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

SEVENTIETH SESSION

In re LARIBI (No. 3)

(Application for review)

Judgment 1059

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 1002 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 Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 9.3 of the Staff Regulations of the Centre;

Having examined the written evidence;

CONSIDERATIONS:

1. In his first complaint the complainant impugned a decision the Director-General of CAFRAD had taken on 14 September 1988 to regrade him P.1, step 9, as from 1 July 1988. Judgment 1002 of 23 January 1990 declared that complaint irreceivable on the grounds that he had lodged no "written appeal" within the meaning of Article 9.3 of the Staff Regulations, had failed to exhaust the internal means of redress and was not challenging a final decision. That is the judgment of which he seeks review.

2. Judgment 442 of 14 May 1981 discussed the matter of review at some length and explained just when review would be allowed. The Tribunal's judgments carry the authority of res judicata from the date at which it delivers them. Though subject to review thereafter, they will be reviewed only in exceptional cases. Of the several pleas in favour of review that will not be entertained at all one is an alleged mistake of law. To allow an application for review on the grounds of the legal reasoning would be to let anyone who was dissatisfied with a ruling question it indefinitely in disregard of the res judicata rule. Likewise an alleged mistake in appraisal of the facts, i.e. the interpretation put on the evidence, will not be treated as admissible grounds for review.

Other pleas may be allowed if they are such as to affect the ruling. They include an omission to take account of particular facts; a material error, i.e. a mistaken finding of fact which, unlike a mistake in appraisal of the facts, involves no exercise of judgment; an omission to pass judgment on a claim; and the discovery of a so-called "new" fact, i.e. a fact which the complainant discovered too late to cite in the original proceedings.

The complainant has three such pleas.

3. One is that there are new facts. He cites the provisions of the CAFRAD Convention on the establishment of the Centre's component bodies and on the functions of its Executive Committee, Governing Board and Director-General. He says that when someone is to be appointed to the staff the Executive Committee reports to the Governing Board and the Board conveys its decision to the Director-General for action. So whatever the Director-General does is in the nature of things a final decision and the Representative Committee, though appeal lies to it under Article 9.3 of the Staff Regulations, might therefore have been brought in only at the outset of the procedure, before the Director-General acted on the decision by Committee and Board.

The provisions of the CAFRAD Convention on the running of the Centre can scarcely be treated as a new fact since the complainant obviously did not learn about them after the Tribunal had made its ruling.

Moreover, the ruling was that the original complaint was irreceivable because the complainant had failed to appeal to the Representative Committee before impugning the decision of 14 September 1988 and so to exhaust the internal means of redress. In other words, the Tribunal was plainly appraising the evidence before it and determining when the complainant should have lodged a 9.3 appeal.

His plea is therefore inadmissible.

4. He further alleges a material error which consisted in confusing the Executive Committee and the Representative Committee. Such confusion would have no bearing on the ruling of irreceivability in Judgment 1002.

5. The allegation of failure to take account of particular facts is also mistaken. It rests again on the supposition that an appeal lies to the Representative Committee before the Executive Committee and the Governing Board take action and it consists in saying that to reject that supposition was to overlook an essential fact.

For the reasons given in 3 above the supposition is wrong. In fact the plea is not so much about taking account of an essential fact as about applying the material rules. The most that can be said is that the Tribunal misapplied them; but that would be to accuse it of committing a mistake of law and would not constitute admissible grounds for review.

For the same reason the allegation of a misreading of Article VII(1) and (3) of the Tribunal's own Statute is also inadmissible, besides betraying misunderstanding of the procedural rules on implied rejection of a claim.

6. There is no need to go in further detail into the complainant's repetitive and superfluous arguments. Being just a vain attempt to question Judgment 1002 in defiance of the res judicata rule, his application is clearly inadmissible.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Mr. Jacques Ducoux, 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)

Jacques Ducoux
Mella Carroll
E. Razafindralambo
A.B. Gardner

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