

Nations Staff Regulations and Rules concerning the right of appeal to the Tribunal were available to the Applicant.

8. In view of the foregoing, the Tribunal, without making any findings on other issues, decides that it has jurisdiction to consider the merits of this case.

(Signatures)

Suzanne BASTID  
*President*

CROOK  
*Vice-President*

Sture PETRÉN  
*Vice-President*

Jacob M. LASHLY  
*Alternate*

Mani SANASEN  
*Executive Secretary*

Geneva, 9 September 1955

### Judgement No. 58

**Case No. 61 :**  
**Kamal Kumar Chattopadhyay**

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

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; the Lord Crook, Vice-President; Mr. Sture Petré, Vice-President; Mr. Jacob Mark Lashly, alternate;

Whereas Kamal Kumar Chattopadhyay, former Deputy Director of the Information Centre of the United Nations at New Delhi, filed an application to the Tribunal on 26 February 1955 requesting:

(a) The rescission of the Secretary-General's decision of 25 July 1953 to terminate his temporary-indefinite appointment;

(b) The award of \$28,380 as minimum compensation for wrongful dismissal;

(c) Alternatively, in the event that the Secretary-General avails himself of the option given to him under article 9 of the Statute of the Tribunal, the award of \$28,900 as compensation for the injury sustained;

Whereas the Respondent filed his answer to the application on 16 May 1955;

Whereas the Tribunal heard the parties in public session on 31 August 1955;

Whereas the facts as to the Applicant are as follows:

The Applicant entered the service of the United Nations on 1 January 1947 under a temporary-indefinite appointment, as Acting Chief of the New Delhi Information Centre. He had previously served in the New Delhi Office of the League of Nations and, at the time of his engagement by the United Nations, held the post of Principal Secretary. From 5 September 1948, the Applicant served under fixed-term appointments for three years. On 5 September 1951, he again received a temporary-indefinite appointment. By letter dated 21 November 1952, the Applicant was advised that his within-grade increment, due on 1 January 1953, would be withheld. By letter dated 16 December 1952, the Department of Public Information informed the Applicant that "final decision consequent on the Report 'below standard' for 1951 has not been taken inasmuch as the Review of the staff by the Personnel Selection Committee is contemplated and final decision will be forthcoming when this Review in respect to yourself has been completed."

On 25 July 1953, the Director of Personnel notified the Applicant orally of the decision to terminate his appointment. On 13 August 1953, the Bureau of Personnel confirmed this decision by cable and letter and stated that the termination was to be effective as of 15 September 1953. On 18 August 1953, the Applicant cabled to the Director of Personnel asking for reasons for the termination. He also wrote on 31 August 1953 to the Assistant Secretary-General in charge of Administrative and Financial Services, requesting that the decision of termination be reviewed. On 31 August 1953, the Director of Personnel cabled to the Applicant stating that the decision of termination had been taken in the interest of the United Nations, in accordance with Staff Regulation 9.1 (c) on grounds of unsatisfactory services as shown by the periodic reports for 1951 and 1952. On 3 September 1953, the Applicant wrote to the Assistant Secretary-General in charge of Administrative and Financial Services pointing out that the periodic report for 1952 had never been communicated to him and appealing against the termination. On 7 September 1953 the Applicant received his periodic report for 1952. On 3 October 1953, the Applicant filed an appeal with the Joint Appeals Board at Headquarters. On 12 November 1954, the Board reported to the Secretary-General that it found no grounds upon which to recommend reconsideration of the termination but mentioned that the process followed by the Administration was open to some criticism. The Secretary-General wrote to the Applicant under date 16 November 1954 confirming the decision to terminate his appointment. On 23 February 1955, the Applicant instituted proceedings before the Tribunal.

Whereas the Applicant's principal contentions are :

1. The decision of termination and the reasons alleged for it were improper and motivated by prejudice. The Applicant's adverse periodic

report for 1952, which was given as one of the reasons for the termination, was not in existence on 13 August 1953 when the Applicant was given notice. It was, in fact, signed by the Applicant's supervisor on 18 August 1953 and communicated to the Applicant on 7 September 1953.

2. The Applicant's periodic report for 1951, signed by the Director of the Information Centre on 20 December 1951, contained favourable remarks about the Applicant's performance. On 25 February 1952, at the request of the Director of Management and Circulation, DPI, and without the Applicant's knowledge, the Director of the Centre sent to Headquarters certain explanations in which he reversed the position taken by him in the periodic report. Allusion was also made to earlier reports which were never brought to the Applicant's knowledge.

3. The reasons for termination advanced by the Administration, namely, unsatisfactory service and the interest of the United Nations, were not the real reasons. The Applicant's termination was brought about as a result of personal prejudice entertained against him by the Director of Management and Circulation, DPI, and by the Director of the Information Centre.

