

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

Djalal ABDOH

Member

Omar LOUFTI

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 Petré, 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 ;

Whereas the Tribunal heard the parties in public session on 30 November 1953 ;

Whereas the Applicant filed further documents during the proceedings ;

Whereas the facts as to the Applicant are as follows :

The Applicant entered the service of the United Nations on 1 July 1948 under a one-year fixed-term contract as a Legal Affairs Officer in the Division of Development and Codification of International Law of the Legal Department. The Applicant's fixed-term contract was extended for two months on 1 July 1949 and again for one month on 1 September 1949. On 1 October 1949 the Applicant was transferred to the Department of Political and Security Council Affairs as a Political Affairs Officer and his contract was twice extended for three months. On 1 April 1950 the Applicant received a temporary-indefinite contract. On 27 October 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 January 1953 on the basis of a recommendation of the Walters Selection Committee stating "The Committee does not consider that Mr. Mohan's professional qualifications or experience are such as to enable him to make an efficient contribution as a professional officer". On 17 December 1952, the Applicant requested that the period of his employment be extended until the end of March 1953, and was subsequently granted two fixed-term contracts for periods of one month and of three months respectively. The second of these contracts expired on 31 May 1953 and was not renewed. On 15 April 1953 the Applicant requested direct submission of his case to the Tribunal and on 24 April 1953, the Secretary-General signified his agreement through the Director of the Bureau of Personnel. On 24 July 1953 the Applicant filed an application with the Tribunal for reinstatement in his former post and compensation.

Whereas the Applicant's principal contentions are :

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

(a) The dismissal violated the requirements of due process because the procedure employed by the Walters Committee was so defective that the Applicant was denied even the rudimentary principle of fair play in not being afforded an opportunity for a fair and adequate hearing. The Walters Committee was obliged under its terms of reference to grant a fair hearing under whatever procedure it chose for itself. In denying him this opportunity, and in destroying its records, the Committee violated the universally recognized standards of due process and justice.

(b) Staff Regulation 9.1(c) was not intended by the General

Assembly to grant the Secretary-General an absolute and unreviewable authority to terminate temporary appointments.

The General Assembly agreed in February 1952 to the proposals for a Selection Committee on the basis of certain assurances given by the Secretary-General.

The Secretary-General informed the Fifth Committee that new Staff Regulation 9.1(c) was "a clarification of the present regulations". The Applicant considers that the clarification was to be used in the context of increasing permanency and security for the staff.

2. The Walters Selection Committee's evaluation of Applicant's qualifications was arbitrary and prejudicial. The Committee made its statement concerning the Applicant's qualifications despite the fact that his immediate supervisors had held that he was not only highly qualified but that the performance of his duties was high in relation to his grade.

3. The Respondent failed to make any effort to place the Applicant in another post and thus disregarded 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.

Whereas the Respondent's answer is :

1. The General Assembly granted full authority to the Secretary-General to terminate the appointments of temporary staff members under Staff Regulation 9.1 (c).

The Applicant's temporary appointment was terminated under Staff Regulation 9.1 (c) and Staff Rule 103 (c). Staff Regulation 9.1 (c) makes it quite clear that the temporary staff of the United Nations is subject to termination when such action is in the interests of the Organization and that the Secretary-General and he alone is the judge as to whether or not the interests of the Organization require a termination.

2. The Applicant's case was reviewed by the Walters Selection Committee with scrupulous fairness.

The Committee was established with the full knowledge and endorsement of the General Assembly.

In charging that the Committee's procedure was improper, the Applicant overlooked the fact that he was never charged with an offence. The Committee was not constituted as a Tribunal but was only required to ascertain whether the Applicant had the necessary qualifications to be granted a permanent contract. The Committee had

a free hand to adopt its own rules of procedure and full discretion as to what records it kept.

3. The Walters Selection Committee's unanimous evaluation of the Applicant's suitability was the result of thorough consideration. There was no real conflict between the recommendation of the Walters Committee and the assessments of the Applicant's qualifications appearing on his personnel file because of the over-all responsibility entrusted to the Committee to advise the Secretary-General on the general suitability of temporary staff as international civil servants. In the final analysis, the appraisal of the Walters Committee—a truly expert committee in the matter of judging the suitability of temporary staff for the permanent career service—was that the Applicant had failed to reach this standard.

The Secretary-General's authority to terminate temporary appointments where service ratings are "satisfactory" and better has been recognized by the Tribunal in Judgement No. 26.

The Secretary-General is not obliged to give detailed reasons to the Applicant for the termination action and this has been upheld in the Tribunal's Judgements Nos. 19 to 25 and No. 27.

4. No effort was made by the Respondent to place the Applicant in another post because both the Secretary-General and the Respondent 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.

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

1. Article 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 Walters Selection Committee was to make recommendations to the Secretary-General as to which temporary staff (a) should be granted permanent appointment, or (b) should be placed on a further probationary period of one year or (c) should be terminated.

The Walters Committee's recommendation was that the Committee does not consider that Mr. Mohan's professional qualifications or experience are such as to enable him to make an efficient contribution as a professional officer.

5. 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 render 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.

6. 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)

Suzanne BASTID

President

Sture PETRÉN

Vice-President

Omar LOUTFI

Member

Djalal ABDOH

Alternate Member

Mani SANASEN

Executive Secretary

New York, 11 December 1953
