

Tribunal has been informed that the lump-sum compensation awarded by the aforesaid judgements was held by the fiscal authorities of the United States to constitute income, subject in at least one case to taxation in an amount as high as or exceeding 50 per cent of the total award.

The Tribunal is not competent to consider the circumstances in which United States fiscal legislation was held to apply to compensation which the Tribunal awarded, on the request of the parties, as a lump sum designed to repair the prejudice sustained through the termination of a contract expected to remain in force for many years.

If a large fraction of the compensation awarded to the Applicants out of funds constituted by contributions from all the Member States is recovered as income tax by a particular Member State, then the principle of equity postulated in resolution 13 (I) cannot be said to be upheld. But it is not for the Tribunal to rule that, as a consequence, the United Nations has a duty to reimburse the individuals concerned.

8. The Tribunal notes, however, that the Circulars concerning reimbursement of taxes (ST/ADM/SER.A/354 and 355) request staff members to co-operate faithfully in lawfully minimizing their taxes.

The provisions of the judgements which relate to compensation do not contain anything to prevent the parties from agreeing, with similar considerations in mind, that the sums awarded by the Tribunal should be paid in a manner designed to reduce as far as possible the amount of tax which may be chargeable thereon.

9. By reason of the foregoing considerations the Tribunal rejects the application.

(Signatures)

Suzanne BASTID
President

Sture PETRÉN
Vice-President

Omar LOUTFI
Member
Mani SANASEN
Executive Secretary

New York, 10 December 1956

Judgement No. 68

Case No. 69 :
Bulsara

**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 ; the Honourable Mr. R. Venkataraman, alternate ;

Whereas Jal Feerose Bulsara, former Social Services Expert of the United Nations Technical Assistance Administration, filed an application to the Tribunal on 28 August 1956 requesting :

(a) Rescission of the Secretary-General's decision of 8 March 1955 not to grant the Applicant a permanent appointment and to terminate his temporary-indefinite appointment ;

(b) Rescission of the Secretary-General's decision of 11 April 1956 not to revert the Applicant to his former post of Regional Social Welfare Adviser at Bangkok ;

(c) Rescission of the Secretary-General's decision of 11 July 1956 terminating Applicant's project personnel appointment ;

(d) That the Secretary-General be ordered to carry out the unanimous recommendation of the Joint Appeals Board of 22 December 1955 which had been approved by the Secretary-General "that Appellant might be granted a fixed-term appointment in the Secretariat extending until the normal retirement age and carrying financial benefits at least equal to those attaching to a permanent appointment, or if such an appointment is not feasible, a project personnel appointment on the same basis in a post where his valuable knowledge of Far Eastern conditions may be utilized"—the latter appointment being clearly feasible by the Applicant's appointment as Regional Social Welfare Adviser or Chief of the Social Welfare Division in the ECAFE region at Bangkok ;

(e) That the Secretary-General take disciplinary action or arrange for it to be taken against certain officials of the United Nations Secretariat, the World Health Organization, and the Technical Assistance Administration who allegedly conspired against the Applicant ;

(f) In the event that the Secretary-General avails himself of the option given to him under article 9 of the Statute of the Tribunal, and as an alternative to orders under (d) above, the Applicant requests payment of compensation as follows :

(i) Full salary for the Applicant's remaining months of service until the date of retirement (31 August 1959), exclusive of the termination indemnity, repatriation grant and other payments and perquisites accruing to him under Staff Rules and Regulations

or

(ii) Lesser compensation but, in any case, not less than the equivalent of two years' net base salary, exclusive of other payments and perquisites due to him under the Staff Rules and Regulations

or

(iii) Lesser compensation but, in any case, not less than an amount equivalent to

1. Termination indemnity of five months' net base salary due under Staff Rule 109.3 Annex III (a) for termination of the Applicant's temporary-indefinite appointment on 21 December 1955 ;

plus

2. Repatriation grant of sixteen weeks' net base salary to which the Applicant is entitled under Staff Regulation 9.4 ;

plus

3. Termination indemnity under Staff Rule 209.4 (a) of thirty-six weeks' net base salary for thirty-six months of uncompleted service by reason of the termination of the Applicant's project personnel appointment on 20 July 1956 ;

plus

4. Compensation for mental anguish, injury to reputation and loss of professional opportunity outside the United Nations.

