

Decision 103

Michael D. Mathew,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of P. Weil, President, A.K. Abul-Magd and E. Lauterpacht, Vice Presidents, and F.K. Apaloo, R.A. Gorman, E. Jimenez de Arechaga and Tun Suffian, Judges, has been seized of an application, received July 5, 1990 by Michael D. Mathew, against the International Bank for Reconstruction and Development. The Tribunal rejected the Applicant's request for oral proceedings as unnecessary. The usual exchange of pleadings took place. The case was listed on January 29, 1991.

The relevant facts:

2. The Applicant joined the Bank effective December 3, 1984 on a three-year fixed-term appointment as a Disbursement Officer, level L (equivalent to current grade 23) in the Loan Department.

3. At the end of his probation, in a memorandum dated March 26, 1986 to the Personnel and Management Department (PMD), the Applicant's Department Director requested that the Applicant's appointment be immediately confirmed. The Applicant was confirmed in his term of appointment with retrospective effect from December 1, 1985.

4. In November 1986 the Applicant applied through the World Bank Vacancy Information Service (VIS) for the position of Cofinancing Officer, level 23, in the office of the Vice President for Cofinancing (VPCOF). By memorandum dated December 22, 1986, the Senior Adviser, Cofinancing, informed PMD that the Applicant had been selected "because of a clearly superior background in investment and commercial banking." He further stated that "we would anticipate that he would transfer to this Unit on his fixed-term appointment with the expectation that it will be regularized to a permanent position in December 1987." On February 1, 1987 the Applicant transferred to the office of the VPCOF.

5. In the Applicant's Performance Review (PPR) dated May 5, 1987 the Senior Adviser, Cofinancing, stated that the Applicant appeared to be settling down well with his colleagues but that since he had been in the Cofinancing Unit for only three months, it was rather early to evaluate his performance. He added that "It was agreed at the time of his (Applicant's) transfer that his performance would be reviewed by the end of the calendar year against the objectives which have been set for him here and at which time his fixed-term appointment should be changed to permanent."

6. In mid-1987 the Reorganization began. As a result there were changes in management in the office of the VPCOF. The Senior Adviser, Cofinancing, left the Bank. There were also many uncertainties regarding the Applicant's principal functional area of commercial bank cofinancing. Consequently, in a memorandum dated October 30, 1987 addressed to PMD, the Applicant's new supervisor, the Manager, Commercial Cofinancing, recommended that the Applicant's fixed-term appointment be extended for six months to June 1988. In particular the supervisor stated:

Mr. Mathew brings to the position an extensive background in commercial banking and it was expected that he would over time advance to a Cofinancing Adviser-Banking Institutions position, depending on his performance. Unfortunately, the many uncertainties that have developed regarding the commercial

cofinancing program due to the Bank's growing country exposure problem and the hiatus in advancing new initiatives during the reorganization have brought into question the career path initially anticipated and have precluded a realistic evaluation of his performance and prospects in this area.

[The VPCOF] and I agree that we have no basis for recommending conversion of his fixed term appointment to a regular appointment for the time being. Therefore, we recommend that Mr. Mathew's fixed term appointment be extended to June 30, 1988 which would allow sufficient time for the development of a clear trend in our commercial cofinancing program and to be able to advise Mr. Mathew of a decision well in advance of expiration of his fixed term appointment.

7. In a memorandum dated December 11, 1987 to the VPCOF the Applicant reiterated that the Senior Adviser, Cofinancing, had at the time of the Applicant's appointment recorded an important aspect of the Applicant's willingness to accept the appointment, namely that he would be transferred on his fixed-term appointment with the expectation that it would be regularized to a permanent position on its expiry in December 1987.

8. In the Applicant's PPR covering the period May 1, 1987 to April 30, 1988 and dated May 20, 1988 the Manager, Commercial Cofinancing, stated that the Applicant had been given a variety of assignments with the object of improving his understanding of operations in the unit and that he had contributed to the unit's effort to improve the timeliness and quality of the flow of information on cofinancing; however, he had been slow in overcoming his lack of exposure to Bank operations. The Manager further stated that he would have liked to see the Applicant taking more initiative in furthering the work, developing a thorough understanding of Bank lending operations and the role of cofinancing, as well as establishing good working relationships with staff throughout the Bank. In the management review (Section V) for this PPR the VPCOF said:

Despite many opportunities given, [the Applicant] has not shown the initiative in his work that we expect of him. He has required more than usual supervision and the quality and quantity of his work is not adequate.

