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ADMINISTRATIVE TRIBUNAL

Judgement No. 374

Case No. 381: HOWLADER

AGAINST: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Herbert Reis, Vice-President, presiding; Mr. Luis M. de Posadas Montero; Mr. Ahmed Osman;

Whereas on 16 December 1985, John S.R. Howlader, a former staff member of the United Nations Children's Fund, hereinafter referred to as UNICEF, filed an application that did not fulfil the formal requirements of Article 7 of the Rules of the Tribunal;

Whereas on 24 February 1986, the Applicant filed a corrected application, the pleas of which read as follows:

"As per Article 7 (Chapter III) of the Rules of the Administrative Tribunal of the United Nations.

(a): I. Please call the record of the personnel and medical files of the petitioner from UNICEF/Dhaka, UNICEF Headquarters, N.Y. [New York]

II. Please produce the following witnesses:

1. Dr. Moniruddin Ahmed MRCP (London), FRCP (Glasgow)
Prof. of medicine
Dhaka Medical College Hospital
Dhaka, Bangladesh

2. Dr. Md. Farooq
M.B.B.S. (D.U.) M.P.H. Micro (Belgium)
Bacteriologist, M.B.L.
Institute of Public Health
Mohakhali, Dhaka-12
3. Mrs. Joanna S. Howlader,
wife of Mr. J.S.R. Howlader
c/o UNICEF/Dhaka, Bangladesh
4. Mr. Joseph D'Costa
son of late Pedru D'Costa
Radda Barnen,
House No. 70, Road No. 11/A,
Dhanmondi, Dhaka
5. Mr. K. Bahauddin
UNICEF, Dhaka
Bangladesh

(b) The decisions which the Applicant, contesting and whose rescission he is requesting under Article 9, paragraph 1 of the Statute:

The Applicant is contesting the decision of the United Nations Joint Appeals Board in the matter of his two appeals before the said Board that is appeal No. 82-53 (First Appeal) and 83-12 (Second Appeal)

A n d

The Applicant prayed for rescission of the decision of the UNICEF/Dhaka for that matter UNICEF/New York and or the Hon'ble U.N. Secretary-General for non-payment of medical evacuation expenses of the petitioner for a total amount of U.S. Dollars 5,429.92, the outstanding medical expenses as per the said two appeals and as a result of revised computation of the medical evacuation expenses of the petitioner as a result of the approval of the medical evacuation of the petitioner during the pendency of the said two appeals.

(c) The obligations which the Applicant is invoking and whose specific performance he is requesting under Article 9, paragraph 1 of the Statute.

The Applicant is invoking specific performance of the UNICEF/Dhaka for that matter UNICEF/New York and/or the Hon'ble U.N. Secretary-General for not paying the medical evacuation expenses of the petitioner for U.S. Dollars 5,429.92 as per the two appeals as stated hereinabove in paragraph (a) and (b).

(d) In addition to the obligation for U.S. Dollars 5,429.92, payable to the petitioner, he hereby prays for 9,500 U.S. Dollars for the loss of movable (Golden ornaments and other valuable properties) and immovable property to meet the medical evacuation expenses of the Applicant in India (Vellore, Madras India).

(e) The Applicant prays that his medical treatment immediately be continued by the Christian Medical College Hospital at Vellore, Madras, India so that he may back to his normal duties as a normal employee of the UNICEF/Dhaka and the Applicant further prays for any other relief or reliefs the Hon'ble Tribunal may deem fit and proper."

Whereas the Respondent filed his answer on 30 July 1986;

Whereas on 3 October 1986, the presiding member of the panel ruled that no oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 16 November 1972 as a locally recruited Clerk/Typist at the GS-3 step 1 level at the UNICEF office in Dhaka, Bangladesh. He was initially offered a three month fixed-term appointment that was successively extended for further fixed-term periods. On 1 April 1979 his appointment was converted to a probationary appointment and on 1 April 1980 to a permanent appointment. During the course of his employment with UNICEF he was promoted to the G-4 level, as Senior Clerk Typist, and then to the G-5 level, as Accounts Assistant.

