

Decision No. 261

Syed Ghulam Mustafa Gilani,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on July 6, 2001, by Syed Ghulam Mustafa Gilani 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 Thio Su Mien (a Vice President of the Tribunal) as President, Bola A. Ajibola (a Vice President of the Tribunal), Elizabeth Evatt and Jan Paulsson, Judges. The usual exchange of pleadings took place. The case was listed on January 8, 2002.

2. This case concerns a claim by the Applicant regarding the redundancy of his position and the admissibility of several other claims that the Applicant makes regarding his allegedly improper initial classification, the reclassification of his position, and the evaluation of his performance throughout his career at the Bank.

**Relevant facts**

3. The Applicant joined the Bank in 1983 as a Librarian (Level 5, Step II) at the Resident Mission in Islamabad, Pakistan (RMP). The Applicant's duties and responsibilities while holding this position were: (i) establishing and administering a new Documents Center; (ii) rationalizing the central filing system; (iii) distributing documents to government and non-government entities; (iv) setting up and maintaining an up-to-date distribution system; and (v) disposing of old documents and files.

4. In the Applicant's Performance Evaluation signed on December 7, 1989, his supervisor, Deputy Chief, RMP, recommended that a request made by the Applicant for a review of his job grade be granted so as to establish some equality with his counterparts in sister UN organizations in Pakistan. On May 24, 1990, the Chief, RMP, proposed to re-grade the Applicant's position at Level 6 immediately and later to consider the possibility of a Level 7 upgrade because the Applicant had initially been misclassified at Level 5, while he was a full-fledged Librarian. The Applicant's position was accordingly re-graded to Level 6.

5. In early 1990, a decision was made to separate the Documentation Center functions and filing from the library functions. The Applicant's job description at that time consisted of duties related solely to the managing of the library. On April 28, 1992, the Applicant wrote to the Ombudsman complaining that when he joined the Bank, the position of Librarian was to be classified at Level 8 according to the UN system, but had been wrongly classified at Level 5, and only later was re-graded to Level 6 by the Chief, RMP. He explained that despite promises to the contrary, the Applicant's next supervisor (the Deputy Chief, RMP) never upgraded the Applicant's position to Level 7. The Applicant complained again about the above-mentioned problems in a letter to the then Human Resources (HR) Officer, dated February 10, 1993, requesting that his position be reclassified to Level 8.

6. In 1997, in accordance with a global job grading exercise at the Bank and with the Bank's occupational standards as provided to the South Asia's Regional Office, Pakistan (SACPK), the Applicant's Level 6 position was given the designation of Level 16 and his title was changed to that of Information Assistant. There was no change in the Applicant's responsibilities. On March 11, 1997, the Applicant sent an office memorandum to the Chief, RMP, in which he argued that the grade range of 16 was not indicative of his status, his long meritorious service and experience of 27 years, and the recommendations of his superiors; and that a grade range of 18 to

21 conformed to his present job description.

7. The Applicant was subsequently placed on a six-month performance improvement plan (PIP). The Applicant improved his performance to a satisfactory level as a result of the PIP, but was informed by his then supervisor that he would be expected to further improve his “communication and electronic information technology skills to meet the expanding needs of the planned PIC [Public Information Center].”

8. In his Overall Performance Evaluation (OPE) covering the period from January 1, 1998 to March 31, 1999, the Applicant’s supervisor mentioned that the Applicant had served external clients well and had also managed the PIC satisfactorily. The Applicant’s supervisor noted, however, that the Applicant needed to improve his communication skills to handle effectively work related to PIC, as well as to strengthen his Information Technology (IT) skills to meet the needs of an IT-based PIC/Library.

9. In November 1999, the Manager, South Asia Region Information Management Unit (SARIM), visited the Islamabad Office in order to clarify the roles and responsibilities of two IT staff members and to assess the feasibility of establishing an Electronic Library in the World Bank office. Upon the request of the Country Director, the Manager, SARIM, made several recommendations regarding the IT function, the Library and the Documentation Center. She recommended, among other things, that an Electronic Library be established using the prototype of the country office website as a cornerstone. She also recommended that a talented and experienced librarian be hired with experience in Web development and electronic database design to run the Electronic Library. She attached a job description for an Electronic Resources Librarian.

