



Administrative Tribunal

Distr. Limited
30 September 2004

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1166

Case No. 1176: WU

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Kevin Haugh, Vice-President, presiding; Ms. Jacqueline R.
Scott; Mr. Dayendra Sena Wijewardane;

Whereas, on 10 March 2003, Ming Wu, a staff member of the United Nations,
filed an Application that did not fulfil all the formal requirements of article 7 of the
Rules of the Tribunal;

Whereas, on 30 May 2003, 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. 1085 rendered
by the Tribunal on 25 November 2002;

Whereas, the Application contained pleas which read, in part, as follows:

“II. PLEAS

...

6. ... [T]he Applicant most respectfully requests the Administrative
Tribunal *to order*:
 - (a) that the Applicant be provided with a copy of confidential
evaluation of his performance by revisers each year;

(b) that the Applicant be provided with a copy of duly signed Rebuttal Panel's Memo and Report concerning his rebuttal;

(c) that the methodology of survey adopted in the Chinese Translation Section be thoroughly reviewed, and if found defective, be abolished;

(d) that the Applicant be promoted to a P-4 post, retroactive to the date of the first impugned decision in this case;

or failing that:

(a) that the Applicant be granted one year net salary in compensation for the considerable moral injury, anguish and distress;

(b) that in addition, the Respondent make every effort to have the Applicant fairly and seriously considered for promotion, as soon as possible, to a P-4 post for which he is qualified."

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 30 September 2003;

Whereas the Respondent filed his Answer on 15 July 2003;

Whereas the Applicant filed Written Observations on 30 October 2003 and Additional Written Observations on 5 January 2004;

Whereas the Respondent submitted his comments on the Applicant's Additional Written Observations on 4 February 2004 and the Applicant responded thereto on 29 March 2004;

Whereas the facts in the case were set forth in Judgement No. 1085;

Whereas the Applicant's principal contentions are:

1. The Applicant did not receive equal treatment by the Tribunal.
2. The survey system used by the Respondent was prejudicial to the Applicant.
3. The promotion process was tainted by prejudice, discrimination and other improper motives.

Whereas the Respondent's principal contentions is:

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. 1085 was rendered, and, accordingly, his request for a revision of the Judgement is without merit.

The Tribunal, having deliberated from 22 June to 23 July 2004, now pronounces the following Judgement:

I. The Applicant filed his Application seeking a revision by the Tribunal of its previous judgement, Judgment No. 1085 of 25 November 2002, wherein the Tribunal upheld the Respondent's decision not to promote the Applicant.

II. Article 12 of the Statute of the Tribunal sets forth the circumstances under which a judgment may be revised. Generally, judgements may be revised in limited circumstances: (1) upon "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", and (2) in the case of clerical/arithmetic mistakes or errors arising from any accidental slip or omission in a judgment. 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.

III. In the first case, the newly discovered fact must be one that is "sufficiently important to have affected the Tribunal's decision and which was unknown either to the applicant or to the Tribunal" at the time of the original judgement. (See Judgement No. 556, *Coulibaly* (1992), citing Judgement No. 303, *Panis* (1983).)

In the second case,

"applications for correction of clerical mistakes have no purpose other than to amend such mistakes in the text of a judgement. In fact, such mistakes may be typographical or arithmetical (affecting, for example, the amount of compensation) or they may result from an accidental slip or omission. The point at issue always relates to a defect in the drafting of the judgement and never to its substance, i.e., to possible unawareness on the part of the Tribunal of facts or applicable rules." (Judgement No. 896, *Baccouche* (1998).)

IV. In addition, pursuant to an advisory opinion, dated 13 July 1954, of the International Court of Justice and its own jurisprudence, the Tribunal will consider applications for interpretation of Judgement, where there is dispute as to the meaning or scope of the Judgement. (See Judgement No. 61, *Crawford et al* (1955).)

V. The Tribunal has consistently held Applicants to these "rigorous conditions" which must be met in order to request a revision of a judgement. (See *Coulibaly*, *ibid.*) Further, article 2 of the Tribunal's Statute provides that "neither an application for

revision nor an application for correction of a clerical mistake may be confused with a procedure for appeal against the Tribunal's judgements, which are final and not subject to appeal. (See also *Baccouche, ibid.*) Thus, attempting to re-argue issues already decided by Judgement, thus constituting *res judicata*, is improper and considered an abuse of the Tribunal's procedures. (See Judgement No. 497, *Silveira* (1990).)

VI. In his Application for revision, the Applicant does not claim that any clerical mistakes were made in the Tribunal's original Judgement. He also does not allege any new facts; he devotes most of his application to facts which were already considered by the Tribunal in connection with its Judgement No. 1085 and which the Tribunal cannot now revisit. Nor does the Applicant request an interpretation by the Tribunal of the original Judgement. Upon review of his allegations, it is clear that the Applicant's dissatisfaction with the original Judgement is based on dissatisfaction with the weight given to and characterization by the Tribunal of certain aspects of the evidence. Since the Applicant has failed to provide any new facts which might justify reconsideration of the original evidence in light of the newly discovered facts, he cannot use his request for revision to relitigate the underlying issues in hopes of reaching a conclusion more satisfactory to him. The Applicant has failed to meet the "rigorous conditions" required by Article 12, and, therefore, his request for revision must fail.

VII. The Application is therefore rejected.

(Signatures)

Kevin Haugh
Vice-President, presiding

Jacqueline R. Scott
Member

Dayendra Sena Wijewardane
Member

Geneva, 23 July 2004

Maritza Struyvenberg
Executive Secretary