

108th Session

Judgment No. 2908

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 2719 filed by Mr B. K. on 13 February 2009;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. In 2005 the complainant was summarily dismissed for unauthorised absence from duty. To explain his absence, he claimed that he had been fraudulently implicated in an investigation regarding someone with a similar name, and that since the case was not subject to bail, he had to protect himself by going into hiding. The Tribunal found in Judgment 2719 that the Regional Director was entitled to find that that was not a “satisfactory explanation”. The complainant now seeks review of that judgment.

2. In Judgment 442, under 3, the Tribunal set out admissible grounds upon which a decision may be reviewed, as follows:

“Other pleas in favour of review may be allowed if they are such as to affect the Tribunal’s decision. They include an omission to take account of particular facts; a material error, i.e. a mistaken finding of fact which, unlike a mistake in appraisal of the facts, involves no exercise of judgment; an omission to pass judgment on a claim; and the discovery of a so-called ‘new’ fact, i.e. a fact which the complainant discovered too late to cite in the original proceedings.”

3. In support of his application for review, the complainant produces a copy of a later order of an Additional Chief Metropolitan Magistrate of Karkardooma Courts, Shahdara, Delhi, India, dismissing a case against him on the basis that it was not proved that he was the person who committed the acts in question. It is stated in that order that “[e]ven at the time of seeking bail [...] identity of the accused [was] not established”.

4. The order dismissing the charge against the complainant is not a “new” fact that would affect the Tribunal’s decision in Judgment 2719. That judgment took into account the fact that the complainant could have been falsely accused but it considered that the explanation he provided was not, itself, a “satisfactory explanation” for his absence from duty. Moreover, the order indicates that bail could be granted for the offence with which he was charged, contrary to the explanation provided by the complainant to the Regional Director.

5. Since the evidence put forward by the complainant clearly does not warrant review, the application must be dismissed in accordance with the summary procedure provided for in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 29 October 2009, Ms Mary G. Gaudron, President of the Tribunal, Mr Agustín Gordillo, Judge, and

Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2010.

Mary G. Gaudron
Agustín Gordillo
Dolores M. Hansen
Catherine Comtet