

Decision No. 305

Choudhury M. A. Ismail,  
Applicant

v.

International Bank for Reconstruction  
and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on May 8, 2003, by Choudhury M.A. Ismail 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, and composed of Francisco Orrego Vicuña (President of the Tribunal) as President, Elizabeth Evatt (a Vice President of the Tribunal), Robert A. Gorman and Sarah Christie, Judges. The usual exchange of pleadings took place. The case was listed on October 10, 2003.

2. The Applicant challenges the decision to terminate his employment for misconduct and to withdraw accrued leave benefits which were due to him.

### History

3. The Applicant joined the Bank on January 1, 1973 as a Secretary in the Bangladesh Country Office. He was promoted to Assistant Administrative Officer in 1974, and later to Administrative Officer. On February 1, 2000, he became Senior Administrative Officer, level GF.

4. The Applicant's job included making travel arrangements and procuring goods and services for the Bank. He was required to organize maintenance for the Country Office and for the residences of expatriate Bank employees in Dhaka. He was largely trained on the job. Throughout his 28 years of service in the Bank the Applicant received good Overall Performance Evaluations (OPEs). He had several supervisors in that time. The Applicant's most recent supervisor acknowledged the expertise and experience of the Applicant, and that the Applicant had trained him when he joined the Bank in 2000.

5. In April 2001, the Applicant was asked to organize the installation of sliding doors in the Bank's offices in Dhaka. Under the Bank's General Services Departmental Institutional Procurement Policy and Procedures Guide (GSD Guidelines), if procurements exceed a fixed amount, three original quotes should be obtained from reputable vendors. After quotes for the work had been obtained by the Applicant's Team Assistant, purchase documents were sent to the Applicant's supervisor for his approval. These documents authorized the work to be done by a local firm, Sunlit Electrical Works (Sunlit). Quotes from two other firms were annexed to the quote from Sunlit. The supervisor asked the Applicant to arrange for him to meet the two vendors who had put in the unsuccessful bids for the job. The Applicant later informed his supervisor that the two other quotes had in fact been submitted by Sunlit itself as "supporting quotes," and that this was the normal procedure for raising purchase orders for the majority of the repair and maintenance work for the Bank in Dhaka.

6. The supervisor reported what he had learned to the Country Director, who forwarded the matter to the Department of Institutional Integrity Unit at Headquarters (INT). The Applicant and his Assistant were placed on administrative leave by the Acting Head of the Dhaka Office on April 22, 2001, pending an investigation by INT.

7. The Manager of the Business Ethics and Integrity Office (INTBEI) sent the Applicant a written Notification of Alleged Misconduct under Staff Rule 8.01, dated May 7, 2001. The allegations which were to be investigated were:

(a) [t]hat [he had] knowingly and intentionally engaged in a scheme to submit false procurement documents in connection with Country Office procurement of goods and services; and

(b) [t]hat [he had] failed to observe the legal, policy and administrative standards and restrictions imposed by the Bank Group.

The Notification informed the Applicant of the investigation procedures and of his right to respond and to review the report of the investigation. An investigation team from INT was sent to Dhaka and met with the Applicant on May 7, 2001 to explain the allegations and the procedure to be followed.

8. Thereafter, investigators examined many Bank records relating to Sunlit and other providers of goods and services to the Bank. They interviewed a number of people in the Bank and from Sunlit and those other providers. The Applicant was interviewed on three occasions and provided two written statements.

9. The investigators' inquiries brought to light other alleged irregularities in procurement procedures, particularly relating to Sunlit, but also involving other firms which had provided furniture, air conditioners, and general maintenance services to the Bank. As a result of information received, they examined whether the Applicant had obtained any personal benefits as a result of any failure on his part to comply with the procedures laid down for the procurement of goods and services. He was asked to provide information about his financial position, and about work which had been done at his private residence by Sunlit.

10. On August 22, 2001, the Draft Report of the investigation was sent to the Applicant for review and comment. He responded in detail on October 24, 2001, denying any wrongdoing. A Final Report, including the Applicant's comments, was then submitted to the Vice President, Human Resources (VPHR).

