

ADMINISTRATIVE TRIBUNAL

Judgement No. 397

Case No. 434: HOWLADER

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President,
presiding; Mr. Endre Ustor; Mr. Ahmed Osman;

Whereas on 29 March 1987, John S.H. Howlader, a former staff member of the United Nations Children's Fund, hereinafter referred to as UNICEF, filed an application that did not fulfil the formal requirements of the Rules of the Tribunal;

Whereas on 5 June 1987, the Applicant filed a corrected application in which he requested, under article 12 of the Statute of the Tribunal, a revision of Judgement No. 374 rendered in his case on 5 November 1986;

Whereas the pleas in the application read as follows:

"Section II: Pleas

As per article 7 (read with article 12 of the Statute) (Chapter III) of the Rules of the Administrative Tribunal of the United Nations.

- (a) Please call the record of the Personnel, medical files of the Petitioner, ABCC [Advisory Board on Compensation Claims] & JAB [Joint Appeals Board] files, and Personnel Administration Manual (PAM), specially chapter 8.5.4; 8.5.5, and 8.5.10 issued on first July 1981 from UNICEF/Dhaka, UNICEF Headquarters, N.Y. and Appendix-'D' to the Staff Rules (relevant: Section 1 and Section 2 etc.) regarding misnomer of Chronic disease alleged by the Respondent.

(b)The decision which the Applicant, [is] contesting and whose rescission he is requesting under article 9, paragraph 1 of the Statute:

The Applicant is contesting (through review under article 12 of the Statute) the decision of the United Nations Joint Appeals Board in the matter of his two appeals before the said Board, that is appeal No.82-55 (First Appeal) and 83-12 (Second Appeal).

And

The Applicant prayed (through this review application) for rescission of the decision of the UNICEF/Dhaka for that matter UNICEF/New York and or the Hon'ble U.N. Secretary-General for non-payment of medical evacuation expenses of the Petitioner for a total amount of U.S. Dollars 5,429.92; the outstanding medical expenses as per the said two Appeals and as a result of revised computation of the medical evacuation expenses of the Petitioner as a result of the approval of the medical evacuation of the Petitioner during the pendency of the said two appeals ...

(c)The obligation which the Applicant is involving [sic] and whose specific performance he is requesting under article 9, paragraph 1 and article 12 of the Statute.

The Applicant is involving[sic] specific performance of the UNICEF/Dhaka for that matter UNICEF/ New York and/ or the Hon'ble U.N. Secretary-General for not paying the medical evacuation expenses of the Petitioner for U.S. Dollars 5,429.92 as per the two appeals as stated herein above in paragraph (a) and (b).

(d)In addition to the obligation for U.S. Dollars 5,429.92, payable to the Petitioner (through this review petition) he hereby prays for 9,500.00 U.S. Dollars for the loss of movable (Golden ornaments and other valuable properties) and immovable property to meet the medical evacuation expenses of the Applicant in India (Vellore, Madras, India).

(e)The Applicant prays (through the review petition) that his medical treatment immediately be continued by the Christian Medical College Hospital at Vellore, Madras, India so that he may [come] back to his normal duties as an normal employee of the UNICEF/Dhaka and the Applicant further prays (through this review petition) for any other relief or reliefs in accordance with the rules and regulations of the UNICEF (UNO) or equity and good conscience of the Hon'ble Tribunal."

Whereas the Respondent filed his answer on 14 August 1987;

Whereas on 24 September 1987, the presiding member of the panel ruled that no oral proceedings would be held in the case;

Whereas on 29 September 1987, the Applicant requested the Tribunal to adjourn the case until the negative ruling on oral proceedings by the presiding member of the panel was examined by the Committee on Applications for Review of Administrative Tribunal judgements;

Whereas the Applicant filed written observations on 8 October 1987;

Whereas on 21 October 1987, the Executive Secretary of the Tribunal informed the Applicant that the Tribunal had rejected his request to adjourn the case;

Whereas the facts of the case have been set forth in Judgement No. 374 rendered by the Tribunal on 5 November 1986;

Whereas the Applicant's principal contentions are:

1. When the Tribunal considered Judgement No. 374, neither the Applicant nor the Tribunal could foresee the remarks made by the Committee on Applications for Review of Administrative Tribunal Judgements, namely that various members of the Committee were of the view that the manner in which the Respondent had handled the Applicant's case suggested that the Respondent should take further remedial action.

2. The Tribunal's failure to hold oral proceedings to enable the Applicant's Counsel to present his case, placed the Applicant in a disadvantageous situation with respect to the Respondent and did not enable the Tribunal to arrive at a correct decision.

