

Decision No. 363

**Dariusz Malekpour (No. 2),
Applicant**

v.

**International Bank for Reconstruction
and Development,
Respondent**

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute and composed of Jan Paulsson, President, Francisco Orrego Vicuña and Florentino P. Feliciano, Judges. The application, received on 25 July 2006, is the second filed by the Applicant against the Bank. The prior application resulted in two judgments of the Tribunal: *Malekpour*, Decision No. 320 [2004] and *Malekpour*, Decision No. 322 [2004]. After the usual exchange of pleadings in respect of the claim presented in the current application, the case was listed on 15 March 2007 for a decision on the merits.

2. In his first application to the Tribunal, the Applicant listed the acts and decisions that he was contesting (see *Malekpour*, Decision No. 320 [2004], at para. 10) in the following manner:

- (i) identification of the Applicant – as of the mid-1990s by the senior management in Finance – as a member of a group of staff suffering from various degrees of “dysfunctionality” that needed to be dealt with;
- (ii) failure to inform the Applicant before October 3, 2003 of the mid-1990s decision to identify him as a member of “dysfunctional” staff and targeting him for “dysfunctionality” treatment;
- (iii) retaliatory actions and decisions against the Applicant pursuant to the mid-1990s decision. The retaliatory actions and decisions became explicit in early 2000 and gained in intensity over time;
- (iv) mismanagement of the Applicant's career;
- (v) failure to promote the Applicant in 2000 on the ground that “... all finance managers hated [him] ...”;
- (vi) failure to provide the staff with a non-hostile, non-retaliatory work environment;
- (vii) inflicting pain and suffering on the Applicant and his family by subjecting him to humiliating and abusive treatment;
- (viii) [the] Applicant's (primary) OPEs for fiscal years 2000, 2001, 2002, and 2003; and
- (ix) [the] Applicant's Salary Review Increases (SRIs) in 2001, 2002, and 2003.

3. Upon a jurisdictional challenge by the Bank, the Tribunal concluded that “the application [was] inadmissible, except with respect to the claim relating directly to the Applicant's 2002 OPE.” *Malekpour*, Decision No. 320 [2004]. The Bank filed its answer on the merits of the 2002 OPE claim. After the usual exchange of pleadings, the Tribunal in *Malekpour*, Decision No. 322 [2004], dealt with the merits of the Applicant's 2002 OPE claim and dismissed it.

4. On 22 March 2004, the Bank declared the Applicant's position, i.e., Senior Financial Officer, Grade GG, Corporate Finance Department of Strategy, Finance and Risk Management (SFRCF), redundant. The present application principally challenges that redundancy decision.

Background and Procedural History

5. The Applicant joined the Bank's Regular staff in 1991 as an Economist, Grade Level 23, in the Economic

Development Institute, National Economic Management Division. In 1993, he joined the Corporate Finance Department (FINCF), where he worked until his employment was declared redundant in 2004. The Applicant's task at FINCF was basically to contribute to the development of the Bank's financial policies. (FINCF has been renamed SFRCF.)

6. In his current application, the Applicant complains (as he did in his first application) that he was identified "as of the mid-1990s by the senior management in Finance – as a member of a group of staff suffering from various degrees of 'dysfunctionality' that needed to be dealt with." He asserts that he was "targeted for redundancy" as early as 2000, when Mr. Sudhir Krishnamurthi was the Director of FINCF.

7. According to the Applicant, he was mistreated by Mr. Krishnamurthi, who served as Director, FINCF, from 1999 to 2001:

In 2000, I incurred the wrath and retaliation of Mr. Krishnamurthi ... by showing reluctance to give up my work program ... [,] by objecting to my marginalization and should get out of the Bank [sic]. I refused to accept his advice and went to the Ombudsman, the Staff Association, etc.

