



Administrative Tribunal

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LIMITED

AT/DEC/1017
20 November 2001

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1017

Case No. 881: EVERETT

Against: The Secretary-General
of the United Nations

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Mayer Gabay, President; Ms. Marsha A. Echols; Ms. Brigitte Stern;

Whereas at the request of Mavis A. Everett, a former staff member of the United Nations Development Programme (hereinafter referred to as UNDP), the President of the Tribunal, with the agreement of the Respondent, granted an extension of the time limit for filing an application with the Tribunal until 30 April 1999, and periodically thereafter until 30 November 2000;

Whereas, on 27 July 2000, the Applicant filed an Application requesting, in accordance with article 12 (formerly article 11) of the Statute of the Tribunal, the revision of Judgement No. 812 rendered by the Tribunal on 25 July 1997;

Whereas the Application contained pleas which read as follows:

" II. PLEAS

6. With regard to its competence and to procedure, the Applicant respectfully request[s] the Tribunal:

(a) To find that the present request for revision of Judgement No. 812 is receivable under article [12] of its Statute.

...

7. On the merits, the Applicant requests the Tribunal:

(i) *To find* that the Secretary-General erred by terminating the SLWFP [special leave with full pay], forcing the Applicant's separation ...;

(ii) *To find* that the Respondent abused the fact that the separation from service was not covered in the Application for [Judgement] No. 812 and terminated the Applicant, the holder of a permanent contract, forcing her into early retirement;

(iii) *To find* that the Respondent violated the Applicant's right to due process, when [he] informed her in a letter, dated 28 August 1996 and received by the Applicant on 29 August 1996, that she [would] be separated from the Organization, effective 31 August 1996;

(iv) *To find* that the Respondent wrongfully separated the Applicant while the UNAT [United Nation Administrative Tribunal] was waiting for the Respondent's long delayed Answer, to consider the Applicant's pleas for [rescission] of the unjustified SLWFP decision;

(v) *To find* that the abolition of the Applicant's post was wrongfully employed as an excuse, only to effect the termination of the Applicant's permanent contract;

(vi) *To order* the Respondent to reinstate the Applicant retroactively, effective the date of the unjustified separation, 1 September 1996, and maintain her employment until 30 November 1999, the date of the Applicant's anticipated retirement;

(vii) *To order* the Respondent to pay the Applicant the annual step increments that were denied her during the SLWFP;

(viii) *To order* the Respondent to pay the Applicant her salary and emoluments - including annual step increments - from 1 September 1996 - until 30 November 1999, the date of the Applicant's anticipated retirement;

(ix) *To order* the Respondent to pay the Applicant's pension in accordance with (vi) above;

(x) *To order* the Respondent to pay compensation for the Applicant's continuous stress and humiliation, caused by her abrupt and illegal separation from the Organization."

Whereas, at the request of the Respondent the President of the Tribunal granted an extension of the time limit for filing a Respondent answer until 31 January 2001, and thereafter until 30 April 2001;

Whereas the Respondent filed his Answer on 27 April 2001;

Whereas the Applicant filed Written Observations on 10 September 2001;

Whereas the facts in the case were set forth in Judgement No. 812.

Whereas the Applicant's principal contentions are:

1. The Applicant was wrongfully separated from service while the Respondent's Answer to the Application in Judgement No. 812 was still pending.
2. The downgrading of the Applicant's performance appraisal report (PAR) rating on the basis of unsubstantiated accusations (hearsay) was illegal, as was the further downgrading by the Management Review Group. In addition, the report of the PAR rebuttal panel is inaccurate.
3. The fact that UNDP put the Applicant on SLWFP "effective immediately" made it the equivalent of a suspension and the subsequent termination of her appointment amounted to a summary dismissal.
4. The Joint Appeals Board (JAB) was prejudiced against the Applicant and violated her rights of due process.

Whereas the Respondent's principal contentions are:

1. The issue of the Applicant's separation from service was not before the Tribunal. Furthermore, the Applicant acknowledged that she was aware of the fact that she was being separated from service and that she made the Tribunal aware of this fact in the course of its proceedings.
2. The Applicant's 27 July 2000 claim is time-barred because it was not made within thirty days of the 29 August 1996 discovery of the fact, and, in any event not within a year of the 25 July 1997 Judgement.
3. The Applicant does not introduce any new fact of a decisive nature.

