

ADMINISTRATIVE TRIBUNAL

Judgement No. 488

Case No. 515: MOSER

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, Vice-President, presiding;  
Mr. Samar Sen; Mr. Arnold Kean;

Whereas, on 16 June 1989, Hans Jurgen Moser, a former staff member of the United Nations Industrial Development Organization, hereinafter referred to as UNIDO, filed an application with the Tribunal in which he requested, inter alia, a revision of Judgement No. 388 rendered in his case on 4 June 1987;

Whereas the application contains the following pleas:

"II. PLEAS

6.The Applicant respectfully requests the Administrative Tribunal:

(1)To declare his application receivable under article 12 of its Statute (the reference is to the wording '... errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal ...').

(2)To revise the Administrative Tribunal's Judgement No. 388: Moser (Case No. 273) in the light of the provisions laid down in article 9 of the Statute of the Tribunal, i.e., to rescind the decisions contested by the Applicant regarding the classification level of his former post (...), namely:

(a)The decision of 21 December 1971 to classify his post in the General Service category; and

(b)The decision of 27 July 1977 not to take steps to reclassify his post;

which rescissions were omitted in Judgement No. 388.

(3)To order that the Applicant's post officially be reclassified to the level of P-2 by the Administration of the United Nations Industrial Development Organization (UNIDO), with retroactive effect from 1 March 1972, the date when the Applicant joined UNIDO, through 28 November 1978, the date of the Applicant's separation from service, and that his grading level be brought into harmony with his new classification level with effect of[sic] the dates mentioned above.

(4)To order that the difference in salary between the levels G-7 (the Applicant's actual grading during the entire period of his service) and P-2 (the appropriate level for the Applicant's post, as spelled out in the Tribunal's Judgement No. 388) be paid to the Applicant. Further, to order that such calculation of the difference in salary should take into consideration all benefits and allowances applicable to the Viennese duty station, especially the post adjustment applicable for Vienna. According to the Applicant's estimate this difference totals to approximately US\$65,000 (on the basis of the exchange rates currently in effect) as the monetarial damage sustained by him.

(5)To order that a new 'Certification of Service' - letter be issued by UNIDO Administration, which indicates the Applicant's status as Professional during the entire period of his service.

(6)To award the Applicant a sum of US\$500 as legal costs."

Whereas the Respondent filed his answer on 26 October 1989;

Whereas the Applicant filed written observations on 20 January 1990;

Whereas the facts in the case were set out in Judgements No. 304, No. 325 and No. 388;

Whereas the Applicant's principal contentions are:

1. The Tribunal did not explain its reasons for fixing the amount of compensation awarded in Judgement No. 388, did not order

the contested administrative decision to be rescinded, and did not order the reclassification of the Applicant's post.

2. Although the Applicant requested the Tribunal to rescind the decisions to classify his post in the General Service Category and then, not to reclassify his post, the Tribunal did not, under article 9 of its Statute, "order the rescinding of the decision contested". This constitutes an "omission" under article 12 of the Statute of the Tribunal, warranting revision of Judgement No. 388.

3. The Applicant is entitled to a new Certificate of Service, rewritten to show the professional nature of his former post and his grading on the level of the post.

Whereas the Respondent's principal contentions are:

1. The application for revision, made more than two years after the Tribunal's Judgement No. 388, delivered on 4 June 1987, is time-barred under article 12 of the Tribunal's Statute.

2. The Applicant's claims concerning the Tribunal's "accidental omission" to rescind the decision classifying his former post at the General Service level and his claim for additional damages assessed at US\$65,000 are not matters falling within the final sentence of article 12 of the Tribunal's Statute.

3. The Applicant's request for a revision of his Certificate of Service is not a matter falling under article 12 of the Tribunal's Statute.

The Tribunal, having deliberated from 16 to 25 October 1990, now pronounces the following judgement:

I. The Applicant asserts that his claim for revision of Judgement No. 388 is receivable under article 12 of the Tribunal's Statute on the ground that it results from an "error arising therein from any accidental slip or omission". The omission to which he refers is the omission, in Judgement No. 388, to order the rescission of the administrative decisions of 21 December 1971 (to classify his post in the General Service category) and of 27 July 1977 (not to reclassify his post).

II. Article 12 of the Statute provides, inter alia, "Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal ...". In the Tribunal's view, the adjective "accidental", governs both "slip" and "omission", so that the power conferred by article 12 does not extend to the correction of errors in judgements unless resulting from an accidental slip or accidental omission. It does not empower, or confer a right to, a review of decisions deliberately made by the Tribunal.

III. In the present case, there is not a shred of evidence that the Tribunal's judgement resulted from an accidental slip or an accidental omission in not ordering the rescission of the administrative decisions of 21 December 1971 and of 27 July 1977. Indeed, paragraph XV of Judgement No. 388, in awarding US\$10,000 in compensation, stated specifically that the Tribunal was taking into consideration "all the circumstances of the case". The Judgement then stated: "All other pleas are rejected". Accordingly, this application is, in reality, merely an impermissible attempt to reopen issues already decided.

IV. For the foregoing reasons, the application is not receivable.

(Signatures)

Jerome ACKERMAN  
Vice-President, presiding

Samar SEN  
Member

Arnold KEAN  
Member

New York, 25 October 1990

R. Maria VICIEN-MILBURN  
Executive Secretary