

Decision No. 139

Jasbir Chhabra,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of A.K. Abul-Magd, President, E. Lauterpacht and R.A. Gorman, Vice Presidents, and F.K. Apaloo, F. Orrego Vicuña, Tun M. Suffian and P. Weil, Judges, has been seized of an application, received September 30, 1993, by Jasbir Chhabra, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on July 26, 1994. Subsequent to the filing of the Rejoinder the Applicant sought to file additional statements. The additional statements filed by the parties as a result were rejected by the Tribunal under Rule 11, paragraph 1, because no exceptional circumstances were shown. An amicus curiae brief filed by the Staff Association after the listing of the case was rejected by the Tribunal under Rule 12, paragraph 1.

The relevant facts:

2. The Applicant joined the Bank as a level G Research Assistant in April 1972 in the Trade Policies and Export Division, Economics Department and was later transferred to the Commodity & Export Projections Division of the Economic Analysis and Projections Department (EPDCS) where in August 1982 she was promoted to level 1. In 1985, following the Bank's job grading exercise, the Applicant's position was regraded as 21 and in 1987 she was given the title of Economist. Up to that time, the Applicant had received very good performance evaluations.

3. At the time of the 1987 Bank-wide Reorganization, the Applicant was transferred to the Country Operations Division of the Asia Region, Country Department II (AS2CO), as a grade 21 Economist. In her Performance and Planning Review (PPR) covering the period from August 1987 to March 1989 the Division Chief of AS2CO concluded that, because there was clearly a mismatch between her strengths and the Division's requirements, the Applicant should move to another position. The Management Review Team's decision was that the division should draw up a task and time-specific work program for the Applicant and her performance would be assessed in six months, sometime in mid-February 1990. In order to ensure objectivity, the work program and performance criteria would be reviewed by an economist in a country division in another department; if at the end of this six-month period the Applicant's performance was not assessed as adequate, another fixed-term period would have to be provided for her to seek another assignment and, if this also were unsuccessful, then action on separation would be taken.

4. By memorandum, dated February 22, 1990, to the Division Chief, AS2CO, the Applicant expressed her belief that the terms of the proposed trial period were unfair in several respects. In a memorandum, dated March 22, 1990, her Division Chief, responding to her, stated that she had not been treated unfairly, because she had been assigned to work with five economists, three of whom were not satisfied with her performance and one of whom had declined to work with her. He maintained that she had been adequately informed of all the developments in her case and that the Department had taken ample measures to find her a position outside country operations.

5. During 1990 the Applicant became sick. By memorandum, dated March 30, 1990, to the Applicant's Division Chief, the Chief, Clinical Services, of the Health Services Department (HSD), stated that, in her opinion, a different work environment would enhance the prospects of a recovery of the Applicant's good health. The

Applicant's own physician, in a statement made on September 22, 1993, agreed with some of the conclusions of the Respondent's medical officer including that job-related stress was one of the causes of the Applicant's ill-health.

6. As a result, efforts were initiated to locate another position for the Applicant both in her Department and elsewhere. On July 16, 1990, the Applicant had a meeting with the Asia Personnel Team, at which she was informed that there were two options available to her; the first was a six-month to one-year assignment in the Latin America & the Caribbean Region (LAC), and the second was a six-month trial assignment to a work program developed in Asia Region, Country Department I (AS1). The Applicant was told that the LAC assignment had no long-term possibilities of continued employment, nor were there any future prospects for a vacancy in this area; but that the second option entailed the possibility of continued employment, if the trial assignment was successful.

7. After consulting with the Project Advisor, Asia Region, Country Department I, Office of the Director (AS1DR), later renamed South Asia Country Department I, Office of the Director (SA1DR), to discuss the possibility of the temporary reassignment of the Applicant from AS2CO to AS1DR, the Applicant on July 24, 1990, informed the Project Advisor of her decision to decline that assignment. Later in the week, however, the Applicant was informed by the Bank that the assignment to AS1DR was the only assignment the Bank could offer her and that she should advise by July 30, 1990 when she would be able to report to work. On August 3, 1990 the Applicant contacted the Personnel Officer for Asia and said that she was ill and would not be able to report to work before August 21, 1990. The Project Advisor, AS1DR, indicated that it would be by mid-September at the earliest that a detailed assignment could be prepared for the Applicant. The Applicant joined AS1DR on September 24, 1990. On advice from the Medical Department it was decided that the Applicant would initially work part time.

