

Decision No. 266

Djinsinah Husain,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on September 19, 2001, by Djinsinah Husain 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 Respondent agreed to the Applicant's request that she remain eligible for resettlement benefits for six months following the date of the Tribunal's decision. The case was listed on March 15, 2002.

2. The Applicant's principal claim is that the decision to declare her position redundant was an abuse of discretion. She seeks rescission of that decision and reinstatement or, in the alternative, compensation.

3. The Applicant joined the Bank in 1973 on a temporary appointment as a clerk typist. In 1974, her appointment was converted to Regular. She was the Office Manager in the International Economics Department from 1993 to February 1997, when she became Office Manager for the Strategy and Resource Management Group. She had good performance reviews throughout her employment.

4. In 1997, following a recommendation of a working group of the Poverty Reduction and Economic Management Network (PREM), a position of Office Manager was created within PREM to carry out office support functions. The creation of this position was widely approved by PREM managers after a close examination of its needs. PREM was at that time a relatively new group.

5. The Program Co-ordinator for PREM, Ms. X, approached the Applicant about the new Office Manager position. In June 1998, the Applicant applied for that position and was later offered it. In December 1998, she commenced her new appointment as Office Manager, PREM, under the management of the Program Co-ordinator, Ms. X.

6. The job description for the Applicant's new position included, *inter alia*, participation in the monitoring of the central unit's work program, functional supervision of all office support staff, performance assessment of Level 11-17 staff incorporating assessments of task team members, and formulation of on-the-job training programs. However, the Applicant did not take part in the PREM Management Team meetings as stated in the job advertisement. She said later that this had caused her difficulties in carrying out her responsibilities. The Applicant raised her problems with Ms. X, but claims that nothing was done.

7. On March 29, 1999, Ms. Y replaced Ms. X as the Program Co-ordinator, Vice Presidency, PREM (PRMVP), and became the Applicant's manager. The Applicant met with the Program Co-ordinator several times a week to discuss her work. She claims that she raised the difficulties she was experiencing in her role as Office Manager, but that no action was taken to resolve those difficulties. She submitted a draft work program, but it was never finalized by the Program Co-ordinator.

8. In June 1999, the PREM Management Team met to discuss management issues. According to the

Respondent, budget issues were considered at the meeting, and ways of saving money. The Office Manager position was discussed and the Program Co-ordinator was asked to review the position, assess its value, and report back later in the year.

9. One month later, in July 1999, the Applicant's Overall Performance Evaluation (OPE), covering the period from January 1, 1998 to March 31, 1999, was signed by the Program Co-ordinator. It noted that the Applicant had joined PREM in December 1998 and that the current Program Co-ordinator (Ms. Y) had been her manager only since April. The Applicant was rated "fully successful" except in one area where she was rated "superior," and in another, "drive for results," where she was rated "partially successful." The evaluation noted that the period had been one of settling in, and that the Applicant had not been given clear objectives and directives when she joined, "making her role somewhat difficult." The Program Co-ordinator envisaged "1999/2000 being far more productive as both [the Applicant] and I work together to make the role of Office Manager work and add value. I look forward to a productive year."

10. The overall comments in the evaluation noted that the Applicant had an excellent relationship with the Administrative and Client Support (ACS) staff, and that there were some areas which needed improvement, due in part to the lack of direction and mandate. Those areas included ensuring deadlines were met and authoritatively handling the OPE process for ACS staff. The comments said that the Applicant's manager would work on this with her in the next year. The OPE was signed by the Program Co-ordinator on July 9, by the Applicant on July 22 and by the Vice-President, PREM, on August 10, 1999.

11. On October 18, 1999, the Program Co-ordinator informed the Applicant by e-mail that "as we have previously discussed" it was essential to define her role with the ACS staff, and that they should look at her job description and sort it out. She asked the Applicant to send her the current job description. Although the Program Co-ordinator has since admitted that she was considering the possibility of abolishing the Office Manager position, she did not inform the Applicant of this prospect at the time. The Applicant continued to meet regularly with the Program Co-ordinator to discuss her day-to-day work.

12. In early November 1999, the Program Co-ordinator contacted each of the four sector directors of PREM and their Executive Assistants to discuss "the role of the Office Manager." In reply, some of those approached made suggestions for improving the position.