(g) That the Tribunal adjudge whether a week in the Rules for Indemnity Payment and Repatriation Grant is correctly construed by the Respondent as a week of five days, or whether payment should be made for a week of seven days ;

Whereas the Respondent filed his answer to the application on 21 November 1950 ;

Whereas on 13 December 1956 the President of the Tribunal put certain questions to the parties to which the Applicant and the Respondent submitted written replies on 12 February and 21 February 1957 respectively ;

Whereas on 13 December 1956 the President of the Tribunal requested the Applicant to produce in writing his reply to the arguments presented by the Respondent in his answer and the Applicant complied on 19 February 1957 ;

Whereas, at the request of the President of the Tribunal and in conformity with Article 9 of the Rules of the Tribunal, the Respondent submitted a supplementary answer on 20 March 1957 ;

Whereas under Article 9.3 of the Rules of the Tribunal oral depositions were taken on several dates prior to the public hearings from seven witnesses cited by the Applicant (documents AT/R.20—AT/R.26) ;

Whereas, in response to the Tribunal's request, made at a private hearing on 6 August, the Respondent produced further documentation on 12 August ;

Whereas, on 12 August, the Tribunal put questions to the parties

to which replies were received from the Applicant on 13 August and from the Respondent on 14 August ;

Whereas the Tribunal heard the parties in public session on 7 and 8 August 1957 ;

Whereas the facts as to the Applicant are as follows :

The Applicant entered the service of the United Nations on 24 June 1949, under a fixed-term appointment for one year (later extended to two years) as Far Eastern representative of the Division of Social Activities, stationed at Bangkok. On 24 June 1951 he received a temporary-indefinite appointment as Far Eastern Social Welfare Representative — Technical Assistance Administration at Bangkok. In the latter part of 1952, the Applicant was appointed Chief of a Technical Assistance Social Services Mission to Burma and filled that post until July 1953, when the Mission concluded its work. On 1 January 1953, the Applicant was transferred to the United Nations Technical Assistance Administration as Regional Social Welfare Adviser (still stationed at Bangkok). On 1 February 1954, the Applicant was detailed, as a Social Services Expert, to the United Nations Technical Assistance Administration in Burma. The Applicant's employment position was reviewed, in December 1954, by the Review Board which, in its report of 30 December 1954, stated that it was "not in a position to judge whether Dr. Bulsara possesses all the requirements for career service in the Secretariat and is therefore unable to recommend a permanent appointment. The Board would like to add that probably only an assignment of a certain duration at Headquarters would furnish sufficient evidence on which to base a final appraisal." On 8 March 1955, the Bureau of Personnel notified the Applicant that the Secretary-General "has decided that he is unable to offer you a permanent appointment and... instructed that your temporary appointment be terminated upon the completion of your present assignment as an expert to the Government of Burma, i.e. with effect on 31 December 1955." On 19 March 1955, the Applicant requested reconsideration of the decision of termination and on 14 April 1955 submitted the matter to the Joint Appeals Board. On 28 November 1955, the Technical Assistance Administration cabled to the Applicant, offering him an extension of his services for one year after 31 December 1955. Having been informed that the proposed appointment was a fixed-term one (the termination of his temporary-indefinite appointment being maintained) the Applicant rejected the terms but stated that he was prepared to continue his service in Burma for three months on certain conditions. The Applicant's offer was not accepted by the Technical Assistance Administration and he left Burma at the end of December 1955. In the meantime, the Joint Appeals Board, in its report of 22 December 1955, recommended to the Secretary-General that "Appellant might be granted a fixed-term appointment in the Secretariat extending until

