

WORLD BANK ADMINISTRATIVE TRIBUNAL

REPORTS

1996

No. 148

[EE],
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

World Bank Administrative Tribunal

**[EE],
Applicant**

v.

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

1. The World Bank Administrative Tribunal, composed of E. Lauterpacht, President, R. A. Gorman and F. Orrego Vicuña, Vice Presidents and P. Weil, A.K. Abul Magd, Thio Su Mien and Bola A. Ajibola, Judges, has been seized of an application received on June 5, 1995, by [the Applicant], against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on January 24, 1996.

2. The Applicant has requested that his name be omitted from the report of the case. The Tribunal decided that because there is no circumstances to justify the Applicant's request the request is denied.

The relevant facts:

3. The Applicant was appointed as a temporary employee of the Respondent on January 19, 1983, to the position of Research Assistant in the Europe, Middle East and North Africa Country Department. The Personal History Form submitted by the Applicant in late 1982 stated that the Applicant was in the process of obtaining a Ph.D. degree in Economics from Princeton University and that the degree was expected in January 1983. Effective March 1, 1983, the Applicant's

appointment was changed to a fixed-term appointment for the period of two years, and as of March 1, 1984, the Applicant's appointment was changed to a regular appointment. Effective October 1, 1985, as a result of the Bank-wide job regrading exercise, the Applicant's grade was regraded from level 2 to level 20. On July 1, 1987, the Applicant was reassigned to a Research Assistant position in the International Trade Division (IECIT) of the International Economics Department (IEC) without any change in his grade. In June 1989, the Applicant's title was changed to Research Analyst without any change in his grade.

4. By memorandum to his Vice President (VPDEC), dated October 6, 1989, the Applicant requested an administrative review of the failure of his then supervisor to recommend him for promotion to a level 22 Economist position. He requested as relief that various "injustices be acknowledged and that my FY89 PPR (Planning Performance Review) be modified accordingly; recommendation for my promotion to a level 22 economist position be made retroactive to the time of the original PPR; and I be transferred to another suitable research division." By memorandum, dated November 17, 1989, the VPDEC replied that his conclusion was that the Applicant could not be recommended for promotion at that time but that he agreed with a proposal to transfer the Applicant to the International Economic Analysis and Prospects Division of IEC (IECAP) provided the Applicant agreed that, in accepting the

transfer, the Applicant would consider as settled and closed the matters which were the subject of this administrative review. The Applicant accepted the VPDEC's proposal, and he was reassigned to IECAP effective January 2, 1990.

5. In taking this reassignment, the Applicant agreed to the terms of an earlier memorandum, dated October 25, 1989, from the Division Chief, IECAP, stating that the Applicant's work program for the next three years "if successfully carried out, is expected to culminate with the receipt of a Ph.D. in economics from Princeton University and/or promotion into the economist stream." It also stated that (i) in the first two years, half of the Applicant's time would be allocated to the implementation of IECAP's work program and the other half would be reserved for work towards the Applicant's Ph.D. dissertation; and (ii) after those two years, he could take the opportunity, if he so considered, to take leave without pay for up to one year to concentrate on completing his dissertation (with the costs of tuition and books being covered by the Respondent) or alternatively extend for another year the arrangement made for the first two years. The memorandum concluded:

After the Ph.D. has been completed (or before then, if, in my and [the Director, IEC's] judgment, circumstances warrant), I will consider recommending you for promotion for an economist position in the Bank based on your track record of past work, on your performance in IECAP, and on the quality and relevance of the work on your dissertation.

The Applicant's Division Chief repeated specifically the above conclusion in the Applicant's PPR for 1990/91.

6. The arrangement for allowing the Applicant to spend half of his work hours on his Ph.D. dissertation, at full salary, went into force in 1990 and 1991, and was extended through 1992 pursuant to the terms of the October 25, 1989 memorandum from his Division Chief. Because by the end of 1992 the Applicant had still not completed his dissertation, his new Division Chief authorized the arrangement to continue beyond 1992. In a letter to the Applicant, dated March 32, 1993, his Division Chief stated that in order to maximize the possibility of the Applicant obtaining the Ph.D. degree in the summer of 1993, the Applicant would be permitted to work full-time on his dissertation (except for the continuation of his work on the World Bank Annual Report) until the end of May 1993, and that, if the Applicant's dissertation required further work beyond May 1993, the Applicant could explore the possibility of taking several months of leave without pay to complete it.

7. In the Applicant's PPR for 1992/92 his new Director noted that

I have advised [the Applicant] that completion of his Ph.D. would put him in a good position to secure clearance from the Panel for level 21 and a move to an economist position in Operations. On completion of his Ph.D., [the Applicant] should be nominated for clearance to level 21.

