

procedure of and the methods followed by the Committee and decided to accept the recommendations of this body.

7. The Tribunal notes that the Applicant's immediate superiors considered him fully qualified for the post he occupied. On the other hand, the Secretary-General is entitled to set such standards for recruitment to permanent appointments as appear to him to be appropriate. Accordingly, the Tribunal finds that the grounds alleged by the Respondent for the termination of the Applicant's employment appear to be such as might cause the Secretary-General to reach the opinion that the termination was in the interest of the United Nations under article 9.1(c) of the Staff Regulations. Moreover no evidence has established improper motivation for the termination of the Applicant.

Accordingly the Tribunal rejects the claim.

(Signatures)

Sture PETRÉN
*Vice-President
and Acting President*

Omar LOUTFI
Member

Djalal ABDOH
Member

Mani SANASEN
Executive Secretary

New York, 11 December 1953

Judgement No. 44

Case No. 54 :
Bergh

**Against: The Secretary-General
of the United Nations**

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Sture Petrán, Vice-President and Acting President ; Mr. Omar Loutfi ; Dr. Djalal Abdoh ;

Whereas Sven-Erik Bergh, former member of the Purchase and Transportation Division, Department of Conference and General Services, filed an application to the Tribunal on 18 August 1953, for rescission of the Secretary-General's decision of 3 November 1952 to terminate his employment, for reinstatement in his post and for compensation ;

Whereas the Respondent filed his answer to the application on 6 November 1953 ;

Whereas the Tribunal heard the parties in public session on 26 November 1953 ;

Whereas the Applicant filed further documents during the proceedings ;

Whereas the Applicant filed on 27 November 1953 a document amplifying his application and claim for reimbursement for counsel's fees and costs of the proceedings as follows :

“ A. If the Administrative Tribunal decides that the Secretary-General's decision to terminate the Applicant's appointment is illegal and recommends to the Secretary-General that Applicant be reinstated, the Applicant requests

“ (1) full salary from the date of termination to the date of reinstatement, including all benefits usually received by employees of the United Nations ;

“ (2) additional remedial relief in the amount of \$7500 for damages to the Applicant's reputation and professional standing ;

“ (3) reimbursement for counsel fees and costs in this proceeding which amount to \$2500.

“ B. In addition to the above, in the event that the Tribunal recommends to the Secretary-General reinstatement, and the Secretary-General refuses to reinstate the Applicant, Applicant claims additional damages equal to full salary plus all United Nations employees' benefits for five years. This is based on the fact that had Mr. Bergh not been terminated as a result of the Walters Committee recommendation, he would have received a permanent appointment in the United Nations.”

Whereas further additional documents were filed by the Respondent on 2 December 1953, by the Applicant on 4 December 1953 and by the Respondent on 7 December 1953 ;

Whereas the facts as to the Applicant are as follows :

The Applicant entered the service of the United Nations on 14 June 1948 under a temporary-indefinite appointment as a General Administrative Officer in the Purchase and Supply Division of the Department of Conference and General Services. On 7 February 1949 the Applicant's temporary-indefinite appointment was changed to a one-year fixed-term contract with the title of Procurement Officer. On 7 February 1950 he received a temporary-indefinite contract. On 3 November 1952, the Director of the Bureau of Personnel notified the Applicant that the Secretary-General had decided to terminate his appointment, with effect on 31 December 1952, on the recommendation of the Walters Selection Committee, and gave as a reason for the termination the fact that the Committee considered that Mr. Bergh did not possess the qualities of knowledge, experience and judgement required for a permanent international civil servant. On 3 December 1952, the Applicant requested the Administration to reconsider its decision and, in view of the refusal encountered, filed an appeal with

the Joint Appeals Board. On 7 May 1953 the Joint Appeals Board presented a unanimous report indicating that it was unable to make a recommendation in support of the appeal and offering certain observations. On 19 May 1953, after receiving the report of the Joint Appeals Board, the Secretary-General informed the Applicant through the Director of the Bureau of Personnel of his decision to reaffirm the termination of his appointment. On 18 August 1953, the Applicant filed an application with the Tribunal for reinstatement in his former post and for damages.

Whereas the Applicant's principal contentions are :

1. The termination of the Applicant's appointment violated the applicable Regulations and Rules.

(a) No affirmative finding of cause constituting reasonable grounds for termination had been advanced. In reaffirming his decision to terminate the Applicant's appointment, the Secretary-General disregarded the Joint Appeals Board's findings which, although not supporting the Applicant's appeal, recognized that the evidence before the Board did not support the statement in the Walters Committee recommendation and that the Applicant had reasonable grounds for complaint in the Committee's use of such language.

(b) The Applicant's efficiency, competence and integrity had been given recognition by his periodic reports and by previous action by the Respondent. Lack of qualification could not therefore be advanced as a reason for termination.

2. The dismissal violated the requirements of due process because the Applicant did not receive a statement of cause in terms sufficiently specific to facilitate proceedings before the Appeals Board and the Administrative Tribunal (Judgement No. 4 of the Administrative Tribunal). The very structure of the Walters Committee, its method of operation and its deliberate destruction of its records also made it impossible for the Applicant adequately to present his case.

3. The Respondent failed to make any effort to place the Applicant in another post, thus disregarding the ruling of the Tribunal in Judgement No. 4 that in the case of termination of employees with service ratings of "satisfactory" or better there is a presumptive right to consideration for posts elsewhere in the Secretariat for which their qualifications are appropriate and that an essential of due process is an affirmative showing either that reasonable efforts were made to place such employees in other posts, or a statement of reasons why this was not done.

