

Decision No. 156

Ali S. Montasser,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Lauterpacht, President, R. A. Gorman and F. Orrego Vicuña, Vice Presidents and P. Weil, A.K. Abul Magd, Thio Su Mien and Bola A. Ajibola, Judges, has been seized of an application, received on November 9, 1995, by Ali S. Montasser, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The Applicant requested, as a preliminary measure, that the Tribunal report his case on an anonymous basis. Finding no exceptional circumstances that would warrant so doing, the Tribunal rejected this request. The case was listed on December 6, 1996.

2. The Applicant was initially employed by the Bank in 1983, and was promoted from a level 24 to a level 25 position in 1987. In early 1994, the Applicant was employed as a level 25 Principal Information Officer in the Policy, Strategy and Evaluation Division (hereinafter referred to as the "Policy Division"), which was located within a then recently created department, the Organization and Business Practices Department (OBP). The purpose of OBP was to collaborate with and support managers at all levels throughout the Bank to improve existing business practices, processes and procedures.

3. On March 7, 1994, a document entitled "OBP Business Plan: FY 95-97" was distributed to OBP staff. Among other things, the Plan identified weaknesses and problems within the Department and described a plan to restructure the Department so as to improve the quality and efficiency of its work. Among other things, the Plan stated:

[T]here are too many people performing tasks that add limited value; and the fact that they may be doing them well is beside the point...[I]t is obvious the organization of the IT [information and technology] elements of the new department need immediate attention and a new direction. In the longer term...a new organization and management structure for IT services will emerge. But the existing anomalies cannot be tolerated even in the short-term. Moreover, the capacity to support process innovation in other areas is needed now. Several structural changes will, therefore, be made on March 15, 1994, to support the objectives outlined above.

Among the structural changes mentioned in the Plan was the redeployment of a small number of positions from the Policy Division (in Information Security, and in Business Continuity and Disaster Recovery), while all other staff members in that Division, in which the Applicant worked, were to have their work programs canceled and their positions abolished. This was more formally announced by the Vice President, Management and Personnel Services, in a memorandum dated March 10, 1994 to the Director, OBP.

4. The Applicant was informed by a memorandum dated March 11 that, pursuant to paragraph 8.04 of Staff Rule 7.01, his employment was to become redundant on March 31, and that the Bank would attempt to place him in a suitable position among existing or known prospective vacancies. Absent the Applicant's reassignment to such a position within six months from March 31, 1994, he would receive sixty-days' notice of termination of employment as provided by Staff Rule 7.01, paragraph 8.07. On the same day as he received official word of his redundancy, the Applicant was informed by the Director, OBP, of some ten position openings, along with their job descriptions, and he was invited to indicate his interest in any such positions, for which he would be

interviewed along with other interested candidates by a panel specially created for that purpose.

5. By an electronic mail message of March 18, the Applicant expressed interest in a Management Consultant position in the Organization Design Staff (ODS) as his first choice, and a Senior Information Officer position as his second choice. The Applicant, and the other candidates, were interviewed on March 21 by the selection panel, which considered such information as the candidates' recent performance reviews and which rated the candidates against certain advertised selection criteria. The positions were awarded to others. The Director, OBP, so informed the Applicant, and also took other steps, as did the Personnel Management Department, to identify suitable and available positions for the Applicant. After other efforts and assistance by the Bank, and efforts by the Applicant himself, proved fruitless, the six-month search period mandated by Staff Rule 7.01 ended, and the Applicant was informed that his employment would be terminated on November 30, 1994. Pursuant to Staff Rules, upon leaving his employment with the Bank, the Applicant was granted 13.75 months of severance pay.

6. In the meantime, the Applicant had been given his final Performance Review Record (PRR) covering the period March 1, 1993 through February 28, 1994, and his merit salary adjustment. In that 1993-94 PRR, the Applicant's Director rated him as "fully effective" in almost all pertinent categories, indicated the general satisfaction of OBP management with the Applicant's performance, and made some positive and sympathetic comments about the Applicant's work. But the Director concluded: "Unfortunately, there is not a good fit between Mr. Montasser's skills and the needs of OBP as now constituted." In determining merit for purposes of awarding a salary increase, the Director compared the Applicant's work with others at his grade level in the Department, and awarded him a salary increase of one percent effective May 1, 1994; one percent was the minimum increase for fully satisfactory performers under the salary administration criteria for that year (while the maximum in the Applicant's salary range was 2.7%).

7. The Applicant in 1994 took timely steps to secure administrative review of the Respondent's decisions relating to his redundancy and to his nonassignment to a new position, as well as of his 1994 performance review and salary determination. When the Respondent confirmed those actions after administrative review, the Applicant filed appeals (dated August 12, 1994 and November 23, 1994) to the Appeals Committee, which on July 31, 1995 announced its recommendation that all requests for relief should be denied. The Appeals Committee did, however, opine that the framework of rules on redundancies should be more clearly established and articulated.

