



Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1032

Case No. 1105: RAHMAN

Against: The Secretary-General
of the United Nations

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Mayer Gabay, President; Ms. Marsha A. Echols; Mr. Spyridon
Flogaitis;

Whereas, on 27 October 1999, Iftikhar Rahman, a former staff member of the United Nations Development Programme (hereinafter referred to as UNDP), filed an Application containing pleas which read as follows:

"II. PLEAS

- (a) To over-rule and rescind the decision of the Respondent, issued by his letter dated 12 August 1999 (...), by which the Applicant was separated from service, on account of acceptance by the Respondent, of [the] Report ... of the UNDP/UNFPA/UNOPS [UNDP/United Nations Population Fund/United Nations Office for Project Services] Disciplinary Committee, dated 13th July 1999 (...), because this Report is based on assumptions and surmises, ignores vital countervailing evidence, facts, contradictions and vital legal aspects/considerations presented by the Applicant.
- (b) To further rule that the Report of the ... Disciplinary Committee is further legally flawed because the Disciplinary Committee used the 'three complainants' as 'witnesses' for the UNDP Administration because each was narrating her own allegations and not corroborating their individual allegations by another witness or document. On the other hand, the Disciplinary Committee did not admit the

many oral witnesses requested by the Applicant, which shows ill motives and bias.

- (c) To rule that the initial group complaint letter (sexual harassment in the work place) dated 22 December 1997, by the 10 complainants against the Applicant (...), was not maintainable under the provisions of the [circular] UNDP/ADM/93/26 dated [18] May 1993 on sexual harassment (...). Ignorance of law is no excuse for the complainants to not abide by its provisions, thus, to rule that this complaint was doubtful, malafide and should have been rejected on first review by UNDP.
- (d) To rule that the 'Report of the Grievance Panel on Sexual Harassment' dated 22 May 1998 (...) is based on assumptions and surmises, is devoid of legally sustainable corroborative evidence to support the conclusions arrived at by the Panel, and has serious factual and legal shortcomings... To rule that evidence of one complainant to support the allegations of another complainant in this combined case cannot be accepted, as both become interested parties.
- (e) To rule that, once the review of all evidence and rejoinders by the Applicant over a period of 14 months yielded no *prima facie* evidence of 'sexual harassment' (the original cause of action of the group complaint), the case should have been closed/settled amicably, instead of framing three other charges ('harassment', '*fostering a hostile work environment*' and '*conduct unbecoming of a senior UNDP official*' ... To rule further that the basis of these fresh charges is legally not sustainable, ... The Applicant, therefore, makes a request for a *REVIEW BY THE UN ADMINISTRATIVE TRIBUNAL, OF HIS PRESENTATION TO THE DISCIPLINARY COMMITTEE* (...).
- (f) The Applicant humbly also requests the following '*preliminary and provisional measures*' to be ordered by the Tribunal ...
 - i. To order the Respondent to produce the confidential communication sent by ... the Resident Representative, UNDP, Pakistan, to UNDP Headquarters in August 1999, with regard to his *reservations* on the Report ... of the ... Disciplinary Committee ...
 - ii. To order the Respondent to produce the confidential communication sent by... the Resident Representative, UNDP, Pakistan, to UNDP Headquarters before/and or after UNDP Headquarters framed its charges against the Applicant ...
 - iii. *The hearing by the UN Tribunal of a key witness* ... the then Resident Representative, UNDP, Pakistan ...

- iv. *The hearing by the UN Tribunal of a another key witness ... the Deputy Resident Representative, UNDP, Pakistan ...*
- (g) To rule ... that the Applicant committed no violation of the UN Charter, UN Staff Regulations, Rules and Administrative Instructions issued thereon.
- (h) To hold 'extraordinary sessions' under the provision of Article 4 of the Statute and Article 6 (paragraph 3) of the 'Rules of the Administrative Tribunal ...'
- (i) To allow the Applicant to also present his appeal in person and be represented by his counsel, under the provisions of Article 13 of the 'Rules of the Administrative Tribunal ...'

