

ADMINISTRATIVE TRIBUNAL

Judgement No. 430

Case No. 434: HOWLADER

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Samar Sen, President; Mr. Ahmed Osman;
Mr. Ioan Voicu;

Whereas, on 24 February 1986, John S.R. Howlader, a former staff member of the United Nations Children's Fund, hereinafter referred to as UNICEF, filed an application against a decision by the Secretary-General to deny the Applicant additional reimbursement for travel expenses incurred by the Applicant for himself and for his wife, in connexion with two trips to India, outside of his duty station, undertaken for medical treatment;

Whereas, on 5 November 1986, the Tribunal rendered Judgement No. 374 in which it held that "the Applicant received all his entitlements with regard to his first trip, under pertinent regulations and rules" and rejected the Applicant's claims "as not valid and unfounded" (para. VI). The Tribunal found that:

"... since [the Applicant's] 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 [Medical Expense Assistance Plan] for medical expenses, nor can he claim daily subsistence allowance nor the cost of air travel ..."

and that there was no basis for compensation

"... for the loss of movable and immovable property to meet his medical evacuation expenses ... since the Respondent has

correctly reimbursed the Applicant his full entitlements in conformity with applicable regulations, rules and procedures." (paras. VII and IX).

Whereas, on 5 June 1987, the Applicant requested, under article 12 of the Statute of the Tribunal, a revision of Judgement No. 374 rendered on 5 November 1986;

Whereas, on 5 November 1987, the Tribunal rendered Judgement No. 397 in which it held that:

"... the Applicant has failed to establish, within the meaning of article 12 of the Statute of the Tribunal, the existence of any new fact unknown to him or to the Tribunal at the time the judgement was rendered, far less a fact of decisive nature so as to warrant a request for revision under article 12 of the Tribunal's Statute."

Whereas, on 5 April 1988, the Applicant filed an application, the pleas of which read as follows:

"Section II: Pleas

As per Article 7 (read with Article 12 of the Statute) (Chapter III) of the Rules of the Administrative Tribunal of the United Nations.

(a) Please call the record of the Personnel, Medical files of the Petitioner, ABCC [Advisory Board on Compensation Claims] & JAB [Joint Appeals Board] files, and Personnel Administration Manual (PAM), specially chapter 8.5.4; 8.5.5, 8.5.10 and 8.5.12(b)(ii) issued on First July 1981 from UNICEF/Dhaka, UNICEF Headquarters, N.Y. and Appendix-'D' to the Staff Rules (relevant: Section 1 and Section 2 etc.)

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

The Applicant is contesting (through review under Article 12 of the Statute) the decision of the United Nations Joint Appeals Board in the matter of his two appeals before the said Board, that is appeal No. 82-55 (First Appeal) and 83-12 (Second Appeal) and the Revision of the Honorable Tribunal Judgement No. 397 of 5th November, 1987.

A n d

The Applicant most respectfully submits that due to oversight and bona fide mistake the question of interpretation of

'retroactive approval of his Medical evacuation on June 4, 1984 by the United Nations Medical Director, Dr. Irwin, for the Medical trip in year of 1981' by the Applicant

was never taken up and disposed of by the Honourable Tribunal as the Applicant directly made one of his pleas either in the application before the Honourable Tribunal Case No. 381 of 1986 or in the review application (case No. 434 of 1987) but he has now discovered the said fact: interpretation of retroactive medical evacuation just on March 14, 1988 while the Applicant minutely scrutinised Judgement No. 397 of the Honourable Tribunal recently passed on the November 1987 on Case No. 434 of 1987.

This discovery of new fact is a 'decisive factor' but was not known to the Applicant although such ignorance was not due to his negligence at all because, if this most decisive factor would have been taken up for consideration by the Honourable Tribunal, the Judgement No. 397 of 1987 would have definitely been an affirmative judgement i.e. that once the medical evacuation of the Applicant is retroactively approved, the expenses and the entitlement of getting other expenses (DSA) [Daily Subsistence Allowance] for the attendant (here the wife of the Applicant) is also automatically approved in accordance with PAM: Chapter 8, Section 5, Subsection 12, Clause (b), Sub-Clause (ii) or 8.5.12(b)(ii) dated First July 1981.

(c)The obligation which the Applicant is involving[sic] and whose specific performance he is requesting under Article 9, paragraph 1 and Article 12 of the Statute.

Interpretation of 'Retroactive approval' by Dr. M. Irwin, Medical Director, United Nations Medical Service, on 4th June 1984 (...) through this re-consideration/review petition.

