

Decision No. 66

Elena Gavidia,
Applicant

v.

International Finance Corporation,
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 January 12, 1987, by Elena Gavidia against the International Finance Corporation. The Respondent submitted an answer on March 5, 1987. The Applicant did not exercise her right to reply on the answer. The case was listed on August 3, 1987.

The relevant facts:

(a) The Job Grading Program

2. The general facts relating to the Job Grading Program are as stated in paragraphs 2 to 10 of Decision No. 56.

(b) The particular facts of the case

3. On September 26, 1985 the Applicant, who is a Staff Assistant in the Information Office of IFC's Corporate Promotion and Syndications Department (CCP), was notified that her position was placed at level 15 of the new grade structure. The Applicant's position was individually evaluated by the Evaluation Committee on the basis of a position description submitted by her and approved by her immediate supervisor. Prior to the grading exercise the Applicant's position was placed at level G which is equivalent to grade 16 of the new grade structure.

4. On October 2, 1985 the Director, CCP, wrote to the Director, Personnel Management Department (PMD), stating that he was very surprised to learn that the Applicant's position had been downgraded especially since the Applicant had a G level grade since October 1981 and had been carrying out the responsibilities of an Administrative Secretary II since that time. He also pointed out that neither the Chief of the Information Unit nor himself had been consulted on the downgrading of the Applicant's position. He concluded that the Applicant's position should be considered as a level 16 position.

5. On October 29, 1985 the Applicant's immediate supervisor who had just returned from field mission also wrote to the Director, PMD, stating that the Applicant's position fit the criteria for Administrative Secretary II which he understood were used to evaluate grade 16 positions and that he believed that there were more than sufficient grounds for withdrawing the letter allocating grade level 15 to the Applicant's position and letting her retain her 16 level.

6. On December 16, 1985 the Applicant filed a request for an administrative review of the job grading decision stating, inter alia, that her job description was not properly read or understood and that some vital elements were overlooked. In particular, she pointed out that (i) the problem solving content of the job was not properly recognized, (ii) language skills were not taken into account in the grading process, (iii) she had budgetary responsibilities and (iv) she had a high level of accountability and significant external responsibilities.

7. On March 31, 1986 the Applicant was notified of the result of the administrative review confirming the original job grading decision, because the Committee was unable to identify sufficient additionalities to support a change in the original evaluation.

8. On April 29, 1986 the Applicant filed an appeal with the Job Grading Appeals Board (JGAB) claiming that (i) the Information Office was a small unit within the IFC; (ii) she was doing the job of a staff assistant but she had additional responsibilities that fell under the job description of an administrative assistant and that of a specialized staff assistant; (iii) she was responsible for editing the IFC Annual Report in Spanish and also the Spanish versions of various publications printed by the Information Office; and therefore, (iv) although, according to the Evaluation Rationale, the points for “know-how” fell under the C Category-Vocational, they should instead come under the D Category-Advanced Vocational.

9. The JGAB concluded that it was unable to recommend a change in the Grade 15 allocated to the Appellant's position for the following reasons:

(a) There was no evidence that the Evaluation Committee which evaluated and graded the Appellant's position had not been fully aware of the job content of the position.

(b) No new facts were adduced by the Appellant to warrant a change in the original grading decision.

(c) It did not appear to the Panel that the Appellant's position had features of an Administrative Secretary or Specialized Staff Assistant position.

(d) Language skills adduced by the Appellant did not under the Hay grading methodology provide additional points.

10. On October 10, 1986 the Vice-President, Personnel and Administration (PA), informed the Applicant that he accepted the JGAB's recommendation and that her position was consequently graded at level 15.

The Applicant's main contentions:

11. Grade 15 was allocated on the basis of insufficient or inaccurate information about the functions the Applicant carried out in her position.

12. The problem solving content of the position description and in particular the incumbent's handling of the press and requests for information were not properly recognized.

13. The “know-how” section of the Applicant's evaluation did not take into account the language skills requirements. Consequently, in the evaluation rationale the points for “know how” should have fallen into the D Category-Advanced Vocational and not into the C Category-Vocational.

14. The Applicant had a high level of accountability not only within the unit but also externally since her unit constantly received inquiries from the press and media. She was also responsible for making a wide variety of arrangements for press seminars, for contacting journalists concerning meetings and for providing background materials and press kits.

15. Because of the unique nature of the Information Office which was a small unit within the Corporation, the Applicant, in addition to the duties of staff assistant, also discharged functions of an administrative secretary and of specialized staff assistant.

16. The Applicant requested the change of grade to level 16 and under the title “Pleas” specifically requested the rescission of the following contested decisions:

Job Grading Program Implementation – Letter dated September 26, 1985 – Position assigned to grade 15

(previously grade G);

Result of Administrative Review of Job Grading Decision dated March 31, 1986;

Report of the World Bank Job Grading Appeals Board dated September 15, 1986;

Letter from Mr. Martin Paijmans, Vice President, Personnel and Administration dated October 10, 1986.

The Respondent's main contentions:

17. The classification of positions is an exercise of discretionary authority. Abuse of discretion has not been demonstrated in this case. The Applicant's contract of employment or terms of appointment have not been violated in any way by an abuse of discretion or otherwise.

18. The Applicant has failed to substantiate her claim that the grade 15 allocated to her position was based on inaccurate or insufficient information concerning her functions.

19. The Applicant failed to present additional facts in order to correct the alleged inaccuracies concerning her functions. The only new fact was related to language skills. However, under the applicable methodology language skills are not to be taken into account in evaluating positions.

