



Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1014

Cases No. 1001: AL ANSARI
No. 1004: ZARRA AND KHALIL
No. 1015: ABDULHADI ET AL

Against: The Commissioner General
of the United Nations
Relief and Works Agency
for Palestinian Refugees
in the Near East

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Julio Barboza, First Vice-President, presiding; Mr. Kevin Haugh,
Second Vice-President; Ms. Brigitte Stern;

Whereas, on 22 July 2000, Nabil Ra'ouf Al Ansari, a former staff member of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an Application in which he requested, in accordance with article 12 (formerly article 11) of the Statute of the Tribunal, the revision of Judgement No. 926, rendered by the Tribunal on 30 July 1999;

Whereas, on 11 September 2000, Mohammed Zarra and Ali Saleh Khalil, former staff members of UNRWA, filed an Application in which they requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgement No. 929, rendered by the Tribunal on 30 July 1999;

Whereas, on the same date, Suheil Ahmed Abdulhadi, Mohammed Deeb Salameh and Bassem Mahmoud Khader, former staff members of UNRWA filed an Application in

which they requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgement No. 928, rendered by the Tribunal on 30 July 1999;

Whereas the Applications contained pleas which read as follows:

"I. Receivability

1. [These] Application[s] for revision of judgement [are] submitted under ... Article [12] ...
2. Whereas the Applicant[s] obtained the attached document ... in less than a month [of the discovery of the document entitled 'NOTES OF THE COMMISSIONER-GENERAL'S OPENING REMARKS TO THE CABINET MEETING'], the contents of which were concealed from the Applicants, by the Respondent,

Whereas as [these] Application[s] [are] submitted in less than a year from the date of notifying the respective judgement[s] to [them],

Whereas the document is productive in the case[s], [the] Applicants pray the Tribunal to declare the application[s] for revision of judgement receivable."

Whereas the Respondent filed his Answer in case Al Ansari on 21 November 2000;

Whereas the Respondent filed his Answer in cases Zarra and Khalil and Abdulhadi et al. on 1 February 2001;

Whereas the facts in the cases were set forth in Judgements No. 926, No. 928 and No. 929.

Whereas the Applicant Al Ansari's principal contentions are:

1. Had the Tribunal had the "Notes" before it when considering the case, it would have found that there was no mistake or dishonesty on the part of the Applicant.
2. The "Notes" provide evidence that the decision to discipline the Applicant was based on prejudice and motivated by extraneous factors.

Whereas the Applicants Zarra and Khalil's principal contentions are:

1. The Respondent did not submit any evidence linking the Applicants to manipulation of Special Hardship Cases allegedly taking place, but fabricated such evidence.
2. The "Notes" provide evidence that the decision to discipline the Applicants was based on prejudice and motivated by extraneous factors.

Whereas the Applicants Abdulhadi, Salameh and Khader's principal contentions are:

1. Had the Tribunal had the "Notes" before it when considering the case, it would have found that the accusations against the Applicants were false and that the Board of Inquiry (BOI) fabricated evidence against the Applicants and was influenced by extraneous factors.
2. The "Notes" provide evidence that the Joint Appeals Board as well as the Respondent were prejudiced and motivated by extraneous factors.

Whereas the Respondent's principal contentions in all three cases are:

1. The Applicants have failed to meet all four of the criteria of article 12 of the Statute.
2. Although the Agency's records show that the Commissioner-General did hold a cabinet meeting on or about 15 May 1996, the Respondent disputes the authenticity of the "Notes" submitted by the Applicants, which are neither dated nor signed.
3. The Applicants have submitted no proof that they were unaware of the existence of these "Notes" at the time the Judgements were rendered.
4. Even if the Applicants had not been aware of the "Notes", they have submitted no proof that their lack of knowledge was other than the result of negligence.
5. The "Notes" do not substantiate the Applicants' allegations that there existed an "outside faction" which dominated the works of the BOI and the Administration's decision-making process.

The Tribunal, having deliberated from 29 October to 20 November 2001, now pronounces the following Judgement:

I. In each of the above cases each of the Applicants seeks revision of judgement in relation to the Judgement with which he is concerned. Since each Applicant purports to rely on the self-same document as grounding his Application and allegedly making same receivable under the terms of the Tribunal's Statute and each rely on very similar grounds and each seek very similar relief, the Tribunal orders joinder of the cases.

Article 12 of the Statute of the Tribunal provides as follows:

"The Secretary-General or the applicant may 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 application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. 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 either of its own motion or on the application of any of the parties."

II. What in each case is alleged to constitute fact "of such a nature as to be a decisive factor" or which grounds the said Applications for revision, is a document entitled "NOTES OF THE COMMISSIONER-GENERAL'S OPENING REMARKS TO THE CABINET MEETING" which is submitted on behalf of each Applicant and which recites what is stated to be the content of "the Commissioner-General's opening remarks to a Cabinet Meeting dated 15 May, 1996".