Relief Requested

- (a) To reinstate the Applicant with effect from 20 August 1999, to the post of Assistant Resident Representative (Operations) and the grade he was holding when the termination measure was taken; or to reinstate him into an equivalent post ... To consider the period of cessation (between the date of termination and date of reinstatement), as special leave with full pay.
- (b) To order UNDP to compensate the Applicant for the agony, humiliation, loss of reputation, and sustained distress, a sum of money equal to 2 years of net base salary in Pakistan currency.
- (c) To consider the injury sustained by the Applicant **as 'exceptional' under Article 9, paragraph 1 of the Statute** and to order UNDP to pay in addition, a sum of US dollars 1,000,000 (US dollars 1 Million) for the progressive impairment of his health (...) on account of the unfair process leading to his conviction on grounds devoid of legal substance.
- (d) To order UNDP not to 'exploit labor' and to pay a sum of US dollars 55,000 on account of 'Special Post Allowance' [(SPA)] (calculated at the rate of US dollars 5,000 per month for 11 months that the applicant served as Officer-in-Charge Operations, UNDP, Pakistan), for which he was recommended under provisions of UNDP Personnel Rules (...) but wrongfully denied (...). Thus, to order UNDP to de-link the matter of earned allowance (SPA) from the decision of the Respondent dated 12 August 1999 (...)."

Whereas, at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 March 2000 and periodically thereafter until 2 May 2001;

Whereas the Respondent filed his Answer on 2 May 2001;

Whereas the Applicant filed Written Observations on 19 June 2001;

Whereas the Tribunal decided on 7 November 2001 that there would be no oral proceedings in the case;

Whereas the facts in the case are as follows:

The Applicant joined UNDP on a fixed-term appointment as a locally recruited Administrative Officer, UNDP Office, Pakistan, at the NO-B level, on 17 January 1993. Effective 1 January 1995, he was promoted to the NO-C level as Assistant Resident Representative for Administration, subsequently, for Operations. As of 9 May 1997, the Applicant assumed the responsibilities of Officer-in-Charge, Operations Division, which position he held until his separation from service, effective 12 August 1999.

In October or November 1997, the Resident Representative, UNDP, Pakistan, (the Resident Representative) recommended to the Director, Office of Human Resources, UNDP, (OHR) that a special post allowance (SPA) at the P-5 level be granted to the Applicant. This request was subsequently referred to the Advisory Group on SPA

On 22 December 1997, ten UNDP female staff members lodged with the Resident Representative an official complaint of sexual harassment against the Applicant. The complaint followed the provisions of UNDP/ADM/93/26.

On 11 March 1998, an eleventh staff member requested she be added to the original complaint.

The letters of complaint were forwarded to the UNDP/UNFPA Grievance Panel on Sexual Harassment (Grievance Panel) and copied to the Applicant.

The Grievance Panel presented its report to the Director, OHR, on 19 May 1998. The Panel found that, in four of the eleven complaints, there was sufficient evidence to conclude that "the sexual conduct of the [Applicant] created an intimidating, hostile, or offensive work environment for the complaint as set forth in the Sexual Harassment Policy and Procedures for UNDP/UNFPA staff".

On 12 June 1998, the Director, OHR, sent the Applicant a copy of the report and informed him that he could respond to it by 10 July 1998. She also informed him that, pending

further review of his case, he would be placed on special leave with full pay (SLWFP) for an initial period of three months.

On 5 February 1999, the Officer-in-Charge, OHR, notified the Applicant that, based on the findings of the Grievance Panel and on OHR's analysis of the evidence, his case would be referred to the UNDP/UNFPA/UNOPS Disciplinary Committee (JDC). Three charges were brought against the Applicant: harassment, fostering a hostile work environment and conduct unbecoming of a senior UNDP official.

The JDC submitted its report on 13 July 1999. Its conclusions and its recommendation read as follows:

"CONCLUSIONS AND RECOMMENDATION

60. The Committee unanimously concluded that [the Appellant] had been afforded every opportunity of due process to rebut the allegations against him, but that he had not been able to cast doubt on any issue. The Committee unanimously found all three witnesses to be entirely credible ... The Committee unanimously found that not only could his veracity not be relied on, but he was also vengeful... The committee unanimously found that a clear and repeated pattern of harassment existed on the part of [the Applicant].

61. *IN CONCLUSION, the Committee finds the charge of harassment, which includes sexual harassment, to be supported by the evidence; that [the Appellant]'s pervasive and repeated acts of verbal harassment of a sexual nature against young female colleagues to have created a hostile, intimidating and offensive work environment; that therefore [the Appellant]'s conduct was unbecoming of an international civil servant and incompatible with continued membership of the staff.*

62. *The Committee unanimously recommends that [the Appellant] be separated from the service of UNDP in accordance with staff rule 110.3 (viii), without notice or compensation in lieu thereof."*

On 12 August 1999, the Administrator, UNDP, transmitted a copy of the JDC report to the Applicant and informed him as follows:

"...

... I am ... satisfied that due process requirements were fully met in this case.

...