The VPCOF concluded that he would conduct an interim review of the Applicant's performance by October 1, 1988 and that, if his performance had not shown significant improvement, other steps would need to be taken at that time. In the meantime the Applicant's fixed-term appointment was extended for one year, to June 30, 1989. As a follow up to the PPR, in a memorandum dated July 14, 1988 to the Applicant, the Manager, Commercial Financing, recorded the performance plan agreed between him (Manager) and the Applicant to be operative during the period July 15 - October 1, 1988. The Applicant thereafter went on home leave from September 9 to October 13, 1988.

9. The interim review took place in January 1989. In that review the Applicant noted that he had been exposed "to a field (mainly administration including the management of data flows and production of the cofinancing publications) which does not match my background – nonetheless I have shown goodwill in carrying out these functions to a reasonable standard." The Manager, Commercial Financing, stated that few of the agreed tasks had been carried out initially in an entirely satisfactory manner and that most of the deadlines set were missed by a wide margin. He concluded that "the Applicant, on the one hand, has not proven to be well suited to carry out the 'administrative' tasks assigned to a Cofinancing Officer, which are essential to the Unit's overall performance and, on the other hand, has not convincingly demonstrated the potential to become a credible and effective Cofinancing Advisor." He, therefore, recommended that the Applicant not be offered a permanent position and that his fixed-term appointment as Cofinancing Officer in the office of the VPCOF should be allowed to expire. The VPCOF fully agreed with the Manager, Commercial Financing.

10. In a memorandum dated January 30, 1989 to the VPCOF the Applicant recorded his disagreement with that evaluation of his performance and requested that he be given an early opportunity to further discuss this important issue with the VPCOF, given the bearing it had on his future career and livelihood. Not having received a response, in a memorandum dated April 27, 1989 to the VPCOF the Applicant drew attention to the fact that he had not been given a full and fair hearing and made various allegations about damage to his future and the possibility that the future evaluation of his performance could be detrimentally affected by the departure from the Bank of the Manager, Commercial Cofinancing.

11. On May 17, 1989 the VPCOF responded to the Applicant. Among other things he pointed out that due process had been followed and that the Bank did not give qualitative references on former employees. He also stated that the Personnel Team had assisted the Applicant in finding a suitable position elsewhere, although unsuccessfully.

12. The Applicant's employment with the Bank came to an end on June 30, 1989, the date of the expiration of his extended fixed-term contract.

13. Meanwhile, on June 16, 1989 the Applicant filed an appeal with the Appeals Committee which, on March 30, 1990, rendered its Report. The Appeals Committee concluded:

(a) According to existing Bank rules, the Bank followed the rules and acted fairly. The Appellant has not been able to substantiate the allegations of malice or unfair treatment.

(b) After the reorganization, the nature of functions in COFVP changed and the Appellant found himself performing tasks he either did not like (administrative tasks) or was not well suited to perform.

(c) The Appellant had a fixed term contract, which was extended a number of times. Although expectations were expressed that the fixed term contract would be "regularized" such expectations did not amount to an explicit promise on the part of the Bank to do so. The expectations were conditional on the Appellant's satisfactory performance.

Consequently, the Committee recommended that the appeal be denied. The Committee also recommended that the adverse performance evaluations in the 1988 interim evaluation concerning the administrative tasks with which he was entrusted in the office of the VPCOF and which did not reflect accurately on the Applicant's own area of professional expertise be deleted or removed from the Applicant's file; and Staff Rule 4.01 on fixed-term appointments be revisited to introduce a reasonable degree of certainty that Staff members who had worked in the Bank for a reasonably long time on fixed-term appointments were given preference whenever a vacancy for a "regular" position occurred.

#### The Applicant's main contentions:

14. The Respondent was under a duty to convert the Applicant's fixed-term appointment to a permanent one in December 1987, since the Respondent had found his performance to be satisfactory and he had been earlier confirmed. The Applicant had at least an undeniable expectation that his appointment would be converted to a permanent one at the end of his contract, unless his performance was unsatisfactory, which it was not. Besides, both the Division Chief who recruited him to the Bank and the recruiting manager to the office of the VPCOF had given him grounds for this reasonable expectation.

15. The Applicant's performance was satisfactory, as the Manager, Commercial Financing, had stated in his evaluation of the Applicant's performance. The VPCOF who had no knowledge of the Applicant's work had made an unsubstantiated criticism of the Applicant's performance. It was, therefore, clear that an improper motive had influenced the evaluation of the Applicant.

16. While the Applicant was in the office of the VPCOF, the Reorganization intervened and the Applicant found himself de facto demoted to a level 18-19 administrative position, despite having been selected because of his international banking background to perform duties at level 23. Consequently, the Applicant had not been fairly evaluated in the position for which he had been hired.