the normal retirement age and carrying financial benefits at least equal to those attaching to a permanent appointment or, if such an appointment is not feasible, a project personnel appointment on the same basis in a post where his valuable knowledge of Far Eastern conditions may be utilized." On 17 January 1956, the Director of Personnel sent to the Applicant a copy of the report of the Joint Appeals Board, and stated that the Secretary-General had decided to adopt the Board's suggestions and recommendations and proposed an offer of a fixed-term appointment effective 1 January 1956, until the date on which the Applicant would reach retirement age (31 August 1959) for service as a Technical Assistance Expert in the field of Social Services in Burma or in another country in the Far East. The Director of Personnel also pointed out that should such an assignment prove not to be feasible in the near future, the Applicant would receive proper notice of termination and indemnity under the Rules governing project personnel appointment and under a special term of appointment made in his case. The Applicant, by letter of 17 February 1956, advanced counter-proposals which were rejected on 2 March 1956 by the Director of Personnel who, at the same time, reaffirmed his previous offer, setting 19 March 1956 as the dateline for Applicant's acceptance. On 17 March 1956, the Applicant accepted the offer of the Director of Personnel. By letter of 20 March 1956 the Applicant asked the Director of Personnel to return him to the post of Regional Social Welfare Adviser in Bangkok from which he had been detailed to Burma. On 11 April 1956, the Director of Personnel informed the Applicant that the post in Bangkok did not exist at the time, but that it had been decided in consultation with the Technical Assistance Administration to submit the Applicant's name as a candidate for the post of Adviser in Social Welfare in the Philippines. On 10 May 1956, the Applicant was put on special leave with full pay, since his annual leave was exhausted. On 11 July 1956 the Administration wrote to the Applicant that the Philippines Government had selected another candidate and that "In view of this decision by the Philippines and in the absence of any other vacancies for which we could propose your candidature, we have no alternative but to terminate your project personnel appointment." At the request of the Applicant, the Secretary-General agreed that the application should be submitted directly to the Tribunal in accordance with Article 7 of the Statute. On 28 August 1956 the application was filed without the supporting documents which were received on 24 September and completed on 16 October 1956.

Whereas the Applicant's principal contentions are :

1. The notice of termination of the Applicant's Technical Assistance project personnel appointment given in the letter of the Deputy Director of Personnel of 11 July 1956 is *mala fide* and invalid in law and equity.

2. The Administration accepted but failed to carry out the recommendation of the Joint Appeals Board of 22 December 1955 for the Applicant's further employment for a fixed term in the Secretariat, or alternatively, on a project personnel appointment. It could have done so by retaining the Applicant in his post as Social Welfare Consultant to the Burmese Government throughout 1956 on his temporary-indefinite contract or returning him, as he requested, to his former post as Far Eastern Social Welfare Adviser at Bangkok.

3. After the Joint Appeals Board had given its favourable opinion in December 1955, the Administration had no intention of retaining the Applicant's services and deliberately contrived to prevent him from obtaining any United Nations post in South-East Asia.

4. The Administration issued a periodic report on the Applicant's services on 19 October 1954 containing adverse comments upon his work as Chief of the United Nations Social Services Mission to Burma. The periodic report was made 15 months after the termination of the mission's work and the Applicant had received no previous indication of dissatisfaction with his services. The report was based upon letters written to Headquarters in 1953, behind the Applicant's back, by members of the mission to Burma and Technical Assistance officials. These letters were not disclosed to the Applicant until their production by the Administration before the Joint Appeals Board in November 1955.

5 The Administration did not comply with Staff Rule 112.6 by failing to make a periodic report on the Applicant's services between June 1951 and October 1954.

6. The Administration recommended to the Review Board that the Applicant's services should be terminated but failed to advise him of this decision prior to his appearance before the Board in December 1954.

7. In its report on the Applicant of 30 December 1954, the Review Board failed to comply with Staff Rule 104.13 by making none of the recommendations prescribed, viz. permanent appointment, one year's probation or separation from service.

