
ADMINISTRATIVE TRIBUNAL

Judgement No. 558

Case No. 578: FARUQ

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Jerome Ackerman, President; Mr. Samar Sen;
Mr. Mikuin Leliel Balanda;

Whereas, on 19 December 1990, M. Omor Faruq, a former staff member of the United Nations, specifically recruited for the United Nations Children's Fund, hereinafter referred to as UNICEF, filed an application containing the following pleas:

"Section - II: Pleas

As per article 7 of the Rules (read with article 2 of the Statute) of the Administrative Tribunal of the United Nations.

- (a) Please call the record of the Personnel file of the Petitioner from UNICEF HQS and UNICEF/Dhaka and please call ... and ... as the witnesses to testify before Hon'ble Tribunal so that the decision of dismissal against the petitioner by the Respondent No. 1 vide his letter dated 30 August 1990 is set aside or rescinded as being false and illegal and as per UN Staff Rules dated 26 February, 1990 specially on the question of non-compliance/non observance of the provision of staff regulations 8.1 to 8.2, read with rule No. 108.2 of article VIII; Separation from service: article IX: regulation No. 9.1; Disciplinary measures and procedure, chapter X: rule No. 110.1, rule No. 110.2, rule No. 110.3, rule No. 110.4 (Due process), rule No. 110.5 and 110.6 (composition of Joint Disciplinary Committee) and article XI: Appeals, regulation No. 11.2 and thus services of the petitioner be restored/re-instated from the date of the said separation, 23 September 1990 and such direction be given to the Respondent.

(b)The decision which the Applicant is contesting and whose rescission he is requesting under article 9, paragraph 1, of the Statute.

The Applicant is contesting the decision of 23 August 1990 of the Secretary-General/Executive Director in the matter of this one sided and illegal dismissal for non-observance of the UN Staff Rules and Regulations as stated in paragraph (9) hereinabove and as such humbly request to declare the said one sided and illegal dismissal is not applicable to the petitioner and he is still in the services of the UNICEF/Dhaka-Bangladesh -- in other words his services be re-instated by the affirmative judgement/decision of this Hon'ble Tribunal in favour of the petitioner.

(c)The Applicant humbly prays that his salary be paid immediately from where it was stopped (23 September 1990) as he cannot work any more due to his complete incapable left hand fatal fractures (humerous become mass in several pieces which now is the cause heavy continuous pains of the whole body of the petitioner -- the doctor's report is enclosed as annexure 'Q') and further since the petitioner files this appeal he naturally did not take any payments as suggested by the Respondent, specially by the Respondent 2 and reserves the right to file a separate compensation claim for his disability due to his accident while he was on official duty."

Whereas the Respondent filed his answer on 29 May 1991;

Whereas the Applicant filed written observations on 3 August and 29 September 1991;

Whereas, on 11 May 1992, the Applicant submitted an additional statement;

Whereas, on 15 May 1992, the presiding member of the panel ruled that no oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNICEF on 1 June 1971, as Secretary/Stenographer at the GS-4 level at the local Office in Dhaka, Bangladesh. During the course of his employment with UNICEF, he was promoted to the GS-5 level on 1 February 1975, as Shipping Assistant, Supply and Shipping Section, and then, on 1 August 1978,

to the GS-6 level as Senior Shipping Assistant. On 1 September 1978, he was granted a probationary appointment and on 1 September 1979, a permanent appointment.

On 17 July 1990, three suppliers of TARA Handpumps submitted a signed written statement to the UNICEF Representative, alleging that they were "under constant pressure from certain UNICEF staff members involved in procurement for payment of quite large sums of money in exchange for processing procurement documents and ensure award of contracts." They described incidents in which UNICEF staff had requested bribes. Specifically, they stated that at a meeting of manufacturers, two UNICEF staff members "advised [them] that a quotation of approximately Tk.[Taka] 2,600/per pump would be accepted by UNICEF. They demanded payment of Tk. 100/per pump (amounting to Tk. 2 million)which they claimed would have to be shared with ... (Water Section) and [the Applicant] (Supply Section) ..."

At a meeting held on 18 July 1990, the UNICEF Representative informed the Applicant of the allegations made against him. According to the Note for the Record of the meeting, signed by the Applicant and the UNICEF Representative, the Applicant denied the allegations.

The three other General Service staff members accused of receiving bribes, when confronted with the accusations, submitted letters of resignation. In addition, in a signed written confession dated 18 July 1990, one of them stated, inter alia:

"(4) [The Applicant] was not involved in the beginning but started receiving kickbacks after he became involved in quality inspection. I heard that [the Applicant] received money from the suppliers of No. 6 Handpump and printers for performing quality assurance inspection and issuance of Delivery Order".