8. By memorandum, dated January 14, 1991, to the Personnel Officer, Asia Region Personnel Department (AS1PT), the Project Advisor, AS1DR, stated that the arrangement for the Applicant to work part time (half days), initially for one month, had been extended. He also stated that the recommendation by the Health and Services Department (HSD) for part-time attendance by the Applicant had been taken into consideration when assigning her to various projects. He observed that it was not possible to assign to the Applicant pieces of economic work which would require full time involvement and that her two major assignments could have been normally done by an experienced Research Assistant. The assessment of her performance under each of the work modules was rated 3 to 3.5 (fully satisfactory). As a result, "based upon the overall quality and quantity of her output against the limited job expectations, her performance had been rated satisfactory".

9. In a memorandum, dated May 2, 1991, to the Senior Personnel Officer, ASIPT, containing a second evaluation of the Applicant, the Project Advisor, AS1DR, reiterated his earlier assessment of the Applicant. He concluded that a further assignment of six months and a full-time participation on her part would be necessary in order to develop a real test of the Applicant's "capabilities of filling a level 21 economist position in this Department".

10. On July 25 and August 6, 1991, the Project Advisor, AS1DR, met with the Applicant to discuss progress against her work program for the period April 1 to July 26, 1991. He informed her that a clear imbalance of quality was noted in the Applicant's work. Although her performance was satisfactory in the area of data analysis, the Applicant did not have enough knowledge of the Bank's operations policies in order to function efficiently as a level 21 Economist in a sector or country operations division. He suggested that a formal request be submitted to HSD for a medical evaluation of the Applicant's condition and her ability to carry out the duties of a fully functioning level 21 Sector Economist. On October 18, 1991, HSD advised the Chief Personnel Officer, Asia Region, that the Applicant was now able to carry out her duties full time including a reasonable operational travel schedule.

11. By memorandum, dated October 25, 1991, sent by the Project Advisor, AS1DR, to the Director, AS1, the final performance evaluation of the Applicant was made. It covered the period from September 24, 1990 to September 30, 1991. In his evaluation the Project Advisor described the seven tasks on which the Applicant

worked during that period with four Task Managers. The seven assignments ranged from those that were normally assigned to experienced Operations/Research Assistants level 19-20, to those that were assigned to level 21-22 officers. Rating the Applicant's performance on a scale of 1-5 (unsatisfactory to outstanding), the Project Advisor gave her ratings of 3 or 3 plus for two assignments at level 20 and two assignments at level 21, and 2 for three assignments generally at level 21 and above. His conclusion was that the Applicant had demonstrated considerable ability in data processing and research but that she had not demonstrated the ability to function as a level 21 Country or Sector Economist.

12. A search for a reassignment of the Applicant then began. The Applicant was included in the restructuring exercise carried out in the fall of 1991. However no positions were found at her level or at level 18-20.

13. By memorandum, dated January 31, 1992, from the Chief Personnel Officer, South Asia Region/East Asia & Pacific (SAS/EAP), to the Applicant, she was given three options: acceptance of (i) a mutually agreed separation, or (ii) a level 17 Administrative Assistant position in either the South Asia or East Asia Regions, or (iii) an additional six-month trial assignment to perform level 21 Economist work (including mission travel), with the understanding that if her performance was unsatisfactory, she would not be eligible for a separation package, but would be subject to Staff Rule 7.01, Section 11, "Termination for Unsatisfactory Performance". If her performance under the third option was satisfactory, she would be placed in a level 21 Economist position in the South Asia Region on a permanent basis. The Applicant was given until February 19 and then until February 27 to make a choice.