8. In the letter of termination of the Applicant's appointment of 8 March 1955, the Administration purported to act in the light of the Review Board's report whereas before the Joint Appeals Board, in November 1955, it denied that the termination was connected with the report in question.

9. In spite of the Joint Appeals Board's favourable recommendation to the Secretary-General, the Administration continued to show prejudice towards the Applicant by offering him on 17 January 1956, a one-sided and conditional offer which the Applicant first refused. The Applicant only accepted this offer after the Permanent Representative of India to the United Nations had obtained an

assurance from the Secretary-General's office and from the Director of Personnel that the offer was one of uninterrupted tenure until the age of retirement.

10. The Administration's action in taking the second termination decision of 11 July 1956 was part of a premeditated scheme to get rid of the Applicant by going through a fiction of an offer of employment.

11. The Applicant having accepted the offer of appointment on 17 March 1956, the Administration failed to comply with Staff Regulation 4.1, Annex II of Staff Regulation 4.1 and Staff Rules 204.1, 204.2 and 204.6 by not issuing a letter of appointment to the Applicant and by not submitting him to a medical examination.

12. The treatment accorded to the Applicant during the last 3½ years of his services with the United Nations clearly proves that the Administration was motivated by prejudice in its dealings with him.

Whereas the Respondent's principal contentions are :

1. The decision of termination of 11 July 1956 was taken strictly in accordance with the terms of the Applicant's fixed-term appointment which expressly provided that the Applicant would be terminated (with a generous special indemnity) if an assignment as a Technical Assistance Expert in the field of Social Services in the Far East proved not to be feasible. As the Applicant did not wish to continue to serve in Burma, the Administration made a diligent search to find an assignment suitable to the Applicant's qualifications elsewhere. Thus there was no improper motive in this decision or any other decision taken by the Administration with respect to the Applicant's employment.

2. The Administration's evaluation of the Applicant's services on the Burma Mission was made known to him in proper time and particularly in June and July 1953 and in February 1954 (Annexes Nos. 79, 89 and 102), as well as in the periodic report of 19 October 1954. This evaluation was wholly free from any improper motive, as proved by the fact that the Applicant remained in the service of the United Nations for three years after the Mission and that serious efforts to place him were continued down to October 1956.

3. There was no legal irregularity in the Administration's decision of 8 March 1955 not to grant the Applicant a permanent appointment and to terminate his temporary-indefinite appointment as of 31 December 1955 after the Review Board had made no specific recommendation. The Review Board is not compelled by the Staff Rules to advise the Secretary-General on a course of action when it finds itself unable to make any sound recommendation by reason of some circumstance such as the long absence of a staff member from Headquarters. The Applicant held a type of appointment which the General Assembly desired to have abolished. It was therefore necessary to review his contractual status. While the Secretary-General's Bulletin

ST/SGB/94/Amend.1 had been fully complied with by the submission of the Applicant's case to the Review Board, the Respondent's wide discretionary authority in the matter of appointments and terminations of appointments remained unimpaired under Staff Regulation 9.1 (c).

4. The decision taken by the Administration on 8 March 1955 was without direct causal connexion with the report of the Review Board. During a portion of his career, the Applicant's services had been evaluated as unsatisfactory on the ground of lack of leadership and failure to make effective use of his colleagues. This constituted a reasonable ground for not giving a permanent appointment to the Applicant, especially in view of his senior grade, where such qualities are particularly important.

5. Evidence of lack of any personal hostility against the Applicant is demonstrated by the fact that he was offered a further appointment in Burma on 29 November 1955 (Annex No. 24) during the pendency of the Appeals Board proceedings.

6. Following the Applicant's acceptance on 17 March 1956 of the appointment offered to him on 17 January 1956, no Letter of Appointment was prepared because, in spite of the Administration's efforts, no post could be found for the Applicant. The Applicant suffered no injury by reason of the absence of a Letter of Appointment, because the terms of his appointment were perfectly clear from the Staff Rules (which had been sent to him) and from the correspondence which the Applicant had exchanged with the Director of Personnel and the Technical Assistance Recruitment Services.