In the Applicant's PPR for 1992/93 his Director noted that

"[t]he Management Review agreed to submit [the Applicant] to the Economist Panel for clearance to level 21 upon completion of his Ph.D."

8. In the fall of 1993, the Applicant informed his Division Chief that he had submitted his Ph.D. dissertation in August 1993. The Applicant then informed his Division Chief that the Economics Department of Princeton University, by letter dated November 24, 1993, recommended the conferring of the degree on him. By E-mail, dated February 10, 1994, to the Personnel Officer for IEC, the Division Chief proposed that the Applicant be presented for clearance for promotion into the Economist stream at level 21, and he also noted his intention to propose the Applicant for promotion to level 22 in one year assuming satisfactory performance. The Applicant was promoted to level 21 effective March 1, 1994.

9. By memorandum to the VPDEC, dated May 27, 1994, the Applicant requested administrative review of the decision to promote him to level 21 effective March 1, 1994, stating that he should have been promoted to at least level 23, and that the effective date of promotion should have been November 1993. In response, by memorandum dated June 10, 1994, the VPDEC stated that the level to which the Applicant had been promoted, and the date of promotion should stand.

10. On August 11, 1994 the Applicant filed an appeal with the Appeals Committee against the decision promoting him to level 21 effective March 1, 1994, and requested a

retroactive adjustment of his grades. The Appeals Committee recommended that the Applicant's request for relief be denied.

The Senior Vice President, Personnel, by letter dated March 6, 1995, communicated to the Applicant his decision to accept the recommendation of the Appeals Committee.

11. Effective June 1, 1995, the Applicant was promoted to level 22.

The Applicant's main contentions:

12. There is no reason why testimony given before the Appeals Committee should be confidential and enjoy a special privilege.

13. The decision taken by the Applicant's managers relating to his promotion were unreasonable, unfair and an abuse of authority.

14. The Applicant was discriminated against both in not being promoted earlier than he was and in being promoted only to level 21. The Applicant was fully qualified to be promoted at least to level 23 after he completed the requirements for his Ph.D. There were errors of fact underlying the decisions not to promote the Applicant earlier and to promote him to level 21 when the promotion took place.

15. Management's plan relating to the Applicant's promotion as not agreed to by the Applicant, because his written statements implied that he would continue to prove himself and expected to be treated fairly.

16. The Applicant's Director in IEC made statements in

his 1992 and 1993 PPRs which were in contradiction to prior agreements between the Applicant and his former managers in IEC. The Applicant did not formally challenge them at the time because the Director was dictatorial and the Applicant feared retaliation.

17. The Applicant's promotion to level 21 after he completed the requirements for his Ph.D. was subject to unwarranted delay.

18. Irrelevant considerations were taken into account by management in deciding upon the Applicant's promotion.

19. The Applicant's challenges to matters of the past are not out of time and can be presented to the Tribunal because he is attempting to establish a pattern of mismanagement of his career by showing a series of decisions not to act on his promotion. All these matters were the subject of administrative review and were submitted to the Appeals Committee which entertained them.

20. The Applicant made the following pleas:

- (i) award of salary adjustment to reflect a more normal career path, promotion and merit awards, or compensation amounting to \$191,500 for lost income and Respondent's mismanagement of the Applicant's career;
- (ii) retroactive adjustment of the Applicant's grade and title since June 1988 so as correctly to reflect his performance and responsibilities at the

corresponding time and a normal salary progression, culminating in the award of a level 24 position as an Economist as of August 1993, the date on which he completed the work for his Ph.D.; and

(iii) compensation for moral and professional damage equal to the lost compensation referred to in (i) above.

The Respondent's main contentions:

21. Oral statements made by witnesses at the hearings before the Appeals Committee which are referred to by the Applicant should be struck from the record, as they were made confidentially to the Appeals Committee.

22. The decisions and actions taken by the Applicant's managers relating to his promotion and other matters were entirely reasonable, fully justified and showed no abuse of discretion.

23. The decision to promote the Applicant to level 21 and not a higher level reflected the judgment of IEC management that he had not demonstrated a full range of skills, responsibilities and independence required of an Economist at a higher level than level 21.

24. It had also been a general practice of the Respondent to promote Research Analysts, such as the Applicant into the Economist stream at level 21, and later to consider them for promotion to level 22 and above.

