



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninety-first session
15 October -2 November 2007

DECISION

Communication No. 1031/2001

Submitted by: Amaranada Banda Weerasinghe (represented by
counsel, Mr. Elmore M. Perera)

Alleged victim: The author

State party: Sri Lanka

Date of submission: 18 January 2001 (initial submission)

Document references: Special Rapporteur's rule 97 decision, transmitted to
the State party on 22 November 2001 (not issued in
document form)

Date of adoption of Decision: 31 October 2007

* Made public by decision of the Human Rights Committee.

Subject matter: Fair trial in Supreme Court following labour complaints

Procedural issues: Sufficient substantiation, for purposes of admissibility

Substantive issues: Fair trial

Articles of the Optional Protocol: 2

Articles of the Covenant: 14

[ANNEX]

ANNEX**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

Ninety-first session

concerning

Communication No. 1031/2001*

Submitted by: Amaranada Banda Weerasinghe (represented by
counsel, Mr. Elmore M. Perera)

Alleged victim: The author

State party: Sri Lanka

Date of submission: 18 January 2001 (initial submission)

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

Meeting on 31 October 2007,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication, initially dated 18 January 2001, is Amaranada Banda Weerasinghe, a Sri Lankan citizen, who claims to be a victim of a violation by Sri Lanka of article 14 of the International Covenant on Civil and Political Rights. The author is represented by counsel, Mr. Elmore Perera.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

Factual background

2.1 The author worked for the Mahaweli Authority of Sri Lanka (“the Authority”), a statutory body charged with undertaking large-scale integrated rural development based on water resources of the Mahaweli and six other river basins. From 11 August 1988, he worked as Project Manager on Victoria and Randenigala projects. On 1 April 1992, the author was transferred to another project, “System L”, as project manager. On 5 September 1992, the author held an inquiry into an allegation that a colleague mechanic had misappropriated state property, who was later convicted in Magistrate’s Court. The mechanic assaulted the author, as a result of which he began to suffer from ill health. In September 1992, he submitted a medical certificate requesting leave for 3 months from 15 September 1992. The author was later informed that the medical certificate had not been received. On 21 October 1992, he was served with a vacation of post notice, informing him that he was treated as having vacated his post with effect from 10 September 1992, as he had neither reported for work from that day on, nor submitted valid reasons (such as a medical certificate) for his absence. The author submitted an appeal for reinstatement to the President of the Republic, and sent many letters and subsequent reminders to the Authority, requesting a review of the decision.

2.2 In a letter dated 28 June 1994, and having discovered that the medical certificate had in fact been received, the Authority reinstated the author as Victoria project manager. This letter also stated that he would be paid the same salary as previously earned and that the period during which he was not working would be treated as leave without pay. On 30 June 1994, the author reported for duty, whereupon he requested to be paid his back wages from 9 September 1992 to 28 June 1994 and granted increments, promotions and other benefits due to him. Although the author was formally reinstated as project manager, he states that he was effectively only acting as an additional project manager as another colleague had taken over the responsibilities normally assigned to the project manager.

2.3 By letter of 1 August 1994, the Authority transferred the author to a Colombo head office position, with immediate effect, to function in the personal staff of the then Minister of Mahaweli Development. The State party disputes as a factual matter whether he in fact assumed duties in this position. On 14 August 1994, the author was released from his duties on the Minister’s staff and instructed to return to his previously-assigned head office duties, it again being contested whether he in fact resumed those new functions. On 24 August, the author applied for an extension of sick leave, with a medical certificate apparently to follow. On 25 August 1994, the author was again treated as having vacated his post with effect from 1 August 1994 for failure to report to duty. On 30 August and 17 October 1994, he appealed to the managing director, and on 23 September 1994 to the relevant Minister, without response.

2.4 On 8 November 1994, the author filed a claim with the Labour Tribunal under the Industrial Disputes Act, which considered his case on 11 January 1997. After three years of inquiries, on 11 November 1997, the Tribunal found for the author, deciding that he should be reinstated with effect from 1 December 1997 and compensated, and that the period during which he was not working should not be counted as a break in service. The author appealed the decision to the Provincial High Court on the point that back wages for two years had not been awarded. The author states that the

appeal had been “laid by”, pending conclusion of the Supreme Court litigation, although the State suggests the author has not shown due diligence in pursuing the appeal.

2.5 On 1 December 1997, and following the decision of the Labour Tribunal, the author resumed his duties at the Colombo head office. However, he was not paid any salary until February 1998 (and was then paid the same salary he had received in August 1994); he was not provided a table or chair; and was not offered voluntary early separation, offered to all other employees. On 27 March 1998, the author learnt that two of his colleagues, who were his juniors, were promoted to project managers of “System L”. On 30 March 1998, he protested against these matters.

2.6 By letter dated 23 April 1998, the author was directed to transfer to “System L” as an additional project manager to a recently appointed acting project manager. On 4 May 1998, the author requested a review of this decision, on the basis among others that as the most senior project manager in the division, it was unfair to assign him as an additional project manager to an acting project manager who had only just commenced his probation period. He argued that, having been a project manager for the same project in 1992, his present assignment was tantamount to a demotion and unwarranted humiliation, and that there had never been any allegation of unsatisfactory conduct in respect of his long service with the Authority. The author did not receive a review of the transfer decision.