10. The recommendations of the Manager, SARIM, were notified to the Applicant on January 14, 2000. On February 10, 2000, the Islamabad Office IT committee, which was headed by the Country Director, approved the redesigned position of the Electronic Resources Librarian. On February 11, 2000, the Islamabad Front Office (IFO) HR Officer sent an e-mail announcing the internal job vacancy for the position of Electronic Resources Librarian, grade range 19-20. On February 13, 2000, the position was also announced externally.

11. On February 14, 2000, the Applicant met with the IFO HR Officer. According to the Applicant, the IFO HR Officer informed him that his present position was being abolished and that he could either apply for the redesigned position, appeal to higher management, or accept mutual separation. The Applicant chose, on February 24, 2000, to send an e-mail to the President of the Bank, raising various complaints regarding the grading of his position and the proposal to redesign the Librarian position. On March 20, 2000, the Vice President of Human Resources wrote to the Applicant on behalf of the President, concluding that the decisions taken in the Applicant’s case had been appropriate.

12. Although the closing date for the job posting announcement of the Electronic Resources Librarian vacancy was February 26, 2000, the Applicant submitted his application for this vacancy on April 17, 2000. On April 18, 2000, the Applicant filed a Statement of Appeal with the Appeals Committee. In this Statement, the Applicant raised claims regarding: (i) the initial grading of his position in 1983; (ii) the 1997 job grading exercise; (iii) his placement on a PIP in 1998; (iv) the change in the supervision of the library and his placement under the supervision of a Librarian; (v) an allegedly fraudulent IFO library survey; (vi) his 1999 OPE’s allegedly wrongful rating of his performance as partially satisfactory; (vii) the mission of the Manager, SARIM, in November 1999; and (viii) the Respondent’s failure to reclassify his position in 1992.

13. On April 20, 2000, the Acting Vice President, South Asia Region (SAR), sent a notice of redundancy to the Applicant in which the Applicant was informed that his employment would be declared redundant pursuant to Staff Rule 7.01, paragraphs 8.02(c) and 8.03.

14. On May 23, 2000, the Respondent submitted to the Appeals Committee a jurisdictional challenge arguing that the only issue that had been timely appealed concerned the decision to declare the Applicant’s position redundant. After its review of the matter, the Appeals Committee decided on July 28, 2000, to accept jurisdiction over the following matters: (i) the mission of the Manager, SARIM, in November 1999 to assess the feasibility of establishing an Electronic Library; (ii) the decision to declare the Applicant’s position redundant;

and (iii) inconsistencies in Bank policy with respect to the decision to make the Applicant's position redundant. In its report dated April 12, 2001, the Appeals Committee Panel concluded that there was no basis to the Applicant's claims and recommended that the Applicant's requests for relief be denied. The Applicant filed his application with the Tribunal on July 6, 2001.

## **Considerations**

15. In his application, the Applicant does not contest specific decisions but requests that the decision of the Appeals Committee be reviewed in the light of the Applicant's requests before the Appeals Committee. In his Reply, however, the Applicant clarifies that he is contesting the termination of his employment, in addition to the pay differential he allegedly suffered from the date when it was acknowledged in May 1990 that he had been misclassified.

16. As the Tribunal has ruled in the past, the Appeals Committee is not a judicial body rendering decisions, and "there is no such thing as an Appeals Committee's 'decision' which could be challenged before the Tribunal." (*Carter*, Decision No. 175 [1997], para. 22.) The Tribunal's task is to pass judgment upon whether the Bank has violated the contract of employment or terms of appointment of the Applicant. (*Lewin*, Decision No. 152 [1996], para. 45.) The Tribunal's function is not to review the Report of the Appeals Committee. (*Id.* at para. 44.) It would appear, therefore, that the application is misdirected. The Tribunal has also ruled, however, that "it is its duty, as it is the duty of every international tribunal, 'to isolate the real issue in the case and to identify the object of the claim ...; this is one of the attributes of its judicial functions' (*Nuclear Tests (Australia v. France)*, Judgment of December 20, 1974, *I.C.J. Reports* 1974, p. 262)." (*McNeill*, Decision No. 157 [1997], para. 26.)