13. The Applicant was aware that the Office Manager position was due to be discussed by the Management Team in December 1999, although, as stated, she did not know that abolition of the position was contemplated. On December 15, she offered to assist the Program Co-ordinator in preparing the presentation, but had no response.

14. The Program Co-ordinator prepared a report on the Office Manager position for the PREM team meeting of December 15, 1999. The report observed that in June 1999 "Effectiveness of Office Manager [was] questioned and review of position [was] to be completed." The results of the review carried out by the Program Co-ordinator were: that the majority of PREM Directors saw no value added in the role of the Office Manager; that the Executive Assistants did not believe the position had evolved to its ideal standard; and that the incumbent was performing only one-tenth of the responsibilities in the job description and required "major intervention from manager." The report also indicated that there was a consensus among Executive Assistants (EAs) that PREM needed an Office Manager with some redefinition of responsibilities. It reported that practice across the Bank varied and that while some units had Office Managers, others did not. Where there was an Office Manager, there were clear guidelines on responsibilities.

15. Three options were put forward by the Program Co-ordinator, based on the results of the review. The first was to do nothing; this was not preferred as the incumbent was not performing all the tasks of the Office Manager, and it was an inefficient use of the budget. The second option was to retain the Office Manager and ensure the full adoption by the incumbent of all responsibilities in the job description. This was not preferred, because it would require the agreement of the Directors, it would require a Performance Improvement Plan (PIP) for the incumbent, it would be difficult for the incumbent to perform the role for all groups, especially

performance appraisal, and it might be difficult for staff to accept an outsider as appraising manager.

16. The third, preferred option, was to replace the Office Manager with a Budget Assistant and to re-deploy the Office Manager. The review acknowledged that this was at odds with the wishes of EAs, who would have to assume certain responsibilities, that the current incumbent might find it difficult to find another role, being at the top end of the pay scale, that it would potentially add to salary costs in the short term, and that there would need to be a high investment of time from both directors and managers. The report indicated that the responsibilities of the Budget Assistant would include space planning and co-ordination.

17. On December 15, at the PREM team meeting, a range of views were expressed about the usefulness of the Office Manager position. The team ultimately agreed that the position should be abolished.

18. The next day, December 16, the Applicant asked for and was sent a copy of the Program Co-ordinator's review of the position of Office Manager. On the same date, the Program Co-ordinator saw the Applicant and informed her that the PREM team had decided to abolish her position. The Applicant was upset. She e-mailed the Vice-President, PREM, on December 17, raising her concern that PREM managers had not been fully informed of the role and accomplishments of the Office Manager over the previous year. She said that there had been serious problems in ACS before she joined, that she had solved several conflicts and that PREM was in a better position than before. She asserted that, even though it was irrelevant to the decision, the Program Co-ordinator had told her that her performance had been an issue, and had mentioned examples of non-performance.

19. The Applicant says that her relationship with the Program Co-ordinator became difficult after the events described above. As a result of the Applicant's concerns, on January 5, 2000, she was moved to another position helping to prepare for PREM week.

20. The redundancy process was initiated in January 2000. The Applicant received notice on February 29, 2000, that her employment would be declared redundant with effect from March 1, 2000. The Applicant had asked for that date, though she had been offered a later date towards the end of June. The redundancy notice informed the Applicant that suitable vacancies would be notified to her, but if she did not succeed in finding a position by September 1, she would be given 60 days' notice of termination.

21. The Respondent notified the Applicant of a number of vacant positions, but she did not apply for any of them. She did not send a summary of her skills and interests to the Manager, Human Resources, PREM, until July 7, 2000. Steps taken by the Manager, Human Resources, to find employment for the Applicant in the Bank did not succeed.

22. The Applicant's employment with the Bank ended on November 1, 2000. She received severance pay for 22.5 months in the amount of \$101,700, a separation grant of \$29,992.31, a dependency allowance of \$5,157.90, education and other benefits of \$13,925 and accrued annual leave of \$7,685.86, totaling \$158,460.17.

Appeals Committee

23. The Applicant filed an appeal with the Appeals Committee on July 24, 2000, claiming that her redundancy was improper because it was allegedly for performance reasons and because it violated promises made by the Bank to define her position and to allow her to succeed. The Appeals Committee heard the matter in March 2001 and issued its report on June 5, 2001.

