

Decision No. 262

Wilfred Biswas,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of Francisco Orrego Vicuña, President, Thio Su Mien and Bola A. Ajibola, Vice Presidents, and A. Kamal Abul-Magd, Robert A. Gorman, Elizabeth Evatt and Jan Paulsson, Judges, has been seized of an application, received on August 6, 2001, by Wilfred Biswas against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place and the case was listed on February 4, 2002.

2. In January 1973, the Applicant commenced his employment with the World Bank as a Secretary in the Country Office in Dhaka, Bangladesh. The Applicant worked in that Country Office from 1973 to 1986. Under the prevailing benefits rules at that time, the Applicant was not enrolled in the Respondent's pension plan. Instead, he was informed of his entitlement to a Termination Grant. The letter of May 27, 1974 formalizing his appointment provided, among other things: "On termination of employment by an employee in good standing, a cash payment will be made, equal to one month's salary at the time, for each year of service exclusive of the probationary period."

3. In 1986, the Applicant accepted a Regular appointment as a Communications Assistant in the Bank's Headquarters in Washington, D.C. The Applicant was informed that, on the occasion of his departure from Bangladesh and his move to Washington, he had to submit a letter of resignation, which he did in October 1986. The Applicant was then paid a Termination Grant, which was calculated at the rate of 14 percent of his final annual salary for each year of his service at the Bangladesh Country Office. (This improved calculation as compared with the Applicant's letter of appointment is not in issue here.) The Applicant's final annual net salary in Bangladesh was equal to some \$4,000. His Termination Grant was \$8,540.

4. Effective December 1, 1986, when the Applicant took up his appointment at Headquarters, he immediately commenced participation in the Staff Retirement Plan (SRP), and he began making contributions to the Plan. His initial salary in Washington was more than four times what it had been in his last year of service in Dhaka. After the Applicant had served over 12 years on a Regular appointment, his position was abolished in May 1999, and he was declared redundant, a decision that the Applicant does not contest. He remained on regular work status through July 31, 2000, and was then placed on Special Leave status through December 7, 2001, on which date he retired.

5. In determining his SRP pension, the Bank has credited the Applicant for his service during the entire period of his Regular appointment at Headquarters, some 15 years. In the meantime, as a result of a comprehensive reform of staff member pension benefits effective April 15, 1998, staff members serving then and in the future in Country Offices were to be given prospective credit for purposes of pension benefits under the new so-called Net Plan for service at those stations; any previous Country Office service would still be counted in calculating the Termination Grant to be paid upon future separation from the Bank.

6. On October 24, 2000, the Applicant sent a letter to the Pension Benefits Administration Committee (PBAC) asking for "the opportunity to pay back my [termination] grant and receive full credit under the Staff Retirement Plan for all my years of service in the Bank, both the years in Bangladesh and those in the United States." He

noted in his letter his intention to remain in the United States and his wish to enhance his pension income beyond what he would receive under the SRP as based only upon his work in Washington, D.C. He also contended that he was entitled to SRP service for the years in the Country Office even without repaying his Termination Grant. In supporting his request to pay back his Termination Grant, the Applicant made passing reference to the allegedly erroneous payment to him in 1986: "[T]here is no reason to treat my new service in headquarters as a break in service, since it is much more akin to a reassignment. Hence, there was no reason to pay me the local staff separation grant for pension, and I wish to repay it back in order to obtain full credit for my Bangladesh service under the SRP."

7. It was not until May 4, 2001 that the PBAC met to deal with the Applicant's letter. In the meantime, by a memorandum of April 18 to the PBAC, the Pension Benefits Administrator stated his reasons for opposing the Applicant's request. The Administrator stated that the SRP made no provision for the eligibility of staff members employed in field offices during the years of the Applicant's service in Bangladesh, that he was properly paid a Termination Grant in lieu thereof, and that he began SRP eligibility only with the beginning of his employment at Headquarters in December 1986. The Administrator also wrote that the Applicant's request was out of time: "[W]e note that [the Applicant] has known for many years that his gross plan service would not include his country office service. His claim should be time-barred by the three year statute of limitations contained in Staff Rule 11.01" At its May 4, 2001 meeting, the PBAC considered, among other matters, the request of the Applicant and the similar claims of two other staff members.