4. The Applicant's termination was motivated by prejudice, as the main evidence before the Walters Committee had been the testimony of one of the Applicant's superiors who had been planning to obtain the termination of the Applicant's appointment in order to promote a personal friend.

Whereas the Respondent's answer is :

1. The termination was in accordance with the terms and conditions of the Applicant's appointment.

(a) The Applicant's temporary appointment was terminated under the authority of Staff Regulation 9.1 (c) and Staff Rule 109.3 (c). Staff Regulation 9.1 (c) made it quite clear that the temporary staff of the United Nations is subject to termination when such action is in the interest of the Organization and that the Secretary-General is the sole judge as to whether or not the interest of the Organization justifies a termination.

(b) The Applicant was given a reasonable ground for termination based upon the Secretary-General's considered judgement of the Applicant's professional qualities.

(c) The Secretary-General's judgement of the Applicant's professional qualities is not reviewable. The Tribunal is not competent to hear and pass judgement upon the professional competence of staff members or upon the facts contributing to forming the opinion of the Secretary-General on such professional competence. This is supported by Article 2 of the Tribunal's Statute, Staff Regulation 9.1 (c) and the interpretations given by the Tribunal itself in Judgements Nos. 4, 21 and 24.

(d) The Secretary-General has the power to terminate the appointments of temporary staff members with service ratings of satisfactory and better.

(e) The Joint Appeals Board unanimously upheld the termination. Its criticism of the report of the Walters Committee was directed only against the wording of that document.

(f) The termination was not inconsistent with the Applicant's service ratings, as the Walters Committee formed its judgement on the basis of all the elements available and did not necessarily use the same standards of evaluation as the various departments of the Secretariat.

2. The Applicant was not denied due process.

(a) The Secretary-General advanced specific reasons for termination. It should also be recalled that recent judgements of the Tribunal (Nos. 19 to 25 and No. 27) had upheld the termination of temporary staff where no specific reasons had been given.

(b) The Secretary-General afforded to the Applicant procedural guarantees in excess of those required by the Staff Regulations and Rules. The Secretary-General could have carried out directly through the Bureau of Personnel the review and selection of temporary appointments, forming his opinion on the personnel and other data available to him. The prior examination of each case through the Walters Committee permitted an added safeguard to the Staff. The

structure and operation of that Committee therefore could not be considered a denial of the Applicant's rights.

3. No effort was made by the Respondent to place the Applicant in another post because both the General Assembly and the Secretary-General had recognized the need of reaching a final decision regarding the future of all the staff in the Applicant's category and had agreed that, subject to certain exceptions, the decision in each case must be either that the appointment of the staff member concerned should be terminated or that the staff member should be granted a permanent appointment.

4. The Applicant's charge that the termination was motivated by prejudice is unfounded and is not substantiated by any evidence.

The Tribunal having deliberated until 11 December 1953, now pronounces the following judgement:

1. Regulation 9.1(c) provides that the Secretary-General may terminate temporary appointments if, in his opinion, such action would be in the interest of the United Nations.

2. The discussions in the Fifth Committee show that the intention of the authors of the United Nations Staff Regulations approved by General Assembly resolution 590(VI) on 2 February 1952 was to invest the Secretary-General with discretionary powers in the termination of temporary appointments.

3. Such discretionary powers must be exercised without improper motive so that there shall be no misuse of power since any such misuse of power would call for the rescinding of the decision.

4. With regard to the case under consideration, the Applicant was informed that the reason for the termination of his appointment was a recommendation of the Walters Selection Committee.

The function of the Walter Selection Committee was to make recommendations to the Secretary-General as to which temporary staff (*a*) should be granted permanent appointments, or (*b*) should be placed on a further probationary period of one year or (*c*) should be terminated.

The Walters Committee's recommendation as to the Applicant was that he be terminated as the Committee considered that he did not possess the qualities of knowledge, experience and judgement required for a permanent international civil servant.

5. As the result of the Committee's recommendation, the Director of the Bureau of Personnel sent a memorandum to the Applicant on 3 November 1952 stating that the Secretary-General had given the most thorough consideration to the report of the Walters Committee and had decided to accept the recommendation that the Applicant's temporary appointment be terminated as of 31 December 1952.

6. As regards the argument alleging the absence of due process

before the Walters Committee, the Tribunal notes that the Committee was an internal administrative body, established by, and functioning in the way approved by the Secretary-General in order to tender him advice. It is not for the Tribunal to express an opinion on internal administrative practices adopted by the Secretary-General.

The Tribunal notes that the Secretary-General was aware of the procedure of and the methods followed by the Committee and decided to accept the recommendations of this body.

7. The Tribunal finds that the grounds alleged by the Respondent for the termination of the Applicant's employment appear to be such as might cause the Secretary-General to reach the opinion that the termination was in the interest of the United Nations under Article 9.1 (c) of the Staff Regulations. Moreover, no evidence has established that prejudice against the Applicant or any improper motivation caused the termination.

(Signatures)

Sture PETRÉN
Vice-President and Acting President

Omar LOUFTI
Member

Djalal ABDOH
Member

Mani SANASEN
Executive Secretary

New York, 11 December 1953

Judgement No. 45

Case No. 52 :
Mohan

***Against:* The Secretary-General
of the United Nations**

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; Mr. Sture Petrén, Vice-President ; Mr. Omar Loutfi ; Dr. Djalal Abdoh, alternate member ;

Whereas Pearey Mohan, former member of the General Political Division, Department of Political and Security Council Affairs, filed an application with the Tribunal on 24 July 1953, for rescission of the Secretary-General's decision of 27 October 1952 to terminate his employment, for reinstatement in his post and for compensation ;

Whereas the Respondent filed his reply to the application on 10 November 1953 ;