



World Bank Administrative Tribunal

2018

Decision No. 583

**Ashis Bhadra,
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**Ashis Bhadra,
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Mónica Pinto (President), Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), Ahmed El-Kosheri, Abdul G. Koroma, and Marielle Cohen-Branche.
2. The Application was received on 24 August 2017. The Applicant represented himself. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant is contesting, among others, his supervisor's decision of 19 April 2017 not to extend his fixed-term appointment beyond its expiration date.

FACTUAL BACKGROUND

4. The Applicant joined the Bank on 18 October 2015 as a locally recruited Senior Transport Specialist, Grade GG, for a two-year term appointment in Dhaka, Bangladesh. The Applicant's Letter of Appointment stated that "[y]our appointment will be subject to a probationary period of one year, which may be extended for up to one additional year."
5. On 30 July 2016, the Country Director announced a Voluntary Departure Program (VDP) for non-national staff and their families in response to a terrorist attack in Dhaka that had targeted the expatriate community a few weeks earlier. The VDP allowed non-national staff, like the Applicant, who was of Indian nationality, and their dependents to voluntarily depart the country for an initial period of four months.

6. On 3 August 2016, the Applicant informed his supervisor of his decision to participate in the VDP and “evacuate urgently, take my family along to Delhi, immediately try to ensure that my child [does] not lose another year in school.”

7. On 9 August 2016, the Country Director authorized the relocation of the Applicant, his wife, and his child to New Delhi, India.

8. In early October 2016, the Applicant’s Performance Evaluation for Fiscal Year 2016 (FY16) was completed. The Applicant’s supervisor commented in the Overall Supervisor Comments section of the FY16 Performance Evaluation that “[the Applicant] had had a good start [...]. He has the skills and he is ready to take on more responsibilities in BD [Bangladesh] but needs to be more proactive to ensure his portfolio will be [a] strong one this upcoming year.”

9. On 18 October 2016, the Applicant completed his one-year probationary period.

10. The same date, the Applicant’s supervisor emailed the Applicant to inform him that his probationary period would be extended for four additional months, noting that:

The political situation in Bangladesh is uncertain at the moment vis-à-vis non-Bangladeshi nationals, since you were hired as a local staff to work in Bangladesh this uncertainty is affecting your work place directly. As discussed, I am extending your probation to monitor the situation and asses[s] our options over the next 4 months to inform next decisions.

I want to clarify that this is not a decision based on performance and your skill set. As per my assessment in your FY16 performance evaluation, you have performed as expected while Bangladesh was a place for you to work normally.

We will work jointly to explore solutions that will be safe for you and effective for the WB’s GP [Global Practice] performance.

11. In the following days, the Applicant and a Human Resources (HR) Business Partner, Human Resources, Client Services (HRDC2) exchanged emails regarding the applicable legal basis for the extension of the Applicant’s probationary period.

12. On 27 October 2016, upon the HR Business Partner's suggestion, the Applicant emailed his supervisor requesting her to "kindly 'not' extend my probation for reasons outside of my performance (for security related emergency evacuation as per Vice President's directive)." He added that "[a]ll I need at this stage is your appreciation of my circumstances and favorable decision on my confirmation. On my part, I assure you of my best effort and sincerity to the Bank." The Applicant reiterated his request on 31 October 2016.

13. On 16 November 2016, the Applicant's supervisor confirmed the Applicant's appointment to take effect retroactively from 18 October 2016. In her email to the Applicant, she communicated "the terms and conditions" of the confirmation, noting that:

- (i) I'll proceed entering the HR action for your confirmation with an effective date of October 18, 2016. This refers to your CO [country office] appointment as Transport Specialist in Bangladesh;
- (ii) Starting on December 1st we expect you to work every week from Dhaka using BD labor schedule for weekends and AWS [Alternative Work Schedule]; and
- (iii) Assuming that the VDP is extended beyond November 30th, 2016, we will fully support the continuation of the VDP and its current terms for your dependents if you cho[o]se to continue with this relief measure. I'll discuss this with the Region to ensure that the extension memo is clear.

14. In the email, the Applicant's supervisor noted that, because of the security situation in Dhaka, the Applicant had expressed his preference not to work in Dhaka weekly but spend more time with his family, particularly with his child. She recalled that she had informed the Applicant of management's preference to have him in Dhaka for at least four days a week. The Applicant's supervisor finally stated that it was "important that the teams know that they can count on you, that you are available and effective in Dhaka. Your presence in BD is essential to the job."

15. On 30 November 2016, the Applicant had a meeting with his supervisor in Dhaka. The following day, the Applicant emailed the country office's Operations Manager alleging that his supervisor had threatened him with the non-renewal of his contract. He asked the country office's Operations Manager "to put an end to this kind of behavior without further delay, so that

my work and health [are] not affected.” In his email, the Applicant recounted that his supervisor was not keen to accede to his request for a more flexible work schedule and “insisted upon my being here every week, despite the cost and no additional advantage.” He added that:

She told [me] something rather emphatically though: “Nobody in Bank (arms stretched out to emphasize her point) can do anything about extending your term—it is entirely my decision.”

Put in context: not responsive to the initial VDP, holding back confirmation, confirmation subject to conditions, holding back charge code (which she defended), travelling on personal expense, trying to dilute performance right after appraisal, trying to bias CMU [Country Management Unit], aspersion on technical competence—all these were retaliatory and causing mental stress. But now it has been taken one notch higher—this is more like [a] threat.

