

Decision No. 188

Kiran Singh,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on May 7, 1997, by Kiran Singh 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 E. Lauterpacht (President of the Tribunal) as President, F. Orrego Vicuña (a Vice President of the Tribunal) and Bola A. Ajibola, Judges. The usual exchange of pleadings took place. The case was listed on February 13, 1998.
2. The Applicant complains of the termination of her employment on the ground, as alleged by the Respondent, of unsatisfactory performance whereas, in the Applicant's contention, the true ground of termination was redundancy. Because of the different payments and benefits that each ground entails, the Applicant further complains that she has suffered significant losses in terms of reduced pension, medical benefits, reassignment, training, travel and home leave. Moreover, the Applicant asserts that there have been serious procedural irregularities and abuses of discretion in the manner in which the Bank has dealt with her case, all of which have resulted in a violation of due process.
3. The Applicant joined the Bank in 1973 as a Research Assistant and made a successful career while working mostly in the Africa Region. She was promoted to levels 21 and 22 and during the 1990-1991 evaluation she was cleared for promotion to level 23. In 1993, she was invited to join the Africa-Western Africa Department, Country Operations Division (AF4CO), also within the Africa Region, where she was assigned the responsibility of task-managing various Sierra Leone missions in 1993-1994, in particular a Judicial and Legal Reform Project ("Sierra Leone Project") and an Agriculture Sector Support Project. Until she joined AF4CO she had received fully satisfactory merit awards, although remarks were made in her 1992-1993 Performance Review Record (PRR) and earlier exchanges about difficulties she had had with team membership and with her need to enhance her interpersonal skills.
4. Not long after the Applicant joined AF4CO, there were two series of episodes which, the Applicant claims, led to her eventual termination. The first series was related to the Sierra Leone Project in October-November 1993, of which both parties give different accounts. In the Applicant's view, the problem arose as a result of her protest about procurement irregularities pertaining to the hiring of a consultant allegedly by the Country Economist for Sierra Leone without her knowledge. The Respondent argues, however, that its actions during this period were prompted by the Applicant's distressful conduct, including her refusal to go on a mission, her refusal to share information, her long delays in completing reports, and the fact that during a mission she locked herself up in a hotel room for two days and then traveled around against the advice of security.
5. In any event, the fact is that relations between the Applicant and other staff members soured at this point and that some strong messages were exchanged in writing. The difficulties prompted the Applicant's manager to request the Bank's Medical Department to evaluate the Applicant's fitness for duty, which evaluation resulted in a clearance for the Applicant to work on her usual schedule, and also in a recommendation that she not take part in operational travel for the following six weeks. In this respect, the Applicant argues that proper procedures were not followed in that the reasons for the medical evaluation request were not stated. As a result of the events surrounding the Sierra Leone Project, the PRR for 1993-1994 was critical of the Applicant's

interpersonal skills, an aspect that was identified as affecting her performance. Specifically, this PRR considered the Applicant to be “generally ineffective” in resolving differences. Due to this evaluation she was, on June 24, 1994, placed on a performance effectiveness plan.

6. The second series of episodes relates to the Ghana Parliamentary Project to which the Applicant was assigned as from mid-1994. It was the Applicant’s opinion at that time that since this project involved providing assistance to a governing political body and could, therefore, violate the Bank’s Articles of Agreement, it needed to be approved by Senior Management. The project was in fact discontinued and the Applicant believes that this led to further retaliation, including her being “exiled” to her office for a period of eight months and her ultimate removal from the Division and the Department. In the Respondent’s view, the Applicant’s situation in the Division was entirely unrelated to the fate of that project since a performance effectiveness plan had been in operation for her as from June 24, 1994, and because it was only this plan that could govern her evaluation.

