

WORLD BANK ADMINISTRATIVE TRIBUNAL

REPORTS

1997

No. 171

[EE] (No. 2),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

World Bank Administrative Tribunal
Office of the Executive Secretary

World Bank Administrative Tribunal

**[EE] (No. 2),
Applicant**

v.

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

1. The World Bank Administrative Tribunal has been seized of an application, received on December 2, 1996, by [the Applicant] 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 R.A. Gorman (a Vice President of the Tribunal) as President, P. Weil and Thio Su Mien, Judges. The usual exchange of pleadings took place. The case was listed on May 16, 1997.

2. On May 14, 1996, the Tribunal rendered its judgment in [EE], Decision No. 148 [1996]. That case was concerned with the Applicant's promotion to a level 21 Economist position effective March 1, 1994. The Applicant claimed that he should have been promoted sooner and that he was entitled upon his promotion to a position at no less than grade 22 and most properly at grade 24. He sought adjustments of his title, grade and salary, along with other compensation. The Tribunal concluded that the Bank had not acted arbitrarily or discriminatorily, or had otherwise abused its discretion, with respect to the timing of, and the conditions placed upon, the Applicant's promotion (the central condition being the award

of his Ph.D. degree), and with respect to the grade level of the position to which he was promoted.

3. In the present proceeding, the Applicant seeks "reconsideration and correction of the record in Decision No. 148." The Applicant proffers several reasons, principally, that the Tribunal committed a number of serious errors in understanding and ruling upon his contentions, that its decision was poorly reasoned and that the Tribunal was biased and unfair. His application concludes: "The Tribunal has an obligation to reconsider and correct the record, and restore my good name and repute. If -- for whatever reason -- the Tribunal is unable to do so, I expect it to allow me to withdraw my Application and suppress the publication of the judgment or, at the very least, to publish the judgment under a pseudonym."

4. Article XI of the Statute of the Tribunal provides that the judgment of the Tribunal "shall be final and without appeal." As the Tribunal has previously observed:

Article XI lays down the general principle of the finality of all judgments of the Tribunal.... No party to a dispute before the Tribunal may, therefore, bring his case back to the Tribunal for a second round of litigation, no matter how dissatisfied he may be with the pronouncement of the Tribunal or its considerations. The Tribunal's judgment is meant to be the last step along the path of settling disputes arising between the Bank and the members of its staff.

(van Gent, Decision No. 13 [1983], para. 21).

5. The Statute provides only one limited exception to this principle. Article XIII provides in pertinent part: A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.

Given the principle of finality of judgments of the Tribunal, the Tribunal has stated in a number of its decisions: "[T]he powers of revision of a judgment are strictly limited and may be exercised only upon compliance with the conditions set forth in Article XIII" (Skandera, Decision No. 9 [1982], para. 7).

6. With the exception of one allegedly after-discovered fact, the Applicant makes no claim whatever that he has met the requirements of Article XIII for revision of judgment. Indeed, his pleadings merely revisit the very same facts, evidence and legal arguments that were before the Tribunal when it deliberated upon and rendered its judgment in Decision No. 148. The one fact that the Applicant asserts came to his attention only after the filing of the Tribunal's judgment in Decision No. 148 is that a lawyer (Mr. X) who had worked in 1993 as a consultant for the Secretariat of the Tribunal, and who had, at a time when he was not so employed, assisted the Applicant in preparing his earlier application, was later re-employed by the Secretariat as a consultant

during the period when Decision No. 148 was being considered by the Tribunal. The Applicant contends, therefore, that Mr. X "could have been involved in my case," and that if he had been, this "would be a clear conflict of interest" since that individual would be placed "on both sides of the bench."

7. It is uncontested that this combination of facts -- that Mr. X had worked on the preparation of the application in Decision No. 148, at a time when he was not employed by the Bank and subsequently worked for the Secretariat when that decision was being considered by the Tribunal -- was not known either to the Applicant or to the Tribunal "at the time the judgment was delivered." But that does not suffice to warrant revision of the judgment. It is also necessary that the after-discovered fact must be one "which by its nature might have had a decisive influence on the judgment of the Tribunal." It is noteworthy that the Applicant does not contend that there was such a "decisive influence." He contends merely that there was a conflict of interest.

8. The Applicant appears to be suggesting that Mr. X, when working in the Tribunal Secretariat, might not have been sympathetic to the Applicant (who had not been satisfied with his earlier work on the application) and that this might, somehow, have "influenced" the Tribunal's analysis and judgment in Decision No. 148. The record, however, belies such speculation. Although Mr. X did undertake additional service with the Secretariat of the Tribunal in March to May

1996, while the Applicant's earlier case was pending, his work at the Secretariat was limited to research and writing about other Tribunal decisions in connection with a review of the Tribunal's case law. He was not involved in any way in the Secretariat's or the Tribunal's consideration of the Applicant's case, and, in Mr. X's uncontradicted words, "I never saw [the Applicant's] file or case; did not even know his case was still pending in the Tribunal." Even if the Tribunal had been fully aware of these factual circumstances at the time it rendered its earlier decision, they could not have had any influence, let alone a "decisive" one, on its judgment.

9. The Applicant also requests that Decision No. 148 should be amended so as to omit reference to him by name, and, if that request is not granted, that the judgment should be voided, suppressed and not published, or that at the least the full record in the case should be made public.

10. The Applicant's request for anonymity had in fact already been made in the proceedings leading to Decision No. 148. The Tribunal had then concluded that "because there are no circumstances to justify the Applicant's request, the request is denied." This ruling too is final and without appeal, subject only to the effect of Article XIII of the Statute concerning after-discovered facts of which there are none advanced in this connection.

11. In any event, while the present "request for

reconsideration" has been pending, the Tribunal has given further consideration to the circumstances under which anonymity should, in general, be granted in proceedings before the Tribunal. The Tribunal has concluded that no change is warranted in its long-standing practice: a request for anonymity will be granted only in an exceptional case in which the publication of the Applicant's name is shown to be highly likely to result in grave personal hardship to him or her. The Applicant was informed of this conclusion, and also of the Tribunal's conclusion that his requests for anonymity -- in Decision No. 148 and in the present case seeking reconsideration -- did not meet this standard and were thus denied. He was given an opportunity to withdraw his present application in light of that ruling. He did not do so.

12. With respect to the Applicant's requests that the Tribunal void Decision No. 148 and suppress its publication, there is no basis in the Statute of the Tribunal for such a step. These requests amount to an appeal or a plea for revision. For the reasons given above, they are beyond the Tribunal's authority. Finally, to grant the request of the Applicant that the Tribunal make public the full record in this case would be inconsistent with the procedure followed by the Tribunal, since its establishment, in the interests of the administration of justice.

Decision

For the above reasons, the Tribunal unanimously

decides to dismiss the application.

Robert A. Gorman

/S/ Robert A. Gorman
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At London, England, June 10, 1997