

**118th Session**

**Judgment No. 3392**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation and review of Judgment 3130 filed by Mr S.K. M. against the World Health Organization (WHO) on 2 August 2012;

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

Having examined the written submissions;

**CONSIDERATIONS**

1. Following the complainant's application for the post of National Professional Officer (Planning & Monitoring) at WHO's Country Office for India, on 2 April 2008 the Regional Director approved the selection of another candidate for the post. The complainant appealed that decision before the Regional Board of Appeal (RBA) and then before the Headquarters Board of Appeal (HBA). The HBA recommended that although the selection should be maintained, the complainant should be awarded 8,000 United States dollars in compensation because the selection process had been flawed, and up to 2,000 dollars in costs upon presentation of bills, and

that his remaining claims should be dismissed. The Director-General accepted those recommendations in a decision of 7 April 2010, which the complainant impugned in his second complaint before the Tribunal.

2. The complainant requested the Tribunal to quash the selection of the successful candidate and to order WHO to conduct a new selection process that complied with the Selection Guidelines. He sought material and moral damages in the amount of 50,000 dollars instead of the 8,000 dollars that had been awarded by the Director-General, compensation of at least 10,000 dollars for delays in the internal appeal procedure, and 2,000 dollars in costs.

3. In Judgment 3130 the Tribunal set aside the decisions of 2 April 2008 and 7 April 2010 (ordering WHO to shield the successful candidate from any injury that might result from the setting aside of an appointment he had accepted in good faith), found the previous award of 8,000 dollars to be adequate and thus ordered no further award of compensation, dismissed as unfounded the complainant's claim for compensation due to delays in the internal appeal proceedings, and awarded costs in the amount of 1,000 dollars.

4. The complainant applies for an interpretation of the judgment and also seeks a review. In the present application, insofar as it seeks an interpretation, the complainant requests the Tribunal to "elaborate" its decision and to specifically explain "in what manner and to what extent the 'successful candidate' must be shielded from any injury, after his appointment (promotion) is set aside". He asks that it be made clear "whether only the salary, allowance and other entitlements that the 'successful candidate' enjoyed from the date of his selection to the date of the Judgement are protected and he reverts to his former position [with effect from] the date of Judgement" or "whether the selection of the 'successful candidate' endures and the Organization is bound to reassign him to a position of the same grade from which his appointment was set aside, by absorbing him (i) against another vacant position of the same grade, or (ii) by

creating a new post of the same grade, or (iii) by protecting his salary against his former lower grade post, or (iv) by creating a supernumerary post”.

5. The complainant requests a review of Judgment 3130 on the basis that the Tribunal drew “clearly mistaken conclusions from evidence” with regard to his claim for an award of 10,000 dollars in damages for unreasonable delays in the internal appeal proceedings. He asserts that the Tribunal erred in finding that “[c]onsidering that the two appeals took less than two years to complete, the complainant cannot be considered to have suffered inordinate delays meriting an award of damages”. He submits that the Tribunal failed to consider WHO Staff Rules 1230.3.2 and 1230.3.3 “which allow only 150 days each to [the RBA and Regional Director] and [the HBA and Director-General] to conclude and finalize consideration of the appeal”. The complainant also requests a review of Judgment 3130 on the basis that the Tribunal failed to rule on his claim to order WHO to conduct a fresh selection process which complied with the relevant Selection Guidelines.

6. WHO Staff Rule 1230.3.2 provides that “the regional Board of Appeal shall report its findings and recommendations to the Regional Director. The Regional Director shall inform the appellant of his decision within sixty calendar days of the date of the receipt by him of the findings and recommendations of the Board, and at the same time send him a copy of the report.”

WHO Staff Rule 1230.3.3 provides that “a Board shall report its findings and recommendations to the Director-General or Regional Director, as appropriate, within ninety calendar days of the date on which the appellant’s full statement of his case is received by the Board. This period may be extended by the Board if the appellant and the administration concerned agree.”

7. A request for interpretation of a judgment by the Tribunal is receivable only if the operative part of the judgment gives rise to uncertainty or ambiguity about its meaning or purport. The Tribunal

finds that Judgment 3130 is clear, suffers from no ambiguity and presents no difficulty of interpretation. The reference in the decision to the shielding of the successful candidate is not ambiguous; the Tribunal deliberately left it to the discretion of WHO as to how it should protect the candidate who had accepted the appointment in good faith. Moreover, the Tribunal notes that the complainant requests clarification of a part of the decision (i.e. the shielding of the successful candidate) that does not affect him directly. The Tribunal therefore sees no reason to interpret the judgment.

8. The Tribunal's judgments have the authority of *res judicata*. The Tribunal has stated many times that it will review a judgment only in exceptional circumstances and then only on limited grounds. There are several pleas in favour of review that it will not admit. These include an alleged mistake of law, an alleged mistake in the appraisal of the facts, failure to admit evidence and absence of comment on the parties' pleas. Other pleas in favour of review may be admitted if they are such as to affect the Tribunal's decision. They include failure to take account of essential facts, a material error – i.e. a mistake in finding of fact which does not involve any value judgment and is therefore distinguishable from misappraisal of the evidence – failure to rule on a claim and the discovery of some new fact – i.e. a fact which one of the parties was not able to rely on in the proceedings that culminated in the judgment (see Judgments 748, under 3, 1294, under 2, 1504, under 8, 2270, under 2, and 2693, under 2).

9. The complainant's claim regarding the Tribunal's alleged "clearly mistaken conclusion" with regard to the violation of the above-mentioned Staff Rules is a question of law and therefore inadmissible under a request for review.

10. The complainant's assertion that the Tribunal failed to rule on his claim (to order WHO to conduct a new selection process complying with the Selection Guidelines) is incorrect. The decision of the Tribunal to dismiss that claim and leave all decisions regarding the

filling of the position to WHO's discretion, considering the passage of time, was a question of law and, as such, does not fall within the exceptions to *res judicata* which allow for review.

11. In the circumstances, the complainant's application for interpretation and review must be dismissed in accordance with the summary procedure provided for in Article 7 of the Tribunal's Rules.

#### DECISION

For the above reasons,

The application for interpretation and review is summarily dismissed.

In witness of this judgment, adopted on 15 May 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 9 July 2014.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