24. The Appeals Committee found that the decision to abolish the Applicant's position was genuine. No equivalent position had been created with substantially the same duties; the Office Manager's duties were distributed among other staff. The Committee found that the abolition of the Applicant's position was not in itself an abuse of discretion and was not to be regarded as a termination on the basis of performance.

25. Nevertheless, the Appeals Committee considered that although the Applicant's performance had not been considered unsatisfactory, the roles and responsibilities of her position as Office Manager had never been clarified. The review document prepared for PREM had left her with the impression that she was perceived as having a performance problem which was relevant to the abolition of the position. The Appeals Committee found that this reflected poorly on management. The Appeals Committee noted that the position had been created after a detailed review of needs, and that the decision to abolish it was taken only a year later. The Appeals Committee held that, given the Applicant's long service, greater care should have been taken to enable her to succeed in the position. The failure to ensure that she was given proper guidance in developing a work program or to inform her that her position might be abolished within a year of its creation was evidence of career mismanagement which adversely affected her career and future within the Bank. The Appeals Committee found, following *Caronjot*, Decision No. 178 [1997] and *Chhabra*, Decision No. 139 [1994], that the Applicant was entitled to compensation for these failures. The Appeals Committee held that reinstatement of the Applicant was not warranted, but she should receive compensation.

26. The Appeals Committee recommended that the Applicant should be compensated in the amount of one year's net pay and \$5,000 in attorney's fees. This was accepted by the Bank on June 18, 2001.

27. The Appeals Committee found that the Bank had not failed in its duty to assist the Applicant in finding alternative assignments and that there was no abuse of discretion in that regard. It also concluded that there was no support for the Applicant's contention that she had been subjected to retaliation or harassment.

Tribunal proceedings

28. The Applicant filed an application with the Tribunal on September 19, 2001. She claims that the decision to declare her position redundant was an abuse of discretion and should be rescinded. In the alternative, she claims the equivalent of three years' salary as compensation. She also claims costs.

Considerations

29. The decision to declare a position redundant or to abolish a position in accordance with the Staff Rules is an exercise of discretion by the Bank. The Tribunal will not review or interfere with such a decision unless it constitutes an abuse of discretion, because it is arbitrary, discriminatory, improperly motivated or carried out in violation of fair and reasonable procedures (*Kahenzadeh*, Decision No. 166 [1997], para. 20; *Saberi*, Decision No. 5 [1982], para 24). The decision in the present case purports to have been taken under Staff Rule 7.01, paragraph 8.02(b), which provides that employment may become redundant when the Bank Group determines in the interests of efficient administration that "[a] specific position in an organizational unit must be abolished."

30. The Applicant claims that the decision to abolish the position of Office Manager was not a genuine redundancy, that business efficiency was not the sole basis for the decision and that it was a device to mask improper motivations. In particular, she argues that performance issues were improperly made a factor in the decision and that fair procedures were not followed. The Bank, on the other hand, contends that the decision to abolish the position was made on the basis of business needs, and in accordance with the Staff Rules.

31. The reason advanced by the Bank for its decision was that the PREM management team decided that it did not need an Office Manager and that the tasks assigned to that position could be more effectively handled by other staff. The Vice-President, PREM, later explained that the units in the PREM network had begun to establish an identity and did not see advantage in a management structure spanning many units. The formal request for the redundancy stated that the role of Office Manager was not working as originally anticipated, and that many of the responsibilities would be better served if performed by the Executive Assistants or Directors with the help of a Budget Assistant. On this basis, the Respondent argues that the decision to abolish the position was a decision about the most effective way of carrying out the functions then assigned to the position of Office Manager.

32. The Tribunal notes that the Bank's decision was not part of a wider reorganization of the Bank or of the

particular work unit. It affected only one position, the recently created one of Office Manager. It notes also that the need to reduce expenditure, though it may initially have had some relevance, did not appear to be a compelling factor in the decision. The abolition was “genuine” in the sense that the position was not replaced by a new one with substantially the same description and duties. (See *Arellano*, Decision No. 161 [1997], paras. 32-33; *Brannigan*, Decision No. 165 [1997], para. 23.) The new position of Budget Assistant, which had been proposed at the time of the redundancy decision, did not include all the functions of the Office Manager, and in particular did not include the task of performance assessment for ACS staff; in fact that position was not created.