Also, on 18 July 1990, the UNICEF Representative wrote to the Applicant and informed him that he was "suspended from duty pending investigation and a final decision of the Executive Director on

serious incidents of alleged irregularities and misconduct" in accordance with staff rule 110.4.

In a further letter dated 19 July 1990, the UNICEF Representative informed the Applicant that an ad hoc Joint Disciplinary Committee (ad hoc JDC) had been constituted in consultation with the Staff Association to investigate the allegations made against him. The allegations were contained in two communications attached to the letter, namely the statement dated 17 July 1990, by the suppliers of TARA Handpumps, with their names deleted, and the written confession by one of the three accused staff members who had resigned. His name had also been deleted. The Applicant was informed of the composition of the ad hoc JDC and was asked to provide a written statement in respect of the charges by 22 July. He was also asked to provide the names of any persons he wished the ad hoc JDC to call on his behalf and the names of any staff member (serving or retired) whom he wished to be present when he appeared before the ad hoc JDC. The Applicant argues in his pleadings that a carbon copy of this letter was handed over to him on 22 July 1990 and not on 19 July 1990, thereby depriving him of the possibility of submitting a proper defence.

On the same date, the UNICEF Representative wrote to the Project Officer, informing him that he had been designated Chairman of the ad hoc JDC and transmitting to him documentation containing the allegations against the Applicant, namely, the letters by the suppliers complaining of corruption, the letters of resignation by the three accused staff members, as well as a signed confession by one of them, implicating the Applicant. He also transmitted the letter communicating to the Applicant his suspension from duty and the Note for the Record of their meeting on 18 July 1990, signed by the Applicant and the UNICEF Representative. He stated in this regard:

"These documents constitute the details of the allegations against [the Applicant] and are the documentary evidence pertaining to the case. Specifically, please investigate allegations that kickbacks were given to [the Applicant] by

colleagues and the companies where [the Applicant] did quality inspections of No. 6 Pumps and for printers etc."

In a letter dated 22 July 1990, the Applicant asked the Resident Representative to "exonerate" him from the charges brought against him and allow him to resume his duties. He denied having any knowledge of payment of bribes and argued that the allegations were "completely baseless and imaginative", particularly since the delivery of TARA Pumps had not yet been made nor had payment been made to the suppliers. A copy of this letter was sent to the Chairman of the ad hoc JDC.

The ad hoc JDC adopted a report with respect to its investigation on 24 July 1990. It listed 10 suppliers it had interviewed with whom the Applicant "was directly involved in ... procurement matters". On 21 July 1990, two of these suppliers alleged that:

"... through the previous couple of years [the Applicant] frequently demanded money when he was responsible for processing quality assurance inspection reports and issuing delivery orders. [The supplier] paid [the Applicant] Tk. 2,000/- on two occasions (Tk. 4,000/- total). Payments were made by [the supplier] personally, to [the Applicant] at the tea stall near the canteen".

and that:

"... For the production and supply of No. 6 Handpump and spares in 1989/90 [the supplier] had to make the following payments.

1. 1st payment - Tk. 2,500/- each to ... and [the Applicant].
2. 2nd payment - A total of Tk. 20,000/- paid to the same 4 persons at Tk. 4,000 to 6,000 each (January - February 1990)".

The Applicant was not informed of the identity of his accusers. The names were deleted from the documents made available to him.

The Applicant subsequently appeared before the ad hoc JDC on

23 July 1990. According to a Note for the Record, the Applicant denied the allegations by the two suppliers and asked "that the concerned suppliers be interviewed in his presence". One of the suppliers was summoned, but "declined to meet [the Applicant] directly on the grounds that he [was] afraid for the safety of himself and his family." According to the minutes of the meeting, the ad hoc JDC informed the Applicant that it would "request the concerned suppliers to give evidence in his presence and [would] fix an appointment, no later than Tuesday, 24 July 1990." There is no record attesting to whether such a meeting was held or not.

The ad hoc JDC concluded:

"On evaluating all the documentation and discussions, the Committee makes the following observations:

1. [The Applicant] has served this Organization for the last 20 years in the Supply & Logistics Section with a clean record and enjoys the respect of his colleagues (ref. personal file).
2. He has worked in an environment where colleagues have been involved in receiving large sums of illegal money based upon the resignation of 3 staff members and written confession of one.
3. He has not been involved in extortion or negotiations on bids etc.
4. It is highly probable that he has taken small sums of money without fully realizing the implications or consequences."

and unanimously recommended:

"the following disciplinary measures be taken against [the Applicant].

- (a) Written censure by the Executive Director.
- (b) Deferment, for a period of three years, eligibility for within-grade increment or promotion.

- (c) That he be transferred to a post where he has no responsibilities related to local procurement or financial transactions".

Also on 24 July 1990, the Applicant wrote to the UNICEF Representative concerning alleged wrong-doings by the Assistant Supply Officer. He argued essentially, that the suppliers of TARA Handpumps and the colleague who had implicated him, had accused him in order not to involve the Assistant Supply Officer who was "playing a vital and crucial role by motivating the suppliers to fulfil his vindicative attitude." A copy of the letter was sent to the Chairman of the ad hoc JDC.

On 30 August 1990, the Deputy Executive Director of UNICEF informed the Applicant that:

"...

Having considered the findings of the investigation, we regret we do not find your explanations as credible, and we have concluded that you received kickbacks from several suppliers. Such action is obviously incompatible with your responsibility and conduct befitting your status as an international civil servant under staff regulation 1.4. Therefore, I have decided on behalf of the Executive Director to invoke the provision 110.3(vii) of UN Staff Rules and separate you from UNICEF service for misconduct.

I have also decided that on compassionate grounds, in view of your medical situation, you receive payment of three months salary in lieu of notice in accordance with UN staff rule 109.3(a). In addition, you will receive payment of one half of the termination indemnity due to you in accordance with para (c) of Annex III to the UN Staff Regulations."

On 19 December 1990, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The finding by the ad hoc JDC that it was "highly probable" that the Applicant had received bribes from suppliers did not constitute a sufficient charge on which to dismiss him. Such a

decision was thus flawed, going beyond the scope of the disciplinary measures recommended by the ad hoc JDC.

2. The Applicant was denied due process in not being able to cross-examine the suppliers interviewed by the ad hoc JDC who made allegations against him.

3. The disciplinary procedure conducted was not in accordance with the Staff Regulations and Rules.

4. The Respondent did not allow the Applicant sufficient time to defend himself against the charges inasmuch as he received the letter specifying the charges on 22 July 1990 and not 19 July 1990.

Whereas the Respondent's principal contentions are:

1. The United Nations Charter and the Staff Regulations oblige the Secretary-General to select and retain staff of the highest standard of integrity, and therefore he has the responsibility to determine definitively whether a staff member meets those standards.

2. The decision to dismiss the Applicant was reached after a disciplinary procedure which guaranteed due process and safeguarded the Applicant's rights, and was not improperly motivated.

The Tribunal, having deliberated from 10 to 30 June 1992, now pronounces the following judgement:

I. Interspersed in the application are requests to the Tribunal to hold oral hearings and to call for documents. The material before the Tribunal is adequate to decide on the application and therefore these requests are denied. The Applicant also asks for interim relief in the shape of "subsistence allowance and child allowance". The Tribunal's Statute makes no provision concerning such matters, and the request cannot be entertained.

II. The principal thrust of all the pleas put forward by the Applicant is that his separation from service with UNICEF in Dhaka should be rescinded as he was an innocent victim of prejudice and machinations and was subjected to the wrong application of numerous regulations and rules. In support of this allegation he cites, in particular, regulations VIII, IX, X, XI and rules thereunder and asserts that they have been violated in several ways.

III. A close examination of the provisions of these Regulations and related Rules convinces the Tribunal, however, that while there might have been minor deviations and occasional faulty applications, such deficiencies did not, taken singly or together, affect the outcome of this case or deflect the course of justice.

IV. The main disciplinary measures applicable to the Applicant are elaborated in article 10 of the Regulations and the Rules made thereunder. Regulation 10.2 prescribes that the Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory. Staff rule 110.3 provides for "separation from service, with or without notice or compensation therefor, notwithstanding rule 109.3" as one of these measures. Under staff rule 109.3, a staff member, such as the Applicant, holding a permanent contract, "shall be given not less than three months' written notice of such termination". There are further provisions relating to the procedure to be followed in respect of staff members, i.e. due process, the composition of the Joint Disciplinary Committee and its procedure.

V. The Tribunal has consistently held the view that all administrative decisions, especially on disciplinary matters, should be free of prejudice, personal bias and other deleterious extraneous factors and that due process should be observed. An important measure of protection built in the relevant Regulations and Rules is that a staff member accused of wrong-doing should know precisely the

charges against him, should have a right to counsel and should have all the important statements recorded and open to examination. In the present case, the Tribunal finds that the Applicant was accorded the due process to which he was entitled.

VI. Thus, the action taken by the UNICEF Representative in Bangladesh on 18 July 1990, to suspend the Applicant from that date "pending investigation and a final decision of the Executive Director on serious incidents of alleged irregularities and misconduct as discussed with [the Applicant] today" would clearly indicate that correct procedure was being initiated. This was followed in quick succession by meetings of an ad hoc Joint Disciplinary Committee (JDC). The final separation of the Applicant was decreed by the Deputy Executive Director in a letter of 30 August 1990, and took effect on 23 September 1990.