In the course of his Application, each Applicant refers specifically to paragraphs 5 and 6 of the said document as being crucial. Those paragraphs are set out hereunder:

"5. I am pleased to have discovered such good and dedicated people within UNRWA. But unfortunately unhealthy attitudes also exist within the organization, and the structures are not totally adapted for the challenges ahead. I am concerned that:

[*] UNRWA, today, is not a team, but rather a collection of individual fiefdoms each jealously protected by its management. Unhealthy tensions exist between the different levels and entities of UNRWA;

[*] Strategic thinking and policy analysis are almost non-existent within the organization. Many of UNRWA's previous strategic choices seem to have been reactive or as a result of the passive acceptance of a single option, rather than as part of an overall plan; and

[*] UNRWA does not seem to have benefited from the post Cold-War evolution in thinking within the international humanitarian community on such issues as addressing the politicization of humanitarian assistance and how to effect the transition from relief to recovery.

6. It is my intention, with your assistance, to further transform UNRWA to enable the organization to better fulfill the mandate given to it, and thus to more effectively support and serve the Palestin[ian] refugees, our *raison d'être*, immediate steps will include to:

[*] Change the management culture and introduce a participatory approach which is the guarantee for a successful attempt to establish a decentralized structure. This participatory approach demands mature, ethical, responsible and committed staff. I want to encourage positive interaction between structures, the free flow of information and transparent dialogue within UNRWA. We must overcome traditional unhealthy defensive and protective attitudes which inhibit thought and action. Staff will never be censured for expressing an opinion, nor making an honest mistake. Quite to the contrary, such initiatives are expected. The change in culture will affect all levels of the organization including my office. I have repeatedly told you that I have an open door policy. I reaffirm that my close collaborators exist to facilitate the interaction between you and me; and

[*] Bring in new blood to help stimulate reflection and provoke innovative action. I plan to bring in a small number of 'tested' people known to me or highly recommended to me because of a recognized track record. The individuals will be brought in to support such functions within UNRWA as those of policy elaboration and analysis, research and evaluation, field operations, relief programmes, and public relations and information. The role of the new arrivals will not be to take over the responsibilities of other staff but rather to assist in the overall process of restructuring and energizing the system. Donors have already expressed their willingness to allocate special funds for this purpose."

III. In the Respondent's Answers to the said Applications in each instance he raises issues concerning the authenticity, accuracy and provenance of the said document. While the Respondent's Answers confirm that according to the Agency's records the Commissioner-General did hold a General Cabinet Meeting on or about 15 May 1996, as is reflected in a "message to the Agency's staff" (a copy of which is annexed to the Respondent's Answers) a check of the Respondent's records did not find a record or document corresponding with that document relied upon by the Applicants and the Respondent in his answer further states "nor is the Respondent aware that the Commissioner-General ever used the words attributed to him" in the Applicants' documents. Whilst the "message to the Agency's staff" referred to above bears a similarity of sorts

in parts thereof to the document relied upon by the Applicants it does not recite the Commissioner-General as having stated "UNRWA, today, is not a team, but rather a collection of individual fiefdoms each jealously protected by its management. Unhealthy tensions exist between the different levels and entities of UNRWA" or any words to like or similar effect.

IV. In April 1995, the Director of UNRWA Affairs, Syrian Arab Republic, had convened a BOI to examine the procedures for according Special Hardship Status to Palestinian Refugees in Dera'a and the procedures employed by UNRWA in the distribution of commodities to those entitled to receive same. As a result of its investigations, the said BOI concluded by making various adverse or critical findings against each and every Applicant in this case.

The BOI's general findings in relation to the scheme of distribution included findings that there was serious misconduct on the part of many of the persons employed by UNRWA to administer and implement the scheme for distribution of rations to Special Hardship Cases and that fraudulent practices such as a failure to keep proper records, the keeping of deceased Special Hardship Cases on the rolls, the issuing of cards in respect of deceased persons and other acts of corruption had facilitated this fraud continuing on a massive scale. It found that such officials might be divided into two categories, (i) those who actively participated in such fraudulent practices and (ii) those who were aware of what was taking place and failed to seek to stop it but rather turned a blind eye to such practices which had facilitated their continuance.

In relation to each of the Applicants the said BOI had made findings adverse to them, being findings that they had variously participated in the fraudulent practices or in some instances had turned a blind eye to what was going on, describing their performances as having been negligent or grossly negligent and identifying the manner in which they had failed in the discharge of their duties in order to facilitate the continuance of the fraud. In this context it is interesting to note that a number of the Applicants had argued in defence to the allegations that they had no duty to prevent fraud, implying that acquiescence or a failure to take action to prevent it did not constitute misbehaviour on their part. Insofar as the Respondent had relied upon findings of neglect of duty or failure to perform one's duties as a ground for terminating the Applicants' appointments either for "misconduct" or "in the interest of the Agency", the Tribunal was satisfied that such findings as were relied upon were findings of willful or reckless failure to

perform duties rather than findings of innate inefficiency or inability, so that it had been permissible or appropriate for the Respondent to have taken disciplinary action against them rather than administrative action appropriate to innate incapacity or inefficiency, which would have been appropriate had the neglect or failure to perform duties been of the less culpable kind.