14. The Applicant requested administrative review of the performance evaluation given by the Project Advisor, AS1DR, on October 25, 1991. By memorandum, dated February 7, 1992, the Vice President, SAS, responded that he found the overall performance evaluation sound and fair. The Applicant later requested administrative review of the three choices given to her by the Chief Personnel Officer, SAS/EAP, in his memorandum of January 31, 1992. The Vice President, SAS, responded by memorandum, dated March 25, 1992, to the Applicant in which he advised the Applicant that the options presented to her were appropriate and reasonable and that the memorandum of the Chief Personnel Officer, SAS/EAP, was not an abuse of procedure.

15. On April 7, 1992, the Applicant filed an appeal with the Appeals Committee, where she contested the performance evaluation of October 25, 1991 by the Project Advisor, AS1DR, and the three options offered to her in January, 1992. On April 28, 1992, by letter from counsel the Applicant advised the Respondent that she would be accepting reassignment at level 17. With effect from June 1, 1992 the Applicant was assigned to the position of Program Assistant, level 17, in the South Asia Region in Country Department 1, Population and Human Resources Operations Division (SA1PH).

16. The Applicant's PPR covering the period July 1991 to March 15, 1992 was prepared in July 1992. It stated that the Applicant had not demonstrated the expected performance of a level 21 Economist, but had performed satisfactorily at lower grade levels. For the merit increase of 1992 the Applicant was evaluated as a level 21 Economist and received a merit rating of "2" and an increase in salary of 1.3%. The Applicant requested administrative review as to the administration of her salary, the grading of her level 17 Program Assistant position and her merit increase for 1992. By memorandum, dated August 27, 1992, the Vice President, SAS, responded to her, rejecting her requests, and on September 24, 1992 the Applicant challenged that decision by filing a second appeal with the Appeals Committee.

17. In its report, dated June 24, 1993, the Appeals Committee found that there had been a problem of poor performance by the Applicant after she had transferred to the AS2CO Division, but questioned the reliance solely on tests with different supervisors to resolve a "mismatch" problem and was of the view that the Personnel Department should have made independent efforts to assist the Applicant in receiving proper training. It also expressed its deep concern and disapproval over an incident, where the Division Chief, AS2CO, had deleted a favorable comment on the Applicant's qualifications from her PPR after her refusal to sign her PPR. Regarding the Applicant's performance in SA1DR the Committee found that the conclusions and testimony of the Project Advisor, SA1DR, were fair and impartial, but did not agree with the decision to downgrade the Applicant to level 17, especially since in the Project Advisor's opinion the Applicant could

perform satisfactorily at least at level 18. The Committee recommended: a) that the Applicant's 1989 Annual Evaluation Review (AER) be deleted from her file along with all the damaging memoranda by the Division Chief, AS2CO; b) that her current level 17 position be elevated to a level 18-19 and that her salary be adjusted accordingly with effect from the date of her assignment. The Vice President, Personnel and Administration (VPPAA), accepted the Appeals Committee's recommendations, but decided that, because the grade range for her current position stopped at grade 17, she would hold grade 18 on a personal basis for the duration of her current assignment. Since the Applicant's salary was within the level 18 salary range no adjustment was strictly necessary. The VPPAA, however, decided, "in the spirit of the Committee's recommendation", to decrease Applicant's initial salary reduction by half.

The Applicant's main contentions:

