

**Administrative Tribunal**

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**ADMINISTRATIVE TRIBUNAL****Judgement No. 1226**

Case No. 1177

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, President; Ms. Jacqueline R. Scott; Mr. Goh Joon Seng;

Whereas at the request of a former staff member of the United Nations Population Fund (hereinafter referred to as UNFPA) the President of the Tribunal, with the agreement of the Respondent, granted an extension of the time limit for filing an application with the Tribunal until 31 December 2003 and once thereafter until 31 March 2004;

Whereas, on 25 March 2004, the Applicant filed an Application in which he requested, in accordance with article 12 of the Statute of the Tribunal, and the Tribunal's established practice, revision and interpretation of Judgement No. 1123, rendered by the Tribunal on 25 July 2003;

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

**“II. PLEAS**

...

8. ... [T]he Applicant most respectfully requests the Administrative Tribunal *to order*:

(a) that the Respondent pay to the Applicant the retirement package that was offered to him, by letter dated 30 September 1999, *with effect from 1 August 2000, the date of his separation from service with UNFPA* giving to him the entitlements he would have received had the retirement been offered on those terms;

(b) to award the Applicant, on an exceptional basis, three years' net base pay as compensation for the material, consequential and moral damages suffered by the Applicant, for the damage to the Applicant's career and professional reputation, for the denial of due process and fair treatment to which he was subjected, for unnecessary delays and for the effects of the Respondent's prejudicial actions on him and his family;

(c) to fix the amount of compensation to be paid in lieu of specific performance in the amount of three years' net base pay in view of the special circumstances of the case;

(d) to award the Applicant as cost, the sum of \$10,000.00 in legal fees and \$500.00 in expenses and disbursements."

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 2004 and once thereafter until 31 October 2004;

Whereas the Respondent filed his Answer on 29 October 2004;

Whereas, on 18 March 2005, the Applicant filed Written Observations, amending his pleas as follows:

"The Applicant further requests the Administrative Tribunal,

*To order* the production of the Crown Agent's Report on construction costs in Nepal;

*To decide* to hold oral proceedings on the present application ..."

Whereas, on 6 July 2005, the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts in the case additional to the statement of facts contained in Judgement No. 1123 are as follows:

In February 2003, the Executive Director, UNFPA, approved the release of the Applicant's final payment. On 22 September, the Applicant's final entitlements were processed and paid to him.

On 18 and 21 November 2003, the Tribunal rendered its Judgements in the cases of *Poudel* (No. 1153), *Khanal* (No. 1160) and *Dongol* (No. 1161), all of which dealt with matters arising from the same factual circumstances as that of the Applicant's case.

On 3 December 2003 and on 30 January 2004, the Applicant requested the Secretary-General to conduct an investigation pursuant to paragraph XIII of Judgement No. 1123.

On 29 October 2004, the Applicant's counsel requested UNFPA to provide him with a copy of the "Crown Agent's Report on construction costs in Nepal".

Whereas the Applicant's principal contentions are:

1. The Applicant has discovered and placed before the Tribunal new facts of such a nature as to be decisive, which facts were, when Judgement No. 1123 was rendered, unknown to the Tribunal and also to the Applicant. Additionally, the facts contained in the Intervention pertaining to the case of the Applicant, were not taken into consideration by the Tribunal and had no bearing on the Tribunal's decision. These facts are, therefore, "new facts" within the meaning of the Tribunal's Statute.

2. The new information points to the existence of prejudice and bias against the Applicant on the part of those taking the decisions against him.

3. No award of damages was made for the violation of the Applicant's rights of due process, for the unnecessary delays in handling his case, for the legal expenses incurred and for the additional stress and emotional strain to which he was subjected.

4. At the time Judgement No. 1123 was rendered, it was not known that the Applicant's separation had been implemented and that his pension entitlements had been processed. The result thereof is that the full implementation of the Tribunal's judgement could result in a net loss to the Applicant and could impose a significant financial hardship on him. Logic and fairness dictate that the retirement package should be implemented with effect from 1 August 2000, the date of the Applicant's actual separation.

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. 1123 was rendered, and, accordingly, his request for a revision of that Judgement is without merit.

2. The Applicant's request for interpretation is without merit.

3. The Applicant's request for the award of costs is groundless.

The Tribunal, having deliberated from 21 June to 22 July 2005, now pronounces the following Judgement:

I. The Applicant requests both revision and interpretation of Judgment No. 1123, rendered by the Tribunal on 25 July 2003. The Tribunal will look at each request separately, and review its jurisprudence accordingly.

