

CSAT APL/40 (No 2)

IN THE COMMONWEALTH SECRETARIAT ARBITRAL TRIBUNAL

IN THE MATTER OF

RAM VENUPRASAD

APPLICANT

and

THE COMMONWEALTH SECRETARIAT

RESPONDENT

Before the Tribunal constituted by

**Mr David Goddard QC (Presiding Member);
Mr Chelva Rajah SC; Professor Epiphany Azingo SAN**

JUDGMENT No 2 (COMPENSATION)

Introduction

- 1 The Applicant, Mr Venuprasad, was employed by the Commonwealth Secretariat from 1 November 2001 to 31 December 2016. His final post was as Deputy Head of Office in the Secretary-General's Office. He was employed in that position from 16 November 2014 to 31 December 2016. His employment came to an end when his contract expired on 31 December 2016.
- 2 The events that took place in the last six months of Mr Venuprasad's employment are described in detail in the Tribunal's Interim Judgment dated 16 April 2018. In May 2016 confidential Secretariat documents were leaked to a British newspaper, the Daily Mail. Mr Venuprasad came under suspicion within the Secretariat as the source of those leaks. He was suspended from his position on 22 June 2016. The Secretariat initiated disciplinary proceedings, and on 31 October 2016 a Disciplinary Board met to consider allegations that:
 - 2.1 Mr Venuprasad had acted in breach of the Secretariat's confidentiality policy, particularly its IT policy in Part 5, Section 12 of the Staff Handbook;
 - 2.2 Mr Venuprasad inappropriately handled confidential and highly sensitive information that he had access to in his position as Deputy Head of the Office of the Secretary-General.
- 3 The Disciplinary Board met in Mr Venuprasad's absence. Mr Venuprasad had become seriously unwell, and was on sick leave from 8 July 2016. The Board had agreed to a previous request from Mr Venuprasad to reschedule a hearing planned for 14 September, as he was unable to attend for health reasons. But the Board refused his request to adjourn the hearing it had scheduled for 3 November until he was well enough to attend (and advanced the hearing date to 31 October).
- 4 The Disciplinary Board found that the two allegations had been substantiated. However the Board concluded that there was no direct evidence that Mr Venuprasad leaked the confidential information. The panel recommended that Mr Venuprasad be issued with a final written warning.
- 5 The Secretariat proceeded to issue a final written warning to Mr Venuprasad on 2 December 2016, just a few weeks before his employment was due to come to an end, and at a time when he was still on sick leave. He did not return to work before 31 December 2016, when his employment came to an end.

- 6 Mr Venuprasad brought proceedings before the Tribunal challenging the following decisions:
- 6.1 the decision of 22 June 2016 to suspend him;
 - 6.2 the decision of 12 August 2016 to subject him to a disciplinary procedure;
 - 6.3 the Disciplinary Board's decision in November 2016 to issue him with a final written warning;
 - 6.4 the decision of Sir Simon Gass dated 1 March 2017 to dismiss his appeal against the final written warning.
- 7 In its Interim Judgment the Tribunal upheld the challenges to these decisions. The Tribunal concluded that the decision of the Disciplinary Board was flawed in a number of significant respects, and should be set aside. The Tribunal also concluded that the internal appeal decision should be set aside. The issue of the final written warning to Mr Venuprasad on 2 December 2016 was therefore set aside.
- 8 The Tribunal also concluded that the decision to suspend Mr Venuprasad breached his contract of employment. The Tribunal held that the appropriate remedial response was a declaration of breach, and an award of compensation.
- 9 The Tribunal also found that the Secretariat had breached its obligations to Mr Venuprasad by making adverse statements about him to the media, which were calculated to discredit him and harm his reputation.¹
- 10 The Tribunal held that Mr Venuprasad is entitled to compensation for loss caused by the Secretariat's breaches of its obligations to him. His suspension, the issue of a final written warning, and the attacks on Mr Venuprasad in the media are inherently likely to have damaged Mr Venuprasad's reputation and prejudiced his search for new employment.²
- 11 However the Secretariat had submitted at the hearing of Mr Venuprasad's claim that it put Mr Venuprasad to the proof of loss claimed, and wished to be heard further on any award of compensation. The Tribunal therefore delivered an interim judgment that

¹ Interim Judgment at [167].

² Interim Judgment at [168].

determined questions of liability, and awarded certain remedies, with the quantum of compensation to be determined in a subsequent judgment.

- 12 In the Interim Judgment the Tribunal made the following formal orders:
 - 12.1 the decision of the Secretariat to suspend Mr Venuprasad made on 22 June 2016 was a breach of the Secretariat's obligations under his contract of employment;
 - 12.2 the decision of the Disciplinary Board dated 10 November 2016 was set aside;
 - 12.3 the decision dated 28 February 2017 dismissing Mr Venuprasad's internal appeal was set aside;
 - 12.4 the final written warning issued to Mr Venuprasad on 2 December 2016 was set aside;
 - 12.5 the Tribunal reserved leave to the parties to make submissions on the amount of compensation to be awarded to Mr Venuprasad in respect of the breaches by the Secretariat of its obligations in connection with the disciplinary procedure;
 - 12.6 Mr Venuprasad is entitled to costs in respect of his successful application to the Tribunal. If costs cannot be agreed by the parties they would be fixed by the Tribunal on the basis of the parties' written submissions.
- 13 The parties reached agreement on the amount of costs payable in respect of the proceedings up to and including delivery of the Interim Judgment, with one exception discussed below. But they did not agree on the amount of compensation payable to Mr Venuprasad.

Mr Venuprasad's compensation claim

- 14 Mr Venuprasad now applies to the Tribunal to determine the amount of compensation payable to him. As directed by the Tribunal he has filed detailed submissions setting out his claim for compensation. Those submissions were accompanied by a schedule of loss, a witness statement, and supporting documents.
- 15 Mr Venuprasad claims the following amounts by way of compensation for financial loss:
 - 15.1 loss of earnings from the end of his employment on 31 December 2016 to mid-June 2018 (17.5 months), quantified at £179,686.15;

- 15.2 loss of future earnings for a further 24 months, quantified at £246,426.72;
- 15.3 loss of contractual benefits associated with employment for a 31.5 month period, quantified at £139,548.74;
- 15.4 cost of medical consultations and treatment, quantified at £2,795.06;
- 15.5 costs relating to job searches and travel to London for Tribunal-related work, quantified at £13,644.94.
- 16 The total amount of the claimed financial loss is £662,101.61.
- 17 Mr Venuprasad also claims compensation for moral injury and harm to his health. He invites the Tribunal to award the sum of £60,000 for moral injury, and £20,000 for the serious and lasting effects on his health which he says were caused by the Secretariat's breaches of the obligations it owed him.
- 18 Article X(1) of the Tribunal's statute provides that the Tribunal must fix the amount of compensation to be paid to an applicant for the loss, injury or damage sustained
- provided that compensation shall not normally exceed the equivalent of three years' net remuneration of the applicant. The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher amount of compensation. A statement of the specific reason for such an order shall be made.
- 19 The parties differ on how Mr Venuprasad's net remuneration should be calculated for this purpose. But on any view it is not more than approximately £300,000.
- 20 Mr Venuprasad says that this is an exceptional case which justifies awarding more than three years' net remuneration, having regard to the nature and extent of the breaches and the effect on him of those breaches.
- 21 Mr Venuprasad claims interest at the rate of 5.5% per annum on the claimed damages for past financial losses and for moral injury. The details of the interest claim are discussed in more detail below.
- 22 Mr Venuprasad says that he does not know what the tax treatment of the compensation payable to him will be. He seeks either a tax indemnity from the Secretariat or orders which make provision for the question of taxation to be resolved after an award is made, with leave to return to the Tribunal on this issue if necessary.

