

Decision No. 200

Jasbir Chhabra (No. 3),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on October 28, 1997, by Jasbir Chhabra 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, composed of Francisco Orrego Vicuña (a Vice President of the Tribunal) as President, Thio Su Mien (a Vice President of the Tribunal) and Prosper Weil, Judges. The usual exchange of pleadings took place. The case was listed on September 21, 1998.

2. The Applicant joined the Bank in 1972 as a Research Assistant and her position was re-graded to level 21 in 1985. The Applicant was later given the title of Economist. After holding positions in several divisions, she was assigned to the South Asia Country Department I. Following periods of illness, it was concluded that she could not function as a level 21 Economist. In 1992, the Applicant reluctantly accepted to be reassigned to a level 17 position in order to avoid the choice of a mutually agreed separation or a trial assignment that could have ended in termination. On the recommendation of the Appeals Committee, the Applicant was re-graded to level 18, but, pursuant to a decision by Bank management, the level 18 was to be held only on a "personal basis" for the duration of the Applicant's assignment because her position grade stopped at level 17. The Tribunal later concluded, among other things, that the Applicant had not been offered real options and that the Respondent had mismanaged her career. (*Chhabra*, Decision No. 139 [1994].) While the Tribunal did not direct the Bank to take specific steps to rectify its errors of judgment, it did note that the Respondent had agreed to restore the Applicant to level 18. Compensation was also awarded to the Applicant.

3. This is the third time that the Applicant has come before the Tribunal seeking to redress decisions, which, in her opinion, have affected her career with the Bank. On this occasion, the Applicant specifically contests the decision to declare her redundant on the ground that it was based not on a business rationale but rather on an improper motive, including retaliation for the Tribunal's finding in her favor in *Chhabra* (Decision No. 139 [1994]). The Applicant also complains that the Bank did not re-grade her position as it was committed to do. Issues concerning a performance evaluation and the holding of her to a position below her demonstrated capabilities have also been raised in this case.

4. The Tribunal shall first address the question of redundancy. Because of budget cuts directed by the Bank amounting to a 14% reduction over a period of two years, it was decided in 1994 to reorganize and merge various departments in the South Asia Region, as a result of which various positions, including that of the Applicant, were identified for redundancy under Staff Rule 7.01, paragraphs 8.02(d) and 8.03. These redundancies were mostly directed to higher level staff, grades 18 and above, as explained in a memorandum of December 28, 1994 from the Vice President of the South Asia Regional Office (SAS) to the Director of the Personnel Management Department. While the Applicant's position was re-graded at levels 16-17, she was included in the redundancy process because she held a level 18 grade on a "personal basis." With respect to the Applicant, it was concluded that in the new division there would be no need for a Program Assistant and that some of her functions could be performed by level 18 Operations Analysts. The Applicant was the only Program Assistant proposed for redundancy.

5. The Tribunal's decision in *Chhabra* (Decision No. 139 [1994]) was rendered in the same week in which the redundancies were communicated to affected staff members in the South Asia Region (i.e., in mid-October 1994). Several senior managers requested that special treatment be given to the Applicant since it was believed that a redundancy in the circumstances could be perceived as a reprisal. Also, the Ombudsman requested that the Applicant be placed in another position or that her time of service be extended to reach the milestone of the Rule of 85. As a result, the Applicant's proposed redundancy was not pursued at the time. While the Applicant believes that the redundancy was "withdrawn" and while management regards the situation as a simple deferral or extension of the Applicant's assignment, in part due to her own requests to attain certain benefits, the fact is that the Applicant continued to work for the South Asia Region until the end of August 1996.

6. The Vice President of SAS again requested the Applicant's redundancy on October 17, 1995 and, after appropriate clearances, he gave the Applicant a formal notice of redundancy on November 7, 1995. The redundancy was to become effective on January 1, 1996. On this occasion, however, redundancy was based on Staff Rule 7.01, paragraph 8.02(b), which involves the abolition of a specific position. This redundancy decision, and other claims, were the basis for requests for administrative review, appeals to the Appeals Committee and the current application before the Tribunal.

7. The decision on redundancy in this case did not involve an abuse of discretion on the part of the Respondent since it has been clearly established that it was taken in the context of a broad process of reorganization of the various departments composing the South Asia Region. This reorganization responded to the budget cuts directed by the Bank. Neither is there any indication that the decision was improperly motivated, even though the many difficulties experienced by the Applicant with management could quite naturally have led her to believe so. Moreover, there is no evidence to suggest that the redundancy was in retaliation for the Tribunal's decision in *Chhabra* (Decision No. 139 [1994]). On the contrary, management made an effort to accommodate the Applicant's situation after the Tribunal's first decision, as a result of which the redundancy did not materialize at the time.

8. Two specific irregularities, however, have affected this redundancy. The first is of a procedural nature and concerns the grounds for redundancy, which were identified, in 1994, as Staff Rule 7.01, paragraph 8.02(d), and later, in 1995, changed to paragraph 8.02(b). As was explained by the Vice President of SAS in a memorandum to the Applicant dated March 4, 1996, the Bank considered that the abolition of the Applicant's position, originally scheduled to occur at the end of 1994, was "deferred to the second round which occurred at the end of 1995." The Acting Division Chief also stated in the Applicant's Performance Review Record (PRR) for 1995 that "[f]or personal reasons only, delivery of notice of redundancy to Ms. Chhabra was deferred until November 1995." If the first decision on redundancy was simply "deferred," or its notification postponed, and if the second decision only continued the implementation of the process, there would have been no reason to have changed the grounds invoked. If conditions had changed between 1994 and 1995, as argued by the Applicant, the second redundancy would have responded to a different and separate process which as such would have had to be evaluated on its own merits. True as it is that the intention of the managers responsible for the redundancy was to consider her situation as a continuation from 1994 to 1995, and that paragraph 8.02(b) of Staff Rule 7.01 was invoked because her position was the only one of that type left, the fact is that the change of grounds lends support to the Applicant's argument that the first decision was "withdrawn" in 1994 and that the second decision involved a different scenario. This conclusion is reinforced by the uncertainty as to what exactly was being abolished, a question that will be examined below.

9. Even if the original business rationale for the redundancy was still justified in 1995, as concluded above, the problem that ensues is that the Applicant was put at a disadvantage in that paragraph 8.02(d) incorporates a competitive selection process under the provisions of paragraph 8.03, while no such process is available under paragraph 8.02(b). As concluded by the Tribunal in another case, "[t]he question of identifying the specific provision of Staff Rule 7.01 under which the position of the Applicant was declared redundant is of considerable importance, since the Respondent's obligation vis-à-vis the staff member under paragraph 8.02(d) of Staff Rule 7.01 is different from that under paragraph 8.02(b)." (*Arellano*, Decision No. 161 [1997], para. 31.) In any event, it does not appear that this selection process was followed in the first case.

10. The second aspect affecting this redundancy relates to the identification of what exactly was being abolished, a situation which, as rightly argued by the Applicant, has never been clear. From the memorandum of December 28, 1994 by the Vice President of SAS to the Director of the Personnel Management Department, it appears that what was being abolished were a number of higher level staff positions level 18 and above, in which group the Applicant was included for having a level 18 position on a "personal basis"; although it was also clear that her position was graded at level 16-17. A year later, however, what was being abolished was the Applicant's position as "the only Level 16/17 Program Assistant position" in her Division, as was stated by the Vice President of SAS in his memorandum to the Applicant of March 4, 1996. If what was really abolished in 1994 were higher level positions, the Applicant should not have been included therein because her position was at the lower level grades 16/17, and, even if she had held a level 18 grade on a "personal basis," it is not persons but positions that are subject to redundancies under the Staff Rules invoked. Conversely, if in 1995 what was being abolished was her true level 16/17 position, this, as argued by the Applicant, ignores the fact that she was performing additional tasks at higher levels. This situation in turn is connected with the question of re-grading that will be examined below. It should also be noted that if the positions or grades targeted for redundancy had changed between 1994 and 1995, this contradicts the Respondent's argument that it was simply a question of "deferral." Although the Applicant believes that all of this confusion was intentional so as to eliminate her from Bank employment, it rather appears to be a case of continuing mismanagement.

11. The Tribunal now turns to the second major issue raised by the Applicant in respect of the re-grading of her position. As explained above, the Bank, subsequent to a recommendation of the Appeals Committee, re-graded the Applicant to a level 18 on a "personal basis" and retained her in a level 16/17 position. Since then, the question of re-grading has haunted the Applicant's career with the Bank. Already in 1993, the Applicant was given in her PRR a positive evaluation as a level 18 Program Assistant and, in 1994, the Division Chief recommended that the process be set in motion to reclassify her position on the ground that "the nature of her work is much closer to that of an Operations Analyst than of a Program Assistant." Reclassification was also pursued by the Ombudsman, and in the Management Review Record of November 1, 1994 for the 1993 review period it was recommended that the Applicant's position be reclassified at level 18. The record of this case is abundant in communications recommending and discussing the need for such a reclassification. However, the reclassification was never done. Instead, the process of redundancy was undertaken. While the Respondent has argued that the issue of re-grading became moot because of the redundancy, this is not so in the light of the close connection existing between the redundancy and the grading of the Applicant's position as explained above. Moreover, the Manager of the Asia Human Resources Team informed the Applicant by a memorandum of October 20, 1995 that the title of her position could not be changed because management had not agreed, in blatant contradiction to earlier recommendations and views of management on the matter.

12. While the Appeals Committee concluded that the Respondent was merely negligent in not reclassifying the Applicant's position, the Tribunal finds to its regret that the mismanagement identified in *Chhabra* (Decision No. 139 [1994]) has continued unabated ever since and has been further complicated by the ensuing redundancy and associated issues. It must be noted that some managers attempted to redress the irregular situation that had affected the Applicant, particularly in terms of the reclassification of her position, but these efforts were not successful.

