

SEVENTY-NINTH SESSION

In re SAUNDERS (No. 9)

(Application for review)

Judgment 1421

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 1171 filed by Mr. Yann Harris Saunders on 29 July 1994, the reply of 26 January 1995 of the International Telecommunication Union (ITU), the complainant's rejoinder of 1 February and the ITU's letter of 8 March 1995 informing the Registrar of the Tribunal that it did not wish to enter a surrejoinder;

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

Having examined the written submissions;

CONSIDERATIONS:

1. This is an application for the review of Judgment 1171 of 15 July 1992, in which the Tribunal ruled on Mr. Saunders' sixth complaint and by which it rejected his claim to the recalculation by the ITU of the amount of his salary to be taken into account for the purpose of determining his pension rights.
2. The complainant puts forward the following pleas for review of the judgment:
 - (1) The Tribunal committed a material error in holding that the dispute on which the judgment ruled turned mainly on whether he had been promoted to grade P.2 from G.7 or G.5. The point was relevant, he says, only to his subsidiary claims for redress.
 - (2) There was also a material error in holding that "The fact that the complainant continued to be paid the P.2 [special post] allowance, shows that he was merely to discharge the duties" of a P.2 post: in fact he was performing the duties of a permanent G.7 post.
 - (3) There was a material error in holding that he had had the benefit of Rule 3.4.2c).
 - (4) There was a further material error in holding that he could not object to the fact that his pensionable remuneration had not increased.
 - (5) The Tribunal failed to take into account certain facts and therefore came to wrong conclusions.
 - (6) New facts came to light in January 1995 which showed the ITU's failure to put the complainant on an equal footing with at least two other members of its staff.
3. In Judgment 442 (in re de Villegas No. 4) the Tribunal declared that its judgments carried the authority of res judicata and would be reviewed only in exceptional circumstances. It held to be inadmissible pleas for review: allegations of a mistake of law; a mistake in the appraisal of facts; failure to admit evidence; and failure to comment on a plea submitted by one or other of the parties. Other pleas in favour of review might, the Tribunal said, be allowed if they were such as to affect its decision. They include omission to take account of particular facts; a material error, i.e. a mistaken finding of fact which, unlike a mistake in the appraisal of the facts, involved no exercise of judgment; omission to pass judgment on a claim; and the discovery of a so-called "new" fact, i.e. a fact which the complainant had discovered too late to cite in the original proceedings.
4. The allegations of material errors in (1) to (4) above cannot amount to admissible pleas within the meaning of Judgment 442 but are mere attempts to reopen issues that were resolved in Judgment 1171.
5. Plea (5) does not even identify the facts the Tribunal has allegedly failed to consider.

6. Plea (6) relates to facts which go back several years and which he has failed to show that he did not know before January 1995.

7. The complainant's present pleadings contain a mass of repetitive arguments which he put forward in the context of his sixth case. They have no place in an application for review.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Pierre Pescatore, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 6 July 1995.

William Douglas
P. Pescatore
Mark Fernando
A.B. Gardner