Although Mr. Krishnamurthi had recorded good performance ratings in the Applicant's 2000 Overall Performance Evaluation (OPE), he soon began to doubt the value of the Applicant's contribution to FINCF. In a draft 2001 OPE, Mr. Krishnamurthi commented that

[the Applicant] has an inclination to work on projects from an academic perspective. That, coupled with his background in economics, perhaps makes him better suited for research oriented assignments within the World Bank Group. ... In the previous OPE [2000] I had rated [the Applicant] very highly, and had in fact recommended him for a performance award. This was my first year of working with [the Applicant]. That rating was based on his conceptual inputs in two distinct areas of work that were underway at that time, namely determining the currency and duration of equity, and the use of national paid in capital.

During the period under review [2001], the work program of the department changed to operationalizing and implementing the conceptual ideas into policies and guidelines. This process involves working in teams and interacting with a wide range of colleagues from inside and outside the department. During the period under review, it became evident that [the Applicant's] performance was satisfactory, but not outstanding in these same areas because he did not readily take inputs from other team members that might require him to modify his point of view. As a result, the level of contributions that he made to the overall output of the department on the projects was less than it would have been, and was not at the same level demonstrated during the previous evaluation period.

Going forward, I see the FINCF department will have to spend a lot more time and effort on issues like pricing and financial capacity, which are work program items that require working in groups and fine tuning existing policies and procedures. *[The Applicant] may want to keep this in mind, and strengthen the skills required for this area of work.* [Emphasis added.]

8. In March 2001, Mr. John Herlihy became the new Director of FINCF. Under Mr. Herlihy, the scope of FINCF's work expanded as FINCF merged with another unit of the Bank, Risk Management (FINRM). According to the Applicant, "from the first day of our meeting [in] March 2001, [Mr. Herlihy] has explicitly and transparently expressed his dislike for me, and his wish to see me out of FINCF, Finance complex, the Bank, etc."

9. During his first meeting with Mr. Herlihy in March 2001 to discuss his work program, the Applicant described a number of research projects he wished to pursue. Mr. Herlihy did not approve those research projects, explaining to the Applicant that none of them reflected the priorities which had been set for FINCF, and that he would have to work on projects useful to the Department and consistent with its major deliverables. The Applicant later sent Mr. Herlihy another list of topics which he thought needed "to be looked at." In Mr. Herlihy's view, however, the items on this list were also not priorities for the Department. According to Mr. Herlihy, the Applicant was very "rigid" when it came to defining his work program, would "not move from what he ha[d] done before; and [was] not willing to do any work outside of that."

10. During the 2002 OPE cycle covering April 2001 to March 2002, the Applicant's main tasks included: (a) a paper relating to Rolling Reinstatable Guarantees; (b) a paper concerning currency-by-currency pricing of loans; (c) an overall review of loan pricing; and (d) work on specific issues on the pricing and Fixed-Spread Loans. According to the Bank, each of these tasks consisted primarily of carrying out research on policy issues and producing a paper based on the results of that research. In his comments on the Applicant's 2002 OPE, Mr. Herlihy noted that:

While [the Applicant] has a good understanding of the Bank's financial policies and a good background in economics, it has been difficult to have him contribute effectively to the Department's work program. *[The Applicant] has his own views on which pieces of work he [is] willing or capable of carrying out.* He often does not take comments on his work very well and prefers to work to a large extent on his own. At times he indicates the desire to communicate only in written form. The result is that his contribution can form only a part of a finished product or piece of work. I have asked Mr. Gwinner and Mr. Cheah to provide assignments to [the Applicant] that make use of his skills as effectively as possible. However, they have found it difficult to find projects which fit into the Department's work program and yet meet [the Applicant's] academic requirements and skills.

The role of the Department as it has now evolved requires much more focus on practical issues of financial strategy and the application of financial policies that require close interaction with colleagues in the Department and with Treasury and CTR, an array of practical financial and modeling skills and a knowledge of market instruments and techniques. These are the kinds of skills where [the Applicant] is relatively weak. The result is that increasingly [the Applicant] has little work to perform, even though the Department is fully stretched to meet its work program. I would encourage [the Applicant] to look for opportunities outside the Department where his skills may be effectively used.

