

Decision No. 281

Zeeshan Fatima Blair,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on August 14, 2002, by Zeeshan Fatima Blair against the International Bank for Reconstruction and Development. The Bank has raised a jurisdictional objection to be 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, Bola A. Ajibola (a Vice President of the Tribunal) and Robert A. Gorman, Judges. The usual exchange of pleadings with respect to jurisdiction took place. The case was listed on November 5, 2002, to decide the issue of jurisdiction only.

2. The Applicant began a Regular appointment in January 1981 as a Senior Secretary in the Bank's Country Office in Islamabad, Pakistan. She asserts that at that time, the Local Staff Handbook treated the subject of Termination Grant payments by stating that staff members "[o]n leaving the service of the Bank" would be eligible "for a termination benefit . . . equal to 14% of your final month's salary times the number of completed months of service." She acknowledges that she was told by Bank officials during her service in Islamabad that she was not eligible for any retirement benefit other than the Termination Grant.

3. In June 1993, the Applicant was offered a Regular appointment as a Staff Assistant in the Bank's Headquarters in Washington, D.C., and she took up that assignment the following month. The Bank documents given at that time to the Applicant state that "there has been no break in service," and that the change in her appointment from Islamabad to Washington was a "change in appointment type." Although she was asked, before leaving Islamabad, to submit a letter of resignation – presumably to provide a context for the Bank's paying a Termination Grant – the Applicant did not comply, believing that termination or resignation did not represent an accurate characterization of the change in her employment status with the Bank.

4. Although she did not submit such a letter, she received from the Bank some 552,000 Pakistani rupees, which were presented to her as a Termination Grant. This amount represented 14% of her final month's salary at the Islamabad Country Office multiplied by the number of months she had worked there.

5. After relocating to Washington, D.C., the Applicant became a participant in what is known as the Gross Plan of the Staff Retirement Plan (SRP), which involves contributions on the part of both the Applicant and the Bank. In various Bank documents issued after her relocation to Headquarters, the Bank treated the Applicant as if she had had unbroken service since her initial appointment to the Country Office began in 1981. For example, her annual and sick leave records were based on service dating from then, and in the year 2001 she received a certificate in honor of her "20 years of dedicated service to the World Bank."

6. In December 2001, the Applicant sent a letter to the Pension Benefits Administration Committee (PBAC), in which she asserted that

the Bank acted improperly when it prematurely paid and miscalculated [the] Termination Grant that I received when I transferred from the Bank's Country Office in Islamabad, Pakistan to Headquarters in Washington, D.C. . . . [B]ecause my Termination Grant was paid out prior to the time that I will leave the service of the Bank and retire, the amount I was paid was calculated in an arbitrary manner and in violation of the Bank's own written procedures.

At its meeting of March 20, 2002, the PBAC decided not to consider the merits of the Applicant's claim. She was informed in a letter from the Pension Benefits Administrator dated April 17, 2002 that "[e]ven if one assumes that your claim was timely, it is not within the jurisdiction or competence of the PBAC." The Administrator pointed out that the PBAC can hear only claims under the terms of the SRP, while the Applicant's claim regarding the improper payment of her Termination Grant raised questions under "the Staff Rules and other statements of human resources policy," which "likely" fell within the competence of the Appeals Committee rather than of the PBAC.

7. The Applicant then filed this appeal with the Tribunal. She contests and seeks rescission of two decisions by the Respondent: (a) the allegedly premature payment and improper calculation of the Termination Grant that she received when she transferred to Headquarters in 1993, and (b) the refusal of the PBAC to permit her to include her service in the Islamabad Country Office in the calculation of her pension under the SRP. She relies principally upon the terms of the SRP and of the Principles of Staff Employment, which require the Bank to avoid improper process and unjustifiable differential treatment. As compensatory relief, the Applicant seeks to have the period of her Country Office service credited toward her SRP benefits as well as the recalculation of her Termination Grant so as to be based on her final month's salary when, in the future, she leaves the service of the Bank by retirement or otherwise.

8. Ten other staff members who initially commenced their Bank service in Country Offices, and who then transferred to Headquarters in Washington, D.C. at various dates between 1980 and 1997, have also proceeded unsuccessfully to the PBAC and have filed applications with the Tribunal. They too complain about the improper payment of Termination Grants and the Bank's failure to credit their Country Office service in calculating benefits under the SRP. The Bank has been granted permission to file a single consolidated Answer with respect to the Applicant's and nine other applications, and it has challenged the jurisdiction of the Tribunal. An eleventh staff member, Mr. Bhattacharya, filed pleadings that, although different in certain minor details from those of the other applicants, assert essentially the same claims and the same responses to the Respondent's jurisdictional challenge. The Tribunal is treating the instant judgment as the principal one for purposes of explicating its reasons in full, and will address the other applications in separate and shorter judgments also issued this day.