- 23 The parties' agreement on costs did not extend to one item claimed by Mr Venuprasad: the cost of seeking counsel's advice on 12 October 2016. The sum in question is £1,400. Mr Venuprasad says this is properly seen as a claim for costs. The Secretariat says it is a claim for compensation, and that this sum is not recoverable. This claim is discussed in more detail below.
- 24 Mr Venuprasad also seeks an order for recovery of costs he has incurred in these proceedings after 12 April 2018, the date on which agreement was reached on costs incurred in the initial phase of these proceedings. He suggests that no order is required as the parties are likely to agree on the relevant figure, but seeks liberty to apply if agreement cannot be reached.

The Secretariat's response

- 25 The Secretariat filed detailed submissions opposing Mr Venuprasad's claim for compensation, accompanied by supporting documents. The Secretariat says that Mr Venuprasad's claim is "manifestly excessive, disproportionate and not supported in fact or law."³ It submits that he should be awarded nominal damages of not more than £10,000 to £15,000 for the process breaches found by the Tribunal. It says that the amount of compensation should be consistent with CSAT precedent. The Secretariat also argues that Mr Venuprasad's own conduct throughout these proceedings has been the principal contributing factor to the loss he claims he has suffered.
- 26 In particular the Secretariat says that it should not have to make any more than a nominal payment to Mr Venuprasad in relation to the media disclosures by the Secretariat "[h]aving proper regard to the evidence of the Applicant's egregious media contact as a whole".⁴
- 27 The Secretariat also argues that other information in the public domain about Mr Venuprasad would have impeded his job search to an extent that far outweighs the impact of the Secretariat's conduct, and its adverse statements about him to the media.
- 28 The Secretariat emphasises the restriction on awards of compensation in Article X(1) of the Statute, and says that the burden of proof is on the Applicant to establish exceptional circumstances that would justify an award of more than three years' net remuneration. The Secretariat says that this is not a case in which there are exceptional circumstances of that nature. The Secretariat says that the amount claimed by Mr

³ Secretariat submissions on compensation at [5].

⁴ Secretariat submissions on compensation at [7].

Venuprasad far exceeds any award previously made by Commonwealth Secretariat Arbitral Tribunal.

- 29 The Secretariat also invokes its limited resources, saying it is “a state-funded organisation with increasingly limited resources to carry out its work promoting democracy, rule of law, human rights, good governance and social and economic development.”⁵ The Secretariat refers to the Tribunal’s decision in *Ayeni*, where the Tribunal said:⁶

We must, in addition, be mindful of the very limited resources at the disposal of the Commonwealth Secretariat as an organization that is dedicated to providing very much needed technical assistance to its member countries many of which are highly indebted poor countries.

- 30 The Secretariat rightly points out that if none of the breaches found by the Tribunal had occurred, Mr Venuprasad’s contract would still have ended on 31 December 2016. As he was paid up to that date, he has not suffered any loss of earnings at the Secretariat.
- 31 The Secretariat seeks to portray Mr Venuprasad as the author of his own misfortunes. It reasserts the breaches of the Secretariat’s IT and confidentiality policies that were found by the Disciplinary Tribunal, and argues that by this conduct Mr Venuprasad “brought clear suspicion on himself”.⁷ The Secretariat goes on to argue that Mr Venuprasad has courted media attention and used the media to attack the Secretariat, and that this “removes any basis for the Applicant to contest that he has suffered any damage to his reputation or been prejudiced in his search for employment”.⁸ The Secretariat summarises this argument as follows in its submissions:

49. The Respondent submits that in this context, the two statements it made to the media in October and November 2016 concerned matters that the Applicant had already put into the public domain and did not take those matters any further.

50. The Respondent's submission remains that if the Applicant is the cause for the release of information in the first place, as his correspondence with various journalists would suggest is likely, then the Applicant is also the sole person responsible for the

⁵ Secretariat submissions on compensation at [14].

⁶ CSAT/12 (No.2), *Ayeni v Commonwealth Secretariat* at [85].

⁷ Secretariat submissions on compensation at [23].

⁸ Secretariat submissions on compensation at [25].

impact of that information on his personal and professional life. This does not result in any liability in damages for the Respondent, who has refrained from media contact in relation to this case since November 2016 and has declined to make substantive comments to the press.

51. The Respondent invites the Tribunal to find that, viewing the totality of the evidence, the Applicant has solicited media attention in breach of his confidentiality obligations and should only be awarded nominal damages. This finding should be subject to further disclosure from the Applicant of evidence of his contact with the media during the period 1 January 2016 to 16 April 2018.

- 32 The Secretariat goes on to deny that its conduct caused incremental harm to Mr Venuprasad's reputation or affected his ability to obtain new employment. The Secretariat also disputes the quantification of the claims for loss of remuneration and loss of contractual benefits.
- 33 The Secretariat says that Mr Venuprasad has not established that the medical conditions in respect of which he claims medical costs and compensation for injury to health were directly caused by the disciplinary process or the Tribunal proceedings, and that the treatment he received was reasonable and necessary. The Secretariat also argues that the Tribunal has never made an award for injury to health.
- 34 The Secretariat also disputes Mr Venuprasad's claims to recover costs related to job search travels and travel to London for Tribunal-related work.
- 35 The Secretariat's submissions provide a helpful summary of previous awards by the Tribunal of compensation for moral injury, and note that the Tribunal's approach is to consider the circumstances as a whole in making a lump sum award to account for moral injury arising from relevant breaches. The Secretariat acknowledges the findings of procedural breaches by the Secretariat, but says that these conclusions must be weighed against the fact that:

(i) the Applicant's contract would have expired regardless of the disciplinary process; (ii) the Applicant never offered a defence to the allegations that started the disciplinary process; (iii) the Applicant took no steps to mitigate his loss; and (iv) he voluntarily assumed the risk of damaging his reputation by engaging with the media. In all of these circumstances, the Respondent submits that the Applicant's claim for £60,000 is wholly inappropriate, inflated and without any real merit.

