
ADMINISTRATIVE TRIBUNAL

Judgement No. 434

Case No. 438: AL-ALI

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Roger Pinto, Vice-President, presiding;
Mr. Ahmed Osman; Mr. Jerome Ackerman;

Whereas, on 11 August 1987, Mohamed Al-Ali, a staff member of the United Nations, filed an application in which he requested the Tribunal, essentially, to order the Secretary-General to implement his promotion to the D-1 level effective 1 April 1984, 1 April 1985 or 1 April 1986, since the Secretary-General had approved the inclusion of his name in the 1984, 1985 and 1986 Principal Officer (D-1) Promotion Registers;

Whereas, on 13 May 1988, the Tribunal rendered Judgement No. 411 in which it decided that:

"Since the Respondent has stated that he is continuing his efforts to search for a suitable post for the Applicant with a view to implementing his promotion, and taking into account that assurances had been given to the Applicant regarding the retroactivity of his promotion as of 1 April 1984, ... the Applicant should be paid, as compensation for the injury he has sustained, the difference between the Applicant's salary at the P-5 level and the salary he would have received had he been promoted to the D-1 level from 1 April 1984 until the date of this judgement inclusive."

Whereas the Respondent has paid the Applicant the award ordered by the Tribunal;

Whereas, on 31 August 1988, the Applicant filed an

application in which he requested the Tribunal:

"PLEAS

Applicant respectfully requests the Tribunal to order the following measures:

1 - To reconfirm that the continued failure by the Secretary-General to implement Applicant's promotion to the D-1 level in the UNCTC [United Nations Centre on Transnational Corporations] effective 1 April, 1984, is based on an invalid exercise of departmental 'wishes' as already decided by the Administrative Tribunal in para. XIII of its Judgement No. 411 issued on 13 May, 1988.

2 - To order that the Secretary-General proceed forthwith with the aforesaid promotion without further delay.

3 - In accordance with the formula set in para. XIV of the Judgement, to order that the Secretary-General pay as compensation to Applicant the difference between his salary at the P-5 level and the salary he would have received had he been promoted to the D-1 level to take effect from the date of the aforesaid judgement to the date of implementation.

4 - To order the payment by Respondent of additional adequate compensation, as deemed appropriate by the Tribunal, for the injury and humiliation suffered by Applicant on account of the continued delay in effecting his promotion."

Whereas the Respondent filed his answer on 30 September 1988;
Whereas the Applicant filed written observations on 7 October 1988;

Whereas, on 17 October 1988 and 1 November 1988, the Applicant submitted additional documents;

Whereas, on 28 October 1988 and 8 November 1988, the Respondent submitted additional documents;

Whereas the facts in the case have been set forth in Judgement No. 411;

Whereas the Applicant's principal contentions are:

1. The Tribunal awarded the Applicant compensation up to the date of its Judgement No. 411, bearing in mind that the Applicant's promotion would be implemented without delay. Any other interpretation of the judgement would be untenable and arbitrary and would prolong the injustice recognized by the Tribunal to have existed since April 1984.

2. The actions by the Secretary-General's representatives indicate that they are not acting credibly in order to implement the Applicant's promotion.

3. There is no valid reason for the continued exercise of what seems to be a veto power by the Executive Director of the UN Centre on Transnational Corporations.

Whereas the Respondent's principal contentions are:

1. An application which makes claims that would constitute an extension of an earlier judgement cannot be submitted to the Tribunal without complying with article 7(1) of its Statute.

2. The Respondent has not failed to comply with Judgement No. 411.

3. The Respondent has not failed to comply with his undertaking recognized by the Tribunal in Judgement No. 411.

The Tribunal, having deliberated from 25 October 1988 to 9 November 1988, now pronounces the following judgement:

I. The threshold question before the Tribunal is whether the application can properly be characterized as a request for an interpretation of the Tribunal's final Judgement No. 411 of 13 May 1988, in which case it would be within the competence of the Tribunal, cf., Judgement No. 61, Crawford et al (1955), or whether the application, in reality, seeks relief going beyond that judgement on the basis of subsequent events, in which case the

application would not be within the competence of the Tribunal under article 7 of its Statute.

II. Having considered the submissions of the Applicant and the Respondent, and having reviewed the contents of Judgement No. 411, the Tribunal concludes that the application may not properly be understood as a request for interpretation, and it does not even purport to be a request for revision under article 12 of its Statute. As the language of paragraphs XIV and XV of Judgement No. 411 plainly shows, the Tribunal's decision was limited to an award of compensation for injury sustained by the Applicant. Nothing in the judgement provides any basis for an interpretation that would result in specific performance - the ordering of the Applicant's promotion, particularly where (1) the grounds for doing so appear to be disputed events occurring after the Judgement was issued, including alleged unjustified delay and an allegedly improper offer of a promotion, and (2) no alternative compensation was fixed in Judgement No. 411. It follows that the application must be viewed as seeking to initiate a new proceeding for further relief, and that appeal to a Joint Appeals Board from a decision by the Secretary-General or consent by the Secretary-General to a direct appeal to the Tribunal, is a pre-requisite to the Tribunal's competence.

III. Although the application must fail for the reasons set forth above, the Tribunal wishes to note that, as paragraph XIV of Judgement No. 411 indicated, the Tribunal believed, on the basis of apparently sincere representations made by the Respondent, that "the search for a suitable post for the Applicant with a view to implementing his promotion ... as of 1 April 1984 ...", would be completed within a reasonable time. If this was not possible, or if there was a question regarding a proposed promotion, it was assumed

that a factual explanation would be provided, the adequacy of which could be contested by the Applicant before the JAB and this Tribunal. That course would still be open to the Applicant, if it is necessary. Depending on the resolution of any such factual issues, serious questions as to appropriate relief might be presented for consideration by the Tribunal.

IV. In view of the above, the Tribunal need not consider the Applicant's request for access to any allegedly privileged attorney-client communications. Aside from legal advice or opinions (which may or may not be accurate), the Tribunal expects that all relevant facts will be fully developed in any further proceedings which may become necessary.

V. For the foregoing reasons, the application is rejected without prejudice to the initiation of further proceedings by the Applicant with respect to the implementation of his promotion.

(Signatures)

Roger PINTO
Vice-President, presiding

Ahmed OSMAN
Member

Jerome ACKERMAN
Member

New York, 9 November 1988

R. Maria VICIEN-MILBURN
Executive Secretary