P.

v.

WTO

(Application for review)

128th Session **Judgment No. 4199**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4022 filed by Mr D. P. on 22 December 2018 and corrected on 18 January 2019;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant applies for the review of Judgment 4022, delivered in public on 26 June 2018 on his first complaint against the World Trade Organization (WTO). In that judgment the Tribunal dismissed as unfounded his complaint against the impugned decision, dated 25 September 2015. That decision had informed him that pursuant to the Human Resources Division's new determination, which formed part of the Director-General's final decision on his recruitment status, at the time of his recruitment, in 2014, he was "resident within a radius of 75 km from the Pont du Mont-Blanc in Geneva" and had thus properly been designated as "locally recruited" pursuant to Staff Rule 103.1(a). He impugned that decision arguing that it was unlawful on two main grounds. One was that it was based on a wrong interpretation of Staff Rule 103.1(a). The second ground was that the decision violated the

principle of equality of treatment and constituted an abuse of authority, because it subjected him to unequal treatment compared to five other persons who, despite being in the same situation as the complainant when they were recruited in 2013, were designated as "internationally recruited". In his application for review the complainant asks the Tribunal to quash the Tribunal's decision in Judgment 4022 and to instruct a new panel to fully examine the case. The grounds for review are that Judgment 4022 involved an omission to rule on a claim and that it also involved a material error (a mistaken finding of fact involving no exercise of judgement).

2. Consistent precedent has it that a judgment of the Tribunal may be reviewed only in exceptional circumstances and on strictly limited grounds. The rationale for this was stated, for example, in Judgments 3815, consideration 4, and 3899, consideration 3, as follows:

> "[P]ursuant to Article VI of its Statute, the Tribunal's judgments are 'final and without appeal' and have *res judicata* authority. They may therefore be reviewed only in exceptional circumstances and on strictly limited grounds. As stated, for example, in Judgments 1178, 1507, 2059, 2158 and 2736, the only admissible grounds for review are failure to take account of material facts, a material error involving no exercise of judgement, an omission to rule on a claim, or the discovery of new facts which the complainant was unable to rely on in the original proceedings. Moreover, these pleas must be likely to have a bearing on the outcome of the case. Pleas of a mistake of law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea, on the other hand, afford no grounds for review (see, for example, Judgments 3001, under 2, 3452, under 2, and 3473, under 3)."

3. As indicated above, the complainant contends, as a first ground for review, that the Tribunal omitted to rule on a claim. His arguments on this ground may be summarized as follows: the Tribunal committed a serious omission by failing to require the WTO, as he requested, to provide information on all recruitment decisions involving the application of the so-called "precariousness test" as a basis to determine whether new staff members were designated as locally or internationally recruited. The complainant had asked the Tribunal to require the WTO to provide information on all staff members recruited since 2010. This, he stated, was in order for the Tribunal to determine

whether the Administration had an established practice that it applied uniformly to all staff members for determining whether they were locally or internationally recruited. He believed that that information would have proved the unequal treatment that he alleged to have suffered. He insists that the Tribunal should have required the WTO to provide this information and, in the event that the WTO failed to do so, the Tribunal should have drawn "adverse inferences" therefrom and thereupon dismiss the argument that the alleged established practice existed. He complains that the Tribunal "omitted this request completely in its decision, without an explanation [and that this] not only evidenced bad faith on [the] part of the WTO [...] and demonstrated clearly intended inequality of treatment, but also severely impeded [him] in contesting his recruitment status based on all relevant facts, thus denying him [a] fair consideration of his case".

This is an inadmissible ground for review, as it essentially raises an omission to rule on a plea which, according to the case law, affords no ground for review. In any event, this ground is plainly unmeritorious as, in consideration 9 of Judgment 4022, the Tribunal expressly did not grant the complainant's request for this information, among other things, because he had not shown the relevance of that information to the issues which he had raised in the complaint.

4. The complainant contends, as a second ground for review, that the Tribunal committed a material error. He submits that it made a mistaken finding of fact involving an error of judgement when it found that he was "not in the same situation in fact and in law" as the five persons whom he had cited as being designated internationally recruited, and wrongly held on that basis that the WTO had not discriminated against him or treated him unequally by designating him as locally recruited. However, this is also an inadmissible ground for review, as it essentially seeks to call into question the Tribunal's exercise of judgement in assessing the evidence. As noted above, such a plea affords no grounds for review. The complainant was correctly designated as "locally recruited" at the time when he was recruited, pursuant to Staff Rule 103.1(a), as he was then "resident within a radius of 75 km from

the Pont du Mont-Blanc in Geneva". It is noteworthy that the complainant has not challenged this finding.

5. It follows that the complainant's application does not raise any admissible ground for review of Judgment 4022. It must therefore be summarily dismissed in accordance with the procedure set out in Article 7 of the Tribunal's Rules.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 9 May 2019, Mr Giuseppe Barbagallo, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