8. The Applicant challenges both the substance, and procedures, pertaining to the several decisions made by the Respondent: (i) to declare his employment redundant based on the abolition of the Policy Division; (ii) not to give the Applicant a position equivalent to the one he previously occupied; (iii) to institute panels for selection of staff to positions in the successor unit and the failure to apply the proper redundancy criteria; (iv) not to select him for a suitable position; (v) to give him a below norm merit increase for 1994; (vi) not to revise more positively his 1994 PRR; and (vii) to prepare his 1994 PRR without according him due process.

9. The Applicant requested the following relief: compensation in the amount of three years' gross salary, for the prejudice caused to his career, including future loss of earnings and pension rights; withdrawal and revision of his PRR to reflect fully satisfactory performance by eliminating unsubstantiated derogatory comments; setting of his merit award at the level of a norm increase, at a minimum; and attorney's fees in the amount of \$17,480.

10. The principal claims of the Applicant relating to the Respondent's determination of the redundancy of his position and the nonselection for a new one, and to his annual PRR and merit salary increase, involve matters that are within the discretion of the Bank, subject only to limited review by the Tribunal. As it has been stated in many of the Tribunal's decisions, the Tribunal will not interfere with the exercise of such discretion unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure. Applying those standards to the several decisions of the Respondent that are challenged here, the Tribunal concludes for the reasons set forth below that there has been no such abuse of discretion.

11. A major contention on the part of the Applicant, from which the others derive, is that the abolition of his position within the Policy Division, and the resulting declaration of his redundancy, were products of a defective and ill-considered process. He asserts that the OBP Business Plan: FY 95-97 was an inadequate basis upon which to rest the abolition of the Policy Division; he condemns the Plan's "opaque and tendentious posturing," and he finds its analysis vacuous and unconvincing and its conclusions ill-defined.

12. The Tribunal, however, cannot find that the Plan is so lacking in cogency as to render reliance upon it by the Bank in reorganizing the Department an abuse of discretion. Among other things, the Plan discusses the objectives to be pursued in redesigning OBP processes--among them the identification of core and peripheral services, an assessment of client satisfaction, identification of "areas of overlap, duplication, competition and waste," and identification of "the services that should be eliminated"; the Plan further discusses the work program and budget within the various divisions of OBP, and the details of the OBP reorganization. Among other things, the Plan concludes:

With some exceptions, the work program of the Policy Division was neither focussed nor well grounded in client needs. The exceptions apart, the answers to the question: "what would happen if this activity did not exist?" lacked conviction. It was, therefore, concluded the Policy Division should be disbanded and its resources redeployed. In a few instances, this meant existing staff would move, with their work, to another unit in OBP. In most, it meant the work program item was cancelled and the corresponding positions abolished.

These observations were in the context of a varied and detailed set of recommended changes relating to other divisions within OBP.

13. There is thus no basis for concluding that the abolition of the Policy Division was an abuse of discretion. Moreover, such action was consistent with the express provisions of Staff Rule 7.01, paragraph 8.02(a), which empowers the Bank, in the interests of efficient administration, to eliminate an entire organizational unit and to declare the employment of staff assigned to such a unit redundant. Irrespective of the arguments of the parties about the provisions of paragraph 8.02 and the extent to which those provisions are covered by the guarantees of paragraph 8.03, the Tribunal finds that in essence such guarantees were complied with in this case.

14. The Applicant nonetheless claims an entitlement to a continued appointment to carry out his former functions. He asserts that the mere fact that a budgetary unit such as the Policy Division is disbanded does not mean that the positions therein lose their function and purpose; and he also asserts that the functions of his previous position were in fact carried forward elsewhere within OBP after the termination of the Policy Division. He claims, therefore, that he should have automatically been offered one of the positions at level 24 or 25 in the newly reorganized OBP.

15. The record clearly suggests that the abolition of the Policy Division was not an artifice. The work programs of almost all staff members were found, after study and analysis, to be lacking in purpose and to warrant elimination. As to whether other staff members in OBP did in fact carry on with the Applicant's work after the reorganization, as he contends, the record is less than clear. But in any event, even if some of the surviving OBP positions required the use of skills such as those previously utilized by the Applicant, the Bank was not obliged by its rules and regulations, or by basic principles of fairness and due process, to place the Applicant in such a position, in preference to the earlier incumbent or to some other candidate who might be properly found to be more highly qualified than the Applicant. Indeed, the Applicant was given an opportunity to apply for, and to be fairly considered for, other positions for which he believed himself to be qualified; yet after a competitive process, he was not selected. For the Bank to have thus allocated available assignments within OBP among department members declared redundant is reasonable and is not an abuse of discretion.

16. The Applicant also challenges the panel process by which he was considered for a new appointment after the abolition of the Policy Division. He asserts that the decision to use the panel process was ad hoc and ultra vires; that the criteria on which the panelists based their decisions were unclear and inadequate; that a number of the panelists were biased against him; and that the selection process otherwise violated due process.