(d)The Applicant respectfully submits that he would be grateful to the Honourable Tribunal for awarding compensation in accordance with the interpretation of the Statute and Rules of the United Nations Administrative Tribunal, particularly the interpretation of the

'retroactive approval' of his Medical evacuation to India relating to his wife, the attendant read with Chapter 8.5.12(b)(ii) dated First July 1981 inasmuch as the said medical evacuation and its related expenses had already been spent in 1981 and the expenses just merely reimbursable in full on the said retroactive approval as per Chapter 8.5.12(b)(ii) but the same was not paid as per the said PAM.

(e)The Applicant prays that Dr. Irwin, the Medical Director of the United Nations Medical Service be called before the Honourable Tribunal as the expert opinion for the interpretation of 'retroactive approval' of the medical evacuation of the Applicant inasmuch as (as stated hereinabove) the same was never taken up by the Honourable Tribunal either on its own motion or at the request of the Applicant for his bonafide mistake and oversight although this question of decisive fact for the purpose of this reconsideration/review application could not be discovered earlier than on March 14, 1988 (at the time of reviewing the judgements of the Honourable Tribunal)."

Whereas the Respondent filed his answer on 31 May 1988;

Whereas the Applicant filed written observations on 14 July 1988;

Whereas, on 3 September 1988, the President of the Tribunal ruled that no oral proceedings would be held in the case;

Whereas, on 22 September 1988, the Applicant requested the Tribunal to call the UN Medical Director to testify and on 1 November 1988, the Tribunal rejected the Applicant's request;

Whereas the facts of the case have been set forth in Judgement No. 374 rendered by the Tribunal on 5 November 1986;

Whereas the Applicant's principal contention is:

Neither the Applicant nor the Tribunal interpreted in favour of the Applicant the UN Medical Director's retroactive approval of the Applicant's travel to India, and this constituted a decisive fact under article 12 of the Statute of the Tribunal.

Whereas the Respondent's principal contention is:

The retroactive approval of the Applicant's travel to India by the UN Medical Director is not a fact previously unknown to the Tribunal and was, in fact, specifically taken into account by the Tribunal in the disposition of the Applicant's case in Judgement No. 374.

The Tribunal, having deliberated from 10 October to 4 November 1988, now pronounces the following judgement:

I. The Tribunal notes that:

(a) The Applicant brought his case for the first time before the Tribunal in 1986 and that it was considered and decided upon by the Tribunal in its Judgement No. 374 on 5 November 1986;

(b) Following this judgement, the Applicant presented an application to the Committee on Applications for Review of Administrative Tribunal Judgements, under article 11 of the Statute of the Tribunal. On 19 and 20 February 1987, by a decision without a vote, that Committee did not find a substantial basis for the application and rejected it;

(c) The Applicant, in 1987, then filed an application in which he requested, under article 12 of the Tribunal's Statute, a revision of the above-mentioned Judgement No. 374.

After considering his application, the Tribunal rejected it by its Judgement No. 397 rendered on 5 November 1987.

II. The Applicant now presents a new application, requesting a revision of Judgement No. 397, under article 12 of the Tribunal's Statute.

The Tribunal recalls its Judgement No. 303, Panis (1983), paragraph I, in which it stated:

"Applications for revision of a judgement delivered by the Tribunal must be considered in the light of the standards imposed by article 12 of the Tribunal's Statute. That article enables the Secretary-General or the Applicant to

'apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence ...'. ... The standards contained in article 12 are accordingly relatively strict and lay a substantial burden upon a party who requests revision."

III. The Tribunal examined whether the basis for the present request for revision of Judgement No. 397, fulfils the requirements of article 12 of the Tribunal's Statute.

The Applicant submits, as a newly discovered fact of a decisive nature, the question of interpretation of the retroactive approval by the UN Medical Director of his medical evacuation, on 4 June 1984. The Applicant alleges that the interpretation in question was never taken up and disposed of by the Tribunal.

IV. However, the Tribunal observes that, at the beginning of para. VI, in Judgement No. 374, it noted specifically 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."

Secondly, in the same paragraph VI, the Tribunal gave its interpretation of the effect of this retroactive approval on the Applicant's entitlements which accrued as a result therefrom.

Thirdly, at the end of paragraph VI, the Tribunal gave its final conclusion on the consequences of this retroactive approval in the following terms:

"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."

V. The Tribunal finds that the question of interpretation of the retroactive approval by the UN Medical Director of the Applicant's

trip to India has already been specifically addressed and decided upon by it; the present application does not meet the requirements of article 12 of the Tribunal's Statute.

VI. Accordingly, the Applicant has failed to establish within the meaning of article 12 of the Statute of the Tribunal, the existence of any new fact, unknown to him or to the Tribunal when the judgement was rendered, and far less a fact of a decisive nature so as to warrant a request for revision under article 12 of the Tribunal's Statute.

VII. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Samar SEN
President

Ahmed OSMAN
Member

Ioan VOICU
Member

New York, 4 November 1988

R. Maria VICIEN-MILBURN
Executive Secretary