18. The Respondent's evaluation of the Applicant's performance was flawed in many ways, being unfair, capricious, carried out without respect for the proper procedure and constituted an abuse of discretion. Also, the original decision to require the Applicant to be specially evaluated as an Economist lacked justification.
19. The Staff Rules on termination were improperly applied. Reassignment should have been attempted before resort was had to declaring the Applicant redundant.
20. The Respondent also failed in its duty to provide the Applicant with the retraining necessary to enable her to retain the position she had.
21. There was no justification for the Respondent's offer to the Applicant of three unacceptable options including one of demotion to a level 17 position.
22. From 1988 to 1992, there was no valid annual evaluation in the Applicant's personnel file and the below norm salary awards for 1989, 1990, 1991 and 1992 were all unfounded.
23. There was ample evidence of prejudice and discrimination against the Applicant on the part of her manager while she was in AS2CO Division.
24. The pressures and ill treatment to which the Applicant was subjected in her then division and the inept handling of her case was the immediate cause of the stress which resulted in certain physical impairments for which the Respondent should be liable. Although the Respondent contended that the Applicant's claims were not properly before the Tribunal, there is no procedure for contesting Workers' compensation decisions other than the standard grievance procedures.
25. The Respondent has improperly denied the Applicant full restoration of her salary for the period she was downgraded to level 18.
26. The Applicant made the following pleas:
 - (i) reinstatement of the Applicant to a level 21 Economist's position in a division where her skills and experience can be utilized and provision of any training deemed necessary for the new position;
 - (ii) deletion from her personnel file of all the damaging memoranda of her supervisors in AS2CO and SA1DR and all other memoranda relating thereto;
 - (iii) rectification of below norm merit awards for 1989, 1990, 1991 and 1992 to reflect satisfactory performance;
 - (iv) restoration of all of the Applicant's sick and annual leave, utilized in lieu of sick leave, during the period March 1990 to the present;
 - (v) payment of 18 months net salary for the intangible and tangible physical damage she has suffered; and
 - (vi) payment of legal costs estimated at \$30,000.

The Respondent's main contentions:

27. The application should be declared inadmissible because (i) the request by the Applicant for the rectification of the below norm merit awards for 1989, 1990, 1991 is out of time; (ii) the Applicant's claim concerning her health is not properly before the Tribunal at this time, because it is currently under review by the Respondent's Workers' Compensation Claims Administrator; and (iii) the entire application is possibly inadmissible since it was refiled "after corrections" thirty four days after the deadline for the original filing and amounts to a new pleading which was out of time.

28. As to the issue of prejudice, there is no evidence to support the Applicant's assertion of harassment by any persons in AS2CO, including her Division Chief.

29. There is no basis for the Respondent's being ordered to place the Applicant in a level 21 Economist position and to provide necessary training for any such new position.

30. The Applicant's complaint regarding her PPRs was without merit.

31. As to the three options offered the Applicant, they were neither improper nor intended to force her to take a mutually agreed separation.

32. There is no substantive basis for adjusting the Applicant's salary increases for 1989-1992, because her evaluations were proper and she did not perform her duties satisfactorily.

33. The Applicant's salary is being properly administered under Staff Rule 5.06, para. 8.01 and the Respondent had no obligation fully to restore the Applicant's salary or make adjustments.

34. The Respondent has committed no wrongful action warranting payment for damage to her career.

35. In case the Tribunal considers the merits of the Applicant's claim for compensation for damages to her health, no showing has been made of a causal connection between the alleged job stress and the onset of her health problems.

36. The request for removal of documents from the Applicant's Personnel File is moot in part, because the Respondent accepted the recommendation of the Appeals Committee concerning material prepared by her Division Chief in AS2CO.

37. No basis exists for the Applicant's request for restoration of leave.

38. The application has no merit and no exceptional circumstances exist that would warrant an award of costs.

Considerations:

39. As appears from the sequence of events detailed in paragraphs 2 ff. above, the Applicant, who had joined the Bank in 1972 as a Research Assistant, was graded level 21 as a result of the 1985 Job Grading Exercise and was subsequently given the title of Economist. Up to 1987 she had received good performance evaluations. Following the 1987 Reorganization she was selected as a grade 21 Economist into the Country operations Division of the Asia Region, Country Department II (AS2CO). In 1990 she was assigned to the Asia Region, Country Department I, Office of the Director (AS1DR). As a result of various events which will be discussed below, her supervisor, when evaluating on October 25, 1991 her performance for the period September 1990-September 1991, concluded that, while she "demonstrated considerable ability" in certain fields, she "has not demonstrated the ability to function effectively as a level 21 Country or Sector Economist", but "may be better suited to a research-focused environment". Consequently, on January 31, 1992 the Chief Personnel Officer for Asia offered her three options: (a) a mutually-agreed separation; (b) a level 17 Administrative Assistant position entailing a reduction in salary; or (c) an additional six-month trial assignment to perform level 21 Economist work, including mission travel, with the understanding that if her performance as

level 21 Economist was going to prove fully satisfactory she would be placed in a level 21 Economist position on a permanent basis, but that in the event of unsatisfactory performance she would be subject to the provisions of Staff Rule 7.01, Section 11 ("Termination for Unsatisfactory Performance") with no severance payments. On April 7, 1992, the Applicant filed an appeal before the Appeals Committee against her supervisor's evaluation, against her merit increases for the years 1988 through 1991, and against the alternatives presented to her in January 1992.

