

SIXTY-NINTH SESSION

In re MARSAULT (No. 2)

(Application for review)

Judgment 1036

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 917 filed by Miss Denise Marcelle Antoinette Marsault on 11 September 1989, the reply of 23 October from the Food and Agriculture Organization of the United Nations (FAO), the complainant's rejoinder of 18 November and the FAO's surrejoinder of 22 December 1989;

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

Having examined the written evidence;

CONSIDERATIONS:

1. In her original complaint the complainant sought material and moral damages on the grounds of the FAO's wilful breach of the Staff Regulations and Rules and its demeaning treatment of her over a period of ten years.
2. In Judgment 917 the Tribunal found that the complainant had failed to identify any decision of the Organization's which constituted breach of her contract of appointment or of the Staff Regulations and Staff Rules and which caused her injury. It found no evidence to suggest that she had been promised an appointment to the Professional category or had in any way been discriminated against or humiliated, or that any abnormal impediment had been put in the way of her career, or that there was any breach of the principles of the international civil service.
3. The complainant seeks revision of Judgment 917 on three grounds:
 - (1) omission to take account of certain facts;
 - (2) material errors leading to the wrong conclusion; and
 - (3) failure to rule on a claim.
4. The admissible grounds for review being limited, the Tribunal will entertain an application only in exceptional cases. The grounds are stated in Judgment 442 (*in re de Villegas* No. 4). The points that are relevant to this case are that, whereas an alleged omission to take account of a particular fact is an admissible plea in favour of review, an alleged misappraisal of the facts is not. Another inadmissible ground is an alleged mistake of law. Furthermore, an application based on the admission of new evidence may be entertained provided that the complainant discovered that evidence too late to be able to cite it in the original pleadings and provided that it is relevant.
5. The complainant cites examples of documents and facts which she believes that Judgment 917 did not take into account. Insofar as the facts were mentioned and the documents were included in the original pleadings it is not correct to say that they were not taken into account. The Tribunal had to review the entire case records and reach a decision on evaluation of the evidence. It did so by finding that the complainant had not proved her case. She does not substantiate her contention that the Tribunal failed to take those facts and documents into account. What she is saying in effect is that it should have come to a different conclusion on the evidence before it. Her plea fails.
6. She has also submitted seven additional documents which she did not include in her original pleadings. The allegedly "new" documents were all in existence before she lodged her original complaint and she does not explain why she failed to cite them earlier. They are therefore inadmissible, and it is not necessary to rule on whether they are relevant.
7. Another argument the complainant puts forward is that there are material errors in the judgment. She identifies

an allegedly false plea in the Organization's pleadings and maintains that it misled the Tribunal. What the Tribunal held was that she had no right in law to obtain entitlement to a Professional category post. The error she alleges is that FAO rules provide for making good the lack of a university degree with proper experience and she therefore did qualify in law for such a post.

That is an alleged mistake of law and not of fact. Since an alleged mistake of law does not constitute admissible grounds for review, the plea again fails.

8. Lastly, the complainant says that the Tribunal did not rule on her claim to damages for "psychological" injury. The case law recognises no special head of damages of that kind: damages may be either for material or for moral injury. Judgment 917 referred, under 2, to the complainant's claim to an award of 50,000 United States dollars in damages for material and moral injury, and it rejected it, under 3, on the grounds that there was no breach of the terms of her appointment or of the regulations and rules. It rejected, under 7, her further claim relating to her career. It is therefore not correct to say that the Tribunal failed to rule on her claim to damages for psychological injury.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 26 June 1990.

Jacques Ducoux
Mella Carroll
William Douglas
A.B. Gardner