7. There is evidence that the Applicant sought to involve at least one government in his employment problems, a course which is difficult to reconcile with full compliance with Staff Regulations 1.4 and 1.5.

8. As to Applicant's request for rescission of the Secretary-General's decision not to grant him a permanent appointment, the Respondent would refer the Tribunal to Judgement No. 46 in which it was stated that in view of the provisions of Staff Regulation 4.1 it was not for the Tribunal to decide what kind of contract a staff member is entitled to receive. This ruling would also be applicable to the Applicant's claim to be assigned to his former post as Regional Social Welfare Expert at Bangkok.

9. This is not a case of prejudice of the Administration against the Applicant but that of the Applicant against the Administration.

The Tribunal having deliberated until 22 August 1957, now pronounces the following judgement:

1. In order to determine the claims of the Applicant, it is necessary to ascertain the nature of the contract and the terms and conditions thereof subsisting between the Applicant and the Respondent as of 20 July 1956, when the final separation of the Applicant took effect.

2. The Applicant's contention that he continued on a temporary-indefinite appointment till 20 July 1956 is untenable for the following reasons :

(a) The letter of termination of the Applicant's temporary-indefinite appointment dated 8 March 1955 (Annex No. 18) effective from 31 December 1955, was not withdrawn, waived or rescinded at any time ;

(b) There was no compromise between the Applicant and the Respondent before the Joint Appeals Board having any kind of contractual force as pleaded by the Applicant.

3. The Tribunal therefore holds that the Applicant's temporary-indefinite appointment came to an end on 31 December 1955.

4. On 17 January 1956, the Respondent made an offer (Annex No. 27) of a fixed-term appointment under the rules governing project personnel appointments and extending to 31 August 1959. The offer further stated that the appointment would be effective from 1 January 1956. The Respondent further clarified the salary entitlement under the offer in Annex No. 29. On 17 March 1956, the Applicant accepted the offer. The Tribunal therefore concludes that the subsisting contract between the Applicant and the Respondent on the date of separation was the one created by the aforesaid offer and acceptance.

5. It follows that the Applicant's contractual status, as well as his entitlements, are governed by the terms and conditions contained in Annexes Nos. 27 and 29 and 31.

6. The contract spelled out from the correspondence set out above, provided as follows :

(i) That the Applicant was not entitled to a permanent appointment in the Secretariat ;

(ii) That the Applicant was granted a fixed-term appointment effective from 1 January 1956 till 31 August 1959 under the rules governing project personnel appointments ;

(iii) That if such an assignment proved not to be feasible in the near future, the Applicant was entitled to an indemnity in conformity with the rules governing project personnel appointment ;

(iv) That if, after resuming duty, it became necessary to terminate the appointment of the Applicant, the Applicant would be entitled to an indemnity not less than the amount due to him on 31 December 1955 ;

(v) That, on final separation from the services of the United Nations, the Applicant would receive repatriation grant based on the temporary-indefinite appointment ending on 31 December 1955 ;

(vi) That the annual leave accrued to the Applicant would be carried over to his account under the fixed-term appointment ;

(vii) That the Applicant would be allowed to continue as a member of the Joint Staff Pension Fund ;

(viii) That the salary would be the same as under the temporary-indefinite appointment including within-grade increment due to the Applicant on 1 January 1956.

7. Pursuant to the above agreement, it is stated by the Respondent, and denied by the Applicant, that form P-5 relating to the employment of the Applicant was transmitted. The Tribunal considers that the receipt or otherwise of the said document by the Applicant does not in any way materially affect the decision in this case. Regulation 4.1 applicable to the present case provides : "Upon appointment each staff member shall receive a letter of appointment in accordance with the provisions of Annex II to the present regulations." Rule 204.1 provides that all contractual entitlements of project personnel shall be strictly limited to those contained expressly or by reference in their letters of appointment. Rule 204.2 provides that the appointment of project personnel shall take effect from the date on which they may enter into official travel status to assume their duties or from the date on which they start to perform their duties.