- 36 The Secretariat opposes the claim for interest. The details of the parties' arguments in relation to interest are discussed in more detail below.
- 37 The Secretariat opposes the grossing up of any award of compensation to reflect possible tax liability, noting that there is no precedent in the Tribunal's caselaw to support such an approach, and that Mr Venuprasad has not provided any submissions or evidence to support an argument that an award of compensation will be taxable. It says there is no basis to order the Secretariat to provide a tax indemnity.
- 38 The Secretariat also opposes any further award of costs, contending that the Tribunal has generally ordered that parties bear their own costs, and that a substantial amount of costs (£37,720.46) has already been paid by the Secretariat.
- 39 The Secretariat's submissions conclude with the following summary of the Secretariat's position on compensation:

97. The Respondent invites the Tribunal to make an award consistent with its internal law as well as international administrative law on an appropriate amount of compensation.

98. The Respondent submits that, on the findings in the Interim Judgment, the Applicant is only entitled to compensation for the four procedural breaches in the disciplinary process and the two adverse statements made by the Respondent to the media in the range of £10,000-£15,000. The parties have also agreed the amount of £14,440 for the Applicant's pre-application legal costs.

99. In total, the Applicant would therefore receive a total in the order of £62,000-£67,000, which is more than a fair and reasonable amount for his alleged losses.

100. The Respondent further submits that in light of the Applicant's lack of mitigation, flagrant breach of his continuing obligations of confidentiality under Regulation 6 of the Staff Handbook and his soliciting of media attention, he is not entitled to more than nominal compensation for the media matters. The Respondents instead requests that the Tribunal consider whether the overall compensation award should be subject to a deduction for this conduct.

Mr Venuprasad's reply

- 40 In his reply submissions Mr Venuprasad takes issue with the approach adopted by the Secretariat. He summarises his position as follows:

- a. the Respondent is attempting to reargue (or to argue for the first time) matters of liability and costs which it is plainly too late to raise now;
- b. the Respondent's response to the Applicant's case on remedy throughout misunderstands and fails to engage with the way in which the Applicant's case is put;
- c. the Respondent makes a series of misconceived arguments with a view to further besmirching the Applicant, most notably a hopeless, unpleaded and inchoate appeal to principles of *ex turpi causa*;
- d. the Respondent's attempt to argue a position which is opposite to that reached by its own disciplinary panel is discreditable and misconceived;
- e. overall the approach taken by the Respondent in its submissions exhibits the same retaliatory hostility which has characterised its approach towards the Applicant since the spring of 2016, and gives rise to a claim for aggravated damages.

- 41 Mr Venuprasad strongly disputes any suggestion that he engaged in any improper conduct in the course of his employment, or that he admitted engaging in any improper conduct in the course of the investigation and disciplinary process. He refers to his earlier evidence, and the evidence of Mr Gimson, to the effect that use of personal email accounts for Secretariat purposes was commonplace.
- 42 Mr Venuprasad also strongly contests the Secretariat's attempts to paint him as having courted press attention or brought reputational damage on himself.
- 43 Mr Venuprasad filed a further witness statement in support of his reply submissions. Among other matters, that witness statement explains that he did not seek press coverage or provide any confidential Secretariat information to the media in the course of his employment. It also sets out the details of his contacts with the media in connection with these proceedings. The statement addresses in some detail the matters that the Secretariat relies on in arguing that his reputation was impaired by information in the public domain about a fraud investigation in India in the early 2000s, in the course of which he was questioned by investigators. The Tribunal issued a Minute

asking the Secretariat if it wished to cross-examine Mr Venuprasad on this statement.⁹ The Secretariat advised that it did not wish to do so.¹⁰

- 44 In his reply Mr Venuprasad seeks aggravated damages in the sum of £3,000 arising out of the manner in which the Secretariat has conducted these proceedings, with particular reference to the various allegations made against him in the Secretariat's submissions on compensation.
- 45 Mr Venuprasad's reply submissions and supporting evidence are referred to in more detail in the context of the Tribunal's discussion of the specific issues raised by the parties.

Consideration of compensation and costs claims by the Tribunal

- 46 Both parties invited the Tribunal to determine the question of compensation on the papers, and expressed the view that a further oral hearing was not required. The Tribunal proceeded on this basis, and met in London in the week of 17 September 2018 to consider and determine this aspect of the proceedings.
- 47 The Tribunal has carefully considered all of the material provided to it by the parties in relation to Mr Venuprasad's claim for compensation and associated issues, and has also taken into account all of the material before it in the liability phase of the proceedings. The Tribunal is grateful to the parties for their assistance.

The relevant principles

- 48 It is common ground that the purpose of an award of compensation is to put Mr Venuprasad in the position he would have been in had the breaches identified in the Interim Judgment not occurred. The focus must therefore be on a comparison between the position Mr Venuprasad is in now, and the position he would have been in if the Secretariat had not suspended him, conducted an unfair disciplinary process and issued a final written warning, and made inappropriate statements about him to the media in late 2016.

⁹ Tribunal Minute dated 29 August 2018.

¹⁰ Secretariat's Memorandum dated 4 September 2018.

- 49 As the Tribunal said in *Addo*, “in assessing the appropriate level of compensation [the Tribunal has] a broad discretion to award what is equitable for the injuries sustained.”¹¹
- 50 In this context it is worth emphasising that at the hearing of Mr Venuprasad’s claim, the Secretariat acknowledged that the Disciplinary Board process was unfair, and acknowledged that it had acted inappropriately by making critical statements about Mr Venuprasad to the media.¹² Those concessions were inevitable, and were properly made.
- 51 Those breaches by the Secretariat were inherently likely to have damaged Mr Venuprasad’s reputation and prejudiced his search for new employment, as the Tribunal observed in the Interim Judgment at [168]. The Interim Judgment vindicating Mr Venuprasad’s criticisms of the process followed by the Secretariat, and of the actions taken against him, should substantially reduce the adverse effect of the Secretariat’s breaches. It is therefore sensible to approach the question of compensation for financial loss by reference to the periods before and after the delivery and publication of that judgment in April 2018.

Financial loss prior to delivery of Interim Judgment

- 52 Mr Venuprasad remained employed by the Secretariat, and was remunerated, up to 31 December 2016. He does not argue that he would have remained employed by the Secretariat but for the breaches identified by the Tribunal. Rather, he says that he would have successfully sought other employment during the final six months of his employment with the Secretariat, and would have found new employment beginning promptly after his employment at the Secretariat came to an end. However as he explains in his evidence, a number of potential opportunities failed to come to fruition after he disclosed his suspension, and the subsequent steps taken by the Secretariat. For example, he had been approached by a recruiter in relation to a senior role with the Ford Foundation working out of India. But following his suspension and the reference of allegations against him to a Disciplinary Board, he was not shortlisted for the role. He says that his understanding is that this was caused by negative commentary online, which is likely to have been the Daily Mail article of 7 October 2016 which included adverse statements made about him by the Secretariat. Mr Venuprasad says that he was subsequently told by the recruitment firm that interviewed him for this vacancy that profile reviews, primarily based on internet searches, were negative and that this was based on statements by his former employers that were in the public domain.

¹¹ CSAT/21 at [118].

¹² Interim Judgment at [137], [156]. See also Transcript of oral hearing 4 April 2018 at 23, 55-56.

However the recruiter would not comment on the more specific issue of whether this was a factor in relation to the Ford Foundation vacancy.