40. In the meantime, on April 28, 1992, the Applicant had accepted the alternative of her downgrading to level 17. She had, accordingly, been assigned to the position of Program Assistant, level 17, in the Country Department I, Population and Resources Operations Division, South Asia Region. Her request for administrative review having been rejected, she filed on September 24, 1992 a second appeal before the Appeals Committee, contesting the Respondent's two decisions relating to the administration of her salary and her merit increases for 1992 and the decision which rejected her contention that the level 17 duties assigned to her were in fact level 18 or above duties.

41. In its Report of June 24, 1993 the Appeals Committee, besides recommending that some damaging documents be deleted from the Applicant's file, recommended "that the Appellant's current level 17 position should be elevated to Level 18-19 in accordance with the Respondent's assessment of the Appellant's capabilities and to reflect the true nature of the Appellant's responsibilities and that the Appellant's salary be adjusted accordingly....".

42. On July 1, 1993, the Vice President, Personnel and Administration (VPPAA), accepted the Appeals Committee's recommendations, with one minor exception regarding the Applicant's salary. This decision was received by the Applicant on July 5, 1993.

43. On September 30, 1993, the Tribunal received an application contesting the VPPAA's decision and requesting compensation for the damage to her career and health, along with other relief, as set out in paragraphs 26 above.

44. The Tribunal will first deal with certain preliminary issues raised by the Respondent. One of them relates to the possible untimeliness of the entire application. The Respondent notes that the cover sheet of the application mentions that it was first filed on September 30, 1993, i.e., within the ninety-day time limit reckoned from July 5, 1993, the date of receipt by the Applicant of the Respondent's decision accepting the recommendations of the Appeals Committee, but was subsequently "received after corrections" on November 9, 1993 only, i.e., after the expiry of this time limit. The Respondent requests the Tribunal to consider whether the corrections were purely technical or resulted in a substantive new pleading.

45. It was, indeed, at the request of the Executive Secretary of the Tribunal that the Applicant introduced some technical and minor corrections. The application was filed in time and the objection raised by the Respondent is without foundation.

46. The Respondent also maintains that the Applicant's request for rectification of her below norm merit awards for the years 1989 through 1992 is time barred because the Applicant did not seek administrative review of the Bank's relevant decisions, and because no "exceptional circumstances" exist which could excuse such failure. The Applicant, on the other hand, contends that the issue of past merit increases forms part of the res and that all these matters are "one ball of the same wax". She argues also that her illness constituted an exceptional circumstance which prevented her from dealing in time with her below norm merit increases.

47. The Tribunal need hardly recall the importance it attaches to compliance with the statutory requirements of exhaustion of internal remedies (see, for example, de Jong, Decision No. 89 [1990]). In the present case, however, as appears from the Appeals Committee's Report, the adjustment of the merit increases for 1989, 1990 and 1991 had been requested in the Applicant's first appeal to the Appeals Committee, filed on April 7, 1992, and the adjustment of the merit increase for 1992 had been requested in her second appeal to the Appeals Committee, filed on September 24, 1992.

