

Registry's translation, the French text alone being authoritative.

FORTY-EIGHTH ORDINARY SESSION

In re VERDRAGER (No. 6)

(Fifth application for review)

Judgment No. 504

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth application for review filed by Mr. Jacques Verdrager on 25 July 1981 in the case of Verdrager versus the World Health organization (WHO) and brought into conformity with the Rules of Court on 31 July 1981, the WHO's reply of 26 October 1981, the complainant's rejoinder of 25 November and the WHO's letter of 4 December 1981 stating that it would not reply to the rejoinder;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Rules 410.1, 465.2 and 970 and Manual section II.5.195 as in force at the time of the first complaint;

Having examined the written evidence;

CONSIDERATIONS:

The general question of receivability

1. On 10 June 1976 the Director-General confirmed the decision to terminate the complainant's appointment on the grounds of his refusal of a transfer to Sri Lanka and then of a transfer to Bangladesh. The Tribunal dismissed the complaint impugning that decision in Judgment No. 325. The complainant filed four applications for review of the judgment, and the Tribunal dismissed them in Judgments Nos. 350, 400, 439 and 443. This is the fifth.

The complainant may not urge the same pleas indefinitely. In each application he may submit only those he was unable to submit before. The Tribunal will therefore consider only such of his arguments in favour of his fifth application as he was unable to submit in the first four.

The complainant's pleas

2. First he says that the Tribunal disregarded one of his claims, relating to the application of Staff Rule 970.

Whether this is a new plea is moot. There was certainly nothing to prevent him from making it in his first application. He says that he bases it on recent case law, and this suggests he regards it as new. In any event the Tribunal need not determine whether it is admissible. It will merely observe that the argument based on Staff Rule 970 affords no grounds whatever for reviewing the original judgment.

His original claims were for the quashing of the impugned decision, reinstatement, damages, oral proceedings and costs. He did refer to Staff Rule 970, but in the memorandum appended to his complaint. The argument he based on the rule was not a claim for relief, but merely a plea in support of his claims. Even if the Tribunal did not comment on the argument, it did not disregard a claim for relief. Besides, it stated that there was no need to rely on Staff Rule 970; thus it did not disregard the rule.

3. The complainant's second argument is that the Tribunal overlooked a specific fact, namely the existence of Manual section II.5.195. This argument is clearly devoid of merit, and the Tribunal need not consider whether it is admissible.

Manual section II .5.195 is a rule, not a fact in the legal sense of the term. Thus to omit reference to it would not be to overlook a fact, but possibly to commit a mistake of law. An allegation of mistake of law does not afford grounds for review. If it did any party who was dissatisfied with the Tribunal's decision might continue to question

it in disregard of the principle of *res judicata*.

4. A third argument is that the Tribunal's quotation of Staff Rules 410.1 and 465.2 was incomplete. That, in the complainant's view, is a material error, that is, as defined in the case law, a misstatement of fact not involving any appraisal.

This plea fails for the same reasons as the second. Staff Rules 410.1 and 465.2 are rules, not facts, and incomplete quotation of rules is not a misstatement of fact. At most it may amount to a mistake of law, and that constitutes no reason for review.

5. The complainant objects to the following passage in Judgment No. 325: "Nor may the complainant justify his refusal on the grounds that the post offered to him in Sri Lanka was graded P.4: it is clear that it was graded P.5 the same grade as he had held in Indonesia." In the complainant's opinion this passage contains a material error, as may be seen from the "Staff Directory 1975" and the report of the Board of Inquiry and Appeal.

The plea fails. First, it was put forward in the first application for review, is not new and is therefore not admissible in the present proceedings. Secondly, the report of the Board of Inquiry and Appeal is mentioned in the original complaint and the Staff Directory 1975 in the first application for review, and they may therefore not be relied on in the fifth application. And thirdly, in commenting on the grade of the post in Sri Lanka the Tribunal chose between conflicting views. It made, not just a finding of fact, but an appraisal of evidence on a matter in dispute, and under the case law such appraisal does not afford grounds for review.

6. In his rejoinder the complainant alleges that the Tribunal failed to take account of the deciphering of a handwritten note which in his view shows that the offer of transfer to Bangladesh was a form of reprisal.

This argument appeared in the first three applications, is not new, and is therefore inadmissible in these proceedings. Besides, the note reveals no more than the Regional Director's intention of cancelling the offer of transfer to Sri Lanka and substituting an offer of transfer to Bangladesh. It does not show that the first offer was factitious or that the second was necessarily made by way of reprisal. It will not in itself suffice to bear out the allegation of a "ruse". It cannot have any effect on the Tribunal's decision or provide grounds for review.

7. In his rejoinder the complainant relies on an item which he regards as the basis of the "ruse" he alleges and of which the Tribunal omitted to mention the first line.

The item is dated 10 July 1975 and headed "SEARO Mail Poll 508/775". The complainant relied on it in his first, third and fourth applications and he may not do so in his fifth.

Besides, it is immaterial. First, it relates to the post in Bangladesh, the grade of which is not mentioned in Judgment No. 325. Secondly, while it states that the Bangladesh post was graded P.4, it does not prove that the WHO intended to give the complainant that grade in Bangladesh. In fact the Regional Director proposed in a telegram of 25 July 1975 assigning the complainant to a P.5 Post in that country.

8. Lastly, the complainant accuses the Director-General of complicity and dishonesty. These accusations rest on facts of which he was in any event aware when he made his first application for review and they cannot now constitute an admissible plea for review.

The Tribunal's decision

9. It appears from the foregoing that, like the earlier applications, this too must fail.

The Tribunal believes that it has fully explained its reasons for rejecting the pleas for review the complainant has already submitted. If he makes any further application which is based on the same pleas, it will simply be dismissed as *res judicata*.

DECISION:

For the above reasons,

The application for review is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice- President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 3 June 1982.

(Signed)

André Grisel

J. Ducoux

Devlin

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.