

FIFTY-SEVENTH ORDINARY SESSION

In re BAMBINELLI (No. 3)

(Application for review)

Judgment No. 708

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment No. 636 filed by Mr. Vincent Babinelli on 17 January 1985 and corrected on 28 February, the reply of the Pan American Health Organization (PAHO) (World Health Organization) of 11 April, the applicant's rejoinder of 22 May and the Organization's surrejoinder of 31 July 1985;

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

Having examined the written evidence;

CONSIDERATIONS:

The first ground given in the application for the review of Judgment 636 is an alleged omission to pass judgment on a claim. The material facts are that on 6 August 1982 the Director decided to reject a recommendation by a selection committee to appoint the applicant to post 3478. The reason he gave for the rejection was that, as stated in the committee's report, no candidate met the minimum requirements. He communicated his decision to the Chief of Administration. On 29 October the Director decided that a Mr. Bertran, whose post was being eliminated, should be assigned to the vacant post 3478. On 14 December 1982 the applicant was formally notified of this later decision, and on 4 March 1983 he appealed to the headquarters Board of Appeal against it. In his subsequent complaint to the Tribunal, dealt with in Judgment 636, the decision he impugned, and the only one impugned, was the decision of 29 October.

In the last sentence of Judgment 636 the Tribunal refers to the decision of 6 August as having gone "unchallenged". The applicant describes this as an important error. He asserts that his legal argument "impugned" the August decision as "arbitrary and capricious".

The applicant confuses the challenging or impugning of a decision with the criticism of it. The impugning of a decision is a procedural step which cannot be taken in argument. A decision that is not impugned cannot be quashed, but it can be criticised in argument in subsequent proceedings wherever it is relevant to do so.

The applicant asserts that the appeal was against the decision of 6 August and not against the decision of 29 October. This is incorrect, but immaterial. In his argument it was necessary for the complainant to attack both decisions and he did so. Likewise, Judgment 636 deals with both decisions. There is no foundation for the contention in the application that "the Tribunal misunderstood the centre of the appeal".

The second ground given in the application is described as "Mistaken Findings of Fact". In his argument the applicant mentions not a fact but an issue and alleges that one of his contentions was misunderstood. He does not identify any finding of fact as mistaken.

The third ground is "Mistake of Law". The applicant states correctly that "the Tribunal has specifically ruled mistake of law an inadmissible ground for review". He argues, in the words which the Tribunal used in Judgment 570, that "the principle of finality ... does not go so far as to require that errors arising from accident or inadvertence or the like can never be corrected". It is unlikely that a mistake of law would arise through accident or inadvertence. In any case in which it does arise the Tribunal will consider which principle should prevail. In the present case the applicant does not identify any statement of law in Judgment 636 which could conceivably be said to have been made through accident or inadvertence.

The fourth ground is described as "Burden of Proof". It contains an argument that the burden of proof should in certain circumstances be shifted to the Organization. The argument is obviously irrelevant to an application for review.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, the Right Honourable the Lord Devlin, 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 14 November 1985.

André Grisel

Devlin

William Douglas

A.B. Gardner