48. The question, nevertheless, arises whether these appeals to the Appeals committee had been preceded by requests for administrative review, as required by Staff Rules 9.01 and 9.03. The record provides evidence of such a request regarding the 1992 merit increase, and in this respect the Respondent's allegation that the Applicant "failed to seek timely administrative review, or, indeed, to seek administrative review at all", is not accurate. As to the pleas relating to the merit increases for the years 1989, 1990 and 1991, the question whether a request for administrative review had preceded the appeal to the Appeals committee appears to have been raised neither by the Respondent before the Appeals Committee nor by the Appeals Committee itself. According to Article II, paragraph 2(i) of the Statute of the Tribunal, the Respondent may waive the requirement of exhaustion of internal remedies prior to the filing of an application before the Tribunal. Such a waiver must be deemed to have taken place when the Respondent fails to raise the matter before or at the time that the case is considered by the Appeals Committee. In effect, the Bank is precluded from raising the plea of non-exhaustion of internal remedies if it has not told the Applicant of its intention to invoke Article II, paragraph 2(i) before the Applicant pursues proceedings before the Appeals Committee and thereafter initiates proceedings before the Tribunal. The Tribunal, therefore, concludes that the Respondent's objection to the admissibility before the Tribunal of the pleas relating to the merit increases for the years 1989, 1990, 1991 and 1992 has to be dismissed.

49. As a final jurisdictional challenge, the Respondent maintains that the Applicant's request that the Respondent should compensate her for damages to her health is inadmissible because a similar claim has been filed by her, and is currently pending, before the Bank's Workers' Compensation Claims Administrator. The Tribunal concurs with this view. It must, however, be pointed out that the Applicant's claims relating to an alleged failure by the Respondent to take account of her health problems and the incidence, if any, of this alleged failure on her career are part of the present case.

50. The Tribunal now turns to the merits of the case. The Applicant maintains, in substance, that after her assignment to AS2CO in 1987 she was subjected to harassment, prejudice and unfair treatment by her supervisors, in particular on gender and ethnic grounds; that this hostile environment and the resulting stress caused her serious health problems; that the Respondent's decision in 1990, when she was already ill, to place her on a trial assignment was "poor judgment" and constituted an abuse of power; that she has been given operational assignments for which she lacked the time to acquire the necessary exposure; that she should not have been evaluated as an Economist because, as the Respondent itself recognized, there was a "mismatch" between her skills and the needs of her division; that her evaluation, in particular in October 1991, was unfair, capricious and arbitrary, and constituted an abuse of discretion; and that the options offered to her on January 31, 1992, and in particular the offer of a demotion to a level 17 position, were manifestly unreasonable and as such an abuse of discretion.

51. Regarding the allegations of harassment and prejudice, the Tribunal notes that, even though the working relationship between the Applicant and her supervisors in AS2CO from 1987 onwards appears not to have been good, the Applicant failed to produce evidence to support such allegations.

52. The Applicant was, indeed, given assignments with different economists, each of whom evaluated her independently. Clearly, as the Appeals Committee's Report observed, "there was a problem of poor performance as documented by (her) numerous supervisors". This appears as early as in her 1989 PPR in which her supervisor wrote that, although she was able to "produce a superior product" when given "time to reflect", "the particular requirements of (the) Division are not areas in which she can effectively apply her more specialized skills". The supervisor concluded that "There is... a clear mismatch between her strengths and the Division's requirements". He suggested, therefore, that she be transferred "to a position where her duties would be more congruent with her skills". In spite of her assignment to another division in 1990, the performance problem did not disappear. Thus, when evaluating on October 25, 1991 her performance for the period September 1990-September 1991, her supervisor reached a conclusion which came close to that reached earlier by her supervisor in AS2CO. Her "strong sense of responsibility", her "willingness to work", her "diligence and perseverance in her tasks", all her "strengths", so he wrote after a detailed and thorough examination of the seven tasks performed by her with four Tasks Managers, are "offset by a descriptive rather than

prescriptive presentation in her draft papers, a lack of logic in presentation, and an inability to structure her work to meet agreed deadlines without the need to work considerable personal overtime". He concluded that, while she had "demonstrated considerable ability in the data processing, research-oriented aspects of her assignments,.... she has not demonstrated the ability to function effectively as a level 21 Country or Sector Economist". In a subsequent PPR covering the period July 1991 through March 1992 the same supervisor concluded that, while the Applicant had performed satisfactorily the 18-20 level tasks entrusted to her, "her work did not indicate that she could meet the standards of performance expected of a grade 21 Country or Sector Economist".

