

TWENTY-SECOND ORDINARY SESSION

In re GOYAL

Judgment No. 136

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Educational Scientific and Cultural Organization drawn up by Mr. Prahlad Saran Goyal on 23 December 1968, brought into conformity with the Rules of Court on 9 January 1969, the reply of the Organization dated 4 April 1969, the rejoinder of complainant dated 20 June 1969 and the reply of UNESCO to that rejoinder dated 5 September 1969;

Considering Article II, paragraph 5 of the Statute of the Tribunal and UNESCO Staff Rules 104.6, 105.2, 109.15, and 110.3;

Considering a letter from complainant dated 21 August 1969 alleging that he had been subject to acts of persecution on the part of an agent of the Organization subsequently to the cessation of his employment, the observations of the Organization dated 18 September 1969, complainant's reply of 11 October 1969 and the subsequent observations of the Organization dated 23 October 1969;

Having excluded from the dossier as irrelevant to the case letter No. 465/PER/FIAT/68 dated 7 March 1968, communicated to the Tribunal by the Organization at complainant's request;

The oral proceedings requested by complainant having been disallowed;

Considering that the material facts of the case are as follows:

A. Mr. Goyal entered the service of UNESCO at the Regional Centre for Science and Technology for South Asia in New Delhi in 1965. His initial contract, which was for one year, was renewed on 30 June 1966 until 30 June 1967, and again until 30 June 1968.

B. On 1 December 1967, in a letter addressed to UNESCO headquarters, Mr. Goyal accused one of his colleagues who was in charge of the Centre's accounts of fraud, corrupt practices, embezzlement and inefficiency. In reply to questions from headquarters, the acting chief of the Centre stated that he had no reason to doubt the integrity and efficiency of the accused person. On 29 December 1967 Mr. Goyal cabled to headquarters challenging the aforesaid report. On 1 January 1968 he was notified of his promotion to Grade ND-5/Step 3.

C. The complainant repeated his accusations to the new Director of the Centre, who took up his post at the beginning of 1968. His chief described them as "gossip" and recommended that Mr. Goyal's contract should not be renewed. On 18 March 1968 the complainant was officially informed that his contract would not be renewed. On 20 March 1968 he addressed a letter to the Director-General of the Organization asking him to reconsider his decision, and assuring him that his accusations had been made in good faith and out of a sincere desire to protect the interests of the Organization. On 16 April 1968 the Director of the Centre cabled to headquarters urging the immediate dismissal of Mr. Goyal on the grounds that he had spread abroad unfounded allegations against the staff of the Centre, and on the following day he informed the complainant that he would be considered as being on annual leave (the complainant having at that time an entitlement of 49 days' annual leave up to the end of his contract) and that he would have to leave the office and not to enter it again. The complainant protested by a letter addressed on the same date to the Assistant Director-General for Administration at headquarters. He suggested in this letter that he should at least be placed on special leave with pay and not on annual leave; he repeated and enlarged on his original accusations against his colleague. On 19 April 1968 the Assistant Director-General for Administration cabled to Mr. Goyal informing him that he had been placed on special leave with pay, and this was confirmed by a letter of 23 April 1968. Mr. Goyal was also informed that his request for reconsideration of the decision not to renew his contract was being examined, and that an investigation was to be held, and meanwhile nobody should be considered guilty until so proved.

D. On 27 April 1968 the Assistant Chief Accountant from headquarters visited the Centre with detailed instructions to make an investigation, and interviewed the complainant among others on 9 May 1968. In the meantime, on 29

April 1968, the Assistant Director-General for Administration informed Mr. Goyal that the Director-General had confirmed the decision not to extend his contract. On 29 May 1968 the Assistant Chief Accountant submitted a report on his investigation.

E. On 31 May 1968 Mr. Goyal lodged an appeal with the UNESCO Appeals Board asking either for the renewal of his contract for two years, withdrawal of the letter he had received from his chief on 17 April 1968, which he considered damaging to his reputation, and possibly a fresh investigation, or for payment of compensation and damages. On 15 November 1968 the Appeals Board recommended that the Director-General should reject the request of the complainant for the renewal of his appointment and for compensation and damages, and found that the other requests were not receivable. On 20 November 1968 the Director-General informed Mr. Goyal that he had accepted these recommendations.