25. Management's plan to give the Applicant an

assignment that would allow him to spend time on preparing his dissertation and to promote him upon completion of his Ph.D. program was neither unreasonable nor was it in contradiction to earlier proposals made to him nor was it ultra vires. Not only did the Applicant agree to the plan but the plan permitted earlier promotion if, in the opinion of management, circumstances warranted. It is clear that the circumstances had not warranted such an earlier promotion. There was also no unfairness in the execution of this plan. In any event, because this plan had not been contested by recourse to internal remedies at the time it was formulated, the Applicant's claims in regard to it before the Tribunal were out of time.

26. There was no discrimination against the Applicant in not promoting him to a higher level than 21.

27. There was no undue delay in effecting the Applicant's promotion after he completed his Ph.D. program.

28. No irrelevant facts were considered in assessing the Applicant's promotion prospects.

Considerations:

29. The Applicant challenges the Respondent's delay in promoting him from Research Analyst to Economist, as well as the grade level to which he was ultimately appointed on March 1, 1994. He seeks a retroactive adjustment of his grade and title, up to a level 24 position, and compensation for lost salary and for other moral and professional damage.

30. The Applicant's complaints regarding lack of promotion surfaced at latest by 1989, when he requested administrative review. As a result of the Respondent's examination of the Applicant's situation at that time, the Respondent proposed--and the Applicant agreed in December 1989--that the Applicant would transfer to a different division (IECAP) within his department; that he would be permitted to work half-time on his Ph.D. dissertation for at least two years (at full salary); that his new Division Chief would "consider recommending [the Applicant] for promotion for an economist position ... after the Ph.D. has been completed" or before then if his supervisors believed circumstances to warrant; and that the Applicant's complaints about his current Director and his lack of a promotion were to be considered "settled and closed".

31. This arrangement was indeed put in place beginning in early 1990, and--although the Applicant questions here the precise allocation of his time in some of the period that followed--it appears that roughly half his fully-paid time in calendar years 1990 and 1991 was devoted to working on his Ph.D. dissertation. In the Applicant's annual performance review (PPR) in mid-1991, his new Division Chief reiterated that he would consider recommending a promotion after the Ph.D. was completed (or before then if he and the Director thought circumstances so warranted); and the Director added that the Applicant, "in the coming year, needs to demonstrate

his readiness for promotion." The Applicant did not at that time challenge these conditions upon his possible recommended promotion.

32. The half-time arrangement was extended beyond the initial two-year period so as to include calendar year 1992. In the PPR prepared in mid-1992, the Applicant's department Director repeated that: "I have advised [the Applicant] that completion of his Ph.D. would put him in a good position to secure clearance from the Panel for level 21 and a move to an economist position in Operations." Again, there was no challenge by the Applicant either to this condition or the proposed grade level.

33. The Applicant's Ph.D. dissertation remaining uncompleted at the end of 1992, the half-time (full salary) arrangement was extended into the beginning of 1993; and he was permitted in March 1993 to devote full-time efforts for two more months, at full Bank salary, to completing his dissertation. In his mid-1993 PPR, the Applicant's immediate supervisor stated his recommendation that "following the acceptance of [the Applicant's] Ph.D. dissertation, IEC Management present him to the Panel for promotion to the Economist stream." And the Director, in August 1993, noted that "The Management Review agreed to submit [the Applicant] to the Economist Panel for clearance to level 21 upon completion of his Ph.D." Once more, the Applicant did not challenge this condition upon his promotion, nor the stated

intention to place him at level 21.

34. The Applicant appears to acknowledge that decisions taken by the Respondent many years ago not to promote him in the absence of a completed dissertation cannot be challenged now before the Tribunal. Yet, he adverts to this history in order to allege a "pastern of injustice and unfair dealing" through wrongful interference with his promotion, and his requested relief includes "retroactive adjustment of grade and title since June 1988" (i.e., a retroactive promotion to level 24 Economist) along with appropriate compensation.

35. The Tribunal concludes that the only decision by the Bank that is properly before it for review is the promotion of the Applicant on March 1, 1994, to the level 21 Economist position. Challenges directed by the Applicant to earlier failures to consider him for promotion are untimely, under Article II of the Statute of the Tribunal. Not having raised them before and not having taken them through administrative review, the Applicant cannot now incorporate these earlier decisions by the Bank as part of a "pattern" that can be indefinitely subjected to review by the Tribunal.

The Tribunal has explained in several cases that there are important reasons for the requirement that Bank decisions be reviewed in a timely manner and that internal remedies be exhausted, including timely recourse to administrative review and to the Appeals Committee (Dhillon, Decision No. 75 [1989], paras. 22-25; Steinke, Decision 79 [1989], paras. 16-

17; de Jong, Decision No. 89 [1990], paras. 29-33, 36-37, 44-46). All that was considered by the Appeals Committee was the Respondent's promotion decision of March 1, 1994.

