

World Bank Administrative Tribunal

Reports

2002

No. 277

**Anand Kumar Chavakula,
Applicant**

v.

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

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

World Bank Administrative Tribunal

**Anand Kumar Chavakula,
Applicant**

v.

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

1. The World Bank Administrative Tribunal has been seized of an application, received on June 17, 2002, by Anand Kumar Chavakula 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, Bola A. Ajibola (a Vice President of the Tribunal) and Robert A. Gorman, Judges. The usual exchange of pleadings took place. The case was listed on November 21, 2002. The President of the Tribunal denied on July 23, 2002 a request by the Applicant for provisional relief. The President of the Tribunal also denied on September 23, 2002 a request by the Applicant for the production of a document.

2. This case concerns complaints about a negative assessment by Bank officials of the Applicant's performance during the probationary period of his appointment, the handling by the Bank of a disability that allegedly affected him, and an alleged unfulfilled promise to reinstate the Applicant in his former position. The Applicant seeks reinstatement, compensation and other remedies.

3. The Applicant began working in the Bank in March 1998 as an employee of an independent firm contracted by the Bank to supply information technology. The

Applicant was a technician in charge of support for computer problems in the Core Services Department, Information Technology Unit, Europe and Central Asia Region (ECAIT). The problems that were entrusted to the Applicant for solution were generally of a basic nature, although on occasion he was required to deal with more complex issues. In October 1998, the Applicant was given a temporary appointment in the Environmentally and Socially Sustainable Development Sector Unit of ECA (ECSSD), which on March 1, 1999 was converted to a Short-Term Consultant appointment. This appointment, however, ended in June 1999, after which he applied and was selected for a position in ECAIT. On December 7, 1999, the Applicant was in this regard formally offered an Open-Ended appointment as an Information Analyst in the ECA Sector Unit (ECS), which he accepted on December 17, 1999. This appointment was subject to a probationary period of up to two years, in accordance with Bank policy.

4. Because of performance problems and other questions related to the discharge of his functions, several discussions took place between the Applicant and his supervisors. The ECAIT Team Manager sent the Applicant a detailed communication on April 20, 2000 listing the various problems with his performance that needed to be solved. Because these problems continued, the Applicant was placed on a Monitored Work Program between July and September 2000. As in the view of the Applicant's supervisors his performance had not improved sufficiently, he was officially informed on October 31, 2000 that his appointment would not be confirmed. This decision had been informally explained to the Applicant in meetings held with his supervisors earlier that month. Following a period of administrative leave, the Applicant on November 27, 2000

resigned from the Bank effective December 31, 2000. This resignation was accepted on December 5, 2000.

5. The Applicant believes that his performance was adequate and satisfactory, and that the problems which his managers identified were without foundation and designed mostly to harass him. In the Bank's view, however, there were serious deficiencies in his professional behavior and technical skills, about which he had been advised on many occasions during his probationary period, to no avail.

6. The Tribunal must first examine the record of the Applicant's performance. While it is true that the Applicant handled some assignments to the satisfaction of given departments, particularly ECSSD, the record shows that in general terms the assessment of the Applicant's performance from the outset of his employment with the Bank was mixed and on occasions frankly negative. Questions were raised from time to time about the Applicant having disregarded Bank policies in connection with his functions, his alleged failure to follow technical procedures, and his allegedly incorrect installations.

7. The problems that managers had identified became more apparent following a reorganization of ECAIT that had been undertaken with a view to improving the delivery of services. As a result of this change, the requirements of the Applicant's position were listed in detail in a communication sent to the Applicant on October 29, 1999 by the ECAIT Team Manager. Managers and other staff members provided feedback to the Applicant at various stages, an exercise that became fully structured as a result of the Monitored Work Program. However, the written evaluation of the Applicant's performance following the conclusion of the Monitored Work Program was

also critical of his progress. It was noted in particular that the Applicant required too much supervision, that he lacked sufficient organizational skills, and that he had difficulty working in a team environment. In addition to questions concerning his technical skills, the record also shows that on occasion the Applicant's absence from his office caused an interruption of services.

8. It is important to note that the Applicant himself was aware of these deficiencies and criticisms, even though he does not admit that he was responsible for all the failures of which he was accused. In point of fact, in a communication sent to the ECAIT Team Manager on October 13, 2000, following the negative evaluation of his Monitored Work Program, the Applicant stated that he would like to take the opportunity to "sincerely apologize for all the difficulties I might have caused. I wish of course that I had acted differently when challenging situations arose in the past It may not be possible to undo what has been done." At the same time, the Applicant requested a new opportunity.