13. Claims relating to the preparation of the 1995 PRR have also been raised by the Applicant in this case. The Applicant first asserts that the PRR did not reflect the true nature of her work. In fact, the assessment refers to tasks that were both "at the Program Assistant level" and to others that were "in the nature of Operations Analyst work," that is, both level 17 and level 18 work were mixed up in the performance evaluation. In earlier evaluations it appears that the Applicant was assessed against competencies of levels 18-21 even though her position had not been reclassified. Again, this is not really a question of abuse of discretion, as the Applicant maintains, but rather one that reflects the situation of mismanagement as explained above.

14. A second question raised by the Applicant is that the 1995 PRR was not completed until August 6, 1996, that is, eight months after the end of the period covered by the evaluation. While the late conclusion of the PRR has been explained by the Respondent in terms of "inadvertent miscommunication" between the Personnel

Team and the Division Chief, this explanation is not quite satisfactory in view of the fact that communications appear to have been most expeditious during a redundancy process that was taking place simultaneously. The record also indicates that the Applicant had been warned that the completion of her PRR could be done without her signature and that she had been given only a day and a half to submit comments on the PRR. This amounted to a form of pressure that was not justified.

15. In the circumstances, an active discussion with the Applicant would have been appropriate so as to ensure that the PRR fully reflected her prior performance, particularly in view of the fact that evaluations are important to a staff member's search for other positions in the Bank. Such a discussion, however, appears at best to have been very limited. The Management Review Group merely endorsed the evaluation done but did not attempt to discuss the Applicant's comments. While this cannot be taken for an abuse of discretion, it is certainly not a recommendable attitude towards a staff member. The Tribunal has emphasized in earlier cases the importance of granting staff members adequate and ample opportunity to comment on performance evaluations and for such comments to be considered by the Management Review Group. (*Garcia-Mujica*, Decision No. 192 [1998], para. 20.) The Tribunal also notes that the administrative review of the 1995 PRR was conducted by the Vice President of SAS, who had been actively involved in the process of declaring the Applicant redundant.

16. The 1995 PRR also reveals one other problem of significance, namely that after the determination on redundancy of 1994, no formal work program was prepared for the Applicant and only ad hoc tasks were assigned to her by different managers. Whether redundancy was withdrawn, deferred or postponed, according to the differing views held on the matter, a work program should have been defined for the period of extension of her service with the Bank, which in fact covered a time span of over eighteen months.

17. The Applicant also complains in this case about the Bank not having conducted a proper search for an alternative position. Formal steps toward this end were indeed taken and one direct effort was made to move the Applicant to another Department, but the effort failed for budgetary reasons and in view of the situation of other staff members who were being declared redundant in that Department. However, notwithstanding this assistance, confusion over the Applicant's grade again resurfaced during her job search. In fact, the Applicant was listed in the Bank's on-line Human Resources Kiosk as a level 18 Program Assistant whose discipline was "Secretarial/Staff Asst." Although the Applicant herself provided the information about her job skills, education and experience, as argued by the Respondent, this does not alter the fact that there was an inherent difficulty with the grade and job description arising from the issue of reclassification. If her true job was secretarial (levels 16-17), it would have been difficult for any other Bank Department to have assigned to it a level 18, which is reserved for the professional work of Operations Analysts or the equivalent. Conversely, if her true job was that of an Operations Analyst no one would have realized it because her discipline was described as "Secretarial/Staff Asst." that is, clerical. The end result would inevitably be a mismatch with available positions, which is in fact what happened. Moreover, the fact that her 1995 PRR was not completed until after the job-search period had ended did not contribute either to clarify the situation or to help the search. Once again, the Tribunal does not find in this situation an abuse of discretion but simply the renewed manifestation of the mismanagement that affected the Applicant's situation in the Bank.

18. The Applicant has also raised the question of unjust enrichment on the part of the Bank because her work was at levels 18-21. This argument is not tenable in view of the fact that she was being remunerated at the higher end of level 18 even if in the peculiar condition of "personal basis." While the Applicant has also repeatedly requested that she be reclassified as a level 21 Economist, this claim is, in the light of *Chhabra* (Decision No. 139 [1994]), unwarranted and, as rightly argued by the Respondent, subject to the rule of *res judicata*.

19. The Tribunal must now turn to the consequences of the mismanagement identified in this case. First, the Tribunal does not find it appropriate to quash the decision on redundancy taken by the Respondent because, in spite of its deficiencies, it responded to a legitimate business rationale adopted in the interests of efficient administration. Second, neither does the Tribunal find it appropriate to bridge the Applicant to the Rule of 85, because the Bank has already accommodated her situation on an exceptional basis by further extending her service to allow her to reach the Rule of 75 and to attain other benefits. However, as concluded in *Chhabra*

(Decision No. 139 [1994]), the mismanagement of the Applicant's career "reveals errors of judgment which taken together amount to unreasonableness and arbitrariness." (Para. 57.) This has caused the Applicant injury for which she must be compensated.

DECISION

For the above reasons, the Tribunal unanimously decides that the Respondent shall pay the Applicant:

- (i) compensation for injury suffered in the amount equivalent to two years' net salary; and
- (ii) legal costs relating to the proceedings before this Tribunal in the amount of \$9,000.

Francisco Orrego Vicuña

/S/ Francisco Orrego Vicuña
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At Washington, D.C., October 19, 1998