4. The procedure followed by the Administration in terminating the Applicant's appointment was irregular. Staff Rule 112.6 prescribes that periodic reports containing adverse remarks should be shown to the staff member concerned. The periodic report for 1951, in which the Director of the Centre rated the Applicant as "above average — taking the local standards as basis for judgement", was signed by both the Director and the Applicant on 20 December 1951. On 25 February 1952, the Director of the Centre sent a memorandum to Headquarters containing adverse comments in explanation of the periodic report without the knowledge of the Applicant. The memorandum also alluded to previous adverse reports which were never communicated to the Applicant, in violation of the above Staff Rule.

5. The Applicant contends that he was entitled to have his case considered by a special appeals board before which he could appear. The Administration refused the request of the Staff Committee that the Personnel Selection Committee should consider the Applicant's case at New Delhi and also declined to appoint an *ad hoc* Committee locally, as provided in Staff Rule 111.4 (b).

6. After receiving notice that his within-grade increment for 1953 was withheld, the Applicant was informed by the Administration, by letter of 16 December 1952, that final action on his case would be communicated to him as soon as his case had been reviewed by the Personnel Selection Committee. The Applicant contends that Respondent was obliged to submit his case to the Committee referred to before termination.

Whereas the Respondent's answer is :

1. The termination was in strict accord with the terms and conditions of the Applicant's temporary appointment. Under Staff Regulation 9.1 (c), a temporary appointment is subject to termination when such action is in the interest of the Organization and it is clear that the Secretary-General is the sole judge as to whether or not the interest of the Organization justified the termination. In the present case, the Secretary-General reached the conclusion that the Applicant's services had been unsatisfactory and that he did not measure up to the standards required for a permanent career in the Secretariat.

2. The Secretary-General's judgement of the Applicant's qualities and performance is not reviewable by the Tribunal as such review would be contrary to the clear wording of Staff Regulation 9.1 (c) and to the interpretation given to it by the Tribunal itself (Judgements Nos. 14, 21, 24). Even if the Applicant had been able to produce a uniform record of good service with the Secretariat—which is not so in the present case—the Secretary-General would still have the power, under Regulation 9.1 (c), to terminate his temporary appointment, if in his opinion “such action would be in the interest of the United Nations” (Judgement No. 26).

3. The Applicant's charge of prejudice was unfounded and was not substantiated by any evidence. The Applicant cited and exaggerated certain incidents which could not, by their importance, or by the date of their occurrence, have created the prejudice alleged.

4. The Respondent denies any violation of Staff Rule 112.6 which prescribes that periodic reports containing adverse comments be shown to the staff members concerned. The 1952 periodic report was received at Headquarters on 25 August 1953, after the Applicant's termination, and reference was made to it in the Director of Personnel's cable of 31 August 1953 to the Applicant, in which he stated the reasons for the termination. The Applicant was, however, shown his adverse periodic report for 1951 upon which his termination was based and he was further made aware of the intentions of the Administration by the withholding of his within-grade increment for 1953.

5. The Respondent denies any violation of Staff Rule 111.4 (b) in referring the Applicant's appeal to the Joint Appeals Board at Headquarters. The wording of the Rule permits the Secretary-General to choose between the Board at Headquarters, the Board at the European Office or an *ad hoc* committee. The Secretary-General therefore acted within his discretion under Staff Rule 111.4 (b), as well as Staff Regulation 11.1, in referring the appeal to the Board at Headquarters. In any case, the Applicant failed to avail himself of the right, under Staff Rule 111.3 (f), to have his appeal presented to the Board by another staff member.

6. The Respondent denies that the Administration was under any obligation to submit the Applicant's case to a Selection Committee

before terminating his appointment. Alternatively, if the Tribunal should hold that such an obligation existed in the present case, then he would rely on the Tribunal's finding in Judgement No. 55 which was to the effect that non-observance of the obligation to submit a case to a review board could not be held to affect the Secretary-General's decision to terminate the appointment of the staff member concerned.

The Tribunal, having deliberated until 9 September 1955, now delivers the following judgement:

1. The application is directed against a decision of the Secretary-General of the United Nations dated 16 November 1954 confirming the termination of the Applicant's appointment effective on 15 September 1953.

The notification of termination, communicated by cable and letter dated 13 August 1953, does not indicate any reason for the decision. In response to an inquiry from the Applicant, the Director of Personnel cabled on 31 August 1953 as follows:

"Termination deemed in interest United Nations accordance Regulation 9.1 (c) on grounds unsatisfactory service as evidenced periodic report for 1951 and 1952 which will be communicated shortly to you and by withholding salary increment due January 1953."