- 53 There is no direct evidence that the reason that Mr Venuprasad did not obtain this particular job, or the many other jobs that he applied for in the relevant period, was the action taken against him by the Secretariat or the media statements made by the Secretariat. And we bear in mind that there was nothing wrongful in the Secretariat deciding to investigate whether Mr Venuprasad was responsible for the leak: to the contrary, such an investigation was inevitable and appropriate.

Secretariat argument based on likely outcome of disciplinary process

- 54 The Secretariat appears to go further in its submissions and suggest that even in the absence of the defects in its processes identified in the Interim Judgment, Mr Venuprasad would have been subject to some sort of disciplinary process that would have had a (justified) adverse impact on his reputation. Mr Venuprasad disputes this, and says that the Secretariat's argument is misconceived for a number of reasons:

54.1 the argument is founded on factually incorrect assertions about Mr Venuprasad's post-employment conduct in providing information to the media. Mr Venuprasad's unchallenged evidence is that he did not provide any information of substance to the media prior to the hearing before the Tribunal;

54.2 the Secretariat's criticisms of Mr Venuprasad's provision of information to the media in relation to these proceedings are not well-founded. Mr Venuprasad's evidence is that a number of the inferences that the Secretariat sought to draw concerning communications between Mr Venuprasad and the media about the hearing and the delivery of the judgment are incorrect as a matter of fact. The Secretariat's complaints about comments made about the judgment after its delivery but before its posting on the Tribunal's website are misconceived: no confidentiality restrictions applied to the Judgment after 20 April 2018. The date of its posting on the Tribunal's website is irrelevant. There was no breach of the confidentiality restrictions that applied to information disclosed at the oral hearing, or to submissions made at that hearing. The suggestion that the agreement between the parties on what documents could be provided to the media was subject to various stringent conditions is not consistent with the recollections of Mr Venuprasad or his legal team, and no such restrictions were imposed by or notified to the Tribunal;

54.3 even if these allegations about post-employment conduct were made out, they shed no light at all on who leaked information to the media in 2016. The

Secretariat's attempt to draw inferences from the alleged conduct in connection with the proceedings and the Interim Judgment about Mr Venuprasad's responsibility for the mid-2016 leaks is illogical and unpersuasive;

54.4 these allegations are inconsistent with Mr Venuprasad's unchallenged evidence to the Tribunal that he was not involved in any leaks to the media. Mr Venuprasad strongly denied these allegations in his evidence for the initial phase of these proceedings. The Secretariat chose not to cross-examine Mr Venuprasad on that occasion.¹³ The Secretariat did not ask the Tribunal to consider whether Mr Venuprasad was the leaker. Rather, the Secretariat proceeded on a basis consistent with the findings made by the Disciplinary Board (including that there was no direct evidence linking Mr Venuprasad to the leaks) and did not suggest that the Tribunal should revisit the merits of those findings. Having chosen to proceed on that basis, the Secretariat cannot at this late stage ask the Tribunal to make findings adverse to Mr Venuprasad on matters that should in fairness have been squarely put in issue at the initial phase of the proceedings, and put to him in cross-examination.

55 We have no hesitation in rejecting the Secretariat's argument about the likely outcome of the investigation and disciplinary process absent the defects identified in the Interim Judgment. There is no evidence that a properly conducted investigation and internal decision-making process would have led to any adverse consequences for Mr Venuprasad. The Secretariat's assertion that a fully informed Disciplinary Board process could have led to a finding that Mr Venuprasad was responsible for the leaks is in our view misconceived, for the reasons set out at [54.1] to [54.4] above, which we accept.

¹³ The Secretariat seems to be suggesting in its submissions that it did not cross-examine Mr Venuprasad at the April 2018 hearing because he did not give oral evidence at that hearing. However before deciding whether Mr Venuprasad should be permitted to give evidence orally at the hearing in April 2018, as he wished to do, the Tribunal asked the Secretariat whether it wished to put questions to him, and was advised that it did not wish to do so. The Tribunal directed that Mr Venuprasad would not give evidence orally at the hearing because it did not see the need for him to repeat what he had said in his written statement, and because the Secretariat had indicated that it did not wish to put any questions to him: Further Directions dated 15 February 2018 at [5]. If the Secretariat had wished to cross-examine him on his statement, it would have been given the opportunity to do so. Similarly, the Secretariat was asked if it wished to cross-examine Mr Venuprasad on his witness statements in connection with the compensation claim, and advised that it did not wish to do so.

Secretariat argument based on soliciting media attention

- 56 The Secretariat also argues that Mr Venuprasad should only recover nominal damages because he has solicited media attention in breach of his confidentiality obligations.
- 57 We have already rejected the argument that Mr Venuprasad breached confidentiality obligations by leaking confidential information in mid-2016. We do not consider that the Secretariat has established that Mr Venuprasad has breached any confidentiality obligations by making disclosures to the media in the course of his employment, and we do not consider that he has breached any confidentiality obligations owed to the Secretariat in connection with these proceedings. And in any event, this argument is a non sequitur: disclosures by Mr Venuprasad to the media would be relevant to the assessment of compensation only if they were the effective cause of his difficulties in finding employment, or were a significant contributing factor to those difficulties. On the basis of all the material before us, we do not consider that any disclosures Mr Venuprasad has made to the media have been a material factor in his difficulties in finding new employment.

Secretariat argument based on CBI investigation in India

- 58 The Secretariat also argues that Mr Venuprasad was involved in an ongoing serious fraud investigation in India during the majority of his tenure, and that this is relevant to his claim for compensation. The Secretariat has put this argument in a number of ways. In its submissions on remedy, the Secretariat appeared to be arguing that Mr Venuprasad had an obligation to disclose this investigation to the Secretariat, and that if he had done so then he would not have been employed in the first place, or his contracts would not have been renewed. However in response to a Minute from the Tribunal seeking clarification of this argument, and asking whether the Secretariat wished to pursue it in light of the evidence provided by Mr Venuprasad in these proceedings, the Secretariat has disclaimed any intention to pursue an argument based on non-disclosure.¹⁴ Rather, the Secretariat argues that “publicly available information about the fraud investigation damaged the Applicant's reputation and attraction to employers”. The Secretariat goes on to say that “there was already publicly available information about the Applicant which damaged his future employment prospects and reputation, quite apart from and far more damaging than any media statements made

¹⁴ Tribunal Minute dated 5 September 2018; Secretariat's Memorandum dated 10 September 2018. Mr Venuprasad sought to respond to the Secretariat's memorandum by filing a memorandum dated 12 September 2018: however no direction had been given that provided for further submissions to be made by Mr Venuprasad, and the Tribunal has not taken this memorandum into account. Nor has the Tribunal taken into account a further witness statement sent to the Tribunal by Mr Venuprasad on 17 September 2018.

by the Respondent. It would be reasonable to anticipate that the material available would deter potential future employers.”

