

SIXTY-FOURTH SESSION

In re LARGHI

Judgment 883

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Oscar Larghi against the Pan American Health Organization (PAHO) (World Health Organization) on 25 August 1987 and corrected on 4 October, the PAHO's reply of 21 December 1987 as corrected on 14 January 1988, the complainant's rejoinder of 1 April and the PAHO's surrejoinder of 6 May 1988;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Staff Regulation 4.2 and Staff Rules 410.1, 510.1, 565.2 and 565.3 of the Pan American Sanitary Bureau, the secretariat of the PAHO;

Having examined the written evidence and disallowed the Organization's application for oral proceedings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, an Argentinian who was born in 1930, joined the PAHO in 1966 and was employed at its Panamerican Zoonoses Center, known as CEPANZO, at Ramos Mejía in Argentina. He was in charge of the Viral Zoonoses Section and had a grade P.4 post as a virologist. His appointment was to end on 31 August 1989. In April 1984 Mr. Acha, the acting Director of CEPANZO, and the PAHO's Co-ordinator of Veterinary Public Health told him he might be transferred to the National Health Institute of Peru, in Lima, to help in producing vaccine against rabies, a subject he was expert in. On 16 April he wrote a long letter to the Director of the PAHO at headquarters in Washington D.C. stating his technical and personal objections to transfer, but the next day he got a telex conveying the Director's approval of it. Another telex of 8 June gave the duties of his new post, which he also strongly objected to, and on 1 August he sent the Director a telex asking that the transfer be cancelled. A telex of 8 August from the Chief of Personnel refused on the grounds that the work programme required his transfer, although, since he was on sick leave, he need not go to Lima until the end of October. On 14 August he filed notice of appeal. He did not actually take up his new post until 6 December 1984. His counsel submitted his appeal to the Board of Appeal on 15 October 1985. He worked in Lima until 31 December 1985, when he resigned from the Organization to take up other employment. In its report of 16 April 1987 the Board of Appeal recommended rejecting his appeal and by a letter of 26 May 1987, which reached him on 28 May and is the decision he impugns, the Director told him his appeal was rejected.

B. The complainant's objections to the post in Lima are that after running a scientific laboratory with well-qualified staff he was to become a mere technical adviser with no authority and no opportunity for research.

First, he alleges breach of the rules on transfer. He cites Staff Rule 510.1: "Staff members in the professional category are subject to assignment by the Director to any activity or office of the Bureau ... In determining the initial and any subsequent assignment, consideration shall be given, to the extent possible, to the staff member's particular abilities and interests"; and Rule 565.2: "A staff member may be reassigned whenever it is in the interest of the Bureau to do so". He maintains that the interpretation the Tribunal put on those rules in Judgment 447, under 4, supports his case. His transfer from laboratory work, at which he excelled, to a desk job was not in the PAHO's interests and disregarded his "particular abilities and interests". As the Tribunal held in Judgment 447, the Organization has a duty before transferring an official against his will to look for someone else on the staff who is fit and willing to hold the post. In this case it made no attempt to do so.

Secondly, he alleges personal prejudice. The real reason for his transfer was the professional jealousy of Mr. Acha, who was also a veterinary scientist. He appends written statements by former senior staff of CEPANZO which he says show he got no proper support from above and that Mr. Acha wanted to be rid of him. He describes incidents which he believes bear out the disparaging attitude of Mr. Acha, who, in particular, improperly added adverse comments to his performance report for 1984-85.

He seeks damages, costs and such other relief as the Tribunal deems fit.

C. In its reply the PAHO cites other rules: Staff Regulation 4.2, which says that the Director shall consider paramount "in the appointment, transfer or promotion of the staff ... the necessity of securing the highest standards of efficiency, competence and integrity"; Staff Rule 410.1 which has similar wording; and Staff Rule 565.3: "So far as practicable, vacancies in posts in the professional category ... shall be filled by the reassignment of staff members between the different activities and offices of the Bureau in the interest of developing a versatile career staff. In accepting appointment, a staff member accepts the applicability of this policy to himself"

The Director has wide discretion in the matter of transfer, particularly of Professional category staff, but is bound by the rules to give greater weight to the PAHO's interests than to the staff member's. The case may thus be distinguished from the one allowed in Judgment 447. Having pondered all the relevant facts, including a request for technical assistance from the health minister of Peru, and the complainant's objections, the Director concluded that programme needs warranted his transfer. A staff member may not expect to keep the same post for ever. The purpose of sending the complainant to a place where staff and facilities were not so good was that he should help in improving them. His duties in Peru were in fact similar and the transfer caused no injury to his career or good name.

His allegations of personal prejudice are groundless. In support he offers hearsay evidence and a fanciful interpretation of several unconnected incidents. The PAHO discusses each of the incidents and rejects the conclusions he draws from them. Accusing unnamed superiors of refusing support is no proof of the hostility of any one of them. Mr. Acha's entry in his performance report was fair comment and affords no evidence of prejudice.