16. On 19 December 2016, the Applicant wrote to HR Client Services, to bring to their attention that the HR Business Partner had misguided him and misinterpreted the Staff Rules regarding the extension of his probationary period. The Applicant alleged that the HR Business Partner’s actions were deliberate and unethical and evidenced manipulation and coercion on her part. HR Client Services responded on 28 December 2016 asking for further clarification, noting that they “could not find anything that fits the behavior ascribed in your note.”

17. On 18 January 2017, HR Client Services notified the Applicant that the VDP had been extended through 30 June 2017, noting that:

The purpose of the Voluntary Departure Program remains unchanged (i.e., to support staff family members—registered spouse and dependents), but we will be aiming at limiting its scope to family members only. Accordingly, by default, non-national staff members will be expected to be permanently based at their normal duty station (Dhaka). In the case a staff member expresses the desire to be based (or continue to be based) outside Dhaka in order to remain with his/her family, a discussion with the staff member’s manager should take place for assessing whether the assigned work program can be accommodated remotely. As per applicable staff rule[s], the prerogative of the final decision will remain with the line manager, in consultation with the staff member.

18. On 22 January 2017, the Applicant emailed his supervisor to request permission to stay in Delhi for the extended VDP period. The Applicant stated that:

My requirement of being with my family is not an option but a necessity due to the health condition of my child. He has medical problems, which throw him into SOS situation. For this, it is not advisable for me to stay away from my family [...].

Submitting that it is really difficult for me to be apart from the family due to circumstances, which [were] not my creation [...].

19. On 13 February 2017, the Applicant's supervisor emailed the Applicant to communicate her decision regarding the VDP extension and other outstanding matters. In her email, the Applicant's supervisor stated:

Work program:

[Y]ou requested not to work in the Transport Connectivity nor Bangladesh Inland regional waterways project as you are not comfortable working with the TTL [Task Team Leader]. [...] Your decision will impact more than 50% of your portfolio. Once again, I encouraged you to engage in an open dialog[ue], which I'll be happy to facilitate, with this [TTL] to go over the issues as we need you to work/support all the portfolio in the country.

To work on Rural Roads, Rural Bridges, projects and Urban Agenda in Bangladesh:

I expect you to become the TTL for the BD rural roads and have a leading role in the deliverable of the PfoR Bridges project [...]. On the portfolio development, we discussed the importance for you to be present in the ground to ensure an ongoing dialogue based on the IDA [International Development Association] envelope and the options that are open for Transport projects using these funds.

Voluntary Departure Program:

I agreed to your proposal on the basis of your assurance that all your responsibilities and revised FY17 objectives can be covered satisfactorily [...].

Work from home:

[T]here is no need to work from Delhi office premises. Moreover, while in Delhi, you are expected to work while being at home to ensure WB rules [are] observed properly to ensure completion and timely work [...].

20. On 25 February 2017, the Applicant replied to his supervisor's email alleging that his supervisor's statements were inaccurate and retaliatory and that "[i]t would not be out of reason if one wonders that such inaccuracies, repeated many times and biased uniformly against oneself has a motive behind it. Compels me to say that collectively speaking, all these actions and statements [look] like an attempt to build up a case against me, even if at the cost of accuracy."

21. On 19 April 2017, the Applicant received from his supervisor a letter notifying him that his appointment would not be renewed beyond its expiration date of 31 October 2017.

22. On 20 April 2017, the Applicant requested his supervisor to inform him of “the reason behind the decision to end my Term Appointment.”

23. On 21 April 2017, the Applicant’s supervisor responded that “your term appointment is expiring at its completion and by its own terms. T&I [Transport and ICT Global Practice] is not prepared to offer an extension as we are currently reviewing our staffing structure for the region vis-a-vis the business needs.”

24. In May 2017, there were a series of emails between the Applicant, his supervisor, and HR, in which the Applicant protested against the non-extension of his contract, insisting that pursuant to the Staff Rules, the Bank had an obligation to “absorb me against one of those vacant positions [two GG Senior Transport Specialist positions he claimed were vacant in India at the time].” HR clarified that the Bank’s obligation to reassign him to another similar position is only pertinent in redundancy cases, which was not applicable to his case.

25. On 30 June 2017, the VDP was terminated and Dhaka was declared a non-family post. That meant that all non-national staff assigned to Dhaka who had not already returned were required to return to Dhaka, and either make arrangements for their families to be based outside of Bangladesh or seek exception from senior management to allow for families to be in Bangladesh.

26. The same date, the Applicant’s supervisor emailed the Applicant to inform him that he was expected to report to Dhaka on 2 July until the expiration of his contract. The Applicant immediately replied to his supervisor’s email and requested that he be allowed to continue working from India.

27. On 11 July 2017, the Applicant’s supervisor emailed the Applicant authorizing a home-based work arrangement from Delhi from 1 July 2017 until the expiration of the Applicant’s

contract. From that date, the Applicant's work concentrated on an analytical report pertaining to the project in which he had been involved since the beginning of FY17.

28. The Tribunal received the Application on 24 August 2017. The Applicant seeks the following: (i) his "reinstatement in similar positions based in New Delhi"; (ii) compensation in the amount of \$1,398,375.00 "for the cumulative salary he would have received for the remaining years of his service till retirement at 67 years of age"; and (iii) compensation in the amount of \$186,450.00 "for 2 (two) years' salary (at current level) for the rather inhuman stress that [he] has been subjected to."