7. The first issue before the Tribunal is whether the Applicant was terminated on grounds of poor performance, as the Respondent argues, or on grounds of redundancy, as the Applicant believes. It should first be noted in this respect that the notice of termination dated August 17, 1995 was issued on the ground that “there were no good prospects for satisfactory performance within the Africa Region,” or elsewhere in the Bank Group. This notice was the controlling document in the process that followed and indeed was the culmination of a long period of administrative difficulties which were solely associated with the question of performance. This was also the understanding of the Applicant and her attorney at the time the administrative review of this decision was requested, as is clearly documented in the record.

8. Following the request for administrative review, the Vice President of Management and Personnel Services, by memorandum of October 23, 1995, asked another Senior Vice President to conduct the review. This document referred to “my decision to declare her redundant,” which is the basis of the Applicant’s argument that she was declared redundant and not terminated for poor performance. However, it is quite clear from the record that this was simply a mistake on the part of the Vice President -- not just a clerical error as argued by the Respondent -- and it was duly clarified in the memorandum, dated December 4, 1995, of the Vice President who conducted the review. Although suggestions for benefits were also made in the latter document using redundancy or ill health as possible parameters, these elements were not related to the grounds for termination. While the Appeals Committee recommended that the Applicant be separated on redundancy grounds, this recommendation was not accepted insofar as it implied a different ground for termination and was only accepted in respect of certain benefits that will be examined below. It is clear that the Applicant was in fact separated on grounds of poor performance and not of redundancy.

9. The Tribunal has recognized in many cases that the evaluation of staff performance is a discretionary decision within the powers of the Respondent’s management (*Lopez*, Decision No. 147 [1996], para. 36; *Romain (No. 2)*, Decision No. 164 [1997], para. 13), as it has also recognized that such evaluation “may refer not only to the technical competence of the employee but also to his or her character, personality and conduct generally, insofar as they bear on ability to work harmoniously and to good effect with supervisors and other staff members” (*Matta*, Decision No. 12 [1983], para. 47). In this case, there can be no doubt that the Applicant was a competent staff member whose technical and professional abilities were never at issue. The problem was essentially one of difficulties in her interpersonal relationships.

10. In view of the Applicant’s deteriorating working relations, the Division Chief, on June 24, 1994, gave her a performance effectiveness plan for the period of July 1-December 31, 1994, which specifically stressed “the importance that I attach to interpersonal performance as it affects the work of the division.” The Management Review Records of June 2 and July 8, 1994 also expressed the thought that if performance did not improve by the end of that year the Applicant “would be placed on a formal monitored performance plan in accordance with Staff Rule 7.01, Section 11, Unsatisfactory Performance.” The decision to give the Applicant this performance effectiveness plan was based on the need identified by the Division Chief to pay “special attention to Ms. Singh’s working with others” and the need to focus training “on building her skills in resolving differences.” It is therefore well established that the performance effectiveness plan was mostly concerned with her interpersonal relations and not with her technical competence. This decision was enough warning to the Applicant about the

situation she was facing and the steps that could follow if she did not meet the improvements defined in these first measures. Furthermore, the question of interpersonal skills had also been present in the Management Review Records for the periods of 1991-1992 and 1992-1993 and in various other documents addressed to the Applicant as from 1989, that is, even before she actually joined AF4CO.

11. The evaluation of the performance effectiveness plan was carried out first by the Senior Country Officer for Ghana in a memorandum addressed to the new Division Chief of AF4CO on November 22, 1994. While this evaluation describes the Applicant's performance as average, it was quite negative as regards her interpersonal skills. An interim review meeting with the new Division Chief was next held and summarized in a memorandum from her to the Applicant of November 27, 1994. Although this document was inconclusive, it referred to the question of interaction with team members as still being a problem. The Applicant sought to rebut the accuracy of the Senior Country Officer's evaluation of November 22, 1994 by arguing that this supervisor had confirmed to her that they were working well together and by arguing that the new Division Chief herself had complimented her for her work. Ultimately, the new Division Chief requested the removal of the Applicant from the Division by a memorandum of March 30, 1995, and the Department Director requested her removal from the Department by a memorandum of May 19, 1995, both managers invoking problematic interpersonal skills and unsatisfactory performance related thereto. As noted above, the notice of termination was issued on August 17, 1995.

12. In the view of the Tribunal there are many valid reasons for the Respondent to have evaluated the Applicant as a poor performer given her interpersonal difficulties and the manner in which this affected the work of the Division. The Tribunal is also satisfied that there were no improper motives underlying such negative assessments. The allegation of the Applicant that they were in retaliation for her views and complaints on the projects undertaken does not find support in the facts of the case, particularly as her problems surfaced much earlier than the projects mentioned.

13. However, the Tribunal must also note that the Respondent mismanaged the handling of this matter in several important respects.

14. The first serious flaw relates to the application of Staff Rule 7.01, paragraph 11.02, which provides that the Bank may terminate the appointment of a staff member for unsatisfactory performance. The Applicant has argued, and the Respondent has admitted, that she was never placed under this Rule. In fact, the performance effectiveness plan issued for her on June 24, 1994, does not invoke any rule in particular. Moreover, the Management Review Record of July 8, 1994, expressly provided that if the Applicant did not improve her performance under the effectiveness plan only then, as quoted above, "would [she] be placed on a formal monitored performance plan in accordance with Staff Rule 7.01, Section 11, Unsatisfactory Performance." Such formal monitored performance plan was never prepared and, therefore, some of the guarantees established under such Rule were not observed. While it is true, as the Respondent argues, that adequate warning about the Applicant's performance was amply and timely given and that the necessary feedback was provided to her pointing out repeatedly the problem of interpersonal skills and how to improve them, the fact remains that she was never formally placed on a monitored performance plan and that no warning of termination was issued to her in this connection.

15. The Respondent has argued that, despite the absence of a final warning, "the procedures followed were nonetheless adequate and reasonable, and satisfied the requirement of due process." However, if a staff member is not formally placed under Staff Rule 7.01, paragraph 11.02, there can be no basis on which such staff member could know clearly where the process is leading. In the present case, the possibility of termination was not mentioned either in writing or in any other way. The Respondent argues that the application of Staff Rule 7.01, paragraph 11.02, would in any event have been useless because the Applicant's performance continued to be problematic under the performance effectiveness plan. This argument is not tenable and, even if factually correct, cannot be substituted for the application of a staff rule. Although Staff Rule 7.01, Section 11, was invoked later, at the time when the process of removing the Applicant from the Division began to unfold, this could not ensure the adequate handling of the process as a whole.

16. Another problem area arose in connection with the preparation of the 1993-1994 and the 1994 PRRs which, in the latter case, followed the change of the Bank's performance review cycle to the calendar year.

17. With respect to the 1993-1994 PRR, the Applicant complained about the assessment of her performance and about the management review of July 8, 1994. She requested the pertinent administrative review of both aspects of the matter. In particular, the Applicant complained that there had been no prior critical feedback or warning, that she had obtained a low salary increase, and that the Management Review Record had been signed by a participating official a day after he had resigned from the Bank. None of these allegations was accepted in the administrative review since they all lacked merit or relevance. It should also be noted that the question of difficult interpersonal relations was very much present in all the discussions between the Applicant and management.

18. With respect to the 1994 PRR, while the Applicant has emphasized that this evaluation was biased and that the information favorable to her performance was suppressed by the Division Chief and other officials, the fact remains that, although there were on occasion positive references to her performance, the issue of interpersonal difficulties was again present at all times. Just because the Applicant's performance on the technical level might have been considered adequate in some evaluations does not necessarily mean that bad interpersonal relations should be ignored. It was for this reason that when the Ghana Parliamentary Project was discontinued, the Division Chief came to the conclusion that there was no work program matching the Applicant's skills, a situation which, contrary to what the Applicant argues, was not related to redundancy. It is also on this basis that the Applicant was first informed that she would not be given a satisfactory performance evaluation and why, in the 1994 PRR, she was considered "ineffective in all aspects of working with others."

19. Even though the Respondent's evaluation of the Applicant's interpersonal skills was correct, there was nonetheless mismanagement with respect to some of the procedures that were followed. No supplementary evaluation from the former Division Chief who had worked with the Applicant during most of the six-month period of the performance effectiveness plan was requested by the Respondent. Such a supplementary evaluation could have provided broader input for the process leading up to the 1994 PRR. A complaint made by the Applicant regarding misconduct of her former Division Chief in connection with the 1993-1994 PRR was apparently dismissed by the Ethics Officer on the basis that there were insufficient grounds to pursue an investigation, but this dismissal was not documented and the Applicant was not so informed until after she had been terminated. It must also be noted that the Management Review Record of July 8, 1994 specifically decided that it was for the Management Review Committee to judge the Applicant's performance in January 1995, a decision that was not complied with, thus leaving the normal PRR as the sole basis for evaluation. Because the matter was serious and affected a competent staff member who had worked for the Bank for many years, it was evidently recognized that it was desirable that decisions be kept at a high managerial level, an objective that was not achieved.

20. Also the timetable followed in the preparation of the 1994 PRR is open to question. As the Applicant has argued, this PRR was not finalized until after her removal had been decided and the notice of termination issued. While some delays might be explained by requests made by the Applicant herself, it was not right to reach the decision of termination without the complete PRR. The Respondent has explained the delay in preparing Section 3 of the PRR on the ground that, since that Section is concerned with future work, it was not relevant in this case as termination had already been decided. The Management Review Group for its part postponed consideration of the PRR because it was waiting for the Applicant to complete Section 4. But the Applicant said that she would not do so until all other Sections were prepared. Whatever is the explanation for this vicious circle, the fact is that the Applicant is correct on this point. Section 4 is designed to contain a staff member's comments on all managerial views included in other sections of the PRR and this is the place where the Applicant would have been able to respond to any charges or complaints made against her performance, even to the fact that Section 3 did not define a work program. All the other parts of the PRR must therefore be completed before the staff member is required to complete Section 4. The Management Review follows the completion of the PRR. Moreover, in the present case, the fact that both the Department Director and the Division Chief were part of the Management Review Group could be seen as affecting adversely the necessary transparency and impartiality of the process, since both officials had requested the Applicant's removal before

the PRR came to be considered by the Management Review Group.

21. The Tribunal has held in a previous case:

Two basic guarantees are essential to the observance of due process in this connection. First, the staff member must be given adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached. Second the staff member must be given adequate opportunities to defend himself. (*Samuel-Thambiah*, Decision No. 133 [1993], para. 32).

The paradox of the present case is that the Applicant had more than adequate warning on most issues, except termination, and many opportunities to defend herself -- the voluminous correspondence and documentation of the record speaking for themselves --but the mismanagement of the procedures followed resulted in a disregard for due process. Staff rules are not written for the sake of formality but precisely to secure an orderly process that will be fair and ensure that the staff member affected can feel that his or her case has been properly considered. Even if the Respondent is in substance right about the decision that it took with respect to the Applicant, its departure from the relevant rules amounts to an abuse of its discretion.

22. A third problem area concerns the payments and benefits associated with the Applicant's separation from the Bank. In spite of the fact that the Applicant had completed 22 years of service with the Bank and that she had reached the age of 49, the Respondent decided at first that her termination would be made without any severance payments. While it is true that Staff Rule 7.01, paragraph 11.04, provides that a staff member separated for reasons of unsatisfactory performance is not entitled to severance payments, it is also true that the same Rule allows for exceptions taking into account the circumstances of the case. On this point, it is appropriate to make a distinction between unsatisfactory performance based on professional incompetence and unsatisfactory performance based on questions of personal relations. The two situations are different in nature. Given the circumstances of this case, it would not have been unreasonable for the Bank to have had recourse to the exception at the outset. Such recourse would in any event have been limited to 50% of the amount that would have been payable to the Applicant had her employment been terminated on grounds of redundancy. But the fact that the Respondent did not apply the exception does not appear to have been related to improper motive, retaliation or vindictiveness, as the Applicant believes, but simply to a rather mechanical application of the Rule.

23. The situation was partly corrected in the administrative review concluded on December 4, 1995, in which the Applicant was offered 22.5 months' net salary as a severance payment, an amount equivalent to what she would have received under redundancy or ill health, but with the condition that she release all claims and appeal rights. As an alternative, she was offered 11.25 months' payment, this being the maximum of 50% provided under the Staff Rule discussed above, "in recognition of the strong humanitarian aspects of the case." It should be noted again that reference in this context to redundancy payments is made as a standard of measurement and not because the Applicant had been declared redundant. It follows that the Applicant's argument that the above-mentioned administrative review would have resulted in terms less favorable than the original declaration of redundancy is out of place and not comparable at all with a situation of the kind that the Tribunal addressed in the *Samuel-Thambiah* case cited above. Since the first option offered exceeded the maximum allowed under the Rule, it was lawful for the Respondent to have conditioned such payment upon a release of claims. The Applicant opted for the alternative and the retention of the right to pursue her claims. In any event, the Respondent made known that it was prepared to make such payment as a lump sum and not in the form of special leave, a decision that had implications with respect to other potential benefits for the Applicant, notably the possibility of reaching the "Rule of 75" for pension benefits and the "Rule of 70" for medical coverage.

24. The Applicant pursued her claims before the Appeals Committee. This body concluded on December 11, 1996 that the Applicant should have been declared redundant and recommended, among other things, separation on these grounds with all associated benefits, including special leave and career search assistance. The Vice President of Human Resources, by a letter to the Applicant of February 3, 1997, accepted the

recommendations of the Appeals Committee “to the extent that it provides you the severance payments that you would have received had you actually separated on grounds of redundancy.” This does not mean that the ground for separation was changed but only that the Applicant’s severance payments would be made equivalent to those under redundancy as the standard of measurement. The Applicant was thereby entitled to receive the 22.5 months’ net salary as a severance payment, from which the 11.25 months’ payment already received would be deducted. An additional lump sum payment was authorized on this basis. The total of both severance payments was \$119,268.74.

25. Because the Applicant was not separated on grounds of redundancy but for unsatisfactory performance she is not entitled to other benefits associated with redundancy. The option, exercised by the Respondent for payment in the form of a lump sum rather than a grant of special leave, was within the discretionary powers granted under Staff Rule 7.01, paragraph 12.01.

26. The Tribunal turns now to the question of remedies. The Respondent has argued in this connection that in granting the additional severance payment recommended by the Appeals Committee there has been adequate compensation to the Applicant for some of the procedural flaws discussed above, notably the fact that she was not dealt with under Staff Rule 7.01, Section 11. However, in the view of the Tribunal the disregard for due process and abuse of discretion resulting from the mismanagement of the case goes wider than the fact that the Applicant was not dealt with under Staff Rule 7.01, Section 11. Since it is most unlikely that the final outcome would have been different if the appropriate procedures had been followed, the quashing of the decision to terminate the Applicant’s employment, as requested by the Applicant, is not a realistic option. Moreover, the possibility that the Respondent could reinstate the Applicant must be ruled out in the light of the circumstances of the case. It follows that the appropriate remedy in this case is an award of compensation to the Applicant for the intangible damage which she has suffered as a result of such mismanagement, to be paid in addition to the severance payments already received.

DECISION

For the above reasons, the Tribunal unanimously decides that:

- (i) the Respondent shall pay the Applicant compensation in an amount equivalent to three months’ net salary in addition to the severance payments made;
- (ii) the Respondent shall pay the Applicant costs and expenses in the amount of \$6,418; and
- (iii) all other pleas are dismissed.

Elihu Lauterpacht

/S/ Elihu Lauterpacht
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At London, England, May 15, 1998