3. The Tribunal did not consider the fact that Chapter 8.5.4, 8.5.5 and 8.5.10 of the UNICEF Personnel Manual issued on 1 July 1981 are applicable to his case.

Whereas the Respondent's principal contentions are:

1. Observations of various members of the Committee on Applications for Review of Administrative Tribunal Judgements do not constitute new facts justifying revision of Judgements of the Administrative Tribunal.

2. The UNICEF Personnel Administration Manual, Chapter 8, Section 5, is not a fact previously unknown to the Applicant or the Tribunal in terms of article 12 of the UNAT Statute.

The Tribunal, having deliberated from 20 October 1987 to 5 November 1987, now pronounces the following judgement:

I. The Applicant requests revision of Judgement No. 374 of 5 November 1986, on the basis of article 12 of the Tribunal's Statute which provides, in part, 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. ..."

In his application, the Applicant relies for that purpose mainly on the observations made by various members of the Committee on Applications for Review of Administrative Tribunal Judgements, reflected in paragraph 8 of the Committee's report (A/AC.86/35) which reads as follows:

"8. In considering the application of Mr. Howlader the Committee reaffirmed that its function was confined to deciding whether there was a substantial basis for referring a question to the International Court of Justice for an advisory opinion. Nevertheless, various members were strongly of the view that the way in which Mr. Howlader's situation had been handled suggested that the Secretary-General should take such remedial action as the circumstances allowed." (emphasis added).

The Tribunal, must therefore, consider if the comments referred to in paragraph 8 of the Committee's report do constitute a newly discovered fact within the meaning of article 12 of the Tribunal's Statute.

The Applicant argues his case by stating in paragraph 2 of his explanatory statements, "that at the time of considering the said case, the Hon'[oura]ble Tribunal, nor the Applicant could foresee the observations/remarks of the Hon'[oura]ble Committee on Applications for Review of Administrative Tribunal Judgements ...".

II. The Tribunal notes first that the application presented by the Applicant to review his case by the Committee on Applications for Review of Administrative Tribunal Judgements under article 11 of the Statute of the Tribunal has been rejected by a decision without a vote of the said Committee.

The Committee did not find a substantial basis for the application and concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 374 delivered by the United Nations Administrative Tribunal in the case of Howlader against the Secretary-General of the United Nations.

The Tribunal considers that by this decision, the Committee had unquestionably exhausted its functions in respect of the cited judgement.

With regard to the comments of various members of the Committee, referred to in paragraph 8 of the Committee's report, they are in the opinion of the Tribunal, individual views which could not be considered as facts within the meaning of article 12 of the Tribunal's Statute.

III. With regard to the Applicant's second allegation that the Tribunal did not consider the application of Chapter 8.5.4, 8.5.5 and 8.5.10 of the UNICEF Personnel Manual issued on 1 July 1981, the

Tribunal observes that it was well aware of the position of the Applicant in this regard and had decided the issue in its Judgement No. 374. The Applicant does not put forward any new fact that was unknown to the Tribunal when the judgement was rendered.

IV. With regard to other grounds for requesting the revision of Judgement No. 374 under article 12 of the Tribunal's Statute, the Applicant mentions the following:

(A) The failure of the Tribunal to hold oral proceedings so as to enable him to present his case, which provided an advantage to the Respondent who had access or representation before the Tribunal.

The Tribunal notes that the Respondent did not appear before the Tribunal but simply presented a written answer to the pleas submitted by the Applicant. The equality of the two parties in the procedure before the Tribunal has therefore been respected.

With regard to the oral proceedings, in accordance with article 15 of the Rules of the Administrative Tribunal, these are held "if the presiding member so decides or if either party so requests and the presiding member agrees". In this case, the presiding member did not consider it necessary to hold oral hearings. In any event the arguments put forward by the Applicant in respect of the oral proceedings are irrelevant under article 12.

(B) With regard to his pleas under (b), (c), (d) and (e) of his application, the Tribunal considers that these pleas have already been considered and decided upon in its Judgement No. 374 and do not refer to any new fact. The Applicant cannot bring this case back for a second round of litigation.

V. The Tribunal concludes that the Applicant has failed to establish, within the meaning of article 12 of the Statute of the Tribunal, the existence of any new fact unknown to him or to the Tribunal at the time the judgement was rendered, far less a fact of decisive nature so as to warrant a request for revision under article 12 of the Tribunal's Statute.

VI. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Endre USTOR
Member

Ahmed OSMAN
Member

New York, 5 November 1987

R. Maria VICIEN-MILBURN
Executive Secretary