

106th Session

Judgment No. 2812

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 2407 filed by Mrs M. d. C. C. I. on 30 October 2006;

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

Having examined the written submissions;

CONSIDERATIONS

1. The complainant asks the Tribunal to reconsider and rescind Judgment 2407 and to grant her the relief she sought in her earlier complaint leading to that judgment. In support of her request for review of Judgment 2407, the complainant alleges that in reaching its decision the Tribunal failed to take into account particular facts, made an error of fact and breached a rule of procedure.

2. In Judgment 442, under 3, the Tribunal set out the grounds upon which an earlier decision may be reviewed, as follows:

“Other pleas in favour of review may be allowed if they are such as to affect the Tribunal’s decision. They include an omission to take account of particular facts; a material error, i.e. a mistaken finding of fact which,

unlike a mistake in appraisal of the facts, involves no exercise of judgment; an omission to pass judgment on a claim; and the discovery of a so-called 'new' fact, i.e. a fact which the complainant discovered too late to cite in the original proceedings.

[...]"

3. The complainant submits that the Tribunal failed to take into account the fact that "subsequently to the Contract Extension Board's recommendation of 1 April 2003 to extend the contracts of all the inspectors with one year, the Director-General instructed [Mr C.], the Acting Director of [the] Inspectorate [Division], to give him a list of twenty inspectors whose contract [would] not be renewed".

4. Leaving aside that this was disputed by the Organisation, for the purpose of review, the fact that has allegedly not been taken into account in reaching the decision must have been material to the outcome of the decision. It is clear from a reading of the decision at issue that this fact, even if true, was not material to the outcome.

5. As to the assertion of error of fact, the complainant states that the Tribunal's reference, in consideration 15 of Judgment 2407, to "a memorandum from the Acting Director of the Inspectorate Division" is an error of fact, because the said memorandum was not mentioned anywhere in her original complaint. This submission is without merit. In effect, the complainant is arguing that the Tribunal may only take into account the facts asserted by the complainant.

6. Lastly, the complainant alleges that the Tribunal breached its own rules of procedure and the principle of *audi alteram partem* by failing to provide her with a copy of the aforementioned memorandum from the Acting Director of the Inspectorate Division, which the Tribunal requested from the Organisation. She refers to Article 9 of the Rules of the Tribunal which states that the submissions received from one party must be forwarded to the other party. First, the memorandum in question, which was confidential, was not a

submission. Second, the fact that it had not been provided to the complainants is an issue that was specifically addressed by the Tribunal in Judgment 2407. Upon reviewing the document, the Tribunal concluded that the Organisation had acted properly in maintaining its confidentiality. This ground for review must be rejected.

7. Since the pleas put forward by the complainant clearly do not warrant a review of Judgment 2407, her application must be dismissed in accordance with the summary procedure provided for in Article 7 of the Rules of the Tribunal.

8. In the circumstances, the request for an oral hearing is denied.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 7 November 2008, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Agustín Gordillo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2009.

Mary G. Gaudron
Agustín Gordillo
Dolores M. Hansen
Catherine Comtet