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

NINETY-FIFTH SESSION

(Application for review) **Judgment No. 2219**

The Administrative Tribunal,

Considering the application for review of Judgment 2113 filed by Mr A. B. on 12 June 2002 and corrected on 11 July, the reply of 28 October from the International Atomic Energy Agency (IAEA), the complainant's rejoinder of 10 December 2002 and the Agency's surrejoinder of 20 January 2003;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment 2113, delivered on 30 January 2002, the Tribunal dismissed the initial complaint filed by the complainant, a former P.3-grade official of the IAEA, against the decision of the Director General of the IAEA not to reclassify his post to grade P.4 nor to provide financial relief for the injuries he claimed to have incurred in the course of his career. The complainant requests a review of this judgment, on the grounds that the Tribunal overlooked essential facts, failed to rule on some of his "claims" and made several mistakes. He also cites a new fact which might affect the Tribunal's settlement of the dispute.

2. Consistent precedent has it that the Tribunal's judgments are final and that they carry the authority of *res judicata*. It is only quite exceptionally that an application for review may be allowed, even though that procedure is not provided for in the Statute of the Tribunal. The only grounds which may be admissible are failure to take account of particular facts, a mistaken finding of fact that involves no exercise of judgment, omission to rule on a claim and the discovery of some new facts which the complainant was unable to invoke in time in the proceedings leading to the judgment which the complainant is seeking to reverse. The application for review should also be filed within a reasonable time and the pleas put forward should be of such a nature as to affect the original ruling.

3. While both the complainant and the defendant are aware of this line of precedent, they disagree regarding its application in the present case.

4. The Agency contends that the application for review is irreceivable on the grounds that it was submitted more than five months after the judgment was delivered. According to the Agency, this does not constitute a "reasonable" time within the meaning of the case law referred to in Judgment 1952. The Tribunal on occasion has ruled on applications for review filed more than six months after the impugned judgment was delivered, and even though it is aware of the need to avoid going back on legal situations arising from its decisions, it may consider an application to be receivable when it is submitted nearly six months after a judgment has been delivered, as in the present case. If vital evidence were to come to light, for instance, a judgment could be reviewed even after a greater period of time has elapsed.

5. It is clear, however, that the pleas put forward in exceptional proceedings such as an application for review must be admissible grounds for review, which they are not in the present case.

6. Firstly, the complainant submits that the Tribunal committed a factual error in its interpretation of the reasons he had put forward in favour of the reclassification of his post by the Agency. On this point, however, the Tribunal

merely commented that the good quality of the services rendered by the complainant, which is not in fact denied by the Agency, was immaterial to the grading of his post, as admitted by the complainant, so that this finding may in no way be considered to be materially incorrect.

Furthermore, the Tribunal did not omit to take account of the fact that on two occasions it had been recommended to upgrade the complainant's post to P.4 level. The impugned judgment precisely mentions that, according to the complainant, his supervisors had acknowledged several times in the course of his career that he performed P.4-level duties, but the Tribunal found no flaws in the classification procedure. The Tribunal also made it clear that the complainant could not challenge decisions taken throughout his career when appealing against the refusal to upgrade his post in 1999.

7. Secondly, the complainant objects that the Tribunal failed to rule on some of his "claims". Regarding the flaws which, according to the complainant, appeared in the Joint Appeals Board's report, the Tribunal expressed its opinion in consideration 8 of its judgment; it could not now reconsider its earlier appraisal without infringing the principle of *res judicata*. Similarly, while the complainant maintains that the findings of a job evaluation study carried out in 1998 by the Department of Technical Co-operation were illegally applied to his case and that the Agency failed to observe the proper procedure, he cannot challenge the Tribunal's appraisal in that respect, since the latter committed no factual error, took due account of the facts of the case and gave a ruling on the claims submitted. It may be recalled that the absence of a ruling on certain pleas of the parties does not constitute a valid ground for review of a judgment.

8. Thirdly, while the complainant again objects that a number of documents were not disclosed to him, the Tribunal has already addressed that contention. The complainant adds that with its surrejoinder on his first complaint the defendant's submission of a document entitled the "Protection of Personnel Confidential Information" issued on 1 January 2000, that is, subsequent to the filing of his internal appeal and his departure from the organisation, constitutes a new fact justifying his request that the Tribunal reconsider its decision on the merits. It emerges from the file, however, that these provisions of the Administrative Manual concerning the protection of personnel information, of which the complainant maintains he was unaware, date back to 1987 and that the amendments introduced on 1 January 2000 are immaterial to the complainant's objection. As for the memorandum dated 6 February 1990, of which the complainant would have liked to have been informed, the plea in that respect does not concern a new fact which may be taken into account by the Tribunal, being only a repetition of arguments already dismissed in consideration 12 of its judgment.

9. It follows that none of the grounds for review submitted in the application justifies a reconsideration of the Tribunal's ruling.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 9 May 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 16 July 2003.

(Signed)

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 23 July 2003.