

the use of that information for purposes of home leave in the application form itself. The future staff member is asked to indicate his permanent address and his present address. It is understandable that the Applicant, who at that date had no home of his own, permanent or otherwise, in his home country, gave the only possible U.S. address—that of his brother in Grand Haven.

5. The Tribunal therefore reaches the conclusion that, under the provisions of article 105.3 of the Staff Rules, Applicant's place of home leave must be fixed in Santa Monica, California.

6. The Tribunal therefore decides:

(a) that Santa Monica, California, be designated as the place of entitlement for home leave under Regulation 5.3 and Rule 105.3 in lieu of Grand Haven, Michigan;

(b) that there should be paid in respect of the home leave already taken during 1957, the difference between the amount already paid to the Applicant (with Grand Haven, Michigan, regarded as his place of entitlement) and the amount properly due in respect of Santa Monica, California, as the place of entitlement, as now provided in the preceding paragraph;

(c) that in the nature of this case and its resultant future obligations, as well as the obligation referred to above, the Tribunal does not consider itself called upon to fix alternative compensation under article 9 of the Statute.

*(Signatures)*

Suzanne BASTID  
*President*

CROOK  
*Vice-President*

Harold RIEGELMAN  
*Member*

Mani SANASEN  
*Executive Secretary*

*New York, 3 December 1958.*

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### Judgement No. 73

*(Original: English)*

**Case No. 69:**  
**Bulsara**

*Against:* **The Secretary-General  
of the United Nations**

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*Request for revision of Judgement No. 68 in which the Tribunal ordered the granting of compensation to the Applicant instead of ordering his reinstatement.—Request for revision of basis of calculation of amount of compensation.*

*Power of Tribunal to revise a judgement under article 12 of its Statute.—Mandatory nature of article 12 of Statute.—Difference between appeal and an application for revision.*

*Absence of any material error in the calculation of compensation.—Rejection of requests for revision.*

*Request for award of costs in respect of previous Judgement No. 68.—Absence from Judgement No. 68 of any reference to costs considered to be an implicit refusal to award such costs.—Rejection of claim for costs.*

*Application rejected.*

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## THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; the Lord Crook, Vice-President ; the Honourable Mr. R. Venkataraman ;

Whereas the Applicant filed an application with the Tribunal on 14 July 1958 requesting, under article 12 of the Statute, revision of Judgement No. 68 rendered in his case by the Tribunal on 22 August 1957 ;

Whereas, at the invitation of the President of the Tribunal, the Secretary-General submitted his comments on the application on 28 August 1958 ;

Whereas, at the invitation of the President of the Tribunal, the Applicant submitted his observations on the Secretary-General's comments on 22 September 1958 ;

Whereas the facts as to the Applicant are set forth in Judgement No. 68 ;

Whereas the Applicant's requests for revision of Judgement No. 68 are as follows :

1. Revision of the part of the Judgement in which the Tribunal orders compensation in lieu of specific performance so as to request the Secretary-General to continue the Applicant's employment as member of the staff ;

2. Revision of the part of the Judgement in which the Tribunal fixes one year's salary as the measure of compensation so as to order payment of three year's salary ;

3. Revision of the part of the Judgement in which the Tribunal awards 9 months' salary

(i) so as to order payment of one year's salary with no deduction of indemnity previously paid to Applicant ;

(ii) if indemnity paid prior to the Judgement is to be deducted, then the amount paid to the Applicant should be equivalent to salary for 40 weeks and one day and not the equivalent of 9 months as ordered by the Tribunal ;

(iii) so as to eliminate the deduction of the staff assessment ;

4. In addition, Applicant asks for payment of costs ;

Whereas the Secretary-General, in his comments on the application, submitted that none of the requests for revision are receivable under article 12 of the Statute of the Tribunal, with the exception of that for revision of the award of 9 months' salary ;

The Tribunal, having deliberated until 5 December 1958, now pronounces the following judgement :

1. This is an application, under article 12 of the Statute of the Administrative Tribunal, for revision of Judgement No. 68 dated 22 August 1957. The Statute of the Administrative Tribunal was amended by the General Assembly on 8 November 1955, providing for a revision of the judgement by the Tribunal on an application by any of the parties under certain circumstances. According to the Statute, the Tribunal may revise a judgement if ;

(a) some fact, unknown to the Tribunal and the party claiming revision at the time the judgement was given, is subsequently discovered,

(b) such fact is a decisive factor and

(c) the ignorance of such fact is not due to the negligence of the party claiming revision.

The Tribunal may also, of its own motion or on the application of any of the parties, correct clerical or arithmetical mistakes in the judgement or errors arising therein from any accidental slip or omission.

The powers of revision are strictly limited by the Statute of the Administrative Tribunal and cannot be enlarged or abridged in the exercise of its jurisdiction by the Tribunal.

