Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

118th Session **Judgment No. 3371**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3101, filed by the International Labour Organization (ILO) on 13 March 2012 and corrected on 16 March;

Considering Article II, paragraph 1, of the Statute of the Tribunal, and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The ILO is applying for review of Judgment 3101, delivered on 8 February 2012, in which the Tribunal decided as follows:

> "1. The decision of 6 May 2009 is set aside.
> 2. The competition procedure shall be resumed as indicated under 16 […].
> 3. The Organization shall pay [Ms A.B.] 3,000 Swiss francs in compensation for the moral injury suffered.
> 4. It shall also pay her costs in the amount of 2,000 francs."

2. Consideration 16 of that judgment reads as follows:

> "[Ms A.B.] requests the cancellation of the whole procedure. The Tribunal concludes that the procedure must be resumed as from the stage at which it became flawed, in other words at the stage of evaluation by the Assessment Centre."

3. In its judgment, the Tribunal concluded that by failing to respect the order established for the competition process, that is the evaluation by the Assessment Centre and then the technical evaluation, the ILO had breached its own rules governing the conduct of the competition process. Moreover, the possibility that this reversal of the order might have had an impact on the results of the competition could not be ruled out.

4. The Tribunal recalls that, according to its consistent case law, pursuant to Article VI of its Statute, its judgments are "final and without appeal" and carry the authority of *res judicata*. They may therefore be reviewed only in exceptional circumstances and on strictly limited grounds. As stated in Judgments 1178, 1507, 2059, 2158 and 2736, the only admissible grounds of review are failure to take account of material facts, a material error involving no exercise of judgement, an omission to rule on a claim, or the discovery of new facts on which the complainant was unable to rely in the original proceedings. Moreover, these pleas must be likely to have a bearing on the outcome of the case. On the other hand, pleas of a mistake of law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea afford no grounds for review. (See Judgment 3001, under 2.)

5. In support of its application for review, the ILO contends that in Judgment 3101 the Tribunal omitted to take account of material facts, or made a material error involving no exercise of judgement.

It states that the appointment which was disputed in that judgment was made following two successive and combined competition processes, namely:

– "The first competition process, contested by the complainant on the basis, inter alia, that the technical evaluation had taken place before the tests at the Assessment Centre, was cancelled by the Director-General so that it could be resumed at the technical evaluation stage, the results from the Assessment Centre being retained. […]"
– "The second competition process is the one which was resumed at the technical evaluation stage, pursuant to the decision of the Director-General […], and which was continued until the contested appointment was made."

The ILO therefore takes the view that the Assessment Centre tests that took place during the first competition process in fact preceded the technical evaluation, which was carried out during the second competition process in July and August 2009, and that, consequently, the Tribunal's finding that there was a failure to respect the order established for the competition process "is based either on an error of fact or on the omission of a particular fact".

6. In the instant case, however, the Tribunal does not consider that it made a material error or omitted to take account of a material fact.

Having examined the case file, the Tribunal recalled the case law established in Judgment 3032 and merely replied, as it did in that judgment, to the defendant, which argued in its submissions that the order in which the technical evaluation and evaluation by the Assessment Centre occurred had no influence on the fairness of the recruitment process, and that "in this case, as all the shortlisted candidates had to undergo examination by the Assessment Centre, it was immaterial whether the candidate in question underwent this examination before or after the technical evaluation".

The Tribunal found that the ILO, in its pleadings, was not disputing in any way that it had failed to respect the order established for the competition process, and concluded that by virtue of the principle *tu patere legem quam ipse fecisti*, the procedure followed

was flawed and must therefore be cancelled. If in fact the tests had taken place in the proper chronological order, it would have been up to the ILO to make that plain in its submissions, instead of presenting arguments to the contrary.

7. Since the ILO has not put forward any ground warranting a review of Judgment 3101, the Tribunal must dismiss the application in accordance with the summary procedure provided for in Article 7 of its Rules.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 9 May 2014, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 9 July 2014.

CLAUDE ROUILLER
SEYDOU BA
PATRICK FRYDMAN

DRAŽEN PETROVIĆ