8. The PBAC decided to reject the Applicant's request, and he was so informed on May 8, 2001 in a terse letter, the operative part of which simply stated: "We regret to inform you that your request was denied by the Committee after due consideration," and which noted the possibility of appeal to the Tribunal. The Applicant indeed filed an appeal with the Tribunal on August 6, 2001. It was not, however, until August 15 that the Applicant was provided with an explanation of the reasons of the PBAC, as reflected in the pertinent portion of their minutes of the May 4 meeting:

Committee members agreed with staff that the [Gross] Plan has no provision allowing recipients of termination grants to somehow restore that [country office] service into the Gross Plan. The Committee also determined that there is no provision in the Gross Plan that allows for staff to participate and earn service while assigned to the country offices. Additionally, counsel pointed out that the claims are barred by the statute of limitations to the extent that they relate to periods more than three years before the claimants first raised their claims.

9. In his application to the Tribunal, the Applicant has identified two decisions by the Respondent that he seeks to have rescinded: (1) the refusal to permit him to pay into the SRP "that amount which he would have contributed had he been permitted to participate while working in the Bank's Country Office in Dhaka, Bangladesh, in exchange for inclusion of his service in Dhaka"; and (2) the "improper payment and miscalculation of the Termination Grant" that he received when he "transferred" from Dhaka to Headquarters in Washington, D.C.

10. The Respondent filed an Answer in which it not only responded to these claims on the merits but also raised objections to the Tribunal's jurisdiction to decide them. It contends that the first claim is out of time, because the claim under the SRP arose in 1986 and there is a three-year period of limitations before the PBAC, so that the Applicant's October 24, 2000 letter to the PBAC was nearly eleven years too late; and it contends that the second claim is based on employment rules outside of the SRP, was not properly before the PBAC (if raised there at all), and was not "exhausted" through the proper dispute-resolution agencies within the Bank.

Premature Payment of Termination Grant

11. The Applicant contends that the payment to him in 1986 of a Termination Grant in the amount of \$8,540, corresponding to his 13 ½ years of service in the Dhaka Country Office, was "arbitrary, based on error of fact, and carried out in violation of fair and reasonable procedure." He asserts that his letter of appointment and

other contemporaneous Bank documents provided that his Termination Grant was to be payable upon “leaving the service of the Bank,” and that his transfer from the Country Office to Headquarters in 1986 was merely a conversion of his appointment and not its termination. He claims, rather, that he did not terminate or leave his Bank service until 2001, after his position was declared redundant, and that his monthly salary at that later date, rather than his far smaller Dhaka salary in 1986, should serve as the base multiplier for calculating the grant. He seeks as a remedy, *inter alia*, “the difference between the amount he would have received if his Termination Grant had been properly calculated based on his final net salary, less any amounts [the Applicant] has already received as a Termination Grant.” The Respondent not only contests, on the merits, the Applicant’s identification of, and interpretation of, the governing Bank documents relating to Termination Grants, but as already noted it also asserts a jurisdictional bar.

12. Article II, paragraph 2(i), of the Statute of the Tribunal provides, in pertinent part:

No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless . . . the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal.

The question for the Tribunal is whether the Applicant presented his claim regarding his Termination Grant to the proper dispute-resolution authority within the Bank and did so in a timely manner.

13. As an initial matter, the Applicant contends that the Respondent is itself barred from raising any jurisdictional objections, in view of the fact that the PBAC addressed the merits of his case and did not rely on any jurisdictional flaws in denying his request for relief. This contention is not convincing. For one thing, in the minutes of the May 4 meeting furnished on August 15, 2001, the PBAC did explicitly allude to the matter of the statute of limitations governing claims before the Committee. More significantly, there is no question that the Respondent – represented in these circumstances by the Pension Benefits Administrator in his letter to the PBAC dated April 18, 2001 – clearly stated that the three-year statute of limitations contained in Staff Rule 11.01 should bar the Applicant’s claim. The raising of this jurisdictional defense before the PBAC distinguishes the instant case from the situation in *Madhusudan*, Decision No. 215 [1999], upon which the Applicant relies.