It appears from the record of the case that during 1980 the Applicant's health deteriorated. The UN physician in Dhaka referred the Applicant to the Rushmono Poly Clinic in Dhaka for a complete medical examination. The Medical Board of the Poly Clinic diagnosed that the Applicant had a chronic duodenal ulcer and advised him to undergo surgery. On 17 March 1981, the Applicant wrote to the UNICEF Representative in Dhaka, Bangladesh, to inform him that the physicians at the Poly Clinic had decided that he needed an operation and that the UN physician concurred with the diagnosis. He indicated that he would prefer to be operated on in India, and therefore sought his approval to be treated medically outside Bangladesh.

In a letter dated 20 March 1981, the UN physician in Dhaka informed the UN Medical Director at Headquarters of the Applicant's condition. He noted that although the operation required by the Applicant could be performed in Dhaka, the Applicant was "mentally not fit to be operated [in Dhaka]". He asked for his advice on whether the Applicant could be medically evacuated to India or to Thailand. In case the evacuation were not approved, he asked whether UNICEF would reimburse all medical expenses incurred for the operation and treatment needed outside Bangladesh.

In a reply dated 8 April 1981, the Officer-in-Charge, United Nations Medical Service at Headquarters informed the UN physician in Dhaka that:

"Medical evacuations may be recommended for approval if the following conditions are met: (a) Treatment or surgery is not possible on location; (b) in case of a medical emergency.

As Mr. Howlader's condition is chronic duodenal ulcer, and surgery is possible in Bangladesh, I regret that medical evacuation to the nearest center cannot be recommended at this time."

Accordingly, the Applicant's request for medical evacuation was not approved. However, in a telex dated 24 April 1981, the Assistant Personnel Officer at Headquarters informed the Officer-in-Charge, UNICEF, Dhaka, that UNICEF would "REIMBURSE MEDICAL EXPENSES INCURRED [FOR] TREATMENT OUTSIDE BANGLADESH UP TO MAXIMUM ALLOWABLE AND [WOULD] CONSIDER ADDITIONAL MAJOR MEDICAL PAYMENTS UNDER MEAP [MEDICAL EXPENSE ASSISTANCE PLAN]".

Since the Applicant had definitively decided to leave for India, on 27 April 1981 the UN Physician in Dhaka issued a certificate in order to assist the Applicant to obtain the required visa and currency exchange. The certificate stated that the Applicant suffered "from chronic duodenal ulcer and chronic dysentery and was advised for operation" and that: "as the case was becoming complicated and the patient wants better treatment, [the UN physician in Dhaka] advised and recommended him to have the operation done outside Bangladesh, i.e. in India".

At the Applicant's request, on 11 May 1981, the Officer-in-Charge, UNICEF, Dhaka, notified the Applicant that UNICEF had agreed to provide the Applicant with a salary advance in US dollars. Nevertheless, he specified that the Applicant's "going to Madras (Bhalor Christian Mission Hospital) for an operation [was] quite clearly [his] own and personal decision" and that "it must be clear to [him] and to anyone concerned that the travel is personal and financed personally, not by UNICEF". UNICEF was "facilitating with an advance of salary and [currency] exchange on humanitarian grounds."

The Applicant departed for India on 7 July 1981. He was admitted to the Christian Medical College Hospital, Vellore, India, from 14 to 30 July 1981 and from 2 August to 4 September 1981. The Applicant was not operated on, because doctors in India diagnosed his disease to be psychophysiological. The Applicant returned to Dhaka and resumed his duties on 1 October 1981. He subsequently submitted a claim to UNICEF for medical treatment in India for the amount of \$US 2,011.45.

On 15 October 1981, the UNICEF Representative in Bangladesh transmitted to the Personnel Officer at Headquarters the Applicant's claim for medical expenses during his stay in India. Since the amount of \$US 500.00 would be reimbursed under MEAP, the UNICEF Representative requested that favourable consideration be given to reimburse the Applicant the maximum amount possible as a hardship case under Article 3(c) of the MEAP. In a memorandum dated 10 December 1981, the Assistant Personnel Officer at Headquarters informed the UNICEF Office in Dhaka that UNICEF had approved payment of an additional sum of \$US 1,209.16 under Major Medical.