Consequently the temporary-indefinite appointment of the Applicant was terminated on the basis of article 9.1 (c) of the Staff Regulations and the grounds given were "unsatisfactory service".

The Staff Rules in force at the time of the termination were those applicable as from 1 January 1953.

2. The Applicant contends that the periodic reports on the basis of which the decision of termination was taken were not communicated to him and were irregular. As regards the periodic report for 1951 (Annex B of document 11), it is clear that the Applicant at the date on which he signed the report (20 December 1951) had knowledge of only paragraphs 1 to 6 inclusive; on that date paragraphs 7 and 8 had not been completed.

Nevertheless, it appears from the Applicant's memorandum, dated 5 September 1952 (document 7), that at that time the periodic report was shown to him in its "full and final form".

As to the periodic report for 1952, mentioned in the telegram received by the Applicant on 1 September 1953, the Tribunal notes that this report was completed after the decision of termination and was communicated to the Applicant three weeks after the date of notification of termination. Notwithstanding that the requirements concerning periodic reports had not been fulfilled, the Secretary-General was entitled to decide on termination under Staff Regulation 9.1 (c).

3. The Tribunal notes that the Applicant has been aware of the opinion of his supervisors since July 1952. The Director of the Management and Circulation Division, Department of Public Information, wrote to him on 15 July 1952 (document 17a) that the "marking of a report as 'below standard' carried with it serious consequences". In his memorandum of 5 September 1952 to the Director of the Management and Circulation Division, the Applicant discussed at length this opinion and expressed his views upon it.

The action in December 1952, denying a within-grade salary increment as at January 1953, was based on the periodic report for 1951. In a memorandum dated 16 December 1952, the Director of the Management and Circulation Division stated that "final decision consequent on the Report 'below standard' for 1951 has not been taken". Thus the Applicant was warned that new unfavourable developments could arise.

4. The Applicant contends that the Respondent was obliged before termination to submit the case to a Personnel Selection Committee.

The Tribunal observes that in his memorandum, dated 16 December 1952 (document 10), the Director of the Management and Circulation Division wrote :

"I should like to add that final decision consequent on the Report 'below standard' for 1951 has not been taken inasmuch as the Review of the staff by the Personnel Selection Committee is contemplated and final decision will be forthcoming when this Review in respect to yourself has been completed. The Personnel Selection Committee is expected to resume its activities in January. As soon as the decision is reached I will immediately communicate it to you."

It is possible that this communication might have given the Applicant the impression that the Personnel Selection Committee would examine his case and that the decision taken by the Respondent without the recommendation of such Committee was irregular. Nevertheless, under the Staff Rules then in force, the Secretary-General had no obligation to present the case to a Selection Committee before taking a decision.

5. The Applicant contends that he was entitled to have his case considered by a special Appeals Board before which he could appear.

The Tribunal notes that, under Staff Rule 11.4 (b), the Secretary-General has full discretion in deciding whether the case of a staff member who is attached to an office outside Headquarters and the European Office may be brought before the Joint Appeals Board at Headquarters, the Board at the European Office, or a board specially constituted for the purpose.

It is regrettable that there was a delay of thirteen and a half months

before the Applicant was given any knowledge of the decision taken on the recommendation of the Appeals Board.

6. Finally, the Tribunal must determine whether the decision of termination was vitiated by improper motive resulting from the animosity of the Applicant's supervisors.

The record shows that there were certain difficulties between the Applicant and his supervisors, but it appears that these difficulties arose as a result of differences of opinion on questions concerning the transaction of business within the Office. Before taking the decision of termination, the Secretary-General had at his disposal a full statement of the Applicant's point of view. The Tribunal finds that the decision of the Secretary-General was not vitiated by improper motive.

7. Accordingly the Tribunal rejects the claim.

(Signatures)

Suzanne BASTID  
*President*

CROOK  
*Vice-President*

Sture PETRÉN  
*Vice-President*

Jacob M. LASHLY  
*Alternate*

Mani SANASEN  
*Executive Secretary*

Geneva, 9 September 1955

## Judgement No. 59

**Case No. 63 :**  
**Bertrand**

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

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of the Lord Crook, Vice-President, presiding ; Mr. Sture Petré, Vice-President ; Mr. Jacob Mark Lashly ;

Whereas Elisabeth Bertrand, former member of the Languages Division of the European Office of the United Nations, filed an application to the Tribunal on 6 June 1955 requesting :

(a) The rescission of the Secretary-General's decision of 3 January 1955 terminating her temporary-indefinite appointment ;

(b) Reinstatement in her former post ;

(c) Alternatively, in the event that the Secretary-General avails himself of the option given to him under article 9 of the Statute of the Tribunal, the award to two year's gross salary (\$13,600) and a further \$5,000 for special damages ;