

Decision No. 257

Ranga Madabushi,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of applications, received on July 11 and 19, 2001, by Ranga Madabushi against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Thio Su Mien (a Vice President of the Tribunal) as President, Elizabeth Evatt and Jan Paulsson, Judges. The Respondent, at the Tribunal's request, provided a consolidated answer. Requests made by the Applicant for the production of documents and for provisional relief were denied by the Tribunal. The usual exchange of pleadings took place and the case was listed on October 23, 2001.

2. The Applicant's first application challenges his non-selection for an Open-Ended appointment. The second application challenges the conduct of an investigation by the Ethics Office. In each application, the Applicant claims reinstatement, three years' net salary or other appropriate relief. He also claims costs.

The relevant facts

3. The Applicant was an Information Technology Specialist with the Bank. He began work with the Bank in March 1994 as a Long-Term Consultant in the Finance and Private Sector Development Department. His work was to provide technical support for end-users of the Bank's information technology (IT) systems. The Applicant had good assessments. In his review up to December 1997, dated April 1998, he was found to be fully effective and rated at either the highest or second highest level.

4. In May 1998, the Applicant posted comments in an open discussion space on an internal Bank website. The Applicant wanted to stimulate discussion about the use of technology tools in developing the Knowledge Base system. He quoted from an article available on the Internet which called for worthwhile knowledge to be put into the system rather than useless material. Soon after, for reasons which are not clear, the open discussion space data was lost. Although it was partly reconstructed, the Applicant's comments could not be restored.

5. The Applicant alleges that in June 1998 his supervisor told him that his actions might get everyone fired, and that he should look for a job outside the Bank. The Applicant believed that these remarks were made in reaction to the comments he had posted on the open discussion space. The Applicant's supervisor had no recollection of making such statements.

6. Around the end of June 1998, the Applicant had a difference of opinion with his supervisor about the installation of new software in the system. The Applicant did not want to proceed with the installation until his concerns had been resolved. On July 1, his supervisor threatened him with termination if he did not proceed. He replied that he would do so, but was uncomfortable because his concerns had not been answered. The Applicant says that he raised the problem with the unit manager who told him that his supervisor was angry with him because of the comments in the open discussion space. The manager later stated that he had no recollection of the alleged conversation.

7. The Applicant interprets these events to the effect that his open discussion space comments were seen as a challenge to the Chief Information Officer of the Information Solutions Group (the "CIO-ISG"), and that his supervisor had been put under pressure by management of the Information Solutions Network (ISN) to

terminate him. The Applicant's supervisor, on the other hand, has affirmed that he was not even aware of the comments until over a year later, during the ethics investigation initiated by the Applicant.

8. In August 1998, the Applicant was informed that his contract would be extended for one year, with an increase of 3.6% for fully satisfactory performance.

9. In July 1998, as part of the phase-out of Long-Term Consultancies, two new appointment types were created: Open-Ended and Term. In order to convert Non-Regular Staff (NRS) positions, such as that held by the Applicant, to Open-Ended positions, the new positions had to be advertised and the best-qualified candidate chosen. According to the Bank, some units chose to indicate the existence of a "preferred" candidate in this process. This meant that a successful incumbent was competing for (but not guaranteed) the position. If an incumbent were not named as a preferred candidate, this would be a warning that he or she was not a strong candidate, and would have to contest the position.

10. The Applicant claims that around June 1998 his supervisor and his manager told him that he would not be "selected" for regularization. He claims that on or about October 6, 1998, he was once again informed verbally by his supervisor that his NRS position would be converted to an Open-Ended position and that he would not be "selected." The Bank contends, on the other hand, that he was told that he would not be "preferred."

11. In any event, in an e-mail dated October 29, 1998 to a Human Resources Manager, the Applicant raised his concern at having been told verbally that he would not be a "preferred" candidate. The Human Resources Manager sent him information about the practice in regard to "preferred" candidates. A Human Resources Officer on her team later met with the Applicant and gave further explanations of the process.

12. On November 5, 1998, the Applicant's supervisor e-mailed him about the conversion process for NRS positions, and informed him that "[p]ursuant to [the] strategic direction in IT," he would not be the "preferred" candidate for the new position. He would, however, be welcome to apply. The supervisor also recommended that he apply for jobs elsewhere in the Bank.

13. On November 16, 1998, the Applicant contacted Confidential Feedback, ISN/ISG, through an assistant to the ISN Professional Development Board (the "ISN Board"). He complained that, despite his fully satisfactory performance, he would not be converted to a Regular position. He had been told verbally that this was because he had participated in the open discussion space. That was not liked by ISG, which controlled all ISN positions. He wanted to discuss personally an issue about a conflict of interest. He received no reply until November 4, 1999, a year later.

14. On December 18, 1998, the Applicant contacted the Vice President of Human Resources about his non-conversion. He said that although he had had good reviews, he was being terminated for asking simple questions on IT issues. He had been told he fell under ISN, but had had no reply from the ISN Board.

15. The Bank alleges (and the Applicant denies) that the Applicant's performance deteriorated after he had been informed that he would not be the preferred candidate for his position (designated as Position No. 5061). The supervisor's evidence was that the Applicant often failed to report for duty, had outbursts with team members and poor communication with clients.

16. On January 4, 1999, the Applicant's supervisor and manager met with him and put him on a performance improvement plan (PIP). They gave him written instructions regarding needed improvements and informed him that his performance would be evaluated against the criteria. An unsatisfactory evaluation would lead to termination proceedings. The Applicant alleges that they threatened him that he would be fired if he protested about not being a preferred candidate.

17. On March 22, 1999, the Applicant's supervisor informed him by e-mail that he had successfully completed his PIP and had met the performance criteria. The Applicant claims, however, that he had no intermediate feedback during the PIP and that there were no written records of his performance in his file. He also states

that his supervisor did not carry out his Overall Performance Evaluation in April 1999 (for 1998), though it was done for all his colleagues.

18. On or about May 14, 1999, the Applicant contacted the Vice President of Private Sector Development & Infrastructure (the "VP-PSI") to express concern about being subjected to an improper PIP and threatened with early termination. She replied on May 18, to say that the situation was being handled by his colleagues in the ISN network. The Applicant states that he understood from this message that an investigation was being conducted, though that was not in fact the case.

19. The Applicant applied for a number of positions in the Bank, including one of seven advertised positions of Information Analyst, Position 2106. He was short-listed for that position, but was informed in June 1999 that he had not been selected.

20. On May 14, 1999, four Information Analyst positions in PSI were advertised as Position No. 5061. Three of the positions had "preferred" candidates. The Applicant's supervisor, who was the hiring manager, confirmed to him that he was not one of the "pre-selected" candidates. The Applicant nevertheless applied for Position 5061 and was short-listed.

21. On June 26, 1999, the Applicant reminded the ISN Board assistant of his earlier correspondence of November 16, 1998, to which there had been no reply. The Applicant raised concerns about being put on probation for speaking out and about being asked to leave the Bank. He sent a copy to the CIO-ISG. On June 28, the Board assistant replied that human resource matters were outside his scope, and that the Applicant should contact his human resources team. On June 30, the CIO-ISG informed the Applicant that there was no question of him being penalized. He should feel free to use the Bank's grievance procedures and could contact his Human Resources Officer.

22. On July 2, 1999, the Applicant put a message in the "Speakout" space on the Bank's website to inquire whether it was normal for managers to put NRS on probation and to threaten them with termination. He was advised that if he had a problem, it should go to the Human Resources team in his unit.

23. The Applicant was interviewed for Position 5061 by a panel made up of his supervisor and an Information Officer, Partnership & Knowledge Programs. He was informed on July 8 that he had not been selected. The Bank states that the decision was made on the basis of technical abilities.

24. On August 16, 1999, the Applicant wrote to the Vice President of Human Resources, asserting again that his "big mistake" in posting the comments in the open discussion space had resulted in threats of termination, and that he had received no performance evaluation. He did not blame his supervisor or manager, but considered that he had been subjected to retaliation.

25. On August 19, 1999, the Applicant contacted the CIO-ISG reiterating many of the same concerns. He said that he had been short-listed for ISG positions but had been asked why he should be employed if he did not like ISG policies.