20. There is nothing in the record to suggest that essential facts concerning the functions of the Applicant's position were left out of consideration, or that clearly mistaken conclusions were drawn from the information on which the grading decision was based.

Considerations:

21. In her Application, as well as before the Job Grading Appeals Board, the Applicant complained that her job description was not properly understood; that the problem-solving content of the job was not properly recognized and that in the know-how section language skills were not included. She added that her job had a high level of accountability, not only within the Unit but also externally. On these grounds, the Applicant requested that her grade should be changed to level 16.

22. The Respondent pointed out that there is nothing in the record to suggest that essential facts concerning the functions of the Applicant's position were left out of consideration, or that clearly mistaken conclusions were drawn from the information on which the grading decision was based. According to the Respondent, the classification of positions is to be considered an exercise of its discretionary authority. The Respondent claims that, in such cases, unless the discretion has been abused, "it is not for this Tribunal to substitute its own judgment for that of the competent organs of the Bank" (de Merode, Decision No. 1 [1981], para. 45).

23. The Tribunal agrees that the Job Grading Program – involving decisions regarding criteria for evaluating staff positions, the assignment of various tasks to particular positions and the ultimate determination of grade levels – constitutes an exercise of discretionary authority by the Respondent and, as such, is not subject to review by this Tribunal, unless it is contended that there has been an abuse of discretion, by reason of the action taken in a concrete case "being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure" (Saberi, Decision No. 5 [1982], para. 24). No such abuse of discretion has been shown.

24. The Tribunal does not deem it necessary to pronounce in the present case on the question whether and, if so, under what conditions, the Respondent has the power to deprive a staff member of a grade previously held by him. In particular, with respect to the Job Grading exercise, there can be no certainty that in all cases an exact correspondence exists between the former grades and the present ones, so as to consider a grade under the previous system the indisputable source of a right to maintain the grade previously held or to be assigned a

new grade of a similar value. Moreover, the Applicant herself has not invoked the existence of a right indefinitely to maintain her former grade. Her contentions and arguments have been essentially concerned with the grading of her position but, as the Tribunal has decided in von Stauffenberg (Decision No. 38 [1987], para. 43), it is within its judicial mission to address the legal questions really in issue in the submissions formulated in an application.

25. In a case similar to this one, namely, Pinto (Decision No. 56 [1988]), the Applicant's principal contention was that her salary review increases after the effective date of her job regrading should not be limited by the two-year grandfathering provision in Staff Rule 5.06, para. 3.01. That section provides:

“A staff member whose position is graded at a lower level as a result of a formal job evaluation assumes the lower grade upon the effective date of the evaluation. However, for a period of 24 months thereafter, he will be eligible for increases as if the salary range formerly applicable to the position, adjusted for any increases in the salary structure, had remained in effect..... If after 24 months the staff member has not been selected for a position at his previous or a higher level, future increases in his salary will be administered within the range of his new grade. If at this time the staff member's salary exceeds the maximum of the salary range of the position occupied, the salary will remain unchanged until the maximum of the range exceeds that amount.”

In her reply, the Applicant in Pinto invoked, in support of her claim, Para. 5(1)f of the Principles of Staff Employment, which states that the Respondent shall:

“establish procedures and conditions under which staff members may be assigned to positions graded at various levels, while providing reasonable measures to alleviate adverse effects on staff members assigned to positions graded or regraded at a lower level.”

The Applicant in Pinto contended, on the basis of the above Principle, that she should be indefinitely “grandfathered” in her previous salary level. She also contended that by freezing her salary the Bank would deny her a “fundamental element in Applicant’s conditions of employment which the Bank does not have the right to change unilaterally,” namely, the right, as embodied in de Merode (para. 112) to benefit from “periodic adjustments reflecting changes in the cost of living and other factors.”

26. In de Merode (paras. 111 and 112) the Tribunal found “that a consistent practice of periodic adjustment has been established, and that the Bank makes these adjustments out of the conviction that it is legally obliged to do so”. The Tribunal concluded:

“...in consequence the Bank is obliged to carry out periodic reviews of salaries, taking into account various relevant factors the established practice, and statements confirming that practice, have created a legal obligation to make periodic adjustments reflecting changes in the cost of living and other factors. In the opinion of the Tribunal such an obligation is a fundamental element in the Applicant's conditions of employment which the Bank does not have the right to change unilaterally.”

The Tribunal concludes that the freezing of the Applicant's salary, from September 30, 1987, would deprive her, without justifiable cause, of the right to benefit from periodic adjustments reflecting changes in the cost of living and other factors, which the Tribunal has found to be a fundamental element in the Applicant’s conditions of employment which the IFC does not have the right to change unilaterally. This is not to suggest that a staff member may under no circumstances have his or her grade reduced or salary frozen, for example, when this is done for cause as for disciplinary action. In the present case, however, the downgrading of the Applicant and her position was done not because of her misconduct but because of the organizational needs of the IFC; in such circumstance, the staff member is reasonably entitled to more equitable treatment, as appears to be contemplated by Staff Principle 5(1)f.

Decision:

For the above reasons the Tribunal unanimously decides that the decision of the Vice President, PA, of September 18, 1986 is rescinded so far as it does not provide for the payment to the Applicant, as from September 30, 1987 of the periodic salary review increases approved by the Respondent for staff members in grade 16.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At Washington, D.C., May 26, 1988