2.7 The author therefore sent another complaint to the Authority on the conditions to which he was subjected since his reinstatement on 1 December 1997. The author repeated his complaints, and requested acceptance of his resignation under the voluntary early separation plan, with effect from 1 June 1998. The author states that the Authority assured him that his retirement request would be accepted upon provision of the relevant documents, which he provided.

2.8 The author did not receive a response to his request for resignation but on 21 August 1998, received a letter from the Authority stating that he was being treated as having vacated his post on 1 June 1998, because he had not proceeded on the transfer directed in the letter of 23 April 1998.

2.9 On 18 September 1998, the author filed an application to the Supreme Court under the jurisdiction of article 126 of the Constitution for leave to proceed; for a declaration that his constitutional rights under article 12(I)¹ of the Constitution had been violated and for compensatory damages; to direct the Authority to restore all appropriate salary, increments and promotions due him and to accept his retirement under the voluntary early separation; and for costs and any other relief. On 23 September 1998, the Supreme Court referred the case to the Human Rights Commission of Sri Lanka under section 12 of the Human Rights Commission of Sri Lanka Act 1996, to inquire into the matter and to report its findings.

2.10 On 3 September 1999, after hearing the parties, the Human Rights Commission forwarded its report of 20 August 1999 to the Supreme Court. On the issue of voluntary early separation plan, it

¹ Article 12(I) provides: « All persons are equal before the law, and are entitled to the equal protection of the law ».

found it “clear that the [author] did not make a proper application and in due time to get the benefit of the [voluntary early separation] scheme”. It found however that there were arrears of salary and promotions due to the author, which should be paid upon the author’s statement of arrears and increments due. It also found “ample facts” to indicate that article 12(I) of Constitution had been violated by executive and administrative actions of the Authority. On compensation for these constitutional violations, the Commission regretted that it was unable to assess the amount of compensation that could be paid, being unaware of any rules promulgated by the Supreme Court for this purpose.

2.11 On 2 November 1999, the Supreme Court granted leave to proceed. On 6 July 2000, following the Commission’s findings, the Supreme Court heard arguments of the parties on the substantive petition and dismissed the petition without costs. In a judgment of Amerasinghe J. with which Wijetunga and Weeraskara JJ. agreed, the Court held that the author had not made the necessary application for retirement before 31 December 1997, and therefore had acted out of time. On the argument that the Authority’s failure to assign suitable work made his transfer discriminatory and in breach of article 12(I) of the Constitution, the Court held that the vacation of post notice made upon his failure to transfer “was not mala fide or without justification” and there was “no evidence whatsoever” that the Authority “had failed to observe the rules of natural justice and had acted for a collateral, illegal purpose”. In the circumstances, there was thus no violation of Article 12(I) of the Constitution.

The complaint

3. The author claims that the State party violated his rights under article 14 of the Covenant. He states that without his counsel being afforded a proper hearing, the Supreme Court summarily and unjustly decided that his fundamental rights had not been violated, despite the Commission’s finding that his rights under the Constitution had been violated.

State party’s submissions on admissibility and merits

4.1 By submissions of 7 March 2002, the State party argued that the communication should be declared inadmissible in limine for patent error on the basis that the author had intentionally misrepresented the position before the Committee by failing to provide it with the Court’s reasoned judgment and suggesting that the Supreme Court had improperly dismissed the petition. The State party also argues that, the author having provided no material on exhaustion of his appeal to the Provincial High Court, the complaint should be declared inadmissible for failure to exhaust domestic remedies.

4.2 The State party also argues that although invoking article 14 of the Covenant, the author has failed to place before the Committee any material indicative of the manner or nature in which this provision was allegedly violated. In any event, the State party had not, either directly or through its agents, violated this right, and the claim was misconceived in law.

Author's comments on the State party's submissions

5. By letter of 17 February 2003, the author responded, amplifying the factual record and disputing factual aspects of the State party's submissions. He also argues that the short judgment of the Supreme Court precludes recourse to the writ jurisdiction of the Court of Appeal, as well as any relief being granted in the High Court in his case.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that the State party has supplied it with a copy of the reasoned judgment of the Supreme Court, dismissing the author's application following a defended hearing with the author represented by counsel. The Committee recalls its prior jurisprudence that it is generally for the courts of States parties to the Covenant to interpret domestic law and to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation by the domestic tribunal was clearly arbitrary or amounted to a denial of justice². The material before the Committee does not show that the proceedings before the Supreme Court suffered from such defects. In the circumstances, the Committee considers that the author has failed to substantiate his claim under article 14 of the Covenant, for purposes of admissibility, and the claim is accordingly inadmissible under article 2 of the Optional Protocol.

6.3 In light of that finding, the Committee need not assess the State party's other objections to the admissibility of the communication.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That this decision shall be communicated to the author and to the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

² Communication No.541/1993, *Errol Simms v. Jamaica*, declared inadmissible on 3 April 1995, para 6.2.