

Decision No. 75

Gurdev Singh Dhillon,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, P. Weil and A. K. Abul-Magd, Vice Presidents, and R. A. Gorman, E. Lauterpacht, C. D. Onyeama and Tun Suffian, Judges, has been seized of an application, received August 23, 1988, by Gurdev Singh Dhillon, against the International Bank for Reconstruction and Development. There was an exchange of pleadings without the Applicant exercising his right of reply. The case was listed on March 2, 1989.

The relevant facts:

2. On August 5, 1986 the Applicant, a Budget Officer level 22 in the Accounting Department, signed a separation agreement setting forth the terms under which he was to separate from the Bank because of the decision to abolish his position. In accordance with the terms of the separation agreement the Applicant remained in active work status until February 28, 1987, the last day of his employment.

3. On March 5, 1987 the Executive Directors decided that "no funds will be used to finance redundant employment separation until after the review of the redundancy policy." Consequently, on March 6, 1987 the Team Managers in the Personnel Department were notified that (i) all separation actions due to redundancy or abolition of office were suspended; (ii) all staff currently on notice of post abolition or redundancy should be advised in writing that their notices were suspended; and (iii) no other staff would be notified of abolition of office or redundancy.

4. Shortly afterwards, written notifications of suspension of separation from employment were given to the redundancy or abolition staff who had been advised in fiscal year 1987 of termination of employment but whose termination had not yet taken effect.

5. On March 24, 1987 the Applicant, whose employment had been terminated on February 28, 1987 wrote to the Acting Director, Personnel Management Department (PMD), asking him either to agree to extend his separation date of February 28, 1987 to a later date, or to agree retroactively to compensate him in accordance with the new separation policy. The Applicant based his request on grounds of fairness since his date of separation, i.e. February 28, 1987, was very close to March 6, 1987, the effective date of the new compensation policy for separation because of redundancy.

6. On March 27, 1987 the Director replied that Management decided to suspend future cases of separation from the Bank due to redundancy or abolition of office pending the outcome of the reorganization; that to undo agreed and implemented separation arrangements was not satisfactory, because it was not possible to settle on a date before March 6, 1987 which would not be considered arbitrary; and that the only really acceptable date was the date on which the new policy became effective, i.e., March 6, 1987.

7. On August 6, 1987 the Applicant's attorney wrote to the President of the Bank stating that the date March 6, 1987 was very unpalatable to the attorney in light of his client's departure from the Bank on February 28, 1987. The attorney further stated that he could only conclude that the failure of the Bank to advise his client in advance of the new compensation policy had a racial motivation, his client being from India, whereas two

favored employees (one British and the other Australian) who had concluded similar agreements were advised to postpone their respective dates of separation. He asked for compensation in the amount of approximately \$30,000, being the differential amount.

8. On October 21, 1987, the Acting Vice President, Personnel, replied that on March 6, 1987 no new compensation policy had been announced, but rather as of that date certain redundancy cases, viz those where the persons were still in active work status in March 1987, had been suspended and subsequently made subject to the procedures of the reorganization. The Acting Vice President concluded that this was the case of the two individuals to whom the Applicant's attorney had referred, and that there had been no discriminatory treatment based on improper motivation.

9. On April 1, 1988 the Applicant filed a statement of appeal with the Appeals Committee claiming additional compensation for the termination of his employment in the amount of \$87,465.78 because the Bank had failed to advise him to remain in service for an additional six days. On July 20, 1988 the Appeals Committee found that it lacked jurisdiction in this case because the appeal was time-barred, the Applicant having failed to comply with Staff Rule 9.03, para. 5.01.

The Applicant's main contentions:

10. Because the Applicant's separation from the Bank was the result of the abolition of his position due to redundancy, he is entitled to receive the enhanced separation package. Because of an administrative error, the Applicant was not advised to postpone his departure from the Bank by six days in order to qualify for the revised separation compensation program. Had he received such proper notice, he would have received additional separation compensation in the amount of \$87,465.78.

11. On the basis of the general principle of equal treatment, all staff members forced to leave the Bank because of redundancy due to the abolition of their position must receive the same benefits.

12. Other individuals who had entered into similar separation agreements were expressly told by representatives of the Bank to postpone their respective separations so as to be in service on March 6, 1987, the date on which the new compensation policy arising from the reorganization came into effect. Among such other staff members were a British and an Australian; the Applicant, an Indian, was not so informed.

