



Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1061

Case No. 1167: AHSAN

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Julio Barboza, First Vice-President, presiding; Mr. Kevin Haugh,
Second Vice-President; Mr. Spyridon Flogaitis;

Whereas at the request of Zafreen Ahsan, a former staff member of the United Nations Children's Fund (hereinafter referred to as UNICEF), the President of the Tribunal, with the agreement of the Respondent, granted an extension of the time limit for filing an application with the Tribunal until 12 May 2000 and periodically thereafter until 31 October 2000;

Whereas, on 28 October 2000, the Applicant, filed an Application requesting the Tribunal to:

"...

- 2) Rescind the order of summary dismissal ...
- 3) ... [Reinstate the Applicant] effective ... 2 September 1998, as Project Assistant, UNICEF, Bangladesh, [at the G-6 level] with all benefits.
- 4) Award ... legal costs ...

- 5) Award any other relief or benefits as the [Tribunal] deems fit."

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 30 June 2001 and periodically thereafter until 31 January 2002;

Whereas the Respondent filed his Answer on 30 January 2002;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNICEF as a Project Assistant at the GS-6 level, on a temporary fixed-term contract in the Programme Planning (Field) Section, Dhaka & Khulna Field Cluster, UNICEF Bangladesh Country Office in Dhaka, on 14 September 1997. The Applicant's fixed-term contract was extended on 1 January 1998 and on 1 July 1998, the latest extension running until 31 December 1999.

By letter dated 2 September 1998 from the Representative, UNICEF-Bangladesh, (hereinafter "the Representative") the Applicant was notified that "serious irregularities" had been identified in a review of her travel claims, and that "serious statements [had] been made by some Government employees concerning release of funds allocated by UNICEF to the Government". Consequently, the Applicant was advised that, in view of the seriousness of the allegations, she was being suspended without pay and that an investigation into the allegations was being initiated.

On 26 September 1998, the Applicant met with an Assistant Finance Officer, a Senior Finance Clerk and an Investigation Team member, to review the details of her travel claims for the period April to August 1998. The Applicant's statements were recorded in a "Note for the Record" of the same date. On 30 November, the Applicant was informed that the investigation had been completed. In addition to being charged with making false certifications in her travel claims, she was charged with receiving monies from government counterparts without proper authorization for (a) an Oral Rehydration Therapy (ORT) programme, and (b) the installation of tubewells. She allegedly gave the money received for the tubewells to the Chairperson of the Poverty Elimination Organisation (PEO), but they were never installed. The formal charges lodged against her were as follows:

- A. The Applicant made false certifications in her travel claims
- B. The Applicant abused her status as an international civil servant and position in UNICEF to obtain personal loans from Government counterparts and failed to honour the resulting private obligations
- C. The Applicant made false representations to government counterparts and through this fraudulent means and, presumably, for personal gain persuaded them to lend her and/or place at her disposal either personal monies or monies advanced by UNICEF to the counterparts to be disbursed in support of programming activities.

The Applicant was advised that she should respond to the charges within two weeks. In her reply of 21 December 1998, the Applicant denied any misrepresentation on her part.

On 16 March 1999, Ms. Karin Sham Poo, Deputy Executive Director, UNICEF, advised the Applicant that her actions constituted conduct not befitting an international civil servant and demonstrated a failure to maintain the highest standards of integrity, independence and impartiality required by her position, which could have seriously jeopardized UNICEF's standing and relationships with the Government of Bangladesh, and informed her of the Executive Director's decision to summarily dismiss her in accordance with staff regulation 10.2.

On 25 May 1999, the Applicant requested administrative review of her summary dismissal. On 13 June, she was advised that her case would be referred to an ad hoc Joint Disciplinary Committee (JDC).

The JDC submitted its report on 14 December 1999. Its conclusion reads, in part, as follows:

"Conclusion

After careful consideration of the material evidence produced before us, the ad hoc JDC is of the opinion that the [Applicant] has not succeeded in bringing to our attention any evidence concerning a mistake of fact or proof of bias or prejudice. She has also not established that she was denied the benefits of due process or there has been any violation of any procedural requirement.

Hence the ad hoc JDC resolves that there is no merit in granting a personal hearing to the [Applicant] at this time. There is also no merit in the [Applicant's] request to re-open the enquiry or be allowed to cross-examine witnesses at this stage.

In conclusion, we therefore advise the Executive Director that no further review in this case is warranted."

On 23 December 1999, the Executive Director, UNICEF, transmitted a copy of the JDC report to the Applicant and informed her as follows:

"...

I have re-examined the decision to summarily dismiss you in light of the Committee's report and have taken note of its conclusion that no further review of your case is warranted. I have decided to accept the Committee's recommendation and to maintain your summary dismissal.