11. The main conclusions of the investigation were that the Applicant: "(i) knowingly and intentionally engaged in a scheme to submit false procurement documents in connection with Country Office procurement of goods and services; and (ii) failed to observe the legal, policy and administrative standards and restrictions imposed by the World Bank Group." Specific findings were that the Applicant:

(a) participated in a fraudulent scheme to contravene established institutional procurement policies in order to favor Sunlit Electrical Works in procurements for maintenance services performed at the Dhaka Country Office and in expatriate residences, in violation of paragraph 3.01(a) of Staff Rule 8.01;

(b) abused his position in the Bank for financial gain by accepting from Sunlit free or discounted materials and labor in exchange for said favoritism, and accepting similar discounts from Hasan Engineering, all in violation of paragraphs 3.01(a) and 4.01(a) of Staff Rule 8.01; and

(c) intentionally or recklessly disregarded his duties, or performed such duties in a grossly negligent manner, in connection with the procurement of air conditioners from [GIA] and furniture from [NC], in violation of paragraph 3.01(a) of Staff Rule 8.01.

### **Termination and appeal process**

12. The VPHR reached conclusions essentially the same as those of the investigation. Under Staff Rule 8.01, paragraph 4.01(a), it is mandatory to terminate services where a staff member is found to have abused his position for financial gain. On December 7, 2001, the VPHR informed the Applicant that his employment would be terminated with immediate effect. She withheld \$4,300 of accrued annual leave entitlements due to the Applicant at that time.

13. On April 12, 2002, the Applicant filed an appeal with the Appeals Committee. He attended a hearing at Headquarters on October 31, 2002. Among the witnesses were the Bank's Bangladesh Country Director, current and former supervisors of the Applicant, one of the investigators, the VPHR and the Applicant.

14. On December 19, 2002, the Appeals Committee found that the VPHR had not abused her discretion in

concluding: that the Applicant had committed misconduct under Staff Rule 8.01, paragraph 3.01(a); that he had abused his position for financial gain; and that he had intentionally or recklessly disregarded his duties in connection with the procurement of air conditioners and furniture. The Appeals Committee concluded that the termination of the Applicant's services, and the denial of his accrued annual leave benefits, were not an abuse of discretion and did not involve any failure of due process. It recommended that all requests in relation to the appeal be denied. This recommendation was accepted, and the Applicant was so informed by a Managing Director by letter dated January 3, 2003.

15. The application to the Tribunal was filed on May 8, 2003. The Applicant seeks withdrawal of all charges against him and reinstatement from the date of his termination, December 7, 2001, to enable him to complete his service until his retirement date in January 2004 (when he will be 65). He also seeks reinstatement of all accrued benefits, monetary compensation, reimbursement of legal fees and further action against those who misdirected the investigation against him for ulterior motives.

### **Considerations**

16. In disciplinary matters, the Tribunal has held that it may examine: (i) the existence of the facts; (ii) whether they legally amount to misconduct; (iii) whether the sanction imposed is provided for in the law of the Bank; (iv) whether the sanction is not significantly disproportionate to the offence; and (v) whether the requirements of due process were observed. (*Carew*, Decision No. 142 [1995], para. 32.) The standard of proof in disciplinary matters leading to termination is higher than that of a balance of probabilities. (*Arefeen*, Decision No. 244 [2001], para. 42; *Kwakwa*, Decision No. 300 [2003], para. 20.)

17. The Applicant claims that the decision to terminate him was arbitrary and an abuse of discretion, that the evidence could not reasonably support the conclusions reached by the Bank, and that due process was denied to him. The Bank maintains that there was an ample factual basis to justify the conclusions arrived at, that there was no abuse of discretion in terminating the Applicant's services and that he was accorded due process throughout the investigation and decision-making process.

### **Contravention of procurement policies**

18. The first set of issues to be considered relates to the conclusion of the VPHR, based on the Investigation Report, that the Applicant participated in a fraudulent scheme to contravene established institutional procurement policies in order to favor Sunlit in procurements for maintenance services performed at the Dhaka Country Office and in expatriate residences, in violation of paragraph 3.01(a) of Staff Rule 8.01, "e.g. ... abuse of authority; ... intentional or reckless disregard of duty; gross negligence in the performance of assigned duties ...." That conclusion had several related elements: that the quotes for the sliding doors were fabricated; that over a period a high proportion of the Bank's work was given to Sunlit and to another company closely connected with Sunlit; and that the Applicant failed to ensure compliance with the guidelines requiring independent quotes to be obtained. The issue for the Tribunal is whether the evidence supports these conclusions.

19. The Bank's GSD Guidelines for the procurement of goods and services call for three independent quotes to be obtained for procurements above the specified threshold. Country Offices generally follow the GSD Guidelines, but may vary procedures and lower the relevant thresholds. In the Bangladesh office, the Applicant's supervisor had lowered the GSD threshold of \$1,000 to \$500 on June 2, 1999. The Applicant's supervisor had further lowered it to \$200 on December 3, 2000 in an e-mail which was sent to the Applicant and others. The e-mail clearly states that there must be at least three original quotes from reputable vendors for items valued at more than that amount. Under the GSD Guidelines, no distinction is made between the supply of goods and the delivery of services such as repairs.

20. The investigation established that the Applicant's Team Assistant had first invited a particular firm, IH, to submit a quote for the sliding doors. The Applicant thought their quote was too high and instructed the Assistant to get a design and quote from Sunlit. When the Sunlit quote was received, the Applicant considered

it appropriate. He asked the Assistant to request Sunlit to submit two “supporting quotes,” which it did, using letterheads from two other firms which were in its possession. When the supervisor asked the Applicant to arrange for him to meet the two firms whose quotes had been unsuccessful, the Applicant directed the Assistant to ask the two firms to submit their own quotes. One firm agreed, but the other firm no longer existed. The Applicant then informed the supervisor that Sunlit had in fact been asked to provide the two other quotes, as that was the normal procedure for most maintenance and renovation work.

21. The facts as outlined were ultimately conceded by the Applicant. At first, he claimed that he had followed the usual practice in the matter. In his first written response of May 17, 2001 to the allegations of misconduct, he stated that asking a supplier whose quote was considered reasonable to provide “supporting quotes” was in accordance with the usual practice for repair, maintenance and renovation works at the Dhaka Office from 1986 to 1987. He also gave reasons for selecting Sunlit to quote for the job and for limiting access by many different vendors and their staff.

22. When the Applicant responded in writing to the Draft Investigation Report, on October 24, 2001, he claimed for the first time that his Team Assistant was responsible for failing to follow the correct procedures. The Applicant said that he had delegated to the Team Assistant the task of obtaining “supporting quotes” from *independent* vendors, not from Sunlit, and had relied on him to do so. He had later “discovered” that the “supporting quotes” were fabricated by Sunlit.

23. In his Statement of Appeal to the Appeals Committee, the Applicant expressed regret for his statement of October 24 and asserted that he had correctly stated his position in his first statement of May 17. He reverted to the argument that it was quite normal to get a vendor to supply “supporting quotes” and that it was particularly necessary to do this in the case of rush jobs. He said that in the majority of cases he and his Team Assistant would obtain quotes from three independent vendors when required to do so by the procurement guidelines, unless there were special circumstances, like a rush job.

24. In his submission to the Tribunal, the Applicant states that because the sliding doors were a rush job, he “asked [the Team Assistant] to obtain two supporting quotes from Sunlit as this was the normal practice in the Dhaka office for rush jobs that required three bids.”

25. Among the many explanations put forward by the Applicant in relation to the sliding doors, are: there were no formal procurement guidelines for the Bangladesh office; his team followed the GSD Guidelines as best they could; he had been trained by an earlier supervisor to obtain “supporting quotes” in the manner adopted in this case; and this practice was continued by his later supervisors and had not been questioned. He submits that the decision to terminate his services was based on a finding that he had systematically failed to observe the requirements, whereas in fact there was only one incident with Sunlit. According to the Applicant, only 8 other irregularities had been found out of 95 procurements. He claims that he only did what was usual and of long-standing practice.

26. Some of the Applicant’s supervisors gave evidence to the Appeals Committee. Two of the earlier supervisors appeared to agree that “supporting quotes” had been used in some cases, but the Tribunal finds their evidence to be unclear, contradictory and unsatisfactory. The Applicant’s last supervisor, who had reported the sliding door incident, was very clear that such a practice was not acceptable and that the Applicant should have known this.

27. Another issue concerns the improper preference given by the Applicant to Sunlit. During the investigation, the investigators obtained a statement from the proprietor of Sunlit that the firm had done work for the Bank since 1987 and that from 1995 the Applicant had begun a practice of preferring Sunlit. In one case, where Sunlit had done a rush job, the Applicant had asked the firm to provide “supporting quotes” to back the invoice. The proprietor said that he had obtained letterhead from two other companies and had put in false quotes. He said that this was a common practice in Dhaka, and that the Applicant used the same procedure in later cases. If Sunlit submitted a quote considered reasonable by the Applicant, it was asked to provide “supporting quotes.” The proprietor initially told investigators that Bank work was his sole income for 5-6 years, though he later

revised this to a lower proportion.

28. Records examined by the investigators revealed that between 1999 and 2001 Sunlit performed more than 98% of the maintenance work for the Bank in expatriate residences in Dhaka. The investigators found documents showing that in one instance in November 2000, where competing quotes had in fact been obtained from different companies, Sunlit had apparently been permitted to put in later quotes to bring itself below the other quotes. The Applicant holds the Team Assistant responsible for this event, because the documents were found on the Assistant's desk.

29. The investigators discovered that another company, Rakib Engineering, had been awarded a substantial number of jobs on expatriate residences in 1998, sometimes in competition with Sunlit. The former manager of Sunlit told the investigators that the two firms were closely associated, and that the apparent proprietor of Rakib Engineering was in fact the son of the Sunlit proprietor.

30. The Applicant denied that he had improperly given preference to Sunlit. He claimed that Sunlit had been chosen over others by his previous supervisors and he had just continued this, because of the firm's long association with the Bank and because it was known to have the right expertise, dependability, availability, price and security. Many Bank staff used Sunlit for their private work. The Applicant at first denied that he had had any personal dealings with Sunlit, but later conceded that he may have had frequent contact with that firm, after his telephone records were drawn to his attention showing the high number of calls he made to the firm. The Applicant claimed that he was unaware of any connection between Sunlit and Rakib Engineering, and denied that he had asked Sunlit to create Rakib Engineering.

31. In regard to all the dealings with Sunlit and Rakib Engineering, the Applicant sought to put the whole responsibility for any failure to follow procedures on his Team Assistant, as it was the Assistant's job to obtain the quotes and to prepare comparisons, while the Applicant was responsible for conducting procurements and making substantive business judgments. The Applicant contended that even if the Sunlit bids were fraudulent, he should not be blamed for failing to notice it because his superiors had also failed to notice it. The Applicant also submits that he should not be blamed because he did not receive formal training in procurement practices.

32. The Tribunal has concluded that there are serious inconsistencies in the Applicant's statements and submissions in relation to the sliding doors and other dealings with Sunlit. At one point, he says that obtaining supporting quotes from a single vendor was the usual practice, condoned by his supervisors. Later he says that he knew that three independent quotes were required by the GSD Guidelines, but that these rules did not apply to urgent jobs.

33. The record shows that there had for some time been deficiencies in the control of procurement procedures. The Country Director told the Appeals Committee that the procedures which led to the repeated hiring of Sunlit were not as tight as they should have been, and that he had sought to tighten up those procedures.

34. The Applicant, despite having had no formal training, had long experience in his job, and was familiar with the GSD Guidelines. It was his job to ensure that quotes were secured in accordance with the GSD Guidelines, and any departure from that procedure should have been drawn to the attention of his supervisor. It appears, however, that departures from the GSD Guidelines had occurred over a period of years with the active involvement or condonation of the Applicant. Even if, as he says, this had not been queried from above, his long experience in the Bank should have been sufficient for him to know that fabricated quotes were not permissible. If he had ever been in any doubt about the matter, the supervisor's e-mail of December 3, 2000 was a clear indication to him and to all concerned that the GSD Guidelines should be followed in all cases, and that any departure from the requirement to get three independent quotes would require specific explanation and authorization.

35. The Tribunal does not consider the statements by any of the parties involved in the contracting arrangements to be entirely reliable; specific problems in relying on some of this evidence are referred to later. However, statements of Sunlit's former manager relating to the preference given to Sunlit in the award of



contracts are backed up by documentary evidence, showing the high proportion of work given to Sunlit and Rakib Engineering, found to be a close associate of Sunlit, over a period of years. There is clear evidence that the practice of obtaining “supporting quotes” had continued for some time. In regard to the sliding doors, the Applicant conceded in his evidence to the Appeals Committee that he had told the Team Assistant to ask Sunlit to provide two “supporting quotes.” That he later asked the Assistant to get fresh quotes is an indication that he was attempting to make the quotes, which he knew to be fabricated, appear genuine. His practices were not compatible with the requirement laid down in the GSD Guidelines to obtain independent quotes.

36. The Tribunal thus concludes from the evidence that the Applicant was aware of the GSD Guidelines for procurement, which required independent bids for jobs over \$200; that he failed to apply these GSD Guidelines in all cases or to ensure that they were complied with; that in at least one case he directed that Sunlit be invited to submit fabricated quotes from other firms; and that he favored Sunlit and its associated firm Rakib Engineering in the award of repair and maintenance work in expatriate residences in the period from 1995 onwards. These activities led to a deception of the Bank in approving the contracts.

37. The Tribunal concludes that the VPHR was correct in finding that the Applicant participated in a fraudulent scheme to contravene established institutional procurement policies in order to favor Sunlit Electrical Works in procurements for maintenance services performed at the Dhaka Country Office and in expatriate residences, in violation of paragraph 3.01(a) of Staff Rule 8.01.

### **Abuse for financial gain**

38. Another conclusion of the VPHR, based on the Investigators’ Report, was that the Applicant had abused his position in the Bank for financial gain by accepting from Sunlit free or discounted materials and labor in exchange for favoritism, and accepting similar discounts from Hasan Engineering, all in violation of paragraphs 3.01(a) and 4.01(a) of Staff Rule 8.01. The significance of this finding is that termination is mandatory under Staff Rule 8.01, paragraph 4.01(a), when misconduct consists of abuse of position for financial gain.

39. The investigators were told by the former manager of Sunlit that the Applicant had awarded Bank contracts to Sunlit in return for the firm carrying out work at the Applicant’s residence at discounted rates. The former manager signed a Declaration about this agreed discount scheme. Sunlit, he said, charged the Applicant only for the cost of materials, without any mark-up, and sometimes made no charge for labor; this was outside the normal practice. The Applicant would pay the firm for the materials over a period of time. The former manager estimated the benefits to the Applicant as being more than \$1,000 for materials and more than \$6,000 for the labor charges.

40. The Applicant denies that he used his position for personal financial gain. He has challenged the neutrality and impartiality of the former manager of Sunlit, because he had been dismissed and had then set up a competing business. The Applicant’s Reply of September 5, 2003 refers to information provided by the proprietor of Sunlit which aims to discredit the former manager. The proprietor filed a complaint against the former manager with the Police on October 29, 2001, alleging that the former manager had demanded money from him with threats of violence. On August 7, 2003, the proprietor attested a statement repeating these allegations. The Applicant conceded that he used Sunlit for private work at his residence from 1991 to 1999. He claimed, however, that many Bank Staff did the same, and that he did not receive any discount, but paid in full for the work. He annexed to his application an invoice of July 6, 1995, showing that he had paid Sunlit an invoice of TK21,828 equivalent to US\$388, including labor charges.

41. The proprietor of Sunlit denied to the investigators that his firm had done a substantial amount of private work for the Applicant, or that it had given him any discounts. In a recent statement, attested on August 7, 2003, the proprietor said that Sunlit had different policies for official work (including World Bank work) and private (personal) work. For official work, he said, Sunlit charged 10% extra on the purchase of materials because the work is done on credit; the bills are submitted on completion of the work and take a long time to process. But for personal (private) work, Sunlit takes money in advance for the purchase of materials, and does not charge 10% extra.

42. A proprietor of another firm, Hasan Engineering, told the Bank investigators that his firm had done a few minor jobs for the Bank in 1999. The firm had also installed a water tank for the Applicant at his private residence. The Applicant had asked for a discount; the proprietor said that he had understood that if he gave the discount, the firm would be allocated more work for the Bank. The Applicant agreed that Hasan Engineering had done work at his home, but he denies that it had installed a water tank. On one occasion, he had asked his Team Assistant to pay an invoice from Hasan Engineering when he was absent from the office. The Assistant had asked Hasan Engineering for a discount. The amount was rather small, TK90 in respect of a bill for TK2,290. The Applicant asserts that the Assistant had done this of his own volition, that the Applicant had not asked for this and that he had never tried to do this himself.

43. The Tribunal notes that the main source of the information about discounts given to the Applicant is the former manager of Sunlit. The proprietor of Sunlit has tried to discredit the former manager, and has given another explanation for charging lower amounts for private work. (That explanation was not available either to the VPHR or to the Appeals Committee.) The Tribunal does not find the proprietor's statement about his different pricing system to be credible. Neither he nor the Applicant made any mention of this when first asked by INT about discounts. Nevertheless, for reasons set out elsewhere, the Tribunal does not consider that the statements made to the investigators should be sufficient to base a finding of personal benefit on the part of the Applicant, unless supported by other evidence.

44. There are in fact records which show clearly that over a period of years Sunlit received preferred treatment in the allocation of Bank work, including the practice of "supporting quotes," and that in that same period the Applicant, who was responsible for the allocation of Bank work, had engaged Sunlit to do work for him personally. The Applicant concedes that these actions resulted in an "appearance of conflict." It was a poor practice for him to use Sunlit for personal work, when they were a significant contractor for the Bank. It was also poor practice to maintain regular contact by telephone with a firm that was working not only for the Bank but for him privately. The fact that on one occasion he left funds with his Assistant to pay for work done at his private residence shows that he did not keep sufficiently separate his responsibility to the Bank and his private affairs. It appears also that the Applicant did accept without question the small discount asked for by his Assistant.

45. These actions, which were conceded by the Applicant, taken together with the substantial documentary evidence showing that Sunlit was given preference in the allocation of Bank work, give rise to a strong inference that the Applicant gave preferred treatment to Sunlit in return for benefits, the amount of which cannot be determined precisely but was significant.

46. In these circumstances, the Tribunal determines that the VPHR was correct in concluding that the Applicant abused his position in the Bank for financial gain by accepting from Sunlit free or discounted materials and labor in exchange for favoritism. This was in violation of Staff Rule 8.01, paragraphs 3.01(a) and 4.01(a).

### **Intentional or reckless disregard of duties**

47. The VPHR concluded, on the basis of the Investigators' Report, that the Applicant had intentionally or recklessly disregarded his duties, or performed such duties in a grossly negligent manner, in connection with the procurement of air conditioners from GIA and furniture from NC, in violation of paragraph 3.01(a) of Staff Rule 8.01.

48. The investigators had found that fraudulent quotes had been provided in regard to those two procurements. Although there was no conclusive evidence directly implicating the Applicant in the fabrication, or indicating that he profited personally, the investigators concluded that he either intentionally ignored or recklessly failed to notice obvious evidence of collusion.

49. In relation to bids submitted by GIA in May 2000 for air conditioners, it appeared that two other companies, O and M had submitted unsuccessful quotes. The e-mail address and telephone number of O were similar to

those of GIA, and it appeared that the two firms were the same or closely associated. There were, in addition, many similarities in the details of the three bids. Later contracts were given to GIA to supply air conditioners without any further competitive bidding process. This was not in accordance with the procedures laid down in the GSD Guidelines.

50. The Applicant claims that it had been left to the Team Assistant to obtain the quotes for the air conditioners and to review them. The Applicant then reviewed the quotes and chose GIA as the most competitive. He forwarded the quotes for approval by his supervisors without noticing the collusion, and claims that he should not be blamed for failing to detect it. In regard to the later procurements, he saw no reason to invite further quotes from any firm other than GIA. He holds the Team Assistant responsible for any problem, and argues that neither his supervisor nor the Country Director had objected to the procedure; they had cleared the procurements quickly.

51. In regard to the furniture procurements, the investigators found that from November 1998 to September 2000, most furniture for the Bank was purchased from NC without competitive bids. Bids were called for in only three cases. In those cases, the other bids appeared very similar to those of NC. An examiner concluded that two, and possibly three, had been prepared on the same typewriter. One of the other companies could not be found and the other denied having bid. The investigators concluded that it was probable that the Applicant knew of the fictitious bids or at least that he should, with his experience, have known.

52. The Applicant says that it was the Team Assistant who got the quotes and reviewed them. He did not suppose they were not legitimate and was unaware of any fraudulent practices. He reviewed them quickly and chose NC as the lowest before referring the procurement documents to the supervisor. He chose NC for the later contracts for aesthetic reasons, because the furniture would be of similar type to that supplied earlier.

53. The Tribunal notes that the Applicant was responsible for the integrity of the procurement system and was, moreover, aware of the practice of obtaining "supporting quotes" in other areas. He had an obligation to ensure that procedures were followed correctly. If there were reasons to depart from the procedures specified in case of later supplies, he could have sought approval from his supervisor. The Tribunal concludes as did the VPHR that the Applicant recklessly disregarded his duties in regard to these procurements; he failed to observe the similarities of the bids in these cases, and he failed to follow the procedures for obtaining competitive quotes in relation to the later procurements without seeking approval for this course of action.

### **Due process issues**

54. The Applicant has raised a number of due process issues. He complains that no preliminary inquiry was held before the decision to suspend him, so that he could have defended his position. In view of the circumstances relating to the discovery of the fabricated quotes from Sunlit, the Tribunal does not consider that the Country Director abused his discretion by placing the Applicant on administrative leave pending the investigation. That is, in itself, not a disciplinary measure.

55. The Applicant complains that the investigation team that came to Dhaka included two investigators who had received the first report from the Country Director to INT. The Tribunal does not consider that the membership of the Investigation Team is a matter for legitimate complaint unless the Applicant has cause to allege bias or prejudice. The investigators would in any event have access to the initial report.

56. The Applicant complains that when he was first interviewed, he had not been informed of the precise allegations against him and that he did not know the detail of the charges until he got the Draft Report in August 2001. The Tribunal notes that the Notification of Alleged Misconduct of May 7, 2001 was broad in its terms, and brought into question the whole of the Applicant's conduct in relation to procurement. It notes also that the details of the allegations could not be known until the investigation had made progress. However, the Applicant was given a chance to respond in writing before the Draft Investigation Report was prepared, and an opportunity to respond in detail to the specific allegations raised in the Draft Report before it was finalized.



57. The Applicant also claims that the investigation was conducted in a heavy-handed manner and was hostile and aggressive, which impaired his ability to co-operate fully. This allegation is not supported by any specific evidence from the Applicant. He was given full opportunity to put his position to the Investigation Team in writing and he did so.

58. The Applicant complains that he had no chance to cross-examine the witnesses interviewed by the investigators. The Tribunal takes the view that denying a party the opportunity to be present when witnesses are interviewed does not necessarily amount to a denial of due process, provided that the party has a proper opportunity to be made aware of what is alleged and to put forward evidence and arguments in response. (*Rendall-Speranza*, Decision No. 197 [1998], paras. 61-62.) In that case, the Tribunal held that the investigation in a disciplinary matter is administrative and not adjudicatory, and compliance with all technicalities of judicial proceedings is not necessary if the investigation is fair and impartial (para. 57). Here the Applicant had a full opportunity to respond to the Draft Report and its many annexes.

59. The Applicant complains that his supervisor, who made the initial complaint against him, later acted as interpreter at the interviews conducted by the investigators with the representatives of local firms and others. He argues that the supervisor could not be considered as a neutral interpreter, and that his involvement in the matter affected the impartiality of the procedure.

60. It appears from the Bank's submission that the supervisor translated for the proprietor of Sunlit and for the manager of GIA and that others translated for the former manager of Sunlit. The Bank submits that although the supervisor acted as a translator, he was not in a position to influence the investigation.

61. The Tribunal considers that it is inappropriate to use a key witness as an interpreter, as this could undermine the integrity of the process. The supervisor was a witness before the Appeals Committee and gave opinions about the conduct and experience of the Applicant. His role in the case was not consistent with the independent and impartial role expected of an interpreter. This was a breach of due process and undermines the weight which could be attached to the statement, in particular, of the proprietor of Sunlit.

62. The Tribunal notes, however, that the supervisor was not the only interpreter used by the investigators, and that a different interpreter was used for the former manager of Sunlit. In addition, the findings relating to the Applicant's misconduct, some of which were initially revealed by the proprietor and the former manager of Sunlit, are supported by substantial documentary material and by other circumstantial evidence. The Applicant himself has conceded that he adopted practices which were incompatible with the GSD Guidelines. These factors reduce the adverse impact of the breach of due process.

63. The Applicant complains that he did not receive the complete Final Investigative Report before the VPHR made her decision to terminate his services. He had received a copy of the Draft Report and had submitted his comments on October 24, 2001, in a document with many annexes. His comments were annexed to the Final Report, submitted to the VPHR on November 20, 2001. The Applicant was not sent a copy of that Report until after he took his case to the Appeals Committee.

64. The Respondent claims that the Draft Investigative Report which had been sent to the Applicant did not differ in any significant respect from the Final Report that was forwarded to the VPHR. The Bank states that "it is INT's standard procedure not to seek additional input from the accused when the changes to a draft report, as a result of comments provided by the accused, are minor." Later, the Bank states: "The Bank procedures provide for only one round of comments by the accused, and one response by the investigators. Otherwise the rebuttal process could go on indefinitely."

65. The Tribunal notes that the Draft Report was amended by annexing in full the Applicant's Comments and by the insertion in the Report of two paragraphs to reflect those comments and the Bank's response; another part of the Draft Report no longer relevant was deleted. These changes could be considered as minor, and did not require further comment from the Applicant. But, in addition to these changes, the investigators annexed to the Final Report a Clarification Document of 12 pages, dated November 13, 2001, which comments, paragraph

by paragraph, on the Applicant's rebuttal of the allegations. The Applicant did not see this document until after the VPHR had decided the matter and the Applicant had appealed to the Appeals Committee.

66. The Tribunal does not consider it essential for the Bank to refer every minor amendment to a draft report, including its response to submissions, to the person whose conduct is in question. In this case, however, the Clarification Document was a substantial document containing argument on virtually every point raised by the Applicant. It included substantial argument and reference to the evidence, and it was clearly intended that the Clarification Document be read with the Report to which it was annexed and that it influence the decision of the VPHR. The failure to send it to the Applicant was in the circumstances a breach of procedural fairness. The Tribunal has stated on more than one occasion that it is particularly important that the proper procedures be followed in the case of field staff who do not have ready access to the services and facilities available at Headquarters to protect their interests. (*Mustafa*, Decision No. 207 [1999], para. 35.) The consequences of this are considered below.

## Other issues

67. The Applicant complains about allegations made by the investigators that he failed to co-operate fully. Examples are that he did not immediately reveal all his land holdings and that he denied having business interests or having lent money to anyone. It is also alleged in the Report that he had denied purchasing shares, contrary to the evidence. He explained, adequately in the Tribunal's view, that the share purchase was not completed, and the Bank did not comment further on that point. He also offered explanations for the other matters, including that he was distraught and upset and could not co-operate as fully as he wanted to.

68. The Applicant also complained that the investigators had made allegations that he had received kickbacks from a local real estate company. Although no direct evidence of violation of procedures was found, the Respondent included this issue in its Answer and repeated the view of the investigators that the Applicant had adopted a heavy-handed behavior to local real estate agents. The Investigative Report refers to "the petty retribution that he [the Applicant] could exact on those who threatened to upset his complete control over the institutional procurement process." Remarks of this kind when unsupported by clear evidence could easily create the impression that the investigators were straying from the path of objective neutrality in their investigations. However, these observations have little bearing on the main conclusions reached by the Bank.

69. The Applicant made a number of other complaints which are not of great relevance to the case. For example, he complains that he was denied access to the Washington offices of the Bank so that his presentation of his case to the Appeals Committee was hampered. But there are no particulars to bear this out.

## Sanction

70. The Applicant has submitted that the decision to terminate his services was arbitrary and disproportionate, in view of the fact that he had only followed long-standing practice, had no dishonest intent and made no personal financial gain. He complains also that depriving him of his unused annual leave entitlements and denying him future medical benefits was excessive, and that no weight had been given to his 28 years of service and his good record.

71. It appears that the Applicant's accrued annual leave entitlements were worth about \$4,300. His pension entitlements were not affected. He received a termination payment of \$60,000.

## Conclusion

72. Under Staff Rule 8.01, paragraph 4.01(a), termination of service is mandatory when it has been determined that there has been abuse of position in the Bank for financial gain. In the present case, the Applicant's abuse of his position for financial gain was clearly established. Despite the Applicant's length of service and good performance reviews, he had, over a period of years, failed to act in accordance with the responsibility which had been entrusted to him; instead he had personally benefited from his failure to follow appropriate

procedures. In addition, he had tried to cover up the default and to blame others.

73. Under paragraph 4.02 of Staff Rule 8.01, a manifest lack of due process is a factor which might lead the Bank in its discretion not to determine upon the otherwise mandatory sanction of dismissal. In this case, the Tribunal has concluded that the procedures followed by the Bank were not in accordance with the requirements of due process in two respects, first in relation to the translation services provided by the Applicant's supervisor, and second in failing to provide to him its Clarification Document to his Comments on the Draft Investigation Report. However, after examining all the facts and evidence, the Tribunal concludes that these procedural irregularities do not negate the validity of the Bank's determination to terminate the services of the Applicant.

74. The Bank's decision to withhold the Applicant's accrued annual leave entitlements was purportedly made under paragraph 4.03(d) of Rule 8.01. The Tribunal determined in the cases of *C*, Decision No. 272 [2002], and *Moses* (No. 2), Decision No. 138 [1994], that accrued annual leave is a part of the compensation of a staff member and must in due course be paid. Moreover, the provisions of paragraphs 4.03(c) and (d) must be read together with Principle of Staff Employment 2.1(c), which states that the Bank shall "refrain from any action that would deprive staff members retroactively of compensation in any form for services already rendered." Therefore this part of the Bank's decision must be rescinded.

75. Because the Bank did not follow fully the requirements of due process in reaching its decision, it should compensate the Applicant in that regard. As the Tribunal stated in an earlier case, it "shall award the Applicant compensation only on account of the Respondent's failure fully to accord to the Applicant his procedural rights." (*Mustafa*, Decision No. 207 [1999], para. 36.)

## **Decision**

For the above reasons, the Tribunal decides that:

- (i) the Bank's decision to forfeit the Applicant's leave entitlements shall be rescinded and the amount withheld shall be paid to him;
- (ii) the Respondent shall pay the Applicant compensation assessed in the amount of \$2,000; and
- (iii) all other pleas shall be dismissed.

/S/ Francisco Orrego Vicuña  
Francisco Orrego Vicuña  
President

/S/ Nassib G. Ziadé  
Nassib G. Ziadé  
Executive Secretary

At Washington, DC, December 12, 2003