

EIGHTY-FIRST SESSION

***In re* PARY (No. 5)**

(Application for review)

Judgment 1545

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 1437 filed by Mr. Lazaro Pary on 29 January 1996;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS:

1. In Judgment 1437 of 6 July 1995 the Tribunal dismissed the third complaint by Mr. Pary against the World Intellectual Property Organization (WIPO). His chief claim therein was to the quashing of a decision the Director General had taken on 23 September 1993 to put him on a post for a messenger and driver but which was revised on 29 April 1994 to confine his duties to mere messenger. He had also sought transfer to a post on a par with one he had had earlier, damages for loss of earnings and awards of 60,000 Swiss francs in moral damages and 10,000 francs in costs.

2. As the Tribunal has often held, its judgments carry the force of *res judicata* and are not subject to appeal. Only in exceptional cases may it review them. Application for review is an extraordinary remedy that is not to be mistaken for appeal. Appeal lies only to a court of higher instance that may reconsider the whole case, whereas review, as contemplated in the case law, falls to the Tribunal itself. The rules it applies to review are stated in, for example, Judgment 442 (*in re* Villegas No. 4), which limits the admissible grounds for review to the neglect of some material fact, to the discovery of a "new" one, to a material error and to failure to rule on a claim.

3. None of the complainant's pleas is admissible. All he pleads is misappraisal of the facts and of the evidence, misinterpretation or misapplication of the law, and failure to answer some of his arguments.

4. Stated in more particular terms, one of his contentions is that the Tribunal overlooked a mistake the Director General had committed in making him messenger and driver when he did not have the right sort of driving licence. The plea is worthless: Judgment 1437 addressed the matter under 4:

"... the Director General removed that formal flaw by deciding on 29 April 1994 to follow the Board's recommendation and by amending his job description. The mistake has caused him no injury because he has done only messenger work since transfer".

5. Another of his pleas rests on new facts that he places in November and December 1995. Though the discovery of a new fact may afford grounds for review, the fact must date from before the material judgment and be such as would have affected the ruling had the Tribunal known of it in time. The facts the complainant alleges are subsequent to 6 July 1995, the date of Judgment 1437. They may afford grounds for a new complaint but not for review of that judgment.

6. For the foregoing reasons the application is clearly irreceivable under Article 7 of the Tribunal's Rules.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Mr. Michel Gentot, Vice-President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 11 July 1996.

(Signed)

Michel Gentot
Julio Barberis
Egli
A.B. Gardner

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