8. The Applicant was not given any letter of appointment in accordance with the above provisions as he was not appointed to any post. On a reading of the letters exchanged and the relevant provisions of the rules, it would appear that there was a contract *for* employment of the Applicant by the Respondent but there was no appointment as such of the Applicant.

9. In the absence of any such appointment as contemplated under the Rules, the purported termination of that appointment under Annex No. 44 should be deemed to be void. The result of this legal position is that the Respondent's obligation to specify a duty station consequent on reinstatement of the Applicant, as provided for in the Respondent's letters dated 11 April 1956 (Annex No. 37) and 30 April 1956 (Annex No. 38), would remain valid and effective and in force, unless the Respondent can show that the contract had become impossible of performance at any particular time.

10. The agreement for employment also provides that if an assignment proved not to be feasible in the near future, the Applicant would be entitled to proper notice of termination and to indemnity. The burden of proof that either the contract became impossible of performance or that an assignment did prove not to be feasible, is on the Respondent. The Respondent has to establish objectively that the appointment of the Applicant was "not feasible". In this respect, this case would differ from the cases in which the Secretary-General has a discretion to offer, or not, employment to a person and also from the

line of cases in which the Tribunal has held that it will not interfere unless there has been prejudice or improper motivation in termination of an appointment.

11. Even on the footing that there was an appointment according to the terms of the letters exchanged between the parties (though there was no formal letter of appointment), as contended by the Respondent, the said appointment being one for a fixed term, could be terminated only according to Regulation 9.1(b) applicable to the Applicant. Regulation 9.1(b) provides that "The Secretary-General may terminate the appointment of a staff member with a fixed-term appointment prior to the expiration date for any of the reasons specified in paragraph (a) above, or for such other reason as may be specified in the letter of appointment." It is nobody's contention that the termination in this case was for reasons specified under Regulation 9.1(a) such as abolition of post, reduction of staff or unsatisfactory service.

12. The only ground on which such termination could be justified was the one specified in Annex No. 27 that such an assignment did "prove to be not feasible in the near future".

13. The abovesaid question is a question of fact. It is not merely a question whether a bona fide endeavour was made to find a suitable assignment for the Applicant. The Tribunal has to be satisfied on the evidence placed before it whether it was not feasible to find a suitable assignment for the Applicant when the Respondent decided to "terminate" the Applicant's services.

14. The Respondent pleads that long and sincere efforts were made to place the Applicant and it was a matter of regret to the Administration that no placement was possible in his case. The Respondent stated that his efforts to place the Applicant unfortunately did not result in success. In any event, these efforts were made in good faith and therefore the Respondent claims he is absolved of any obligation to place the Applicant in a suitable position.

15. According to the evidence placed before the Tribunal, the name of the Applicant was forwarded only for one post, namely that of the Social Welfare Adviser in the Philippines and it was ultimately rejected by the Philippines Government. The Applicant contends that this attempt to place the Applicant in the Philippines post was not bona fide and that, by adding private information (Annex No. 108), the Respondent clearly intended to spoil his chances of selection. In respect of the Philippines post, the Tribunal finds some lacunae in the evidence. In Annex No. 37, it was stated, as early as 11 April 1956, that it had been decided to submit the name of the Applicant to the Government of the Philippines. Letter No. 286 subsequently produced before the Tribunal, shows that the submission was not made until 4 May 1956. There is no explanation for the delay in presentation of the candidature of the Applicant. Secondly, it is not clear from Annex

No. 107 how, after the Philippines Government had expressed a preference for Bulsara, further information regarding smooth working relations between Mr. Bulsara and officials came to be requested. It is not clear whether the Government of the Philippines asked for that information. It is also not explained how the Personnel Officer, Miss Betty Whitelaw, comes to the conclusion in Annex No. 112 that the non-availability of Miss McCord for the Philippines post would not change the Philippines Government's reaction towards Mr. Bulsara when the Philippines Government had expressed earlier, in Annex No. 107, their preference for Bulsara.

