

## **FORTY-FIFTH ORDINARY SESSION**

### ***In re* VERDRAGER (No. 4)**

(Third application for review)

#### **Judgment No. 439**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third application for review filed by Mr. Jacques Verdrager on 7 June 1980 in the case of Verdrager versus the World Health Organization (WHO);

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

Having examined the written evidence and considering that the material facts of the case are as follows:

A. On 10 June 1976 the Director-General confirmed his decision terminating the appointment of the complainant, who had refused two reassignments from Indonesia, one to Sri Lanka and the other to Bangladesh. The complainant appealed to the Tribunal against the decision. The WHO appended to its reply a reassignment form bearing a scarcely legible annotation by the Regional Director.

By Judgment No. 325 the Tribunal dismissed the complaint. It held that in refusing the two reassignments the complainant had acted in breach of his duties as an international official and that he was mistaken in alleging a difference between his grade in Indonesia and the grade of the post he was offered in Sri Lanka.

B. On 16 January 1978 the complainant applied for review of Judgment No. 325. He contended: (1) that the Tribunal had been mistaken in finding no difference in grade and (2) that it had been misled into thinking that there was an urgent need to fill the posts in Sri Lanka and Bangladesh. In his other item as evidence which supported his contention that his reassignment to Bangladesh was a form of reprisal.

By Judgment No. 350 the Tribunal dismissed the first application for review on the grounds that the complainant had not adduced any new facts and that the application was therefore irreceivable.

C. On 7 December 1978 the complainant filed a second application for review. He objected that Judgment No. 350 had not mentioned the "ruse" of which he said he had been the victim and of which he had become aware on 21 December 1977 when he had deciphered the Regional Director's annotation at headquarters.

By Judgment No. 400 the Tribunal dismissed the second application for review. It said that the complainant had alleged that he had become fully aware of the wording of the annotation only after the Tribunal had given Judgment No. 350. But it found that there was no new fact since the document bearing the annotation had been filed in the first complaint and relied on in the first application for review.

D. On 7 June 1980 the complainant filed a third application for review. He states that he has not admitted that he became aware of the annotation only after the Tribunal had given Judgment No. 350: on the contrary, in his first application for review he cited the annotation and another document as evidence of the Regional Director's "ruse".

#### **CONSIDERATIONS:**

It is immaterial whether Judgment No. 400 was based on an oversight or not. Even if there was an oversight it had no effect on the decisions on the complaints.

First, the complainant argues that his becoming aware of the annotation is a new fact which warrants review of the judgments already given. A new fact such as will warrant an application for review must be material, i.e. such as to affect the decision, and it must be a fact of which the complainant had no knowledge and was unable to obtain knowledge in the course of the original proceedings. It was in the original proceedings that the WHO appended to

its reply the document bearing the annotation by the Regional Director. Although it was scarcely legible there was at the time nothing to prevent the complainant from asking the WHO to make its meaning clear and he was therefore able to ascertain its meaning. He therefore has only himself to blame for not obtaining information on the matter until 21 December 1977. His becoming aware of the annotation on that date is not a new fact as defined above.

The complainant alleges another new fact, namely a document which he appended to his first application for review. The document contains the following words: "For reassignment of Dr. J. Verdrager from January 1976 instead of July 1976 from INO MPD 001". Those words are not enough to establish the "ruse" of which the complainant believes he was the victim. There is therefore no material fact warranting an application for review.

DECISION:

For the above reasons,

The application for review is dismissed.

In witness of this judgment by Mr. André Grisel, Vice-President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

(Signed)

André Grisel  
Devlin  
H. Armbruster

Bernard Spy