

Decision No. 105

Janardan Prassad Singh,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of P. Weil, President, A.K. Abul-Magd and E. Lauterpacht, Vice Presidents, and F.K. Apaloo, R.A. Gorman, E. Jimenez de Arechaga and Tun Suffian, Judges, has been seized of an application, received June 12, 1991, by Janardan Prassad Singh, against the International Bank for Reconstruction and Development. There was the usual exchange of pleadings. The Tribunal decided to make part of the record the additional statements filed by the parties, with the exception of the statement filed by the Respondent on October 16, 1991, which the parties agreed should not be made part of the record. The case was listed on November 8, 1991.

The relevant facts:

2. The Applicant held a number of short-term appointments within the Bank Group, beginning in April 1988 and ending with the Multilateral Investment Guarantee Agency under an appointment having an expiration date of June 29, 1990.

3. On June 2, 1986, the Applicant filed a bill of complaint for divorce from his wife, M..., with the Circuit Court of Fairfax County, Virginia. On August 12, 1986, however, the Applicant wrote a letter to the Circuit Court to inform it that on the previous day he had reconciled with his wife and that it was his understanding, because the divorce decree had not yet been signed by the judge, that he remained legally married. He asked the court to inform him if his understanding was not correct and if he therefore needed "to file any official papers or do anything else." The Circuit Court issued a final decree of divorce dated August 23, 1986, which was never sent to the Applicant.

4. The Applicant continued to live with M... and in 1988 he sought and received reimbursement under his Medical Insurance Plan (MIP) from the Bank's medical insurer, in the amount of approximately \$16,000, for medical treatments rendered to M... at the George Washington University Hospital. In June 1989, the Applicant resolved once again, on the basis of a precipitating incident, to initiate divorce proceedings. At that time, he was informed – allegedly for the first time – that he was already divorced. On June 19, 1989, the Applicant submitted to the Bank an updated Personal History Form (PHF) indicating his marital status as "single."

5. On June 28, 1990, the Applicant met with the Ethics Officer of the Bank and provided him with a copy of his final decree of divorce. This was accompanied by a document signed by the Deputy Clerk of the court that "This copy was picked up on June 28, 1990. To our knowledge no other copy has been given out to Mr. Singh." The Ethics Officer met again with the Applicant the following day and gave him a memorandum setting forth the following: that the Applicant had in 1988 indicated on several Bank documents that M... was then his wife; that he had in 1988 received reimbursement of approximately \$16,000 for M...’s medical treatment; that the Applicant’s divorce decree dated August 23, 1986 showed clearly that M... was not his wife at the time he received medical insurance payments; that the Applicant had stated to the Ethics Officer on June 9, 1990 that he was not aware until a few days before June 19, 1989 that his divorce had already become final; that the Applicant was given until July 2, 1990 to explain the discrepancy between his MIP claims and his divorce decree; and that the Ethics Officer had provided the Applicant with a copy of Staff Rule 8.01 concerning Disciplinary Measures.

6. By memorandum dated July 2, 1990 to the Ethics Officer, the Applicant responded, stating inter alia: that he had in 1986 reconciled with his wife pursuant to her urging and that of his mother; that, when he resolved to file for divorce once again in the middle of June 1989, he

[I]mmediately contacted Fairfax County to find out my marital status as it was recorded in the Court . . . I came to know for the first time that I was, according to the Court's records, divorced. I had no reasons to ask about the date the divorce was actually finalized, and hence found out the actual date of divorce only when I obtained a copy of the divorce papers on June 28, 1990, the day that I first met you;

that promptly thereafter, on June 19, after realizing that the court records showed that he was divorced, he amended his PHF to indicate that he was not married, and designated himself as single (rather than "divorced") "not to intentionally hide the fact of the divorce, but because I did not recognize the technical definitions and differences associated with being divorced and single"; that it was because he had believed that he was married to M... that he filed claims and received reimbursement under his MIP for her medical treatment in 1988 and that he had designated her as his beneficiary in all other Bank documents; and that he would have gained nothing by filing claims on behalf of a woman who was not his wife, and such would have been inconsistent with the values given to him by his parents.

7. In a memorandum dated July 9, 1990 to the Acting Director, Personnel Operations (POP), the Ethics Officer stated that his unit did not clear the Applicant's new appointment with the Bank scheduled to begin on July 2, 1990, because: the Ethics Office had begun an investigation of the Applicant's misuse of the MIP in 1988 for M... from whom he had been divorced since August 1986; that the Applicant's claim of unawareness of his divorce was not convincing, because he had originated the divorce proceedings and certified that he had lived apart from M... for one year; and that it was the Ethics Officer's professional conclusion that the Applicant had committed fraud on the Bank's MIP, and his recommendation that the Applicant be barred from further employment with the Bank.

8. The Acting Director, POP, accepted the recommendation of the Ethics Officer, and on July 12, 1990, the latter gave the Applicant a memorandum informing him of the decision against him.

9. The Applicant then sought the assistance of the Bank's Ombudsman, with whom he met on July 23. The Ombudsman in a memorandum of July 26, 1990 urged the Director, POP, to review "this bizarre case with some urgency" and added that what appeared on the surface to be a straightforward misconduct case could result in a gross injustice if the Applicant's story was correct. After reiterating the Applicant's explanation of his long-delayed awareness of his formal divorce, the Ombudsman urged a change in the July 12 decision against the Applicant: "Ignorance is not misconduct, and if his actions were in good faith, it is unjust to punish him in this fashion. If the story does not stand up, of course, the decision should stand."

10. By letter dated August 8, 1990, addressed to the Director, POP, the Applicant provided several documents showing that the Applicant and M... had lived as husband and wife throughout 1988. These included a letter from M... 's attending physician in 1988; state and federal joint tax returns; verification of a joint lease and joint certificate of deposit; and a statement from a personal friend of M... and the Applicant. The Applicant listed other pertinent documents he intended to obtain. In a letter dated August 20, the Director, POP, informed the Applicant that there was no basis to alter the decision of July 12, and that the Applicant could appeal that decision through the appeals procedure set out in Staff Rule 9.03, a copy of which was attached.

11. The Applicant responded to the Director, POP, in a letter dated August 30, 1990, in which he once again reiterated his claim that he did not learn of his 1986 divorce until June 1989, and did not learn of the precise date of the divorce until June 1990. He pointed out the purpose of M... 's medical treatment in 1988 was to correct her infertility through surgery so that she could bear children. He asserted that this obviously supported his claim that he believed he was still married to M... in 1988; he also stated that his culture prohibited him to live with a woman, or to have children by her, if she was not his wife.

12. The same day, the Director, POP, wrote to both the Applicant and the Ombudsman. He stated that he had reviewed the Applicant's case "twice in some detail and concluded that we cannot accept his version of events in which he purports not to have known he was divorced from his wife." He once again invited the Applicant to seek redress through the Bank's appeals system.

13. On September 6, 1990, the Applicant filed an appeal with the Appeals Committee against the decision not to renew his consultant services due to his misrepresentation in the filing of health insurance claims.

14. In November and December 1990, the Respondent secured extensions of more than five weeks for the filing of its answer with the Appeals Committee. In its latter request, the Respondent referred to the need to investigate "a number of allegations concerning the veracity of certain statements made by the Appellant on his PHF." Meanwhile, by letter dated November 20, 1990, the Ethics Officer informed the Applicant that new information had come to the Ethics Officer's attention regarding (i) apparent misrepresentations made by the Applicant on his PHF concerning previous employment and/or education at Harvard University, at Alabama A & M University, and at the American Enterprise Institute (AEI), and also regarding (ii) irregularities between January 1989 and April 30, 1990 in certain international telephone calls and telegrams, charged to the Bank but apparently originating from the home of the Applicant and M... and directed to the home of the Applicant's mother in India.

15. The Applicant responded to these charges by a letter dated December 3, 1990. He asserted that his earnings at Alabama A & M University were commensurate with the information he had set forth in his PHF, that he had worked for the Dean of the School of Business there and had obtained substantial research grants, and that he was writing to certain listed persons to obtain further supportive evidence. He made substantially the same assertions regarding the AEI. He denied making any of the alleged telephone calls or sending any of the telegrams to India.

16. On March 5, 1991, the Appeals Committee issued its report and recommendations. With regard to the alleged misrepresentation in the claim and reimbursement for M...'s medical treatments in 1988, the Appeals Committee was unable to conclude whether the Appellant intended to cheat the Bank or whether he genuinely believed he was married to M... at the time. The Committee did express some doubt about the authenticity of the letter allegedly written by the Applicant on August 12, 1986 informing of his reconciliation and his desire to withdraw his divorce petition. In turning, then, to other issues relating to the Applicant's character, the Appeals Committee noted his academic and professional accomplishments, concluded that it was M... who had made the illicit telephone calls but probably the Applicant who sent the telegrams, and expressed its wish that the Applicant could produce documentary evidence to substantiate his assertions regarding prior income. The Committee recommended that, rather than bar the Applicant altogether from future Bank employment, he be barred from Bank employment for a period ending on June 30, 2000 and that at the end of this period he should be given an opportunity without prejudice to compete for employment in the Bank.

17. On March 8, 1991, the Vice President, Personnel and Administration (PA), informed the Applicant that he had accepted the recommendation of the Appeals Committee.

18. By letter to the Applicant dated March 21, 1991, the Deputy Clerk of the Circuit Court of Fairfax stated, [inter alia](#), that by October 1986 the contents of the file of the Applicant's divorce proceeding, "including the letter dated August 12, 1986, was recorded on microfiche, which is for our internal use only."

19. The Applicant brought this to the attention of the Ombudsman, who concluded that it confirmed the authenticity of the August 12, 1986 letter and of the Applicant's assertion that he believed that the 1986 divorce proceedings had been interrupted at his request. The Ombudsman therefore, on March 27, 1991, wrote a letter to the Vice President, PA, pointing out that new evidence had been obtained that warranted a reopening of the case before the Appeals Committee. He referred to the letter from the Deputy Clerk and to other new documentary evidence that would rebut apparent discrepancies in the Applicant's PHF statements about his income and education. He also pointed out that inclusion of these new charges for the first time in the Appeals Committee proceeding was contrary to due process and prejudicial to the Applicant. He suggested that the

Appeals Committee reopen its proceeding in order to avoid a possible miscarriage of justice.

20. Despite these developments, the Ethics Officer stated in a memorandum to the Vice President, PA, dated April 5, 1991, that he continued to have “serious doubts” about the Applicant’s good faith regarding the health insurance claim form at a time when he was in fact divorced. He also opined that the new documentary evidence offered by the Applicant regarding the representations on his PHF about his earlier income raised even more serious doubts about the accuracy of those representations. The Ethics Officer reaffirmed his earlier conclusion that the Applicant ought not be a staff member of the Bank.

21. The Vice President, PA, in a memorandum of April 11, 1991 to the Ombudsman and the Chairman of the Appeals Committee, stated that he would not reopen the Applicant’s case because he did not “feel that the new information is adequate to dispel the doubts about Mr. Singh’s behavior” and because “In the event that I am wrong in my assessment, Mr. Singh is not deprived of redress, since he can still pursue his rights through the Tribunal.” He expressed concern that a precedent might be set for reopening a case whenever a staff member could claim that new information was available.

22. Despite an additional request by the Applicant to reopen his case, and a request to do so on the part of the Chairman of the Appeals Committee, the Vice President, PA, once again, in May 1991, stated that he would not do so. In September 1991, all three members of the Appeals Committee panel in the Applicant’s original appeal informed the Vice President, PA, that they supported the request for reopening, that the new evidence proffered by the Applicant was significant, and that had it been available at the time of the hearing it would have undoubtedly had an important impact on the Committee’s findings and recommendations. Once again, the Vice President, PA, rejected the suggestion; in part, he stated that the grievance procedure must be pursued according to established rules and that the rules of the Appeals Committee do not provide for reopening in light of new evidence.

The Applicant’s main contentions:

23. The erroneous statements made by the Applicant in connection with the medical insurance claims were made in good faith. There was no willful misrepresentation as required for disciplinary action under the Staff Rules. The new evidence produced by the Applicant since the original decision taken by the Vice President, Personnel, upon the recommendation of the Appeals Committee proves this.

