

**SEVENTIETH SESSION**

***In re* LARIBI (No. 4)**

**(Application for review)**

**Judgment 1060**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 1003 filed by Mr. Ahmed Abdelkader Laribi on 22 February 1990 and the letter which the Registrar of the Tribunal sent on 27 February to the African Training and Research Centre in Administration for Development (CAFRAD) inviting it to file a reply in accordance with Article 8(2) of the Rules of Court, which the Centre received on 6 March and which it failed to answer notwithstanding the Registrar's letter of reminder of 18 April 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 4.2(a) and (b) and 10.1 to 10.9 of the Staff Regulations of the Centre;

Having examined the written evidence;

**CONSIDERATIONS:**

1. This is an application for review of Judgment 1003 of 23 January 1990. The Tribunal thereby declared irreceivable the complainant's second complaint seeking the quashing of a decision of 20 October 1988 to dismiss him. It held that there was no cause of action because the dismissal had been replaced by a reprimand before the filing of the complaint.

2. Judgment 1059 delivered on this day on the complainant's third complaint sets out the grounds for review that are admissible in exceptional circumstances.

In support of this application the complainant has four pleas: a material error, his discovery of new facts, the disregard of particular facts and failure to rule on his claims.

3. In his submission the material error lay in holding that the decision of 20 October 1988 was not final: in fact the Tunisian agency for technical co-operation had notified it for immediate effect.

The plea is inadmissible. Besides being irrelevant it alleges, not a material error, but a mistake in determining the purport of the decision of 20 October 1988. As Judgment 1059 states under 2, such mistake of law does not constitute admissible grounds for review.

The complainant makes out that it was a decision of 22 September 1988 that he meant to challenge, not the one of 20 October. That that is untrue is plain from the wording of his complaint of 8 March 1989 and his rejoinder of 29 June 1989.

4. Secondly, he says he has found new facts: the Tunisian agency notified to him on 9 December 1988 the Director-General's letter to it of 20 October 1988 and failed to answer his requests for a copy of that letter.

It is hard to see any new fact in the Agency's failure to answer. As for the minutes which the Director-General wrote on 22 December 1989 and 10 January 1990 and which cited his statement in his second complaint that he intended to resign, they are not new facts either. He knew of them before Judgment 1003 was published. Besides, they have no bearing whatever on the receivability of that complaint.

5. Thirdly, he is mistaken in alleging disregard of material facts. The "fact" he says was overlooked is CAFRAD's failure to apply the arrangements for extending appointments in Articles 4.2(a) and (b) of the Staff Regulations and

for termination in 10.1 to 10.9. But what he is really alleging is not disregard of a fact but misunderstanding of the rules. Even supposing there had been such a mistake of law it would not afford proper grounds for review.

In any event, that the letter of 20 October 1988 was not sent to him directly but to the Agency he was on secondment from makes no difference to the Tribunal's ruling, which was that replacing the dismissal with the reprimand took away the cause of action. He makes out that the replacement did not dispose of the dismissal and that his career has suffered. That is not borne out by any evidence. In any event none of his objections to the grounds of the judgment affords any admissible grounds for review of the Tribunal's ruling on receivability.

6. Lastly, his contention that the Tribunal failed to rule on his claims betrays misunderstanding about what irreceivability means. When a complaint is declared irreceivable for want of a cause of action there is no need to rule on the merits. His plea is misconceived.

7. The Tribunal will not go into his arguments in detail. They are beside the point, repetitive and superfluous. His application is an idle attempt at challenging a ruling that has the authority of *res judicata*.

#### DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Tun Mohamed Suffian, Vice- President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

(Signed)

Mohamed Suffian  
Mella Carroll  
E. Razafindralambo  
A.B. Gardner