16. The Respondent contends that the Applicant's suitability for about 28 posts in the Technical Assistance Administration was considered and that it was found that it was not possible to fit him into any one of them. On the basis of this evidence, Respondent contends that the Appointment of Mr. Bulsara was found not to be feasible.

17. Information regarding rejection of Mr. Bulsara's candidature by the Philippines Government was received on 9 July 1956. The Personnel Officer of the Technical Assistance Administration drew up a list of 29 posts and rejected the Applicant as unsuitable for each one of them on 10 July 1956 (Annex No. 112). This action was put up for approval to the Deputy Director of Personnel and was approved on the same day (10 July 1956—vide endorsement in Annex No. 112).

18. The Respondent's contention that even before 10 July, the Applicant's suitability for these posts was long and carefully considered and that only the decision was taken on 10 July, does not accord with the practice explained by the Counsel for Respondent. Counsel stated that in order to save an embarrassing situation of the person proposed not being available, the Administration proposed a person for only one assignment. Respondent pleaded this as the explanation for not proposing the Applicant to post No. 20 (Annex No. 112) Social Welfare Expert in Bangkok, even though it was the considered opinion of the Administration that the Applicant was well suited to the requirements of this post and the post was uncommitted at that time, as the Administration had proposed the Applicant to the Philippines post in all good faith. It would follow therefore that the need for examination of the Applicant's suitability for other assignments would arise only after his proposal for the Philippines post was rejected. The Tribunal concludes that the alleged examination of the Applicant's suitability was made only after rejection by the Philippines.

19. In considering the qualifications of the Applicant, sweeping generalizations have been made which are not warranted by the facts relating to the Applicant's qualifications. The Tribunal cannot help coming to the conclusion that the decision that the appointment of the Applicant was not feasible in the near future was taken in haste and without due care and consideration.

20. In considering the suitability of the Applicant for the post of Regional Social Welfare Adviser at Bangkok (Annex No. 119), one of the reasons for rejection of the Applicant is stated as follows: "Unfortunately, there is considerable evidence that Mr. Bulsara's relationships with staff are not satisfactory". This obviously relates to his work in the Burma Mission about which the Joint Appeals Board had found (Annex No. 1) that the "evidence regarding the mission has been contradictory". At the time when the new contract had been entered into Mr. Robertson, the Director of Personnel, stated (Annex No. 37) as follows: "I very much hope that if and when you resume active duties, you will not allow events of the past to affect your attitude and work, and I sincerely welcome your assurances in this respect. There is no question that Mr. Keenleyside and myself, as well as the staff of the Technical Assistance Administration, will take the same attitude in our dealings with you and we all hope that a *new start* * in your relationship with the Organization will be successfully launched". It is apparent from the above that the Administration desired to draw a veil over the happenings in Burma and not allow the impressions of the past to influence the future course of dealings. Nevertheless, the Technical Assistance Administration based its decisions regarding the suitability of the Applicant for the post of Regional Social Welfare Adviser in the Far East on the impressions formed out of uncorroborated, *ex parte*, confidential reports of doubtful validity, to disqualify the Applicant.

21. The Tribunal holds that under the agreement for employment between the Applicant and the Respondent, the Respondent could have recourse to termination and payment of compensation only if an assignment proved to be not feasible. On the evidence set out above, the Tribunal holds that the Respondent has not established that the assignment did not prove to be feasible for the following reasons:

(a) That the name of the Applicant was submitted only for one post and even in respect of this, the evidence is incomplete and full of gaps.

(b) That the decision that no other post was available to suit the qualifications of the Applicant was taken in haste and without due regard to the qualifications of the Applicant.

(c) That the decision was coloured by certain impressions formed on conflicting evidence and untested confidential correspondence regarding the Burma Mission.