..."

On 28 October 2000, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. Any mistakes she made were the result of her ignorance and lack of guidance, but her actions were solely for the benefit of the Organization.
2. The impartiality of the investigation is in doubt as her supervisor, who had asked her to resign, led the investigation.
3. The JDC's refusal to allow the Applicant the opportunity of an oral hearing or to cross-examine witnesses, amounts to a procedural irregularity.

Whereas the Respondent's principal contentions are:

1. The decision to summarily dismiss the Applicant was a valid exercise of the discretionary authority of the Executive Director and was not vitiated by substantive irregularity, procedural irregularity, improper motive, abuse of discretion or any other extraneous factors.
2. The Applicant failed to meet the standards of conduct required of staff members as international civil servants.
3. The Applicant was accorded due process.
4. The investigation was not improperly motivated, nor was it tainted with bias or other extraneous factors.

The Tribunal, having deliberated from 4 to 26 July 2002, now pronounces the following Judgement:

I. The Tribunal is satisfied that the Administration had undertaken a detailed and thorough investigation into the allegations levelled against the Applicant and had afforded to her a reasonable opportunity of refuting or answering those allegations and of adducing such evidence or making such submissions as she may have wished to make, prior to its finding that she had been guilty of serious misconduct and deciding that she should be summarily dismissed.

The Tribunal is further satisfied that the basis for the findings that the Applicant had been guilty of misconduct were fully set out in the letter to her of 16 March 1999 from Ms. Karin Sham Poo, Deputy Executive Director, UNICEF, and in the document entitled "FINDINGS" which was attached thereto.

The Tribunal is further satisfied that there was ample evidence available to the Administration to support and justify the findings made adverse to the Applicant and it can find no bias, prejudice, or any improper consideration or motive bearing on the manner in which those findings were reached. Accordingly the Tribunal is satisfied that the decision made by the Respondent to summarily dismiss the Applicant in accordance with staff regulation 10.2 was lawfully and validly reached.

II. When the Applicant sought review of her case by the ad hoc JDC she sought to re-open the investigation and for leave to adduce evidence and to cross-examine witnesses. The duties and powers and procedure of the said ad hoc JDC are to be found in Chapter 15 of the UNICEF Human Resources Manual and in so far as they are relevant to the issues which arise herein, they are as follows:

"Rule 110.7

Joint Disciplinary Committee procedure

(a) In considering a case, the Joint Disciplinary Committee shall act with maximum dispatch and shall make every effort to provide its advice to the Secretary-General within four weeks after the case has been submitted to it.

(b) Proceeding before a Joint Disciplinary Committee shall normally be limited to the original written presentation of the case, together with brief statements and rebuttals, which may be made orally or in writing, but without delay. If the Committee considers that it requires the testimony of the staff member concerned or of other witnesses, it may, at its sole discretion, obtain such testimony by written deposition, by personal appearance before the Committee, before one of its members or before another staff member acting as a special master, or by telephone or other means of communication.

(c) Each standing Joint Disciplinary Committee shall adopt its own rules of procedure, which shall be consistent with these staff rules and with any applicable administrative instructions, as well as with the requirements of due process. An ad hoc Committee shall apply the rules of procedure of the Headquarters Joint Disciplinary Committee, except to the extent it decides, consistent with the requirements of due process, to apply other such rules.

..."

Insofar as those provisions purport to confer on the said ad hoc JDC a very broad discretion as to how to conduct its proceedings, it need hardly be added that it was exercising powers of a quasi judicial nature and accordingly it was bound to exercise its powers judicially and not arbitrarily or capriciously.

III. The Applicant claims that she was denied due process by the said ad hoc JDC in that it embarked upon and in fact concluded its review and furnished its report to the Respondent with the advice that no further review of the case was warranted, whilst denying the Applicant her request that they re-open the case and her request that she should give testimony and that she be permitted to cross-examine certain witnesses. She claims that by being so confined she was denied a proper and meaningful review of the Administration's investigation and of the manner in which the findings had been made against her.

The Tribunal considers that the grounds set forth by the said ad hoc JDC as justification for having considered that there was no merit in re-opening the enquiry or affording the Applicant an opportunity of addressing it or of cross-examining witnesses were in some instances mistaken or inappropriate but nonetheless it does not consider that these errors or omissions constituted such a denial or departure from the concept of due process or the rules of fair procedure that the decision to have summarily dismissed the Applicant for misconduct

should be impugned or set aside. The Tribunal does, however, consider that the procedural deficiencies of the ad hoc JDC merit compensation.