The Tribunal, having deliberated from 23 October to 20 November 2001, now pronounces the following Judgement:

I. The Applicant seeks revision of Judgement No. 812, dated 25 July 1997. The Applicant claims that she was wrongfully separated from service while the Respondent's Answer to her Application was still pending. She also claims that her request for revision of Judgement No. 812 is receivable under article 12 of the Tribunal's Statute.

II. The case concerns two issues: (i) whether the Application is time-barred; and (ii) whether the revision should be granted.

On 18 October 1995, the Applicant filed an Application pleading for rescission of a decision to place her on SLWFP on 17 May 1993 and requesting assignment to her former post or an equivalent post. On 28 August 1996, before the Respondent had filed his Answer in her case, the Applicant received notice that she was being separated from service effective 31 August 1996. On 17 September 1996, she advised the Tribunal accordingly. On 29 August 1996, the Applicant filed for an administrative review of the decision to separate her from service pursuant to staff rule 111.2 (a).

In Judgement No. 812, the Tribunal ordered the Respondent to pay compensation in the amount of \$3,000 for the humiliation and uncertainty the Applicant endured throughout the three-year period during which she was on SLWFP. The Tribunal held that

"[t]he Respondent properly exercised his discretion when he placed the Applicant on SLWFP, pending efforts to find her an alternate post outside the DOP [Division of Personnel]. However, the Respondent failed to suspend the action pending a review of the merits, in contravention of the JAB's unanimous recommendation. He continued the special leave for a three-year period. Coupled with the failure to make a serious, good faith effort to find an alternate post throughout the duration of the SLWFP, this amounts to a violation of the Applicant's rights. Although the Applicant suffered no financial loss during the SLWFP, she did suffer from humiliation, stress and uncertainty that continued until her separation from the Organization."

The Applicant seeks revision of this decision and claims that the Respondent erred by terminating the SLWFP, forcing the Applicant's separation from service. This Application followed.

III. The first issue of whether the Application is time-barred falls within article 12 of the Tribunal's Statute. Under article 12, a party

"may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement ..."

The Respondent claims that the Application is time-barred because it was not made within thirty days of the discovery of the fact and not within one year of the date of Judgement No. 812.

The Applicant filed her Application on 27 July 2000 seeking revision of Judgement No. 812, which was rendered on 25 July 1997. This request was not made within the thirty-day period, nor within one year of the date of judgement as stipulated under article 12. Therefore, the Tribunal finds that the Application is time-barred.

IV. The second issue that could be discussed if the Application were not time-barred is whether the Applicant has introduced any fact of a decisive nature, which was unknown to the Tribunal and also to the Applicant at the time of the Judgement, as specified under article 12 of the Tribunal's Statute. The Respondent claims that the subject matter of the Applicant's current Application is not related to the object of her earlier Application and Judgement No. 812. The Applicant's previous Application involves her being placed on SLWFP for three years, while the facts of the current Application which involve separation from service were known both to her and to the Tribunal before Judgement No. 812 was rendered.

The Applicant claims that she notified the Tribunal on 17 September 1996 of her separation from service. However, the Respondent claims that this should not be viewed as a "decisive factor" which was unknown to her and to the Tribunal at the time Judgement No. 812

was rendered, and rather that the Applicant advances a new cause of action based upon a new administrative decision taken after her initial Application had been filed.

The Tribunal finds that within the confines of article 12, the Applicant has failed to bring forth any new facts of a decisive nature, which were unknown to the Tribunal at the time Judgement No. 812 was rendered, and, therefore, that this claim would have failed even if it were not have been time-barred.

V. For the foregoing reasons, the Application is rejected in its entirety.

(Signatures)

Mayer GABAY
President

Marsha A. ECHOLS
Member

Brigitte STERN
Member

New York, 20 November 2001

Maritza STRUYVENBERG
Executive Secretary