United Nations AT/DEC/1227

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1227

Case No. 1196 Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Kevin Haugh, Vice-President, presiding; Mr. Dayendra Sena Wijewardane; Mr. Goh Joon Seng;

Whereas, on 11 March and on 30 May 2003, a former staff member of the United Nations filed applications that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 30 September 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. 1082 rendered by the Tribunal on 20 November 2002;

Whereas in his Application the Applicant requested the Tribunal, inter alia:

> "7. … [To] order the Respondent to compensate [the Applicant] forthwith for the injuries [he] sustained to [his] United Nations career … [as follows]: Net base salary … from November 1997 to the present.
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> 8. … [To] order the Respondent to compensate [the Applicant] forthwith for the moral injury resulting from the unfair treatment and procedural errors on the part of the Administration from November 1997 to the present. … In addition, [the Applicant requests] the reimbursement of fifteen days salary … unlawfully deducted for sick-leave taken.
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> …
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> 10. … [That the Applicant's] character be cleared of all the allegations stated in [his] Personal Evaluation Report ..."

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 December 2003;

Whereas the Respondent filed his Answer on 5 December 2003;

Whereas the facts in the case were set forth in Judgement No. 1082.

Whereas the Applicant's principal contentions are:

1. The contested decision was based on an error of law, failed to take account of essential facts and was vitiated by abuse of power.

2. The Applicant suffered prejudice and discrimination and was denied a fair and equitable recourse.

3. The Tribunal's decision contained in Judgement No. 1082 is mistaken and was based on frivolous information submitted by the Respondent.

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. 1082 was rendered, and, accordingly, his request for a revision of the Judgement is without merit.

The Tribunal, having deliberated from 24 June to 22 July 2005, now pronounces the following Judgement:

I. The Applicant seeks the revision of Judgment No. 1082 rendered by the Tribunal on 20 November 2002.

II. The Applicant joined the United Nations as a Security Officer, Security and Safety Service, in 1994 and, on 20 February 1995, joined the International Criminal Tribunal for the former Yugoslavia (ICTY) Security and Safety Service, initially on a three-month fixed-term appointment. On 11 March 1997, the Chief, and the Deputy Chief, Security and Safety Service, ICTY, met with the Applicant to discuss his performance in light of certain complaints received and incidents that had occurred, and, on 15 April 1997, the Applicant received a letter of reprimand in light of a serious breach of procedure and failure to follow instructions.

On 21 October 1997, the Deputy Chief, Security and Safety Service, ICTY, informed the Applicant that in view of his performance evaluation contained in his performance report (PER) for the period 20 November 1996 to 19 November 1997, his

fixed-term appointment would not be extended. On 19 November 1997, the Applicant separated from service.

III. Judgement No. 1082 dealt with the Applicant's claims that the decision not to renew his fixed-term appointment should be rescinded and that he should be given relief for a number of reasons. The Applicant had also claimed that the non-renewal of his contract was based on a performance evaluation which he disputed as having been improperly motivated. He had further claimed that he had a realistic legal expectation that he would be offered continuing employment.

The Tribunal accepted that it was the "perceived and found shortcomings in his performance which gave rise to the decision not to renew his contract and to separate him from service". Accordingly, the Tribunal proceeded to consider the circumstances leading to the preparation of his PER and to satisfy itself that the evaluation was justified on the evidence. It came to the conclusion that there was ample evidence to support the evaluation that had been made. With regard to the claim of legal expectancy the Tribunal came to the conclusion that the assertions made by the Applicant were "vague", "uncertain" and "unsubstantiated", and "fell far short" of what was necessary to establish any legally binding expectation of continued employment.

IV. The Applicant was undoubtedly disappointed by the conclusions which the Tribunal arrived at in his case. He has seen it as based on a "misapprehension of facts", "a failure to address facts and evidence" which he had submitted and, "based on frivolous information submitted by the Respondent". Indeed, a "failure of common sense".

He has asked for a revision of the Judgement and has filed an Application dated consisting of 60 paragraphs and 9 Annexes which he believes demonstrates that this Tribunal has committed a fundamental error in procedure which he claims has led to a "complete failure of justice". He states that the central issue in his request for revision is to "challenge the validity and veracity on which [the Tribunal] based its rendered judgment".

The Tribunal finds that the Applicant has had ample opportunity to present his evidence and arguments and to make his complaints both at the JAB stage and at the Tribunal. He cannot once again reopen the very issues which have been adjudicated. The Tribunal has taken pains to explain in some detail the requirements of article 12 of the Statute which, with good reason, limits the jurisdiction of this Tribunal. In this

connection the Tribunal would draw attention to its recent Judgements No. 1164, *Al-Ansari et al.* (2004); No. 1165, *Shehabi* (2004); and, No. 1201, *Berg* (2004), which clearly explain these limitations. As it held in *Al-Ansari*, para. III

> "The jurisdiction of the Tribunal to revisit cases in which Judgement has been rendered [rests on] article 12 of the Tribunal's Statute, which reads as follows:
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> > '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.'
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> The Tribunal applies article 12 rigorously: in Judgement No. 303, *Panis* (1983), it held that
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> > '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.'
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> 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.'"

V. 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. Article 11 of the Statute of the Tribunal states that, "[s]ubject to the provisions of article 12, the

judgements of the Tribunal shall be final and without appeal". As was also stated in the Tribunal's Judgement No. 894, *Mansour* (1998) "[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".

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

(*Signatures*)

Kevin **Haugh**
Vice-President, presiding

Dayendra Sena **Wijewardane**
Member

Goh Joon Seng
Member

Geneva, 22 July 2005

Maritza **Struyvenberg**
Executive Secretary