CSAT/6
BEFORE THE COMMONWEALTH SECRETARIAT ARBITRAL TRIBUNAL
BETWEEN:
PHILIP POORAN
APPLICANT
Vs
COMMONWEALTH SECRETARIAT
RESPONDENT
Mr. Justice Hassan B. Jallow 11th• March 2002

RULING

On the 6th of August 2001 the Tribunal received the application of Philip Pooran (hereinafter the applicant) pursuant to the Statute of the Tribunal. He had been selected for redundancy - by the respondent, wrongly he claims. In his statement concerning his personal and official status the applicant described the decision contested simply as that of 7th May 2001. In his claim he amplifies the complaint to contest the following decisions:-

(a) The decision to make redundancies;
(b) The decision to make redundancies from the Industrial Development Department alone and not to select from within the Export and Industrial and Development Division;
(c) The decision to select the Applicant;
(d) The decision to use first in first out as a redundancy selection criterion;
(e) The decision to adopt the policy of rotation;
(f) The decision not to offer the Applicant redeployment either by way of suitable alternative employment or alternative employment.

Accordingly the applicant prays the Tribunal to rescind the decision of the respondent to make the applicant redundant, reinstate him and award compensation.

The respondent has raised a preliminary objection to the application on jurisdictional grounds and prays that the matter be dismissed. It is submitted by the respondent that the Tribunal

"does not have jurisdiction to consider this matter as its competence to consider this application is excluded by Article 1I(2)(ii)(b) read with Article 11(3) of the Statute of the Arbitral Tribunal (The Statute) in that the Application was not filed within the requisite three-month period after the exhaustion of all internal remedies;

ALTERNATIVELY in that the Applicant has raised new allegations with regard to alleged victimisation in connection with the employment of a consultant in 1998 which had not been previously raised internally, and thus he had not exhausted his internal remedies prior to filing this Application".

The respondent's application to render inadmissible the substantive application is based on the following: the applicant had received a notice of redundancy on 4th April 2000 which he proceeded to contest; that an internal investigation of all the applicants grievances in connection therewith had been conducted and the final decision communicated to the applicant on 11 th September 2000; the screening panel had found procedural irregularity in relation to the redeployment of the applicant but held that the disestablishment of his post as well as his retrenchment were fair in all respects; on the procedural issue the respondent submits that the application to the Tribunal ought to have been filed no later than 28th February 2001 in accordance with Article 1I(2)(b) of the Statute; that as regards the substantive issue of redundancy the application ought to have been filed within three months of the 11th of September 1999 when internal remedies were exhausted and he was notified of the decision on his complaint. It is submitted by the respondent that in accordance with Article 1I(2)(ii)(b) of the Statute the applicant ought to have filed his complaint with the Tribunal by 11th December 2000; not almost eight months later on 6th August 2001.

In his response to the respondent's application, the applicant submits that the "latest event" i.e. the "occurrence of the event giving rise to" his application was the termination of employment of the applicant. That event occurred on the 7th of May 2001; the three months period for filing a complaint with the Tribunal he submits only expired on the 7th of August 2001, a day after he had actually filed his application. As regards the alternative submission of the respondent on nonexhaustion of remedies in relation to the victimisation allegation the applicant responds that he had no knowledge of such until

after the termination of his employment on 7th May 2001 and could not therefore exhaust internal remedies.

It is necessary that jurisdictional issues are separated from the substantive ones and are resolved before proceeding, should the case so require, to a consideration of the merits. Both parties are *ad idem* on this approach (see *Saroha vs. Regional Director CYP (Asia) 14th July 2000).*

The jurisdiction of the Tribunal is derived from and determined by Article II of the Statute. Of relevance to the instant case is Article 11(2) of the Statute which provides as follows:-

"Subject to paragraph 3 of this Article, the Tribunal shall only consider an application if:

(i) in relevant cases, the applicant has exhausted all other remedies available within the Secretariat including the redress of grievance procedures specified in Regulation 22 and in Rules 24(b), 138, 143, 155 and 214 of the Staff Rules and Regulations; and

(ii) the application is filed within a period of three months after the latest of the following:

(a) the occurrence of the event giving rise to the application;

(b) receipt of notice, after the applicant has exhausted all other remedies available within the Secretariat, that the relief asked for or recommended will not be granted; or

(c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within one month after receipt of such notice".

Article 11(2)(i) of the Statutes requires as a condition precedent to the admissibility of an application the exhaustion of "all other remedies available within the Secretariat". Another condition precedent is compliance with the three months time limit for filing applications (Article 1I(2)(ii)) before the Tribunal. This must be done within three months of the latest of the following events (a) "occurrence of the event giving rise to the application" or (b) (c) receipt of a notice after exhaustion of internal remedies that the relief will not be granted or where it was agreed to be granted it has not been so granted within one month of the decision.

The issue in dispute appears to be simply this: from what date is the three months deadline for filing the application to be computed - September 11th 1999 following the exhaustion of all internal remedies and receipt of notice of the decision? Or 7th May 2001 when the applicant's services were terminated?

Truly the applicant had exhausted all internal remedies by 11th September 1999, but the decision to terminate his services had yet to be implemented. That was done only on the ih May 2001. Hence in his application the applicant referred to the ih of May 2001 as the date of the decision contested. The event giving rise to the application, in the instant case, is not necessarily the receipt of notice of a decision following exhaustion of internal remedies. The applicant's complaint is against been made redundant. The most immediate or the latest event which gave rise to this application is the termination of his services on 7th May 2001 pursuant to the earlier decision to make him redundant. The application has thus been filed within the time limit provided for by Article 1I(2)(ii) of the Statute and I so hold.

As regards the alternative submission of non-exhaustion of local remedies in relation to the allegation of victimization, the respondent has not denied the applicant's claim that he became aware of such only after the termination of his services. The internal remedies within the Secretariat could under the circumstances no longer be regarded as available to him. Remedies which are no longer available cannot be required to be exhausted.

Accordingly the respondent's application of 8th October 2001 to render inadmissible the applicants claim is hereby dismissed. The respondent is hereby ordered to submit, in accordance with Rule 7 of the Rules of the Tribunal its answer to the application on the merits.

Dated at London this 11th day of March 2002