9. The Applicant has provided in his submissions a detailed explanation of each and every aspect of his performance which the Bank criticized. However, if all these aspects are taken in their aggregate, they evidence in fact a pattern of weak performance and other anomalies in his professional behavior that the Bank could not fail to take into account in the exercise of its managerial discretion. The decision taken by the Bank not to confirm the Applicant's appointment falls within the managerial discretion of the institution and no evidence has been produced to the effect that any form of abuse or harassment tainted this decision. (*See Salle*, Decision No. 10 [1982], para. 30.) Nor was there any unfair treatment or procedural irregularity in the handling of the

matter by the Bank (*Buranavanichkit*, Decision No. 7 [1982], para. 28 and *Samuel-Thambiah*, Decision No. 133 [1993], paras. 31-32, 38).

10. Contemporaneous with the decision not to confirm the Applicant's appointment, and his choice instead to resign from the Bank, the Applicant developed depression and other disorders. The Applicant requested advice from the Health Services Department (HSD) for these problems, and consulted with other Bank units that could help in arranging for his transition from Bank employment.

11. The Applicant has argued that the Bank did not take adequate steps during his period of Bank employment to deal with his illness, citing as one example of this alleged negligence the fact that he was not allowed to keep an individual office in ECAIT. Since his arrival in June 1999 in ECAIT, the Applicant had requested an individual office in that Unit, but this was not allowed in view of the reorganization that technology services had experienced. The Tribunal concludes that the matter of the office was entirely unconnected with the question of his later illness.

12. The Tribunal must note as an undisputed fact that the first notification to the Bank that the Applicant was ill came in a letter of December 28, 2000 from a psychiatrist at the Washington Psychiatric Center who was attending to the Applicant. In this letter, the psychiatrist indicated that the Applicant had begun receiving treatment for major depression and attention deficit disorder in early December 2000. Prior to the date of this letter, the Applicant had in fact consulted a psychotherapist.

13. These dates have a crucial influence on the assessment of the Bank's reaction to the Applicant's illness. As soon as the Applicant requested benefits under the disability program in January 2001, after he had left the service of the Bank, such

benefits were granted in light of the Bank's disability insurer's determination that he had become disabled on November 9, 2000. The date of disability was thus after the Applicant had been informed of the decision not to confirm his appointment in October 2000. Although the psychiatrist expressed dismay about the Bank having terminated the Applicant's employment while he was hospitalized, this was not in fact the case, and it appears that the dismay originated in a misunderstanding.

14. A separate misunderstanding arose in February 2001. The Director of HSD telephoned the psychiatrist to inquire about the Applicant's health. Two different versions of that conversation have been advanced in the record. In the Bank's view, the Director, HSD, indicated that if the Applicant recovered from his illness, "the Bank would be willing to explore rehiring him, perhaps at a lower level, if a suitable vacancy became available." In the Applicant's version, there had been a promise to rehire him that was not honored. The psychiatrist wrote to the Bank on March 22, 2001, expressing "extreme unhappiness" about the handling of the Applicant's re-employment, and stating the view that the Applicant should have been reinstated in his former position immediately.

15. Regrettable as this misunderstanding may be, the Tribunal has not found any evidence that a promise of reinstatement was made. Such would in any event have to be proven unequivocally as was required in prior cases. (*See Bigman*, Decision No. 209 [1999], paras. 6-7; and *Brebion*, Decision No. 159 [1997], paras. 27, 35-38). The Tribunal notes also that there was no opening that could have been offered to the Applicant and that he had only been encouraged to apply for future openings. Moreover, it is also quite evident that the Director, HSD, did not have the authority to make a

promise of employment, and this must have been apparent to both the psychiatrist and the Applicant. But most relevant is the fact that the Applicant himself stated before the Appeals Committee that he had been too ill to return to work and that he has continued drawing on disability benefits, apparently until now, and so has been periodically confirmed by the treating psychiatrist as being affected by an illness that incapacitates him for work. As the Appeals Committee concluded on this point, the question of rehiring then became moot.

16. The Applicant has also complained about the Bank's sending an e-mail on October 26, 2000 announcing to staff members in the units using the Applicant's services that he had left the institution, the Bank's disconnecting his telephone, and the Bank's taking other similar actions which he believes have damaged his reputation. The reasons for these actions, the Respondent has explained, were related to the need to inform clients that the Applicant would no longer be available to handle requests for his services as he was taking administrative leave before his resignation was to take effect. The Tribunal is satisfied that no damage to the Applicant's reputation ensued from such actions. (*See Van Vugt*, Decision No. 179 [1997], para. 13.)

17. Finally, the Applicant has complained that the Bank did not provide him with the appropriate training to overcome his performance problems. Aside from the fact that the Bank appears to have made an effort to provide for some training, and did provide supervision and guidance, the continuing repetition of performance problems is indicative that training would not have been a remedy for such problems. The situation here, however, appears to be quite the other way round, as it was the Applicant who was supposed to support the Bank with his technical skills.

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