22. From the submission of the Applicant's name for a single post and in circumstances which are not fully explained, the Tribunal cannot come to the conclusion that the Respondent had reasonably done all he could to find a position for the Applicant. The Tribunal

* (Words underlined by the Tribunal).

holds that the obligation undertaken by the Respondent has not been fulfilled with due diligence.

23. If there was a breach of obligation undertaken by the Respondent, the question arises as to what relief is the Applicant entitled.

24. The Applicant's claim that he is entitled to re-instatement effective from 20 July 1956 under his temporary-indefinite appointment came to an end on 31 December 1955. Nor can the Applicant claim re-instatement as project personnel as he was never appointed as such.

25. The Applicant could claim specific performance of the obligation by the Respondent, namely to find a suitable assignment for the Applicant as Technical Assistance Expert. On the conclusions reached in this case, the Tribunal has no alternative as per the language of article 9 of the Statute of the Administrative Tribunal but to order specific performance of the obligation undertaken by the Respondent, namely to find a suitable assignment for the Applicant. However, in view of the fact that the obligation undertaken under Annex No. 27 was circumscribed by a time limit, namely the "near future", the parties cannot be restored to *status quo ante*. The Tribunal therefore holds that compensation, in lieu of specific performance, is the adequate and proper relief that can be granted to the Applicant.

26. Applicant contends that he is entitled to an indemnity based on his service up to 31 December 1955 when his temporary-indefinite contract came to an end, in addition to the indemnity provided for in the agreement for employment as project personnel and further compensation by way of damages for mental anguish, injury to reputation etc. consequent on wrongful termination.

27. Considering that there was no separation of the Applicant from the United Nations on 31 December 1955 but that there was only a change in the nature of his relationship with the organization ;

Considering further that the agreement for appointment as project personnel provided that compensation for loss of employment would be paid at the rate of one week for every month of unexpired service, but not less than the indemnity due to the Applicant if he were separated on 31 December 1955 and thereby absorbed the two indemnities into one obligation as set forth in Annex No. 27 ;

The Tribunal rejects the claim for an indemnity based on the Applicant's service with the United Nations under the temporary-indefinite appointment till 31 December 1955 in addition to any other indemnity due to him.

28. If the Tribunal had held that the Respondent had performed his obligations under the agreement, the compensation granted to the Applicant at the rate of one week for each month of service till 31 August 1959, would conclude his rights.

29. Since the Tribunal has come to the conclusion that the Respondent has not performed his obligations, the damages would be the normal consequence of such action, the outside limit of which is the chance of employment till 31 August 1959. Taking into account the temporary nature of the appointment of Technical Experts, it would not be unreasonable to set the inside limit of such employment at one year. It is not always easy to determine precisely the actual amount of compensation to be awarded in cases of this nature. The Tribunal therefore awards compensation of the sum equivalent to one year's salary from 20 August 1956 to the Applicant "as the true measure of compensation and the reasonable figure of such compensation". (Advisory Opinion of October 23rd 1956: International Court of Justice Reports 1956, p. 77 (page 100)).

30. The Applicant was on accrued leave from 1 January 1956 to 10 May 1956 and on special leave with pay from 11 May to 20 July 1956 and on pay in lieu of notice from 20 July to 20 August 1956. The Applicant has been paid compensation at the rate of one week for every month of uncompleted service for three years from 20 August 1956 to 31 August 1959. Since the Tribunal awards compensation for one year as the reasonable expectation of service, the compensation calculated and paid at the rate of one week for each month of service for that period of one year for which compensation is herein awarded, (amounting to 12 weeks' salary) has to be deducted from the amount payable to the Applicant. In the result the Tribunal awards salary for nine months as compensation in addition to what has already been paid to him. Calculation of salary shall be on the same basis on which compensation has already been paid to the Applicant.

(Signatures)

S. BASTID
President

CROOK
Vice-President

Sture PETRÉN
Vice-President

R. VENKATARAMAN
Alternate

Mani SANASEN
Executive Secretary

Geneva, 22 August 1957