17. In doing so in the present case, the Tribunal notes that the Applicant is in effect contesting before the Tribunal the same Bank decisions or actions which the Applicant has already contested before the Appeals Committee. The Committee declined to review the majority of these decisions on the basis that it had no jurisdiction over them. The Committee only accepted jurisdiction over the decisions or actions of the Bank relating to the declaration of redundancy of the Applicant's employment, and after examination of such decisions on the merits recommended that the Applicant be denied the relief requested. This recommendation was accepted in a decision by the Vice President of Human Resources dated April 18, 2001. The Tribunal will examine the jurisdictional issues.

18. The Respondent states that the Applicant's failure to exhaust internal remedies available within the Bank Group in a timely manner rendered most aspects of his appeal before the Appeals Committee and his application before the Tribunal inadmissible.

19. The Tribunal has emphasized in numerous cases the importance of the statutory exhaustion requirement. It has, for example, stated:

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' positions, 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.

(*Klaus Berg*, Decision No. 51 [1987], para. 30.) See also *Mitra*, Decision No. 230 [2000], para. 11, and *Sharpston*, Decision No. 251 [2001], paras. 25-26.

20. The Bank decisions in the instant case, with respect to which the Respondent asserts that the Applicant failed to exhaust internal remedies in a timely manner, and which the Appeals Committee declined to review, are:

- (i) pay differential issues from 1983 to date and the Bank's treatment of the Applicant as "bonded labor" since that time;
- (ii) the Applicant's 1989 job reclassification;
- (iii) the global job grading of 1997;
- (iv) the Applicant's 1998 PIP;
- (v) changes in library supervision made in 1998;
- (vi) the Applicant's 1998-1999 OPE; and
- (vii) the allegedly fraudulent conduct of the 1999 IFO Library Client Survey.

21. The past versions of Staff Rule 9.01 ("Administrative Review") required the staff member, as a first step in the grievance process, to request administrative review of the administrative decision which he or she contested within 90 days of receipt of the written administrative decision.

22. The Tribunal notes that the Applicant never requested timely administrative review of the decisions mentioned in paragraph 20 above. Although he did complain about these decisions at various times to the Ombudsman, to his managers, to the Human Resources Officer and even to the Vice President of Human Resources and the President of the Bank, he failed to pursue formal internal remedies under the applicable Staff Rules. The Tribunal notes that the Applicant formally challenged these decisions for the first time in his Statement to the Appeals Committee of April 18, 2000. The Appeals Committee, therefore, properly concluded that it had no jurisdiction over them.

23. The Applicant and the Respondent have not agreed to submit the application directly to the Tribunal. Nor has the Applicant invoked any exceptional circumstances that prevented him from requesting administrative review of these decisions in a timely manner. Therefore, the Tribunal finds that the Applicant's claims are inadmissible for failure to exhaust internal remedies in a timely manner pursuant to Article II(2)(i) of the Tribunal's Statute.

24. The Respondent also raised a jurisdictional objection first before the Appeals Committee and now before the Tribunal, alleging that the Applicant failed to exhaust internal remedies regarding the November 1999 mission of the Manager, SARIM, to Islamabad and her resulting proposal for the creation of an Electronic Resources Librarian position. The Appeals Committee nevertheless accepted jurisdiction over this claim. In the course of her mission, the Manager visited the Islamabad office to assess the feasibility of establishing an Electronic Library in the World Bank Office. Her proposal was included in her Report issued that same month. On the other hand, the approval of the proposal for the creation of an Electronic Librarian's position was publicized internally only on February 11, 2000. Therefore, the Committee found, the Applicant timely challenged it before the Appeals Committee on April 18, 2000. Staff Rule 9.03 "Appeals Committee," paragraph 5.01, as in effect in February 2000, stated in pertinent part:

A staff member who wishes to appeal an administrative decision to the Appeals Committee must submit an appeal in writing to the Secretariat of the Appeals Committee within ... (i) 90 calendar days of receiving the written decision.