26. On August 23, 1999, the Applicant wrote to the Manager of the Bank's Office of Professional Ethics. He expressed his belief that his managers had retaliated against him as a result of his May 1998 comments in the open discussion space, and asked whether professional ethics had been violated. An Officer of the Ethics Office spoke to him on August 26 to clarify his concerns.

27. On August 24, 1999, the Applicant contacted the CIO-ISG about his earlier communication of August 19, which he described as a request for administrative review of the decision not to select him for Position 2106. He also raised his concerns about his non-selection for Position 5061, saying that he had been subjected to unjustifiable differentiation as compared with other information technology NRS in PSI who had received offers of regularization. The Bank denies that this was a request for administrative review.

28. On September 5, 1999, the Applicant's employment with the Bank ended due to the expiration of his appointment.

29. The CIO-ISG did not respond to the Applicant's communication of August 24, 1999 until October 4, 1999. He then informed the Applicant that his comments in the open discussion space had had no impact on the selection for Position 2106. A candidate with better skills had been selected. The Applicant replied that he had not had a response with respect to Position 5061, and asked if he should raise the matter elsewhere. On October 5, the CIO-ISG replied that Position 5061 was not an ISG position, adding that he was convinced that the views expressed in the open discussion space had not been relevant to the non-selection of the Applicant for Position 2106. He said that he wanted to end the exchange.

30. On October 4, 1999, the Applicant submitted to the VP-PSI a request for administrative review of the failure to select him for Position 5061. He claimed that there had been retaliation against him by the ISN/PSI network management because of a conflict of interest and because of the views he had expressed in the open discussion space. He complained of unjustifiable differentiation. The VP-PSI replied on November 18 to say that the Applicant was out of time to appeal his non-selection. As he had indicated that he had been advised by his supervisor on November 16, 1998 that he would not be selected for the position, he should have challenged the decision within 90 days of that date.

31. Also on October 4, 1999, the Applicant inquired about the status of the complaint he had made to the Ethics Office on August 23, 1999. He was interviewed by an Ethics Officer once again, in early November 1999. On November 4, he wrote to her, setting out in detail his concerns about the open discussion space, the alleged retaliation against him, the alleged conflict of interest involving his supervisor, and other matters.

32. On November 2, 1999, the Applicant wrote to the ISN Board assistant to complain that his earlier communication to the ISN Open Feedback Facility had not been addressed. He was concerned that it may have been sent to his supervisor. The Chair of the ISN Board replied on November 4 to say that the Applicant's message had been sent to the ISN Board and not to anyone else. No action had been taken, as it was not within the Board's jurisdiction. Their response would have been to contact his human resources counselor.

33. On November 4 and 19, and again on December 6 and 16, 1999, the Applicant forwarded additional documents to the Ethics Office. He said he had relied on Human Resources, but had been misled; they had told him his position was ISN, although it was PSI.

34. On December 6, 1999, the Applicant wrote to the Senior Ombudsman. His main concern was that he was out of time for administrative review because the Human Resources teams responsible for PSI and ISN had deliberately temporized until the 90-day time limit for seeking review had expired.

35. On December 16, 1999, the Applicant filed an Appeal (No. 559) with the Appeals Committee challenging the decisions not to select him for Positions 5061 and 2106.

36. Early in 2000, an Ethics Officer, Mr. X, was given responsibility for the Applicant's complaint. He reviewed the documents and interviewed a Senior Human Resources Manager and other Human Resources Officers who had dealt with the Applicant. He also interviewed the Applicant's supervisor. According to the Respondent, the supervisor said his decisions had been based on the Applicant's performance which had deteriorated in 1998. He had not seen the open discussion space comments; when they were shown to him, he had not found them to be derogatory or inflammatory.

37. Mr. X contacted the Applicant in March 2000 to schedule an interview. He later cancelled it and informed the Applicant that he would wait until the Applicant contacted him before scheduling another meeting. The Applicant and Mr. X were unsuccessful in rescheduling another meeting time.

38. According to the Respondent, Mr. X concluded, on the basis of the documentary record and the interviews, that there had been no "retaliation" as defined in Staff Rule 8.01, which prohibits "[r]etaliation by a Bank staff

member against any person who in good faith reports suspected misconduct.” The Applicant had not made allegations of staff misconduct. Mr. X also concluded that there was no indication that the Applicant’s non-selection for Position 5061 lacked transparency or impartiality. The Applicant was informed of these findings on April 19, 2000.

