



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1375

Case No. 1331

Against: The United Nations
Joint Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Ms. Jacqueline R. Scott, First Vice-President, presiding; Mr. Dayendra Sena Wijewardane,
Second Vice-President; Ms. Brigitte Stern;

Whereas, on 18 November 2005, a participant in the United Nations Joint Staff Pension Fund (hereinafter UNJSPF or the Fund), filed an Application in which he requested, in accordance with article 12 of the Statute of the Tribunal, revision and interpretation of Judgement No. 1243, rendered by the Tribunal on 22 July 2005;

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

“1. To clarify and interpret its Judgement No. 1243 ... in ... several aspects ...

...

2. [and to] revise its Judgement by reason of decisive errors contained therein, so as to accept jurisdiction and receivability of [his] original [A]pplication ... and to declare [his] original [A]pplication to the Pension Board not time-barred [and consequently to grant] all his original pleas in full.”

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 30 June 2006;

Whereas the Respondent filed his Answer on 29 June 2006;

Whereas the Applicant filed Written Observations on 5 December 2006;

Whereas the facts in the case were set forth in Judgement No. 1243.

Whereas the Applicant's principal contentions are:

1. The Tribunal is requested to clarify and interpret several aspects of Judgement No. 1243.
2. The Tribunal is requested to revise its Judgement by reason of decisive factual errors contained therein, so as to accept jurisdiction and receivability of the Applicant's original Application before the Tribunal, and to declare his original Application not time-barred.

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. 1243 was rendered and, accordingly, his request for revision of Judgement is without merit.

The Tribunal, having deliberated from 22 April to 2 May 2008, now pronounces the following Judgement:

I. The Applicant comes before the Tribunal, asking it to "clarify and interpret" as well as to "revise" its Judgement No. 1243, which was decided by the Tribunal on 22 July 2005, in which the Tribunal found the Application time-barred. The Applicant disagreed with the findings and conclusions of the Tribunal and now seeks a review of that decision.

II. In case No. 1331, which resulted in Judgement No. 1243, the Applicant sought review of a decision by the United Nations Joint Staff Pension Board (UNJSPB) to calculate his pension benefits in accordance with article 28 of the UNJSPF regulations, as amended and as in effect for staff members who entered into service after 1983. The Applicant challenged the calculation, alleging that his benefits should have been calculated in accordance with the pre-1983 formula of benefit calculations under article 28. Specifically, the Applicant argued that the General Assembly's amendment of article 28 violated the equality principle of Article 8 of the United Nations Charter, in that the rates of accumulation for calculating retirement benefits under the amended language of article 28 "constituted impermissible discrimination on the grounds of age, benefiting staff members who joined the Organization at a younger age".

III. In Judgement No. 1243, the Tribunal determined, inter alia, that the Applicant's claim was not receivable, *ratione temporis* or *ratione materiae*. In the first instance, the Applicant waited six years to challenge the decision of the UNJSPB. As this was not within the 90-day period specified in Section K of the UNJSPF Administrative Rules - which provides the procedure to be followed by a pension fund participant challenging a decision of the UNJSPB - the Applicant's challenge was thus time-barred at the level of review by the Standing Committee of the UNJSPB. In addition, the Tribunal found the Applicant's challenge to the application of post-1983 article 28 on the basis that it violated Article 8 of the Charter was not receivable because it did not fall within the jurisdiction of the Tribunal. As the Tribunal noted "[w]hilst the Tribunal has power to decide on its own competence, it would be very hesitant to claim jurisdiction when the issue at hand involves the challenge to the legitimacy of a regulation, which

had been adopted by the General Assembly”. According to the Tribunal, this would have expanded its powers beyond what is permitted by article 2 of its Statute.

IV. Notwithstanding the Tribunal’s rejection of the Applicant’s case as non-receivable, the Tribunal felt compelled to address the merits of his case, in order to prevent others, similarly situated, from using the resources of the internal justice system to bring a meritless claim such as the Applicant’s, within the time limits of Section K. In that regard, the Tribunal found that the Applicant misconstrued the “meaning, purpose and intent of the equality of treatment provision contained in Article 8 of the Charter of the United Nations”. Specifically, the Tribunal noted:

“Article 8 of the Charter of the United Nations reads as follows: ‘The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal or subsidiary organs’. This stricture does not mean that all staff members should be paid the same without reference to qualifications, experience, duties, responsibilities or other such matters. ... What is prohibited by the said Article is invidious or arbitrarily unfair discrimination of a sort where those selected for disadvantage are selected on abhorrent or impermissible criteria, so that the person who claims that he has suffered impermissible discrimination can demonstrate that the selection process cannot be justified on rational or acceptable grounds.”

In particular, where the General Assembly altered the regulation so that all persons contributing after 1 January 1983 were to be treated similarly, this new regime did not contravene the equality provisions set forth in Article 8 of the Charter of the United Nations:

“What is meant by equality of treatment is that persons in similar situations should be treated alike. As stated in Judgement No. 268, *Mendez* (1981), ‘[t]he principle of equality means that those in like case should be treated alike, and that those who are not in like case should not be treated alike’. (See also Judgement No. 1221, *Sharma* (2004).)”

V. In the instant case, the Applicant seeks clarification and interpretation of Judgement No. 1243, as well as revision of said Judgement. In the case of a request for revision, article 12 of the Statute of the Tribunal is the sole authority governing such requests. Article 12 provides:

“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”.

Article 12 is rigorously applied. As the Tribunal held in Judgement No. 303, *Panis* (1983), “[t]he standards contained in article 12 are ... relatively strict and lay a substantial burden upon a party who requests revision”.

VI. With respect to requests for clarification or interpretation of judgement, 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).)

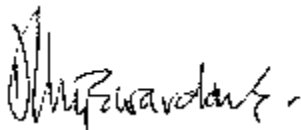
VII. In the instant case, the Applicant’s requests fail to meet the statutory and jurisprudential requirements for either revision or interpretation. In the matter of the request for revision, the Applicant has failed to assert the existence of any new fact, let alone one that would, if known at the time of the Judgement, influence or change the outcome of the dispute, as reflected in the Judgement. In the case of the request for clarification and interpretation, again, the Applicant falls short. The language of Judgement No. 1243 is clear and unambiguous, and reasonable minds could not differ as to its meaning. In reality, the Applicant’s requests are merely a guise to seek another chance to litigate his claim, as he does not agree with the decision previously reached by the Tribunal. However, the Tribunal has repeatedly held that it has “no jurisdiction to re-open cases in which judgement has been rendered based on mere bald assertions ... that the original Judgements were works of incompetence and were wrong”. (See Judgement No. 896, *Baccouche* (1998).)

VIII. For the reasons stated herein, the Tribunal rejects the Applicant’s claim in its entirety.

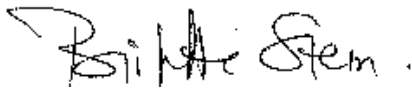
(Signatures)



Jacqueline R. **Scott**
First Vice-President



Dayendra Sena **Wijewardane**
Second Vice-President



Brigitte **Stern**
Member

New York, 2 May 2008



Maritza **Struyvenberg**
Executive Secretary