

EIGHTY-SECOND SESSION

In re Gupta (No. 3)

(Application for review)

Judgment 1580

The Administrative Tribunal,

Considering the application for review of Judgment 1473 filed by Mr. Shiv Raj Gupta on 16 July 1996;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7, paragraph 2, of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant is an employee of the World Health Organization (WHO). In this, his third complaint, he is applying for the review of Judgment 1473. That judgment declared his first complaint against the WHO to be irreceivable. The grounds were that he had failed to bring an internal appeal in time against the Organization's decision of 27 April 1987 refusing payment of a special education grant for his daughter. What he did do was to apply on 14 July 1987 for review of that decision. He had argued that the matter had remained open until exactly six years later, 14 July 1993, when the Director of Personnel wrote a memorandum confirming that his daughter failed to qualify for the grant. The material issue was whether the decision of 27 April 1987 was a final one. The Tribunal held that it was as to refusal of the grant and that, even though the Organization was willing to change its mind if the evidence so warranted, its decision was still a final one. In the event the complainant failed to produce admissible evidence and the Organization took no new decision.

2. He is now asking the Tribunal to reconsider whether the decision of 27 April 1987 was final. He alleges that "by entertaining subsequent correspondence" the Organization "kept him in a state of suspense and misguided him with the sole objective of putting him in a trap". He cites a passage in Judgment 1376 (*in re* Mussnig) which says that the rules on internal appeals "are not supposed to be a trap or a means of catching out a staff member who acts in good faith".

3. Judgment 1473 went into detailed consideration of the material issue, whether the decision of 27 April 1987 was final, and held that it was. In Judgment 442 (*in re* de Villegas No. 4) and in many later ones the Tribunal has declared that an alleged mistake of law or misappraisal of the facts does not afford admissible grounds for review. What the applicant is alleging is indeed misappraisal of the facts and failure to follow precedent, i.e. a mistake of law. Those are not grounds on which his application can succeed. It must therefore be summarily dismissed as clearly irreceivable under Article 7(2) of the Tribunal's Rules.

DECISION

For the above reasons,

The application is dismissed.

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

Delivered in public in Geneva on 30 January 1997.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner

