



Administrative Tribunal

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AT/DEC/1093
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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1093

Case No. 1180: BHATTACHARJEE

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Julio Barboza, Vice-President, presiding; Ms. Marsha Echols;
Ms. Brigitte Stern;

Whereas, on 29 August 1999, Krishna Dhan Bhattacharjee, a former staff member of the United Nations Children's Fund (hereinafter referred to as UNICEF), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas at the request of the Applicant, the President of the Tribunal, with the agreement of the Respondent, extended to 31 May 2000 the time limit for the filing of an application with the Tribunal;

Whereas, on 18 March 2000, the Applicant, after making the necessary corrections, again filed an Application containing pleas which read as follows:

**"SECTION - II
PLEAS**

...

2. Award full pension upon retirement at the age of 60 effective 1 December 1999 making it binding on UNICEF to pay full cost to the [United Nations Joint Staff

- Pension Fund (UNJSPF)] for restoration of [the Applicant's pension] including the amount of ... US\$ 24,350 withdrawn from the [UNJSPF].
3. Award compensation for loss of [the Applicant's] landed property and ... car ...
 4. Award compensation for the damage caused to [the Applicant's] daughters' education.
 5. Award compensation for the incurable ailment of [the Applicant's] wife and [the Applicant's] prolonged ailment ...
 - ...
 7. Award any other compensation 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 August 2001 and periodically thereafter until 31 March 2002;

Whereas the Respondent filed his Answer on 28 March 2002;

Whereas, on 7 April 2002, the Applicant filed a supplement to his Application;

Whereas the Applicant filed Written Observations on 27 August 2002;

Whereas the Applicant filed an addendum to the Written Observations on 19 September 2002;

Whereas the facts in the case are as follows:

The Applicant joined the Organization on a three-month fixed-term appointment as a Senior Secretary at the GS-5 level with the UNICEF Office in Dhaka, Bangladesh, on 6 June 1972. Effective 1 January 1975, he was promoted to the GS-6 level and, on 1 September 1979, he was granted a permanent appointment. The Applicant was transferred to the Khulna Divisional Office (Khulna) on 1 January 1992, where he served until his separation from service.

In response to a job application submitted by the Applicant, on 15 August 1993, the UNICEF Representative, Bangladesh, (the Representative) informed the Applicant that, effective 1 January 1994, he would be placed on the post of Project Assistant at his current level. Subsequently, the Applicant was advised that this post was a project post and that, in accepting the appointment, he was "in effect surrendering [his] Permanent Appointment". A letter of appointment, offering the Applicant a two-year fixed-term appointment, was attached for his signature. The Applicant did not sign the letter but requested review of his case and continued retention of his permanent appointment status.

On 26 July 1995, the Applicant was reminded that his fixed-term appointment would expire at the end of December 1995 and was encouraged to apply for posts, both within and outside the Organization. The Applicant replied on 8 August, stating that the absence of a response to his objections had led him to believe that the management had accepted his contentions regarding his contractual status.

On 28 December 1995, the Applicant was informed that it had not been possible to identify a post for him and that consequently he would be separated from UNICEF upon the expiration of his contract, on 31 December 1995. The Applicant was further informed that upon his separation, he would be paid 18 months net base salary as enhanced termination indemnity, "in accordance with UNICEF policy".

On 18 February 1996, the Applicant requested administrative review of the decision to separate him from service.

On 30 May 1996, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 10 November 1998. Its conclusions and recommendations read, in part, as follows:

"Conclusions and Recommendations"

33. The Panel unanimously agreed that the [fixed-term] contract offered by UNICEF/Bangladesh was not binding on the Appellant for lack of consent, and consequently he had continued his service under the pre-existing permanent appointment during his last two years at the Khulna Divisional Office.

...

35. The Panel thus unanimously concluded that the decision to separate the Appellant had been taken on an erroneous basis and should therefore be rescinded.

36. ... The Panel unanimously recommends that the Appellant be re-employed by UNICEF/Bangladesh with immediate effect and be paid the monetary compensation equivalent to the net base salaries plus other attendant benefits that he would have received had he been allowed to continue to work for UNICEF/Bangladesh from 1 January 1996 up to the time of his re-employment, minus the eighteen-month salaries which the Administration has already paid him.

37. Alternatively, the Panel unanimously recommends that, if the Administration has genuine difficulties to re-employ him, the Appellant be paid the monetary compensation equivalent to the net base salaries plus other attendant benefits which he would have

received effective 1 January 1996 up to his retirement at the age of 60, minus the eighteen-month salaries which the Administration has already paid him.

38. The Panel makes no other recommendation in support of the present appeal."

On 13 April 1999, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed him as follows:

"...

The Secretary-General agrees with the Board's conclusions. In view of the fact that he has been advised that no available suitable post exists in UNICEF/Bangladesh against which you could be placed, he has decided, with the concurrence of UNICEF, to accept the Board's alternative recommendation for compensation.

..."

