

118th Session

Judgment No. 3389

THE ADMINISTRATIVE TRIBUNAL,

Considering the application, filed by Mr T. A. on 12 November 2013, for review of Judgment 3165 concerning his third complaint against the European Organisation for the Safety of Air Navigation (Eurocontrol);

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

Having examined the written submissions;

CONSIDERATIONS

1. The facts of this case can be found in Judgments 2490 and 3165. In Judgment 3165, delivered on 6 February 2013, the Tribunal dismissed a complaint filed by the complainant, a controller in Maastricht, against the 17 May 2010 decision of the Director General to endorse the unanimous opinion of the Joint Committee for Disputes to reject his internal appeal as unfounded. In that judgment, the Tribunal also dismissed the complainant's request to be appointed to grade B2, step 3, with four years' seniority as from 16 January 1998, as the complainant had failed to exhaust all internal means of

redress prior to filing his complaint. The complainant's subsidiary request to be granted grade B2, step 6 (rather than step 4), as from 1 April 2004 was also dismissed as this claim was barred by *res judicata*, having been ruled on in Judgment 2490. The complainant's allegations of discrimination and the violation of the principle of equal pay for work of equal value were also considered unfounded and the Tribunal quoted Judgment 2490 in this regard. Finally, the Tribunal found that "[t]he complainant was in grade B2, step 5, when the new grade structure was implemented. As a result of the new structure he was placed in grade O5, step 5. Considering that his placement in that grade was lawful in light of paragraph 2 of the Sole Article of Annex XV and Annex III of the General Conditions of Employment, the Tribunal f[ound] that his subsequent automatic advancement to step 6 was also lawful. The complainant ha[d] not provided any evidence that his consequent promotion to grade O6, step 3, with effect from 1 April 2009, was mistaken or unlawful, or that it was in breach of the General Conditions of Employment." His complaint was dismissed in its entirety.

2. In his application for review of that judgment, the complainant submits that the Tribunal did not take into account that Articles 46 and 47 of the General Conditions of Employment "explicitly stat[e]: 'Provisions relating to the promotion of servants occupying a position pertaining to category O are set out in Annex XV'". He asserts that "advancement through selection or competition is not applicable for controllers [as] [t]heir career progression is predefined and promotion is only dependent on satisfactory performance in the defined period before the promotion".

3. The Tribunal's judgments have the authority of *res judicata*. The Tribunal has stated many times that it will review a judgment only in exceptional cases and then only on limited grounds. There are several pleas in favour of review that it will not admit. They are an alleged mistake of law, an alleged mistake in the appraisal of the facts, failure to admit evidence and absence of comment on the parties' pleas. Other pleas in favour of review may be admitted if they are

such as to affect the Tribunal's decision. They include failure to take account of specific facts, material error (i.e. a mistaken finding of fact which does not involve any value judgment and is therefore distinguishable from misappraisal of the evidence), failure to rule on a claim and the discovery of a new fact – i.e. a fact which one of the parties was not able to rely on in the proceedings that culminated in the judgment (see Judgments 748, under 3, 1294, under 2, 1504, under 8, 2270, under 2, and 2693, under 2).

4. The present application for review does not present any of the acceptable reasons for review as detailed under consideration 3 above. Moreover, the Tribunal applied paragraph 2 of the Sole Article of Annex XV and Annex III of the General Conditions of Employment when reaching its decision. The grounds for the complainant's application for review essentially repeat the arguments he submitted in his previous complaints, which were fully considered by the Tribunal prior to the taking of its decisions and the publication of its judgments (both 2490 and 3165). No new argument has been raised. The application for review is therefore devoid of merit and must be dismissed in accordance with the summary procedure provided for in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,

The application for review is summarily dismissed.

In witness of this judgment, adopted on 9 May 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 9 July 2014.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