In a letter dated 18 December 1981 addressed to the UNICEF Representative in Dhaka, the Applicant requested that his trip to India be considered a medical evacuation and that all expenditures incurred by him and his wife who had accompanied him, be reimbursed. On 29 December 1981 the Officer-in-Charge, Personnel Services Section, UNICEF, Dhaka, informed the Applicant of the decision taken by Headquarters in connexion with his medical claim. Accordingly, the Applicant was paid a total sum of \$US 1,709.16 for expenses incurred during his 1981 stay in India.

On 12 February 1982, the Physician at the UN Clinic in Dhaka informed the UNICEF Representative that the Applicant was planning to travel to Vellore, India for a medical review of his condition and was "insisting to be sent there on medical evacuation basis, on cost of his organisation." The UN Physician stated that "[the Applicant's] case could not be considered on a medical evacuation basis medical evacuation being an exceptional procedure, [he] really [did] not want a rush to India or Thailand for local or international staff without any serious reason."

In March 1982, the Applicant decided to return to India to follow-up on his treatment. In a memorandum dated 17 March 1982 addressed to the Applicant, the UNICEF Representative informed him that in connexion with this second trip, UNICEF would only reimburse him for "substantiated medical expenses in accordance with established procedures and ceiling under MEAP. UNICEF [would] not consider reimbursement for expenses in excess of the MEAP ceiling, Daily Subsistence Allowance (DSA) nor travel expenses incurred by [him]". Nevertheless, the Applicant returned to India, as planned.

On 19 July 1982, the Applicant requested the UNICEF Representative in Dhaka to reimburse him the amount of \$US 2,800.00. This amount represented additional medical expenses incurred by him in connexion with his first trip to India. In a reply dated 27 July 1982, the Officer-in-Charge, UNICEF, Dhaka, rejected the Applicant's request on the ground that his case had "already been given very sympathetic consideration".

On 25 August 1982, the Applicant requested the Secretary-General to review the administrative decision by UNICEF not to approve payment of the additional sum of \$US 2,800.00. On 25 October 1982 he filed an appeal with the Joint Appeals Board, hereinafter referred to as the "first appeal".

On 1 November 1982, the Applicant submitted a second medical claim to the Administrative and Finance Officer, UNICEF, Dhaka, for the amount of \$US 1,875.87 representing medical expenses incurred during his second trip to India in 1982. In a reply dated 14 December 1982 the Administrative

and Finance Officer, UNICEF, Dhaka informed him that UNICEF would not reimburse him beyond the limits and procedures established by MEAP (i.e. \$US 500.00) since that second trip to India had been undertaken at his own expense.

On 7 February 1983, the Applicant requested the Secretary-General to review the administrative decision by UNICEF not to reimburse his medical and ancillary expenses incurred on his second trip to India under Article 17 of Appendix D to the Staff Rules.

Not having received a reply from the Secretary-General, on 16 March 1983 the Applicant lodged an appeal with the Joint Appeals Board, hereinafter referred to as the "second appeal".

During the course of the proceedings instituted before the Joint Appeals Board the Applicant exhausted his entitlement to sick leave on 17 April 1984, and was placed on special leave with half pay pending a determination by the UN Joint Staff Pension Committee whether he was incapacitated for further service and entitled to a disability benefit.

On 4 June 1984, the Medical Director of the United Nations informed a Personnel Assistant at Headquarters that after reviewing the Applicant's file, he believed that the Applicant's medical evacuation to Vellore in 1981 should be considered as "official travel". The decision of the Medical Director was conveyed by the Chief, Staff Services at Headquarters, in a cable dated 28 August 1984 that reads as follows:

