

and proper case for the payment by the Respondent of the travel and subsistence costs for four days of the Applicant's counsel and so orders.

XIII. Except as said in paragraph XII above, the application is rejected.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

Francisco A. FORTEZA
Member

Zenon ROSSIDES
Alternate member

Jean HARDY
Executive Secretary

New York, 16 October 1971

Judgement No. 153

(Original: English)

Case No. 146:
Jayaram

Against: The United Nations Joint
Staff Pension Board

Request for the commutation into a lump sum of the Applicant's pension benefit at the minimum annual rate.

Article 29 of the Pension Fund Regulations.—In order to be entitled to a commutation of a benefit payable at the minimum annual rate, the participant must elect to receive the benefit at the standard annual rate.—Corresponding provisions of the previous edition of the Pension Fund Regulations.—The application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Zenon Rossides; Sir Roger Stevens;

Whereas, on 17 March 1971, Thodur Madapusi Jayaram, a former staff member of the United Nations Development Programme, hereinafter called UNDP, filed an application the pleas of which read as follows:

“ . . .

“I request the Tribunal to give a decision as regards the applicability of article 29 (d) [of the Pension Fund Regulations] with respect to article 29 (c), i.e. commutation of pension benefit into a lump sum and annual pension, if the participant elects to receive it at the minimum annual rate.

“I also request the Tribunal to recommend to the United Nations Joint Staff Pension Board, if necessary, alterations of the text of the provisions

contained in 29 (d) so that there will not be any ambiguity to the participant in the correct interpretation of the article referred to above.”;

Whereas the Respondent filed his answer on 9 September 1971;

Whereas the Applicant filed written observations on 7 October 1971;

Whereas the facts in the case are as follows:

The Applicant retired from UNDP on 17 June 1970, when he reached the age of 60, after completing 11 years and 10 months of contributory service for pension purposes.

Prior to his retirement he had inquired of the Secretary of the United Nations Joint Staff Pension Board what were the various retirement benefits available to him under article 29 of the Pension Fund Regulations, which read:

“Article 29

“*Retirement benefit*

“(a) A retirement benefit shall be payable to a participant whose age on separation is sixty years or more and whose contributory service was five years or longer.

“(b) The benefit shall be payable either:

“(i) At the standard annual rate which is obtained by multiplying the years of the participant’s contributory service, not exceeding thirty, by 1/50 of his final average remuneration, or

“(ii) At the minimum annual rate which is obtained by multiplying the years of the participant’s contributory service, not exceeding ten, by the smaller of 180 dollars or 1/30 of his final average remuneration, if the benefit so calculated would be greater than the amount under (i) above.

“(c) A benefit payable at the standard annual rate may be commuted by the participant into a lump sum:

“(i) If the rate is 300 dollars or more, to the extent of one third of its actuarial equivalent or the amount of his own contributions, whichever is greater, or

“(ii) If the rate is less than 300 dollars, to the extent of its full actuarial equivalent; if a male participant is married, the prospective benefit payable to his spouse may also be commuted at the standard annual rate of such benefit.

“(d) A benefit payable at the minimum annual rate may be commuted into a lump sum as in (c) above, if the participant elects to receive it instead at the standard annual rate.”,

and on 15 June 1970 the Secretary had replied as follows:

“ . . .

“Please note that, because of the application of the minimum provisions under article 29 (b) (ii), your retirement benefit as of 1 July 1970 is approximately \$1,160.00 per year . . . , instead of the standard annual rate under article 29 (b) (i) which would be \$825.00 per year in your case.

“It should be noted that, in accordance with the provisions of article 29 (d), if you elect to commute part of your retirement into a lump sum, the minimum provisions will not be applicable and your retirement benefit will be at the standard annual rate, one third of which will then be commuted

into a lump sum with the result that you will then receive exactly the same amount under this arrangement as you were in any case entitled to receive under article 29 (c)(i), i.e. \$550.00 per year plus a lump sum of \$3,800.00 . . .

“What cannot be done under article 29 (d) is to commute any portion of a benefit payable under article 29 (b) (ii) . . .”.

