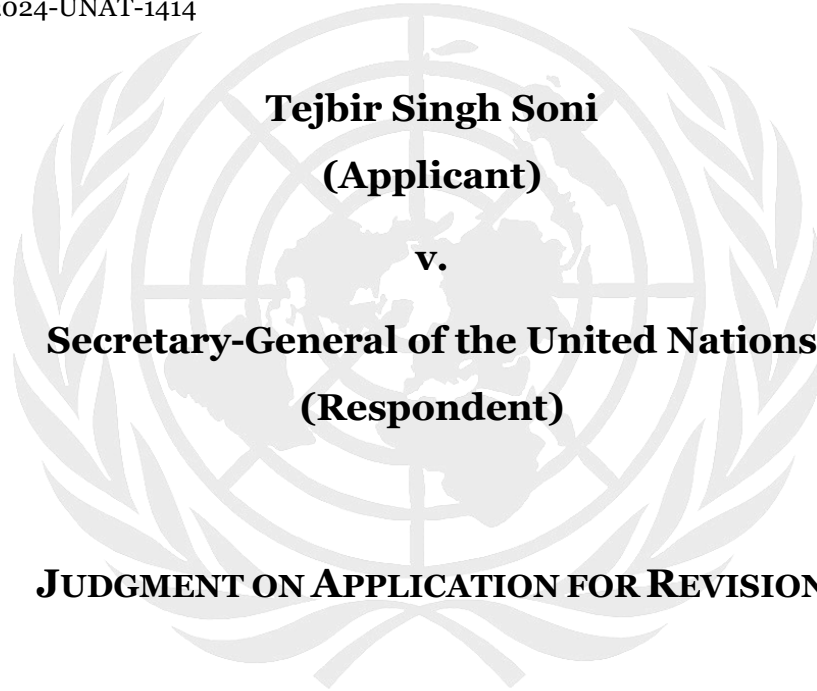




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2024-UNAT-1414



Tejbir Singh Soni

(Applicant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT ON APPLICATION FOR REVISION

Before:	Judge Katharine Mary Savage, Presiding Judge Gao Xiaoli Judge Graeme Colgan
Case No.:	2023-1800
Date of Decision:	22 March 2024
Date of Publication:	19 April 2024
Registrar:	Juliet E. Johnson

Counsel for Applicant: Self-represented

Counsel for Respondent: Patricia C. Aragonés

JUDGE KATHARINE MARY SAVAGE, PRESIDING.

1. Mr. Tejbir Singh Soni, a former staff member of the United Nations Children’s Fund (UNICEF), contested his separation from service on the grounds of constructive dismissal and coerced resignation.
2. By Judgment No. UNDT/2022/003, the United Nations Dispute Tribunal (UNDT) found that Mr. Soni had submitted a management evaluation request (MER) out of time, and rejected the application as not receivable *ratione materiae* (UNDT Judgment). Mr. Soni appealed.
3. By Judgment No. 2023-UNAT-1316 (prior Judgment),¹ the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) dismissed the appeal and affirmed Judgment No. UNDT/2022/003.
4. Mr. Soni filed an application for revision of the prior Judgment with the Appeals Tribunal.
5. For the reasons set out below, the Appeals Tribunal dismisses the application for revision.

Facts and Procedure²

6. Mr. Soni served as Social Policy Specialist at the India Country Office of UNICEF.³ On 18 May 2021 he reiterated his resignation, which he had previously submitted by e-mail, on the basis that he felt coerced to resign. On 23 May 2021, his resignation was accepted. On 28 May 2021, he contacted the Office of the Ombudsman for United Nations Funds and Programmes (OOFPP), among others, about his employment situation. On 4 June 2021, he separated from UNICEF.
7. On 7 July 2021, a Mediation Specialist, OOFPP, advised Mr. Soni that the rules of the Organization did not allow for his reinstatement.⁴ The Mediation Specialist requested him to acknowledge receipt of this information and indicate if he nevertheless remained willing to engage in mediation.

¹ *Tejbir Singh Soni v. Secretary-General of the United Nations*, UNAT Judgment dated 4 April 2023.

² Summarized from the prior Judgment as relevant to the application for revision.

³ Prior Judgment, paras. 6-10.

⁴ *Ibid.*, para. 11.