- 59 This is a surprising submission in light of the evidence provided by Mr Venuprasad in his written statement accompanying his reply submissions: a statement on which the Secretariat was expressly offered, and declined, the opportunity to cross-examine. Mr Venuprasad’s evidence, which is not contradicted by any other evidence and which was not the subject of any cross-examination, is that he himself was never the subject of any investigation by the Indian Central Bureau of Investigation (“CBI”). He was never named as a suspect in any investigation, or charged with any wrongdoing. Rather, in 1998 the CBI began investigating a case against a company called Premier Vinyl Flooring Ltd. Mr Venuprasad was interviewed voluntarily by the CBI in December 1999 in relation to certain commercial shipments made by Premier Vinyl Flooring Ltd to a company that Mr Venuprasad worked for, Exim Sales Corporation Ltd. He was interviewed on a number of further occasions between February and May 2000, and again in September 2001. He says that in August 2000 the CBI filed a charge sheet in the case, and that he was not listed as an accused person. The case is continuing, and he is neither an accused person nor a witness in that case. Following the interview in September 2001 he has had no further involvement in the matter.
- 60 Mr Venuprasad began his employment with the Secretariat on 1 November 2001.
- 61 We are satisfied by the evidence before us that there was nothing that Mr Venuprasad could reasonably have been expected to disclose to the Secretariat in relation to this CBI investigation. It was irrelevant to his initial and ongoing employment with the Secretariat. There is no reliable evidence before us to suggest that the CBI had grounds for suspecting Mr Venuprasad of any wrongdoing, or that he was ever identified by the CBI as a suspect, let alone that any wrongdoing on his part was made out.
- 62 The Secretariat points to media reports which describe Mr Venuprasad as a suspect in the CBI fraud investigation. The Secretariat also referred us to the outcome of a complaint that Mr Venuprasad made to the Independent Press Standards Organisation (“IPSO”) in relation to these media reports. But at the risk of stating the obvious, media reports are not of themselves reliable (or even admissible) evidence of such matters. Similarly, the somewhat inconclusive report prepared by IPSO has no evidential value. We have not seen any relevant and admissible evidence to support the Secretariat’s contention that these media reports provided an accurate description of the Mr Venuprasad’s position. And as noted above there is the express and unchallenged evidence of Mr Venuprasad to the contrary. We also emphasise that being a potential

witness in a fraud investigation targeted at third parties casts no shadow at all on Mr Venuprasad's reputation.

- 63 We do not consider that the information in the public domain about this CBI investigation in the period 1999-2001 would have materially harmed Mr Venuprasad's employment prospects in late 2016 or early 2017, some 15 years later. We would not expect a responsible employer to be deterred by references to the investigation without making further inquiries, in the absence of any charges or any other action by the Indian authorities directed against Mr Venuprasad in the intervening period. In response to such inquiries Mr Venuprasad was in a position to provide information that would allay any reasonable concern, as he did in his evidence before this Tribunal. He was also in a position to point to his lengthy and highly regarded service within the Secretariat.

Our findings on causation of Mr Venuprasad's failure to find new employment

- 64 On the basis of the evidence before us, we are satisfied that Mr Venuprasad was likely to have found other employment from early 2017 onwards if the Secretariat had not breached its obligations to him, and that the Secretariat's breaches were the principal cause of his failure to obtain new employment at this time. The Secretariat's breaches contributed to his inability to find new employment in a number of ways:

- 64.1 they had a direct adverse effect on his reputation and his attractiveness to employers;
- 64.2 they had a direct adverse effect on his health, which impaired his ability to seek and take up new employment;
- 64.3 they prevented him finding new employment while still employed by the Secretariat, which meant that from January 2017 onwards he was in the much less advantageous position of seeking employment while unemployed.

- 65 We do not accept that Mr Venuprasad caused or substantially contributed to his inability to find employment in this period. The evidence before us does not support the Secretariat's argument that Mr Venuprasad courted media attention in this period, and is responsible for bringing the adverse publicity on himself. He did not court media attention. Rather, his unchallenged evidence is that he did not contact any media organisations during this period, and provided no information of substance to the media during this period, apart from confirming that he was the author of a document already in the hands of a newspaper. His lawyer in India also responded by text message to an inquiry by a journalist. We do not consider that Mr Venuprasad did anything to seek out media attention, or bring adverse publicity on himself, in this period. Rather, it was

the Secretariat that made wholly inappropriate and damaging statements about Mr Venuprasad to the media, during the course of his employment and while disciplinary proceedings were still on foot.

- 66 We consider that Mr Venuprasad should recover compensation in relation to the remuneration he is likely to have earned during the period January 2017 to April 2018 but for the Secretariat's wrongful actions: a period of 16 months.

Quantification of compensation

- 67 That then raises the question of the level of remuneration that Mr Venuprasad was likely to earn in this period. On the basis of the average salaries of the jobs he was applying for, Mr Venuprasad claims he lost the opportunity to earn £123,213.34 per annum tax free, with contractual benefits of £583.45 per month life insurance, £16.40 per month health insurance, £1,466.41 employer pension contributions, a rental allowance estimated at £1,571.16 per month, and a contribution to school fees worth on average £792.70 per month over the relevant period. Those allowances bring the claim for this period to around £230,000.

- 68 However we consider that the average salary of the jobs Mr Venuprasad applied for is not a reliable measure of what he was likely to earn in this period. Nor is it appropriate to simply add on to the average salary the value of various contractual benefits associated with some but not all of the positions that Mr Venuprasad applied for. In the absence of any more relevant and helpful evidence on this point, we consider that compensation should be awarded on the basis that Mr Venuprasad could have obtained employment that provided him with net remuneration that was not less than he was earning in his last year at the Secretariat.

- 69 The Secretariat says that Mr Venuprasad's gross salary at the conclusion of his employment with the Secretariat was £97,867, and that his annual net remuneration (after deduction of Commonwealth Secretariat Internal Income Tax) was £69,317.

- 70 Mr Venuprasad says that this figure is arrived at on a flawed basis, since it overlooks elements of remuneration other than basic salary: in particular his remuneration included an expat allowance of £1,141.78 per month and a contractual gratuity accruing at the rate of £1,223.34. Taking these items into account his annual net remuneration was £97,698.48.

- 71 The calculation of Mr Venuprasad's net remuneration is important when it comes to calculating the presumptive limit on compensation provided for in Article X(1) of the Statute: we return to that issue below. For the purposes of quantifying his loss, we are

firmly of the view that all the benefits he would have obtained from his employment including allowances and gratuities are relevant. We consider that it is reasonable to proceed on the basis that in the period from January 2017 to April 2018, Mr Venuprasad would have been earning at least £100,000 per annum net of any applicable taxes, and including any relevant benefits. He might have earned more – but he also might have had a gap in his employment between finishing with the Secretariat and taking up his new employment, and might not have received benefits such as the “expat allowance” paid by the Secretariat if he was employed elsewhere.

- 72 Our broad overall evaluation, taking into account all the evidence before us, is that realistic and fair compensation for loss of employment in this 16 month period is £133,300.
- 73 We return below to compensation for costs incurred in this period – in particular, medical costs and travel costs.

