

Decision No. 230

Mihir Kumar Mitra,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of Robert A. Gorman, President, Francisco Orrego Vicuña and Thio Su Mien, Vice Presidents, and A. Kamal Abul-Magd, Bola A. Ajibola, Elizabeth Evatt and Jan Paulsson, Judges, has been seized of an application, received on May 26, 2000, by Mihir Kumar Mitra against the International Bank for Reconstruction and Development. The Respondent filed a request on June 26, 2000 to separate jurisdictional issues from the merits and to file an answer limited to the jurisdictional issues. This request was granted. The usual exchange of pleadings took place and the case was listed on August 15, 2000 to decide the issue of jurisdiction only.

2. This case concerns a complaint by the Applicant in respect of adverse discrimination on the part of the Bank, based on age and nationality, that allegedly resulted in depriving him of a regular staff position, in the wrongful conversion of his Long-Term Consultant appointment into a Short-Term one and in the non-extension of the latter contract. As a consequence of the above, the Applicant also claims pension benefits for the entire period of his work with the Bank and compensation for income losses.

3. The Applicant joined the Bank in 1987 on a Short-Term assignment and was soon thereafter offered employment as a Long-Term Consultant. After several extensions of his appointment, he accepted a Short-Term Consultant appointment on July 24, 1995, which was renewed a number of times. On June 30, 1999, his last appointment as a Short-Term Consultant expired and was not renewed.

4. The Applicant's main assertion is that he was deprived, on grounds of age and nationality, of a Regular or Fixed-Term appointment at the time he began to work for the Bank. Successive decisions, such as the conversion of his Long-Term Consultant appointment into a Short-Term one, and the ultimate non-renewal of the latter were, in his opinion, tainted by the same discriminatory treatment.

5. The Applicant's second main assertion is that the conversion from a Long-Term Consultant appointment to a Short-Term one was irregular and improper, resulting in lost leave and medical benefits. In particular, the Applicant wrote on September 3, 1997 to the Managing Director of the Bank complaining about various irrationalities and discrimination that affected him and pointing out that under United Nations policies, pension and medical benefits were allowed for Long-Term Consultants retiring after five years of continuous service. Again on September 24, 1998, the Applicant wrote to the Vice President of Human Resources complaining about his ultimate retirement without benefits and requesting his reinstatement as a Long-Term Consultant with retroactive effect to June 30, 1995, and compensation for the losses incurred. Similar claims were made on February 19, 1999.

6. The Applicant's third main assertion flows from those explained above. In a message sent on October 12, 1999, to both the Vice President of Human Resources and the Pension Benefits Administrator, the Applicant requested past pension credits or their monetary equivalent under the Staff Retirement Plan (SRP) for his entire past service with the Bank since January 1988, as well as retiree medical benefits. Invoking the judgment of the Asian Development Bank Administrative Tribunal in the Amora case (Asian Development Bank Administrative Tribunal, Amora, Decision No. 24 [1997]), the Applicant claimed in this communication entitlement to pension, medical, severance and separation benefits on the basis that he had performed duties

and functions equivalent to a regular staff member throughout his career with the Bank.

7. The Applicant took his complaints to the Appeals Committee on November 12, 1999, which dismissed his Appeal on jurisdictional grounds on March 3, 2000, for having failed to observe the applicable time limits. On May 26, 2000, the Applicant brought his case to this Tribunal.

8. The Respondent has objected to the Tribunal's jurisdiction on the ground that the Applicant failed to exhaust all remedies available within the Bank as is required by Article II, paragraph 2(i), of the Tribunal's Statute, in particular by not, in a timely manner, requesting administrative review or otherwise contesting any of the decisions of the Bank that affected him. In fact, as noted above, the Applicant's first complaints about his non-regular status were made in 1997 and 1998, that is almost ten years after his initial appointment and over two years after the conversion of his appointment to that of Short-Term Consultant. The Applicant did not request administrative review of the non-renewal of his Short-Term appointment after its expiration on June 30, 1999. As noted above, the Appeals Committee dismissed the Applicant's Appeal on jurisdictional grounds, finding that he had failed to challenge the terms of his appointment or conversion within the 90-day period required for administrative review by the rules then in effect. The Appeals Committee further noted that even if the Applicant's arguments about continuous discrimination were accepted as the basis for accepting jurisdiction over his complaint the final administrative review decision would have taken place on June 2, 1999. Thus, since the Appeal to the Appeals Committee was made on November 12, 1999, the required 30-day period for making such an Appeal had also lapsed.