17. The Respondent did not make a reasonable effort to assist the Applicant in finding another position in the Bank Group. Moreover, the blackballing of the Applicant by the VPCOF made it virtually impossible for the Applicant seriously to be considered for another position by managers in the Bank.

18. The Applicant made the following pleas:

A. The Applicant requested rescission of the following administrative decisions:

1. the decision not to convert the Applicant's fixed-term contract to a regular appointment;
2. the decision not to extend the Applicant's fixed-term contract; and
3. the decision not to review and possibly not to revise his PPR dated January 25, 1989.

B. The Applicant requested that the Respondent perform the following specific actions:

1. convert the Applicant's fixed-term appointment to a regular one and reinstate him in his position as a commercial cofinancing officer, and pay him back salary.
2. Alternatively:
  - give a regular appointment to the Applicant;
  - carry out a fair and objective evaluation of the Applicant's performance; and
  - make a good faith effort to place the Applicant in a position for which he is qualified.

C. As an alternative to B the Applicant requested compensation in an amount equivalent to what he would have been entitled to under Staff Rule 7.01 (paragraphs 8.07 and 8.08) for termination on grounds of redundancy, i.e., six months of paid service while seeking alternative employment in the Bank group, two months notice and 1.25 months pay for each year of service or a total of 13.0 months of salary plus out-placement assistance; and moral damages in the amount of one year's salary.

D. The Applicant requested attorney's costs and travel costs in the amount of \$6,300.

The Respondent's main contentions:

19. The Respondent was under no obligation to convert the Applicant's fixed-term appointment into a permanent one. There was no evidence of any undertaking written or oral, that he would ultimately receive a regular appointment.

20. When the Applicant elected to end a successful stay in the Loan Department and made the decision to move to the office of the VPCOF he took the risk that his performance in the new position would be found unsatisfactory or that his skills might not match the requirements of the new position. The Respondent was not obligated to alter its own work requirements to meet the particular characteristics of the Applicant. Moreover, the VIS announcement explicitly stated that the Cofinancing Officer would provide support for the cofinancing advisers.

21. The Applicant had no right to, nor could he have had a legitimate expectation for, the conversion of his fixed-term appointment to a permanent one. He could, at the most, have expected that it would be so converted on the basis of satisfactory performance. However, the Applicant's performance, which was evaluated according to standard procedure by his supervisors in the office of the VPCOF was found to be unsatisfactory, even after his fixed-term contract had been extended twice and he had been given an opportunity to improve in the position of Cofinancing Officer.

22. The Applicant's performance was evaluated fairly by his supervisors. There was no bias or discrimination on their part.

23. The Respondent made prompt and extensive efforts to assist the Applicant in finding a position outside the office of the VPCOF. All these efforts eventually proved unsuccessful. The Personnel Team also discussed possibilities of securing an MBA to make him a stronger candidate for positions in the finance complex. Unfortunately, the Applicant's skills were not found to be useful for the Bank's purposes.

24. There are no circumstances in this case which would warrant the award of costs which are awarded only in exceptional cases. In any event, the Applicant is not entitled to travel expenses for purposes of appearing before the Appeals Committee.

Considerations:

25. The principal issue in this case is whether a promise was made by the Respondent to the Applicant at the time of employing him or on his transfer to the Cofinancing Department to convert his fixed-term appointment to a permanent one and, if the answer to this question is in the affirmative, whether the Applicant's performance after his transfer was fairly evaluated so as to justify the non-renewal of his fixed-term appointment and the refusal to convert it to a permanent one.

26. The record shows that the Respondent did promise to convert the Applicant's appointment into a permanent one but that the fulfillment of that promise was conditional upon the Applicant's satisfactory performance.

27. By a letter dated December 22, 1986, the Applicant's supervisor informed the Personnel Management Department (PMD) of the Applicant's selection as a Cofinancing Officer. He stated that:

Applicant would transfer to this unit on his fixed-term appointment with the expectation that it will be regularized to a permanent position in December 1987. (emphasis added)

Again in the Applicant's PPR covering the period from January 27, 1987 to April 30, 1987, the same supervisor confirmed that:

It was agreed at the time of the Applicant's transfer that his performance would be reviewed at the end of the calendar year against the objectives which have been set for him here and at which time his fixed-term appointment should be changed to permanent.

These comments were endorsed by the Vice President, Cofinancing, (VPCOF) on May 14, 1987. The Applicant himself does not contest the Respondent's contention as to the requirement of satisfactory performance.

28. In the case of Mr. X, Decision No. 16 [1984], this Tribunal decided that:

The fixed-term staff member thus had no absolute right to a regular appointment but was necessarily exposed to the exercise of the Bank's discretion as to whether he met the requirements of the position.

