

SEVENTY-THIRD SESSION

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

(Application for review)

Judgment 1174

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 1036 filed by Miss Denise Marcelle Antoinette Marsault on 6 July 1991, the reply of 28 August from the Food and Agriculture Organization of the United Nations (FAO), the complainant's rejoinder of 25 September and the Organization's surrejoinder of 4 November 1991;

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

Having examined the written evidence;

CONSIDERATIONS:

1. On 1 October 1987 the Director-General of the FAO decided not to review the complainant's administrative and financial status. Judgment 917 of 8 December 1988 dismissed as devoid of merit her first complaint, in which she had sought the quashing of that decision. On 11 September 1989 she filed an application for review but Judgment 1036 of 26 June 1990 dismissed it. This is another application for review, this time of Judgment 1036, though some of her objections are to Judgment 917 as well.

2. As the Tribunal said in Judgment 1036, only in exceptional circumstances will it entertain an application for review since to allow one is to derogate from the *res judicata* rule. What is more, the complainant may not submit the same pleas more than once: the Tribunal will entertain in the context of her present application only the pleas that she was unable to put forward in support of the earlier one.

3. The complainant objects to the reasoning in Judgment 1036 under 2. That judgment observed, first, that she had failed to identify any decision of the Organization's to her detriment which constituted breach of the terms of her appointment or of the Staff Regulations or Staff Rules. It said, secondly, that there was no evidence to suggest that she had been promised appointment to the Professional category or discriminated against.

She now purports to submit "further details" on those issues and points to decisions of the Organization's which she says were in breach of FAO rules that she quotes in full.

What the Tribunal said in Judgment 1036 under 2 merely repeated what it had said in Judgment 917. So the complainant's objections go directly to Judgment 917, and she backs them up with what she calls "explanations" that she failed to supply in her first application. For that reason alone her first plea for review is irreceivable.

4. In support of her plea that the Tribunal overlooked material facts the complainant cites in an explanatory brief the facts discussed in Judgment 917 but says she wants the Tribunal to view them "in a different light". In fact she is again challenging the original judgment, on the grounds of a misreading of the evidence that she believes her new version will enable the Tribunal to put right.

The plea is irreceivable both because she did not put it in the context of her first application and because in any event misappraisal of evidence does not afford admissible grounds for review.

5. She further submits that the new fact mentioned in Judgment 1036 under 4 would have become obvious had the Tribunal allowed her application for hearings since evidence from the witnesses she wanted to call would have been more telling than her own written submissions.

There is nothing in her application to suggest that such evidence would have established a new fact of the kind the case law requires if review of the original judgment was to be warranted. And in any event failure to admit evidence does not afford admissible grounds for review.

The plea fails.

6. So does her contention that the Tribunal overlooked provisions of the FAO Staff Rules or Manual by rejecting her applications for two vacant posts. For one thing, insofar as she is raising this objection for the first time to Judgment 917 it is irreceivable. For another, what she is alleging is a mistake of law, and that does not afford admissible grounds for review. If it did, a party who was dissatisfied with a ruling might go on challenging it in defiance of the res judicata rule.

7. The complainant alleges that there was a material error in that the Tribunal referred to her "psychological injury" whereas she had herself spoken of "psychological warfare" against her. As she herself concedes the alleged "error" is of slight importance and in any event it has no bearing on the Tribunal's ruling.

8. Since none of the complainant's pleas is sound her application fails in its entirety.

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. Edilbert Razafindralambo, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 15 July 1992.

(Signed)

Mohamed Suffian
Mella Carroll
E. Razafindralambo
A.B. Gardner