For instance, for the ad hoc JDC to have relied to such a significant extent on the "Note for the Record" of the meeting of 26 September 1998 and to have construed same as a record of the Applicant having made an unqualified admission of culpable and deliberate wrongdoing in relation to her travel and subsistence claims appears to have been somewhat inappropriate as this document might reasonably have been construed as a record that the Applicant had admitted to inadvertently or mistakenly made claims which transpired to be false. What the Applicant had stated at the meeting in question was ambiguous and the Tribunal believes that the ad hoc JDC was mistaken in the manner in which it appears to have construed the record of same. It appears to the Tribunal that this charge of making false claims for expenses had merited a more thorough review or analysis by the JDC of the evidence which had been before the Administration in the course of its investigations and that the JDC ought to have given better consideration to this evidence and the adequacy thereof, rather than disposing of same in the somewhat glib manner apparent from its report. It appears that the ad hoc JDC merely construed the record of the meeting of 26 September 1998 as a record of the Applicant having admitted to deliberate fraud and accepting that the vehicle log book records were infallible, whereas it ought to have considered the case and the evidence as a whole and expressed its findings with reference to the totality of the evidence.

IV. Another example arises from the manner in which the ad hoc JDC glibly dealt with the allegation regarding the tubewells. It found that the Applicant was guilty of misconduct in relation to the matters arising from these transactions apparently solely on the basis that, in the opinion of the ad hoc JDC, the price which the Applicant said she had been quoted for the building of the tubewells by the Poverty Elimination Organisation (PEO) (being what they said was 33% of normal commercial prices) was so low as to be beyond credibility. This was not a conclusion based on established facts nor was it a conclusion which in turn gave rise to a rational finding that she had been guilty of the misconduct alleged. There would have been some rationale to the ad hoc JDC's conclusion and finding if the charge had been that she had pocketed the money given to her for the tubewells (be it at her request or otherwise and be it in the sums stated by her or by the donors) as, had that been the charge, it could rationally have been inferred

from an excessively low price that she had never intended that the tubewells be built and that she had accordingly collected the money intending to benefit personally from same. However, this was not a charge levelled or found against her in relation to the said tubewells. The charge actually levelled and found against her was that she had failed in her personal obligation to repay the money to the donors and that, to her knowledge as of the time when she received the money, the wells in question were not within the purview of the school sanitation project, and not an allegation that she had fraudulently received the money for tubewells, never intending that the money be applied for such purpose, together with a failure to keep proper records or to issue receipts for the money received. This was important as there was issue between the Applicant and the donors as to how much money she had received so that the absence of proper records assumed significance. It was accepted by the Administration that the tubewell money (or at least the money which the Applicant said she had received) had been paid over by her to the Chairperson of the said PEO so that a belief on the part of the ad hoc JDC that the price was so low as to be beyond credibility could not have rationally led to the conclusion that she had been guilty of the misconduct which had actually been alleged against her.

V. Notwithstanding the errors or shortcomings identified above, the Tribunal is satisfied that such matters are not so crucial or central to the overall findings that they constitute a fatal error of procedure or such a denial of the Applicant's rights that the decision that she be summarily dismissed should be set aside. The fact remains that the false travel claims made by the Applicant were so numerous and so grave, and the Applicant was unable to provide reasonable explanations for so many errors in such claims, that the Administration was well entitled to conclude - and it was eminently reasonable to conclude - that the Applicant's explanation of inadvertence was just not credible, and nor was her explanation that her claims were based on her monthly travel plans rather than on actual travel undertaken by her, which explanation in any event would not have afforded a reasonable excuse or answer that she had persistently submitted claims for journeys which she had not made or claimed for overnights which had not been spent in the field.

It is clear to the Tribunal that the overall picture apparent from the Administration's investigation into the totality of the charges was that the Applicant had persistently abused her position and influence; she had persistently lodged false claims for money which she was not

entitled to receive; and, she had failed to discharge debts incurred by having abused her position within the Agency. It was eminently clear that her conduct was likely to have had an adverse effect on the reputation and standings of the Agency and that it fell well short of the standards which the Agency were entitled to expect from an international civil servant and amounted to serious misconduct. Accordingly, her other claims are dismissed.

VI. In view of the foregoing, the Tribunal:

1. Orders the Respondent to pay the Applicant compensation in the amount of three months' net base salary at the rate in effect at the date of her separation from service, for the procedural deficiencies of the ad hoc JDC review; and,
2. Rejects all other pleas.

(Signatures)

Julio BARBOZA
First Vice-President, presiding

Kevin HAUGH
Second Vice-President

Spyridon FLOGAITIS
Member

Geneva, 26 July 2002

Maritza STRUYVENBERG
Executive Secretary