

ADMINISTRATIVE TRIBUNAL

JUDGEMENT NO. 381

Case No. 347: ANSAR HUSSAIN KHAN

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Arnold Kean, Vice-President, presiding;
Mr. Endre Ustor; Mr. Jerome Ackerman;

Whereas on 16 September 1986 Ansar Hussain Khan, a staff member of the United Nations filed an application that did not fulfil the formal requirements of the Rules of the Tribunal;

Whereas, on 8 October 1986, the Applicant filed a corrected application in which he requested, under article 12 of the Statute of the Tribunal, a revision of Judgement No. 354 rendered in his case on 4 November 1985;

Whereas the pleas in the application read as follows:

"Findings

1. Applicant respectfully refers to Judgement No. 354 in his case, and under article 12 of its Statute requests the Tribunal to take into account that new evidence has come to light and is of such a nature as to be a decisive factor, and was, at the time the Judgement was given, unknown to the Tribunal and to the Applicant.
2. He requests the Tribunal to find that this new evidence consists of revelations made in connection with the 1986 presidential election in Austria about the character, the integrity, and the allegiances of the former Secretary-General, Mr. Kurt Waldheim.
3. Applicant further requests the Tribunal to find that to the extent that this evidence casts very serious aspersions on the character of the then Secretary-General, it is of immediate relevance to the Applicant's case which was sui

generis, and put him into direct and personal confrontation with Mr. Kurt Waldheim.

4. Applicant respectfully requests the Tribunal to recall that while it abstained in its Judgement (paragraph XVI) from making a finding of prejudice, it uttered several dicta and noted elements - for example in paragraphs XII, XV, XVI and XVII - which would pave the way to such a finding. The new revelations about the character of Mr. Waldheim - dissimulation, lack of scruple, tenacity in standing by falsehood, etc., and certain biographical facts, for example, that his name appears on the lists maintained by the United Nations War Crimes Commission - sent shock-waves throughout the whole world, Europe and North America in particular. Applicant requests the Tribunal to find that if these revelations had been made while it was considering Applicant's case it would have examined to what extent the new evidence might have influenced the part of the case which was not time-barred.
5. Applicant requests the Tribunal to recall its own observation in paragraph XII as regards events that are time-barred, that 'the Applicant is not thereby precluded from relying on those events as evidence of continuing prejudice on the part of the Administration ...' (He submits that even at the time of the Judgement the reference could well have been to 'prejudice on the part of the then Secretary-General'; the Administration was his own and it was responding to indications clearly given by him.) The Tribunal is respectfully requested to find that the character of the then Secretary-General as the new evidence has shown, and his antecedents, must have influenced all the damaging administrative measures taken by him against the Applicant, those which it found to be time-barred, and those which were not time-barred and on which it adjudicated. The Tribunal having noted the personal, subjective element involving Applicant with Mr. Kurt Waldheim - in paragraphs XII, XV and XVII - is further requested, in the light of the new evidence, to hold that the then Secretary-General deliberately erected barriers to the reclassification, promotion and placement of the Applicant, and the tenacity with which he pursued this campaign over a period of ten years is only explained by his traits of character now revealed.

Orders

6. In the light of the foregoing findings, Applicant respectfully requests the Tribunal to revise its Judgment to the extent of making the following orders:
 - that since the procedural error concerning

reclassification was the principal ground for the Tribunal's award in paragraph XVIII;

- that since the first procedural error was not time-barred, and occurred during the tenure of the impugned Secretary-General ... ;
- that since this error must also be deemed to be tainted by the new evidence about Mr. Kurt Waldheim:

Respondent make administrative amends by assigning the Applicant to a more senior post 'commensurate with his experience, seniority and ability', as observed by the Joint Appeals Board in ... of its report on ..., and this assignment be made retroactive by one year to the date of the Tribunal's Judgement on this application."