29. On 31 October 2017, the Applicant left the service of the Bank, at the expiration of his fixed-term appointment.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

The Bank's extension of the Applicant's probationary period was contrary to the Staff Rules

30. The Applicant claims that the extension of his probationary period violated Staff Rule 4.02, paragraphs 3.01 and 3.02, which provides that the probationary period may not be extended for reasons other than performance, technical qualifications, and professional behaviors. The Applicant claims that his FY16 Performance Evaluation demonstrated that he "had proven suitable for Bank employment" and that the Bank, by extending the Applicant's probationary period, has abused its discretion, acted arbitrarily and discriminatorily, shown improper motive, and violated fair and reasonable process.

31. The Applicant submits that his supervisor further infringed the Staff Rules by subjecting the confirmation of his appointment to terms and conditions. He disputes the Bank's contention that the terms and conditions imposed on him were business expectations from his supervisor and claims that the Bank is trying to "dilute" its violations of the Staff Rules.

The Bank's Response

The extension of the Applicant's probationary period was properly handled

32. The Bank asserts that, pursuant to Staff Rule 4.02, the Applicant's supervisor had the discretion to extend the probationary period for reasons other than performance, noting that the extension decision can be made "for any number of reasons, including the uncertainty of the Applicant's ability to perform tasks in a duty station to which he had been recruited." The Bank submits that the Applicant's supervisor made clear that the decision to extend the Applicant's probationary period was unrelated to performance and that she intended to give management more time to get clarity on whether the Applicant would be able to effectively support the Dhaka team from Delhi.

33. According to the Bank, even if the uncertainty of the VDP is not an appropriate consideration for the extension of the probationary period, no harm was caused to the Applicant as a result of such decision because the Applicant's supervisor reconsidered her decision and confirmed the Applicant's appointment with retroactive effect.

The Applicant's Contention No. 2

The Bank's decision not to renew the Applicant's contract was legally flawed; the Bank had the obligation to reassign the Applicant to a similar job position if non-renewal is based on business needs

34. The Applicant claims that the Bank's decision not to renew his contract was flawed. He submits that according to the Staff Rules, when a staff member is separated for business needs, the Bank has the duty to assign the staff member to a vacant position of similar type. He notes that, at the time he received the notice of non-renewal, there were two Senior Transport Specialist positions available in Delhi to which the Bank had the duty to assign him.

35. The Applicant rejects the Bank's contention that his Application is about the non-renewal of a term appointment. He claims that Principle 7 of the Principles of Staff Employment and Staff Rule 7.01 support his claim that the Bank, by invoking business needs as the basis for his

separation, had the duty to assign him to a vacant position in the same type of appointment he previously held. His interpretation of these provisions is that they cover “all” cases of separation from the Bank. The Applicant objects to the Bank’s assertion that he refused to return to Dhaka leaving the Bank with no choice but not to extend his contract, stressing that his supervisor agreed to all his requests to work from Delhi.

36. The Applicant claims that due process was breached when he was served with the notice of non-renewal. He asserts that his supervisor failed to provide the legal basis for his separation from the Bank, which placed him “at a disadvantage in preparing his defense” and prevented him from confirming whether fair and transparent procedures were strictly observed in the Bank’s implementation of the Staff Rules.

The Bank’s Response

The Applicant had a term appointment with no expectation of renewal; the Bank’s redundancy rules do not apply to the Applicant

37. The Bank claims that the Applicant had no legal enforceable right or expectation to have his appointment extended beyond the term indicated in his letter of appointment, even if his performance had been outstanding. The Bank asserts that the Applicant’s fixed-term appointment expired on its own terms and that, absent unusual circumstances, as acknowledged by the Tribunal in *Koclar*, Decision No. 441 [2010], para. 33, he was not entitled to an extension of his appointment.

38. The Bank rejects the legal characterization purported by the Applicant regarding the non-renewal of his contract, noting that the “Applicant is fundamentally confused about the basis for his termination.” The Bank clarifies that the redundancy provisions on which the Applicant relies are not applicable to him because he was not made redundant. The Bank explains that it had no obligation to assist the Applicant with a job search, let alone assign him to one of the vacant positions of Senior Transport Specialist based in Delhi.

39. The Bank notes that valid business reasons were provided to the Applicant for his non-renewal indicating the Global Practice's need to have the Applicant present in his duty station to be able to work on the projects for which he was hired. The Bank emphasizes that due process requirements were followed because the Applicant was given six months' notice and was informed of the reasons for the non-renewal of his contract.

The Applicant's Contention No. 3

The Bank's decision not to extend the Applicant's contract was improperly motivated by retaliation

40. The Applicant alleges that he suffered retaliation, discrimination, and harassment from his supervisor because of the following: (i) his supervisor unlawfully extended his probationary period for reasons other than performance trying to pressure him to return to Dhaka despite the security concerns in the city; (ii) his supervisor subsequently offered confirmation but subject to conditions, in contravention of the Staff Rules; (iii) his supervisor asked him to travel on personal expense for official work; (iv) his supervisor "did not correct a team member when she was trying to dilute [the Applicant's] performance"; (v) his supervisor lied about his refusing to work on two projects; (vi) his supervisor questioned his ability to be in a leading role and his performance; (vii) his supervisor forbade him to work in the Bank's office in Delhi; and (viii) his supervisor first threatened him with the non-renewal of his contract and subsequently served him a notice of non-renewal based on business needs in violation of the Staff Rules.

