World Bank Administrative Tribunal

2015

Decision No. 510

AI (No. 4),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

World Bank Administrative Tribunal
Office of the Executive Secretary

AI (No. 4),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Andrew Burgess and Abdul G. Koroma.

2. The Application was received on 14 October 2014. The Applicant represented himself. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. Invoking Article XIII of the Tribunal's Statute, the Applicant seeks the revision of three judgments of the Tribunal.

FACTUAL BACKGROUND

4. On 15 September 2008, the Applicant filed an application with the Tribunal raising three main claims: (i) the Bank breached its promises to make him the Global Manager of the International Comparison Program (ICP) and to propose him for promotion to level GH; (ii) the Bank discriminated against him and did not give him the ICP Global Manager title because of his race and origin as a "black Sub-Saharan African"; and (iii) the Bank retaliated against him because he filed an appeal with the Appeals Committee. On 23 March 2010, the Tribunal rendered its judgment on the first application, in which it dismissed all of the Applicant's claims (*see AI*, Decision No. 402 [2010]).

5. On 30 November 2009, the Applicant filed a second application with the Tribunal challenging the Bank's decision to terminate his employment for unsatisfactory performance. On 29 October 2010 the Tribunal rendered its judgment and concluded that

the Bank's termination decision was an abuse of discretion. The Tribunal awarded the Applicant compensation in the amount of three years' salary, net of taxes; and costs and expenses in the amount of $10,000 (*see AI (No. 2)*, Decision No. 437 [2010]). According to the Bank, the compensation awarded "amounted to almost half a million dollars."

6. In his second application, the Applicant requested the Tribunal to "revisit" the judgment in *AI*, Decision No. 402 [2010], which he characterizes as "my discrimination case." He stated: "I appeal to the Tribunal to revisit its judgment of my discrimination on moral and ethical grounds because the judgment contains more than a dozen factually wrong assertions that have long and enduring damage to my career prospects." The Tribunal addressed this request in *AI (No. 2)*, Decision No. 437 [2010], para. 71, stating that:

> The Tribunal recalls that the Applicant made allegations of racial discrimination in his first application. Those allegations relate to his non-appointment as the ICP Global Manager. The allegations have been considered by the Tribunal and are irreceivable under the principle of *res judicata* (*see AI*, Decision No. 402 [2010], paras. 38-77). No new facts or arguments regarding racial discrimination, beyond his bare assertions, have been provided by the Applicant.

7. On 28 October 2013, the Applicant filed a third application seeking revision of the two judgments (Decision Nos. 402 and 437) under Article XIII of the Tribunal's Statute. In this application he sought revision mainly on the ground that on 29 August 2013 the Bank confirmed to him that his employment with the Bank began in 1993, whereas in his view, the Bank had submitted to the Tribunal that his employment began in 1995. The Applicant argued that the Bank defrauded the Tribunal.

8. The Tribunal dismissed the third application in *AI (No. 3)*, Decision No. 495 [2014] concluding that there were no new decisive facts warranting a revision of the judgments under Article XIII. The Tribunal found that: "Given the Bank's Answers to the two applications that stated that he joined in 1993 and the document 'Applicant's Employment History' that were all part of the record, the Tribunal was not 'defrauded' in respect of the Applicant's EOD [entry on duty]" (para. 23).

9. The Tribunal further found that:

> In any event, it is clear that the debate of 1993 versus 1995 had and still has absolutely no relevance for the two applications the Applicant filed before the Tribunal. In both applications, in completing the Tribunal's application forms, the Applicant himself stated "1 July 2000" as his "Date of Employment." Surely no one should assume an ulterior motive on the part of the Applicant in this respect. In both applications, he recited facts dating from 1999 in reference to his role in building ICP. Whether his employment began in 1993 or 1995 was not a decisive factor even in the Applicant's own submissions.