13. The Applicant's delay in filing his appeal with the Appeals Committee was due to the many problems he encountered in his attempt to resettle in India and to establish his life and career outside the World Bank for the first time in eighteen years.

14. The Applicant made the following pleas:

- (i) rescission of the Appeals Committee decision denying jurisdiction;
- (ii) reversal of the decision not to change his separation compensation agreement;
- (iii) a judicial determination that he is entitled to the enhanced separation package; and
- (iv) compensation in the amount of \$87,465.78

The Respondent's main contentions:

15. The Tribunal should dismiss the application as irreceivable because the Applicant failed to exhaust internal remedies as required by the Statute of the Tribunal. The Applicant filed his appeal with the Appeals Committee eleven months after the prescribed deadline of Staff Rule 9.03, para. 5.01, and the Appeals Committee properly refused to assume jurisdiction.

16. The Tribunal cannot rescind the decision of the Appeals Committee because it does not sit as an appellate body with the power to rescind the Committee's recommendations.

17. There were no “exceptional circumstances” to justify the admission of this application. Ignorance of Staff Rule 9.03 and of the existence of the Appeals Committee was no excuse for not prosecuting a timely appeal. Nor was the Applicant’s attempted resettlement in India, which did not take place until the end of July 1987 and could not have been an impediment to the proper prosecution of an appeal in April. In any event, the Applicant’s local attorney could easily have taken the necessary steps to protect his client’s interests.

18. In the event the Tribunal accepts jurisdiction and hears the merits of the case, the Applicant is not entitled to the enhanced separation package under Staff Rule 5.09, para. 10, because that staff rule was issued in May 1987 and the Applicant was separated from the service of the Respondent on February 28, 1987, pursuant to the terms of a separation memorandum dated August 4, 1986.

19. When the Respondent took the decision to suspend pending redundancy terminations in anticipation of the reorganization, the Applicant had already left the service of the Respondent and, while he may consider it unfortunate that his actual separation from service occurred so close to the date on which it was decided to suspend redundancy terminations, that does not indicate an abuse of discretion by management. There was no obligation on the Respondent to undo past separations, because there would always be some ex-staff member who would feel that he should have been able to benefit from the new benefits or the new policy.

Considerations:

20. This case involves an application by a former Budget Officer in the Accounting Department of the Bank, seeking rescission of a decision by the Appeals Committee, which declined jurisdiction on his appeal on the ground that his recourse to the Appeals Committee was time-barred.

21. The Respondent contends that this application should be dismissed on jurisdictional grounds, by virtue of the Applicant’s failure to exhaust his internal remedies within the Bank, as required by Article II, para. 2(i) of the Tribunal’s Statute. That provision states:

No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless: (i) 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
...

22. The Tribunal has stated, with reference to this provision, that the “statutory exhaustion requirement is of the utmost importance. It ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action, short of possibly protracted and expensive litigation before this Tribunal. In addition, the pursuit of internal remedies, in particular the findings and recommendations of the Appeals Committee, greatly assists the Tribunal in promptly and fairly disposing of the cases before it. The Appeals Committee permits a full and expeditious development of the parties’ position, including the testimony of witnesses, and often results in the announcement of recommendations that are satisfactory to both the Bank and to the aggrieved staff member”. (Berg, Decision No. 51, para. 30).

23. The record of this case shows that the Applicant filed his appeal to the Appeals Committee on April 1, 1988, contesting a decision which had been taken by the Acting Vice President of Personnel on October 21, 1987; that is to say, the appeal was submitted more than four months late. The Appeals Committee regulations (Article 9.03, para. 5.01) allow a term of 30 days, which upon request may be extended for 30 days more, in order to file appeals. Consequently, the Appeals Committee rejected this appeal as time-barred.

24. The Tribunal does not find in this case exceptional circumstances justifying such a delay in appealing. Furthermore, the Respondent has not agreed to direct submission of the application to the Tribunal.

25. In these circumstances the Tribunal concludes that the Applicant has failed to exhaust properly the internal remedies available to him.

Decision:

For these reasons, the Tribunal unanimously decides that the application is inadmissible.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At Washington D.C., May 5, 1989