41. The Applicant submits that his supervisor's actions as explained above show a "pattern of action" and the emails sent to him attest to a "trend" that reflected negatively on him. He suggests that all these "inaccuracies, repeated many times and biases uniformly against [him] [look] like an attempt to build up a case against [him]."

42. The Applicant further submits that he was misguided by the HR Business Partner regarding the interpretation of the Staff Rules governing extension of probation. The Applicant alleges that the HR Business Partner manipulated and coerced him by "selectively" quoting the

Staff Rules. He disapproves of these actions as “unethical behavior” and claims that HR officials and his supervisor colluded in trying to “push him back to Dhaka in defiance of security advice.”

The Bank’s Response

There were no arbitrary or discriminatory reasons behind the non-renewal of the Applicant’s appointment

43. The Bank disputes the Applicant’s allegations of arbitrariness, discrimination, and retaliation and maintains that the Applicant has failed to submit evidence “of prejudice or ill-motive” towards him. According to the Bank, the Applicant has not discharged his burden of establishing a *prima facie* case to determine whether retaliation or discrimination occurred, which, according to the Tribunal in *BH*, Decision No. 435 [2010], para. 48, requires that the Applicant present “detailed allegations and factual allegations.”

44. Regarding the Applicant’s allegations of retaliation and discrimination by his supervisor, the Bank contends that the record contains sufficient evidence that shows that the Applicant’s supervisor went “out of her way” to accommodate the Applicant’s requests, by first allowing him to extend his VDP and by subsequently authorizing him to do home-based work from Delhi once the VDP was lifted in June 2017. The Bank submits that the Applicant’s allegation that the extension of his probationary period shows discrimination is equally baseless. The Bank also denies the Applicant’s allegations of threats from his supervisor noting that the record points to the Applicant’s supervisor’s “cordial and professional relationship” with the Applicant.

45. The Bank asserts that all the HR officials with whom the Applicant communicated were “exceptionally accommodating in explaining on several occasions, to [the] Applicant the various HR rules that applied to him and his appointment.” While the Applicant may not have liked the information he received from HR, the Bank claims “this is a far cry from his claims of ‘retaliation, harassment, misinterpretation and misleading of [the] Staff Rule[s].’”

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

EXTENSION OF THE APPLICANT'S PROBATIONARY PERIOD

Rules and general principles on probation

46. Staff Rule 4.02 sets forth the provisions governing the probationary period served by staff members when they enter employment with the Bank Group. Under paragraph 1.01, “[t]he purpose of the probationary period is to assess the suitability of the Bank Group and the staff member to each other.”

47. According to Staff Rule 4.02, paragraph 2.01, the length of the probationary period, which “shall normally be one year” may be extended “by the staff member’s Manager in consultation with the next-in-line Manager. The maximum probationary period shall not exceed two years.” Under paragraph 2.02 of Staff Rule 4.02, a manager or supervisor is required during the probationary period to meet with the staff member “to establish the staff member’s work program” and to “provide the staff member feedback on the staff member’s suitability and progress based on achievement of the work program, technical qualifications and professional behaviors.”

48. Staff Rule 4.02, paragraph 3 provides that “[a]t any point during or at the end of the probationary period, a decision to confirm a staff member’s appointment shall be made [...] based on a written assessment of the staff member’s performance, technical qualifications and professional behaviors.” If the staff member “is considered not suitable for continued employment with the Bank Group,” the manager may recommend “ending a staff member’s employment by non-confirmation of appointment.”

49. The Tribunal has clarified its scope of review of the Bank’s decisions concerning probation. The Tribunal held in *McNeill*, Decision No. 157 [1997], para. 30, that:

The scope and extent of the review by the Tribunal of the Bank’s decisions concerning confirmation or non-confirmation of appointment during or at the end

of the probationary period rest on the basic idea that the purpose of probation is “the determination whether the employee concerned satisfies the conditions required for confirmation” (*Buranavanichkit*, Decision No. 7 [1982], para. 26), that is to say, in the language of Staff Rule 4.02, the determination whether the probationer is “suitable for continued employment with the Bank Group.” The probationer has no right to tenure; pending confirmation his situation is essentially provisional and his future with the Bank depends on his suitability for permanent employment. The assessment of his suitability is a matter of managerial discretion, as the Tribunal has ruled in *Salle* (Decision No. 10 [1982]):

It is of the essence of probation that the organization be vested with the power both to define its own needs, requirements and interests, and to decide whether, judging by the staff member’s performance during the probationary period, he does or does not qualify for permanent Bank employment. These determinations necessarily lie within the responsibility and discretion of the Respondent.... (para. 27).

It is, therefore, for the Bank to establish the standards which the probationer should satisfy. The Tribunal has determined that these standards

may refer not only to the technical competence of the probationer but also to his or her character, personality and conduct generally in so far as they bear on ability to work harmoniously and to good effect with supervisors and other staff members. The merits of the Bank’s decision in this regard will not be reviewed by this Tribunal except for the purposes of satisfying itself that there has been no abuse of discretion.... (*Buranavanichkit*, Decision No. 7 [1982], para. 26).

50. Nonetheless, the Tribunal has equally held that the Bank should observe procedural guarantees during the probationary period. In *McNeill*, para. 44, the Tribunal stated that:

Probation creates rights and obligations for both parties, and the widely discretionary power of the institution to determine whether the probationer should, or should not, be confirmed is balanced by its duty to meet what the Tribunal has called “the appropriate standards of justice” (*Buranavanichkit*, Decision No. 7 [1982], para. 30). While the probationer has no right to be confirmed, he has the right to be given fair opportunity to prove his ability, and the Tribunal will review whether this right has been respected and whether the legal requirements in this regard have been met.

51. In *Khan*, Decision No. 293 [2003], para. 39, the Tribunal observed that:

In assessing whether there has been an abuse of discretion, the Tribunal will review whether the Bank has extended to the probationer the procedural guarantees of due process and the right to have a fair opportunity to prove her ability. (*McNeill*, Decision No. 157 [1997], para. 44.) In *Salle*, Decision No. 10 [1982], para. 50, the Tribunal stated that the Bank's discretion at the end of the probationary period makes it imperative that the procedural guarantees for fair treatment be respected.

The extension of the Applicant's probationary period

52. The Applicant claims that the extension of his probationary period violated Staff Rule 4.02, paragraphs 3.01 and 3.02, which prohibits the extension of the probationary period for reasons other than performance, technical qualifications, and professional behaviors. The Applicant notes that his FY16 Performance Evaluation demonstrated that he "had proven suitable for Bank employment" and that the Bank, by extending the Applicant's probationary period, has abused its discretion, acted arbitrarily and discriminatorily, shown improper motive, and violated fair and reasonable process.

53. In determining whether the Applicant's supervisor abused her discretion in extending the Applicant's probationary period, the Tribunal will consider the following: (i) the Applicant's suitability for employment with the Bank; and (ii) the Bank's observance of the legal requirements regarding probation under Staff Rule 4.02. As the Tribunal held in *Lusakueno-Kisongele*, Decision No. 327 [2004], para. 42, "the essential purpose of the probationary period is to evaluate the staff member's performance and to decide whether he or she does or does not qualify for permanent employment."

54. In assessing the staff member's suitability, the Tribunal has acknowledged that the Bank has the authority and the obligation to establish the standards that the probationer should satisfy. Paragraph 2.02 of Staff Rule 4.02 identifies three specific aspects for the evaluation of the staff member's suitability during the probationary period: (i) the achievement of the staff member's work program; (ii) technical qualifications; and (iii) professional behaviors.

55. In the present case, the record shows that, according to the Applicant's FY16 Performance Evaluation, which was completed a few days before the appointment was due for confirmation on 18 October 2016, the Applicant's performance during his first year of Bank employment was considered satisfactory. In her Overall Comments, the Applicant's supervisor commented that "[the Applicant] had had a good start [...]. He has the skills and he is ready to take on more responsibilities in BD but needs to be more proactive to ensure his portfolio will be [a] strong one this upcoming year." As further evidenced by the record, the Applicant's technical abilities and professional behaviors were equally judged suitable for his position. The Applicant's supervisor considered that "[the Applicant] has been supporting the teams in the ground with their missions, relationship with clients and the CMU." She further noted that the Applicant "has been helpful and diligent" but stressed that "we need him on site." Regarding the Applicant's strengths and areas of improvement, the Applicant's supervisor further commented that the Applicant "is already being perceived as a good team member. Proactive, follows up any given task, works independently, listens to feedback, provides positive feedback to other team members. Engaged with CMU without complications [...] provides solutions or engage with the client the teams can count on him."

56. The Bank claims that the extension of a probationary period beyond the stipulated length is entirely a manager's discretionary decision and that the reasons for extension are not limited to the three scenarios argued for by the Applicant. The Tribunal observes that, while the Staff Rules do not identify the basis for the extension of the probationary period, the rules providing for the evaluation of the Applicant's suitability during the probationary period, read in conjunction with the provisions regarding the confirmation of a staff member's appointment, could reasonably be interpreted to mean that the extension of the probationary period would be justified only if a staff member has failed to demonstrate "suitability" for Bank employment at the end of his or her probationary period. Any reason asserted by the Bank, "even if resting on proper motives," that is unrelated to a staff member's "performance, technical qualifications and professional behaviors" would be contrary to the Staff Rules. As evidenced by the Applicant's FY16 Performance Evaluation, the Applicant's performance evaluation was rather positive. Nothing in the evaluation supports a finding that the Applicant was unsuitable for Bank employment at the end of his probationary period in October 2016.

57. The Bank asserts that its decision to extend the Applicant's probationary period was due to the security situation in Dhaka and the uncertainty regarding the duration of the VDP. While the reasons argued by the Bank were shaped by the extraordinary circumstances surrounding the security situation in Dhaka at the time, the record is unequivocal in showing that the Applicant was found suitable for his position of Senior Transport Specialist in Dhaka by the time of the extension of his probation. The Bank has failed to show that its decision to extend the Applicant's probationary period was due to the Applicant's unsuitability for his position. Quite the contrary, in her email of 18 October 2016, the Applicant's supervisor acknowledged that the Applicant's performance and skill set were not the reason behind the extension.

58. As the Tribunal determined in *K. Singh*, Decision No. 188 [1998], para. 21:

Staff rules are not written for the sake of formality but precisely to secure an orderly process that will be fair and ensure that the staff member affected can feel that his or her case has been properly considered. Even if the Respondent is in substance right about the decision that it took with respect to the Applicant, its departure from the relevant rules amounts to an abuse of its discretion.

59. The Tribunal notes that, while it was the Applicant's decision to relocate to Delhi following the announcement of the VDP in July 2016, he was only making use of the opportunities offered by the Bank at the time. Such temporary relocation provided no justification for the Bank to extend his probation on that basis. As the Tribunal held in *Salle*, Decision No. 10 [1982], para. 29:

The observance of the probationer's conditions of employment is all the more imperative since the period of probation is a difficult one for the staff member in terms both of adjustment to the Bank's needs and policies and because of the inherent insecurity of his situation.

60. According to Staff Rule 4.02, paragraph 2.01, the length of the probationary period "shall normally be one year." The term "normally" suggests that probationary periods should in principle end after one year but could be extended in accordance with the conditions set forth in the Staff Rules. The Tribunal considers that, whatever the Bank's reasons to extend the probationary period beyond the "normal" period of one year, the basis for such extension must relate to the suitability of the staff member and cannot rely on external considerations such as

those deriving from the VDP implemented by the Bank. Attributing to the term “normally” a wider interpretation than its plain meaning suggests would only contribute to the insecurity staff members holding term appointments face during probation.

61. In light of the above, the Tribunal finds that, the Applicant having shown his suitability for Bank employment, confirmation of his appointment at the end of his one-year probationary period was warranted under the Staff Rules. The fact that the Bank did not observe the probation’s conditions under the Staff Rules and delayed the confirmation of the Applicant’s appointment, prolonging the insecurity inherent to probation and causing unnecessary stress to the Applicant, is not a proper use of discretion.

62. The Applicant submits that his supervisor also infringed the Staff Rules by subjecting the confirmation of his appointment to the terms and conditions communicated in her email of 16 November 2016. The Tribunal finds the Applicant’s contention unpersuasive. While the use of the words “terms and conditions” by the Applicant’s supervisor appears misleading, the Applicant’s supervisor only informed the Applicant that his presence in Dhaka was “essential to the job” and that management expected that he return to Dhaka at the end of the initial VDP. These can hardly be characterized as “terms and conditions” but constitute instead business expectations.

63. The Bank takes the position that, because of its decision to confirm the Applicant’s appointment retroactively, the extension of the Applicant’s probationary period caused him no harm. For the reasons explained above, staff members need the assurance that probationary periods are conducted in compliance with Staff Rules and fair procedures. The Tribunal finds that the extension of the Applicant’s probationary period for four months was not a proper use of discretion. Nevertheless, since the Bank promptly took corrective measures, by confirming the Applicant’s appointment with retroactive effect after two weeks of the decision, compensation is therefore not warranted.

THE NON-RENEWAL OF THE APPLICANT'S FIXED-TERM APPOINTMENT

The Tribunal's scope of review of non-renewal decisions

64. The Tribunal has consistently held that “[a] fixed-term contract is just what the expression says: it is a contract for a fixed period of time.... Whatever may be the character of the work which a member of staff performs, his legal position is controlled by the terms of his appointment. The possibility exists, of course, that the character of the work may encourage a staff member to seek some formal amendment of his standing. But that is a matter of negotiation; such modification cannot come about automatically.” See *CS*, Decision No. 513 [2015], para. 67, citing *Mr. X*, Decision No. 16 [1984], para. 35.

65. In *Kopliku*, Decision No. 299 [2003], para. 9, the Tribunal observed that:

The legal principles that govern this case have been well established in the jurisprudence of the Tribunal. A staff member appointed to serve for a fixed period is not entitled, absent unusual circumstances, to the extension or renewal of that appointment. Staff Rule 7.01, para. 3.01, states: “A staff member’s appointment shall expire on the completion of an appointment for a definite term, as specified in the staff member’s letter of appointment, or as otherwise amended.”

66. The Tribunal held in *Barnes*, Decision No. 176 [1997], para. 10, that:

[T]he decision not to convert or extend [the applicant’s] contract was nonetheless a decision which, like any other exercise of discretion by the Respondent, must be reached fairly and not in an arbitrary manner. The Tribunal has held that even where the “circumstances of the case do not warrant any right to a renewal of a fixed-term contract, the Bank’s decision not to renew the contract at the expiration of its predetermined term, however discretionary, is not absolute and may not be exercised in an arbitrary manner.”

67. In *AK*, Decision No. 408 [2009], para. 41, the Tribunal observed that the Bank’s decisions “that are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack a reasonable and observable basis, constitute an abuse of discretion, and therefore a violation of a staff member’s contract of employment or terms of

appointment. *See de Raet*, Decision No. 85 [1989], para. 67; *Marshall*, Decision No. 226 [2000], para. 21; *Desthuis-Francis*, Decision No. 315 [2004], para. 19.”

68. The Tribunal will accordingly consider whether the Bank’s decision not to renew the Applicant’s appointment followed these standards.

The non-renewal of the Applicant’s fixed-term appointment

69. The Applicant does not dispute that he was employed pursuant to a two-year term appointment but objects to the Bank’s decision to separate him from the Bank alleging that, under Principle 7.1, paragraph (b) (iii) of the Principles of Staff Employment, the Bank had the duty to place him in a vacant same-level position at the end of his appointment.

70. The Tribunal first wishes to clarify the legal basis for the Applicant’s separation from the Bank. The Applicant’s appointment as specified in his Letter of Appointment was a two-year term appointment, which “will terminate at the end of this 2-year period unless it is renewed or a new appointment is made.” The Letter of Appointment further specified that the Bank “has no obligation to extend the appointment or to offer a new appointment even if your performance is outstanding, but it may do so if agreed in writing at the time of the expiration of the appointment.”

71. The expiration of term appointments is prescribed in Staff Rule 7.01, paragraph 3.01, which reads as follows:

A staff member’s appointment expires on the completion of an appointment for a definite term, as specified in the staff member’s letter of appointment, or as otherwise amended.