Compensation for financial loss following delivery of Interim Judgment

- 74 As we said above, the delivery of the Interim Judgment has substantially vindicated Mr Venuprasad and has resulted in the disciplinary measures taken against him being set aside. This should assist him substantially in his search for new employment. However the reputational harm that has been inflicted on him by the Secretariat’s actions, and in particular by its statements to the media, will not be wholly undone by the delivery of the Interim Judgment. Those statements will continue to be retrieved by online searches, and will continue to have an adverse impact on his employment prospects that we consider will be material though difficult to quantify.¹⁵
- 75 We accept Mr Venuprasad’s arguments that:
- 75.1 if these breaches had not occurred he is likely to have been in employment in April 2018 and subsequently;
- 75.2 the breaches were a significant factor in his not obtaining employment before April 2018 that would have continued beyond that date;

¹⁵ The continuing online availability, salience and impact of these publications is explained in a report provided to the Tribunal by Mr Venuprasad that was prepared by “Igniye”, a firm working in the field of online reputation management.

- 75.3 the breaches continue to have an impact on his ability to find employment after that date, both because of their impact on his reputation and because they are the main reason that he is seeking employment while unemployed, which is a material disadvantage.
- 76 As against that, the causal significance of the breaches is much diminished by the Interim Judgment, and also to some extent by the passage of time.
- 77 Mr Venuprasad says he will continue to be seen as a whistle-blower following delivery of the Interim Judgment, and that this is also potentially damaging to his employment prospects. However we do not consider that his “whistle-blowing” actions in bringing certain matters to the attention of High Commissioners at the time he sought to resign from the Secretariat were caused by the Secretariat’s breaches: this was a step Mr Venuprasad took on his own initiative, and any consequences it may have are not fairly attributable to the Secretariat. Nor, however, do we consider that this action – which was confined to communicating with Commonwealth High Commissioners, and did not involve disclosure of his concerns about the management of the Secretariat to the media or to the wider public – can be seen as courting publicity in a manner that reduces the Secretariat’s responsibility for the harm its actions caused to Mr Venuprasad’s reputation.
- 78 A global assessment of this component of compensation is required. We consider that an award of a further £100,000 – one year’s loss of earnings, calculated on the pragmatic basis set out above – would provide fair compensation for the significant but declining impact of the breaches on Mr Venuprasad’s employment prospects from April 2018 onwards.

Moral injury and injury to health

- 79 Mr Venuprasad claims damages of £60,000 for moral injury in respect of damage to his reputation, and injury to feelings. It is well established that compensation for such losses can be awarded by the Tribunal.¹⁶ The Tribunal and other international

¹⁶ See eg CSAT/12 (No 2) *Ayeni v Commonwealth Secretariat* at [66]; CSAT/3 (No.2), *Mohsin v Commonwealth Secretariat* at [5]; CSAT APL 21, *Addo v Commonwealth Secretariat*, at [121] – [124]; CSAT/22 (No.2), *Bandara v Commonwealth Secretariat*, [80] and [88]; CSAT APL 21, *Singh v Commonwealth Secretariat* at [89]; *Dicancro* ILOAT Judgment No 427 [1980]. See also Amerasinghe, *The Law of the International Civil Service* (2nd ed, 1994) vol 1 chapters 27-30 esp at 475-477, 502-503, 534.

administrative tribunals have in the past made substantial awards of compensation for such losses, having regard to the seriousness of the harm suffered.

- 80 The unfair process adopted by the Secretariat, and the associated communications it sent him at a time when he was (and was known to be) seriously unwell, were intrinsically likely to cause significant harm to Mr Venuprasad's feelings. Mr Venuprasad's evidence to the Tribunal sets out in some detail the serious impact that this conduct had on his feelings, and on his wellbeing more generally. The Secretariat's breaches are also likely to have had an adverse impact on Mr Venuprasad's reputation, as noted above.¹⁷
- 81 We are mindful that the compensation awarded in respect of loss of earnings compensates Mr Venuprasad for some of the losses caused by the injury to his reputation. Bearing that in mind, we consider that an appropriate award for moral injury, including (uncompensated) harm to reputation and harm to Mr Venuprasad's feelings, is £30,000.
- 82 In this case, as Mr Venuprasad submits, the harm he has suffered goes beyond injury to feelings. He says the Secretariat's breaches caused significant harm to his health, and claims £20,000 as compensation for that harm.
- 83 On the basis of the evidence before us, we accept the submission that the Secretariat's wrongful conduct was a major factor in the stress and illness that Mr Venuprasad suffered, and continues to suffer. Other matters are likely to have contributed to the overall impact on his health, including the stress associated with pre-existing tensions in the workplace, the stress associated with the Secretariat's legitimate investigation of leaks, and certain personal matters. But the Secretariat's wrongful conduct was a major factor, and on the basis of the evidence before us the most significant factor, giving rise to these harms.
- 84 We do not accept the Secretariat's argument that compensation cannot be awarded for injury to health. The Tribunal can award compensation for any loss or damage caused by a breach of a staff member's contract of employment. It would be odd if compensation could be awarded for harm to a claimant's feelings, but not for harm to that claimant's health. Whether a breach has caused loss in the form of injury to health is a question of fact, to be determined on the evidence in each case.

¹⁷ Interim Judgment at [167] – [168].

- 85 On the basis of the evidence before us, we consider that Mr Venuprasad has suffered serious harm to his health that was caused or significantly exacerbated by the wrongful conduct of the Secretariat, and that a fair award of compensation in respect of this harm is the sum of £20,000 claimed by him.

Medical costs

- 86 Mr Venuprasad claims £2,795.06 compensation for medical costs he has incurred in the period from late 2016 to the present. Details of the claim are set out in his schedule of loss.
- 87 We consider that he is entitled to compensation for medical costs incurred in connection with the injury to his health that was caused or exacerbated by the Secretariat's breaches. But there is insufficient evidence before us of the causal link between some of the costs claimed and the harm caused by the Secretariat's conduct. We consider that a fair contribution to the costs that are likely to be attributable to the injury to his health caused by the Secretariat is £2,000.

Travel costs

- 88 Mr Venuprasad claims approximately £1,000 for travel costs associated with his search for new employment. We consider that costs of this kind were likely to be incurred by Mr Venuprasad in the course of seeking new employment in any event, though the exact amount and timing of the costs could well have been different. Just as we consider that it is likely that Mr Venuprasad would have found new employment if the breaches had not occurred, so too we consider that he would probably have incurred travel costs and other job search costs in finding that employment. So the need to incur costs of this nature is not fairly attributable to the Secretariat's breaches.
- 89 Mr Venuprasad also claims approximately £12,500 for travel costs he has incurred in connection with these proceedings. As he acknowledges in his evidence, some of this travel was undertaken for multiple reasons, and he has claimed a proportion of the costs incurred on those occasions.
- 90 We consider that it was reasonable for Mr Venuprasad to travel to London from his home in India to work with his legal team on the material that was to be submitted to the Tribunal, and to attend the April hearing. The cost of travel and accommodation for the purpose of the proceedings is a direct consequence of the wrongs that were the subject of the proceedings. But some of these travel costs (for example, the cost of a two year visa for the UK) are likely to have been incurred in any event for personal reasons, and there is some force in the Secretariat's submission that it cannot reasonably be asked to meet the cost of business class airfares in this context.

