

FORTY-THIRD ORDINARY SESSION

***In re* VERDRAGER (No. 3)**

(Second application for review of Judgment No. 325 in re Verdrager)

Judgment No. 400

THE ADMINISTRATIVE TRIBUNAL,

Considering the second application filed by Mr. Jacques Verdrager on 7 December 1978 for review of Judgment No. 325 of 21 November 1977 in the case of Verdrager versus the World Health Organization (WHO), the WHO's reply of 7 June 1979, the complainant's rejoinder of 7 July and the WHO's written statement of 17 July 1979 that it did not wish to file a surrejoinder;

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

Considering that the material facts of the case are as follows:

A. In the circumstances described in Judgment No. 325 the complainant was dismissed for refusing two assignments, one to Sri Lanka and the other to Bangladesh. In his first application for review, which the Tribunal dismissed in Judgment No. 350, he contended that the Tribunal had not considered the question of the grading of the post in Sri Lanka. In his present application he contends that since those two judgments were delivered the decisive importance of a document has come to his attention. That document has been in his possession since the outset, but it bore an illegible handwritten annotation by the Regional Director. That comment has now been deciphered and reveals that the offer of the post in Sri Lanka was to be withdrawn and that he was to be informed towards the end of the year that he would be sent to Bangladesh. In the present application he contends: (1) that that annotation proves that the offer made on 15 July 1975 of a post in Bangladesh was "staged" in the hope that he would refuse it - as indeed he did on 7 September 1975 - and so afford a pretext for his own dismissal; (2) that the deciphering of the annotation since the date of the Tribunal's two earlier judgments constitutes an important new fact which warrants review of Judgment No. 325.

B. The Organization does not accept that there is any new fact: (1) because the handwritten annotation appeared in Appendix 4 to the WHO's reply to the original complaint; and (2) because the complainant based arguments on that document in almost the same terms in his first application for review.

C. In his rejoinder the complainant admits that the document did exist, but contends it was deliberately made illegible to conceal the Regional Director's ruse.

CONSIDERATIONS:

Neither the Statute nor the Rules of Court permit an application for review of a judgment of the Administrative Tribunal. The Tribunal may therefore declare such an application receivable only in quite exceptional circumstances, for example when new facts of decisive importance have come to light since the date of the judgment.

In support of his second application for review the complainant alleges a new fact, namely that he became fully aware of the contents of a partly illegible document only after the Tribunal had given Judgment No. 350 on his first application for review. That document was filed in the first complaint, being appended to the Organization's reply, and a transcription was appended by the complainant himself to his first application for review, i.e. in the second complaint. It was therefore possible for him to obtain information in the course of the first two complaints about the precise contents of the document. He may not now, in a third complaint, properly invoke a state of ignorance for which he was himself responsible, and hence neither may he properly treat the removal of such ignorance as a new fact warranting the second application for review.

DECISION:

For the above reasons,

The application for review is dismissed.

In witness of this judgment by Mr. André Grisel, Vice-President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 24 April 1980.

(Signed)

André Grisel
Devlin
H. Armbruster

Bernard Spy