D. The complainant rejoins that the rules cited in the reply set out only some of the points the Director must bear in mind in deciding on transfer. In any event the Tribunal's reasoning in Judgment 447 holds good. His case is not that he is immune to transfer but that his interests were overlooked, the breach of Rule 510.1 being the greater because he had given signal service over the years. No heed was paid to his interests until he stated his objections.

Though less cogent, the hearsay evidence is still significant. Besides, the written statements he has submitted from former Directors and the former head of technical assistance of CEPANZO are about matters they themselves had knowledge of. He challenges the interpretation the Organization puts on the incidents he cites as evidence of personal hostility, arguing in particular that Mr. Acha had no right to be commenting in his performance report at all.

E. In its surrejoinder the PAHO develops its submissions and seeks to refute the pleas in the rejoinder. It maintains that the complainant's attitude all along betrayed a mistaken belief that he should not be subject to transfer whereas in fact it was in the Organization's interests that his talents be used to improve services and train local staff in Peru: he was being given an opportunity to help in an area where his expertise was needed. The transfer was therefore in no way arbitrary. The written statements he has produced are not sworn evidence and are not cogent. The PAHO discusses in detail the allegations of personal prejudice on Mr. Acha's part and submits that they are groundless. Indeed many of his contentions are, in its view, not just unsubstantiated but absurd.

CONSIDERATIONS:

1. The material issue in this case is whether it was lawful to transfer the complainant. The Director of the PAHO ordered his transfer from the headquarters of CEPANZO, at Ramos Mejía, in Argentina, to the National Health Institute of Peru, in Lima. The complainant lodged an internal appeal, on 16 April 1987 the Board of Appeal recommended rejecting it, and by a letter of 26 May 1987 the Director did so, thereby confirming the transfer, although the complainant had resigned on 31 December 1985.
2. The complainant's case is that the transfer would have broken up his family at a time when he was only six years short of retirement - "hardly a reward for nearly 20 years of faithful service" - and he contends that the transfer was unlawful because of breach of the rules on transfer and personal prejudice against him. The PAHO denies breach of the rules on transfer and the existence of personal prejudice.
3. The Tribunal holds that there was no breach of the rules on transfer.

Although Staff Rule 510.1 requires the Director, in determining the assignment of staff, to "consider the staff member's particular abilities and interests", the overriding rule in Staff Regulation 4.2 is that "the paramount

consideration" in the transfer of staff shall be "the necessity of securing the highest standards of efficiency, competence, and integrity". The Tribunal indeed recognised that in paragraph 4 of Judgment 447 (in re Quiñones):

"... in deciding to transfer a staff member the Director is bound to take account not only of the PAHO's interests but also of the staff member's particular abilities and interests. It is true that if the Organization's interests carry greater weight the Director will act accordingly."4. Other provisions of the rules make it plain that, provided the correct procedure is followed, the Director has wide discretion in determining transfers of Professional category staff. Thus Rule 565.2 provides that a staff member may be reassigned whenever it is in the Bureau's interest. Rule 565.3 says that as far as practicable, vacancies in professional posts shall be filled by reassignment of staff members in the interest of developing a versatile career staff, and that in accepting appointment a staff member accepts that this policy applies to him. And Rule 410.1 reaffirms that "The paramount considerations in the selection of staff shall be competence and integrity", a requirement that applies to transfer as well as to recruitment.

5. Since the decision impugned in this case was a discretionary one the Tribunal will, in the exercise of its limited power of review and in keeping with well-established precedent, set it aside only if it was taken without authority or in breach of a rule of form or procedure, or was based on an error of fact or of law or if some essential fact was overlooked, or if there was misuse of authority, or if a mistaken conclusion was drawn from the facts.

6. Against such principles will the Tribunal consider the complainant's plea of personal prejudice.

The request that the PAHO send a consultant to Lima was made by the National Health Institute of Peru, which already had staff trained at CEPANZO. The complainant was transferred to Lima because of the "necessities of Program and technical demands in Peru". The duties of his new assignment were the training of staff, technical assistance, co-operation in research projects and the drafting of proposals for research and reports.

It is true that in Argentina he had been working with people of high calibre and had had access to certain facilities. But the purpose of his transfer to Peru was to enable him to pass on his knowledge and experience in a country which needed them badly. The PAHO recognised the complainant's abilities in areas other than laboratory research and believed that he could upgrade the professional quality of staff in Peru.

It therefore had valid and objective reasons for the transfer and his allegations of personal prejudice are unproven. Indeed, far from showing prejudice, the Organization actually granted him at the same time a five-year extension of appointment.

He may have been loth, for personal reasons, to move to another country only a few years before he was due to retire. But it was unreasonable of him to expect to stay on in Argentina until the end of his career and there is no reason to suppose that his transfer was not in the Organization's wider interests.

The conclusion is that the impugned decision is not tainted with any of the flaws the complainant pleads.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 30 June 1988.

Jacques Ducoux
Mohamed Suffian
E. Razafindralambo
A.B. Gardner

