

SIXTY-SECOND ORDINARY SESSION

***In re* AKHTAR**

Judgment 821

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Sheikh Mohammad Akhtar against the Food and Agriculture Organization of the United Nations (FAO) on 20 November 1986 and corrected on 27 November, the FAO's reply of 26 January 1987, the complainant's rejoinder of 11 March and the FAO's surrejoinder of 22 April 1987;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Staff Rules 302.4112, 302.907, 303.1311 and 303.1313;

Having examined the written evidence;

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

A. The World Food Programme was set up jointly by the United Nations and the FAO. Its Professional category staff are governed by the FAO Staff Regulations and Rules, whereas field staff in the General Service category are United Nations staff employed under the United Nations Development Programme (UNDP). In January 1976 the complainant, who is a citizen of Pakistan and was born in 1942, joined the Programme in Islamabad as a field officer at grade G.7 under a fixed-term contract with the UNDP. He is an accountant by training. He was transferred in 1979 to headquarters in Rome as a budget officer at grade P.2 and a year later to Katmandu as assistant project officer, still at P.2. He had his contract successively extended to 31 December 1984. On 11 September 1984 Rome wrote to him to say that after "a comprehensive review of field staffing" and "careful examination of both yours as well as the Programme's long-term interests" the decision had been taken to extend his appointment only to 30 June 1985, though he might be able to go back to a post with the UNDP in Pakistan. The Programme's representative in Nepal wrote to headquarters on 25 October 1984 to say he was sorry to hear of the decision and to ask what had warranted it. The answer of 22 November was that no other international assignment could be found. On 30 November the complainant sent the Director-General an appeal under Staff Rule 303.1311, the Assistant Director-General for Administration and Finance rejected it by a letter of 15 January 1985 and on 20 March the complainant appealed to the Appeals Committee under Rule 303.1313. On 1 July 1985 he took up a post with the Programme in Islamabad under a contract with the UNDP as a "national officer, level A". In its report of 14 May 1986 the Committee recommended rejecting his appeal on the merits but trying to find him something else. By a letter of 13 August 1986, which the complainant received on 26 August and impugns, the Deputy Director-General informed him that the Director-General had rejected his appeal.

B. The complainant observes that his general rating in his annual reports was never below very good and in the last three his supervisor recommended promoting him. There is no black mark against him and he is fit for many an international appointment, having a good record in several areas of relevance to the Programme. The reasons for the non-renewal were said to be financial; yet only two other staff members had to leave because of the staffing review, nearly all the incumbents of abolished posts being transferred or even promoted. Moreover, over 50 international field staff members were recruited between September 1984 and June 1985; 19 such staff got promotion in December 1984 and 45 more recently; and the Programme has grown and had 230 international staff by October 1986. For years before he left Nepal there were two Professional category staff members there; now there are four and his own duties are regraded P.3. He submits that his duties were not abolished at all and the decision was arbitrary and must have been actuated by prejudice. In an appendix to his brief he sets out various circumstances which in his submission bear out the inference of prejudice and show shortcomings in personnel management. The Programme did not try to find him another suitable posting, for all his ten years' good record, qualifications and willingness to serve. He seeks reinstatement as from 1 July 1985 and damages.

C. In its reply the FAO submits that the main reason for the complainant's leaving was the Programme's notorious lack of funds, which prompted the staffing review. Once the review had shown up the need to retrench at

Katmandu the Programme had to set its own interests above the complainant's and had no choice but to let him go. It took due account of its own requirements and his record and seniority as against those of other staff members. The plain fact is that he over-rates his own gifts. The reason why no other job could be found for him was his lack of qualifications for project development. Unlike him, the three international officers now in Katmandu do have experience of development work. He had already been found unfit for a career as an accountant at headquarters and knew little of working languages other than English. The Programme was not likely to need more accountants anyway in Rome or elsewhere. And he had been with the Programme for less than five years, not ten. All in all, he got considerate treatment - including nine months' warning of non-renewal - and it was thanks to support from the Programme that, without any break in employment, he landed his present job in Islamabad. He fails to adduce any serious evidence of prejudice on anyone's part against him: what he says in his appendix relates to incidents that followed the decision not to extend his appointment. It was one-and-a-half years after his post in Nepal was scrapped before another was created and it does not require accountancy anyway.

In sum, there was no breach of the terms of the complainant's appointment or of the rules and his claims are devoid of merit.