"UN MEDICAL DIRECTOR HAS NOW APPROVED HOWLADER'S TRAVEL TO VELLORE INDIA IN 81 AS MEDICAL EVACUATION. HOWEVER, TRAVEL EXPENSES SHOULD BE REIMBURSED FROM DHAKA TO CALCUTTA ONLY AS CALCUTTA IS USUAL POINT WHERE STAFF FROM BANGLADESH WOULD BE RECEIVING MEDICAL CARE. HE SHOULD ALSO RECEIVE PER DIEM PAYMENT AT APPROPRIATE APPLICABLE RATE FOR THE CERTIFIED DURATION OF TREATMENT. THIS NOT REPEAT NOT EXTENDED TO SPOUSE OR ANY ACCOMPANYING MEMBERS OF HIS FAMILY. THIS RECENT APPROVAL IS MADE ON THE BASIS OF LETTER DATED 6 JULY 1981 AND CERTIFICATE DATED 27 APRIL 1981 SIGNED GABRIEL UN MEDICAL DOCTOR IN DHAKA STATING THAT HOWLADER WAS ADVISED TO HAVE AN OPERATION PERFORMED OUTSIDE BANGLADESH. UNFORTUNATELY, THESE STATEMENTS ARE CONTRARY TO UN MEDICAL SERVICE RECOMMENDATION DATED 8 APRIL 1981 NOT APPROVING HOWLADER'S MEDICAL EVACUATION BUT AS THIS CASE IS BEING DISCUSSED BEFORE THE UN JOINT APPEALS BOARD WE CANNOT IGNORE LETTER DATED 6 JULY AND STATEMENT DATED 27 APRIL 1981. PLEASE PROCEED WITH PAYMENT."

The contents of this cable were communicated to the Applicant by the Administrative and Finance Officer, UNICEF, Dhaka, in a memorandum dated 2 October 1984.

The Joint Appeals Board considered the first appeal and the second appeal together and adopted its report on 18 October 1984. Its conclusions and recommendations read as follows:

"CONCLUSIONS AND RECOMMENDATIONS

First appeal

49. The Panel finds first that UNICEF reimbursed the appellant correctly the maximum amount of assistance payable under Article 3(b) (ii) Medical Expense Assistance Plan (MEAP) plus 80% of major medical expenses under Article 3(c) MEAP in compliance with the consistent organizational policy of reimbursements of major medical expenses. The Panel finds that UNICEF paid the appellant daily subsistence allowance (DSA) at full applicable rate for the certified period of treatment of 49 days in hospital in accordance with Staff Rule 107.1(a) (vii) and 107.15(h) and the provisions of the UNICEF Personnel Administration Manual, Volume 1, chapter 12, section 6, paragraph 12, which is above the maximum amount of entitlement, as well as the correct amount of reimbursement of travel expenses for the airfare to the usual place of medical care for staff of that office. The Panel finds that UNICEF reimbursed the appellant in fairness 95% of his total claimed expenses incurred on his first travel to India and that the appellant cannot claim further entitlements of assistance for his medical evacuation above the total received amount of \$US 2,663.52, which was exceptionally granted to him.

50. The Panel finds next that the appellant's illness was chronic and not attributable to the performance of official duties on behalf of the United Nations according to the United Nations Medical Service and that the provisions of Appendix D to Staff Rules did therefore not apply to his case as confirmed by the Secretary, Advisory Board on Compensation Claims (ABCC). The Panel therefore rejects the appellant's contention that the respondent did not observe the provisions of Article 17 to Appendix D to Staff Rules and allegedly failed to constitute a Medical Board as unfounded and not valid.

51. The Panel unanimously decides to make no recommendation in support of the first appeal.

Second appeal

52. The Panel finds that the administrative decision of UNICEF, Dhaka, not to approve the appellant's second travel to India in 1982 as medical evacuation on the unanimous recommendation of the United Nations physician, Dhaka, and of the United Nations Medical Service, New York, was made correctly in accordance with the relevant provisions of Personnel Directive PD/1/82 of 26 January 1982 and of the UNICEF Personnel Administration Manual, Volume 1, chapter 12, section 6. The Panel notes in this connection that according to the United Nations Medical Director adequate follow-up care for counselling of the appellant's illness was available in Dhaka and that there were therefore no 'compelling circumstances' in this case to justify a second medical evacuation to India for follow-up consultation.

53. The Panel finds that the appellant's second not authorized travel to India was not official and that he can therefore not claim entitlements for reimbursement of travel expenses according to Staff Rule 107.1(a)(vii), 107.15(h) and the relevant provisions of the UNICEF Personnel Administration Manual, Volume 1, chapter 12, section 6, paragraph 12.

54. The Panel finds next that UNICEF reimbursed the appellant the maximum amount of assistance of \$US 500 payable under Article 3(b)(ii) MEAP and that further reimbursements for major medical expenses where hardship is involved are within the discretion of the Secretary-General. The Panel finds that the appellant has not submitted concrete evidence which would substantiate his contention that the decision of the Secretary-General not to approve reimbursements above the maximum allowable amount of assistance under Article 3(c) MEAP was arbitrary or motivated by prejudice. The Panel finds therefore that the decision of the Secretary-General was taken correctly and that the appellant cannot claim further entitlements of assistance for his second travel to India above the received maximum amount of \$US 500 according to Article 3(b)(ii) MEAP.

55. The Panel finds as in the first appeal that the appellant's illness was chronic and not attributable to the performance of official duties on behalf of the United Nations and that the provisions of Appendix D to Staff Rules did therefore not apply to his case as confirmed by the Secretary, Advisory Board on Compensation Claims (ABCC). The Panel therefore rejects the appellant's contention that the respondent did not observe the provisions of Article 17 to Appendix D to Staff Rules and allegedly failed to constitute a Medical Board as unfounded and not valid.

56. The Panel recommends in view of its consideration under paragraph ... of this report that UNICEF may reimburse an appropriate

amount of the appellant's claimed major medical expenses incurred on his second travel to India for follow-up treatment on humanitarian grounds in a sense of understanding, sympathy and compassion to the staff member."

Pursuant to the recommendation of the Joint Appeals Board, UNICEF Headquarters recommended that in connexion with the Applicant second trip to India, the Applicant receive an additional payment, "in accordance with allowed expenses under Article 3 of MEAP but do not repeat not include cost in travel or any per diem element". Accordingly, on 3 April 1985, the Administrative and Finance Officer, Dhaka, informed the Applicant that he would receive an additional payment of \$US 148.67.

The Applicant was separated from the service of UNICEF on 29 May 1985. On 30 May 1985, the Secretary of the UN Joint Staff Pension Board informed the Applicant that the United Nations Staff Pension Committee had determined that he was "incapacitated for further service and consequently entitled to a disability benefit under Article 33 of the Regulations of the Fund".

On 12 June 1985, the Assistant Secretary-General for Personnel Services informed the Applicant that:

"(a) With regard to the first appeal, to refer your claim for compensation under the Appendix D to the Staff Rules, to the Advisory Board on Compensation Claims for advice, and

(b) With regard to the second appeal, to take note of the payment made by UNICEF in accordance with the Panel's recommendation, and to take no further action on this matter."

On 22 July 1985 the Advisory Board on Compensation Claims, at its 295th Meeting, recommended to the Secretary-General that the Applicant's claim be denied on the ground that his illness was not attributable to the performance of official duties. The Secretary-General approved the recommendation on 6 September 1985.

On 24 February 1986 the Applicant filed the application referred to above.

Whereas the Applicant's principal contentions are:

1. The Applicant's illness was attributable to the performance of his duties for UNICEF.
2. The Applicant's first trip to India was authorized by the UN Medical Director as a medical evacuation more than three years and six months after the date of the Applicant's request, thus causing him undue hardship.
3. Only the Indian doctors correctly diagnosed the Applicant's disease whereas, had the Applicant followed the incorrect advice from the UN doctor, his health would have been impaired.
4. The decision of the Joint Appeals Board was biased and failed to show justice and fairness to the Applicant's grievances.