24. The alleged false statements in the Applicant’s PHF were not in any case willful misrepresentations. They were substantially true, as the evidence subsequently produced shows.

25. The allegations relating to the unauthorized use of telephones and telegrams were also unfounded, as the evidence produced shows. The Applicant was not responsible for the unauthorized uses most probably by his divorced wife.

26. With regard to the principal charge relating to the medical insurance claims the Respondent failed to respect the mandatory procedural requirements for disciplinary action laid down by Staff Rule 8.01, particularly insofar as the same Bank official was prosecutor and judge in the proceedings, whereas the Staff Rule requires that different officials carry out various aspects of the proceedings. There were also other procedural defects in these proceedings.

27. As to the additional charges, insofar as they were introduced initially before the Appeals Committee, there were procedural irregularities. The Applicant was not properly notified of these charges in the manner required by the procedural prescriptions of the Staff Rules, he was not given a proper opportunity to defend himself against them at the stage of the disciplinary proceedings, he was not notified pursuant to the Staff Rules of the disciplinary measures the Respondent wanted to take against him and he was denied the opportunity to file a request for administrative review.

28. There were several other procedural defects in the Appeals Committee proceedings which vitiated them.

29. The penalty imposed by the Respondent was out of proportion to any proven offense of misconduct on the part of the Applicant.

30. The refusal of the Vice President, Personnel, to reopen the disciplinary proceedings upon the production of new evidence, even though the Appeals Committee Panel that had made the Committee's recommendation was of the opinion that the proceedings should be reopened, was arbitrary and an abuse of discretion.

31. The Applicant made the following pleas:

(i) rescission of the ten year employment ban and elimination of the investigation report and the report of the Appeals Committee from his permanent employment file;

(ii) compensation for lost salary measured from the date of appointment scheduled to commence on July 1, 1990 until the resolution of the dispute;

(iii) compensation for accrued annual leave and the payment of an appropriate amount of compensation for the extreme hardship caused by the contested action of the Respondent;

(iv) in the alternative, a reopening of disciplinary proceedings on the understanding that they will be carried out in full conformity with Staff Rule 8.01; and

(v) reimbursement of costs incurred in defense of the Applicant's rights before the Tribunal.

The Respondent's main contentions:

32. The Applicant had no right to continued employment by the Bank after the term of his consultant appointment expired. Declaring him ineligible for appointment for 10 years is, therefore, not a violation of his rights.

33. There was ample evidence to support the conclusion that the Applicant had falsified willfully the medical insurance claims.

34. There was also good ground for concluding that the Applicant had made misrepresentations in his PHF and had made unauthorized telephone calls and sent unauthorized telegrams which were charged to the Bank.

35. The decision to prohibit any future employment was reasonable and justified by the substantial evidence of a lack of integrity on the Applicant's part provided by his conduct in relation to the medical insurance claims, his PHF and the telephone calls and telegrams.

36. There was no absence of due process as the Applicant was informed of all the charges against him and given adequate time to respond to them.

37. After considering the new evidence, the Vice President, Personnel, took a reasonable decision not to reopen the proceedings, which did not constitute an abuse of discretion by being arbitrary.

38. There is no reason for granting the Applicant any relief or any compensation for not being employed by the Bank as he has no right to such employment.

39. Costs and attorney's fees should not be awarded to the Applicant as an exception to the practice of requiring each party to bear its own costs and fees.

Considerations:

40. The Applicant requests that the Tribunal rescind the Bank's decision to bar him from its employment until the year 2000, and pay him compensation for the loss and damage he suffered as a result of that decision and costs of the proceedings.

41. The Applicant was married to M... in September 1982 in Hunstville, Alabama. They lived together in Virginia. Both parties hailed from a remote village in Northern India. In June 1986 the Applicant filed a bill of complaint for divorce against his wife. The divorce was sought in the Fairfax County Court. The record shows that on August 23, 1986, a final decree of divorce was granted by the Court. The position which resulted from this was that with effect from that date the parties ceased to be husband and wife in the eyes of the law.

42. On various dates between August and October 1988 M... received medical treatment at the George Washington University Hospital. The Applicant paid the hospital bill and claimed reimbursement from the New York Life Medical Insurance Company. The latter, administering the medical insurance on behalf of the Respondent, paid the bill. In claiming reimbursement the Applicant certified M... as his wife. He made the same representation on a number of other Bank documents.

43. The Respondent apparently learned of the divorce between the Applicant and M... As the former made the insurance claim and represented M... as his wife at the relevant time (August-October 1988), the Respondent concluded that the Applicant misrepresented his status and so falsely induced the Bank to reimburse the medical costs on that basis. The Respondent considered that a disciplinary inquiry was warranted under Section 3.01 of Staff Rule 8.01, which defines the misconduct for which disciplinary measures may be imposed.

44. The gravamen of the charge against the Applicant was that, although he well knew that M... had ceased to be his wife by reason of the divorce which he himself initiated, yet he fraudulently led the Insurance Company, acting as agent for the Respondent, to believe that the parties were still married and on that basis induced it to pay a sum in excess of \$16,000. The Applicant did not dispute that he made the representation complained of but excused himself on the ground that he believed in good faith that he and M... remained legally married. Nonetheless the Respondent decided to ban him from further employment.

45. The facts on which the Applicant's belief was grounded are, as related by the Applicant, as follows: After presenting the divorce petition on June 2, 1986, the Applicant's mother and M... pleaded with him to be reconciled with his wife. In their home in Northern India divorce was virtually unknown and such a proceeding, if carried to a completion, may permanently ruin a wife. The Applicant was accordingly reconciled with his wife on August 11, 1986. On the very next day, i.e., August 12, he wrote to the Court to inform it of the reconciliation.

46. By that date the Applicant had signed a form that was entitled "Final decree of divorce". In his August 12 letter the Applicant gave expression to his belief that, as at that date the decree of divorce had not been signed by the judge, he remained legally married. The Applicant was acting without professional assistance and foresaw that his perception of the matter might be faulty. He, therefore, requested to be advised if this was not the case and proceeded to give his contact address.

47. At the date of the Applicant's letter the dissolution of the marriage had not been perfected by the judge's signature on the decree. This was done eleven days later, that is, on August 23. In view of the terms in which that decree was couched it is a fair inference that the judge's attention was not drawn to the Applicant's letter of August 12. But the order granting the divorce was not notified to the Applicant. According to the practice of the Court this notification could only be sent if the Applicant left a stamped self-addressed envelope for the purpose. He had not done so.

48. According to the Applicant, he and M... continued to live together as husband and wife until the middle of June 1989 when he contacted the Court to initiate new divorce proceedings. He then learned, for the first time, that the earlier petition for divorce had been granted. On June 19, 1989, he brought his altered status to the notice of the Respondent by filing the latter's appropriate form. He learned of the date of the decree only when he obtained a copy of the official record on June 28, 1990.

49. The Tribunal concludes that there was insufficient evidence to support the Respondent's finding that the Applicant acted in bad faith and made willful misrepresentations.

50. The record evidences that the Applicant ordered his affairs in a number of ways which made sense only if he believed that the marriage between himself and M... subsisted. In particular, the Applicant produced tax returns, joint bank accounts, Individual Retirement Accounts with M... listed as a beneficiary, as well as an apartment lease, car insurance, credit cards, World Bank emergency contact forms etc., in both their names. All acts were performed after he notified the Court in his letter of August 12, 1986 of their reconciliation and before the commencement of the dispute with the Bank. The Respondent does not dispute this evidence.

51. Moreover, the very nature of the medical treatment which M... received provides positive support of the Applicant's claim that he believed that he and M... remained married. The treatment was to cure M...'s infertility problem. The Applicant has stated that this was because the couple were childless and desired to cement their union with children.

52. The Tribunal also takes note of an important piece of documentary evidence which lends support to the Applicant's assertion that having reconciled with his wife before the finalization of the decree of divorce, he believed his marital status remained unchanged. That is the letter of August 12, 1986, to the Fairfax Circuit Court. That letter was written promptly, one day after the reconciliation. Though the Respondent questioned the genuineness of that letter, there is insufficient evidence in the record to support the Respondent's contention particularly because the letter was subsequently incorporated in the Fairfax Court's records no later than October 1986 and was put on microfiche by that time for the Court's internal use. Therefore, the fact that the divorce decree was not at that time communicated to him shows that the Applicant could reasonably have thought himself still married to M... until a much later date.

53. As to the additional charges made by the Respondent relating to telegrams and telephone calls improperly charged to the Bank and the Applicant's income and education claims at various institutions, no conclusive evidence has been produced to support either of these charges. In any event none of these charges was sufficient ground for imposing such a severe disciplinary sanction.

54. Because the Tribunal has sustained the principal contentions of the Applicant regarding the Bank's bar to future employment, it is necessary to comment only briefly on certain additional claims of procedural irregularity. The Tribunal notes its concern with the fact that the Respondent did not introduce its allegations of income and education misrepresentations on the Applicant's Personal History Form (PHF) until the Appeals Committee was in the midst of considering the Bank's decision, made months earlier, to bar the Applicant because of an unrelated alleged fraud in his medical claims. The Bank's procedures for administrative review contemplate that the Appeals Committee will review a decision already made by a supervisor who acts on the basis of a full and fair consideration of the pertinent facts. It can reasonably be claimed by the Applicant that, here, the Bank did not make an initial decision with respect to the alleged PHF misrepresentations, for these were raised only by persons representing the Bank before the Appeals Committee, and not by the Bank authorities duly charged with making personnel decisions. The Tribunal also finds a second irregularity in the refusal by the Bank's management even to consider the possibility of the Appeals Committee reopening its proceeding in the light of significant newly discovered evidence which the members of the Committee explicitly affirmed might well warrant a different outcome in the Applicant's case before them. By insisting that the Applicant present any such corrective evidence to the Tribunal rather than to the Appeals Committee, the Bank's management treated the Committee as a judicial body upon whose decisions the Tribunal sits in review. Rather, the Appeals Committee is part of the process of administrative review, designed to provide informed recommendations, after a hearing and collegial discussion, to the Bank management who are the formal decisionmakers. Even if there might not be any formal provision for reopening of proceedings before the Appeals Committee, it would be the better course for the Bank's management to reserve the discretion, in appropriate cases, to urge such reopening, rather than in all cases to stand on technicalities and insist on the much more formal procedures of the Administrative Tribunal.

55. The Tribunal allows the Applicant's main plea, namely, to rescind the contested decision, thus lifting the

Applicant's employment ban at the Bank. This will afford the Applicant the possibility, should the Bank decide, of being hired again by the Bank, as if the investigation and subsequent decision affecting the Applicant had not taken place. This decision of the Tribunal is based on the consideration that, as a Consultant, the Applicant has no right of contractual employment by the Bank after the term of his appointment expired. He may be engaged only if the Bank so determines, although his good record of previous employment with the Bank makes his renewed employment likely.

56. In the absence of a right to be employed, the Tribunal must disallow the second plea of the Applicant, by which he "also requests compensation for lost salary measured from the date of the appointment scheduled to commence on July 1, 1990, until the resolution of this matter."

57. As to the compensation requested by the Applicant for "the extreme hardship" caused by the Bank's wrongful action, the Tribunal concludes that the Applicant was largely to blame for his own failure to follow up and inform himself on the fate of his divorce petition. The Tribunal therefore considers that substantial compensation is not justified in these special circumstances and decides to award the Applicant compensation in the amount of \$6,000.

58. A final plea of the Applicant is to request the exclusion from his employment file of the investigation report and the Appeals Committee report. The Tribunal decides that, since both reports are facts that exist, they should remain in his file.

Decision:

For the above reasons, the Tribunal unanimously decides that:

- (i) the decision of the Vice President, Personnel and Administration, dated March 8, 1991, be rescinded;
- (ii) the Respondent pay the Applicant compensation in the amount of \$6,000;
- (iii) the Respondent pay the Applicant costs in the amount of \$22,063.17; and
- (iv) all other pleas be dismissed.

Prosper Weil

President

C. F. Amerasinghe

Executive Secretary

At Washington, D.C., December 6, 1991