

the Tribunal considers that no decision can be made concerning the existence of such damage until a ruling is made on the merits of the appeal.

IV. For these reasons the Tribunal decides that the application is not receivable.

(Signatures)

Suzanne BASTID

Vice-President, presiding

Arnold KEAN

Member

New York, 28 September 1982

Luis de POSADAS MONTERO

Member

Nicholas TESLENKO

Acting Executive Secretary

Judgement No. 292

(Original: French)

Case No. 257:
Mortished

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

Confirmation of Judgement No. 273 following the advisory opinion given by the International Court of Justice.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, President; Madame Paul Bastid, Vice-President; Mr. Herbert Reis; Mr. Luis de Posadas Montero, alternate member;

Whereas, by a letter dated 23 July 1981, the Secretary-General of the United Nations informed the International Court of Justice that the Committee on Applications for Review of Administrative Tribunal Judgements established under General Assembly resolution 957 (X) had, pursuant to article 11 of the Statute of the United Nations Administrative Tribunal, decided on 13 July 1981 that there was a substantial basis for an application for review of judgement No. 273;

Whereas the Committee had requested an advisory opinion of the International Court of Justice on the following question:

“Is the judgement of the United Nations Administrative Tribunal in Judgement No. 273, *Mortished v. the Secretary-General*, warranted in determining that General Assembly resolution 34/165 of 17 December 1979 could not be given immediate effect in requiring, for the payment of repatriation grants, evidence of relocation to a country other than the country of the staff member’s last duty station?”

Whereas, however, in paragraph 48 of an advisory opinion given on 20 July 1982, the International Court of Justice stated that it interpreted

“. . . the question put to it as requiring it to determine whether, with respect to the matters mentioned in that question, the Administrative Tribunal ‘erred on a question of law relating to the provisions of the Charter of the United Nations’ or ‘exceeded its jurisdiction or competence’.” (*Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982, p. 350.*)

Whereas the conclusions of the Court in its advisory opinion read as follows:

“THE COURT,

“1. By nine votes to six,

“Decides to comply with the request for an advisory opinion;

“*In favour: President Elias; Vice-President Sette-Camara; Judges Nagendra Singh, Mosler, Ago, Schwebel, Sir Robert Jennings, de Lacharrière and Mbaye;*

“*Against: Judges Lachs, Morozov, Ruda, Oda, El-Khani and Bedjaoui.*

“2. With respect to the question as formulated in paragraph 48 above, *is of the opinion:*

“A. By ten votes to five,

“*That the Administrative Tribunal of the United Nations in Judgement No. 273 did not err on a question of law relating to the provisions of the Charter of the United Nations;*

“*In favour: President Elias; Vice-President Sette-Camara; Judges Nagendra Singh, Ruda, Mosler, Oda, Ago, Sir Robert Jennings, de Lacharrière and Mbaye;*

“*Against: Judges Lachs, Morozov, El-Khani, Schwebel and Bedjaoui.*

“B. By twelve votes to three,

“*That the Administrative Tribunal of the United Nations in Judgement No. 273 did not commit any excess of the jurisdiction or competence vested in it.*

“*In favour: President Elias; Vice-President Sette-Camara; Judges Lachs, Nagendra Singh, Ruda, Mosler, Oda, Ago, Sir Robert Jennings, de Lacharrière, Mbaye and Bedjaoui;*

“*Against: Judges Morozov, El-Khani and Schwebel*” (*Ibid.*, p. 366.)

Whereas on 27 July 1982 the Legal Counsel of the United Nations notified the Tribunal of the advisory opinion and informed it, pursuant to article 11, paragraph 3, of the Statute of the Tribunal, that it was not necessary for the Tribunal to convene specially and that confirmation of the judgement, as referred to in that paragraph, should take place at the next session.

The Tribunal, having deliberated from 23 to 28 September 1982, now pronounces the following judgement:

The Tribunal confirms its Judgement No. 273 (Mortished against the Secretary-General of the United Nations). Judgement No. 273 accordingly becomes final with effect from 28 September 1982.

(Signatures)

Endre USTOR
President

Luis de POSADAS MONTERO
Alternate Member

Suzanne BASTID
Vice-President

Nicolas TESLENKO
Acting Executive Secretary

Herbert REIS
Member

New York, 28 September 1982

Judgement No. 293

(Original: English)

Case No. 275:
Nayyar

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

Request for rescission of a decision not to promote a staff member.

Flaw in the work of the Appointment and Promotion Panel inasmuch as it did not proceed in the required way in evaluating the merits of staff members.—Acceptance of the Panel's report by the Administration.—Responsibility of the Administration.—Impossibility of determining whether the Applicant would have been promoted if the Appointment and Promotion Panel had followed the established procedure.—Award of \$1,000 to the Applicant as compensation.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Arnold Kean;
Mr. Luis de Posadas Montero;

Whereas at the request of Om Parkash Nayyar, a local staff member of the Office of the United Nations Development Programme, hereinafter called UNDP, at New Delhi, India, the President of the Tribunal, with the agreement of the Respondent, extended successively to 19 November 1981, 18 December 1981 and 18 January 1982 the time-limit for the filing of an application to the Tribunal;

Whereas, on 19 January 1982, the Applicant filed an application the pleas of which read

“RELIEF SOUGHT

“The Appellant requested the JAB (Joint Appeals Board) and respectfully requests the Tribunal:

“(1) To find that . . . the APP [Appointment and Promotion Panel] had:

“(a) failed to observe due process and principles of equity; and/or

“(b) failed to act in accordance with the Staff Rules and the Guidelines of