V. In the case of each of the Applicants the Tribunal has already determined in the Judgements in respect of which revision is sought that the Respondent had lawfully terminated his appointment and the Tribunal had found no evidence of bias, prejudice, improper motive or consideration of any extraneous matter such as would have tainted the said terminations.

In the Applicants' original Applications to the Tribunal in which they challenged the Respondent's decisions to terminate each of their appointments, vague and unsubstantiated allegations of the existence of various sinister bodies or factions had been made and similarly unsupported and unsubstantiated allegations had been made that they had infiltrated the higher echelons of UNRWA and that they had exercised ruthless and malevolent powers which had resulted in the unwarranted termination of the Applicants' appointments. The Tribunal had in the course of the Judgements under review dismissed those allegations as they were unsupported by any evidence.

VI. The Applicants and each of them now seeks revision of those Judgements, claiming *inter alia* that the document in question "NOTES OF THE COMMISSIONER-GENERAL'S OPENING REMARKS TO THE CABINET MEETING" provides conclusive or compelling evidence of what had been originally alleged. In effect, each Applicant argues that the said document establishes that the BOI which had found the facts on which each termination was made, had been infiltrated or controlled by sinister and malevolent persons or factions who were bent on making malicious and unwarranted findings against the Applicants, that the findings so made were malicious or corrupt or were tainted by bias and prejudice and/or that the Respondent was a malicious or corrupt person or was influenced in his decisions by such persons or that he was tainted by bias or prejudice in accepting such findings as were relied upon by him for his decisions to terminate each of the Applicants' appointments.

To put it another way, each Applicant essentially argues that this document confirms his claim that there existed an "outside influential faction" which dominated or influenced the work of the BOI and the Administration's decision-making process and that the findings made adverse to him were the product of prejudice or bias on the part of the BOI and that, had the Tribunal when his case was first considered by it known of the Commissioner-General's alleged remarks, it would not have made findings as set out in its Judgements.

VII. By virtue of article 12 of the Statute, for an application for a revision of a judgement to be admissible, the Applicant must establish four things:

- (1) The existence of a fact;
- (2) That the "fact" was unknown to the Tribunal and the party claiming revision when the judgement was given;
- (3) That such ignorance was not due to negligence; and,
- (4) That the "fact" is of such a nature as to be a decisive factor in the case.

The Respondent in his Answers to these Applications argues that the Applicants have failed to establish any one of those four things, let alone all four. The Tribunal accepts the force of these submissions. Ordinarily, when the authenticity or provenance of an allegedly important document is put in issue and doubts are expressed as to its accuracy as a record, or questions are asked as to how and when it came into the Applicants' possession, the Tribunal would be inclined to seek additional information from the party proffering it. However, it does not seek such information in this case.

VIII. At best from the point of view of the Applicants, the document establishes (if its authenticity is accepted for the purpose of the argument) that there existed within UNRWA's management structure "individual fiefdoms, each jealously guarded by its management", a seeming reference to cliques based upon management divisions, and not the "outside factions" relied upon or spoken of by the Applicants.

The Tribunal is satisfied that even accepting the authenticity of the document for the purpose of the argument, the Tribunal cannot consider it to be evidence of bias or prejudice on the part of the BOI or on the part of the Respondent or those members of the Administration as

were concerned with the decision to terminate the appointments or any of them. Such a document at face value does not purport to establish or confirm any mistake, bias or prejudice on the part of the BOI or to indicate any matter which could have excused the various Applicants' conduct or failures as found by the BOI or relied upon by the Respondent for his decisions.

IX. The Tribunal is further doubtful if the said document should even be construed as disclosing "a new fact" let alone a fact of a decisive nature. Again conceding its authenticity for the purpose of the argument, on a proper construction thereof, it more properly records the Commissioner-General as having expressed his critical view in relation to a management problem rather than making an unqualified statement of fact.

X. In all of the circumstances, the Tribunal is satisfied that neither the Applicants or any one of them have established a new fact of a potentially decisive nature nor raised any new matter which would merit the original Judgements being reviewed and accordingly the Applications are dismissed in their entirety.

(Signatures)

Julio BARBOZA
First Vice-President, presiding

Kevin HAUGH
Second Vice-President

Brigitte STERN
Member

New York, 20 November 2001

Maritza STRUYVENBERG
Executive Secretary