25. The Tribunal notes that the Applicant filed an appeal with the Appeals Committee within 90 days of receiving notice on February 11, 2000 of the approval of the Manager's proposal by the Islamabad Office IT Committee. To the extent that the Manager's mission and assessment led to the approved proposal for the redesigning of the Applicant's position, the Applicant timely challenged that decision before the Appeals Committee on April 18, 2000. The Tribunal finds that the Appeals Committee properly accepted jurisdiction over this claim of the Applicant. The Tribunal also assumes jurisdiction over this claim on the ground that the Applicant has timely exhausted internal remedies.

26. Further, the Appeals Committee assumed jurisdiction over the Applicant's claim that there were inconsistencies in the Bank's policy because, while the Bank in 1992 turned down the recommendation of the Applicant's supervisor that the Applicant's position be reclassified, the Bank accepted the recommendation of the subsequent supervisor that it be declared redundant. The Tribunal, however, will not assume jurisdiction over this claim because its review presupposes an examination of the alleged failure of the Bank to reclassify the Applicant's position in 1992, which he never timely challenged.

27. The Applicant is also contesting before the Tribunal, as he did before the Appeals Committee, the decision of the Bank to terminate his employment on the grounds of redundancy. Although the written notice of redundancy was given to the Applicant on April 20, 2000, i.e., two days after he filed his Statement of Appeal with the Appeals Committee, the Respondent did not raise an objection to the jurisdiction of the Appeals Committee regarding this claim of the Applicant, nor does it do so now before the Tribunal. In fact, the Respondent states that the Applicant's redundancy is the only issue properly before the Tribunal for review.

28. As regards this claim, the Tribunal finds that the Applicant timely exhausted internal remedies, as he filed an appeal with the Appeals Committee within 90 days after either the approval on February 10, 2000, by the Bank of the Manager's proposal for a redesigned position of Electronic Resources Librarian, or the internal publication of such an announcement on February 11, 2000, or, moreover, his meeting with his HR Officer on February 14, 2000, when the Applicant was informed orally of the possibility of the redundancy of his position and discussed the options available to him. The Tribunal, therefore, assumes jurisdiction over this claim.

29. The Tribunal has held in the past that the decision to declare a staff member's position redundant is "within the discretion of the Bank, subject only to limited review by the Tribunal," and that the Tribunal "will not interfere with the exercise of such discretion unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, [or] improperly motivated ...." (See *Kocic*, Decision No. 191 [1998], para. 9, citing *Montasser*, Decision No. 156 [1997], para. 10; and *Kahenzadeh*, Decision No. 166 [1997], para. 20.) The Tribunal has found, however, that at the same time

[t]he Bank must be free to evolve, and therefore to adjust to new needs in its client countries, and corresponding new requirements in its activities. The fact that a staff member's skills have been beneficial to the Bank in the past does not insulate him or her from the risk that the relevant work group requires a "skills mix" .... into which he or she does not fit. (*Mahmoudi* (No. 2), Decision No. 227 [2000], para. 24.)

It is in the light of this jurisprudence that the Tribunal will now examine whether the decision to declare the Applicant's employment redundant was taken in the exercise of a legitimate discretionary power or whether it was tainted by improper motivation, and also whether the appropriate procedure was followed in the implementation of such a decision.

30. The Applicant claims that the redundancy decision was a device to remove him from his position due to his complaints about job classification in the past, and that management invited the Manager, SARIM, to submit a Report that contained erroneous facts in order to get rid of the Applicant. The Tribunal finds no evidence in the record substantiating these claims. On the contrary, a review of the record and, particularly, of the Report prepared by the Manager, SARIM, shows that there was a growing need to strengthen the IT Capacity in the Islamabad office "by providing input to knowledge management, which is the Bank's competitive advantage and an increasingly important role for the organization." It was in response to this need that the new Country Director for Islamabad invited in November 1999 the Manager, SARIM, to assess, among other things, the feasibility of establishing an Electronic Library in the World Bank Office in Islamabad.