14. The Respondent asserts, *inter alia*, that the Applicant failed altogether to raise with the PBAC a challenge to the allegedly premature and inaccurately calculated payment of his Termination Grant in 1986, and that the “exhaustion” requirement therefore forbids the Applicant to do so for the first time before the Tribunal. But there is sufficient reference to the matter in the Applicant’s letter of October 24, 2000 to the PBAC that the Tribunal, construing the reference generously, concludes that the Applicant did make his objection known. But the Respondent also contends that, even if the objection had been raised before the PBAC, that Committee was not the proper body to review possible Bank wrongdoing concerning the Termination Grant (and that the PBAC in fact did not rule upon the claim).

15. The Tribunal agrees with the Respondent. The Applicant’s contention – that the 1986 Termination Grant was paid prematurely and was thus calculated erroneously and to his detriment – rests upon the terms contained in the Bank’s 1974 letter confirming his appointment as allegedly reinforced (retrospectively) by language in a 1992 Local Staff Benefits Handbook. The Respondent, in turn, disagrees with the Applicant’s interpretation, and proffers contemporaneous staff rules in draft and final forms, field managers guidelines, and memoranda from personnel officers – all intended to show the governing rules for the payment of staff members moving from Country Offices to Headquarters at approximately the time the Applicant did so. All of these documents constitute the “terms of appointment and contract of employment” that govern the Applicant’s benefits, including his Termination Grant. Compare *de Merode*, Decision No. 1 [1981], para. 18.

16. Disputes about the interpretation of these documents are not to be presented to the PBAC, whose sole function is to interpret the terms of the Staff Retirement Plan and to rule on entitlements to pensions. Section 10.2(f) of the SRP gives authority to the PBAC to “decide all questions of interpretation of the Plan provisions relating to participation, retirement, elections, and benefits, and any claim of any person for benefits or other payments under the Plan.” The instant dispute concerning the Applicant’s Termination Grant – which turned not

at all upon the interpretation of the SRP – should have been presented and resolved through the dispute-resolution agencies within the Bank that were in place to handle non-pension grievances. As the Tribunal has declared in *Mitra*, Decision No. 230 [2000], at para. 13:

Any question about the proper application of these [Staff] Rules . . . is to be decided in accordance with the grievance procedure available within the Bank, including its time limits and other requirements. It should not be possible to circumvent these time limits by taking the case to the PBAC, which deals with questions of SRP interpretation and claims for benefits or payments under the SRP.

17. Quite apart from the Applicant's having placed the issue of his Termination Grant before the wrong dispute-resolution agency within the Bank, it is far more troubling to the Tribunal that the Applicant was clearly out of time when he raised in the year 2000 claims of improper action taken by the Respondent in 1986. The Applicant was content in 1986 to accept and retain a cash payment equal to more than two years of his current annual salary in the Bangladesh Country Office. No challenge to that payment was even hinted at by the Applicant until his letter to the PBAC some 14 years later.

18. The Applicant explains that the 1986 payment did not affect him adversely and that he could not be expected to complain about it until the approach of his retirement, when the anticipated properly calculated (and significantly enhanced) Termination Grant should have been paid him, but would have been denied him. But the Applicant himself alleges that he believed in 1973 and in 1986 that his Termination Grant was not properly due him until some undefined date in the future when his service to the Bank Group would be "terminated." He must therefore have understood when he began his service in 1986 at Bank Headquarters (at a much higher salary than the one he had been receiving in Dhaka) that the 1986 Termination Grant was much less than he would receive were later service to be taken into account. Surely this should reasonably have been understood as an adverse decision by the Respondent. When the key document on which the Applicant relies to challenge his Termination Grant – the Bank's 1974 letter confirming his appointment – could obviously have been invoked by him in 1986, it is altogether unjustifiable to allow him to accept the grant and wait until his undetermined retirement date – perhaps 10 years or even 20 years later – to claim that he had been underpaid long before.