39. Although he had been informed by the Ethics Office that no further investigation was contemplated, the Applicant sent additional documents to Mr. X in July and August 2000. Once again he set out all his concerns, including his allegation of retaliation, and the grounds for his claim. On August 14, 2000, the Ethics Office informed the Applicant that these materials had been reviewed but did not warrant a change of view regarding the Applicant’s allegations.

40. On August 17, 2000, the Applicant filed a second Appeal (No. 575) with the Appeals Committee, challenging the conduct of the ethics investigation by the Ethics Office. The two Appeals were consolidated and a hearing was held on November 25, 2000 in regard to Appeal 559, and on January 10, 2001 in regard to Appeal 575.

41. In regard to Appeal No. 559, concerning the Applicant’s non-selection to Positions 2106 and 5061, it appears that the Appeals Committee reached these conclusions: that there was no support for the allegation of retaliation, the Applicant’s May 1998 open discussion space comments being regarded as inoffensive; that the selection process for Position 2106 was proper, the response of the VP-PSI on November 18, 1999 having had no bearing on the actual process; and that the Applicant’s managers had failed to develop a detailed record of performance issues prior to his placement on the PIP and had failed to provide him with required feedback, an irregularity that warranted compensation. The Committee concluded also that there was no evidence of wrongdoing in regard to Position 5061; but there should have been an additional member on the selection board in order to conform to procedures, and this warranted compensation.

42. The Appeals Committee recommended a total award of \$15,000 in Appeal No. 559, \$7,500 of which had already been distributed to the Applicant in the form of provisional relief. The Respondent accepted the recommendation of the Appeals Committee.

43. In regard to Appeal No. 575, concerning the Ethics Office investigation, the Bank states that the Appeals Committee found that all major issues had been considered, and that both the Applicant and his supervisor had been afforded ample opportunity to be heard and to corroborate their respective versions of relevant events. The failure to interview the Applicant was not an abuse of discretion. The Appeals Committee concluded that a reinvestigation of the Applicant’s case was unjustified and that no relief should be granted.

Applications to the Tribunal

44. The first application to this Tribunal challenges the decision not to appoint him to Position 5061, a decision notified to him on July 8, 1999. The second application challenges the decision of the Ethics Office of April 19, 2000 to the effect that there had been no retaliation and no lack of transparency or impartiality in the appointment process.

45. The Applicant has raised a number of interrelated issues in regard to his claim that the decision not to appoint him to an Open-Ended position was abusive. Although he has not articulated his complaints clearly, it is the Tribunal’s duty to isolate the real issues in the case. (*McNeill*, Decision No. 157 [1997], para. 26; *Oben*, Decision No. 235 [2000], para. 22.)

46. The Applicant’s main allegations in regard to the decision not to appoint him can be summarized as follows: his open discussion space comments led to a vindictive attitude towards him by his supervisor and management, to threats of termination, to his not being given preferred status, and ultimately to his not being appointed to a new Open-Ended position. This pattern of conduct, he claims, amounted to unfair “retaliation” directed against him, contrary to Staff Rule 8.01. He further alleges that when he made a complaint about the decision not to pre-select him, he was put on a wrongful PIP, the ulterior motive of which was to prevent further

complaints; this is also alleged to be retaliation. In addition, he claims that the PIP was wrongfully carried out and that he was denied a performance review for 1998, which hindered him in securing an appointment. His attempts to have all these matters investigated were frustrated by delay and confusion. Although some of these issues have little direct bearing on the actual decision not to appoint the Applicant, they have some relevance to the second application, and will be briefly considered.

47. The Applicant alleges that his comments in the open discussion space were not liked by ISG managers, and that they conflicted with IT policies instituted by the CIO-ISG. He further alleges that his supervisor's critical comments and threats of termination and non-pre-selection were retaliation for his open discussion space comments.