31. Comments by the Applicant's supervisor in the Applicant's OPE for 1998-1999 also indicate that the Bank was moving towards the direction of strengthening the IT capacity of the Islamabad Office. The OPE stated that the Applicant would need to strengthen his IT skills to meet the needs of an IT-based PIC/Library. In fact, the Applicant himself acknowledges in this OPE that there had been a transformation in information technology through a transition from hard copies to Web pages and that, while he was fully conversant with it by attending



training sessions, he needed to study the system adopted at Headquarters to acquaint himself with the Bank's approach to IT.

32. The comprehensive Report prepared by the Manager, SARIM, confirms that the reorganization of the Islamabad office and the resulting redundancy of the Applicant's employment was not an artifice. This Report contained a review of the existing roles of the Library and Public Information Center, as well as an action plan for an Electronic Library including a description of its purpose, methodology, sources of information and internal and external partners. It concluded that an Electronic Library should be established using the prototype of the country office website as a cornerstone, and that a talented and experienced Electronic Resources Librarian, with experience in Web development and electronic database design, should be hired to run the Electronic Library. A job description of the new Electronic Resources Librarian was attached to the Report of the Manager, SARIM.

33. Finally, the Tribunal notes that the decision to declare the Applicant's position redundant was not taken by one person alone but only after discussions among a number of people, including the Applicant's supervisor, the IFO Human Resources Officer, the new Country Director for Pakistan and the Acting Vice President, SAR.

34. In view of this factual record, the Tribunal concludes that the Applicant's claim of improper motivation or abuse of discretion in the declaration of redundancy of his employment is unfounded.

35. The next question for the Tribunal to examine is whether the appropriate procedure was followed in the implementation of the Applicant's redundancy, i.e., whether the redundancy was implemented according to the appropriate Staff Rules. The Applicant's position was declared redundant pursuant to Staff Rule 7.01, paragraph 8.02(c), which states:

Employment may become redundant when the Bank Group determines in the interests of efficient administration that:

(c) A position description has been revised, or the application of an occupational standard to the job has been changed, to the extent that the qualifications of the incumbent do not meet the requirements of the redesigned position.

36. What took place in the Applicant's case fell clearly within this paragraph because the description of the Applicant's position was revised to such an extent that his qualifications did not meet the requirements of the redesigned position. Both the Applicant's job description from 1990, which basically remained unchanged over the years, and the job description of the new Electronic Resources Librarian are part of the record. It is indisputable from a review of both job descriptions that the occupational standards for the job of the Librarian were significantly changed. The Applicant's old job description was that of a traditional Library/Information Assistant, while the new position description had a strong focus on Information Technology. Indeed, the skills required for the Electronic Resources Librarian's position to fulfill the prescribed duties of the new position were not possessed by the Applicant, as he himself seems to admit in his Reply before the Tribunal. Among the qualifications requested for the newly designed Electronic Resources Librarian position were a Master's Degree in Library and Information Science from an accredited library school, plus three years of demonstrated experience in planning, development and delivery of electronic information and reference services, especially Web and database development. As the Respondent points out, the Applicant had only a Bachelor's degree and his computer skills were limited. There is no doubt, therefore, that as provision 8.02(c) prescribes, the position had been so substantially redesigned that the Applicant's qualifications did not meet the requirements of the redesigned position.

37. In interpreting provision 8.02(c) of Staff Rule 7.01, the Tribunal found in *Mahmoudi* (No. 2), at para. 27, that it did not entitle the Bank to invent post hoc rationalizations. This precedent was re-affirmed in *Yoon* (No. 2), Decision No. 248 [2001], para. 30, where the Tribunal found that "the redesigning of the position should precede the redundancy decision, and the incumbent of the position should be informed beforehand of the revised design of the position." In that case, the Tribunal found that the record did not show that, prior to the redundancy decision, the position occupied by the Applicant had been redesigned, or that a new, substantially different job description of the new position had been developed.

