

SEVENTY-EIGHTH SESSION

In re MENDIRATTA (No. 5)

(Application for review)

Judgment 1377

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by Mr. Arjan Lal Mendiratta on 1 June 1994, and corrected on 6 July 1994, for review of Judgment 1031;

Considering Articles II, paragraph 5, and VII, paragraph 2, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS:

1. By Judgment 1031 of 26 June 1990 the Tribunal dismissed Mr. Mendiratta's third complaint on the grounds that he had filed it after the time limit of ninety days laid down in Article VII(2) of the Tribunal's Statute.
2. The final decision he was impugning in that complaint was in a letter of 1 August 1989 from the Director-General of the Food and Agriculture Organization of the United Nations (FAO), and he had received notice of it on 16 August. On 7 November 1989 he sent a telex to the Registrar applying for a two-week extension of the time limit for filing a complaint. The Registrar replied by telex on the same day to say that the time limit could not be extended and also wrote a letter on 8 November to say that the complainant must post his complaint without fail not later than ninety days from the date of notification of the decision he wanted to impugn. The complainant contended that he never got the telex, but did get the letter on 21 November, and he filed his complaint the same day.
3. In support of that complaint he argued that while he was preparing his case his wife fell ill and that was why he needed the two-week extension. He also pleaded ignorance of the requirements of the Statute. The Tribunal rejected his plea of ignorance, observing that the complaint was his third one and that the Director-General's letter of 1 August 1989 stated in the final paragraph that he was entitled to appeal to the Tribunal within ninety days of receiving it.
4. The complainant is applying for review of Judgment 1031. He enters an affidavit signed by his son Harjinder on 26 May 1994 and stating that his mother "was hospitalised during October/November, 1989"; that his father "was essentially required to be in attendance throughout in the hospital"; that he had "come to know" that his father was contesting a decision by the FAO and on account of his mother's illness "was not in a position to submit his petitions on time"; that he (the son) was advised to file a complaint "within 90 days of the receipt i.e. up to 14 November, 1989"; that he "obtained the signatures" of his father on the complaint form; that he wrote the Registrar a letter on 22 October 1989 to say that his father was "simply not in a position to attend to his cases" and he himself was going to "fill in the complaint" and send it "next week"; that on 1 November 1989 and under cover of a letter dated 31 October 1989 he sent the complaint form signed on 15 October 1989 by his father to the Registrar and a copy of it to the President of the Tribunal, dated "certificates of posting" being appended to the affidavit; that copies of all the documents were to be delivered to his father by their accountant, but that the documents never reached his father and the accountant left "for unknown destination"; that this fact came to his (the son's) notice "only in January, 1990 but the search of documents proved futile"; and that not until 12 May 1994, "during the periodic scanning of the old records", did he discover copies of his letter of 22 October 1989 to the Registrar, with the certificate of posting, and of his letter of 31 October 1989 to the Registrar and of the complaint form, again with the certificate of posting.
5. Neither the letter of 22 October 1989 nor the letter of 31 October enclosing the complaint form was received at the Registry of the Tribunal.
6. The complainant argues that since he was "committed to his ailing wife, it was not possible for him to keep track

of his son who was on travel status". Having had no further information of the action taken by his son he applied for extension of the time limit but "rushed through" his complaint on 21 November 1989 when he got the Registrar's letter of refusal. He says that it "was later indicated" to him by his son that he (the son) did file the complaint within the ninety days and had directed an employee to send the papers to the complainant, but they never reached him. Then, by the "sudden discovery" in May 1994, his son found all the records relating to the filing of the complaint. That, he makes out, is a "new" fact and evidence that he discovered too late to be able to cite in the original proceedings, "thereby creating exceptional circumstance for admission of the review plea".

7. The complainant does not say at what date his son informed him of the timely posting of a complaint; he merely implies that it was after 21 November 1989, when he posted the complaint that he had prepared himself and that the Tribunal declared out of time. Nor does the son say when he so informed his father; he merely mentions that he discovered in January 1990 that the documents were missing.

8. It is simply not plausible that a son whose mother was in hospital would not have kept in constant contact with his father and, having taken it on himself in ease of his father to look after filing the complaint, would not have assured him reasonably quickly that he had done so in time.

9. The complainant fails to explain why he did not write immediately to the Registrar, on learning that his son had filed an earlier complaint, to ask what had come of it. Indeed at no stage did he make any inquiry, though as far as he was concerned the complaint ought to have arrived safely. Nor did he raise any objection in that regard when he got the judgment of 26 June 1990.

10. There are, moreover, the allegations about the missing telex, two missing letters and a missing employee. Again, the coincidences are not credible.

11. The conclusion is that the Tribunal rejects as incredible the evidence tendered by the complainant. Accordingly it applies the procedure provided for in Article 7 of its Rules and summarily dismisses the application as clearly devoid of merit.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1995.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner