

Decision No. 303

Om Bhatia,
Applicant

v.

International Bank for Reconstruction
and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on April 14, 2003, by Om Bhatia against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Francisco Orrego Vicuña (President of the Tribunal) as President, Elizabeth Evatt (a Vice President of the Tribunal), Robert A. Gorman and Sarah Christie, Judges. The usual exchange of pleadings took place. The case was listed on October 10, 2003.

2. This case involves a complaint of the Applicant in respect of the decisions of the Respondent: (i) to declare his position redundant on June 22, 2000 in terms of Staff Rule 7.01, on the basis of the abolition of his position; and (ii) to award him on August 9, 2000 a low merit award which led to his being awarded a 2% increase in salary. The Applicant requests rescission of the decision to declare his position redundant, compensation in the amount of three years' net salary, and costs.

3. The Applicant joined the Bank on November 15, 1976. At the time of his redundancy, he was a Procurement Analyst at grade level GE in the Energy Sector Unit, South East Asia Region ("SASEG"), where he worked on the India Power Team.

4. The Bank explains that soon after the merger of two divisions in SASEG in 1997, it became apparent to regional management within SASEG that there was an excess of procurement and engineering staff in the Region. SASEG management then restructured its procurement functions, assigning specialized procurement staff to the field. At that time, there were three SASEG specialized procurement staff at Headquarters under the leadership of the Regional Procurement Advisor. One of the three retired in 1998 and another who was close to retirement was made redundant, with a bridge provided so that she could obtain enhanced retirement benefits.

5. The Applicant's redundancy was also considered at that time but the Bank decided to retain him. The Applicant was accredited for procurement on small contracts and he agreed to do some of the clerical work which had previously been done by the colleague declared redundant. Later in 1998, after a further assessment of procurement staff, the Regional Procurement Advisor considered that the Applicant had not demonstrated that he had the requisite analytical skills to handle large contracts. It also appeared to the Respondent that the Applicant would be unlikely to acquire these essential skills.

6. A further reorganization of procurement took place during the period from 1998 until early 2001. Whereas SASEG's small energy sector contracts had been handled by the Country Offices and the larger, more complex contracts at Headquarters, by 2001 the procurement work was being done primarily in the India Country Office by a newly established Procurement Hub. It is claimed by the Respondent that the Applicant was aware of these developments and also that by April 2001 the Applicant's job had become superfluous.

7. The pressure to eliminate the Applicant's job was exacerbated by budgetary cuts for the 2001 fiscal year. On June 13, 2000, the Applicant was approached by his Division Manager and asked if he would volunteer for redundancy. He declined to do so, by e-mail on June 16, 2000. On June 22, 2000, the Vice President, South East Asia informed the Applicant that the Bank had decided to declare his position redundant based on Staff

Rule 7.01, para. 8.02(b).

8. Mediation between the parties took place on June 1, 2000 but was unsuccessful. On October 27, 2000, the Applicant filed an appeal against the decision to declare him redundant. A stay of proceedings took place on June 27, 2001 pending a preliminary investigation into the Applicant's allegations of racism and discrimination on the part of his Manager. The Appeals process resumed on October 17, 2001, but was stayed again on February 27, 2002 to allow the Applicant to submit an additional appeal on the investigative findings. The Applicant ultimately chose not to submit this additional appeal and the stay was lifted on March 19, 2002. On December 9, 2002, the Appeals Committee recommended that the Applicant's requests should be denied. The Vice President of Human Resources (VPHR) accepted this recommendation.

9. The Applicant claims that the decision to declare him redundant was improper, and argues that the Respondent misused its powers under the Staff Rules by informing him that he was being declared redundant for budgetary rather than work-related reasons. The Applicant argues that in a budgetary crisis, the Respondent should not have declared essential positions redundant. The Applicant argues further that even if the Respondent was experiencing a budgetary crisis at that time, this was a consequence of what he refers to as "lavish spending" by the Respondent's Lead Financial Analyst and "extreme budget wastage" in recruiting a Senior Financial Analyst from India to Headquarters, who continued to return to India on mission.

10. The Respondent denies that the main reason for abolishing the Applicant's position was budgetary constraints, and states that there were several reasons: (i) Energy Sector investment lending was declining, as was SASEG's portfolio of projects; (ii) procurement work was being regionally organized and not at Headquarters; (iii) Country Offices were taking more and more responsibility for projects; (iv) the Applicant had been accredited for procurement only for small contracts while most of SASEG's procurement work comprised large projects which would continue to be handled by high-level staff in Washington; (v) the Applicant was not sufficiently proficient to assume responsibility for large, complex projects; and (vi) the demand for procurement staff at Headquarters was declining and is in fact still declining. According to the Respondent, the budget cuts were the trigger for the decision to declare the Applicant redundant, but the more basic causal factors lay elsewhere in the operational reorganization of procurement work.

11. In the Tribunal's view, the Bank has established that the Applicant's function was no longer needed at Headquarters because the Bank had legitimately restructured its procurement work. Most of the functions that the Applicant had formerly performed were no longer required there and the record shows that the Applicant did not have the requisite skills for the more demanding work that was now being handled at Headquarters. It is not improper for the Bank to consider not only operational justifications but also budgetary constraints.

12. The Tribunal has stated that Staff Rule 7.01, para. 8.02(b), which governs the issue of redundancy in this case, can be applied "where a position is abolished because the specific functions [are] no longer required or because different skill requirements appl[y], such as after a reorganization (see *e.g. Denning*, Decision No. 168 [1997])." (*Harou*, Decision No. 273 [2002], para. 34.) The Tribunal considers that the direct consequences of the restructuring of procurement functions, together with the necessary implications of the Bank's "co-location" policy (whose applicability the Applicant does not challenge), rendered the Applicant's post at Headquarters redundant. As in *Marchesini*, Decision No. 260 [2002], para. 35, the Tribunal concludes that the reasons for the reorganization have been shown to be genuinely related to efficient administration of the procurement sector, and consequently the Bank's decision to declare the Applicant's position redundant under para. 8.02(b) had a legal basis and served a legitimate goal.

13. The Applicant claims that the Respondent did not comply with the general obligations owed by the World Bank towards its staff, as embodied in its Principles of Staff Employment. Principle 2.1(d) requires the Bank to "provide staff members security in their employment consistent with the terms of their appointments, their satisfactory performance and conduct, and *the efficient administration of the Organizations*." (Emphasis added.) The Respondent asserts that, notwithstanding its general obligations, its "co-location" policy required it: (a) to empower staff in Country Offices with roles and responsibilities equivalent to those of comparable staff at Headquarters; and (b) to decentralize or devolve functions to the field where appropriate. Furthermore, there

were existing staff members within the Country Offices to do the procurement work. The Tribunal considers that the Applicant has not established that the Respondent's conduct was improper in this regard.

14. The Applicant also claims that it was improper to ask him to volunteer and that the Respondent is entitled to call for volunteers only when there is a reduction in the number of like positions under Staff Rule 7.01, para. 8.02(d), which states that "[s]pecific types or levels of positions must be reduced in number." The Applicant asserts that when a specific position is to be abolished, as envisaged in Staff Rule 7.01, para. 8.02(b), there must be an imperative need based on operational requirements. The Applicant further claims that it was improper for the Bank to ask him to volunteer for redundancy when it had already taken the decision to declare his position redundant. Although under para. 8.02(d) the Bank is obliged to call for volunteers, the Tribunal concludes that there is nothing in Staff Rule 7.01, para. 8.02(b), which bars the Bank from inviting a staff member in other circumstances to participate in what amounts to a mutually agreed redundancy. Furthermore, there was no disadvantage to the Applicant in asking him to volunteer.

15. A further contention advanced by the Applicant is that when the procurement work was reorganized and assigned to the Country Office in India, he should have been assigned the procurement duties in the New Delhi Country Office instead of being declared redundant, as he is accredited for procurement and is an Indian national with 24 years' service with the Bank. He alleges that the Bank transferred a Senior Procurement Analyst to the Country Office in New Delhi to do not much more than, as he put it, "sign off faxes and telexes" whereas he was perfectly competent to do that work. The Respondent counters that this proposition is "absurd" on two grounds. First, the work of the person who had been transferred to New Delhi involved recruitment, supervision and coaching of procurement staff there, while the Applicant was certainly not qualified to do the type of work required, as his accreditation was only for small projects and was primarily administrative in nature. Second, there were no vacancies for a Procurement Analyst position at his level (GE) in the Country Office in New Delhi.

16. In the view of the Tribunal, the Applicant has not established that he was sufficiently qualified to be assigned the procurement work that had become available in New Delhi, or that he could acquire those skills within a reasonable time. In any event, the Applicant's claim that his Division Manager abused his authority by not transferring the Applicant to India is not borne out by the record. The record shows that the decision to transfer the former Regional Procurement Advisor to India was not in fact taken by the Applicant's Division Manager but by the then Operations Director. Furthermore, this relocation was not covered by the SASEG budget. Moreover, there is no factual basis for the Applicant's contentions that the Division Manager has a history of poor management or that he resented the Applicant's refusal of voluntary separation. The record shows that the Applicant's performance review was based not on the Division Manager's personal assessment of the Applicant's performance but on the feedback the Division Manager had received from the Regional Procurement Advisor and the India Energy Team Leader and that this feedback had been compared with that relating to other Procurement Analysts in the region.

17. A related question, which the Applicant raised during the pendency of the Appeals Committee process, concerns an allegation of racial discrimination. On March 22, 2001, the Applicant wrote to a Managing Director of the Bank (with copies sent to several other senior Bank staff) to complain that his Division Manager had lied about the Applicant's record with the Bank and that the Division Manager had been motivated by improper racist attitudes towards the Applicant and other persons. On April 16, 2001, and again on July 20, 2001, the Applicant wrote to the President of the Bank and repeated these allegations. As these letters contained serious allegations against the Division Manager, the Respondent requested its Office of Business Ethics and Integrity, Department of Institutional Integrity (INT), to investigate them. The Respondent also requested the Bank's Appeals Committee to stay the Applicant's appeal proceedings pending the outcome of that investigation. The Applicant did not oppose this and on June 27, 2001, the appeal proceedings were stayed.

18. In January 2002, the report of the investigation found that the Division Manager had not been guilty of racist conduct towards the Applicant or anyone else. The Tribunal notes that the Respondent did not initiate the investigation pursuant to the Applicant's challenge to the redundancy decision but pursuant to his complaints to the President and Managing Director of the Bank. The Respondent therefore took the view that if the Applicant

wished to challenge the outcome of the INT investigation, he would have to do so by submitting a separate appeal against those findings. The Applicant argues that the complaint which led to the investigation was ancillary to the redundancy decision and was not an independent matter. He therefore sought to admit into evidence in these proceedings some or all of the documents generated by the investigation and to call a number of witnesses. The Bank opposed this.

19. The Tribunal allowed for the admission of the INT investigation report and its accompanying testimonies into these proceedings based solely on their relationship to the redundancy decision at issue. The Tribunal's overall obligation is to isolate the real issue in a case, to identify the object of the claim and to deal with it (see *McNeill*, Decision No. 157 [1997], para. 26). The object of admitting the report into these proceedings was of course not to review the Applicant's claims of discrimination on the part of his Manager in and of themselves but only in so far as they related to the Division Manager's decision to declare the Applicant redundant. From an analysis of the INT report, the Tribunal considers that it discloses no basis for finding that the Bank's decision to declare the Applicant's position redundant was improperly motivated by racial prejudice on the part of the Division Manager.

20. The Applicant raises a number of objections relating to the procedures which were used in implementing the redundancy decision. He argues that the Respondent ought to have consulted with him over the redundancy, gave him no warning of the impending redundancy, and did not consult with him over the problems the Bank was experiencing, instead simply informing him of its decision. The Applicant points out that it is normal in redundancy cases, particularly for long-serving staff, to warn them several months in advance.

21. The Tribunal considers that it is "a basic guarantee of due process" to give early notice of impending redundancy so that the affected staff member may take steps to improve his qualifications in order to benefit from any vacancies that might arise. (See *Garcia-Mujica*, Decision No. 192 [1998], para. 19.) A staff member cannot be expected to rectify deficiencies in his qualifications if the staff member is unaware that he is deficient. Even so, provision of such notice is not always practicable. The Bank cannot be expected to forewarn a staff member of defects in his qualifications when these only emerge in the context of later, new organizational demands, particularly when the required experience or qualifications could not have been predicted. The Tribunal has noted that where the former position did not require certain training or experience but the new professional structure does and the shortcomings in the staff member's qualifications could not have been remedied, notification of those shortcomings is not required. (See *Denning*, para. 27.) To consider otherwise would, in effect, require a supervisor when evaluating a staff member's past performance to inform the staff member that if the Bank were – at some indeterminate time – to restructure some parts of its work, it might require a different skills set. Such an exercise would improperly conflate performance evaluation with organizational development and planning. The Tribunal considers that, in the circumstances of this particular case, earlier notice would not have made a difference. It further considers that the Respondent did not violate the Applicant's rights in not granting him advance notification of his possible redundancy.

22. The Applicant further argues that the Sector Board was not properly consulted and therefore his right to due process in this regard was violated. The Applicant claims that the redundancy process was unfair because the consultation with the Sector Board was "a farce." The record shows that the process was done as a matter of urgency, but it was not a "farce" as the Applicant alleges. The consultation was urgent because the Applicant's redundancy would have been on less generous terms had it taken place after July 1, 2000. The Procurement Sector Board considered the issue on June 13, and the Energy Sector Board was invited to do so around the same time. The members of these Boards had the opportunity to object to the decision had they elected to do so. There is no evidence that the individual members of the Boards did not consider the merits of the issue and the Tribunal finds that there was no irregularity in this respect.

23. The Applicant's final claim is that in the final period of his employment, after the redundancy decision had been taken, he was awarded the lowest possible merit award in his salary category. The Applicant claims that the manner in which this was done was "suggestive of a dismissive attitude." He also claims that it was in retaliation for his refusing to volunteer for redundancy and therefore an abuse of process.

24. The Respondent asserts in response that the salary review process involves comparing staff with their peers and is an assessment of the relative performance of different staff. The Respondent states that it assessed the Applicant's performance for the period April 1, 1999 to March 31, 2000 as "fully successful in all categories" and provided him with the rating for that assessment. The Tribunal finds that the Applicant's rating and concomitant salary increase were within the normal range applicable to the majority of Bank staff, albeit at the lower end.

25. Deciding where to rank a staff member is prototypically a discretionary decision that is not to be overturned by the Tribunal, absent an abuse of discretion. (See *Marshall*, Decision No. 226 [2000], para. 21.) The record shows that the determination of the Applicant's ranking was done in good faith and did not constitute such an abuse of discretion.

Decision

For the above reasons, the Tribunal decides to dismiss the application.

/S/Francisco Orrego Vicuna

Francisco Orrego Vicuna

President

/S/Nassib G. Ziadé

Nassib G. Ziadé

Executive Secretary

At Washington, DC, December 12, 2003