

Decision No. 279

Shankar S. Dey,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on July 30, 2002, by Shankar S. Dey 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 joined the Bank on a Fixed-Term assignment as an Administrative Assistant at the World Bank Office in Dhaka on July 1, 1983. The Applicant's Fixed-Term appointment was converted to Regular with effect from November 1, 1987. The Applicant's letter of appointment provided that his appointment was subject to the conditions of appointment as in effect at that time and as they might be amended from time to time. The letter also indicated that a full set of the Principles of Staff Employment and the Staff Rules based on such Principles was kept in the field office and was available for examination during regular business hours.

3. In September 2000, the Applicant was officially informed by the Manager, Administration, of the World Bank Office in Dhaka that the Applicant's job as a Communications Officer would be transferred to the General Services Department (GSD) and reclassified as a General Services Officer under the supervision of a Senior Administrative Officer with effect from October 1, 2000. The Applicant's job was, however, apparently not transferred.

4. On March 22, 2001, the Manager, Administration, orally informed the Applicant that his position had been declared redundant. On June 1, 2001, the Vice President, South Asia Region, notified the Applicant in writing that his employment would be declared redundant with effect from August 2001 under paragraphs 8.02(b) and 8.03 of Staff Rule 7.01. On November 27, 2001, the Applicant filed a Statement of Appeal challenging the redundancy decision. The Appeals Committee found on April 8, 2002 that it was without jurisdiction to hear the Applicant's Appeal because the Appeal was untimely. The Applicant filed his application with the Tribunal on July 30, 2002. He alleges that the World Bank breached the terms and conditions of his appointment, and seeks payment for his remaining years of service with a normal salary increment factored into his compensation.

5. The Respondent has raised a jurisdictional objection, and asks the Tribunal to hold the application inadmissible for lack of jurisdiction because the Applicant failed to exhaust all prior remedies available within the Bank Group as required by Article II, paragraph 2(i), of the Tribunal's Statute.

6. Article II, paragraph 2(i), reads:

[n]o ... 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.

7. The Tribunal has often expressed the importance of the requirement of the exhaustion of internal remedies.

(See, e.g., *Klaus Berg*, Decision No. 51 [1987] at para. 30.) Furthermore, the Tribunal has stressed in numerous decisions that a failure to observe time limits for the submission of an internal complaint or appeal is regarded as a failure to comply with the statutory requirement of exhaustion of internal remedies. (See *de Jong*, Decision No. 89 [1990], para. 33; *Setia*, Decision No. 134 [1993], para. 23; *Sharpston*, Decision No. 251 [2001], paras. 25-26; and *Peprah*, Decision No. 275 [2002], para. 24.)

8. The operative Staff Rule in this case is Staff Rule 9.03 ("Appeals Committee"), which states at paragraph 5.01:

A staff member who wishes to appeal an administrative decision to the Appeals Committee must submit the appeal in writing to the Secretariat of the Appeals Committee within either: (i) 90 calendar days of receiving the written decision; or (ii) 30 calendar days following the termination of mediation which failed to resolve the issue arising from the same administrative decision.

9. Furthermore, Staff Rule 9.01 ("Office of Mediation") provides at paragraph 4.02(b) that:

Parties to a dispute involving an Administrative Decision ... must request Mediation within 90 days of the disputed decision. In certain circumstances, Bank staff may request either mediation or file an appeal with the Appeals Committee within 90 days of an Administrative Decision. ... In such cases, if a staff member chooses mediation and it is unsuccessful, for whatever reason, the staff member may then file an appeal with the Appeals Committee within the remainder of the initial 90 days, or within 30 days after the unsuccessful mediation, whichever period is the longer.

10. As the record in this case shows, the Applicant received written notice of the redundancy decision on June 1, 2001. Under either Staff Rule 9.01 or Staff Rule 9.03, the Applicant thereafter had ninety days within which to seek mediation or file an appeal with the Appeals Committee. The Applicant chose neither of these options in a timely manner. Instead, the Applicant filed his Statement of Appeal almost six months after the date of receipt of notice of his redundancy, i.e. on November 27, 2001. The Tribunal finds that the Applicant thus failed to pursue internal remedies in a timely manner and, therefore, the Appeals Committee properly determined that it did not have jurisdiction to hear his Appeal.

11. As the Applicant did not exhaust internal remedies in a timely manner as required by the Tribunal's Statute, and as there is no record of an agreement between the Applicant and the Respondent to submit the application directly to the Tribunal, the next question to be examined by the Tribunal is whether there were any exceptional circumstances that would excuse this delay in the Applicant's filing of an appeal with the Appeals Committee and permit the assumption of jurisdiction by the Tribunal.

12. The Applicant has alleged several instances of exceptional circumstances, based largely on medical reasons. The Applicant first alleges that he underwent heart by-pass surgery on May 22, 2000 at a hospital in India, and that he thereafter went for a follow-up Comprehensive Cardiac Check-up (CCC). The Tribunal notes that this operation took place one year before the Applicant received notice of the redundancy of his employment, during which year he was, apparently, fully employed. It is not clear, therefore, how the Applicant's health status could have prevented him from filing a timely appeal with the Appeals Committee. Moreover, the Tribunal notes that the Applicant does not specify at which time the CCC took place or for how long it lasted, making it impossible to determine whether his inability to pursue timely internal remedies is excusable.

