

## SEVENTY-THIRD SESSION

(Application for review)

Judgment 1165

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by Miss B. F. on 6 August 1991 for review of Judgment 1097, the reply of 18 October from the World Health Organization (WHO), the complainant's rejoinder of 20 December 1991 and the WHO's surrejoinder of 13 February 1992;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

### CONSIDERATIONS:

1. The complainant is applying for review of Judgment 1097, in which the Tribunal dismissed her complaint against the World Health Organization.

The facts of the original dispute are summed up in that judgment, under A. The Organization employed the complainant from time to time as an administrative assistant under its Global Programme on AIDS at G.6 on a short-term contract from 1 December 1988 to 13 January 1989, later extended to 15 February 1989. On 13 February her first-level supervisor gave her a personal reference on unheaded paper.

In letters of 2 March and 31 May 1989 to the Director-General she said that that reference would not do and claimed a "proper" one.

She made no reply to an offer of 6 July 1989 from the acting Director of Personnel of a certificate covering her periods of employment. Nor did she accept an offer of an interview with him made in a letter of 24 November 1989 from a personnel officer.

On 10 May 1990 she filed an appeal with the Board of Appeal. On 8 August 1990 the Division of Personnel gave her a certificate of service but she objected on the grounds that it was incomplete and incorrect. In its report of 16 October 1990 the Board recommended dismissing her appeal as irreceivable and in a letter of 31 October 1990 the Director-General accepted that recommendation.

In her complaint she asked for a "true" certificate of service made out in accordance with the Staff Regulations and Staff Rules and she claimed damages.

In Judgment 1097 the Tribunal dismissed her complaint on the grounds that on 8 August 1990 she had been given a certificate she had failed to challenge and that she was therefore unable to show any cause of action.

2. The complainant submits that the certificate of 8 August 1990 does not comply with the Staff Regulations and Staff Rules.

The answer to that argument is already in Judgment 1097, under 4, where it says: "Although the complainant could have appealed against [the] contents [of the certificate] for non-compliance with Rule 1095, she did not do so". Never having filed an internal appeal against the contents of the certificate, she had failed to exhaust the internal means of redress and her complaint was

irreceivable under Article VII(1) of the Tribunal's Statute. On that score the ruling in Judgment 1097 must hold good unless the complainant bases her application for review on grounds that not only are admissible but the Tribunal allows.

3. As the Tribunal has time and again affirmed, its judgments have the force of *res judicata* and may not ordinarily be challenged. Only in exceptional cases will they be subject to review, on the grounds of failure to take account of essential facts, a material error involving no value judgment, failure to rule on a claim, or the discovery of an essential fact the parties were unable to rely on in the original proceedings.

The complainant has two main lines of argument. One is that in Judgment 1097 the Tribunal overlooked facts she had alleged and based its decision solely on the WHO's submissions.

She fails, however, to establish that any essential fact was discounted in ruling on her case.

She submits, secondly, that the Tribunal was wrong to hold that she had been given a valid certificate of service. What she is thereby alleging is that the Tribunal either committed an error of law or else made a mistaken appraisal of the evidence before it. Neither charge affords admissible grounds for review.

**DECISION:**

For the above reasons,

The application is dismissed. In witness of this judgment Tun Mohamed Suffian, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Pierre Pescatore, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 15 July 1992.

Mohamed Suffian  
Mella Carroll  
P. Pescatore  
A.B. Gardner