2. The Applicant's claim that the Tribunal should have ordered reinstatement, in accordance with article 9 of its Statute, is neither a discovery of a new fact nor a clerical or arithmetical error affording competence to the Tribunal to revise its decision and has therefore to be rejected.

3. Likewise, the claim of the Applicant that the Tribunal should have granted him three years' compensation instead of one year, is in the nature of an appeal against the judgement of the Tribunal and is not a case for revision under article 12 of the Statute.

4. The Applicant's claim that, in directing payment of nine months' salary, the Tribunal erred in the calculation of damages, requires careful consideration. In claiming that the Tribunal should have directed payment of 40 weeks and one day as compensation on the basis of its own judgement, the Applicant is interpreting the judgement of the Tribunal differently from the intent and tenor of the judgement. In para. 29 of its judgement, the Tribunal stated as follows:

"It is not always easy to determine precisely the actual amount of compensation to be awarded in cases of this nature. The Tribunal therefore awards compensation of the sum equivalent to one year's salary from 20 August 1956 to the Applicant 'as the true measure of compensation and the reasonable figure of such compensation'."

The Tribunal did not intend to award compensation for either 52 weeks or 365 days. It fixed the compensation at one year's salary as a reasonable measure of compensation. Since the Applicant had already received compensation for 12 weeks, the Tribunal converted the compensation already received, in terms of the year, and equated the compensation already received to three months' salary.

5. The final decision of the Tribunal was that the Applicant should receive salary for nine months as compensation in addition to what had already been paid. References in the judgement to the period of one year for which compensation is said to be due and to the period of 12 weeks for which compensation has already been paid, were only various steps in the process of reasoning leading to the conclusion that the compensation should be fixed at 9 months' salary in addition to what had already been paid. Since the final decision of the Tribunal is that salary for 9 months should be paid as compensation to the Applicant, there is no clerical or arithmetical mistake calling for revision.

The Applicant's contention that the Tribunal's order relating to calculation of compensation, contravenes certain staff rules, constitutes an attack on the judgement and not a ground for revision under article 12. The Tribunal has in its original judgement carefully considered and awarded damages on a definite basis, namely "the same basis on which compensation has already been paid to the Applicant". In the absence of any discovery of new fact or of arithmetical error in computation of damages, the decision must stand.

6. The Applicant also claims that the Tribunal should have awarded costs in his favour. The Applicant did not claim it in his original application to the Tribunal nor during the oral presentation of the case. The Tribunal, for whatever reason, has not awarded costs to the Applicant in its Judgement No. 68 and should therefore be deemed to have refused the claim. Since an application for revision under article 12 of the Statute is not in the nature of an appeal, the Tribunal decides that the claim for costs cannot be reopened at this stage.

7. In the result, the application for revision is hereby dismissed.

(Signatures)

Suzanne BASTID  
President

CROOK  
Vice-President

R. VENKATARAMAN  
Member  
Mani SANASEN  
Executive Secretary

New York, 5 December 1958.

## Judgement No. 74

(Original: English)

Case No. 80:  
Bang-Jensen

Against: The Secretary-General  
of the United Nations

*Dismissal of a staff member on the recommendation of the Joint Disciplinary Committee.—Request for setting aside the proceedings on the Committee.*

*Complaints regarding alleged violations of the rights of the defence.—Complaint regarding the transmission to the Joint Disciplinary Committee of the report of a special committee appointed by the Secretary-General to investigate the Applicant's conduct.—Right of the Secretary-General to appoint a committee to advise him on a particular question.—Absence of any proof that the transmission of the report vitiated the proceedings of the Joint Disciplinary Committee.*

*Complaint regarding the composition of the Joint Disciplinary Committee.—Failure to raise the matter before the Committee.—Complaint not receivable by the Tribunal.*

*Complaint regarding failure to allow Applicant to engage outside legal counsel to represent him before the Joint Disciplinary Committee.—Opportunity of Applicant to be represented before the Committee by another staff member, in accordance with Staff Rule 110.5 (b).—The fact that the Administration had granted to Applicant the right to consult outside legal counsel in the preparation of his brief.—Absence of any violation of the rights of the defence.*

*Complaint regarding the Joint Disciplinary Committee's refusal to stay its inquiry into the case pending an appeal by the Applicant to the Joint Appeals Board.—Validity of Committee's refusal in view of the fact that the filing of an appeal does not operate as a stay of proceedings.*

*Complaint regarding Respondent's denial to Applicant of access to documents during proceedings of Joint Disciplinary Committee.—Refusal to allow access to relevant documents constitutes a violation of the rights of the defence.—Absence of such a violation, as Applicant had access to the documents on which the charges were based.—Need to prove to the Joint Disciplinary Committee the relevance of documents requested in disciplinary proceedings.—*