In view of [the] unanimous finding of fact by your peers, and taking into consideration your duties and obligations as a senior staff member, my conclusion is that your actions and attitude towards your work colleagues constituted unsatisfactory conduct under Staff Rule 110.1. Such behaviour is contrary to Staff Regulation 1.4 and in breach of the standards of conduct expected from an international civil servant. In this regard, I have duly considered and rejected all your claims to mitigating circumstances.

In these circumstances, and in view of the requirements of article 101.3 of the United Nations Charter on efficiency and integrity, it would not be in the best interests of the Organization to have you resuming your functions or to maintain you at its service. I have therefore decided to separate you immediately from service, with one-month salary in lieu of notice.

..."

On 30 September 1999, the Applicant was informed by the Director, OHR, that his request for SPA had been rejected. On 8 October 1999, the Applicant requested a review of this decision and on 28 October 1999, the Administrator, UNDP, informed him that he had found no ground on which to rescind the said decision.

On 27 October 1999, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The JDC report is legally flawed.
2. The initial group complaint letter was not "maintainable" under UNDP's guidelines on sexual harassment.
3. There was no *prima facie* case of sexual harassment.
4. The three charges against the Applicant, contained in the letter of 5 February 1999, which were brought before the JDC (harassment, fostering a hostile work environment and conduct unbecoming of a senior UNDP official), were new charges.
5. The denial of the SPA was inappropriately linked to the decision to separate him from service.

Whereas the Respondent's principal contentions are:

1. The decision to separate the Applicant from service was within the discretion of the Respondent and was not the result of bias or abuse of discretion.
2. The decision was not vitiated by any mistake, lack of due process, prejudice or other extraneous factors.
3. The decision to deny the Applicant's request for SPA was within the Respondent's discretion and was not an abuse thereof.

The Tribunal, having deliberated from 7 to 23 November 2001, now pronounces the following Judgement:

I. This dispute is a challenge to the Respondent's decision to separate the Applicant from service on the grounds of misconduct. The Respondent concluded that the Applicant harassed four female employees and thereby fostered a hostile work environment and engaged in conduct unbecoming an official of the Organization. The Applicant contests the decision on substantive and procedural grounds.

II. In May 1993 the Agency issued UNDP/ADM/93/26, a policy on sexual harassment. The policy called sexual harassment "unacceptable behaviour". It defined the term to mean,

"conduct of a sexual nature, when it interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment. It is particularly serious when behaviour of this kind is engaged in by any official who is in a position to influence the career or employment conditions (including hiring, assignment, contract renewal, performance evaluation, working conditions, promotion) of the recipient of such attentions."

The policy says that a hostile work environment is one of two categories of sexual harassment. There is a hostile work environment when the sexual conduct "interferes with work, or creates an intimidating, hostile, or offensive work environment". Procedures were included in the policy, including the creation of a Grievance Panel, whose role is investigation and fact finding, and the possibility of referral to a JDC.

III. The original allegations of sexual harassment were contained in a letter signed by 10 of the 16 female employees supervised by the Applicant. An eleventh woman later joined them. The actions about which they complained occurred between late 1996 and October 1997. They included conversations in the Applicant's office about his unhappy situation at home, "seemingly reaching out to them for female companionship" and calling the women at their homes to talk about his unhappiness, while giving intimate details about himself and his wife. The joint letter said that the calls occurred unnecessarily when it was time to renew contracts.

IV. A Grievance Panel found "elements constituting sexual harassment" in four of the allegations of sexual harassment. In February 1999, UNDP sent a memorandum to the Applicant, which stated that the Grievance Panel had concluded both that incidents regarding four of the women might constitute sexual harassment and that the incidents had created a hostile work environment, when in fact the Panel only reached the first conclusion. The memorandum stated that charges of harassment, hostile work environment and conduct unbecoming a senior UNDP official remained to be answered by the Applicant. The JDC found against the Applicant on each charge. It believed the charge of "harassment, which includes sexual harassment, was supported by the evidence: that [the Applicant]'s pervasive and repeated acts of verbal harassment of a sexual nature against young female colleagues to have created a hostile, intimidating and offensive work environment; that therefore [the Applicant]'s conduct was unbecoming of an international civil servant and incompatible with continued membership of the staff". It recommended separation without notice or compensation in lieu thereof. Acting on that recommendation, the Respondent separated the Applicant.

V. The Applicant raises several questions about the procedure followed by the Grievance Panel and the JDC. He challenges the sufficiency of the evidence in each of the four cases. He asserts that the charges against him were based on the uncorroborated testimony of three of the women and that there were contradictions in their statements.