33. On this basis, the Tribunal considers that there were objective reasons which could have supported the Bank’s decision, provided that the decision was not affected by improper motivation and provided that all applicable rules, including fair procedures, were applied.

34. The Applicant asserts that the objectivity of the decision was impaired because the Bank brought into consideration allegations of poor performance on her part, and unfairly denied her an opportunity to respond to those allegations. There is substance in these claims.

35. The PREM team, which had recommended the creation of the position of Office Manager during the previous year, asked for a review of that position only six months after the Applicant had taken it up. The Applicant was not apprised of the fact that this review included consideration of the abolition of her position.

36. Not long after the Program Co-ordinator was asked to carry out the review of the Office Manager position, she indicated, in the Applicant’s OPE, that there was a need to clarify her role and work program, and that she, the Program Co-ordinator, intended to work with the Applicant to make the role effective. The OPE did not seriously question the Applicant’s performance, although it indicated that a lack of direction when the Applicant first took up the job had contributed to the need for improvement in some areas. The Program Co-ordinator did not, however, take action to deal with the issues which she had identified in the OPE.

37. When the Program Co-ordinator prepared the review of the Office Manager position for the PREM group, the issues which she had earlier identified in the OPE remained unresolved. The basis for the review was stated to be that the “Effectiveness of Office Manager [was] questioned.” The Bank submits that it was the *position* of Office Manager which was then under review and not the incumbent. However, the Applicant was the only person to have held that position, and she must have been identified with it to some extent. The review, in fact, identifies a number of problems which directly relate to the Applicant’s performance. It states that the Applicant was not performing the designated responsibilities fully in that the “[c]urrent incumbent is performing approximately 1/10th of the responsibilities in the current job description and requires major intervention from manager.”

38. The Applicant’s performance was also questioned in two of the three options put forward by the review. The first option, to do nothing, was not preferred on the ground that the “current incumbent [is] not performing all tasks required.” The second option, to ensure that the Office Manager fully adopted all responsibilities, was also not preferred; among other reasons, it was stated that it would require a PIP for the incumbent and extensive management time.

39. The Bank argues that performance issues were not the basis of the PREM decision and were not in fact discussed by the PREM team. It relies on evidence to this effect given to the Appeals Committee by the Director, Gender and Development, PRMVP, and the Vice President, PREM. The Tribunal notes, however, that even though the PREM team may not have directly discussed the Applicant’s performance, or made any decision about it, the review document makes it clear that there were underlying performance issues. The Program Co-ordinator acknowledged this in her evidence.

40. The impression given by the review document is that it would be difficult to ensure that the Applicant would be able to carry out the job requirements effectively, that to improve the situation, a PIP would be necessary for the Applicant, and that this would involve extensive management time. The reference in the review document

to the need for a PIP, a procedure which generally precedes termination for unsatisfactory performance, suggests a negative view of the way the Applicant was fulfilling the role of Office Manager. This critical view of the Applicant's performance was a factor which weighed against either of the first two options put forward in the review document, making the third option, abolition of the position, the focus of consideration. Abolition was put forward as clearly preferable to making the position of Office Manager work effectively.

41. The Tribunal notes that the team involved in the decision, and the PREM unit as a whole, had differing views about the Office Manager position; this is indicated in the review document. It notes also that the membership of the team which had favored creating the position the year before had changed by the time the decision was taken to abolish it. If the review document had made no negative observations about the Applicant's effectiveness or performance of the Office Manager's assigned functions, it cannot be asserted confidently that the decision would have been the same.

42. In summary, the Respondent claims that the redundancy decision was made without any reference to the way the job was being performed by the Applicant, and with regard only to objective factors. The Applicant, on the other hand, claims that the review and the consideration of the Office Manager position were influenced by performance issues and by the view expressed in the document that she was not carrying out the job as intended.

43. Bearing in mind that the Applicant was the only person to have held the position and that there were unresolved issues about how she was fulfilling her role, the Tribunal concludes that issues related to the Applicant's performance influenced the decision to abolish the position. The Tribunal has previously expressed concern about the practice of mixing redundancy issues with decisions about the performance of staff, since redundancy does not give staff an opportunity to consider allegations or respond to them. (*See de Raet*, Decision No. 85 [1989], para. 62.) Redundancy procedures are not appropriate mechanisms for addressing performance issues, as they do not provide procedural protection, nor enable staff to respond to accusations.