13. The Applicant further invokes as an exceptional circumstance the fact that he accompanied his wife to a doctor's visit in Calcutta, India, during a period of three days. This amount of time does not, in the view of the Tribunal, excuse a delay of three months in the Applicant's preparation of his Appeal.

14. As another exceptional circumstance, the Applicant invokes his training for a month from July 22, 2001 to August 22, 2001, during which time he was expected to prepare his Appeal. Even if this were the case, the Tribunal notes that the Applicant has provided no justification as to why he did not request from the Appeals Committee an extension of the ninety-day time limit in which to file his Appeal – a possibility offered to him under Staff Rule 9.03 ("Appeals Committee"), para. 5.01.

15. Additionally, the Tribunal finds unpersuasive the general explanations proffered by the Applicant for the exceptional circumstances which he invokes and which are discussed above, as the Applicant provides no corroborating evidence to support them. As the Tribunal held in *Mahmoudi* (No. 3), Decision No. 236 [2000], para. 27, “[r]eliable contemporaneous proof [of the exceptional circumstances invoked by the Applicant] is required.” Although the Tribunal pays the utmost attention to the presentation of exceptional circumstances, especially when they are based on reasons of health, it cannot accept unsubstantiated claims by an applicant to the effect that he or she was unable to pursue claims for such reasons. This is even more so since all that is required in filing an appeal to the Appeals Committee is a simple expression of grievances. (See *Mahmoudi* (No. 3) at para. 27.)

16. Another set of exceptional circumstances which the Applicant invokes deals with his alleged unawareness of the Staff Rules and the Bank’s grievance mechanisms. Although the Applicant does not explicitly invoke as an exceptional circumstance his ignorance of Staff Rule 9.03, he does state that during the Ombudsman’s visit to Dhaka in April 2000, she did not discuss anything about a time limit for filing before the Appeals Committee nor did she give him any Staff Rule concerning the Appeals Committee. The Tribunal notes that, apart from the fact that during this visit the Applicant ought to have been aware of the Bank’s grievance mechanisms because this was the purpose of the Ombudsman’s visit to Dhaka, notice of the existence of the Principles of Staff Employment and the Staff Rules was attached to his letter of appointment for his information. Furthermore, the Applicant was informed in the same letter of appointment that a full set of the Principles, and Staff Rules based on the Principles, was available for examination in the field office during regular business hours. The Applicant’s notice of redundancy of June 1, 2001 also made reference to Staff Rules and to a Human Resources (HR) Officer who would provide assistance to the Applicant in his job search. The Applicant thus had ample access to HR staff who could have explained to him the Staff Rules and the grievance process.

17. As the Tribunal has held in the past, it is the Applicant’s obligation to keep himself apprised of his rights and to submit his appeal in good time. (See *Setia*, Decision No. 134 [1993], para. 31.) Furthermore, the Tribunal has also held that the Bank has no obligation to apprise an applicant of his or her rights or to offer him or her any assistance in contesting the decision to terminate his or her employment. (See *Guya*, Decision No. 174 [1997], para. 8; and *Levin*, Decision No. 237 [2000], para. 22.) In any event, as the Tribunal has ruled in numerous cases, ignorance of the law is no excuse (see, e.g., *Guya*, Decision No. 174 [1997], para. 7; and *Mahmoudi* (No. 3), Decision No. 236 [2000], para. 28).

18. Although there is no obligation on the part of the Bank to notify staff members affected by adverse employment decisions of their rights within the grievance system, it is, however, desirable that information be contemporaneously provided concerning various available options and the accompanying time limits. This is particularly true of staff members employed in Country Offices.

19. Another exceptional circumstance invoked by the Applicant has to do with the hope of a transfer to GSD. As it appears from the record, after the Applicant was orally informed in March 2001 of the redundancy of his employment, he requested that he be transferred to GSD and then approached the Country Director, Team Leaders and senior staff members of the World Bank Office in Dhaka to that effect. The Applicant states that “[s]ince [he] was given the hope of an interchange, [he] could not think of any further remedial measures” and, thus, lost time in filing his Appeal. The Tribunal finds that the Applicant’s deliberate choice to follow a certain course of action – i.e. wait and see if another assignment would materialize while the time for the preparation of his Appeal was running out – constitutes a casual treatment of the requirement of exhaustion of internal remedies. Such an approach cannot be excused as an exceptional circumstance under Article II of the Tribunal’s Statute. (See *Mendaro*, Decision No. 26 [1985], para. 33; *Agerschou*, Decision No. 114 [1992], para. 45; and *Guya*, Decision No. 174 [1997], para. 11.)

20. Furthermore, the Tribunal finds that the Applicant’s meetings with the Country Director, local HR Officer and other staff members do not constitute exhaustion of internal remedies. According to the Tribunal’s jurisprudence, “all other remedies available within the Bank Group” means formal remedies and includes timely recourse to the Appeals Committee. (*Bredero*, Decision No. 129 [1993], paras. 22-23; and *Levin*, Decision No.

237 [2000], para. 13.)

21. Based on all the explanations and observations above, the Tribunal finds that the Applicant has not presented exceptional circumstances that would excuse his untimely exhaustion of internal remedies and justify the assumption of jurisdiction by the Tribunal.

Decision

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

/S/ Francisco Orrego Vicuña

Francisco Orrego Vicuña

President

/S/ Nassib G. Ziadé

Nassib G. Ziadé

Executive Secretary

At London, England, December 14, 2002