8. On 9 July 2021, Mr. Soni formally requested legal assistance from the Office of Staff Legal Assistance (OSLA).⁵ On 27 October 2021, OSLA informed him that it would not represent him before the UNDT.

9. On 2 August 2021, Mr. Soni requested management evaluation of what he contended was his constructive dismissal by UNICEF, due to an inharmonious work environment and a lack of support which had compelled him to resign.⁶ On 31 August 2021, Mr. Soni's management evaluation request (MER) was rejected as not receivable on the grounds that it had not been filed within the mandatory time limit and that it did not contest an administrative decision.⁷

10. On 16 November 2021, Mr. Soni filed an application with the UNDT.⁸

11. On 13 January 2022, the UNDT rendered Judgment No. UNDT/2022/003.⁹ The UNDT found that Mr. Soni had known of the alleged implied contested decision to constructively dismiss him by 18 May 2021, being the date on which he reiterated his resignation, or at the latest, on the date UNICEF accepted his resignation on 23 May 2021. The UNDT found Mr. Soni's contentions regarding lack of orientation and support for filing the MER on time, i.e. ignorance of the law, unsupported and noted that a formal mediation process was never initiated.

12. Mr. Soni filed an appeal against the UNDT Judgment, maintaining that he was misguided by OSLA and OAFP during the period for filing the MER.¹⁰

The prior Appeals Tribunal Judgment

13. By Judgment No. 2023-UNAT-1316 dated 4 April 2023, the UNAT dismissed Mr. Soni's appeal and affirmed the UNDT Judgment.¹¹

14. The UNAT found that the UNDT had not committed any errors when it found that Mr. Soni's application was irreceivable *ratione materiae*.¹² The UNDT was found to have correctly held that Mr. Soni had knowledge of the alleged constructive dismissal on either the date that he reiterated his resignation, being 18 May 2021, or "at the latest" when UNICEF accepted his

⁵ *Ibid.*, para. 12.

⁶ *Ibid.*, para. 13.

⁷ *Ibid.*, para. 15.

⁸ Judgment No. UNDT/2022/003, para. 16.

⁹ Prior Judgment, paras. 16-20.

¹⁰ *Ibid.*, para. 45.

¹¹ *Ibid.*, paras. 27-31.

¹² *Ibid.*, para. 35.

resignation on 23 May 2021. His MER was filed on 2 August 2021, outside the 60-day statutory time limit which expired on 17 July 2021 or, at the latest, on 22 July 2021.

15. The UNAT further noted that there was no evidence that the Secretary-General had extended the management evaluation deadline or specified the conditions for extending it.¹³ There is no indication that settlement negotiations through OOFP actually took place. A mere request for assistance from OOFP was found to be insufficient and, although Mr. Soni sought mediation from OOFP and a formal mediation process was never initiated, it was apparent that Mr. Soni was informed by mediators of his options, particularly that the Organization's rules did not allow for reinstatement after mediation and that he indicate whether he sought that the mediation process proceed.

Procedure before the Appeals Tribunal

16. On 3 May 2023, Mr. Soni filed an application for revision of the prior Judgment with the Appeals Tribunal, to which the Secretary-General filed comments on 7 June 2023.

Submissions

Mr. Soni's Application for Revision

17. Mr. Soni requests the Appeals Tribunal to revise the prior Judgment and issue a fair judgment.

18. With regard to any decisive fact that was unknown, Mr. Soni refers to paragraphs 31 and 33 of the prior Judgment, which summarize the Secretary-General's contentions,¹⁴ and requests that the Appeals Tribunal take note of paragraphs 4, 19, 20 and 21 of his application before the UNDT and Annexes 25, 26, 27, 28, 29, 30, 33 and 34 thereto. He contends that the Appeals Tribunal erred on a question of law and failed to exercise its jurisdiction by only taking into account the Secretary-General's opinions and ignoring the evidence submitted by him to the UNDT and the UNAT.

¹³ *Ibid.*, para. 41.

¹⁴ Mr. Soni takes issue with the Secretary-General's argument that his additional evidence, including correspondence with OSLA, was not presented to the UNDT and that his criticism of OSLA and OOFP was misguided and without merit.