- 91 We consider that the Secretariat's breaches have resulted in additional travel costs for Mr Venuprasad. It is not possible to be precise about the apportionment of the costs actually and reasonably incurred by Mr Venuprasad, but we consider that fair compensation for the additional costs caused by the Secretariat's breaches, assessed on a pragmatic basis, is £6,000.

Interest

- 92 Mr Venuprasad claims interest on damages for moral injury for the period of approximately 2 years since the first breach by the Secretariat. He claims interest on damages for past financial losses from the midpoint of the period of loss of earnings. He says that the appropriate interest rate is 5.5%, on the basis that this is a representative interest rate for an Indian savings account.
- 93 The Secretariat says that no interest should be awarded, but that if the Tribunal is minded to award interest the appropriate rate to apply is 0.75%, on the basis that this is the interest rate set by the Bank of England, and that it should apply only for the period 1 January 2017 to 16 April 2018 (the date of the Interim Judgment). The Secretariat also says that if interest is awarded for a longer period, Mr Venuprasad sought an extension of 4 weeks for filing his submissions on compensation and those additional four weeks should not be included in any calculation of interest.
- 94 An award of interest is appropriate where an amount of compensation is awarded in respect of a loss suffered and quantified as at a date prior to delivery of judgment, to ensure the real value of the amount awarded is not eroded by the passage of time, and to compensate the claimant for not having the use of that money during the relevant period. Correspondingly, an award of compensation for future losses – for example, loss of future earnings – should normally be discounted back to the date of judgment to avoid an unfair burden on the defendant, and an unjustified windfall to the claimant.
- 95 In this case we have awarded compensation in respect of both past and future earnings. We could carry out a precise calculation of the interest payable on that award, which takes into account both the interest payable on the majority of the award relating to a period before the date of this judgment, and the acceleration of payment of compensation for future earnings for a limited post-judgment period. But such precision is not called for, having regard to the broad overall approach adopted when assessing this compensation. We consider that there should be an award of interest on the compensation payable in respect of pre-April 2018 earnings (£133,300) from the midpoint of the period to which those earnings relate. The relevant period is 1 January 2017 to late April 2018, and we consider that interest should run on this award from 1 September 2017 to the date of this judgment. This reflects the period for which Mr

Venuprasad has borne the loss that is being compensated, and during which the Secretariat has had the use of this money. The date of the Interim Judgment, and the extension of the date for filing Mr Venuprasad's submissions, are not relevant to the period for which interest should run.

- 96 We do not consider that use of the interest rate suggested by either party would be appropriate. It makes no commercial sense to apply an interest rate associated with an account in one currency (INR) to an amount assessed and payable in another currency (GBP). Nor does it make sense for interest payable to an individual to compensate them for not having the use of money to be assessed using an interbank lending rate. It appears from the Bank of England website to which the Secretariat has referred us that inflation in the UK in the relevant period was around 2.5% per annum. The interest awarded should as a minimum preserve the real value of the compensation payable. Doing the best we can with the limited information made available to us by the parties, we award interest at a rate of 3% per annum.
- 97 We do not consider that we should award interest on compensation for moral injury. The sum we fixed was a global one that was intended to reflect both past and ongoing harm.

Aggravated damages

- 98 The Tribunal considers that Mr Venuprasad is well justified in criticising the manner in which the Secretariat has approached this compensation hearing. Some of the submissions made by the Secretariat were speculative and wholly without a proper evidential foundation: for example, the allegation that Mr Venuprasad must have entered into contracts with and been paid by the media. It was not appropriate to make such a submission without any evidential basis. The renewed allegations about responsibility for the media leaks that occurred in mid-2016 were also misconceived and inappropriate.
- 99 The Tribunal considers that it is sufficient that this judgment vindicates Mr Venuprasad by rejecting the Secretariat's arguments on these matters, and recording its concern that the arguments were advanced. An award of aggravated damages is not however appropriate.

Cost of seeking advice from counsel in October 2016

- 100 The only matter relating to costs incurred before the Interim Judgment that was not agreed by the parties was Mr Venuprasad's claim to recover £1,400 in respect of advice sought from counsel in October 2016. The advice was sought in relation to the Daily Mail article of 7 October 2016 in which the Secretariat was quoted as describing Mr

Venuprasad as a “profoundly disaffected individual who is facing serious disciplinary charges”. The advice also related to other media interest in this story, and reports received by Mr Venuprasad that the Secretary-General had made adverse comments about him to a number of High Commissioners.

- 101 Mr Venuprasad says that this amount is recoverable as costs, or alternatively as damages. The Secretariat says it is not recoverable as costs of the proceedings, and should not be awarded as compensation.
- 102 We do not consider that this amount could be included in an award of costs in respect of the present proceedings. It was not incurred for the purposes of the proceedings, which were filed some 7 months later. If it is recoverable, it can only be on the basis that it is a loss caused by the Secretariat’s breaches.
- 103 We consider that the cost of obtaining this advice is recoverable as compensation for the Secretariat’s breach of its obligations in making adverse statements about Mr Venuprasad to the media. It was reasonably incurred as a direct consequence of statements made to the media by the Secretariat in breach of the Secretariat’s obligations. If the Secretariat had not breached its obligations, it is very unlikely that this cost would have been incurred.

Overall assessment of compensation

- 104 We have found that Mr Venuprasad is entitled to recover the following amounts:
- 104.1 £133,300 in respect of financial loss before April 2018;
- 104.2 £100,000 in respect of financial loss after April 2018;
- 104.3 £30,000 for moral injury
- 104.4 £20,000 for injury to health;
- 104.5 £2,000 for medical costs;
- 104.6 £6,000 for travel costs associated with the proceedings;
- 104.7 £1,400 for legal costs incurred in October 2016 following the Secretariat’s adverse comments about Mr Venuprasad to the media.
- 105 The total amount of compensation awarded is £292,700.