9. The Applicant has argued ignorance of the law for not challenging adverse decisions in a timely manner and has claimed that the Bank failed to adequately inform him of his rights. These arguments are not tenable. The Tribunal has held on a number of occasions (see Mendaro, Decision No. 26 [1985], para. 33; Bredero, Decision No. 129 [1993], para. 23; and Guya, Decision No. 174 [1997], para. 7) that ignorance of the law is not a valid excuse for failure to comply with the prescribed time limits. Moreover, the Applicant was advised at the moment of his first Consultant appointment to familiarize himself with the Staff Rules, which were indeed made available to him. It follows that the Applicant cannot credibly maintain that his conditions of employment were not clear to him before 1997, that he was unaware that he was not entitled to participate in the SRP or that he failed to realize that he was not in fact participating in it.

10. In sum, the Tribunal concludes that no exceptional circumstances exist so as to justify the Applicant's failure to comply with the procedures for making complaints and with the time limits established under those procedures. Moreover, there is no prima facie evidence that the Applicant's situation was comparable to that of Amora or even to that which the Tribunal discussed but did not need to resolve in Caryk (Decision No. 214 [1999]) and Madhusudan (Decision No. 215 [1999]), in terms of justifying a retrospective evaluation of the Respondent's conduct throughout the years and not in connection with a particular moment. Had there been such evidence, the benefit of the doubt could have allowed for examining such conduct without the restriction of specific time limits applicable at one moment or another. In any event, the retrospective evaluation would always be limited by the evidence and by the question as to when the Applicant became aware of a wrongful conduct or treatment, i.e., the moment from which the pertinent time periods for challenging such conduct would run.

11. The Bank has also urged, as it did in Caryk and Madhusudan, that an applicant should not be permitted to make claims at any time during his employment, after such employment has ended or into the indefinite future, to avoid encouraging claims many years after the events to which they relate. The Tribunal finds this argument convincing. Such long-delayed resolution of staff claims could be seriously complicated by the absence of important witnesses or documents, and would in any event result in instability and unpredictability in the ongoing employment relationships between staff members and the Bank. These are among the reasons why this Tribunal has continuously insisted on the importance of the statutory limitations and why considerations such as those present in Amora, Caryk or Madhusudan should be applied only in cases where the statutory limitations have been observed or, failing this, where there exist exceptional circumstances.

12. These concerns are especially acute in respect of the SRP. As the Tribunal noted in Caryk (para. 17) and

Madhusudan (para. 24), the Pension Benefits Administration Committee (PBAC) has under Section 10.2(f) of the SRP an exceptionally broad authority to decide all questions of interpretation of the Plan provisions, including participation, retirement benefits and any claims for benefits or payments thereunder. This broad authority, however, is limited by two important elements: the substantive provisions of the Staff Rules and the time limits applicable to claims for pension benefits.

13. As to the first element mentioned above, it is the Staff Rules that establish the substantive provisions applicable to staff members, with particular reference to the types of appointments and other conditions of employment. Any question about the proper application of these Rules regarding an alleged appointment misclassification is to be decided in accordance with the grievance procedure available within the Bank, including its time limits and other requirements. It should not be possible to circumvent these time limits by taking the case to the PBAC, which deals with questions of SRP interpretation and claims for benefits or payments under the SRP.

14. There is a second element that limits the authority of the PBAC to decide on claims brought to it. Under Staff Rule 11.01, paragraph 2.01, "the right of a staff member to claim any refund, allowance or payment due but unpaid or any benefit not credited shall lapse three years after the date on which a right to the benefit, allowance or payment claimed arose." There is here a time limit of three years that prevents claims, including those brought under the SRP, being made indefinitely into the future. The Staff Rules and the SRP thus offer a standard which attends both to the rights of staff members and to the need to avoid unlimited or undefined claims proceedings.

Decision

For the above reasons, the Tribunal unanimously decides that the application is inadmissible.

Robert A. Gorman
President

Nassib G. Ziadé
Executive Secretary

At Washington, D.C., November 10, 2000