

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

## FIFTY-NINTH ORDINARY SESSION

In re DUTTA (No. 2)

(Application for review)

Judgment No. 748

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 665 filed by Mr. Vijay Kumar Dutta on 9 September 1985, the reply of the World Health Organization (WHO) of 18 October, the applicant's rejoinder of 6 January 1986 and the Organization's surrejoinder of 30 January 1986;

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

Having examined the written evidence;

### CONSIDERATIONS:

1. The complainant joined the staff of the WHO on 28 November 1968 and held fixed-term appointments. The last extension of appointment, granted in 1980 for two years, expired on 31 December 1982. On 30 September 1982 he was given notice that his appointment would terminate on 31 December in accordance with Staff Rule 1040.

In Judgment 665, which it delivered on 19 June 1985, the Tribunal held that the decision had been flawed because it took no account of the fact that between the complainant's last two performance reports he had not been given time to show he could come up to expectation. The Tribunal did not take up his other submissions. It decided against reinstatement because over two years had passed since he had left the Organization. Instead it awarded him 10,000 United States dollars in damages.

In his present application for review of Judgment 665 the complainant has a principal claim to reinstatement as from 19 January 1983 and a subsidiary one to payment of \$82,200 in damages.

2. The complainant observes in his original brief that the reason why over two years elapsed between the end of his appointment and the date of the judgment was that the internal appeal proceedings took so long. He ought, he believes, to have been reinstated.

Whether reinstatement is inadvisable is an issue of law. A mistake of law does not constitute admissible grounds for review, and the Tribunal's decision on the point, even if it was wrong, is not subject to review.

3. The complainant states that the WHO refused to provide a certificate of security clearance for the United States Embassy in New Delhi and that that prevented him from getting a contract for regular employment with the Embassy.

The alleged refusal dates from August 1985 and it is therefore a new fact subsequent to Judgment 665. But a new fact will constitute admissible grounds for an application for review only provided that (1) it would have had some effect on the Tribunal's decision and (2) the applicant was unable, for the reasons beyond his control, to rely on it in the original proceedings. Condition (1) is not fulfilled: obviously no account could have been taken in the judgment of something that happened afterwards, and the new fact is therefore not something that could have made the Tribunal change its mind in this case.

4. The rejoinder addresses criticisms to the Tribunal which are too sweeping to require any ruling. It then accuses the Tribunal of failing to elucidate all the facts and to rule on various pleas.

As is clear from precedent the absence of a ruling on issues that are not material affords no grounds for review. In Judgment 665 the Tribunal allowed the plea that too little time had passed between the complainant's two performance reports and so it held that it need not take up his other submissions. The absence of a ruling on them

does not constitute grounds for review.

5. Lastly, the complainant objects in his rejoinder to the Tribunal's decision not to give him a hearing. Judgment 665 explained why oral proceedings were unnecessary. The Tribunal thereby ruled on an issue of law and such a ruling is not subject to review.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 12 June 1986.

(Signed)

André Grisel

Jacques Ducoux

H. Gros Espiell

A.B. Gardner