SEVENTY-FIFTH SESSION

In re CARRETTI (No. 3)

(Application for review)

Judgment 1294

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 1162 filed by Miss Giuliana Carretti on 28 April 1992, the reply of 8 July of the Food and Agriculture Organization of the United Nations (FAO), the complainant's rejoinder of 22 September and the FAO's surrejoinder of 27 November 1992;

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

Having examined the written submissions;

CONSIDERATIONS:

1. The main facts relevant to this application for review of Judgment 1162 of 29 January 1992 appear therein under A. By that judgment the Tribunal dismissed Miss Carretti's first complaint. In that complaint she had asked it to set aside the decision of 8 January 1990 by the Director-General of the FAO and in consequence to order the Organization to give her a stable post in line with her qualifications, her G.5 grade and the exemption granted by the FAO's medical service and to withdraw two written warnings given to her on 29 February 1988 and 8 July 1988. She had also claimed one year's salary in moral damages and sums in costs.

2. As the Tribunal has often said, only in exceptional circumstances will it entertain an application for review. There are several pleas in favour of review that it will not admit. They are an alleged mistake of law, an alleged mistake in the appraisal of the facts, failure to admit evidence and absence of comment on the parties' pleas.

Other pleas in favour of review may be admitted if they are such as to affect the Tribunal's decision. They include an omission to take account of essential facts; a material error, i.e. a mistaken finding of fact that involves no exercise of judgment; an omission to rule on a claim; and the emergence of a so-called "new" fact, i.e. a fact that the complainant discovered too late to be able to cite in the original proceedings.

3. In support of her present application the complainant puts forward most of the above pleas, both admissible and inadmissible, and addresses all sections of Judgment 1162, including even the summing-up of the facts of her case. Her pleadings are long, detailed and laboriously developed and often repeat arguments that Judgment 1162 has already dismissed. As is explained in 2 above, the Tribunal will not allow review on the grounds that it has omitted to rule on all the pleas the complainant submitted in the original proceedings. As it has often observed about such argument, for example in Judgment 442 (in re de Villegas No. 2), omission to rule on an argument does not afford grounds for review because then "it would have to pass express judgments on all such pleas, even if they were plainly immaterial. The purpose of an application for review is not to compel the Tribunal to pass judgment on irrelevancies".

The Tribunal extracted from the great mass of submissions and evidence that the complainant had supplied with her first complaint what it considered to be material and ruled accordingly.

The alleged disregard of essential facts

4. The complainant alleges that the omission of many essential facts both from the summing-up and from the section headed "Considerations" in Judgment 1162 made her case look utterly trifling.

In general the Tribunal holds that no fact that may have been omitted from Judgment 1162 was essential or such as to affect the Tribunal's ruling. It takes up her particular points below.

5. The complainant argues that the Tribunal omitted many facts from its summing-up under heads that she

describes as follows: "Period covered by the appeal", "Reason and date for the complainant's temporary assignments", "The complainant's memorandum of 10 October 1984 to the Director of Personnel", "Unlawful transfer from established post AGP No. 2.6192-1431 to temporary position AFPR/TSA No. 2.4223-3026", "The complainant's applications for various posts", "Misuse of authority by Parsons", "Appeals of 28 October 1988 to the Director-General of the FAO and of 31 March 1989 to the FAO Appeals Committee" and "Report to the Tribunal".

The many facts she dwells on under those heads were plainly not essential to her case. Some of them, such as her memorandum of 10 October 1984, were actually cited in Judgment 1162, though not with the details she wants. Sometimes she submits mere opinion as if it were fact, one example being her reference to the unlawfulness of transfer. Other points she raises are no more than details that are of no relevance at all or at any rate can have no effect on the Tribunal's ruling: examples are her contention that the period covered by her appeal began in 1984 and not in 1981; the exact numbers of her applications for posts or of the temporary jobs she had; and her reactions to charges of shortcomings in her personality.

6. The same is true of what she sees as omissions of fact in the Tribunal's reasoning. As to the recommendations by the Appeals Committee, which she says were not properly reflected in the judgment, the Tribunal took into account the main one in favour of rejecting her claim to the withdrawal of the two warnings, and the points she mentions as omissions are not such as to have affected the ruling. Nor are her remarks about the warnings of 29 February and 8 July 1988.

The alleged mistakes of fact

7. What the complainant describes in her application as mistakes of fact are nothing of the kind: she is merely demurring at appraisals of fact, i.e. at interpretations that the Tribunal put on the evidence.

8. The asserts that it was wrong in saying that in February 1988 "she turned down an offer of assignment on the grounds of health and in the belief that the post on offer did not match her qualifications". It was wrong, she maintains, because the "post on offer was neither a post nor an offer".

But she herself described the assignment in her memorandum of 5 February 1988 as a "G.6 post". Whether she was made an offer and whether the assignment was, as she makes out, an "imposition", are matters that turn on appraisal of the evidence and therefore not points on which she may properly found an application for review.

9. She further argues that Judgment 1162 erred in referring under A to "her supervisors" as having reported on her performance during the period from 1 April to 1 July 1988: in her opinion the first-level supervisor is the only official authorised to sign reports on performance in temporary assignments.

Though the report was signed by Mr. Erozer, who was not her first-level supervisor, it was written by Mr. Vink, her first-level supervisor, at Mr. Erozer's request. So it is clear that both of them played a part in assessing her performance, and the reference to "her supervisors" was correct.

10. The complainant maintains that the allegation in the warning of 29 February 1988 that she had difficulty in "maintaining harmonious working relationships" is unfounded and inaccurate.

In point of fact that is what the warning said, and the judgment did not record it inaccurately. To say that the warning was itself unfounded or inaccurate is yet again to allege a mistake in the appraisal of facts and so not an admissible plea for review.

