

**K. (No. 7)**

*v.*

**EPO**

(Application for review)

**120th Session**

**Judgment No. 3479**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3273 filed by Mr T. K. on 26 April 2014;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

**CONSIDERATIONS**

1. The complainant requests review of Judgment 3273, in which the Tribunal dismissed his second complaint challenging the reclassification of his post of Brand Manager in grade group B5/B1 rather than in grade group B6/B4. The reclassification exercise was initiated on the basis of an Administrative Council decision CA/D 11/98, which introduced a new career system for categories B and C employees of the EPO with effect from 1 January 1999. The process involved the evaluation of posts and a subsequent harmonization exercise which ended in June/July 2004. The complainant claimed that the reclassification process was flawed.

2. It is well settled that the Tribunal's judgments are final and may only be reviewed in exceptional circumstances and on the grounds of failure to take account of particular facts, a mistaken finding of fact that involves no exercise of judgment, omission to rule on a claim or the discovery of some new fact which the complainant was unable to invoke in time in the earlier proceedings (see, for example, Judgment 3379, under 1).

3. In his grounds for review of Judgment 3273, the complainant states that he has, over a long period, repeatedly requested the EPO to produce concrete evidence as to his "administrative status" and the fact that the EPO had followed proper procedures but the EPO has refused to produce such evidence. He states that, on the other hand, he has produced clear evidence and reasoning and cited appropriate rules to show that the EPO had not followed its procedural obligations. In the complainant's view, the Tribunal "has not given proper weight to the lack of evidence by the defendant" and gave great credence to mere assertions by the EPO that have not been proven nor properly demonstrated.

4. The Tribunal considers that in the application for review, the complainant is merely requesting a reassessment of the evidence which the Tribunal considered and weighed in Judgment 3273. Moreover, the Internal Appeals Committee (IAC) gave detailed and dispassionate consideration to all of the evidence presented in the complainant's internal appeal and the Tribunal considered both the majority and minority's views concerning the classification.

5. Additionally, the Tribunal adhered to the consistent principle that an evaluation or classification exercise is based on the technical judgement to be made by those whose training and experience equip them for that task, and that such a finding is subject to only limited review in which the Tribunal will not substitute its own assessment for that of the technical evaluators so long as the process was not tainted with illegality. In Judgment 3273, the Tribunal found no flaw or tainting illegality in the process. Moreover, the Tribunal considered

that, notwithstanding that the minority of the IAC found in favour of the complainant, the different findings of the majority and the minority were based on technical aspects of the evaluation and assessment, which fell within the experience, expertise and competence of those who carried out the assessment. The Tribunal further found that the methodology applied to the evaluation of the complainant's post was not tainted so as to render the evaluation arbitrary and *ad personam*, and it appeared that the EPO took reasonable steps to conduct a fair classification exercise (see Judgment 3273, under 21).

6. In the foregoing premises, the matters raised by the complainant are *res judicata* and he puts forward no legitimate ground to reopen the findings made by the Tribunal in Judgment 3273. Accordingly, the application for review must be summarily dismissed in accordance with the procedure provided for in Article 7 of the Tribunal's Rules.

#### DECISION

For the above reasons,  
The application for review is dismissed.

In witness of this judgment, adopted on 15 May 2015, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 30 June 2015.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