During the coming year, we will continue to work with [the Applicant] in using his skills as effectively as possible. *It will be important for [the Applicant] to be willing to be show [sic] a greater degree of flexibility.* We will also look for assistance from HR in working with [the Applicant] on some of the behavioral issues that have been identified. [Emphasis added.]

11. During the 2003 OPE cycle covering April 2002 to March 2003, the Applicant worked on: (a) guarantee issues; (b) a financial policy compendium; and (c) the implementation of financial policies. In the Applicant's 2003 OPE, Mr. Herlihy again noted that "[a]s the nature of work in the Department has evolved, we continue to have difficulty in providing [the Applicant] a full work program in the area of financial policy research."

12. During the 2004 OPE cycle covering April 2003 to March 2004, the Applicant and Mr. Herlihy continued to be unable to agree on a work program that would not only satisfy the Applicant but also meet the Department's priorities. In July 2003, Mr. Herlihy asked another FINCF staff member, Mr. Jaimini Bhagwati, to try to identify tasks which were necessary for the Department and also considered by the Applicant as suitable for his position. When they met in September 2003, Mr. Bhagwati asked the Applicant whether he would be interested in working in the market risk area. The Applicant declined, stating that market risk work was not the "financial policy" type of work he had been doing in the past.

13. On 18 November 2003, the Applicant met again with Messrs. Herlihy and Bhagwati to discuss his work program. At that meeting, the Applicant insisted once more that he be given a work program in the area of "financial policy" involving the type of work for which he had been originally recruited in 1993, when he first moved to FINCF. Mr. Herlihy again explained that FINCF did not currently need the broad policy research work that the Applicant had done in the past, and that given the recent changes in the Department's work program, the job that the Applicant envisioned for himself no longer existed; this could have the eventual result that the Applicant's employment would become redundant. For his part, the Applicant continued to insist on being assigned only the type of work he believed was appropriate for him. On 3 December 2003, he sent an e-mail to Mr. Herlihy stating, among other things:

Finally, [Mr. Herlihy] misconstrues the type of work assignments that I am asking for. He also misconstrues emerging changes in FINCF financial policy work. *The type of work assignment that I am asking for are [sic] not different from the types of work that I was doing in eight years proceeding [sic] [Mr. Herlihy's]*

assumption of FINCF leadership. Those work [sic] can be easily ascertained from my OPEs for years 1993 to 2001. [Emphasis added.]

14. After consultation with Human Resources (HR) and discussion with Mr. John Wilton, Vice President, SFRVP, about the Applicant's case, management recommended to the Severance Review Group (SRG) of the Bank that the Applicant's position be declared redundant and abolished. The SRG approved the declaration of redundancy on 11 March 2004.

15. On 22 March 2004, the Bank notified the Applicant in writing that his employment had become redundant pursuant to paragraph 8.02(b) of Staff Rule 7.01, which provides that employment may become redundant when the Bank determines "in the interests of efficient administration" that a "specific position or set of functions performed by an individual in an organizational unit must be abolished." On 1 April 2004, the Applicant was placed on administrative leave during the six-month job search period preceding the effective date of termination of his employment. The Applicant's job search proved unsuccessful and his employment with the Bank ended on 30 September 2004.

16. On 30 December 2004, the Applicant filed a Statement of Appeal with the Appeals Committee challenging the Bank's decision to declare his employment redundant. On 6 February 2006, the Appeals Committee issued its report recommending that all requests in the Applicant's Appeal be denied. In its report, the Appeals Committee found that

given the evolving work program of the Department, the need for tasks performed by the [Applicant] relating to policy research and compliance work diminished or moved to other areas of the Finance Complex.

...

Management had a legitimate business rationale for abolishing the [Applicant's] position because the [Applicant's] functions he insisted to continue to perform did not fit the needs of the changing work program and new direction of the Department.

...