9. The Respondent contends that the Tribunal is without jurisdiction to decide this application because of the Applicant's failure in a timely manner to exhaust the appropriate internal remedies, with the resulting failure to satisfy a jurisdictional prerequisite set forth in Article II of the Statute of the Tribunal. Article II, para. 2(i), of the Statute 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.

10. In May 2002 – after the Applicant's petition was dismissed by the PBAC and before she filed her application with the Tribunal – the Tribunal rendered its judgments in three cases initiated by staff members who had raised issues almost identical to those presented here, concerning Termination Grants and SRP entitlements when there was a period of Country Office service followed by a relocation to the Bank's Headquarters. The principal case decided in May 2002 was *Biswas*, Decision No. 262 [2002], and the related cases were *Uyanik*, Decision No. 263 [2002], and *Gokce*, Decision No. 264 [2002]. The Tribunal, in its judgments in those three cases, dismissed the applications because of the failure of the applicants to pursue remedies before the appropriate internal bodies in a timely manner.

11. The issue presented now to the Tribunal is whether a different result is warranted under the circumstances of this case. The Applicant argues that those three cases were wrongly decided and were based upon an unsupportable interpretation of the Staff Rule which sets forth the time limit for taking cases to the PBAC. Basically, however, the Applicant makes precisely the same arguments as those made, and rejected by the Tribunal, in the *Biswas* case.

12. As in that earlier case, the Applicant – as noted above – complains of two decisions on the part of the Bank: the allegedly premature and inaccurate payment of a Termination Grant upon her departure from the Islamabad Country Office, and the refusal to credit her Country Office service in calculating the pension benefits ultimately to be paid at the end of her service with the Bank.

13. Those are two distinct decisions, and the record reveals that it was only the former that the Applicant presented to the PBAC and that this was the only claim addressed by the PBAC (and dismissed for lack of jurisdiction). In *Biswas*, the Tribunal agreed with the PBAC that the rules governing the payment of Termination Grants – which the present Applicant acknowledges she was expressly told during her years in the Country Office was the only retirement-related benefit to which she was entitled – are not to be found in the SRP but rather in the Bank's Staff Rules as disseminated in summary form in the Local Staff Handbook. Accordingly, the Applicant should have submitted her challenges to the Termination Grant not to the PBAC but rather to administrative review and then to the Appeals Committee.

14. But here, as in *Biswas*, the Tribunal understands how the Termination Grant and the issue of Country Office credit toward the SRP might have been linked in the Applicant's mind, given the essentially uninterrupted continuity of her service between the Country Office and Headquarters. Accordingly, resort to the PBAC might well have been viewed by the Applicant as an efficient way to clarify her rights altogether. But even assuming that to be the case, her resort to the PBAC was far too late, as was also true in *Biswas*.

15. With respect to the Termination Grant, the Applicant's core contentions are that it was properly to be paid to her only upon her "termination" from Bank service, that she was never terminated but rather simply reassigned without a break in service when she moved to Headquarters in July 1993, and that the "final salary" that was properly to be used as a multiplier in calculating her Termination Grant was not her 1993 Islamabad salary but rather her yet-to-be determined (and much higher) salary when she ends her Bank service in the future. But all of those contentions were fully known to – and could readily have been asserted by – the Applicant in 1993, and yet she waited until December 2001 to place them before the PBAC.

16. The Applicant expressly acknowledges that the alleged improper decision on the part of the Bank was made when the Termination Grant was paid to her in 1993. In her application, she states: "[B]y paying out the Termination Grant upon a Change in Appointment type, rather than upon termination of service, the Bank acted in an arbitrary manner and in violation of its own written procedures. . . . Such calculation [based on the lower Islamabad salary] was therefore based on an arbitrary salary figure mid-term in my employment, rather than on my final salary." Indeed, the Applicant in 1993 refused to submit a letter of resignation as requested by the Bank, because this was desired by the Bank, as she states, "so that the Bank could pay me prematurely a reduced Termination Grant prior to any termination of service." She could therefore, at the same time, have readily returned to the Bank the Termination Grant that it had paid to her. But she failed to do so, and did not make a complaint about it, until more than eight years later.