Whereas in his application, the Applicant requested the correction of a number of "factual and terminological corrections to [Administrative Tribunal Judgement No. 354]";

Whereas on 15 October 1986 the Applicant submitted additional documents;

Whereas the Respondent filed his answer on 29 October 1986;

Whereas the Applicant filed written observations on 9 December 1986;

Whereas the Applicant submitted additional documents on 21 January 1987, and 30 April 1987;

Whereas the facts of the case have been set forth in Judgement No. 354 rendered by the Tribunal on 4 November 1985;

Whereas the Applicant's principal contentions are:

1. Had the Tribunal been aware of the then Secretary-General's activities during the Second World war, it would have found that the then Secretary-General was prejudiced against the Applicant.

2. The alleged new facts concerning the then Secretary-General's activities during the war show that it was within the character of the then Secretary-General to obstruct the Applicant's

career.

Whereas the Respondent's principal contentions are:

1. The application does not establish any new facts of such a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal under Article 12 of the Statute.

The Tribunal, having deliberated from 14 to 25 May 1987, now pronounces the following judgement:

I. This application for revision of Judgement No. 354 is made under article 12 of the Tribunal's Statute. The Tribunal observes that under article 12 of its Statute, the Tribunal may revise a judgement if:

(a) Some fact unknown to the Tribunal and to the party claiming revision at the time the judgment was given is subsequently discovered;

(b) Such fact is of such a nature as to be a "decisive factor"; and

(c) The ignorance of such fact is not due to the negligence of the party claiming revision.

In addition, "the application must be made within 30 days of the discovery of the fact and within one year of the date of the judgement." The Tribunal's powers of revision are strictly limited by its Statute and cannot be enlarged or abridged by the Tribunal in the exercise of its jurisdiction. (Judgement No. 216, Ogley (1977)).

II. The newly-discovered facts on which the Applicant relies, concern the personality and activities of the former Secretary-General of the United Nations, Mr. Kurt Waldheim, with whom the Applicant asserts he was put "into direct and personal confrontation", in the circumstances of the case before the Tribunal to which Judgement No. 354 relates.

III. The facts on which the Applicant relies are, according to his application, "new revelations about the character of Mr. Waldheim - dissimulation, lack of scruple, tenacity in standing by falsehood" and the alleged appearance of his name on the lists maintained by the United Nations War Crimes Commission. These "revelations" were published inter alia in The Times (London) and Le Monde (Paris), including an allegation in The Times Literary Supplement concerning Mr. Waldheim's "patent dishonesty".

IV. The Tribunal finds that these allegations are so far removed from the issues in this case that they do not constitute a "decisive factor" that would warrant a revision of Judgement No. 354 under the terms of article 12 of its Statute.

V. For the reason set forth above, and although the application may have been filed within the 30-day time-limit prescribed by the Statute of the Tribunal, the application for revision of Judgement No. 354 is rejected.

VI. The Applicant has also requested a number of minor textual corrections in Judgement No. 354. Under article 12 of its Statute, the Tribunal may at any time, of its own motion or on application of any of the parties, correct "clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission". The Tribunal decides that, to correct the record, the following typographical errors will be corrected when the Judgement is published in the next volume of UNAT judgements as follows: On page 5 of Judgement No. 354, the word substances will be capitalized as "Substances", and in paragraph V of Judgement No. 354 the word Zybnov will be replaced by "Zybanov". In addition, in paragraphs XI and XVIII, the effective date of the Applicant's promotion (1 January 1984) will be given, as well as the date on which the decision to promote him was announced in the Personnel Action form (7 February 1984). The Tribunal does not consider there are any

other accidental slips or omissions that require to be corrected.

All other requests by the Applicant are rejected.

(Signatures)

Arnold KEAN
Vice-President, presiding

Endre USTOR
Member

Jerome ACKERMAN
Member

Geneva, 25 May 1987

R. Maria VICIEN-MILBURN
Executive Secretary