10. The Applicant filed this fourth Application on 14 October 2014, seeking revision of the three judgments under Article XIII of the Tribunal's Statute.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's main contentions

11. In support of this Article XIII Application, the Applicant makes the following statements:

> This Application is submitted to request a review of the Tribunal's judgment on *AI v. IBRD*, Decision No. 1, 2 and 3 on two grounds.
>
> First this application is based on Article XIII of the Tribunal's Statute, which provides for a reconsideration of the Tribunal's judgment upon the discovery of new evidence. …
>
> On Tuesday, February 25, 2014, Respondent sent me an email suggesting, that it will restore deleted parts of my OPE in my staff files without any explanation why it was deleted and why Respondent failed to restore the record during the Tribunal's proceedings despite my repeated requests and pleas. Two important points are worthy of notice.
>
> First, Respondent's email message was sent to me after the deadline to submit evidence to the Tribunal had long passed. For example, the addendum I sent on January 1, 2014 by an email message to [the Executive Secretary of the Tribunal] was considered late and was not reflected in the Tribunal's judgment. During the Tribunal proceedings I asked Respondent to restore my record several times. Respondent chose to wait until the deadline for introducing new evidence had passed before it restored my record. This is yet

> another evidence that Respondent willfully, systematically, flagrantly and maliciously obstructs its own justice system.
>
> Second, Respondent asserted in [its] email: "To begin with, it is important to note that your 2002 OPE was not the subject of your grievance against the Bank, which you commenced in 2006. In fact, it was your 2008 OPE that you challenged in the Bank's internal justice system." Respondent knows both sentences are patently false. My racial discrimination claims were filed in early 2007 with the Bank's internal justice system. This is over a year before my 2008 OPE was even in existence, assuming that Respondent is using the Gregorian calendar. Furthermore, the Bank's defense for not short-listing me read: "Applicant had no management responsibility during 2002 to 2006." My 2002 OPE was obviously material to my case.
>
> The new discovery provides hard evidence that the Respondent had different HR record for me during the Tribunal proceedings. [Though] what the Bank submitted to the Tribunal is a different record, what it used during the Tribunal's proceedings is based on the deleted record, denying my managerial experience. The fact that the Bank has many starkly contradictory personnel files and stories about me is sufficient enough to warrant a review of the Tribunal's decision. Respondent's decision to restore my HR record outside of the Tribunal's proceedings shows its willful intentions to maintain its false HR assertions in the Tribunal's record. What matters the most is what is in the Tribunal's judgment. What is in the Tribunal's judgment reflects false evidence that Respondent submitted to the Tribunal denying my managerial role in 2002. Since Respondent has now corrected its internal record, the Tribunal must take that into consideration and reconsider its judgment because the Bank has effectively recognized that the evidence is false and accordingly corrected its internal files.

The Bank's main contentions

12. The Bank raises a preliminary objection and requests the Tribunal to summarily dismiss the Application for lack of jurisdiction. The Bank makes the following statements:

> Applicant's assertion is a manifestation of his chimerical relationship with facts. His choice of words is also very telling: "Respondent sent me an email suggesting that it will restore deleted parts of my OPE in my staff files."… Uncharacteristically but conveniently Applicant does not attach the February 25, 2014, e-mail to his latest Application, a review of which would reveal that Applicant's assertion is false. Any deletion or restoration of record is a figment of Applicant's imagination. Since Applicant's records were not falsified in the first place, there was no record to be corrected.

> Applicant's 2002 OPE is neither material nor new facts that would warrant the Tribunal to revisit issues that it had adjudicated in Decision Nos. 402, 437 and 495. Moreover, the existence of the 2002 OPE was known to both the Tribunal and Applicant at the time the Tribunal rendered the three Decisions. In fact, Applicant's "managerial role" was contended during the previous proceedings before the Tribunal but the decision did not turn on whether Applicant had any such role.
> …
>
> In sum, Applicant has not proffered any new facts, which would have made the Tribunal rule differently in Decision Nos. 402, 437 and 495. Applicant is simply making a mockery of the finality of Tribunal's judgment by basically arguing that he disagrees with the Tribunal in Decision Nos. 402, 437 and 495.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

13. Article XI of the Tribunal's Statute provides that: "Judgments shall be final and without appeal." In *van Gent (No. 2)*, Decision No. 13 [1983], para. 21, the Tribunal held that:

> Article XI lays down the general principle of the finality of all judgments of the Tribunal. It explicitly stipulates that judgments shall be "final and without appeal." No party to a dispute before the Tribunal may, therefore, bring his case back to the Tribunal for a second round of litigation, no matter how dissatisfied he may be with the pronouncement of the Tribunal or its considerations. The Tribunal's judgment is meant to be the last step along the path of settling disputes arising between the Bank and the members of its staff.