Whereas the Respondent's principal contentions are:

1. The Applicant's request for witnesses should be rejected as the record is sufficiently complete for disposition of his case by the Tribunal.
2. The Applicant as a locally recruited staff member has no entitlement to medical evacuation, except in compelling circumstances at the discretion of the Organization, under the applicable regulations and rules of UNICEF and, therefore, he has no right to any payments additional to the amounts already paid to him.
3. The Applicant has failed to establish any abuse of discretion or mistake in the determination of his entitlements.
4. The Applicant has no entitlement to compensation for the movable and immovable properties allegedly sold to raise funds for his medical treatment.

The Tribunal, having deliberated from 13 October 1986 to 5 November 1986, now pronounces the following judgement:

I. The main issue before the Tribunal is to ascertain whether the Applicant has been reimbursed correctly for the expenses he incurred in the two courses of medical treatment performed outside the country of his duty station, according to the rules in force at the time.

II. The Tribunal finds in this regard that the Applicant, being a locally recruited staff member at the UNICEF office, Dhaka, comes under the provisions of the Medical Expense Assistance Plan (MEAP) for Locally-recruited General Service and related categories of Staff at designated United Nations Offices. The rules governing the implementation of the said plan are contained in Appendix E to the Staff Rules, in effect from 1 July 1974.

III. The Tribunal will deal with the two medical travels separately, but would like at the beginning to underline the basic philosophy of the Medical Expense Assistance Plan. The Tribunal notes, in this regard, that the plan was not envisaged to secure a full and complete coverage of all expenses incurred for medical treatment but, as mentioned in Article 1 of the Plan, seeks to provide assistance in covering reasonable expenses incurred in the medical treatment of those benefiting from the plan where, "in the opinion of the Secretary-General, no other appropriate coverage is available." Moreover, any reimbursements are made under certain limitations and conditions.

IV. As to the Applicant's first travel: the Tribunal finds that according to Article 4(b) of the Plan, reimbursement shall "be limited to the cost of the services or medication in the country of the duty station". Where the services have been performed outside the country of the duty station, reimbursement rests at the discretion of the Administration, which may grant reimbursement only in situations where:

- "(i) The prior approval of Headquarters has been obtained, or
- (ii) In the opinion of the Secretary-General, care was needed for an emergency".

Although medical evacuation was not approved by the United Nations doctor because treatment or surgery was possible on location, and since the Applicant's case was not an emergency, the Respondent exercised his discretionary power under Article 4(b)(i) of the MEAP and on 27 April 1981 granted the Applicant prior approval of the reimbursement for medical expenses to be incurred outside Bangladesh. The Applicant was thus allowed to claim reimbursement of medical expenses and, in fact, received \$US 500.00 which is the maximum amount of assistance payable under Article 3(b)(ii) of the Plan. Had the Respondent withheld prior approval, the Applicant would not have been in a position to claim any reimbursement whatsoever, since the services were performed outside the country of the duty station.

V. The Tribunal notes also that the maximum amount of assistance of \$US 500.00 which had been approved under Article 3(b)(ii) is far below the medical claim presented by the Applicant for \$US 2,011.45. In view of this situation, the Respondent made a determination under Article 3(c) of the Plan to consider the Applicant's case as a "hardship" case and exercised his discretionary power to approve reimbursement for major medical expenses in excess of the amounts set out in Article 3(b)(ii). The Tribunal notes, that UNICEF accordingly reimbursed the Applicant above the maximum amount of assistance of \$US 500.00 an additional 80 per cent of major medical expenses in the amount of \$US 1,209.16. As a general rule, exceptional reimbursements do not cover the entire amount of the expenses incurred by the staff member.

The Tribunal therefore finds that at that stage the Applicant had no further entitlement to assistance for reimbursement of medical expenses under the MEAP above the amount of \$US 1,709.16 which was paid to him in 1981.

VI. The Tribunal notes moreover, that on 4 June 1984, the Medical Director at Headquarters reversed the earlier decision of a physician in that service and retroactively approved the Applicant's travel to Vellore, Madras, India as a medical evacuation. His action in doing so allowed the Applicant to benefit from the additional entitlements which flow from the UNICEF Personnel Administration Manual, Volume I, Chapter 12, Section 6.

The Applicant's first trip, by being recognized as a medical evacuation, thus became official travel entitling the Applicant to Daily Subsistence Allowance and to related travel expenses.