11. The alleges two mistakes in the warning of 8 July 1988. The first is that the official who signed her report for the period from 1 April to 1 July 1988 was not competent to do so.

That issue was not dealt with in Judgment 1162; the judgment merely said in 2 that the warning referred to a memorandum she had written on 1 July 1988 about that report, and that is a different matter.

12. The second mistake she alleges is in the reference in 2 to remarks she had made in her memorandum of 1 July 1988. She submits that that passage gives the impression that there was a dispute between her and the officer-in-charge whom she referred to in the memorandum.

If that were so, she would merely be disagreeing with the Tribunal's appraisal of the evidence, and again that

affords no justification for review.

13. She argues that the judgment is not based on "materially accurate facts" when it states in 5 that the warnings were "factually correct".

That plea too amounts to no more than an expression of disagreement with the Tribunal's reading of the evidence.

14. Lastly, she submits that the Tribunal erred in stating in 6 that she was asking for a stable post as a shorthand-typist: it ought, she says, to have referred to her G.5 grade.

But she is mistaken: this section of the judgment is headed "Request for assignment to a stable G.5 post". So there was no doubt about the grade she was claiming.

The alleged mistakes of fact in the

ruling on the two written warnings

15. The complainant argues that the interpretation that the Tribunal put on Manual paragraph 314.221 in 3 and 4 is wrong.

To accuse the Tribunal of misconstruing a provision of the Manual is to charge it with a mistake of law. The plea is not an admissible one in an application for review.

16. She further contends that the warnings were mainly based on the mistaken belief that she was unable to maintain harmonious working relationships.

The Tribunal held in Judgment 1162 under 5 that the warnings were "factually correct". In doing so it made an appraisal of the evidence before it and that appraisal may not be properly challenged in this application.

The allegedly wrong description

of the complainant's post

17. The complainant asks the Tribunal to "order the quashing of her transfer to the new temporary post GILS No. 0620653 either because the duties of the post are not those of a G.5 secretary or because, even if they are, they are not those she actually performs".

The complainant put forward in her original complaint her reasons for believing that the duties of the temporary post did not correspond to those of a G.5 secretary and she develops them at great length in her present application. She gives a detailed history of the establishment of the post and an elaborate statement of her own reservations about it. The Tribunal took up the substance of her arguments under this head in Judgment 1162 under F and 9. It has already rejected them by holding that she obtained satisfaction of her claim to an assignment to a stable G.5 post and that the description of the post corresponded to that of a G.5 secretary. All she is alleging is a mistake in the appraisal of the facts, and that cannot succeed. The Tribunal overlooked none of the essential facts that the complainant pleads. In particular her comments on matters that have arisen since Judgment 1162 afford no grounds for review of the Tribunal's ruling.

In any event her claim to the quashing of her transfer is not one that formed part of her original complaint but is a new one. The Tribunal will not entertain a new claim in the context of an application for review.

18. The complainant further asks the Tribunal to "order the FAO to give her as soon as possible a post commensurate with her qualifications as a quadrilingual shorthand-typist (English, French, Spanish and Italian) at grade G.5, excluding those duties from which the Medical Service has exempted her and in keeping with the material terms of employment she had before the period of temporary assignments that started on 2 January 1984"; and "to order the FAO, failing execution of the decision within three months, to put her on paid leave until a suitable post can be found".

Again those claims, which are the corollary of her claim to the quashing of her transfer, are new and may not be entertained in this context.

The alleged failure to rule on

"the main cause of the dispute"

19. In her original complaint she asked the Tribunal to "order the FAO to pay her compensation in the amount of one year's salary for moral injury caused by six years' temporary assignments and the attendant stress". She now describes that moral injury as "the main cause of the dispute" and contends that Judgment 1162 failed to rule on the matter. She explains that what she was impugning in her original complaint was the Director-General's decision of 8 January 1990 to confirm the warnings that had been addressed to her and that the matter of her temporary assignments arose only in the context of her claim to damages for the moral injury they had allegedly caused her. She says that the Tribunal omitted to rule on her claim to such damages and asks it again to award her "compensation in the amount of one year's net salary from the date of judgment, including two language allowances, for moral and occupational injury sustained as a result of having been under the orders of 127 officials on 29 temporary jobs for nearly eight years from 2 January 1984 and because of the resulting uninterrupted stress".

20. Although the Tribunal made no express comment on her claim in Judgment 1162, it held that the Organization had acted in accordance with the material rules and upheld the decisions that the complainant had challenged. It accordingly dismissed her complaint and thereby her claims in their entirety, including of course the one to moral damages.

In Judgment 447 (in re Quiñones) it declared, as to compensation for moral injury, that "where the impugned decision is not unlawful such compensation is due only in exceptional circumstances". The complainant had offered no cogent evidence of such exceptional circumstances as would warrant an award of moral damages in a case where the Organization's action was held to have been lawful. Indeed she offers no evidence in the context of her present application that would warrant review of the earlier ruling on this point. The changes in her assignments may have put her under stress but not such as to constitute grave and actionable moral injury.

Costs

21. Lastly, the complainant claims an award of 18,756,500 lire in costs for the case on which the Tribunal ruled on in Judgment 1162. Since the Tribunal dismissed her original complaint it rejected by implication her claim to costs. The matter is res judicata, and since it allows none of her pleas for review of Judgment 1162 there is no reason to make any award of costs in this judgment either.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Sir William Douglas, Vice-President, and Mr. Edilbert Razafindralambo, Judge, sign below, as do I, Allan Gardner, Registrar.

red in public in Geneva on 14 July 1993.

(Signed)

José Maria Ruda
William Douglas
E. Razafindralambo
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.