17. The Tribunal finds these allegations to be without basis. The Bank's decision to use a panel to assess and select candidates for vacant positions after the OBP reorganization was altogether reasonable. The panelists were selected from certain categories that were reasonably designed to assure a range of experience and perspective; they were the selecting managers, a representative from outside OBP and an external expert from outside the Bank, and the Personnel Officer. For one of the positions sought by him, the Applicant was given numerical ratings in each of eight specific criteria, and for the other position, there were fifteen specific criteria; in addition, consideration was given, *inter alia*, to the candidates' PRRs from the most recent three years. These were hardly irrational or arbitrary criteria, and there is no factual support for the Applicant's speculations that the panelists applied them in a capricious or discriminatory manner. For example, that women were selected for the positions, upon the application of these criteria, can hardly in itself be a satisfactory basis for the Applicant's claim of gender discrimination. Moreover, the Applicant's assertions that the panel relied on illicit reasons for not selecting him, and that at least two of the panel members were biased against him, are entirely speculative.

18. The Applicant asserts other flaws in the decisions relating to his redundancy and termination. He claims, for example, that an early expression (in February 1994) by the Director, OBP, of anticipation that the Applicant would be part of "the team" implementing the "process innovation program" bound the Bank to a "contractual commitment" that he would be insulated against redundancy. The Director's brief E-mail message was an informal communication that envisaged a possibility that ultimately did not materialize. The Tribunal concludes that it could not reasonably have been understood as amounting to a binding assurance. Nor is there a basis in the Bank's rules and regulations, or in fundamental requirements of fairness, for the Applicant's claim that persons serving on temporary or fixed-term appointments, particularly consultants, should be displaced from their ongoing positions in order to enable regular staff members who would otherwise be declared redundant to remain in their positions. Finally, the factual record completely belies the contention that the Director, OBP, and other management and personnel representatives, made little or no effort to assist the Applicant to find employment elsewhere within the Bank, and even outside the Bank, after his nonselection in the panel process. In fact, the record shows that substantial efforts were made by the Respondent to assist the Applicant in securing alternative positions.

19. It remains for the Tribunal to consider the Applicant's contention that his 1993-94 PRR, and his related merit salary award for 1994, were defective both substantively and procedurally. He characterizes certain comments in his PRR as unsubstantiated, derogatory and indeed defamatory, and requests that they be withdrawn; and he claims that he deserved more than the minimal salary increase for his "fully satisfactory" performance. He also claims that the Director, OBP, who prepared the Applicant's 1993-94 PRR, had by then determined that he was redundant, so that the Director had an interest in undervaluing the Applicant's performance in the PRR; and that this alleged bias was compounded by the Director's reliance on secret and anonymous sources within the Bank, who provided critical appraisals that were not put in writing and were not subject to challenge by the Applicant.

20. The Applicant's claim of bias on the part of his Director is belied by the positive assessment by the Director of the Applicant's performance in 1993-94; the content of the PRR was overall quite positive and sympathetic, and not derogatory as the Applicant contends. A balanced statement of reasons was set forth, with mention of the Applicant's good work on the Continuous Quality Improvement plan coupled with an assessment that, for reasons not altogether within the Applicant's control, that work had limited practical value. There was no irregularity in consulting with others who knew the Applicant's work during the pertinent period, so long as these contributed to the Director's own assessment for which he was accountable. In any event, to the extent that comments from other staff members were reflected in the Applicant's PRR, they cannot fairly be characterized as negative, and it therefore cannot reasonably be said that the Applicant was injured in any pertinent respect by any such consultation by his Director. The Tribunal must note, however, that the process by which the PRR was prepared, particularly as it concerns the supplementary review and the Management Review stages, should have been more transparent and should have been so designed as to have kept the staff member better informed as it progressed. But, again, it cannot be found, in the circumstances of this case, that such lack of transparency was harmful to the Applicant.

21. As to the salary increase, it was within the range of merit awards for satisfactory performance. That it was not higher reflects the fact that the merit determination is based on a comparison of a staff member's performance with that of others at his grade level in the unit, here OBP. Beyond the Applicant's assertion of unfairness, there is no evidence that the Director's assessment was arbitrary, capricious, discriminatory or otherwise an abuse of discretion. Indeed, the fact that the Applicant did not fare well in the panel selection process when he applied for vacancies, competitively with fellow staff members, reinforces that conclusion.

22. The Tribunal therefore concludes that the Respondent's decisions relating to the Applicant's abolition of Division, redundancy, nonselection, performance evaluation and salary increase did not constitute an abuse of discretion. His application should therefore be dismissed.

DECISION

23. For the above reasons, the Tribunal unanimously dismisses the application.

Elihu Lauterpacht

/S/ Elihu Lauterpacht
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At Washington, D.C., April 11, 1997