19. At the time the Applicant was paid a Termination Grant upon departing the Bangladesh Country Office and coming to Washington, D.C., staff members were initially to seek redress of their grievances through "administrative review" and, if they remained unsatisfied, before the Appeals Committee. Staff Rule 9.01, para. 2.02, as in effect in 1986, provided for challenges to administrative decisions to be taken to the immediate supervisor "no later than 90 calendar days after being notified of the decision." Obviously, the Applicant did not challenge the alleged prematurity and miscalculation of his grant within the 90-day period provided in the Staff Rules. Nearly 14 years passed before he did so. Even if the PBAC had indeed been an appropriate body to hear the Applicant's complaint on this issue, he would have failed – by many years – to comply with the three-year period of limitations that obtains there. See Staff Rule 11.01, para. 2.01; *Mitra*, Decision No. 230 [2000], para. 14.

20. Because of his failure to exhaust in a timely way the remedies that were available to him to challenge the allegedly wrongful payment of his Termination Grant in 1986, the Applicant has failed to comply with Article II, paragraph 2, of the Statute of the Tribunal. His claim for relief in that respect must be dismissed.

Failure to Count the Applicant's Country Office Service Toward his SRP Benefits

21. In his letter to the PBAC dated October 24, 2000, the Applicant asked that he be permitted to "pay back the termination grant I received for my 13 and ½ years of service in the Bangladesh office and get pension credit for my entire Bangladesh service, in addition to my headquarters service, in the Staff Retirement Plan." The PBAC denied this request, and informed the Applicant that the so-called "Gross" SRP plan in which he was enrolled when he began his service in Washington, D.C. effective December 1, 1986 made no provision either for returning his Termination Grant or for crediting earlier service in a Country Office. In his application to the Tribunal, the Applicant seeks "to include [his] years of service in Dhaka, Bangladesh in the calculation of his

retirement benefit under the SRP.” He relies upon certain provisions in the SRP, which he claims were meant to render him eligible from the date of his appointment in 1973.

22. The Respondent disputes the Applicant’s invocation and interpretation of the SRP, and also contends that Country Office staff members were ineligible for SRP coverage during the period 1973-86 (and that the Applicant was so informed), that the Termination Grant was in fact intended to operate in Country Offices in lieu of pension rights, and that the Applicant should not be permitted to devise arguments for Plan coverage that were not presented by him before the PBAC. The Respondent also contends, as did the Plan Benefits Administrator before the PBAC, that the Applicant’s claim was filed well outside of the three-year limitations period, so that here too the application must be dismissed by the Tribunal for lack of jurisdiction.

23. The Tribunal concludes that the Applicant’s filing with the PBAC was out of time, so that here too he failed to exhaust the remedies available to him within the Bank, in noncompliance with Article II, paragraph 2, of the Statute of the Tribunal. Staff Rule 11.01, para. 2.01, provides that “the right of a staff member to claim any refund, allowance or payment due but unpaid or *any benefit not credited* shall lapse three years after the date on which a right to the benefit, allowance or payment claimed arose.” (Emphasis added.) The Tribunal has held, in *Mitra*, Decision No. 230 [2000], para. 14, that this three-year period of limitations applies to proceedings initiated before the PBAC:

There is here a time limit of three years that prevents claims, including those brought under the SRP, being made indefinitely into the future. The Staff Rules and the SRP thus offer a standard which attends both to the rights of staff members and to the need to avoid unlimited or undefined claims proceedings.

24. The Respondent contends that the Applicant was aware as early as 1973 that his service in Dhaka would not be credited toward any benefits in the SRP as it then existed. Indeed, the Applicant himself affirms in his application that “[w]hile employed in Bangladesh, [he] was not told by Country Office personnel staff that [he] was eligible for any retirement benefit other than a Termination Grant.” In any event, the Tribunal finds that when the Applicant joined the Headquarters staff effective December 1, 1986, he was (or should have been) aware that his pension credits in the Gross SRP were beginning to accrue as of that date, and that neither he nor the Bank had made payments into the SRP during his previous period of service of more than 13 years in the Country Office.