38. In *de Raet*, Decision No. 85 [1989], para. 62, the Tribunal emphasized the need for a “formal ‘redesign’” of a position and for “a written product of that redesign, in the shape of a new job description” in order to guarantee to staff members “the benefits of the predictability of their activities and the standards implicit in an expressly formulated job description.”

39. In contrast to the above-mentioned cases, the record in this case shows that the new position was designed prior to the declaration of his redundancy. The redesigning, as the Tribunal found above, was the result of the assessment by the Manager, SARIM, of the need for the establishment of an Electronic Library to strengthen IT capacity, which started in November 1999 with her mission to Islamabad and ended with the approval of her proposal for the hiring of an Electronic Resources Librarian by the Islamabad IT Team on February 10, 2000. The job description of the Electronic Resources Librarian’s position was part of the Manager’s November 1999 proposal and was attached to her Report.

40. It remains to be determined whether the Applicant was properly notified of the redesigning of his position, the possibility of his redundancy and the opportunity to compete for the new position. The Applicant asserts in this respect that no effort was made to find him an “available suitable position” prior to the implementation of the redundancy. The Applicant also states that the redundancy was carried out despite the Manager’s recommendation that a full time Librarian be hired, suggesting that he should have been placed in that position by the Bank.

41. With regard to the Bank’s obligation to notify staff members of their imminent redundancy, the Tribunal has held:

Although Staff Rule 7.01 does not provide for a specific advance warning about the issuance of notice of redundancy, a basic guarantee of due process requires that the staff member affected be adequately informed with all possible anticipation of any problems concerning his career prospects, skills or other relevant aspects of his work. (*Garcia-Mujica*, Decision No. 192 [1998], para. 19.)

42. As the record indicates, the Manager’s Report subsequent to her November 1999 mission in Islamabad was forwarded by the HR Officer to several staff members in the office, including the Applicant, on January 14, 2000. These staff members were asked to comment on the Report and to submit suggestions. This Report did not explicitly mention the possible redundancy of the Applicant’s position. Nevertheless, the stated purpose of the mission, i.e., the assessment of the feasibility of establishing an Electronic Library in the World Bank office and the recommendation for hiring an Electronic Resources Librarian with experience in Web development and electronic database design to run it, as well as the description of the duties, accountabilities and selection criteria for the Electronic Resources Librarian, adequately put the Applicant on notice of the possibility of the redundancy of his position. The Report was apparently forwarded to him in order for him to consider this possibility, given that the redesigning of his position was likely to affect his career prospects.

43. Furthermore, on February 11, 2000, the HR Officer notified the office’s staff members of the approval of the redesigned position by the Islamabad Office’s IT Committee. As the Applicant himself acknowledged before the Appeals Committee, he met on February 14, 2000 with the HR Officer who informed him that his position would be declared redundant and that he would have, among other options, the possibility to apply for the redesigned position or to accept mutual separation. Clearly, the Applicant was thus alerted to the opportunity to compete for the redesigned position before he received his official notice of redundancy. (*See also Ezatkhan*, Decision No. 185 [1998], para. 24.)

44. The Applicant applied for the redesigned position on April 17, 2000, three days before he was officially notified in writing of the decision to declare his position redundant, although the closing date for the vacancy for the Electronic Resources Librarian was February 26, 2000. The Bank states that it considered his application, nonetheless, because he was an internal candidate. The Tribunal finds that the fact that the Applicant was late in applying for the redesigned position was not because the Bank did not notify him early enough in this respect.

45. As to the Applicant's suggestion that the Bank should have placed him in the redesigned position, the Tribunal finds that in accordance with its jurisprudence, no staff member has a right to be selected to a particular position. (*Riddell*, Decision No. 255 [2001], para. 23.) The Tribunal finds that, as the Applicant did not fulfill the selection criteria announced in the job description of the redesigned position, the Bank had no obligation to offer him this position.

**Decision**

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

/S/ Thio Su Mien

Thio Su Mien

President

/S/ Nassib G. Ziadé

Nassib G. Ziadé

Executive Secretary

At London, England, May 24, 2002