53. It is in light of these concurring assessments of indisputable strengths and qualities in certain specific fields, in particular research, but also of an inability to meet the requirements of a level 21 Economist, and with a view to bridging the "mismatch" which had appeared between her capabilities and the requirements of her job, that the Respondent took various steps aimed at solving this problem. Thus, as already mentioned, the Applicant was assigned in 1990 to another division for a trial period. Because of her health problems, she was granted a part-time arrangement, with working hours specially adapted to her medical condition. In 1991, the Respondent undertook a search for an alternative position, better suited to the Applicant's capabilities. This search, however, was unsuccessful, and it is because of the failure to find a suitable alternative position that, in January 1992, the Respondent proposed to the Applicant the three options detailed above.

54. On the face of it, these options may appear to be beyond reproach. A mutually agreed separation would have implied the Applicant's consent. An additional trial assignment at level 21 would have represented a last ditch opportunity to safeguard the Applicant's grading as a 21 level Economist in spite of the past negative experience. The proposal to downgrade her to a level better suited to her capabilities was intended to bridge the gap between her grade and her skills. The Applicant was left free to choose among these options. She chose the third one. In the event, as already mentioned, the Appeals Committee was of the view that an assignment to a 16-17 level was too harsh, because her supervisor had repeatedly regarded her performance as beyond criticism at level 18 tasks. The Appeals Committee consequently stated that "it would not represent an undue hardship on the Respondent to fit the Appellant at 18-19" and recommended that the Applicant's current level 17 position be elevated to a grade level 18. As already mentioned, the Respondent has agreed to restore the Applicant to level 18 and to adjust her salary accordingly.

55. The Respondent's treatment of the Applicant was flawed from the outset by the "mismatch" which had appeared between the Applicant's capabilities and the level 21 Economist position assigned to her following the 1987 Reorganization. At that time, the Respondent had clearly overestimated the Applicant's skills; had it assessed them in a more cautious and conservative way, it would probably have granted her a grade lower than the level 21.

56. Meritorious as they are, the subsequent efforts of the Respondent to remedy this "mismatch" ended up in offering the Applicant a choice which was such only in name. In particular, the Respondent offered the alternative of an additional trial assignment to perform level 21 Economist work, including mission travel, with the understanding that if her performance was going to prove fully satisfactory, she would be placed in a level 21 Economist position on a permanent basis, but that in the event of unsatisfactory performance her employment would be terminated without severance payments. This alternative was unfair and unrealistic. It was unfair because of her illness which, as her supervisor acknowledged, made it impracticable for her to be given a fair trial at level 21. It was unrealistic because in light of the past experience the result of an additional trial period was a foregone conclusion. Consequently, the alternatives offered to the Applicant were in effect only two: either leave the Bank on mutually agreed terms or accept a demotion to an unreasonably low level. Although there is no evidence or even allegation of duress, it is clear that the continuance of the Applicant's career with the Bank was conditioned on the acceptance of a demotion. Thus, the Applicant was, in fact, given no real choice at all.

57. In Durrant-Bell (Decision No. 24 [1985]), the Tribunal, while concluding that the decision by the Respondent to terminate the employment of the Applicant "shall stand", nevertheless granted the Applicant compensation because of "certain discrepancies and inconsistencies in the treatment of the Applicant's case by the

Respondent". Likewise, in the present case, the Tribunal concludes that, although no particular decision of the Respondent is to be quashed, the Respondent's behavior towards the Applicant from the Reorganization onwards, taken as a whole, constitutes mismanagement of the Applicant's career. It reveals errors of judgment which taken together amount to unreasonableness and arbitrariness. Such behavior falls short of the standards of treatment required of the Bank under the Principles of Staff Employment.

58. For these reasons, and taking into account the Respondent's efforts to remedy the difficulties created partly by its own decisions, the Tribunal decides that the Respondent shall pay the Applicant compensation in the amount of \$50,000.

Decision:

For these reasons the Tribunal unanimously decides that:

- (i) the Respondent shall pay the Applicant compensation in the amount of \$50,000;
- (ii) the Respondent shall pay the Applicant costs in the amount of \$5,000; and
- (iii) all other pleas are dismissed.

A. K. Abul-Magd

/S/ A. K. Abul-Magd
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At Washington D.C., October 14, 1994