17. Staff Rule 9.01, para. 2.01, as in effect in 1993, provided for challenges to adverse employment decisions to be taken to the decision-maker's immediate supervisor "no later than 90 calendar days after being notified of the decision." The Applicant, knowing full well in mid-1993 of her grievance regarding the Termination Grant, failed to pursue administrative remedies within the 90-day time limit. Even if the PBAC had been the proper body to address the Applicant's grievance, Staff Rule 11.01, para. 2.01, dictated that she file within three years, and thus no later than July 1996. But she presented her claim concerning her Termination Grant to the PBAC in December 2001. It may be said of the Applicant, just as the Tribunal said of Mr. Biswas, who also had some 13 years of Country Office service:

[T]he 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. . . . 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. (*Biswas*, Decision No. 262 [2002] at paras. 17, 19.)

18. Because of the Applicant's failure to pursue internal remedies with respect to her 1993 Termination Grant payment, the Tribunal must dismiss the application with respect to that claim, by virtue of Article II, para. 2(i), of the Statute of the Tribunal. The same result is warranted with respect to the Applicant's assertion that she is entitled to have her Termination Grant paid in the form of an annuity rather than as a lump sum.

19. The Applicant's second claim, that her Country Office service should have been credited toward her SRP benefits, must also be rejected under Article II, para. 2(i), of the Statute for the reasons fully set forth in the *Biswas* decision.

20. 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." As was true of Mr. Biswas, when the Applicant transferred from the Islamabad Country Office to Headquarters, she became eligible for and began to make regular payments into the so-called Gross Plan, which has no provision for counting previous Country Office service in the calculation of pension benefits. The Applicant knew, or should have known, that her service in Islamabad was not being taken into account and that neither she nor the Bank had ever made pension contributions for that period of some 13 years.

21. This was a "benefit not credited" by the Bank, for the purposes of Staff Rule 11.01, para. 2.01, and so the running of the three-year period for the filing of a claim with the PBAC began with her transfer in 1993. The Applicant, however, asserts that the first occasion on which her SRP "benefit [is] not credited" is when she is given pension benefits upon her retirement – which will presumably in her view be deficient for lack of considering her Country Office service. As to precisely the same contention made in *Biswas*, the Tribunal stated at para. 25: "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." The Tribunal also found governing precedent in *Thomas*, Decision No. 232 [2000], in which a staff member sought to have her service as Non-Regular Staff credited under the SRP, along with her later service in a regular staff Fixed-Term position. The Tribunal concluded in *Thomas* at para. 31 that the Applicant "must have been aware at the latest [when her appointment was converted to Regular] 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."

22. Just as the three-year time limit under Staff Rule 11.01, para. 2.01, had expired in *Biswas*, so it has here. The Applicant transferred to Headquarters and began participation in the pension plan in July 1993, but she did not complain to the PBAC (about either the Termination Grant or the alleged failure of the Bank to give SRP credit for her Islamabad service) until December 2001, some eight and one-half years later.

23. Although the Applicant has urged the Tribunal to reconsider and reject its reasoning in the earlier pertinent cases, the Tribunal rather reaffirms that reasoning. It is noteworthy that although the Applicant appears to interpret Staff Rule 11.01, para. 2.01, so as to postpone the beginning of the three-year period for her SRP claim until the uncertain future date when she retires or otherwise leaves the Bank's service, she nonetheless appears to have determined, by filing her application with the Tribunal in August 2002, that her SRP claim has matured now, in the midst of her continuing service in Washington, D.C. If she believes that her claim for additional service credit is not premature now, the Tribunal discerns no reason why that claim could not as readily have been asserted in 1993 or in 1996.

24. This second major claim of the Applicant must therefore be dismissed by the Tribunal for lack of jurisdiction.

25. The Applicant seeks costs, and while costs were partially awarded in the *Biswas*, *Uyanik* and *Gokce* cases, the Tribunal decides that the Applicant here is not entitled to such an award. The special circumstances noted by the Tribunal in those cases (see *Biswas* paras. 28-29) do not exist here. Moreover, at the time the Applicant, and her several colleagues, filed their applications, those three cases had already been decided, so

that the applicable law regarding the Tribunal's lack of jurisdiction had already been fully clarified.

Decision

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

/S/ Francisco Orrego Vicuña

Francisco Orrego Vicuña

President

/S/ Nassib G. Ziadé

Nassib G. Ziadé

Executive Secretary

At London, England, December 14, 2002