

## **HUMAN RIGHTS COMMITTEE**

### **Keshavjee v. Canada**

**Communication No 949/2000**

**2 November 2000**

**CCPR/C/70/D/949/2000**

### **ADMISSIBILITY**

*Submitted by: Mr. Ameer Keshavjee*

*Alleged victim: The author*

*State party: Canada*

*Date of communication: 4 June 1996 (initial submission)*

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 2 November 2000

Adopts the following:

#### Decision on Admissibility

1 The author of the communication is Ameer Keshavjee, a Canadian national, born 4 October 1938. He claims to be a victim of a violation by Canada of Articles 14, 25(c) and 26 of the International Covenant on Civil and Political Rights.

#### **The facts as presented**

2.1 The author was employed by Revenue Canada from 19 September 1989 as a Collection Contact Officer after successfully passing the relevant examinations. The appointment was probationary to 9 April 1990. On 15 March 1990, the author passed a further examination and was offered an appointment as Collection Enforcement Officer to commence 9 April 1990 for a 12 month probationary period. On 31 July 1990 the author received written advice from the Collection Group Supervisor that five test checks of the author's work between November 1989 and July 1990 had

shown unsatisfactory performance. These tests were conducted on 8 November 1989, 10 January 1990, 5 March 1990, 22 June 1990 and 10 July 1990.

2.2 On 31 July 1990, the author was given 90 days to correct these deficiencies or have the probationary appointment terminated. He was also advised that three test checks would be performed during that 90 day period. He contends that this was the first notice he had received that his performance was less than acceptable. He also alleges that the whole Unit's production had been down but no other employee had received such a letter. On 29 August 1990, the author was advised that, due to unsatisfactory performance, the usually payable pay increment commencing 19 September 1990 would be denied. This withholding appears to be a standard procedure in cases where management determines that an employee is not performing at an acceptable level. On 28 November 1990, the author's probationary appointment was terminated.

2.3 With the assistance and advice of the Union of Tax Employees, the author challenged the failure to provide the pay increment and the termination of appointment through four levels of internal complaint procedures (details unspecified). That process concluded on 22 January 1992 with advice of the final level hearing. The pay increment was restored at the third level hearing, but the termination was not reversed at any point.

2.4 In October 1991, the author complained to the Canadian Human Rights Commission alleging that he was discriminated against on the basis of his race, colour and national or ethnic origin (East Indian) in the termination of his employment. The Commission, after full investigation, found that the author's performance had not improved as advised, and that other collection officers were treated in the same way as the author. It concluded in August 1992 that the complaint was unfounded. The author made a further approach to the Commission to review its decision, which was also denied.

2.5 In November 1992, the author complained to the Public Service Commission of Canada in respect of his case. That complaint was dismissed in December 1992. The author has made a variety of further attempts to secure redress through the Prime Minister, the Minister of National Revenue and Members of Parliament. He has not proceeded with any further Court action, for instance in the Federal Court of Canada. He contends that such recourse would be pointless, as the Federal Court's review of decisions of the Human Rights Commission is confined to matters of jurisdiction and procedural fairness.

### **The complaint**

3.1 The author raises two main complaints. The first complaint is against the Union of Taxation Employees, representing the author in the internal grievance proceedings. He alleges that the union failed to explain the proper appeal procedures applicable to his case, and that the union had against his wishes excluded him from certain hearings. He also alleges that members of the Union arranged for his dismissal.

3.2 The essence of the author's main complaint relates to his allegation of discrimination in the termination of his employment. The author claims that he had recently passed higher level examinations and points out that the pay increment initially denied was later awarded. He charges that his dismissal was based upon racial discrimination. To support this claim he argues that his

supervisors, the union officials representing him and the adjudicators were Caucasian and that the internal grievance procedures were unfair, as persons who had exercised management functions were also members of grievance panels. The author contends that the above constitutes violations of article 14, 25, paragraph (c), and 26 of the Covenant.

### **Issues and proceedings before the Committee**

4.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 In terms of the allegations directed against the conduct of the Union, the Committee observes that the allegations are directed against private parties. In the absence of any argument on which the State party might be held responsible for the actions of these individuals, this part of the communication is inadmissible *ratione personae* under Article 1 of the Optional Protocol.

4.3 In terms of the author's allegations of discrimination, the Committee recalls that, according to its constant jurisprudence, it is not for the Committee, but for the competent authorities of the State party to evaluate facts and evidence. The Committee does not interfere in such an evaluation unless it was manifestly arbitrary or amounted to a denial of justice. In the instant case, the Committee notes that the author's allegations were examined on their merits by the Canadian Human Rights Commission, which found that the author's employment had been terminated not on any discriminatory ground, but for failure to improve unsatisfactory performance. Moreover, it found that other tax collection officials had been treated in the same manner. The author has failed to substantiate, for the purposes of admissibility, that these findings were either manifestly arbitrary or amounted to a denial of justice. In the light of this finding of the Human Rights Commission, the Committee is of the view that the author has failed to substantiate, for the purposes of admissibility, that his dismissal involved violations of his rights under articles 14, 25, paragraph (c), and 26 of the Covenant. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

5 The Committee therefore decides:

- (a) that the communication is inadmissible under articles 1 and 2 of the Optional Protocol;
- (b) that this decision shall be communicated to the author and, for information, to the State party.

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen and Mr. Roman Wieruszewski. Under rule 85 of the Committee's rules of procedure, Mr. Maxwell Yalden did not participate in the examination of the case.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be translated into Arabic, Chinese and Russian as part of the Committee's Annual Report to the General Assembly.]