United Nations AT/DEC/1141

Administrative Tribunal

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30 January 2004

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1141

Case No. 1127: HOSSAIN

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr.Kevin Haugh, Vice-President, presiding; Mr. Omer Youssif Bireedo; Mr. Spyridon Flogaitis;

Whereas, on 3 July 2002, Monowar Hossain, a former staff member of the United Nations Children's Fund (hereinafter referred to as UNICEF), filed an Application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal.

Whereas, on 19 December 2002, the Applicant after making the necessary corrections, again filed an Application in which he requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgement No. 1033, rendered by the Tribunal on 23 November 2001, requesting the Tribunal, inter-alia:

> "1. To rescind the order of punishment of loss of two steps and written censure …
>
> …
>
> 3. To rescind the separation action taken by UNICEF on the grounds of abolition of post.
>
> 4. To grant retroactive reinstatement effective January 1998 as Senior Driver in UNICEF with all benefits.

5. To award payment towards all legal costs and compensation for loss and damages.

6. To award any other relief or benefit as the UNAT deems fit."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 March 2003;

Whereas the Respondent filed his Answer on 31 March 2003;

Whereas the facts in the case were set forth in Judgement No.1033.

On19 December 2002, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicant was separated from service on disciplinary grounds, and not abolition of post resulting in the imposition of a double punishment for the same alleged offense in violation of due process, and staff Rules and Regulations.

2. The Applicant was not granted the opportunity to represent himself at any level of the adjudication.

3. The charges against the Applicant were not proven.

Whereas the Respondent's principal contentions are:

1. The Applicant failed to introduce any fact of a decisive nature, which was unknown to the Tribunal and to the Applicant at the time Judgement No. 1033 was rendered, and, accordingly, his request for a revision of that Judgement is without merit.

The Tribunal, having deliberated from 21 October to 17 November 2003 in New York, now pronounces the following Judgement:

I. The Applicant is applying for revision of Judgement No. 1033, *Hossain* which upheld his written censure and two-step demotion in grade as well as his separation from service for abolition of his post.

Article 12 of the Tribunal's statute stipulates that:

> "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 facts of such a nature as to be a decisive factor, which fact, 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 mistake 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. The Tribunal found in Judgement No. 1033 that the Application was time-barred and that the Administration had not only provided the Applicant with relevant information but had properly advised him if he wished to appeal, to address his appeal to the Tribunal. Consequently, the Tribunal cannot accept the Applicant's assertion that the advice he received lacked clarity.

III. It is obvious to the Tribunal that the Applicant is attempting to repeat and reargue in this request for revision the identical case previously presented to the Tribunal. However, his current application is completely devoid of any new facts of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal as well as to the Applicant. The Tribunal therefore, finds no merit in the Applicant's request for revision.

IV. The Tribunal's established jurisprudence places strict conditions on an applicant in order to grant revision of a judgement (see Judgements No. 371, *Lebaga* (1986); No. 669 *Khan* (1994); and, No. 896, *Baccouche* (1998)). Furthermore, in its Judgements No. 894, *Mansour* (1998), para. II, the Tribunal stated that

> "under its Statute, the Tribunal's powers of revision of a judgement is strictly limited and may be exercised only upon compliance with the conditions set forth in Article 12. No party may seek revision of the judgement merely because that party is dissatisfied with the pronouncement of the Tribunal and desires a second round of litigation."

V. The Tribunal has also stated that attempts to re-argue issues already decided by judgement and which are res-judicata are considered to be improper and an abuse of the Tribunal's procedures. (See Judgement No. 497, *Silveira* (1990).)

VI. In view of the foregoing, the Tribunal rejects the Application in its entirety.

(*Signatures*)

Kevin **Haugh**
Vice-President, presiding

Omer Yousif **Bireedo**
Member

Spyridon **Flogaitis**
Member

New York, 17 November 2003

Maritza **Struyvenberg**
Executive Secretary