14. The Tribunal has also stated that: "This rule of finality of the Tribunal's judgments is essential to the operation of the Bank's internal justice system. Once the Tribunal has spoken, that must end the matter; no one must be allowed to look back to search for grounds for further litigation." *Mpoy-Kamulayi (No. 7)*, Decision No. 477 [2013], para. 27.

15. The Statute provides a sole exception to this principle of finality. Article XIII provides that:

> A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.

16. The Tribunal has stated in a number of its judgments that "the powers of revision of a judgment are strictly limited and may be exercised only upon compliance with the conditions set forth in Article XIII." *Skandera*, Decision No. 9 [1982], para. 7. In *Kwakwa (No. 2)*, Decision No. 350 [2006], paras. 18-19, the Tribunal held that

> the character of Article XIII as a very limited exception should be obvious. Its requirements are not fulfilled unless the Tribunal is satisfied that newly discovered facts are potentially decisive.
>
> It is difficult to define in a phrase the nature of factual revelations which might justify the disruption of a *res judicata*; it is a matter to be determined in the particular circumstances of each case. If it were left to any disappointed litigant to assess the relevance and decisiveness of subsequently discovered facts, the ingenuity of pleaders would ensure that few, if any, judgments would ever be final. Unless some restrictive principle fulfills a rigorous screening function, the availability of revision would subvert a fundamental rule of tribunals such as this one: namely that its judgments are definitive. To ensure that Article XIII does not wreak havoc with the rule of finality, enshrined in Article XI, the former must be recognized as available only in exceptional circumstances. The "new fact" must shake the very foundations of the Tribunal's persuasion; "if we had known that," the judges must say, "we might have reached the opposite result."

17. The present Application must be viewed in light of these fundamental statutory rules of the Tribunal and its related jurisprudence.

18. Here, the triggering event for the Applicant is an e-mail he received from the Bank on 25 February 2014. The e-mail, which the Bank provided to the Tribunal, is reproduced below:

> This is in response to your various messages to officials of the Bank with respect to your claims, which we dispute, regarding past Overall Performance Evaluations (OPEs) – in particular your 2002 OPE.

> To begin with, it is important to note that your 2002 OPE was not the subject of your grievance against the Bank, which you commenced in 2006. In fact, it was your 2008 OPE that you challenged in the Bank's internal justice system. Notwithstanding, we checked the dossier of your case before the Tribunal and found a copy of your 2002 OPE, which was provided to the Tribunal, along with your 2003, 2004, 2005 and 2006 OPEs, as part of the "Respondent's Response to Tribunal's Orders of August 10, 2009", as attachment 2. You will see that this 2002 OPE, received by the Tribunal, accurately indicated your results assessment for that OPE period. I believe the Tribunal shared this document with you in 2009 as part of your proceedings.
>
> Attached you will find a copy of the relevant reference pages and the 2002 OPE, together with a separate copy of the OPE on its own. This 2002 OPE will be scanned into your staff records.
>
> As for your request for a letter of reference: as you may be aware, Bank policy is to only confirm someone's tenure and title, which we will be happy to do. Nevertheless, if you believe using the 2002 OPE will be useful to you in an application, you have the right to share it with a prospective employer.

19. The Applicant seems to suggest that this e-mail shows that the Tribunal did not have a full record of his 2002 Overall Performance Evaluation (OPE) and he adds that: "What is in the Tribunal's judgment reflects false evidence that Respondent submitted to the Tribunal denying my managerial role in 2002."

20. The Tribunal revisited the record of the Applicant's prior applications and found that the complete record of the Applicant's 2002 OPE was before the Tribunal, and it in fact was also submitted by the Applicant himself as part of the annexes to his first application. In addition, in the same application he made detailed submission with respect to his "management role" in 2002. The Tribunal finds no new decisive facts warranting a revision of the prior judgments under Article XIII.

21. The Applicant seeks a revision also on the ground that the Tribunal's prior judgments contain "material omissions and errors." These are not new assertions. These repeated claims have no factual or legal basis to warrant a revision under Article XIII.

22. In view of the foregoing, the Tribunal dismisses the current Application.

DECISION

The Application is dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel
President

/S/ Zakir Hafez

Zakir Hafez
Acting Executive Secretary

At Washington, D.C., 29 May 2015