

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

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

Appellants: Self-represented

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.

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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.