VII. The Deputy Executive Director, in his letter of 30 August 1990, explained that the Respondent had taken into account the representations and denials made by the Applicant, and concluded that his conduct deserved separation for misconduct. The Applicant challenges this conclusion and contends that it was not based on available facts, that he could not confront and cross-examine the Tara Handpump suppliers who brought the initial complaint and that due process was not applied. In any event, he says he was hardly given any time to answer the charges.

VIII. Despite these assertions by the Applicant, the Tribunal finds that the precise charges were communicated to the Applicant on 18 July 1990 and on the next day, 19 July, the Applicant acknowledged receipt of a confidential letter sent to him by the UNICEF Representative with the words "agreed to cooperate". This letter sets out the various important steps to be taken for proper investigation and specifically asked the Applicant to make available his written statement by 22 July 1990. Since the Applicant had

agreed to cooperate with the steps indicated to him, he cannot now argue that he was not given sufficient time or that the UNICEF Representative's note on the letter, "Accepts to complete by 24 July", lacks validity. There is nothing on record to show that he ever requested any additional time before 24 July 1990, when the ad hoc JDC completed its report.

IX. On the same day, 24 July 1990, the Applicant sent a complaint asserting that all the charges he was facing were due to false allegations brought against him by an official in the UNICEF Office in Dhaka. However, this cannot be accepted as a defence for the specific complaints against the Applicant. In any event, there is nothing in the files to explain why the Applicant did not mention this official's alleged machinations to the UNICEF Representative on 18 July 1990, or to the ad hoc JDC at any time between 18 July and 23 July 1990. The Tribunal cannot accept that the Applicant came to know all about such alleged intrigues and corruption only on or about 24 July, when the JDC completed its work. The Applicant gives no explanation why there should be any conspiracy against him.

X. The Applicant contends that inasmuch as he was not able to confront and cross-examine persons who had alleged wrong-doing on his part, the proceedings of the ad hoc JDC were vitiated. The Respondent in reply points out that the ad hoc JDC was not a national court, had no right to issue subpoenas and had to be guided by such evidence as was available to it. The Tribunal accepts the view expressed by the Respondent. However, it considers that, because of the difficulty mentioned by the Respondent and the limitations of joint disciplinary bodies operating in outlying places far away from Headquarters - for example, possible lack of proper legal assistance - special care should be taken to protect all the rights of staff members. Nonetheless, the Tribunal finds that in this particular instance the Applicant was not denied due process.

XI. The Applicant contends further that insofar as the ad hoc JDC concluded that "it is highly probable that [the Applicant] has taken small sums of money without fully realizing the implications or consequences", the decision by the Respondent to terminate his services was excessively severe and therefore totally unjust. The Applicant apparently takes the view that the Respondent could take milder action than the ad hoc JDC suggested as a disciplinary measure, but could not increase the severity of such measures. The Tribunal does not accept the ad hoc JDC's finding that the Applicant could have taken money "without fully realizing the implications or consequences". Any person placed, as was the Applicant, and particularly, one who, like him, had a record of good service, can be assumed to know the "implications or consequences" of taking bribes, be they large or small.

XII. On the wider question of the Secretary-General's discretion in disciplinary cases, the Tribunal would state once again its view that the Respondent's authority in these matters is broad. (Cf. Judgement No. 494, Rezene (1990); Judgement 490, Liu (1990)). If the Secretary-General concludes, after proper examination, that a staff member's conduct is unsatisfactory, as stated in staff regulation 10.2, he may impose any of the disciplinary measures prescribed in staff rule 110.3. The recommendations of the JDC and similar bodies are advisory and the Secretary-General can go beyond them if, after proper and unbiased consideration, he decides that a more severe penalty is needed either in the interest of the United Nations or for failure by a staff member "to observe the standards of conduct expected of an international civil servant".

XIII. In view of this jurisprudence of the Tribunal and in the light of all the facts in this case, the Tribunal concludes that, despite some minor irregularities, the Respondent examined carefully and without prejudice all the aspects of the case relating to the

charges against the Applicant and exercised his discretion properly.

The Tribunal notes that the Applicant received on "compassionate grounds", following an accident, three months' pay in lieu of notice, in accordance with staff rule 109.3(a), and half of the termination indemnity under paragraph (c) of Annex III to the Staff Regulations.

XIV. For the foregoing reasons, the Tribunal rejects the application.

(Signatures)

Jerome ACKERMAN
President

Samar SEN
Member

Mikuin Leliel BALANDA
Member

Geneva, 30 June 1992

R. Maria VICIEN-MILBURN
Executive Secretary