Accordingly, UNICEF paid the Applicant the amount of \$US 903.67 as DSA at the applicable rate for the certified period of treatment of 49 days in the hospital at Vellore which was above the maximum allowable of thirty days. (UNICEF Personnel Administration Manual, Volume I, Chapter 12, Section 6). Respondent also paid to the Applicant the amount of \$US 50.69 for the airfare Dhaka/Calcutta/Dhaka because Calcutta is the usual point where staff from Bangladesh would receive out-of-country medical care. The Tribunal finds that the Applicant is not entitled to reimbursement for travel expenses incurred by his accompanying wife, because an authorization to this effect at the expense of the organization was not given at any time and was even explicitly excluded by UNICEF.

The Tribunal observes that over and above the entitlements due and already paid to the Applicant under the MEAP which amounted to \$US 1,709.16, the Applicant received an additional sum of \$US 954.36.

The Tribunal concludes that the Applicant received all his entitlements with regard to his first trip, under pertinent regulations and rules, and rejects his claims in this respect as not valid and unfounded.

VII. As to the Applicant's second travel: With regard to his second trip to India the Applicant requested:

- 1) that his trip be authorized by the Administration on a medical evacuation basis; and
- 2) that the Administration should therefore cover his medical expenses, pay daily subsistence allowance and the cost of air travel.

The Applicant's argument is that his second trip was a mere follow-up of his first trip to India, already authorized by the UN physician in Dhaka.

The Tribunal cannot subscribe to this point of view for the following reasons:

1. An earlier assessment of the Applicant's illness could not be automatically applied at a later stage of his illness, especially when there is a gap of one year between the two assessments.

2. When the Applicant requested his second medical evacuation, the UN physician in Dhaka strongly disapproved it because he considered that appropriate medical facilities were available in Dhaka and local psychiatrists could be consulted there. Therefore, there was no compelling reason for travel out of the country of the duty station.

3. Lack of adequate local facilities has always been a sine qua non condition for allowing medical evacuation.

The Applicant left on his own for India on 20 March 1982, after being clearly advised on 17 March 1982, that UNICEF would consider reimbursement for medical expenses only up to the MEAP ceiling, but would not consider payment of daily subsistence allowance, nor travel expenses incurred by the Applicant.

Therefore, the Tribunal finds that since his second travel was not officially authorized because there was no objective requirement for medical evacuation outside Bangladesh, the Applicant cannot claim any entitlement beyond the maximum assistance allowable under MEAP for medical expenses, nor can he claim daily subsistence allowance nor the cost of air travel. The Tribunal notes that the Applicant received the \$US 500.00 which is the maximum allowable under the MEAP.

Nevertheless, the Tribunal notes that upon the Joint Appeals Board recommendation to consider assistance to the Applicant on humanitarian grounds, UNICEF paid to the Applicant an additional amount of \$US 148.67.

VIII. In paragraph 10 of his application, the Applicant contends that his claim for compensation under Appendix D was not properly considered. The Tribunal notes that the Secretary-General decided, with regard to the first appeal lodged by the Applicant, to refer the Applicant's claim to the Advisory Board on Compensation Claims (ABCC) for advice. The Tribunal notes further that the ABCC considered the Applicant's claim and rejected it on 22 July 1985, and that the Secretary-General approved the Board's recommendation.

IX. With regard to the Applicant's claim for compensation for the loss of movable and immovable property to meet his medical evacuation expenses, the Tribunal finds no basis for such compensation since the Respondent has correctly reimbursed the Applicant his full entitlements in conformity with applicable regulations, rules and procedures.

X. The Tribunal finds also no evidence to support the Applicant's allegation that the decision of the Joint Appeals Board was biased and failed to show justice and fairness in its consideration of the Applicant's grievance.

XI. For the foregoing reasons, the application is rejected.

(Signatures)

Herbert REIS
Second Vice-President

Luis M. de POSADAS MONTERO
Member

Ahmed OSMAN
Member

New York, 5 November 1986

R. Maria VICIEN-MILBURN
Executive Secretary