- 106 Stepping back from the detail, we consider that this is a fair amount of compensation for the Secretariat to pay Mr Venuprasad in respect of the Secretariat's serious breaches of its obligations to him as an employee.
- 107 Bearing in mind that there is a pending appeal from the Interim Judgment, it may be helpful if we record that most of these losses result from the breaches by the Secretariat in connection with the Disciplinary Board process and the media statements. If we had not found that the suspension of Mr Venuprasad in June 2016 was a breach, we would have awarded a lesser amount by way of damages for moral injury and injury to health, as the recoverable losses in this category would only commence in October 2016 rather than June 2016. None of the other amounts awarded would be affected. As we recorded in our Interim Judgment, the Secretariat acknowledged at the April 2018 hearing that the Disciplinary Board process was unfair, and that the Secretariat's media statements criticising Mr Venuprasad were inappropriate.¹⁸ Thus almost all of the compensation awarded is compensation for losses arising out of matters that the Secretariat conceded in the course of argument at the April hearing.
- 108 We do not consider that the award should be reduced to reflect the limited resources available to the Secretariat. There is no evidence before us about the Secretariat's overall budget, or about the implications of an award of compensation of this amount for the organisation. And in any event we are firmly of the view that it would be wrong to leave Mr Venuprasad, an individual employee, without adequate compensation for the Secretariat's serious breaches of its obligations to him.
- 109 We trust that this judgment will encourage the Secretariat to ensure that its internal disciplinary processes are conducted in accordance with the requirements of the Staff Rules and basic principles of natural justice. The harm that has been inflicted on Mr Venuprasad, and the cost of these proceedings to the Secretariat, could readily have been avoided if those requirements had been properly understood and complied with. We also trust that this judgment will encourage the Secretariat to reflect on the uncompromising and aggressive manner in which the disciplinary process and this litigation were conducted, despite the illness and vulnerability of the employee concerned. A more sensitive and humane approach would have gone a long way to avoiding the breaches that occurred, the harms that were caused by those breaches, and the cost to the Secretariat of compensating Mr Venuprasad for those harms.

¹⁸ Interim Judgment at [137], [156]; Transcript of oral hearing 4 April 2018 at 23, 55-56.

Tax/grossing up

- 110 We agree with Mr Venuprasad's submission that if an award of compensation would be taxable in his hands, then that would be relevant to the quantification of compensation, and would increase the amount that would need to be awarded to ensure he is adequately compensated for his losses. But there is no evidence before us to suggest that the compensation payable to Mr Venuprasad will be taxable in his hands. The Tribunal has not been asked to gross up awards of compensation in the past. The Article X(1) ceiling, expressed in terms of net remuneration, appears to be predicated on the assumption that compensation paid to an employee by the Secretariat will not be taxable.
- 111 In the absence of any evidence that tax is likely to be payable on the compensation awarded, it would be wrong to direct that the sum awarded be grossed up. Nor could such an order be made without evidence about the applicable rate of taxation.
- 112 Even if we have jurisdiction to order the Secretariat to provide a tax indemnity to Mr Venuprasad, an issue on which we express no view, we do not consider that such an order would be appropriate.
- 113 We agree with the Secretariat's submission that any claim to have compensation grossed up to reflect liability to tax could and should have been dealt with on the basis of appropriate submissions and evidence at this hearing. It would not be satisfactory to leave this issue unresolved by reserving leave to apply to the Tribunal at some future time: potentially months or years hence, at a time when this panel could no longer be reconvened.
- 114 We therefore decline to make any orders in relation to grossing up the award to take possible taxation into account.

Article X(1) ceiling

- 115 It is convenient to set Article X(1) out again. It provides:

If the Tribunal finds that the application is well-founded, it shall order the rescission of the decision contested or the specific performance of the obligation invoked, or in addition to, or alternatively to any such remedy, appropriate compensation for any loss or damage occasioned. Where an application is made by a staff member, where relevant, the Tribunal shall, at the same time, fix the amount of compensation to be paid to the applicant for the loss, injury or damage sustained, provided that such compensation shall not normally exceed the equivalent of three years' net remuneration of the applicant. The Tribunal may, however, in exceptional cases, when it considers it justified, order

the payment of a higher amount of compensation. A statement of the specific reason for such an order shall be made

- 116 The parties disagree about the quantification of the three years' net remuneration figure. As noted above, the Secretariat says that Mr Venuprasad's gross salary at the conclusion of his employment with the Secretariat was £97,867, and that his annual net remuneration (after deduction of Commonwealth Secretariat Internal Income Tax) was £69,317. It says that the three years' net remuneration figure is therefore £207,951.
- 117 Mr Venuprasad says that this figure is arrived at on a flawed basis, since it overlooks elements of remuneration other than basic salary: in particular his remuneration included an expat allowance of £1,141.78 per month and a contractual gratuity accruing at the rate of £1,223.34 per month. Taking these items into account his annual net remuneration was £97,698.48, and the three years' net remuneration figure is £293,095.44.
- 118 We agree with Mr Venuprasad's submission that net remuneration for the purposes of Article X(1) must include all amounts paid for the work done by the employee, net of internal income tax, not just the salary component of that remuneration. It would make no sense for the level of the threshold to depend on how the relevant employee's total remuneration is structured, with the result that two employees receiving a total remuneration package that has the same value, but structured differently, would be subject to different thresholds. The relevant figure is therefore £293,095.44.
- 119 The total of the compensation that we have awarded is £292,700. This is less than the applicable threshold. So we need not address the question of whether compensation in excess of that threshold should be awarded.
- 120 For the sake of completeness we record that if we are wrong about the calculation of the Article X(1) threshold, and the Secretariat's figure of £207,951 is the applicable threshold, then we consider that there are exceptional circumstances that would justify an award in excess of that threshold. An award below this level would in our view fall far short of providing fair compensation to Mr Venuprasad for the loss that was caused by serious breaches by the Secretariat of its obligations to him. Those breaches included the deliberate attacks on Mr Venuprasad in the media, which were wholly inappropriate and were (as we said in the Interim Judgment) calculated to discredit him and harm his reputation. It would be profoundly unjust for Mr Venuprasad to be left uncompensated for the harms caused and contributed to by these breaches.

Costs of determining compensation

- 121 Mr Venuprasad has succeeded in his claim for compensation, and we consider that he is entitled to recover his actual and reasonable costs of making that claim. We have taken a cautious approach to assessment of compensation: the award we have made should not be eroded by the cost to Mr Venuprasad of seeking a remedy for the wrongs done to him.
- 122 We do not consider that there is any settled practice of the Tribunal, or any principle of international administrative law, that supports the Secretariat's argument that there should not be any further award of costs.
- 123 We expect the parties to be able to agree costs. But we reserve leave to either party to apply to the Tribunal to fix costs if agreement cannot be reached.

Formal orders

- 124 The Tribunal makes the following orders:

124.1 the Secretariat must pay Mr Venuprasad compensation of £292,700 comprising:

- (a) £133,300 for loss of earnings before delivery of the Interim Judgment;
- (b) £100,000 for loss of earnings after delivery of the Interim Judgment;
- (c) £30,000 for moral injury;
- (d) £20,000 for injury to health;
- (e) £2,000 for medical costs;
- (f) £6,000 for travel costs associated with the proceedings;
- (g) £1,400 for legal costs incurred in October 2016.

124.2 the Secretariat must pay interest on the sum of £133,300 referred to above from 1 September 2017 to the date of this judgment at a rate of 3% per annum;

124.3 Mr Venuprasad is entitled to costs in respect of these proceedings before the Tribunal. If costs cannot be agreed by the parties they will be fixed by the Tribunal on the basis of the parties' written submissions. Leave is reserved to either party to apply for costs to be fixed.

Delivered on 21 September 2018

Signed

David Goddard QC, Presiding Member

Chelva Rajah SC, Member

Professor Epiphany Azing SAN, Member

and

Richard Nzerem, Executive Secretary