II. The jurisdiction of the Tribunal to revisit cases in which judgement has been rendered is to be found in article 12 of the Tribunal's Statute, which reads 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."

The Tribunal applies article 12 rigorously: in Judgement No. 303, *Panis* (1983), it held that

"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. ... The standards contained in article 12 are ... relatively strict and lay a substantial burden upon a party who requests revision."

Recently, in Judgement No. 1120, *Kamoun* (2003), the Tribunal stated:

"In accordance with the Statute and case law, in order to be able to apply for revision of a judgement it is necessary to satisfy certain formal and substantive conditions. As regards formal conditions, article 12 sets a time limit for filing the application. As regards substantive conditions, in order for an application to be admissible the Applicant must on the one hand, plead discovery of a new fact, that is to say one that was not known at the time the judgement was given, and, on the other, the new fact must be of such a nature as to be able to influence the outcome of the dispute as reflected in the judgement."

With regard to interpretation, in accordance with both the advisory opinion of the International Court of Justice of 13 July 1954 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).)

III. The Applicant requests the Tribunal to find that the Applicant has discovered and placed before the Tribunal new facts of such a nature as to be decisive, which facts were, when Judgement No. 1123 was given, unknown to the Tribunal. The Applicant asserts that the facts and further considerations provided in the request for interpretation and revision significantly alter the basis for the findings and decisions of the Tribunal reached in Judgement No. 1123.

In this connection, the Applicant refers to four “new developments” since the Judgement was rendered: first, the alleged failure by the Respondent to implement the separation package or to amend the Applicant’s record of service; second, the issuance of a JAB report in the appeal of another staff member who had requested intervention in the original case (the Intervener); third, the alleged failure of the Respondent to respond to the Tribunal’s suggestion that a further investigation be held; and fourth, the rendering of UNAT Judgements No. 1153, *Poudel*, No. 1160, *Khanal* and No. 1161, *Dongol*. Each of these, according to the Applicant

“provide[s] clear evidence that the Applicant’s treatment has been influenced by prejudice and other extraneous considerations for which the responsibility of the Organization is entailed beyond the injustice and abuse of discretion found in Judgement No. 1123”.

The Applicant contends that this meets the requirements for revision in that the information is of a decisive nature and was unknown or not fully known at the time the Judgement was rendered.

The Tribunal cannot agree with the Applicant’s reasoning and finds that he has not alleged any new fact as required by article 12. He submits documents which he wrongly describes as “new documents”: the main facts in the cases of *Poudel*, *Khanal* and *Dongol* which were already available to the Tribunal and considered by it during its consideration of the Applicant’s case; the tape-recording, about which the Tribunal was previously aware; and the Intervener’s second JAB report, which addresses facts and circumstances obviously known to the Applicant at the time the Judgement was rendered. On the basis of those documents, the contents of which were largely known to the Tribunal and clearly well-known to the Applicant himself, he seeks to rebut the arguments upon which the original Judgement was based. It is, then, clear that the presentation the Tribunal is now considering is no more than a new appeal in disguise.

The Tribunal has consistently held that “[n]o party may seek revision of the judgement merely because that party is dissatisfied with the pronouncement of the Tribunal and wants to have a second round of litigation”. (See Judgement No. 894, *Mansour* (1998).) Consequently, the Applicant’s request for revision of judgement must fail.

IV. The Application for interpretation of Judgement No. 1123 is based on the hardship occasioned by the implementation of the award. In the implementation of the 30 September 1999 separation package, UNFPA had chosen the original separation date of 1 March 2000 to put into effect the Applicant’s agreed separation. This ignored

the fact that the Applicant was maintained in service through August 2000, pursuant to a decision of UNFPA (a decision not known to the Tribunal at the time of the award). Implementing the Tribunal's decision effectively cancelled the period of special leave with pay granted to the Applicant from February through July 2000, resulting in the Applicant being out of pocket. This was not the intention of the Tribunal when it rendered its Judgement. Accordingly, the Applicant should be reimbursed.

V. In view of the foregoing, the Tribunal:

1. Orders to pay the Applicant compensation in the amount of US \$25,000, with interest payable at eight per cent per annum as from 90 days from the date of distribution of this Judgement until payment is effected; and
2. Rejects all other pleas.

*(Signatures)*

**Julio Barboza**  
President

**Jacqueline R. Scott**  
Member

**Goh Joon Seng**  
Member

Geneva, 22 July 2005

**Maritza Struyvenberg**  
Executive Secretary