29. The discretion exercised by the Respondent as to whether the Applicant met the requirements of the position must, therefore, be scrutinized by the Tribunal in order to ensure that it is not vitiated by an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure. (Saberi, Decision No. 5 [1981] para. 24, Suntharalingam, Decision No. 6 [1981] para. 24, de Raet, Decision No. 85 [1989] para. 67.)

30. The Respondent contends that after the Applicant's transfer to his new Cofinancing position he started to encounter certain difficulties and that his PPRs reflected his unsuitability for this new position.

31. The Applicant contests the Respondent's evaluation of his performance on two major grounds:

(i) he contends that he was assigned tasks that did not correspond to his background and did not conform to the position description advertised. From that he draws the conclusion that he should not have been evaluated on the basis of these tasks; and

(ii) he also contends that a favorable evaluation by his manager was unjustifiably changed by the VPCOF, whom he described as a remote and detached manager with no direct relation with the Applicant or his work and who had no means of evaluating the Applicant's performance.



32. Although the Applicant challenges the Respondent's evaluation of his performance as being discriminatory and motivated by a general hostile attitude on the part of the VPCOF towards the Applicant, the Tribunal does not find in the record any evidence that substantiates that contention.

33. As to the Applicant's contention that he was evaluated on the basis of work assignments of a purely administrative nature which did not represent his performance on the more technical aspects of his responsibilities as a Cofinancing Advisor, the Tribunal notes that as a result of the Reorganization the nature and the priorities of work within the Cofinancing Department changed, and the Applicant, as the Appeals Committee noticed in its conclusions, "found himself performing tasks that he either did not like (administrative tasks) or was not well suited to perform".

34. Those new tasks, however, were not the only tasks on which the Applicant's performance was evaluated. In the Respondent's vacancy announcement it was clearly stated that the work of the Advisory Unit "includes a blend of both financial and operational issues, which need to be handled with versatility and initiative". Among the various qualifications and abilities requested for the occupant of the announced vacancy were:

- ability to marshall and synthesize data;
- demonstrated ability to work independently and to interact in a team atmosphere;
- ability to work quickly and to meet tight deadlines.

35. In the Annual Evaluation Report covering the period from May 1, 1987 to April 30, 1988, the Manager, Commercial Financing, noticed at the outset of his evaluation that the Applicant brought to his job lengthy experience in commercial banking, but relatively little experience in Bank operations. He then went on to identify certain areas where he would like to see the Applicant make more progress. He concluded by stating:

I would like to see Mr. Mathew take more initiative in furthering the work and perhaps more importantly, in taking advantage of the assignment to develop a thorough understanding of Bank lending operations and the role of cofinancing as well as establishing good working relationships with staff throughout the Bank.

36. In the same report the VPCOF made a much more critical assessment of the Applicant's performance. He stated that:

Despite many opportunities given, Mr. Mathew has not shown the initiative in his work that we expect of him. He has required more than usual supervision and the quality and the quantity of his work is not adequate.

37. The above negative evaluation of the Applicant's performance was repeated in the interim review report covering the period from July 15, 1988 to December 2, 1988. The same supervisor, the Manager, Commercial Financing, stated that:

Few of the agreed tasks were carried out initially in an entirely satisfactory manner and most of the deadlines set were missed by a wide margin.

He concluded his critical evaluation of the Applicant with the categorical statement that:

Mr. Mathew, on the one hand, has not proven to be well suited to carry out the administrative tasks assigned to a cofinancing officer, which are essential to the Unit's overall performance and, on the other hand, has not convincingly demonstrated the potential to become a credible and effective cofinancing advisor.

38. On the basis of the above negative evaluation the Applicant's supervisor expressed his inability to recommend that the Applicant be offered a position as a permanent staff member of the Cofinancing Department.

39. The Tribunal concludes that there was no abuse of discretion in making this evaluation.

40. The Tribunal does not find merit in the Applicant's complaint that he was negatively evaluated by a Vice President who had no first-hand contact or knowledge of the Applicant's performance. Vice Presidents and heads of departments commonly base their evaluations of their staff members on a review of the evaluations made by more immediate supervisors.

41. The Applicant also contends that the Respondent did little or nothing to assist him in finding another position in the Bank. Without pronouncing on the question whether the Respondent has such a duty vis-a-vis a fixed-term employee, the Tribunal finds that several attempts were made by the PMD to assist the Applicant to find a position outside the Cofinancing Department, both before and after the January 1989 decision not to renew or convert his appointment. The fact that those efforts were not successful does not constitute any breach or non-observance of the Applicant's contract of employment or terms of appointment.

Decision:

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

Prosper Weil

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President

C. F. Amerasinghe

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Executive Secretary

At Washington, D.C., June 20, 1991