72. Principle 7.1 of the Principles of Staff Employment stipulates that separation from the Bank occurs under the following scenarios:

- a. Separation from service may occur by resignation, with due notice; expiration of an appointment in accordance with the terms of that appointment;

retirement; mutual agreement; or upon reaching the upper age limit for employment, unless this limit has been waived in the interests of The World Bank or the IFC [International Finance Corporation].

- b. Separations may also be initiated by The World Bank or the IFC. They shall be based on the needs for efficient administration and for upholding the standards of the Organizations. Staff members separated at the initiative of the Organizations have the right to be notified in writing of the decision and the reason for it, which shall be based on the following:
 - i. a decision not to confirm a staff member's appointment at the end of or during probation; or
 - ii. grounds of health; or
 - iii. when the Organizations determine that a position or positions are no longer necessary, or that the responsibilities of a position have changed so that the staff member is not qualified to fill it, provided that no vacant position in the same type of appointment exists for which the Organizations determine that the staff member is eligible and has the required qualifications or for which he or she can be retrained in a reasonable period of time; or
 - iv. unsatisfactory service, personal or professional misconduct, abandonment of duties, or action adversely reflecting upon the reputation and integrity of the Organizations or their staff.

73. Contrary to the Applicant's assertion, his separation was not unilaterally initiated by the Bank in the terms expressed in paragraph (b) of Principle 7.1 of the Principles of Staff Employment. Rather, the Applicant's separation from service occurred at the expiration of his two-year term appointment, as provided for in paragraph (a) of Principle 7.1 of the Principles of Staff Employment. The Tribunal notes that paragraph (b) (iii) of Principle 7.1 on which the Applicant relies does not apply to the Applicant because his position was not made redundant. The Bank, therefore, had no obligation to place the Applicant in a "vacant position in the same type of appointment." An essential characteristic of a term appointment is precisely that it provides for the exact end date of the contractual engagement between the Bank and the staff member. Separation from service then occurs at the expiration of the appointment, unless extended. This is the fundamental difference with redundancy, in which the Bank unilaterally decides that a position is no longer necessary.

74. Regarding the reasons given by the Bank for the non-renewal of the Applicant's appointment, the Tribunal held in *CS*, Decision No. 513 [2015], para. 77, that the Bank "must

give an honest reason for the non-renewal of a Term appointment.” In *Skandera*, Decision No. 2 [1981], para. 28, the Tribunal observed that:

[N]otice of termination should communicate to the affected staff member the true reasons for the Bank’s decision. It is in the interest of the Bank that the employment of qualified employees not be terminated on the basis of inadequate facts or ill-founded justifications, and one way to assure this is to furnish the staff member at the time of termination with a specific and true assessment which will provide a fair opportunity to the individual to dispute, and possibly to seek rectification of the decision of the Bank.

75. The evidence on record shows that on 21 April 2017 the Applicant’s supervisor informed the Applicant of the following reasons for the non-renewal of his contract: “your term appointment is expiring at its completion and by its own terms. T&I is not prepared to offer an extension as we are currently reviewing our staffing structure for the region vis-a-vis the business needs.” The business need advanced by the Bank in the present case is that the Applicant’s Global Practice needed a Senior Transport Specialist to be present in and perform tasks specific to the country to which he was recruited. The Bank claims that, while management was able to accommodate the Applicant’s reassignment to Delhi on a temporary basis while the VDP was in place, this accommodation was impossible on a long-term basis.

76. Under the Bank’s Guidelines on the Use of Term Appointments to Enhance Staffing Flexibility, the business rationale articulated by managers for not renewing a fixed-term appointment “may be based on a wide variety of factors.” The record shows that the Bank informed the Applicant on several occasions of management’s preference to have the Applicant return to Dhaka at the end of the initial VDP on 1 December 2016 because his presence in Dhaka was deemed “essential to the job.” The conditions of the VDP changed in January 2017 and, while staff members were given the choice to continue to be based outside Dhaka, the purpose of the amended VDP was to progressively limit its scope “to family members only.” Non-national staff members, like the Applicant, were expected to be permanently based at their duty station in Dhaka. The extended VDP gave staff members the opportunity to extend their relocation provided a discussion with the staff member’s manager took place “for assessing whether the assigned work program can be accommodated remotely.” The Applicant claims that he never refused to return to Dhaka and that his decision to stay in Delhi for a longer period was approved

by his supervisor. The Tribunal finds that the evidence on record shows, however, that given the Applicant's exclusive work program in Bangladesh, the Bank had valid concerns that the Applicant's remote work was affecting the timely delivery of the projects.

77. The Tribunal has in the past acknowledged the Bank's discretion in identifying the skills that are suitable in case of changing needs. In *DM*, Decision No. 542 [2016], para. 49, the Tribunal observed that:

[T]he record supports the reasons articulated by the IFC for its decision not to renew the Applicant's contract. The record shows that the Applicant's primary responsibility before he was placed on administrative leave was to manage the P7 portfolio. The record also shows that the IFC adopted changing investment strategies for the P7 portfolio. Identifying the skills that are suitable for these changing needs and who is the most suitable staff to perform these tasks are discretionary decisions of the IFC (*see Jassal*, Decision No. 100 [1991], para. 37). The IFC concluded that Mr. D, the new supervisor of the Applicant, was in the best position to carry on managing the P7 portfolio and also concluded that the Applicant's skills with a GH level position were no longer in need. The Tribunal is not convinced that this discretionary decision of the IFC had been abused.