F. In his complaint Mr. Goyal requests the Tribunal either that he should be reinstated in his post with a contract of a minimum of two years, with payment of his salary from the date of termination of his employment and that a fresh inquiry should be held into the charges of corruption against the accountant of the New Delhi Centre and suitable action taken against the Director of the Centre; or that he should be paid compensation equivalent to 150,000 Indian rupees.

G. The Organization prays that the complaint should be dismissed.

CONSIDERATIONS:

As to the allegation submitted to the Tribunal by complainant on 21 August 1969:

1. This allegation relates to facts which, even if they were established, would not involve the defendant organisation in the particular circumstances of the case.

As to the non-renewal of the contract:

2. The renewal or non-renewal of a contract of employment is a matter within the discretion of the Director-General. Accordingly the Tribunal will not interfere with his decision unless it was taken without authority, is in irregular form, or tainted by illegality or based on incorrect facts, or if essential facts have not been taken into consideration, or again, if conclusions which are clearly false have been drawn from the documents in the dossier.

The Organization seeks to justify the decision on the ground that the complainant, by making grave accusations against a colleague, had created a situation which made the smooth working of the office in New Delhi impossible. Consequently, so the Organization contends, the Director-General had to resolve this situation and if in his discretion he considered that the only way of resolving it was by separating the complainant from the Organization, the Tribunal ought not to interfere. This might well be so if the accusations were malicious or frivolous or wholly unfounded; or if they were persisted in after they had been disposed of by a full and proper inquiry. In the present case however the accusations, or some of them at least, were specific and detailed and supported by documentary evidence; moreover, they were such as to cause the Director-General himself to deem it necessary that they should be inquired into by an accountant sent from headquarters. It was therefore necessary that any decision about the complainant's future should await the result of this inquiry. The error which the Director-General made - an error which in the opinion of the Tribunal vitiates his decision not to renew the complainant's contract - is that he judged and condemned the accuser before the accusations had themselves been judged. In such circumstances, it is unnecessary for the Tribunal to express any view upon whether the accusations were satisfactorily disposed of by the inquiry. It is sufficient to say that the report of the accountant sent from headquarters showed clearly that the Director-General was right in thinking that there was matter deserving of inquiry.

Accordingly the decision of the Director-General made on 29 April 1968 confirming the expiry of the complainant's appointment on 30 June 1968 must be rescinded; and the Organization must either renew the contract on equitable terms or pay to the complainant such compensation as is equitable in all the circumstances

As to the illegality of the suspension:

3. The Organization has not denied the assertion of the complainant that on 17 April 1968 he was ordered by his chief to get out of the office building at once and never to enter it again. The ground for this action must be that expressed by the Director of the Centre in his telegram to headquarters of the previous day, namely, misusing

office facilities to spread unfounded allegations. This suspension does not fall within any of the cases in which the Staff Rules and Regulations of the Organization authorise such a measure and, in the particular circumstances of the case, is in fact a disciplinary sanction. The Organization has therefore committed a breach of contract by suspending the complainant otherwise than in accordance with the Staff Regulations. Since his emoluments have been fully paid, he has suffered no material damage, but he has suffered moral damage. He is entitled to equitable compensation for the distress caused by the manner of his treatment and for the injury done thereby to his reputation and to his prospects of obtaining other employment. The Organization must therefore pay to the complainant equitable compensation in respect of the illegality of his suspension from duty on 17 April 1968.

4. If the sum or sums offered to the complainant in accordance with the decisions under paragraphs 2 and 3 are not such as he considers equitable, he may submit a claim in respect thereof to the Tribunal, giving all the information necessary to its assessment and stating in particular:

(a) the amount of his remuneration when employed by the Organization; and

(b) the nature and periods of any employment obtained by him since 18 April 1968 and the amounts earned thereby.

DECISION:

For the above reasons,

1. The Tribunal orders the rescinding of the decision of the Director-General made on 29 April 1968 and the Organization shall either:

(a) renew the complainant's contract as from 30 June 1968, making such payment by way of salary in respect of the period between 30 June 1968 and the date on which the complainant is taken back into employment as may be equitable, having regard, in particular, to the earnings, if any, made by the complainant during the said period; or

(b) pay the complainant such compensation as is equitable in all the circumstances.

2. The Organization shall pay to the complainant equitable compensation in respect of the illegality of his suspension from duty on 17 April 1968.

3. The other submissions in the complaint are dismissed.

In witness of this judgment by M. Maxime Letourneur, President, M. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 3 November 1969.

M. Letourneur
André Grisel
Devlin
Bernard Spy