On 18 March 2000, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Respondent's decision to separate the Applicant from service at the end of 1995 was motivated by malice, prejudice, and extraneous circumstances and is in violation of the Staff Regulations and Rules.
2. It is the Respondent's responsibility to restore the Applicant's participation in the UNJSPF to enable him to receive full pension.
3. The Applicant was harassed, defamed, and discriminated against, and his rights of due process were violated.
4. The benefit awarded to the Applicant is grossly inadequate.

Whereas the Respondent's principal contentions are:

1. The Applicant has been fully compensated with the award of four years salary and attendant benefits for the Administration's decision.
2. There is no evidence of prejudice or other extraneous considerations.

The Tribunal, having deliberated from 11 to 29 November 2002, now pronounces the following Judgement:

I. The Applicant separated from service on 31 December 1995, in accordance with a decision taken by the Executive Director, UNICEF. Upon his separation, the Applicant received a payment of 18 months' net base salary as enhanced termination indemnity. This was composed of the statutory one year salary for the termination of his contract plus an additional 50%, which was paid by the Organization to staff members, such as the Applicant, who were over the age of 50 and who had had more than 10 years of service with the Organization.

II. Following his separation from service, the Applicant lodged an appeal with the JAB. The JAB recommended that the Applicant be re-employed with immediate effect or alternatively, if the Administration faced genuine difficulties in re-employing the Applicant, that he be paid "monetary compensation equivalent to the net base salaries plus other attendant benefits which he would have received effective 1 January 1996 up to his retirement at the age of 60, minus the eighteen-month salaries which the Administration has already paid him". The Respondent accepted the JAB's alternative recommendation and the Applicant was paid accordingly.

III. The Applicant was not satisfied with the compensation awarded and therefore now appeals to the Tribunal, requesting additional damages. In essence, he maintains that the amount awarded to him does not fully make up for what he considers was an arbitrary separation from service. He requests compensation for certain losses, which he believes would not have occurred had he not been separated from service. Amongst such losses, the Applicant includes the loss of his real property and of his personal car; the damage done to his daughters' education and marital prospects; and, the impact on his wife's and on his own maladies by the shock of his separation from service. He further claims damages for loss of career advancement earlier in his service. The Applicant also requests that he be reinstated in his pension rights, i.e., that the Tribunal orders that he be paid full pension benefits.

IV. The Tribunal shall first examine the Applicant's claim regarding his pension. In this context, it seems apparent to the Tribunal that the Administration recognized its own mistakes as

concerns the Applicant and took steps to remedy the situation when it complied with the JAB's recommendation. In so doing, the Administration attempted to restore the Applicant to the position that he would have been in but for the Administration's erroneous decision. However, the Tribunal recognizes that in reinstating the Applicant's rights, there was one omission, namely restoring the Applicant's right to a full pension. Had the Applicant not been the subject of the arbitrary termination of his employment, through an act of the Administration, he would have been entitled to a full pension. However, due to lack of sufficient income, occasioned by the loss of his employment, the Applicant was forced to withdraw the sum of US\$ 24,350 from the UNJSPF. The Tribunal therefore believes that in order to fully restore the Applicant to his position, his rights to a full pension should be restored as well. This can only be achieved by allowing the Applicant to return the sum he withdrew (US\$ 24,350) and by the Applicant and the Respondent making the necessary contributions towards his pension.

V. The Tribunal is satisfied that the other claims brought forward by the Applicant cannot be granted. The Regulations and Rules of the United Nations provide for termination indemnity in cases involving termination of employment, which covers foreseeable damages that such termination occasions. Injuries such as claimed by the Applicant are subject to criteria of causality that lend themselves to subjective speculation. It is impossible to ascertain the impact of the Administration's decision on the ailment of the Applicant's wife, and indeed on the Applicant's own ailments. Similarly, it is not practical to try to determine the effects of an adverse resolution on a very sick person or on one of extreme sensitivity. The Tribunal does not award damages for such claims, as the indemnity granted would usually encompass all claims stemming from the Administration's decision.

Furthermore, as the circumstances of the Applicant's case were unusual, so too, the compensation already awarded to the Applicant is indeed out of the ordinary and is higher than that which is generally granted by this Tribunal. It was intended to adequately compensate for damages that are the typical consequence of acts of the Administration, like the one motivating the case *sub judice*.

VI. In view of the foregoing, the Tribunal:

1. Orders the Respondent to take the necessary steps, if it has not already done so, to fully restore the Applicant in the UNJSPF, including making the Organization's contributions to the UNJSPF retroactive from 1 January 1996 until the date on which he would have retired at the age of 60. This order is contingent upon the Applicant making the necessary arrangements with the UNJSPF to repay any amounts outstanding, as well as his own outstanding contributions to the Pension Fund, if any, for the period 1 January 1996 until the date on which he would have retired at the age of 60;

2. Rejects all other pleas.

(Signatures)

Julio BARBOZA
Vice-President, presiding

Marsha ECHOLS
Member

Brigitte STERN
Member

New York, 29 November 2002

Maritza STRUYVENBERG
Executive Secretary