



Administrative Tribunal

Distr. Limited
31 May 2008

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1378

Case No. 1345

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Ms. Jacqueline R. Scott, First Vice-President; Mr. Dayendra Sena Wijewardane, Second Vice-President;

Whereas, on 14 September 2006, a former staff member of the United Nations, filed an Application in which he requested, in accordance with article 12 of the Statute of the Tribunal, revision of Judgement No. 1262, rendered by the Tribunal on 23 November 2005;

Whereas the Application contains pleas which read, inter alia, as follows:

“5. The Tribunal took into account only exculpatory evidence, when overwhelming evidence of mitigating circumstances had been adduced.

...

31. [The Applicant] requests a reduction in [the] sentence meted out [to him,] payment of any sum which the Tribunal deems fit and, if possible, to be reinstated with a reduction in rank.”

Whereas the Respondent filed his Answer on 1 November 2006;

Whereas the Applicant filed Written Observations on 22 December 2006;

Whereas the facts in the case were set forth in Judgement No. 1262.

Whereas the Applicant’s principal contentions are:

1. The sanction imposed on him was disproportionate as, before the actual commission of the offence, he had a change of mind.

2. The mitigating factors in this case were not properly presented in the original Application and, therefore, not duly considered by the Tribunal.

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. 1262 was rendered and, accordingly, his request for revision of Judgement is without merit.

The Tribunal, having deliberated from 23 April to 2 May 2008, now pronounces the following Judgement:

I. In Judgement No. 1262, the Tribunal rejected in its entirety an Application made by the Applicant who had been summarily dismissed from his post for serious misconduct. The dismissal was based on two grounds: one, that the Applicant had conspired with another staff member to violate the laws of a Member State by illegally bringing into the country in which he was serving, a foreigner under a false passport; and, two, that the Applicant falsified and submitted to the Administration documentation relating to the mother of his son, with fraudulent intent. In rejecting the Application the Tribunal, inter alia, stated as follows:

“No Administration, especially one with the importance and prestige of the leading international organization of the world, the United Nations, would like to count among its personnel staff members who forge passports and then produce them to the Administration, regardless of the reason for or the effects of such action. For this reason and based on this charge alone, the Tribunal would find that the Secretary-General's decision was a valid exercise of his discretionary authority in disciplinary cases.”

II. Nonetheless, the Applicant now submits that the sanction imposed on him was disproportionate to the offences and once again seeks relief. His contention is that there are mitigating factors and that these were not adequately presented by his then Counsel to the Tribunal when his case was considered in 2005. The Applicant is fully aware that the only basis for his current Application is article 12 of the Tribunal's Statute, which reads 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. 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.”

It is clear even to the Applicant himself that the Application he is making is not one that remotely falls within the provisions of article 12 and, indeed, he frankly admits that. “In our instant Application”, he states, “we

are not relying on the discovery of new facts". He recognizes that the "thrust of the issues raised in [this] Application [is] that the punishment imposed ... was excessive and out of proportion to the dimension of his offence". The Applicant would like to see himself reinstated in his job, albeit at a lower rank. The Tribunal has only to state his position to show the unsustainability and hopelessness of this Application. It is a blatant request to reopen the merits of his case - as the Applicant puts it, to "take a fresh look". In Judgment No. 1164, *Al-Ansari* (2004), the Tribunal reiterated Judgment No. 894, *Mansour* (1998), where it held that, "[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". In the same Judgment, it continued to state that

"[t]he Applications in these cases are, in reality, a restatement of the claims originally asserted by the Applicants. No one should believe that a mere restatement of claims, even though made in new language and with changed emphasis, can be a basis for the revision of a judgement made by the Tribunal. As stated in Judgment No. 556, *Coulibaly* (1992), a revision is not a means of reopening issues that have been settled definitively and which are thus *res judicata*."

III. Accordingly, the Application is rejected in its entirety.

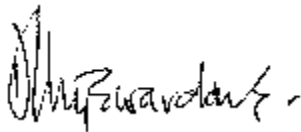
(Signatures)



Spyridon **Flogaitis**
President



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



Dayendra Sena **Wijewardane**
Second Vice-President

New York, 2 May 2008



Maritza **Struyvenberg**
Executive Secretary