On 29 July 1970 the Applicant appealed against the interpretation of article 29 given by the Secretary of the Joint Staff Pension Board. On 4 December 1970 the Standing Committee of the Board decided to uphold that interpretation and on 17 March 1971 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. While the corresponding provision in the previous edition of the Pension Fund Regulations specified that commutation of a benefit payable at the minimum rate could be done only if one elected to waive the additional amount, the current provision in article 29 (d) that a benefit payable at the minimum annual rate “may be commuted into a lump sum as in (c) above” conveys the meaning that commutation is available even when the benefit is payable at the minimum annual rate.

2. Article 29 (d) means that a benefit payable at the minimum annual rate may be commuted into a lump sum and that the commuted portion will be calculated at the standard annual rate as provided in article 29 (c).

Whereas the Respondent's principal contentions are:

1. It is clear from the preparatory work that the principle embodied in article 29 (d) was that the recipient of a (higher) minimum retirement benefit should not be allowed to commute one third to a lump sum unless he waived his right to the minimum benefit, in which case he would receive the (lower) standard benefit with the option to commute up to one third.

2. The statement of that principle in the current text of article 29 is clear and unambiguous.

The Tribunal, having deliberated from 11 to 14 April 1972, now pronounces the following judgement:

I. The Applicant's claim for entitlement to commute into a lump sum his pension benefit at the minimum annual rate rests on the interpretation of article 29 of the Pension Fund Regulations.

II. An analysis of the provisions of article 29 shows that a retirement benefit shall be payable either at the standard annual rate or at the minimum annual rate, that a benefit payable at the standard annual rate may be commuted into a lump sum according to the circumstances of the case, and that a benefit payable at the minimum annual rate may be commuted on the condition that the participant elects to receive the benefit at the standard annual rate. It is clear from the language of clause (d) of article 29 that as a condition precedent to a commutation of a benefit payable at the minimum annual rate, the participant should elect to receive the pension benefit at the standard annual rate instead of at the minimum annual rate.

III. The Applicant's contention that the words “A benefit payable at the minimum annual rate may be commuted into a lump sum as in (c) above”, in clause (d) of article 29, “imply or give rise to ambiguity that a minimum annual rate may be commuted” overlooks the condition attached to such commutation,

namely that the participant should elect to receive the benefit at the standard annual rate. The Tribunal finds no ambiguity in the language of article 29 of the Pension Fund Regulations.

IV. Comparing clause (d) of article 29 with the corresponding provisions (article IV, paragraph 4) in the Pension Fund Regulations prior to 1 January 1970, which read:

“A participant whose retirement benefit would be increased as a result of the application of paragraph 1 (b) above may, at the date of retirement, elect to waive the additional amount which he would thereby receive; if he so elects, he shall be entitled to a retirement benefit calculated under paragraph 1 (a), and shall then be entitled to receive a lump sum under the conditions of paragraphs 2 or 3 above,”

the Applicant argues that there is between the two texts a difference which supports his plea that a benefit payable at the minimum annual rate may be commuted as such or alternatively that at least that part of the benefit which is not commuted shall be paid at that rate. The Tribunal has closely examined those texts and finds that both confine the facility of commutation of a pension benefit into a lump sum only to those who receive, or elect to receive, the benefit at the standard annual rate.

V. The Tribunal therefore decides that under clause (d) of article 29 of the Pension Fund Regulations, the Applicant cannot commute into a lump sum his pension benefit at the minimum annual rate unless he elects to receive the benefit at the standard annual rate.

VI. The application is rejected.

(Signatures)

R. VENKATARAMAN

President

Zenon ROSSIDES

Member

Roger STEVENS

Member

Jean HARDY

Executive Secretary

Geneva, 14 April 1972

Judgement No. 154

(Original: English)

Case No. 147:
Monasterial

Against: The Secretary-General
of the United Nations

Request for the Tribunal to find that the Applicant is eligible for the grant of a special post allowance.

Principal request.—Discretionary power of the Secretary-General to grant a special post allowance and incompetence of the Tribunal to enter into the merits of such a decision.—Contention that the grant of a special post allowance was not denied by the