D. In his rejoinder the complainant discusses the nature of his status with the UNDP and the Programme. He seeks to rebut the charges of professional shortcomings, gives details of his education and work record - which, as the Appeals Committee said, was quite satisfactory - reaffirms that he worked so well as to deserve promotion, describes his qualifications for project work, and speaks of his knowledge of French and Arabic. He again maintains that his post in Nepal did not really disappear and questions the FAO's comments on that score. In his view the FAO cannot show any sound and objective reasons for the challenged decision and its pleas are just an attempt at covering up its own administrative failings.

E. In its surrejoinder the FAO submits that, much of the rejoinder being irrelevant, the complainant has failed to cast doubt on the validity of its reply. It nevertheless takes up his points in order to refute them and develops its pleas. It again invites the Tribunal to hold the complaint unfounded.

CONSIDERATIONS:

The merits

1. The United Nations Development Programme employed the complainant from 26 January 1976 as a grade G.7 field officer with the World Food Programme in Islamabad. On 18 December 1979 he was transferred to WFP headquarters in Rome and appointed budget officer at grade P.2 under a fixed-term appointment for three years. When one year was up, however, he was sent out to Katmandu as an assistant project officer, still at grade P.2. He had several extensions of appointment up to 31 December 1984. By a letter of 11 September 1984 he was told that his last extension was to 30 June 1985 and he would then have to leave.

In accordance with FAO Staff Rule 302.907 the Organization refused to renew his contract when it expired on 30 June 1985, and the Director-General confirmed that on 13 August 1986.

When a fixed-term contract expires the appointment thereupon comes to an end and there is ordinarily no right to renewal. The decision not to renew is at the Director-General's discretion and will be set aside only if taken without authority, or if there was a formal or procedural flaw, or a mistake of fact or of law, or if some essential fact was overlooked, or if there was abuse of authority, or if a clearly mistaken conclusion was drawn from the evidence.

2. The FAO's case is that not only was there no such fatal flaw but the reasons for the decision were cogent and objective. In particular, it says, there is no evidence to suggest that prejudice or any other extraneous consideration prompted the non-renewal or the abolition of post. In point

of fact the decision was based mainly on the findings of a "balanced staffing review", and it did try to find him another job.

3. The material question is whether, as the complainant contends, the reasons the FAO gives are mere pretexts for a decision that was actuated by personal prejudice or bias against the complainant or due to "defective staff administration".

His first argument is that there was no real review of staff needs, not just three officials, but far more, were given notice of termination and for one reason or another all but he were kept on.

The Organization denies that, repeating what it said to the Appeals Committee: between November 1984 and January 1985 it had to reduce staff from 207 to 192.

On the evidence before it the Tribunal cannot make a ruling; the burden is on the complainant to show some fatal flaw, and his mere assertion is not enough.

The FAO observes that it based the decision not just on assessment of the needs of the World Food Programme but also on comparison of the complainant's qualifications and performance with those of other staff. It says that he was underqualified for work on its long-term programmes because he is an accountant, has no experience of the "monitoring" of projects and knows only English well.

But the issue is immaterial, because that is a matter for the Director-General's discretion and the Tribunal will not replace his assessment of the complainant with its own.

For that reason, too, the Tribunal disallows the complainant's plea that an official with no better qualifications and performance fared better. Besides, that is a mere allegation that is not borne out by any evidence.

4. The complainant's objections to the abolition of his post on financial grounds are immaterial to the lawfulness of the non-renewal.

Besides, they are unsound. What he says is that his old post was later revived and that abolishing it was just a pretext for the non-renewal. The FAO retorts that the post was not reinstated until a year and a half after he had left, and that it recruited other staff later only because its finances had by then got better.

Its case is in no way incompatible with the evidence before the Tribunal, and there is therefore no need to take up the complainant's pleas in detail: they relate to points that are either superfluous or irrelevant. The Tribunal finds no evidence to suggest that the decision was taken out of prejudice, on mistaken grounds, or because of extraneous considerations.

5. As for the steps the FAO took to find him another suitable assignment under the Programme, the Organization had no formal duty to find one. Nor does it appear to have refused to let him know if anything turned up.

The complainant's application for oral proceedings

6. The FAO's surrejoinder of 22 April 1987 merely repeats in substance the arguments in its reply, which the complainant had an opportunity to answer in his rejoinder.

The written submissions allow of a ruling on all the material issues and there is therefore no need to hear oral evidence from the complainant.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, 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 5 June 1987.

(Signed)

André Grisel
Jacques Ducoux

E. Razafindralambo
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.