[The Applicant] failed to show a cause and [e]ffect relationship between his claims of retaliation and the redundancy decision.

The Vice President of Human Resources accepted the Committee's recommendations and so informed the Applicant by letter dated 23 February 2006.

17. In his present application, the Applicant protests and seeks the withdrawal of the Bank's redundancy decision. As relief, the Applicant asks from the Tribunal the following remedies: (i) retroactive withdrawal of the redundancy and termination decisions; (ii) retroactive payments of salary and benefits from March 2004; (iii) reinstatement at appropriate grade and salary range or payments of full benefits and salary until the mandatory retirement age; and (iv) compensation for mismanagement of the Applicant's career and abusive treatment.

Consistency of the Redundancy Decision with the Staff Rules

18. The principal contentions of the Applicant relate to the application of paragraph 8.02 of Staff Rule 7.01, which deals with redundancy as follows:

Employment may become redundant *when the Bank Group determines in the interests of efficient administration*, including the need to meet budgetary constraints, that:

a. An entire organizational unit must be abolished;

b. *A specific position or set of functions performed by an individual in an organizational unit must be abolished;*

c. A position description has been revised, or the application of an occupational standard to the job has

been changed, to the extent that the qualifications of the incumbent do not meet the requirements of the redesigned position;

d. Types or levels of positions must be reduced in number.

[Emphasis added.]

19. The Applicant argues that the declaration of redundancy cannot be justified either on the ground of “specific functions being no longer required” or on the ground of “different skill requirements.” He asserts that in November 2001 and September 2002, FINCF hired two Senior Financial Officers and transferred his functions to them. If the specific functions performed by the Applicant were no longer required, the Applicant argues, the Bank would not have recruited two new staff members to perform the same functions. The Applicant also contends that the Bank failed to produce evidence to support its claim that portions or elements of the functions previously assigned to him were now being performed by other departments of the Finance Complex. Finally, the Applicant denies that he lacked skills in quantitative analysis, use of spreadsheets, and economic modeling.

20. The principal response of the Bank is that in the light of the diminished requirement of the Bank over the long term for the functions performed by the Applicant, and in the interests of efficient administration, the Applicant’s position was abolished consistently with paragraph 8.02(b) of Staff Rule 7.01. The tasks which the Applicant considered his own and which he actually performed during the years preceding the declaration of redundancy were primarily research and writing tasks in the area of broad financial policy. In the view of the Applicant’s managers, there was simply not enough work of this type to justify a full-time position. Portions of the tasks previously carried out by the Applicant could be efficiently performed by other staff members as part of broader, more “holistic jobs” that in the main consisted of tasks which the Applicant had not performed and which he was unwilling to perform. The two new Senior Financial Officers in FINCF used increasingly sophisticated tools of economic analysis to perform tasks significantly different from the work the Applicant had been doing up to the time of his separation from the Bank in 2004.

21. The Tribunal begins by noting, as it has done many times in the past, that redundancy decisions by the Bank are of a discretionary nature and that such decisions are subject to only limited review by the Tribunal.

22. More recently, in *Prakas*, Decision No. 357 [2007], para. 36, the Tribunal described the focus of its scrutiny of redundancy decisions in the following terms:

Paragraph 8.02 of Staff Rule 7.01 enables the Bank to declare a position redundant for a genuine business reason. When the Tribunal scrutinizes the conduct of the Bank, it does so not to second-guess the business efficacy of the decision itself, on which it is not qualified to pronounce. The focus of the scrutiny is rather on whether the ultimate decision was genuine in the sense that the Bank’s decision to declare an applicant redundant was informed and justified by a proper business rationale. If so, that is the end of the inquiry – even if the decision might not have been optimal under the circumstances. The Tribunal noted that “[a]lthough staff members are entitled to protection against reprisal and retaliation, managers must nevertheless have the authority to manage their staff and to take decisions that the affected staff member may find unpalatable or adverse to his or her best wishes.” (O, [Decision No. 337 [2005],] para. 49.) [Emphasis added.]

23. On the basis of the record before it, the Tribunal does not find it unreasonable that the Bank concluded that it had no business rationale for continuing to maintain a full-time position for the work the Applicant had been doing from 1993 up to the effective date of the redundancy decision. The Applicant had defined his own work program in a strict and rigid manner. He was adamant in insisting that his work program remain as it had been for a decade. He ignored his managers’ warnings that the work program he had set for himself, and to which he had refused changes, did not fit with the evolving priorities of FINCF. The Bank’s principal rationale for the redundancy declaration is set out in its application to the SRG in the following terms:

Over the past few years under the leadership of the Bank’s senior management, Corporate Finance has evolved along the same lines as the rest of the Bank, i.e. placing more emphasis on practical applications, implementation/results and less on theory and academic research. The work program of the department has moved towards a greater focus on: a) quantitative financial analysis, including the use of increasingly

sophisticated financial modeling; b) *financial risk management techniques in order to measure risks and determine the appropriate actions to correct these risks within overall policy objectives*; and c) communicating clearly to senior management and the Board through presentations that capture the essence of the issues in a way that is useful and easily understood.

The need for tasks performed by [the Applicant] (and which he is interested in pursuing) relating to policy research (or non-recurring financial policy work) and compliance work have either diminished significantly or moved to other areas of the Finance Complex. ...

With the reduction of policy research work and the changes described above, there is no longer any work program for [the Applicant] to justify a full-time position. Management has discussed with [the Applicant] several times whether he would be interested in working on market risk issues or the type of work other Sr. Financial Officers are doing. However, attempts to find a viable work program which is acceptable to [the Applicant] have been unsuccessful because the tasks that [he] is interested in, and capable of doing are no longer key to the business objectives of the department. ...

[E]lements of the functions previously assigned to the position of [the Applicant] are now performed by other departments of the Finance Complex, and the remainder of the functions are no longer needed, and no new position will be created to fill those functions. FINCF has explored the possibility of [the Applicant] working in other parts of the SFR vice-presidency, but there is no suitable vacancy. [Emphasis added.]

The Applicant has not presented any evidence that would tend to dispute the change in emphasis and priorities within the Bank from research on economic theory to techniques of implementation or operationalization of broad economic theory. A review of the OPEs of the two new Senior Financial Officers hired by FINCF (and in particular their 2004 OPEs) shows that the work programs of the two new staff members were significantly different from the Applicant's, even though discrete and limited portions of the Applicant's program that continued to be useful to the Bank were transferred to and allocated between the two new Senior Financial Officers.

24. Finally, the Tribunal agrees with the findings of the Appeals Committee that the tasks of FINCF had evolved over the years and that management had a legitimate business rationale for abolishing the Applicant's position, considering that the functions which the Applicant had insisted on continuing to perform were not consistent with the redefined and changed functions and priorities of FINCF. The Applicant's OPEs, including the comments from his managers set out therein, show that he had limited himself to research and writing on broad economic policy and that he had not heeded his managers' cautionary statements that the work program he envisaged for himself did not fit in with the changed priorities and tasks of FINCF.

Consistency of the Redundancy Decision with Fair and Reasonable Procedures

25. The Applicant also contends that the procedures employed by the Bank in arriving at the redundancy decision and in terminating his employment were in violation of fair and reasonable procedures for the following reasons:

- (a) management failed to implement the Appeals Committee's report (with respect to his Appeal No. 1242 in which he had challenged his 2002 OPE) recommending that management provide him with a "clearly defined work program commensurate with his skills and abilities";
- (b) it was highly unlikely that the SRG ever saw or approved management's proposal for the declaration of redundancy of the Applicant's employment; and
- (c) the Bank failed to provide adequate assistance to the Applicant in locating an alternative position in the Bank.

The Bank controverts the above contentions by stating that the Appeals Committee did not purport to obligate the Bank to create for the Applicant a work program to his liking, regardless of whether or not such a program in fact matched the needs of the Bank. The Bank also stresses that the redundancy decision was reviewed by

the SRG and concurred in by the Manager, Human Resources Service Center. Finally, the Bank states that it assisted the Applicant in seeking another position with the Bank Group and provided access to the Job Search Center and Job World. The Bank's efforts, along with those of the Applicant, were unsuccessful.

26. The Tribunal recalls that although the Appeals Committee in Appeal No. 1242 denied all of the Applicant's requests, it did recommend that management provide the Applicant "with a clearly defined work program commensurate with his skills and abilities." The Tribunal also recalls, however, that the detailed claim of the Applicant about the supposed failure of the Bank to provide him with an appropriate work program had already been made and dealt with in *Malekpour*, Decision No. 322 [2004], and that the Tribunal had found there, at para. 14, that:

[T]he specific work projects that the Applicant was expected to accomplish during the 2002 OPE review period were adequately identified. At the beginning of the 2002 evaluation period, the Applicant was doing Currency work and Guarantee work which he was expected to continue and complete. On June 1, 2001, the Director assigned two additional tasks to the Applicant: the first consisted of Loan Pricing work, in respect of which the Applicant was to report to Mr. C, and the second related to FSL work on which the Applicant was to report to Mr. G. Both of these assignments constituted important "deliverables" that the Director believed were well-suited to the Applicant's strengths and in which he could be successful. *It appears to the Tribunal, therefore, that the Applicant had the substantial equivalent of a "clear work program" he was expected to carry out and on the basis of which his performance would be evaluated.* [Emphasis added.]

The Tribunal is bound to observe that the Applicant comes close to abusing the Tribunal's processes by raising once more a claim that was clearly disposed of in its earlier decision. Acceptance by management of the recommendations of the Appeals Committee in Appeal No. 1242 did not obligate the Bank to create a work program which, while suitable for the Applicant in his own view, did not also serve the legitimate needs of the Bank. Considering the circumstances surrounding the declaration of redundancy, the Tribunal is not persuaded that the Bank arbitrarily and unfairly failed to implement the Appeals Committee's earlier recommendation concerning a work program for the Applicant.

27. The Tribunal now turns to the Applicant's contention that it is highly unlikely that the SRG ever saw or approved management's proposal to declare his job redundant. Since the record shows that the SRG indeed reviewed and approved the redundancy declaration on 11 March 2004, the Applicant's contention appears to be no more than a casual speculation on his part and must be dismissed summarily.

28. The Applicant finally claims, without elaboration, that the Bank failed to provide him with adequate assistance in locating an alternative position in the Bank. The Tribunal notes that under Staff Rule 7.01, paragraph 8.06, the Bank has an obligation to assist the Applicant

in seeking another position within the Bank Group by providing access to the Job Search Center and the Job World. Redundant staff will be matched with existing vacancies in the Job World for consideration along with other applicants. This will include positions, the duties of which are commensurate with the staff member's qualifications, or for which the staff member can be retrained in a reasonable period of time.

This obligation of the Bank is not an absolute one. In *Marchesini*, Decision No. 260 [2002], para. 44, the Tribunal explained that that obligation of the Bank "is an obligation to make an effort; it is not an obligation to ensure the success of such effort." It is an obligation "to make genuine efforts to find alternative positions for redundant staff." (*Ingco*, Decision No. 331 [2005], para. 76.) The fact that the Bank's efforts in this regard were not ultimately successful does not mean that the Bank failed in its obligation to assist the Applicant in finding a new assignment or reassignment. (See *Lee*, Decision No. 241 [2001], para. 44; *Marshall*, Decision No. 226 [2000], paras. 45, 47; *Jakub*, Decision No. 321 [2004], para. 58; and *F (No. 2)*, Decision No. 347 [2006], para. 55.) The Bank did assist the Applicant in seeking another position within the Bank by providing access to the Job Search Center and the Job World, precisely as specified in Staff Rule 7.01, paragraph 8.06. That the Applicant was not successful in securing a position during the job search period cannot be regarded as proof of a failure to provide "genuine" assistance. The Applicant's insistence that he continue the same work program as the one he had been carrying out for a decade – broad economic policy research – was unlikely to have facilitated the job search. In any event, the Applicant has not adduced any evidence to show that the failure to

find another position should be imputed to the Bank.

Was the Redundancy a Consequence of Retaliation on the Part of Management?

29. The Applicant further contends that retaliation against him on the part of both the Director and former Director of FINCF, Messrs. Herlihy and Krishnamurthi, ultimately bore fruit in the declaration of redundancy of his position. In his first application to the Tribunal, the Applicant raised the same claim of retaliation by Messrs. Krishnamurthi and Herlihy in the context of his 2002 OPE. The Tribunal, in *Malekpour*, Decision No. 322 [2004], paras. 28-29, rejected this claim:

The Applicant finally contends that the performance ratings in his 2002 OPE which he found unacceptable constituted retaliation on the part of his supervisor. According to the Applicant, the retaliation against him commenced when he disagreed with his previous supervisor who, he claims, said that “all finance managers” hated the Applicant and that this hatred was a valid basis for refusal to recommend him for promotion. The Applicant also asserts that the retaliation against him intensified when he sought relief from the Bank’s Conflict Resolution System. In the belief of the Applicant, his 2002 OPE represented the culmination of thirty months of retaliatory and abusive treatment from SFRCF management.

The Tribunal is bound to note that an allegation is not a substitute for proof and that *the Applicant adduced no evidence either before this Tribunal or before the Appeals Committee that would substantiate his complaints about reprisals on the part of the Respondent. The Tribunal therefore concludes that the Applicant has not shown that his “Behavioral Assessment” in his 2002 OPE constituted an abuse of discretion.* [Emphasis added.]

Just as the Applicant failed to prove his claim of retaliation on the part of Mr. Krishnamurthi and Mr. Herlihy resulting in his unfavorable 2002 OPE, so too he now fails to substantiate his claim of retaliation by the same persons in connection with the 2004 declaration of redundancy. The Tribunal once more dismisses this claim of retaliation.

The Applicant’s Other Claims

30. The Applicant claims that the Bank arbitrarily failed to grant him any SRI in 2004. The Bank in its answer attached documents showing that the Applicant was indeed provided an SRI in 2004. On 2 February 2007, the Applicant filed a written additional statement withdrawing his claim that he had not been granted any SRI in 2004 and instead admitting that he had received an SRI of 1.7% for 2004. He now claims, however, that his 2004 SRI of 1.7% was unfair. The ground he alleges for his reformulated claim, however, rests on events going as far back as March 2001. In any event, the Tribunal finds that the 1.7% SRI given to the Applicant in 2004 was based on a merit rating of 3.1 corresponding to a “fully successful performance.” The Applicant has failed to adduce any admissible evidence of arbitrariness in this particular exercise of managerial discretion. Accordingly, the Tribunal denies this reformulated claim concerning the Applicant’s 2004 SRI.

31. The Applicant lastly claims that the Bank humiliated him and mismanaged his career. Once again, the Tribunal notes that the Applicant’s first application before the Tribunal raised exactly the same claims: “(iv) mismanagement of the Applicant’s career ... (vii) inflicting pain and suffering on the Applicant and his family by subjecting him to humiliating and abusive treatment.” *Malekpour*, Decision No. 320 [2004], para. 10. The Tribunal denied jurisdiction with respect to those claims. The Tribunal considers that the Applicant must not be allowed to circumvent that jurisdictional decision by introducing the same claims under cover of his present claim relating to the declaration of redundancy of his employment. The Applicant’s claims with respect to humiliation, abusive treatment and mismanagement of his career are therefore dismissed for lack of jurisdiction.

Decision

For the above reasons, the Tribunal dismisses the application.

/S/ Jan Paulsson
Jan Paulsson
President

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

At Washington, DC, 28 March 2007