78. In view of the foregoing, the Tribunal finds that the business reasons invoked by the Applicant's supervisor are supported by the record and that the Bank's decision not to renew the Applicant's appointment had an observable and reasonable basis.

79. Another issue to be addressed is whether the requirements of due process were observed in this case. While the Applicant does not allege violations of due process regarding the decision of non-renewal, the Bank asserts nonetheless that all due process requirements were met because the Applicant was given the required six months' notice and was informed of the reasons for such decision.

80. The record shows that the requirements of due process were followed in the present case. The Applicant was informed on 19 April 2017 that his appointment would end on 31 October 2017, thus giving him the required six months' notice. The record further shows that two days later, on 21 April 2017, the Applicant was informed by email of the reasons for the non-renewal

of his appointment. The Tribunal holds, therefore, that the requirements of due process were duly followed in making the non-renewal decision.

WHETHER THE BANK'S DECISION NOT TO EXTEND THE APPLICANT'S CONTRACT WAS IMPROPERLY
MOTIVATED

81. The Applicant alleges that the following actions by the Bank amount to retaliation, discrimination, and harassment: (i) his supervisor unlawfully extended his probationary period for reasons other than performance trying to pressure him to return to Dhaka despite the security concerns in the city; (ii) his supervisor subsequently offered confirmation but under conditions in contravention of the Staff Rules; (iii) his supervisor asked him to travel on personal expense for official work; (iv) his supervisor "did not correct a team member when she was trying to dilute [the Applicant's] performance"; (v) his supervisor lied about his refusing to work on two projects; (vi) his supervisor questioned his ability to be in a leading role and his performance; (vii) his supervisor forbade him to work in the Bank's office in Delhi; and (viii) his supervisor first threatened him with the non-renewal of his contract and subsequently served him a notice of non-renewal in violation of the Staff Rules.

82. In *AI*, Decision No. 402 [2010], para. 39, the Tribunal stated that:

This Tribunal unhesitatingly invalidates discretionary decisions if the evidence shows that the decision was discriminatory based on race, gender, or other prohibited grounds. Equally, however, as the Tribunal observed in *Njovens*, Decision No. 294 [2003], para. 16, that:

Just as the Tribunal is prepared to be firm on any question of racial discrimination supported by the evidence, so too it is prepared to dismiss outright any unfounded allegation in this context.

83. The Tribunal has stated that allegations of retaliation and discrimination should not be made lightly. In *Bodo*, Decision No. 514 [2015], para. 77, the Tribunal observed that:

[A]n applicant asserting discrimination or retaliation must still make a *prima facie* case with some evidence to show the discriminatory or retaliatory motives behind the impugned decision. Without any elaboration on her claims or evidence of

actual or perceived retaliation and discrimination by the Sector Manager, the Applicant has given the Tribunal little to deliberate on.

84. In *AH*, Decision No. 401 [2009], para. 36, the Tribunal found that:

It is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person. There must be a direct link between the alleged motive and the adverse action to amount to retaliation.

85. The Bank's Code of Conduct describes retaliation in the workplace as follows:

Retaliation is "any direct or indirect detrimental action recommended, threatened, or taken because an individual engaged in a [protected activity]." (SR 8.02) [...].

Retaliation in the workplace encompasses a range of behavior, from something as small as a remark to something as serious as an administrative action affecting a staff member's work program or employment. When taken as a means of retaliation, other examples can include: reprimand, discharge, suspension, demotion, denial of promotion, and denial of transfer. Any staff member who in good faith raises a concern is protected from retaliation. Consult the applicable policies for detailed information on the retaliation protections afforded to staff by the World Bank Group.

86. The Tribunal observes that the Applicant's claims lack "detailed allegations and factual support" to draw a conclusion that a *prima facie* case of retaliation and discrimination has been established. The Tribunal finds that neither the extension of the Applicant's probationary period nor the non-renewal of the Applicant's appointment was improperly motivated by retaliation or had a discriminatory basis. The Applicant has also failed to demonstrate that any of his supervisor's actions, from the moment he was given notice of the expiration of his contract until his separation from the Bank, show retaliatory or discriminatory intent. The evidence on record shows that the Applicant's supervisor accommodated many of the Applicant's requests for flexible work arrangements and supported his preference to stay in Delhi until the expiration of his contract.

87. Furthermore, the record does not support the Applicant's allegations of harassment and unfair treatment. The Applicant claims that his supervisor harassed him and treated him unfairly by asking him to cover his travel expenses from Delhi to Dhaka to perform his assignments. The

Tribunal is unconvinced by the Applicant's allegations. The evidence on record shows that the travel arrangements resulting from the VDP were intended to cover the Applicant's transportation from Dhaka to Delhi, and vice versa, for relocation purposes only. As the Applicant requested flexible work arrangements to stay in Delhi and only work every other week in Dhaka, it was understandable that any travel would be at his personal expense. The Tribunal is also not convinced that HR officials misguided the Applicant or coerced him. The record shows that HR officials assisted the Applicant with his multiple requests promptly. The Tribunal finds that the Applicant's allegations of harassment and unfair treatment have no merit.

88. In light of the foregoing, the Tribunal concludes that the Bank's decision not to renew the Applicant's appointment was not improperly motivated and does not constitute an abuse of discretion.

DECISION

The Application is dismissed.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 May 2018