



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2009-001

**Muthuswami et al.
(Appellants)**

v.

**United Nations Joint Staff Pension Board
(Respondent)**

JUDGMENT ON APPLICATION FOR REVISION

Before:	Judge Inés Weinberg de Roca, Presiding Judge Mark P. Painter Judge Luis María Simón
Judgment No.:	2011-UNAT-102
Date:	11 March 2011
Registrar:	Weicheng Lin

Counsel for Appellants: Self-represented

Counsel for Respondent: Bernard Cochemé

JUDGE INÉS WEINBERG DE ROCA, Presiding.

Synopsis

1. The Appeals Tribunal emphasizes that revision of a final judgment is an exceptional procedure and not an additional opportunity for a party to relitigate arguments that failed at trial or on appeal.

Facts and Procedure

2. Suttamalle Ponniah Sundaram (Sundaram), Venkatarama Muthuswami (Muthuswami), and Gopalamudram Sadagopan Srinivasan (Srinivasan) are retirees who, at the time of their respective retirements, opted to commute one-third of their pension benefit entitlement into a lump sum, which entailed a consequential reduction in their pension benefits for life. In May 2009, Srinivasan wrote to the United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund) requesting the “[r]estoration of full pension for 1/3 Lump Sum Recipients after a pre-determined period of commutation”. Sundaram and Muthuswami made the same request to the UNJSPF. By letter dated 20 July 2009, the UNJSPF informed Srinivasan that the Standing Committee of the United Nations Joint Staff Pension Board (UNJSPB) rejected his request. Sundaram, Muthuswami, and Srinivasan appealed this decision before the Appeals Tribunal. The Appeals Tribunal dismissed the appeal on 1 July 2010.

3. The Appeals Tribunal noted that participants in the Pension Fund who retire or choose early retirement may receive their retirement benefit in one of two ways. A retiree may opt to receive a pension, payable over his or her lifetime by way of a periodic monthly benefit. Alternatively, through the commutation option, a retiree may receive up to one-third of the pension as a lump sum and the balance of the pension, payable over his or her lifetime, as a reduced periodic monthly benefit. The Appellants relied on the Noblemaire principle in support of their argument that the Regulations of the Pension Fund must be implemented to limit the period of commutation of the lump sum to a fixed duration, after which time the full pension is automatically restored. The Appellants argued that some national service pension schemes, including that of India, allow for restoration of the full pension in this way.

4. The Appeals Tribunal held that, until the application of the Noblemaire principle is changed, the United States Federal Civil Service is the basis of comparison of the pension benefits of the staff of the United Nations common system. The Appellants made no arguments with respect to the pension benefits of the United States Federal Civil Service and, therefore the Noblemaire principle did not assist the Appellants in the appeal.

5. The Appeals Tribunal noted that, through the appeal, the Appellants were effectively seeking an amendment to the Regulations of the Pension Fund to enable the restoration of a full pension after a period of time for those retirees who opt to take part of the pension as a lump sum and receive a reduced pension benefit. However, only the General Assembly can amend the Regulations.

6. The Appeals Tribunal is competent to pass judgment on an appeal from the decision of the Standing Committee of the Pension Board alleging non-observance of the Regulations of the Pension Fund. The Standing Committee rejected the request of Srinivasan to restore his full pension on the basis that he was only entitled to receive the reduced pension benefit under the Regulations. The Appellants did not establish that the Standing Committee did not comply with the Regulations of the Pension Fund.

7. The Appeals Tribunal dismissed the appeal in its Judgment No. 2010-UNAT-034. The Registry of the Appeals Tribunal released the Judgment to the parties on 17 August 2010.

8. On 28 August 2010, Sundaram, Muthuswami, and Srinivasan filed an application for revision of the Judgment. On 9 September 2010, the Registry of the Appeals Tribunal forwarded the application for revision to the UNJSPB, which filed its comments on 7 October 2010.

Considerations

9. Revision proceedings are governed by Article 11(1) of the Statute of the Appeals Tribunal (Statute) and Article 24 of its Rules of Procedure (Rules). The Appeals Tribunal emphasizes that revision of a final judgment is an exceptional procedure and not an additional opportunity for a party to relitigate arguments that failed at trial or on appeal.

10. The text of the Statute and the Rules clearly sets out the material elements which a moving party must show for revision to be granted. The moving party must show that (i) there is a new fact which, at the time the judgment was rendered, was unknown to the Appeals Tribunal and the party applying for revision; (ii) that such ignorance was not due to negligence of the moving party; and (iii) that the new fact would have been decisive in reaching the original decision.

11. The former Administrative Tribunal consistently held that “[n]o party may seek revision of the judgement merely because that party is dissatisfied with the pronouncement of the Tribunal and wants to have a second round of litigation”.¹ In another case, the former Administrative Tribunal noted:

[W]hat the Applicant is seeking is “another bite at the cherry”, another chance to litigate the same issues which have been settled in the previous litigation. The jurisprudence of the Tribunal is clear that he cannot do this, as stated in Judgement No. 503, *Noble* (1991): “This request seeks to relitigate factual issues involved in the proceeding which led to that judgement and which could and should have been raised by the Applicant in that proceeding ... It is plainly frivolous for the Applicant to attempt to relitigate factual issues in the guise of seeking an interpretation of a Tribunal judgement.” This principle also applies when the case at hand is one for a revision of judgement.²

12. The Appeals Tribunal has carefully considered the different grounds for revision put forward by the Appellants in this case. These relate to the hearing conducted by the Appeals Tribunal, the oral pronouncement of the synopsis of the Judgment, and the written Judgment. None of the facts presented by the Appellants fulfill the above requirements under Article 11(1) of the Statute and Article 24 of the Rules; and the Appellants clearly confuse “new facts” with oral arguments, the conduct of proceedings, and a final judgment.

13. The present application for revision is nothing but an attempt by the Appellants to relitigate their case. We have inherent discretion in deciding whether submissions merit a detailed reasoned opinion and will readily dismiss arguments which are evidently ill-founded. This case warrants the exercise of such discretion. The parties had ample opportunity to litigate their case. It is abundantly clear that only another review of the original case, resulting in a different outcome, would give the Appellants satisfaction. This

¹ Former Administrative Tribunal Judgment No. 894, *Mansour* (1998).

² Former Administrative Tribunal Judgment No. 1201, *Berg* (2004).

they are not entitled to, since a party may not seek revision of the judgment merely because it is dissatisfied with the pronouncement of this Tribunal and wants to have a new round of litigation.

14. We therefore also dismiss the Appellants' request to have this application heard by the full bench of the Appeals Tribunal.

Judgment

15. The application for revision is dismissed.

Original and Authoritative Version: English

Dated this 11th day of March 2011 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Painter

(Signed)

Judge Simón

Entered in the Register on this 19th day of April 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar