World Bank Administrative Tribunal

2015

Order No. 2015-3

Ramnath Venkataraman (No. 2),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

World Bank Administrative Tribunal
Office of the Executive Secretary

Ramnath Venkataraman (No. 2),
Applicant

v.

International Bank for Reconstruction and Development
Respondent

1. This order is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Stephen M. Schwebel (President), Andrew Burgess, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.

2. The Application, the Applicant's second before the Tribunal, was filed on 28 April 2015. The Applicant represented himself. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency.

3. In his first Application, filed on 5 December 2013, the Applicant challenged:

> (i) his resignation; (ii) the Bank's decision not to confirm his appointment; (iii) his interim Overall Performance Evaluation (OPE); (iv) his placement on administrative leave and the restriction of his access to Bank premises; (v) his work on a "[j]ob that [he] did not sign up for"; and (vi) an "[i]nefficacious work environment." *See Venkataraman,* Decision No. 500 [2014], para. 3.

The Applicant requested the Tribunal to order:

> (i) the rescission of his resignation and of the interim OPE and reinstatement with salary at the "market reference point" and all related benefits; (ii) confirmation of "[his] services in the system"; (iii) compensation in the amount of $90,000 for, *inter alia*: (a) loss of earnings with interest; (b) loss of retirement benefits and loss of medical assistance; (c) humiliation because he was stripped of his access to the Bank premises; (d) lost opportunities; and (e) defamation and loss of reputation; and (iv) legal costs in the amount of $21,899.12. In a later pleading the Applicant requested compensation in the amount of $120,000. *See Venkataraman*, para. 33.

4. On 26 September 2014, the Tribunal rendered its judgment in Decision No. 500 and concluded that

> by not complying with Staff Rule 4.02, the Bank failed to (i) adequately warn the Applicant that he faced termination unless he remedied the defects in his performance; and (ii) afford the Applicant a reasonable opportunity to respond to

> the decision not to confirm his appointment. Taking into consideration these procedural irregularities and the circumstances of the case, the Tribunal awards the Applicant compensation in the amount of three months' salary net of taxes. *See Venkataraman*, para. 91.

Accordingly, the Tribunal decided that:

> (1) The Bank shall pay the Applicant compensation in the amount of three months' salary net of taxes.
> (2) All other pleas are dismissed.

5. In this second Application, the Applicant lists the following as "Decisions Contested":

> 1. Reimbursement of Legal charges amounting to $ 21,949.56.
> 2. The loss of opportunities that I endured. The tribunal has failed/missed out to address this which I had already mentioned in my previous appeal.
> 3. Necessity to hold an oral hearing as the initial oral hearing (PRS) hadn't considered facts that were very relevant to the case.
> 4. Forcing me to go on administrative leave and the way in which the Bank treated me to send me off the office.
> 5. The Tribunal in its decision to compensate me hasn't evaluated the gravity of the situation properly.
> 6. The bank is deliberately not accepting my application for any role although I am qualified for the same.
> 7. Performance & Resignation.

6. Article XI of the Tribunal's Statute provides that: "Judgments shall be final and without appeal." In *van Gent (No. 2)*, Decision No. 13 [1983], para. 21, the Tribunal held that:

> Article XI lays down the general principle of the finality of all judgments of the Tribunal. It explicitly stipulates that judgments shall be "final and without appeal." No party to a dispute before the Tribunal may, therefore, bring his case back to the Tribunal for a second round of litigation, no matter how dissatisfied he may be with the pronouncement of the Tribunal or its considerations. The Tribunal's judgment is meant to be the last step along the path of settling disputes arising between the Bank and the members of its staff.

7. The Tribunal has also stated that: "This rule of finality of the Tribunal's judgments is essential to the operation of the Bank's internal justice system. Once the Tribunal has spoken, that must end the matter; no one must be allowed to look back to search for grounds for further litigation." *Mpoy-Kamulayi (No. 7)*, Decision No. 477 [2013], para. 27.

8. A review of the Applicant's second Application clearly shows that he is seeking to re-litigate his allegations and claims which were addressed in the Tribunal's Decision No. 500. Such an attempt through a new application is not permissible under either Article XI of the Tribunal's Statute or the principle of *res judicata*. The Applicant may be dissatisfied with Decision No. 500 or may feel that he is entitled to more compensation, but that is of no avail, since the Tribunal stated in *van Gent (No. 2)*: "No party to a dispute before the Tribunal may, therefore, bring his case back to the Tribunal for a second round of litigation, no matter how dissatisfied he may be with the pronouncement of the Tribunal or its considerations."

9. The Tribunal notes that the Statute provides a sole exception to this principle of finality. Article XIII states that:

> A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.

10. The Tribunal has stated in a number of its judgments that "the powers of revision of a judgment are strictly limited and may be exercised only upon compliance with the conditions set forth in Article XIII." *Skandera*, Decision No. 9 [1982], para. 7. In *Kwakwa (No. 2)*, Decision No. 350 [2006], paras. 18-19, the Tribunal held that

> the character of Article XIII as a very limited exception should be obvious. Its requirements are not fulfilled unless the Tribunal is satisfied that newly discovered facts are potentially decisive.
>
> It is difficult to define in a phrase the nature of factual revelations which might justify the disruption of a *res judicata*; it is a matter to be determined in the particular circumstances of each case. If it were left to any disappointed litigant to assess the relevance and decisiveness of subsequently discovered facts, the ingenuity of pleaders would ensure that few, if any, judgments would ever be final. Unless some restrictive principle fulfills a rigorous screening function, the availability of revision would subvert a fundamental rule of tribunals such as this one: namely that its judgments are definitive. To ensure that Article XIII does not wreak havoc with the rule of finality, enshrined in Article XI, the former must be recognized as available only in exceptional circumstances. The "new fact" must

> shake the very foundations of the Tribunal's persuasion; "if we had known that," the judges must say, "we might have reached the opposite result."

11. Here, the Applicant did not state in his second Application that he was filing the Application pursuant to Article XIII. But in his Reply to Respondent's Preliminary Objection, he claimed that he had presented "fresh evidence" and he was asking to "reopen" under Article XIII. The Applicant stated as follows:

> I have sought to Re-appeal for the following reasons:
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> a. The Tribunal has either missed or failed to address some queries I had raised.
> b. Fresh evidence that is more than convincing to overturn decision 500 has been produced.
> c. The Bank is still not acting in good faith in considering my employment applications; I have produced documents to support this complaint as well.

12. The Tribunal notes that the Applicant has not explained how the so-called "fresh evidence" meets the terms of Article XIII and the related jurisprudence. The Tribunal has reviewed the second Application and annexes therein but finds no basis for a revision of Decision No. 500.

13. Accordingly, the Application is clearly irreceivable.

DECISION

The Application is summarily dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 13 November 2015