48. Staff Rule 8.01, paragraph 3.02, provides that: "Retaliation by a Bank staff member against any person who in good faith reports suspected misconduct is expressly prohibited and is grounds for disciplinary action under Staff Rule 8.01." The Tribunal cannot find that the conduct alleged by the Applicant comes within the definition of "retaliation" in the Staff Rule, as the Applicant did not allege misconduct by any Bank employee. The Applicant calls for a broader interpretation of "retaliation." This can be treated by the Tribunal as an argument that his open discussion space comments improperly influenced the decision not to pre-select or appoint him.

49. The Tribunal notes that when the Applicant first complained in October 1998 that he had been told that he would not be a "preferred" candidate, he did not identify his supervisors' adverse reaction to the open space comments as the reason for that decision. His stated concern at that time was that his supervisor had a conflict of interest in relation to another position in which he was said to be interested. The Applicant first identified the open discussion space issue as the reason for not giving him "preferred" status on November 16, 1998 when he contacted "Confidential Feedback" for ISN/ISG, and he did so again in December 1998 when he contacted the Vice President of Human Resources about his concerns. His complaint was that as his performance was fully satisfactory, and as he was the only one in his team not to be given preferred status, there must have been an improper motivation in the decision, and that this arose from his open discussion space comments.

50. The Bank submits that the Applicant's supervisor had not seen the open discussion space comments and was not aware of them when the relevant decisions were made. The decision not to give the Applicant preferred status, thus, had nothing to do with those comments. It claims further that no one has ever suggested that the comments were anything but innocuous.

51. The Bank observes that it would not be surprising or controversial if management did not expect the Applicant to be a strong candidate for the position. The supervisor later said that there had been a continuous decline in the Applicant's performance in 1998. On the other hand, no specific weaknesses in his performance were identified, and his contract was renewed in September 1998 for one year, on the basis of "fully satisfactory performance."

52. The Tribunal finds that although the reasons for not giving the Applicant "preferred" status remain unclear, the balance of evidence does not support the conclusion that there was a connection between the Applicant's comments on the open discussion space and the later threat to terminate him, or the decision not to give him preferred status.

53. The Applicant claims that he was improperly subjected to a PIP in retaliation for seeking redress through the Bank's grievance system, and that in order to prevent him from pursuing his complaint (about not being given "preferred status") he was removed from the PIP only after the 90-day period for seeking review had expired. The Applicant asserts that he had excellent reviews during his time in the Bank, and that he had not been told that his performance was unsatisfactory until January 4, 1999. He also complains that no records were kept of his performance while the plan was being carried out, and that there were no performance reviews or weekly reviews or meetings to discuss his performance from January 4 to March 22.

54. The supervisor's evidence was that there had been a continuous decline in the Applicant's performance, but the massive deterioration, including failures to report for duty, had begun about the time that he was

informed that he was not going to be a preferred candidate. It ultimately led to the PIP.

55. The Applicant accepted that he may have been absent on sick leave at times, but said that he left a message or an e-mail for the team. He alleges that the dates given for the decline in his performance were inconsistent. At one point it was stated to be after September/October 1998, elsewhere after November, or yet again during the whole year.

56. The Tribunal observes that the Applicant had been given good assessments up to the end of 1997, and that as late as August 1998 his performance was said to be “fully satisfactory.” However, the written Evaluation Period Action Plan of January 1999 implies that there were certain problems with his performance at that time. Those problems are consistent with the later allegations made by the supervisor in his evidence to the Appeals Committee. The supervisor said that he had reminded the Applicant that his behavior was not acceptable. However, there is no written record of any concerns expressed by him about the Applicant’s performance, or which suggest that the Applicant’s behavior had deteriorated significantly in the latter part of 1998.

57. The reasons why the Applicant was put on a PIP are uncertain. There is, however, nothing to support the view that the PIP was imposed on the Applicant in retaliation for any complaints he had made, or that he was prevented by the PIP from either pursuing these complaints or raising further issues. Once again, it was not retaliation within the meaning of Staff Rule 8.01.

58. The Bank’s failure to provide feedback on the Applicant’s performance during the period of the PIP was considered to be an irregularity by the Appeals Committee, which recommended compensation. The Applicant’s other complaints were that he was denied an Overall Performance Evaluation from January 1998 to September 1999, which disadvantaged him in his job applications, that he was not provided with adequate references, and that he got a bad reference from his supervisor. These issues have no bearing on the decision not to appoint him to Position 5061.

59. The Applicant’s main complaint is that the decision not to appoint him to an Open-Ended position was unfair retaliation against him for his open discussion space comments, contrary to Staff Rule 8.01. He contends that the selection process was prejudged, as he had been told that he would not be selected as a result of his comments. The Applicant complains also that the decision was abusive and unfair, as he was the only one of his team not to be given preferred status, was well qualified, and had good assessments, whereas the successful candidate was less qualified. He also claims that the lack of a third member on the panel was an abuse of discretion, as the guidelines require three managers on the interview panel.

60. The Bank submits that the Applicant had been told that he was welcome to apply for the position. He did in fact apply and was short-listed. However, he was not equal to the other candidates. The evaluation shows that he answered only 8 out of 12 questions correctly, while others answered 10 or 11. He had less knowledge of current trends in his field, was less resourceful and had less effective communication skills.

61. The assessment and selection of candidates is an exercise of managerial discretion which the Tribunal can overturn only if there is evidence of abuse of discretion, such as arbitrariness, discrimination, improper motivation or failure to follow fair procedures. (*Saberi*, Decision No. 5 [1981], para. 24; *Jassal*, Decision No. 100 [1991], para. 30.) In the present case, there was an open competition for Position 5061, and the Applicant was short-listed for an interview. The assessments included in the record suggest that the Applicant’s skills were not equal to those of the chosen candidate.

62. For reasons already outlined, the Tribunal does not consider that the Applicant’s allegations come within the definition of “retaliation” in Staff Rule 8.01, or indeed that they substantiate a claim of retaliation in the broader sense. Further, the Tribunal is unable to conclude that the Applicant’s comments in the open discussion space played any part in the decision not to appoint him or contributed to any improper motivation in that regard. The evidence does not support a conclusion that the supervisor or senior management knew of the comments or reacted adversely to them, or that they led to pressure on his supervisor to remove him from the Bank. In any event, it seems improbable that the comments themselves could have led to such severe consequences as the

Applicant asserts. Nor is there evidence to support a finding that the Applicant was not hired for Position 5061 as “retaliation” for the complaint he made on December 18, 1998 to the Vice President of Human Resources, even taking a broad view of that term.

63. Although the Applicant asserts that he was told in advance that he would not be “selected” or “appointed” to the new position, as distinct from not being “preferred” or “pre-selected,” the Tribunal is unable to find any support for this assertion.

64. The constitution of the selection panel by only two members was not in accordance with the usual practice of three. The Applicant complains that this was an abuse of discretion, especially as one of the two panel members was his supervisor, who was the hiring manager for the position. He says that he was estranged from his supervisor, who had threatened him with termination, informed him that he would not be a “preferred” candidate, and put him on a PIP. The Tribunal observes, however, that the supervisor explained these actions, and why he had foreshadowed termination, in his evidence to the Appeals Committee, and that this evidence conflicted with that of the Applicant in a number of important respects. The Applicant’s version of events was not corroborated in any significant respect.

65. The Appeals Committee regarded the constitution of the panel as no more than a procedural irregularity and recommended compensation. This was accepted by the Bank.

66. The Applicant has failed to put to the Tribunal any material to support his contention that the supervisor was improperly motivated in his actions or that the procedural irregularity resulted in an abuse of discretion. His allegation that the supervisor reacted negatively to his open discussion space comments and his later assertion that he was given fewer questions than the other candidates in the selection process are without substance.

67. The Applicant complains of confusion and delay by the Bank in handling his complaints, and alleges that he was subjected to harassment and intimidation in that respect. He contends that the Bank prevented him from seeking redress in a timely fashion by its delays, by sending him back and forth to different agencies, and by its confusion over which department was the right one to deal with his claim. He contends that Staff Rule 9.03, paragraph 5.01, was violated because of this delay in responding to his request for administrative review, and that he is entitled to a default judgment.

68. The Respondent argues that a default judgment for delay is not contemplated by the rules and that the Applicant did not suffer prejudice or injury as a result of any delays. In any event he contributed to the confusion. He always had access to Human Resources officers and to counselors.

69. The Tribunal observes that the Applicant raised many issues in his challenge to the decision not to appoint him, in an effort to show prejudice, bias and impropriety in the ultimate decision. His numerous communications to different agencies contributed to a great deal of confusion as to what issues he was contesting. Eventually, however, he was able to pursue his challenge to the decision not to appoint him to a permanent position. The Tribunal is not able to conclude that the Applicant was prejudiced by confusion as to which channels he should have pursued.

70. It is, however, unfortunate that the VP-PSI’s reply of November 18, 1999 informed the Applicant that he was out of time to appeal his non-selection for Position 5061, on the basis that the decision had been made in November 1998, when the Applicant was advised in writing that he would not be a preferred candidate. The Applicant took this statement as confirmation that it had been finally decided not to appoint him on that date, and this added to the confusion about his recourse. It is clear from the record that the final decision was not made until after the interviews for Position 5061 had been conducted. However, the Applicant has not in fact been precluded from challenging that decision.

71. The second application challenges the decision of the Ethics Office that there had been no retaliation and no lack of transparency or impartiality in the appointment process. The Applicant complains also that the investigating Ethics Officer, Mr. X, did not interview him, did not deal with all the issues he had raised, and did

not investigate his PIP or the fact that he was not given a performance evaluation. The Applicant further complains that the Ethics Office investigation was not supported by documentation.

72. The Applicant relies on Tribunal jurisprudence for the propositions that the purpose of an investigation is to develop a full and fair record of the facts and that not every aspect of due process is spelled out in Staff Rule 8.01. (*Sjamsubahri*, Decision No. 145 [1995].)

73. The Applicant's main complaint is that the Ethics Office should have taken a broad view of the meaning of "retaliation," rather than limiting itself to the meaning set out in Staff Rule 8.01, paragraph 3.02. A common sense approach would have allowed proper consideration to be given to his claim that he had not been selected for appointment because of his comments in the open discussion space and his later complaint of December 18, 1998.

74. The Tribunal has already concluded that there is no evidence to support a finding of retaliation as defined in Rule 8.01, as the Applicant did not complain of misconduct falling within the meaning of paragraph 3.01. The wider view of retaliation that the Applicant has argued for is essentially a claim that there was an abuse of discretion or improper motivation in the decisions challenged. The Tribunal has already dealt with this claim in connection with the Applicant's complaint concerning his non-appointment.

75. In regard to the Applicant's claims that he was not interviewed by Mr. X and that he had no opportunity to rebut the claims of management, the standard to which he was entitled, as an accuser, was that of a fair procedure entitling him to be heard and to substantiate his charge. (*McKinney (No. 2)*, Decision No. 206 [1999], para. 32.) That standard was satisfied. The Applicant had earlier met with another Ethics Officer, and later indicated in writing to the Ethics Office that he had provided all the information needed for the investigation. The purpose of the investigation was to gather information and to establish and find facts, so that the Bank could decide whether to take any other action pursuant to the Staff Rules. (*Rendall-Speranza*, Decision No. 197 [1998], para. 57.) The Bank was not obliged to provide transcripts of interviews to the Applicant.

76. In regard to the Applicant's complaint that the Ethics Office did not deal with all the issues he had raised, in fact they are essentially the same as those he has raised in his application in respect of the decision not to regularize his position. The fact that the Ethics Office expressed the view that the selection process did not lack transparency or impartiality has not precluded the Applicant from challenging his non-appointment in these proceedings, or from claiming that there had been an abuse of discretion in that respect. Nor has it precluded the Tribunal from considering those issues. For similar reasons, there is no substance in the Applicant's claim that there is no documentation to support the findings of the Ethics Office. The procedural irregularities alleged by the Applicant in relation to the ethics investigation have little bearing on the claims which have been considered by the Tribunal.

77. For the above reasons, the Tribunal decides that there was a procedural irregularity in the appointment process, but that the appropriate and sufficient remedy is that which has been the subject of an award of compensation recommended by the Appeals Committee and accepted by the Bank. No other grievances raised by the Applicant are substantiated.

Decision

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

/S/ Thio Su Mien

Thio Su Mien

President

/S/ Nassib G. Ziadé

Nassib G. Ziadé

Executive Secretary

At Washington, D.C., December 4, 2001