25. The Applicant therefore had three years in which to complain to the PBAC concerning the “benefit not credited,” as provided in Staff Rule 11.01, para. 2.01. This period expired on December 1, 1989. He did not file with the PBAC until October 24, 2000, nearly 11 years beyond that date. The Applicant contends that his “claim” for pension benefits does not “arise” until he retires and begins to receive pension payments that fail to credit him for his substantial period of Country Office service. Were this so, a staff member in a case like this could wait for more than a decade to raise a claim that is already quite evident to him.

26. The conclusion that the Applicant’s recourse to the PBAC was untimely is dictated by the Tribunal’s decision in *Thomas*, Decision No. 232 [2000], involving a factual situation closely paralleled in the instant case. There, the Applicant contested the failure to credit her service as Non-Regular Staff which predated her conversion to a Regular Fixed-Term appointment in 1996 and her appointment to a Regular Open-Ended position in 1999. The Tribunal, in rejecting the Applicant’s claim that remedies under the SRP could still be sought in 1999, stated at paras. 31-32:

She had been converted into a regular staff Fixed-Term appointment in April 1996, and was then entitled to and did commence participation in the SRP. The Tribunal finds in this respect that she must have been aware at the latest at that time that she would not receive pension credits for the previous periods when she was not entitled to participate in the SRP because of the type of appointment she had held. . . . [H]er classification as regular staff . . . had occurred in 1996, and it was at that point that she ought to have considered whether her earlier classification (which excluded her from SRP) was inappropriate. She did not avail herself of the opportunity to challenge her earlier classification at that time, and, in the absence of circumstances found by the Tribunal to be exceptional, the conclusion is inescapable that she has failed to

meet the criteria established by Article II, paragraph 2(i), of the Statute of the Tribunal.

27. For the reasons already set forth above, in paragraph 17, there is no justification for ignoring the obvious intent of the three-year limitations period: to attend “both to the rights of staff members and to the need to avoid unlimited or undefined claims proceedings.” *Mitra*, para. 14. The Applicant’s claim to have his Country Office service credited toward the calculation of his pension benefits under the SRP is therefore also dismissed, for failure timely to exhaust his remedies within the Bank.

Costs

28. The two claims of the Applicant having been dismissed on jurisdictional grounds, the usual ruling of the Tribunal is to deny the Applicant’s requests for costs in the form of attorney’s fees. The circumstances of the instant case, however, are not typical and are in fact extremely troubling to the Tribunal. The Applicant was informed by the PBAC in a letter dated May 8, 2001 that his request “was denied by the Committee after due consideration.” No hint of reasons was provided, nor was it even stated whether the disposition was on jurisdictional grounds or on the merits. The Applicant filed a timely application with the Tribunal on August 6, 2001, still with no information regarding the reasons underlying the denial by the PBAC. It was not until after the application to this Tribunal, in a letter dated August 15, 2001, that the Pension Benefits Administrator provided the Applicant with quotations from the PBAC minutes in which the Committee briefly set forth its reasons relating both to its interpretation of the SRP and to the untimeliness of the Applicant’s filing.

29. The Applicant was thus put in the position of having to speculate about the issues and arguments to present in his application. Although the Tribunal is confident that the pleadings ultimately filed have provided a basis for a full and just decision, it may well be that the Applicant and his attorney were inconvenienced and subjected to unusual uncertainty and expense by the delayed provision of reasons by the PBAC. It is therefore appropriate to award to the Applicant some of his attorney’s fees.

Decision

For the above reasons, the Tribunal decides to dismiss the application and to award to the Applicant costs in the amount of \$3,000.

/S/ Francisco Orrego Vicuña
Francisco Orrego Vicuña
President

/S/ Nassib G. Ziadé
Nassib G. Ziadé
Executive Secretary

At London, England, May 24, 2002