36. Indeed, far from promptly challenging the frequently reiterated requirement that he would have to receive his Ph.D. degree before being eligible for promotion, the Applicant in fact agreed to and subsequently acquiesced in such a requirement--in December 1989 when he agreed to transfer to a new division (and to settle any existing claims to promotion) and again in mid-1991, mid-1992 and mid-1993 when his PPRs all made reference to the PH.D. requirement.

37. What has been said above goes far towards also disposing of the Applicant's timely challenge to his March 1, 1994 promotion. To the extent that he claims it was arbitrary and discriminatory for the Respondent to impose a condition that promotion be considered only upon the completion of his Ph.D., it is clear that his conditions was assented to by the Applicant.

38. Moreover, the Tribunal cannot find that such a condition, viewed on its merits, was improper. For some three and a half years, the Applicant gave the Bank essentially half of his time--and for more than two months in early 1993, almost none of his time--while he worked on a dissertation that he had asserted, in his September 1982 employment application would be completed before January 1983. The Bank was not unreasonable--taking into account the Applicant's

truncated work schedule and certain performance concerns stated in a number of his PPRs--in believing that the completion of the Applicant's Ph.D. requirement was an appropriate condition for promotion, particularly to a position with a heavy research and writing component.

39. The Applicant also contends that, because the Bank had been reliably informed in July 1993 of the imminent completion of his dissertation, it acted arbitrarily in delaying his promotion until March 1994. The Tribunal notes that the Economics Department of Princeton University recommended the Applicant to the Dean for the Ph.D. degree only in late November 1993, that this degree was not formally conferred until January 1994, and that the Applicant's Division Chief recommended his promotion in February 1994. By no reasonable standard of judgment can the timing of the Bank's promotion recommendation and award be deemed arbitrary or otherwise improper.

40. The Applicant's remaining contention is that, when he finally was promoted to an Economist position, that position was at such a low grade level as to constitute an abuse of discretion. The Tribunal has held, with regard to the promotion of staff members, that it "will not interfere with the decision in the absence of evidence of abuse of discretion." (Apergis, Decision No. 82 [1989], para. 57). The Tribunal finds no such abuse in the Bank's decision to promote the Applicant from his position at level 20 Research

Analyst to the position of level 21 Economist.

41. To the extent that the Applicant's claim rests on his belief that he was entitled to "a level 22 economist position as of June 1988, a level 23 economist position as of June 1990, and a level 24 economist position as of August 1993," such a contention must be rejected by reason of untimeliness. But the Applicant also contends that, even viewing the March 1, 1994 promotion in isolation, it was arbitrary for the Respondent to have placed him in no higher than a level 21 position, in light of his long experience with the Bank, his having earned a Ph.D. degree from a prestigious university, the allegedly more modest credentials of others in his department occupying higher graded positions, and the provisions in Bank documents that establish a normal entry level grade of 22 in the economist occupational stream.

42. Those documents do, however, also provide that "positions may be established at level 21 where assignments are similar to those at level 22 but span a narrower range of work". The Respondent asserts that the Applicant's service fits that description, and there is no basis on which the Tribunal may conclude that the application of this view represents an abuse of discretion.

43. Moreover, the Respondent asserts that there has been an unbroken practice of many years standing that level 20 Research Analyst who move into the economist stream are initially placed at level 21 and are promoted only later to a

level 22 Economist position. At the time of the Applicant's promotion, the Personnel Officer for his department determined that such was the uniform practice going back at least as far as the 1987 Reorganization. This is cogent evidence that the Bank's similar treatment of the Applicant cannot be regarded as arbitrary or discriminatory. The Respondent also points out that effective June 1, 1995, little more than a year after the promotion contested here, the Applicant was in fact further promoted to a level 22 Economist position, as has been the practice for others in the past.

44. Finally, the propriety of the promotion of the Applicant to grade level 21 is reinforced by his knowledge for several years of the Bank's intention to place him at that level and by his failure to lodge any protest. The Applicant was informed in his mid-1992 PPR and his mid-1993 PPR that his recommended promotion, upon completion of the Ph.D. requirements, would be to a level 21 position. There is nothing in the record to suggest that the Applicant took issue with that grading, orally or in writing, let alone took more formal action through the process of administrative review.

Decision:

For the above reasons the Tribunal unanimously decides to dismiss the application.

Elihu Lauterpacht

/S/ Elihu Lauterpacht
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At London, England, May 14, 1996