NINETY-SIXTH SESSION

Judgment No. 2301

The Administrative Tribunal,

Considering the second complaint filed by Mrs K. K. against the International Labour Organization (ILO) on 2 November 2002 and corrected on 27 November 2002, the ILO's reply of 5 February 2003, the complainant's rejoinder of 8 March and the Organization's letter of 4 April 2003 informing the Registrar of the Tribunal that it did not wish to enter a surrejoinder;

Considering Articles II, paragraph 4, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Facts relevant to the present case are set out in Judgment 2148, delivered on 15 July 2002, on the complainant's first case. The complainant had been working in Pakistan under a special service agreement as National Programme Coordinator for the ILO's International Programme on the Elimination of Child Labour (IPEC). As explained in that judgment the agreement was not renewed beyond 31 March 2001.

In paragraph 16 of the judgment the Tribunal said it considered that the issue was "not so much the violation of her contract of employment due to an evaluation performed by an unauthorised official, as the non-renewal of her service agreement for reasons of unsatisfactory performance and conduct".

The complainant gives 15 July 2002 as the date of the "decision" under challenge.

B. The complainant contends that in its submissions on her first case the ILO provided only piecemeal information and withheld essential facts, which had they been known at the time would have affected the ruling handed down by the Tribunal. She produces further documentary evidence to fill the information gaps and reveal more of the background to her case.

Referring to paragraphs 16 and 23 of Judgment 2148 the complainant seeks to show that the Organization's allegations of "non-performance" were false, and that there was indeed breach of her contract of employment. Her work was widely appreciated. Senior staff at ILO headquarters in Geneva could not substantiate their claim of weak performance and so turned to unprofessional means to harass her, in order to force her to resign. They discredited her work. She speaks of a "malicious" campaign, launched against her from Geneva and alleges that she was the victim of harassment by hierarchical superiors that bore grudges against her.

She is claiming 100,000 United States dollars in damages for harassment, loss of job opportunities and for the hiding and misstating of facts on the part of the Organization.

C. In its reply the Organization points out that it has taken no administrative decisions in relation to the complainant since that of 28 March 2001, relating to the non-renewal of her contract, which she challenged in her first complaint. It can therefore only assume that as 15 July 2002 corresponds to the date of delivery of Judgment 2148 she is in fact now seeking a review of the Tribunal's ruling on her first case. Citing the case law it says that none of the reasons she has put forward are admissible grounds for review. The documents that she has produced, with one exception, predate the date of filing of her first complaint, and therefore any gaps in the ILO's submissions could have been pointed out by her in the context of that case. According to the ILO, the "facts" it purportedly withheld are not new facts and they have no bearing on the issues that the Tribunal ruled on in Judgment 2148.

However, it argues that the complainant has put forward fundamentally new pleas in this second complaint, which

were not previously raised during the internal review of her first case. They consist in allegations of harassment, essentially against one other ILO official, which have been put forward for the first time in this complaint to the Tribunal. They are, moreover, unsubstantiated and relate to the year 2000. Those pleas are nonetheless irreceivable as the complainant is not challenging a final decision and has failed to respect the statutory time limits for appeal.

D. In her rejoinder the complainant notes that the Organization did not refute the facts she revealed in her complaint. She assumes that it is raising procedural issues to block the judicial review of her complaint. She asks the Tribunal to admit it for review and to provide legal assistance for her to pursue her case. The facts and evidence she put forward are in her opinion not only new but highly relevant and the ILO is "misdirecting the focus of her case".

CONSIDERATIONS

1. In her second complaint the complainant seeks, in essence, a review of Judgment 2148 - delivered on 15 July 2002 - by which the Tribunal dismissed her claim for reinstatement in her former position, which she left on 3l March 2001 due to the non-renewal of her special service agreement for reasons of unsatisfactory performance and conduct.

2. By this complaint, filed some 18 months after she ceased to be a member of the ILO's staff, the complainant has put forward facts and evidence that she deems to be new and highly relevant to her case. She alleges that the ILO has tried "to obstruct justice by distorting facts, withholding information and misstating events", that the whole process of review and consultation within the ILO was "totally biased and discriminatory", and that she was subjected to constant verbal, written and attitudinal harassment which resulted in extreme stress.

3. Although she states that she is not suing the ILO "for money or for restoration of prestige or health", as no amount of compensation can undo the suffering and stress she has undergone, she submits a claim for 100,000 United States dollars in damages for harassment at work and for loss of job and future job opportunities.

4. The ILO correctly observes that the facts cited are not new - the dates of the documents being well before the date on which her first complaint was submitted - and that some of them have no bearing on issues decided on by the Tribunal in Judgment 2148. These could all have been presented to the Tribunal at the time since they were covered by the ILO in its letter of 28 March 2001, which contained a full review of her grievances; the records were fully open to her and, therefore, could have been part of her brief in the context of her first complaint.

5. The principle of *res judicata* prevents the reopening and rearguing of cases already decided where both parties have had a full opportunity to present their case and no new and previously undiscoverable factual element is brought forward.

6. The Tribunal would reiterate that its judgments are, under Article VI of its Statute, "final and without appeal". As a judgment carries the authority of *res judicata*, the admissible grounds for review are strictly limited.

7. Furthermore, the inadmissible grounds for review are an alleged mistake of law, failure to admit evidence, a wrong appraisal of the facts and failure to rule on a plea.

8. The stability of judicial procedures and the need to bring an end to litigation require that parties must accept the result they obtain even when they are unsatisfied with it (see Judgment l825, under 6).

9. In view of the failure of the complainant to make out a case for review of the Tribunal's decision in Judgment 2148, the complaint is clearly unfounded and her claim for damages must be rejected.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Flerida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

Michel Gentot

James K. Hugessen

Flerida Ruth P. Romero

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 20 February 2004.