United Nations AT/DEC/1256

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1256

Case No. 1232
Case No. 1279

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 26 February 2005, a former staff member of the United Nations filed an Application in which he requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgement No. 1167, rendered by the Tribunal on 23 July 2004. The Application contained pleas which read, in part, as follows:

"**III.** ***PLEAS***

The United Nations Administrative Tribunal is, respectfully, requested to review its Judgement [No.] 1167 … on the grounds that:

1. The … Administrative Tribunal failed to exercise jurisdiction vested in it.

2. The order … for compensation in Judgement [No.] 1167 … is deficient and lacks clarity. The compensation did not state the amounts of:

a) Compensation for the moral and material damage arising from the placement on special leave with full pay …

b) Compensation for termination indemnity …; and

c) Compensation for the salary from the date of wrongful dismissal to the date I received … Judgement [No.] 1167 … I plead for compensation of a net base salary for 28 months."

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 August 2005;

Whereas the Respondent filed his Answer on 11 July 2005;

Whereas the Applicant filed Written Observations on 19 September 2005;

Whereas the facts in the case were set forth in Judgement No. 1167.

Whereas the Applicant's principal contentions are:

1. The compensation ordered by the Tribunal was inconsistent with its findings and conclusions and is not commensurate with the damages suffered.

2. The Applicant should have received full termination indemnity of 18 months' net base salary.

3. The Tribunal in its Judgement did not consider carefully all the facts of the case.

Whereas the Respondent's principal contention 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. 1167 was rendered, and, accordingly, his request for a revision of that Judgement is without merit.

The Tribunal, having deliberated from 26 October to 23 November 2005, now pronounces the following Judgement:

I. Whilst framed as an Application for revision of Judgement No. 1167, which determined the Applicant's substantive proceedings, this is essentially an Application which asks that the Tribunal should re-consider the issues in the substantive case and should on such re-consideration increase the measure of the compensation already awarded to the Applicant and to award compensation to him under other headings not specifically dealt with in Judgement 1167. In essence, this Application arises from the Applicant's misapprehension that, since he enjoyed *partial* success in the substantive proceedings, he should have been awarded compensation as if he had been *wholly* exonerated and as if he had enjoyed *total* success therein. Apart altogether from the Applicant's aforesaid misapprehension, the Statute of the Tribunal does not permit for reviews of Judgement of this sort. The circumstances whereby the Tribunal may

review or revisit a Judgement already rendered are strictly limited. They arise principally under article 12 of the Statute which 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."

Furthermore, article 11, sub-paragraph 2 states that "[s]ubject to the provisions of article 12, the judgements of the Tribunal shall be final and without appeal".

II. The Tribunal has consistently held that it applies article 12 rigorously: In Judgement No. 1164, *Al-Ansari et al* (2004), the Tribunal, citing Judgement No. 303, *Panis* (1983), 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:
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> > '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.'
>
> Additionally, 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. In the present case, the Applicant has not presented any new fact, let alone one of a potentially decisive nature, which was unknown to the parties when Judgement No. 1167 was rendered. In fact, he does not even purport to present any new fact but

rests his case primarily on his claim that the compensation ordered by the Tribunal in the said Judgement "is inconsistent with its findings and conclusions".

In recent Judgements, the Tribunal addressed the issue of revisiting its Judgements as follows:

> "[T]he Tribunal reiterates Judgement No. 894, *Mansour* (1998): 'No 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'. … No one should believe that a mere restatement of claims, even though made in new language and with changed emphasis, can be a basis for the revision of a judgement made by the Tribunal. As stated in Judgement No. 556, *Coulibaly* (1992), a revision is not a means of reopening issues that have been settled definitively and which are thus *res judicata*." (See *Al-Ansari et al*. (*ibid.*).)

Similarly, in Judgement No. 1166, *Wu* (2004) the Tribunal stated that:

> "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 … and which the Tribunal cannot now revisit. … 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."

Moreover, in Judgement No. 1227, (2005) the Tribunal held that:

> "The Tribunal acknowledges the Applicant's frustration in failing to have a point of view in which he so fervently believes accepted in proceedings which he had initiated and pursued. However, in the material he has submitted for this revision there are no new facts which could make any difference to his case and not one is advanced that comes within the requirements of article 12 of the Tribunal's Statute. It is abundantly clear that only another review of the original case, resulting in a different outcome, would give the Applicant satisfaction. This he is not entitled to."

The Applicant has not met the requirements of article 12 and, as stated, he is not entitled to have his case reheard just because he is dissatisfied with the compensation awarded. His Application must therefore fail.

IV. The Applicant suggests that the Tribunal should disregard article 12 as it is "defective since it partially addresses the requirements for revision or review of a judgement as provided for in law". The Applicant is misguided in his assertion. The

laws governing the Tribunal's decisions are the laws of the United Nations, as adopted by the General Assembly or by other bodies to which the authority for promulgating rules has been delegated. The law governing the current case is the Tribunal's Statute and the inherent powers of the Tribunal, as recognized by the International Court of Justice in its advisory opinion of 13 July 1954. (See *Crawford et al.* (*ibid.*).) Thus, the references made by the Applicant to other jurisdictions are irrelevant. Moreover, as already stated, the Tribunal's Judgements are not subject to appeal, whilst the references brought by the Applicant in support of his above argument seem to primarily apply to appeals or to cases which are subject to appeal and therefore, for this reason also, are irrelevant to this Tribunal.

V. In view of the foregoing, the Application is rejected in its entirety.

(*Signatures*)

Kevin **Haugh**
Vice-President, presiding

Jacqueline R. **Scott**
Member

Dayendra Sena **Wijewardane**
Member

New York, 23 November 2005

Maritza **Struyvenberg**
Executive Secretary