44. Even though there may have been objective reasons to reconsider the earlier decision to create the position of Office Manager, the Tribunal is of the view that the decision to abolish that position must be considered to have been tainted by improper motivation and extraneous considerations.

45. The Applicant claims also that it was unfair to take performance issues into account without giving her an opportunity to respond to those issues. She maintains that she was in fact performing some of the tasks which the review concluded were not being performed by her, but had not been given a chance to clarify those issues. Her attempts to participate in the discussions about the position of Office Manager had been frustrated. The Applicant asserts, in addition, that she had been denied the direction which was needed to ensure that she could succeed in the position, and had been left without an adequate work program. The failure to inform her, or to deal with the issues had, she argues, prejudiced her right to apply for other positions.

46. The Bank submits that no attempt was made to blame the Applicant for not performing all of the functions assigned to her, and that as performance was not at issue, she did not need an opportunity to defend her performance.

47. The Tribunal's view is that the Bank's decision to abolish the Office Manager position was improperly affected by views about the Applicant's performance. In those circumstances, the failure to inform the Applicant that the abolition of her position was under consideration, or that her performance might be a factor in that decision, is a matter of considerable concern and was less than fair to her. (*See de Raet*, Decision No. 85 [1989], para. 63, in which the Tribunal expressed concern about the redesign of a position leading to redundancy, without informing the incumbent. *See also Garcia-Mujica*, Decision No. 192 [1998], para. 19.)

48. Having created the position and invited the Applicant to apply for it, the Bank had an obligation to ensure that the position operated effectively and that the Applicant was assisted in developing an effective work program. (*Barnes*, Decision No. 176 [1997], paras. 18-20; *Garcia-Mujica*, Decision No. 192 [1998], para. 11; *Chhabra* (No. 3), Decision No. 200 [1998], para. 16.) If there were performance issues which prevented the

position from working as intended, the Applicant ought to have been adequately informed of the problems and given an opportunity to deal with them. (*García-Mujica*, Decision No. 192 [1998], paras. 18-19; *de Raet*, Decision No. 85 [1989], paras. 65-66; *Samuel-Thambiah*, Decision No. 133 [1993], para. 32; *Singh*, Decision No. 188 [1998], para. 21). Even if the creation of the position had been a mistake, it was a mistake which ultimately left the Applicant without a job and which affected her career prospects.

49. Whatever the underlying cause of the problems relating to the position of Office Manager, the Applicant was not given a fair chance to succeed in the position.

50. The Tribunal has said before that the strictest observance of fair and transparent procedures is required in implementing the Staff Rules dealing with redundancy:

Otherwise, ill-motivated managers would too often be able to pay lip service to the required standards of fairness, while disregarding the principle that their prerogatives of discretion must be exercised exclusively for legitimate and genuine managerial considerations in "the interests of efficient administration." (*Yoon No. 2*, Decision No. 248 [2001], para. 28.)

Conclusions

51. The Tribunal considers that the decision to abolish the Office Manager position was an abuse of discretion in that extraneous issues were given undue weight, resulting in improper motivation. It concludes also that the procedures which led to the redundancy of the Applicant were in violation of fair and reasonable procedures, and were unfair to the Applicant, in that the Bank failed to give her a reasonable chance of succeeding in her position and failed to give her an opportunity to respond to the performance issues which were considered in the decision.

52. The Tribunal does not consider, however, that it would be appropriate to order the rescission of the decision to abolish the Office Manager position, or to order reinstatement. Instead, the Respondent should be required to pay to the Applicant as compensation for the injury she has suffered the equivalent of two years' net salary. (See *Chhabra (No. 3)*, Decision No. 200 [1998], para. 19.)

Decision

For the above reasons, the Tribunal decides that:

(i) the Respondent shall pay to the Applicant compensation assessed at two years' net salary, less the amount paid to her pursuant to the recommendation of the Appeals Committee; and

(ii) the Respondent shall pay to the Applicant costs in the amount of \$7,539.80.

/S/ Thio Su Mien

Thio Su Mien
President

/S/ Nassib G. Ziadé

Nassib G. Ziadé

Executive Secretary

At London, England, May 24, 2002