

## SEVENTY-SEVENTH SESSION

### *In re* EL MAHJOUB (No. 3)

#### (Application for review)

#### Judgment 1348

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by Mr. Mohamed El Mahjoub on 9 March 1994 for review of Judgment 1325;

Considering Articles II, paragraph 1, and VI, paragraph 1, of the Statute of the Tribunal, Article 8(3) of the Rules of Court as in force at the date of the filing of the application and Article 7(2) of the Rules of the Tribunal as in force since 1 May 1994;

Having examined the written submissions;

#### CONSIDERATIONS:

1. As is recounted in Judgments 1213 and 1325, which dismissed his first two complaints, the complainant joined the staff of the International Labour Organisation in Geneva in 1985. In 1991 he was stationed at headquarters and held a fixed-term appointment which was to expire on 31 December of that year. After some correspondence the ILO offered him transfer to Tunis under a two-year contract. He lodged his first complaint on 17 January 1992 asking the Tribunal, among other things, to quash the transfer. The outcome of that complaint was Judgment 1213 of 10 February 1993: the Tribunal held that the Organisation had properly treated him as having refused the offer of transfer to Tunis and it dismissed all his claims.
2. The Organisation had given him notice on 31 October 1991 that his fixed-term appointment would expire at the scheduled date, 31 December 1991. He filed a second complaint on 19 April 1993 asking the Tribunal to quash the "unlawful actions" of the Organisation blocking his salary since January 1992, when, he said, he had been on sick leave, and forcing him out of his office in July/August 1992 and to award him damages in an amount corresponding to his "salaries" from 1 January 1992 up to the date of reinstatement and "for the period subsequent to the date of the Tribunal's judgment".
3. None of those claims could succeed unless the decision not to extend the complainant's appointment was quashed. In Judgment 1325 of 31 January 1994 the Tribunal held that his second complaint was devoid of merit and that that decision was the direct consequence of the refusal of transfer, which it had referred to in Judgment 1213 and which was therefore *res judicata*. In this, his third complaint, he is seeking review of Judgment 1325 on two grounds.
4. First, he contends that because he "did not submit any objections or appeal against" Judgment 1213, the *res judicata* rule did not operate to bar his second complaint.
5. He is mistaken. Judgment 1213 was "final" within the terms of Article VI(1) of the Tribunal's Statute: it determined that the Organisation had acted properly both in offering him transfer to Tunis and in treating him as having refused it. On those points his case was *res judicata*.
6. He then argues that his second complaint was based on a new decision by the Organisation, set out in the letter that the Director of the Personnel Department wrote him on 28 January 1993, (a) to withhold his salary for a period in which he was, he says, on sick leave, from 12 December 1991 to 1 March 1992, and for "the following months" and (b) to prevent him from doing his work.
7. Although he had raised the question of sick leave in correspondence with the Organisation, he made no claim on that score in his second complaint. So he may not seek review of Judgment 1325 in respect of the matter.
8. His other claims are identical to those the Tribunal took up and dismissed in Judgment 1325. He has not pleaded any of the grounds on which an application for review will be entertained and which are set out, for example, in

Judgments 442 (in re de Villegas No. 4) and 704 (in re Verron No. 2).

9. The Tribunal will therefore summarily dismiss his application as being clearly irreceivable and devoid of merit within the meaning of both Article 8(3) of the Rules of Court as in force at the date of filing and of Article 7(2) of the Rules as in force since 1 May 1994.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 13 July 1994.

William Douglas  
Mella Carroll  
Mark Fernando  
A.B. Gardner