VI. The Tribunal finds that the bodies that considered this matter appropriately relied on the letter and statements of the Applicant's accusers in determining the truthfulness of their claims. The original letter was signed by ten women, who implicitly corroborated each other's claims. Of course, none of them could verify the accuracy of the events related by her colleagues. Nevertheless, the similarity of their experiences with the Applicant, the pattern of conduct they described in the letter and the ability of the Grievance Panel and JDC to judge the credibility of the oral testimony of at least three of the women made it reasonable for the Panel and the JDC to conclude, as they did, regarding the sufficiency of the evidence.

VII. In addition, the Applicant asserts that the JDC refused to admit his witnesses, including the Resident Representative, a refusal that he believes illustrates the bias of the JDC. The UNDP policy requires the Grievance Panel "normally" to interview the complainant, the alleged offender, any witnesses and others who might be able to provide relevant information. The report of the Grievance Panel states that the panel members interviewed both the Resident Representative and the Deputy Resident Representative (Programme). The JDC report noted the interview of the Resident Representative and the Deputy Resident Representative in a conference call to Islamabad and that the JDC allowed the Applicant to question the two men as well as the three women who traveled to New York to testify concerning their complaints. These facts belie the Applicant's assertion.

However, the Applicant claims that the statements of the Resident Representative and the Deputy Resident Representative exculpated him but were ignored. For example, the Resident Representative stated that he was not aware of a hostile work environment created by the Applicant and that the Applicant could neither approve a personnel contract nor approve the reimbursement of claims for daily subsistence allowance - both statements going to elements of sexual harassment as defined by UNDP. It is unclear from the JDC report whether it believed these statements. However, even if the testimony were judged to be credible it cannot completely exculpate the Applicant, given the very broad definition of sexual harassment in the UNDP policy. Nor are these statements alone sufficient to undo the findings regarding hostile environment and conduct unbecoming a UNDP official.

VIII. While the Tribunal normally relies on the factual findings of a JDC, it will decline to accept those findings when there is evidence of prejudice or bias. (See Judgement No. 1009, *Makil* (2001).) The Applicant says there was management bias against him and a pre-determined objective of punishing him to satisfy political expediencies. He cites, for example, extensions of time, the granting of counsel to the women to assist them in the preparation of their statements, the flow of confidential information from UNDP to the women, the long period of his SLWFP and the fact that the same person served first as counsel to the women then as counsel to UNDP. In addition, there were local news reports about the case. These circumstances illustrate that the case was more than a legal dispute. However, they do not indicate a prejudice or bias against the Applicant.

IX. The Tribunal examined whether there was such a change in the charges against the Applicant that his right to a fair proceeding, including notice of the charges, was denied. A careful examination of the record reveals that adequate notice was provided, in keeping with the ruling of the Tribunal in Judgement No. 997, *Van der Graaf* (2001). After reviewing the complaints by the women and considering evidence, including testimonial evidence, the Grievance Panel in May 1998 found "elements constituting sexual harassment" as defined in the UNDP policy. It made more specific conclusions regarding each of the four women, stating that the "conduct of the [Applicant] created an intimidating, hostile or offensive work environment for the complainants ...". The June 1998 memorandum from the Director, OHR, to the Applicant provided additional notice of the scope of the issues. It referred to the findings and conclusions of the Grievance Panel, repeating the language quoted above, and continued, "[s]uch behavior and conduct is unacceptable, contrary to the provisions of Article 101 of the Charter of the United Nations and is a violation of the standards of conduct expected of an international civil servant. If proven, this may amount to a mismanagement of UNDP resources and to unsatisfactory conduct within the meaning of Staff Regulation 10.2." The Applicant was asked to respond within approximately 30 days. Subsequently, UNDP notified the Applicant in February 1999 that it would refer the matter to a JDC on charges of harassment, hostile work environment and conduct unbecoming a senior UNDP official. Clearly, the Applicant had

adequate and timely notice, distinguishing the facts here from those in Judgement No. 744, *Eren* (1995).

X. The Applicant also argues that UNDP wrongfully withheld an SPA from him. UNDP says that it was a proper exercise of its discretion to refuse the allowance under the circumstances. It said that in carrying out the additional responsibilities for which the SPA was claimed, the Applicant committed misconduct. The Tribunal finds no fault in the denial of the SPA.

XI. For the foregoing reasons, the Tribunal rejects the Application in its entirety.

(Signatures)

Mayer GABAY
President

Marsha A. ECHOLS
Member

Spyridon FLOGAITIS
Member

New York, 23 November 2001

Maritza STRUYVENBERG
Executive Secretary