19. Quoting Annex 13 to his appeal before the UNAT, Mr. Soni proceeds to “reiterate” that a mediator of OOFP misguided him by encouraging him to discuss the matter with OSLA instead of advising him to file a MER immediately. Furthermore, the assigned legal counsel from OSLA purposefully derailed his timeline for filing the MER and confused him by giving conflicting legal opinions and denying assistance of any kind via official e-mail.

20. As concerns becoming aware of the above-mentioned facts, Mr. Soni submits that he learned from the prior Judgment that the Secretary-General’s statements of fact before the Appeals Tribunal were misleading and that the prior Judgment was biased for completely ignoring the evidence.

21. As regards the facts being decisive to warrant a revision of the prior Judgment, Mr. Soni contends that the Appeals Tribunal ignored and denied the fact that all the evidence had been submitted before the UNDT. Furthermore, he was not provided any orientation or training on the time requirements for receivability of an application. OSLA derailed his case and he was victimized. By discounting that important fact, the Appeals Tribunal erred. It can now reverse the decision on receivability.

22. Finally, Mr. Soni argues that the prior Judgment is unjust as it imposed no penalty on the mediator of OOFP or on OSLA for breaches of United Nations rules and unprofessional and unethical conduct. The Appeals Tribunal failed to exercise its jurisdiction and restore the rule of law by not providing any relief for or even mentioning their breaches.

The Secretary-General’s Comments

23. The Secretary-General requests that the Appeals Tribunal reject the application for revision.

24. The Secretary-General argues that Mr. Soni has failed to identify or otherwise refer to the discovery of any decisive new fact. First, the prior Judgment does not constitute a new decisive fact. Secondly, the alleged “facts” recited were not unknown to him or the Appeals Tribunal when it rendered the prior Judgment. He had put forth similar arguments in his application before the UNDT and his appeal before the UNAT.¹⁵ In sum, he merely expresses his dissatisfaction with the

¹⁵ The Secretary-General cites Section VII, paragraphs 19-21, and Section VII, paragraph 4, of Mr. Soni’s application and paragraphs 2 and 5 of his appeal brief.

outcome and attempts to relitigate his case. The authority of the prior Judgment cannot be set aside.

Considerations

25. The jurisprudence of this Tribunal is clear that the authority of a final judgment cannot be readily set aside. An application for revision cannot succeed where it does not meet the requirements of Article 11(1) of the Appeals Tribunal Statute (Statute) and seeks to re-litigate a matter already determined by the Tribunal in a final judgment. This accords with the principle of *res judicata*. It creates legal certainty and bring disputes already litigated to finality.

26. As consistently held by this Tribunal, an applicant for revision of a judgment, in terms of Article 11(1), must identify the decisive facts that, at the time of the Appeals Tribunal's Judgment, were unknown to both the Appeals Tribunal and the party applying for revision; that such ignorance was not due to the negligence of the applicant; and that the facts identified would have been decisive in reaching the decision.¹⁶ An application for revision of a final judgment must be made 30 calendar days after the discovery of the decisive fact and within one year of the issuing of the Judgment and can only succeed if it meets the strict and exceptional criteria established by Article 11 of the Statute.¹⁷

27. Mr. Soni does not fulfil the requirements for revision of the prior Judgment of the Appeals Tribunal. No new fact is advanced by Mr. Soni that was unknown either to him or the Tribunal at the time of the prior Judgment, nor one that would have been decisive in reaching the decision had it been known. Mr. Soni's application for revision amounts to a restatement of the material already placed before the Tribunal, which was considered and rejected, and constitutes an attempt to have the appeal, which was disposed of, re-heard *de novo*.¹⁸ It follows that the application for revision cannot succeed in that it fails to meet the strict and exceptional criteria established by Article 11 of the Statute.

¹⁶ *Ashraf Ismail abed allah Zaqqout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1152, para. 27; *Applicant v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-393 at para 12 (internal citation omitted).

¹⁷ *Applicant Judgment, op. cit.*, paras. 14 (internal citation omitted).

¹⁸ See *Masri v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-163, para. 14.

28. The application therefore does not meet the requirements for revision and falls to be dismissed.

Judgment

29. Mr. Soni's application for revision of Judgment No. 2023-UNAT-1316 is dismissed.

Original and Authoritative Version: English

Dated this 22nd day of March 2024 in New York, United States.

(Signed)

Judge Savage, Presiding

(Signed)

Judge Gao

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 19th day of April 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar