

Decision No. 334

**Padmanabha Rao Hari Prasad,
Applicant**

v.

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

1. The World Bank Administrative Tribunal has been seized of an application, received on October 15, 2004, by Padmanabha Rao Hari Prasad against the International Bank for Reconstruction and Development. The Bank has raised a jurisdictional objection to be decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Bola A. Ajibola (President of the Tribunal) as President, Jan Paulsson (a Vice President of the Tribunal) and Francisco Orrego Vicuña, Judges. The usual exchange of pleadings with respect to jurisdiction took place and the case was listed on March 22, 2005 to decide the issue of jurisdiction only.

Background of the complaints

2. The Applicant's complaint in this case concerns the Bank's alleged failure to carry out the Applicant's performance evaluation for 2001-02 fairly and in a timely manner, and the salary increase (SRI) given for the same period. The Applicant also complains about a continuing mismanagement of his career, the breach of a re-entry guarantee, and a failure to take appropriate action in respect of a claim of administrative harassment and a hostile work environment.

3. The Applicant is at present an Advisor to the Middle East and North Africa Vice Presidency (MNAVP). He has worked for the Bank since 1979 and his performance until the events complained of was constantly evaluated as good, leading to his promotion to increasingly senior and managerial positions.

4. The Applicant was appointed on November 1, 1999, to the newly created position of Resident Representative in Beirut, Lebanon, for a three-year term beginning on January 17, 2000. This position was later renamed Country Manager. The Applicant's letter of appointment envisaged his future work with the Department of the Middle East and North Africa Region (MNCMS), stating in part that "[u]pon completion of this assignment, you may expect to return to a suitable position in MNCMS at your current grade." On this basis, the Applicant argues that a re-entry guarantee was issued to him.

5. As the Country Manager for Lebanon, the Applicant reported at first to the Director, Middle East, Mr. Inder Sud, and to the Vice President, Middle East and North Africa (MNA), Mr. Kemal Dervis. These two officials, however, were replaced soon after the Applicant's appointment by Mr. Joseph Saba as Director and Mr. Jean-Louis Sarbib as Vice President.

6. The new Vice President, MNA, introduced a number of changes in the organization and work of the area under his authority, including a redistribution of countries and a stronger emphasis on the management of country portfolios.

7. In the meantime, the Applicant had set up the Lebanon Country Office in Beirut, recruiting staff and organizing the office's work.

8. The Applicant's 2000-01 Overall Performance Evaluation (OPE), covering his first year as Country Manager, was signed by Mr. Sud on April 17, 2001. The Applicant was rated as Outstanding in some tasks, Superior in others and Fully Successful in yet others. From the correspondence of Mr. Sud with the Applicant, it appears that Mr. Sarbib was not highly impressed with the Applicant's performance.

9. The Applicant asserts that during a meeting held on June 21, 2001 between him and Mr. Sarbib in Washington, D.C., the Vice President expressed his concern about the lack of improvement in Lebanon's troubled portfolio and the management of the office. The Applicant also says that at this time the Vice President informed him that he was considering recalling the Applicant from his position as Country Manager, with a decision to be taken a few months later.

10. This criticism was reflected in Mr. Sarbib's assessment of the Applicant's performance at the time he signed the Applicant's OPE for 2000-01 on July 9, 2001. The assessment recognized the fact that the Applicant had established the Lebanon office in difficult circumstances and had consistently provided the Vice President with reliable analyses of the country. The Vice President also indicated, however, that he would like the Applicant to maintain "a more even keel," with specific references made to the management of the office staff and to taking a stronger leadership role on the portfolio.

11. The second year of the Applicant's work in Lebanon proved to be yet more difficult. The Applicant asserts in this respect that the newly appointed Director, Mr. Saba, was critical of the Applicant's performance for 2001-02 and suggested to the Applicant that he should consider returning to Washington before the expiration of his appointment, indicating June 30, 2002, as an appropriate date of departure. In the meanwhile, the Applicant began a job search and applied for other positions in the Bank, expressing his willingness to set April 30, 2002, as his last day in the Beirut office. The Applicant thus returned to Headquarters by the end of May 2002. Following an illness and surgery, he began to work for the Quality Assurance Group, where he had been employed prior to his appointment to Lebanon. The Applicant's search for other positions did not succeed.

12. The Applicant's 2001-02 OPE reflected the deteriorating perceptions by both the Director and the Vice President of the Applicant's performance. Mr. Saba signed the OPE on September 26, 2002, almost six months after having this document forwarded to him by the Applicant for review. The rating of the Applicant's performance changed rather dramatically from that of the previous OPE, as he was evaluated as Superior with respect to a few categories, Fully Successful in others and Partially Successful in many. The OPE was also critical of the Applicant's handling of the Beirut office and the management of the portfolio. The Applicant was given a low rating of 3.1 as well as the lowest SRI, 1.3%. Neither the Applicant nor the Vice President signed the OPE.

The INT Process

13. Against this background, the Applicant began two processes for consideration of his complaints. The first was a written complaint against Messrs. Saba and Sarbib to the Department of Institutional Integrity (INT). This submission involved ten allegations of harassment, including the abusive evaluation of his performance.

14. The INT report on the preliminary inquiry conducted in this matter, issued on January 10, 2003, retained just one complaint concerning alleged humiliating and demeaning treatment of the Applicant by Mr. Sarbib. No corroborating evidence of this allegation was found, however, and the investigation was concluded. In respect of all the other allegations of harassment, INT concluded that these issues "appear to constitute grievances that could be handled more appropriately through managerial or CRS [Conflict Resolution System] intervention instead of a misconduct context."

Procedure before the Appeals Committee

15. The second procedure begun by the Applicant was his appeal before the Appeals Committee, filed on December 11, 2002. The Applicant listed as the decision affecting him "[t]he Supervisor's performance

evaluation for the period 04/01-03/02.” In addition, the Applicant raised a number of other complaints and allegations, concerning in particular the decision to recall him from Beirut based on biased and unfair views of his performance, the hostile work environment which followed the 2001-02 evaluation and its negative impact on his career prospects in the Bank, the arbitrary downgrading of his 2001-02 performance rating and SRI, and other retaliation taken against him. The Applicant requested relief in the form of a decision removing the 2001-02 OPE from his file, monetary compensation and costs.

16. At the Respondent’s request, on January 10, 2003 (the same date on which INT issued its report on the Applicant’s complaint of harassment), a mediation procedure was offered. The Appeals Committee proceedings were stayed for the duration of the mediation, but as it ultimately failed, they were resumed on October 29, 2003.

17. On November 24, 2003, the Respondent contended in its Answer to the Statement of Appeal that the appeal had become moot as a consequence of the Bank having withdrawn the 2001-02 OPE. The Respondent offered the Applicant another opportunity to discuss his performance in 2001-02 with his managers. The Applicant, however, refused this offer as it would have deprived him of the right to have the merits of his case reviewed by his peers.

18. On January 23, 2004, the Appeals Committee accepted the Respondent’s decision to withdraw the OPE. It also concluded, however, that this withdrawal did not render moot all of the issues raised by the Applicant in his appeal, particularly those concerning the process by which the 2001-02 OPE had been conducted, the Applicant’s allegedly hostile work environment, and any damage caused by the Respondent’s actions to the Applicant’s career prospects and reputation.

19. In its Report dated June 7, 2004, the Appeals Committee concluded that the Respondent had not followed Bank procedures in completing the Applicant’s 2001-02 OPE. Consequently, the Appeals Committee found that the Applicant had been harmed by procedural flaws and denied fair treatment. Particular attention was given by the Appeals Committee to its findings that Mr. Saba had not conducted the required performance review discussion with the Applicant, had not provided him with clear feedback regarding the areas in which he needed to improve, had signed the OPE six months after submission and had not followed any systematic process in collecting feedback. The mismanagement of the Applicant’s 2001-02 OPE, the Appeals Committee found, had impacted his due process rights as he had been denied the opportunity to explain and defend his performance.

20. The Appeals Committee, however, did not find that the performance evaluation embodied in the 2001-02 OPE, or the manner in which it had been conducted, had been motivated by a desire to harass or retaliate against the Applicant. Monetary compensation for damages and costs were recommended. The Appeals Committee’s recommendations were accepted by the Bank on June 10, 2004.

Complaints before the Tribunal

21. On October 15, 2004, the Applicant filed the application before this Tribunal contesting the 2001-02 OPE, the 2002 SRI, the alleged continuing mismanagement of his career, and the Bank’s alleged failure to take appropriate action on his claims of administrative harassment and a hostile work environment. However, as noted by the Respondent, the application also listed other complaints, concerning in particular the decision to recall the Applicant from Beirut, the claim that his re-entry guarantee had been breached, and the allegation that the Respondent’s counsel had attempted to tamper with the testimony of prospective witnesses during the Appeals Committee process.

Objections to jurisdiction

22. On November 16, 2004, the Respondent raised jurisdictional objections on the ground that the Applicant had exhausted internal remedies only in connection with the 2001-02 OPE and the related allegation of abuse of discretion, as these were the only issues brought before the Appeals Committee. The Respondent argues

that for all other issues raised by the Applicant, internal remedies have not been exhausted and hence the requirements for admissibility laid down in Article II of the Tribunal's Statute have not been met.

23. The Tribunal has repeatedly held that the exhaustion of internal remedies is of the utmost importance as it ensures that the Bank will be afforded an opportunity to redress any alleged violation by its own action (*Klaus Berg*, Decision No. 51 [1987], para. 30; *Vick*, Decision No. 295 [2003], para. 14). This the parties do not dispute. The Applicant argues rather that the various complaints brought to the Tribunal are related aspects of a single complaint and not separate charges requiring each to be subject to internal Bank review, and that the exceptional circumstances question in *Hristodoulakis* (Decision No. 296 [2003], paras. 17-18) is not relevant to this case.

Exhaustion of internal remedies in respect of the 2001-02 OPE

24. There is no question but that the Appeals Committee considered the Applicant's claims concerning the 2001-02 OPE. This was indeed the central issue discussed by the parties in their pleadings. Questions of abuse of discretion and proper process were paramount in the Appeals Committee's Report and recommendations. The very description of the Applicant's complaint in this Report was that he was challenging the OPE for this period.

25. The fact that the Applicant referred only to the 2001-02 OPE in the complaint summary entered in the Statement of Appeal form is not conclusive. This is so because, first, this description is intended to refer only to the main issue at stake and, second, what matters is whether there was a sufficiently explicit explanation of the complaints in the Applicant's submission to the Appeals Committee, which is where the detailed argument is made.

26. In the instant dispute, there were indeed other issues raised before the Appeals Committee, which is the very reason why that body decided that the withdrawal of the OPE did not render those other questions moot. It must be noted in this respect that the Appeals Committee decision on the question of mootness, dated January 23, 2004, is quite explicit on this point.

27. Indeed, the Appeals Committee stated first that "[i]n this case, the issue on appeal is not just the content of the [Applicant's] performance evaluation," and referred to other complaints concerning the process followed, the existence of a long-term pattern of harassment, a hostile work environment, opportunities for competitive assignments and damage caused to the Applicant's career and reputation. Moreover, the Appeals Committee concluded

that the unilateral removal of the 2002 OPE does not resolve the [Applicant's] claims with respect to the process by which the 2002 OPE was conducted, the alleged hostile working environment, and any damages the [Applicant] incurred to his career and reputation. Therefore, while accepting the Bank's prerogative to withdraw the 2002 OPE, the Panel members conclude that all of the [Applicant's] issues have not been resolved by the withdrawal.

28. The Applicant asserts that all those other issues were the direct consequence of the improper process followed in the evaluation and that, in any event, the OPE encompasses all of the issues under discussion, namely the SRI, the early recall, the alleged breach of the re-entry guarantee, the alleged harassment and the alleged damage to the Applicant's career. The Applicant argues that the motives underlying the evaluation were specifically considered in connection with all of these other questions, were reviewed by the Appeals Committee and were the subject of testimony.

29. The Tribunal will turn now to the consideration of each of the specific issues brought before it so as to determine whether internal remedies were exhausted.

Exhaustion of internal remedies in respect of the 2002 SRI

30. Whether the SRI issue was considered by the Appeals Committee is a matter on which there is

fundamental disagreement between the parties. The Bank argues that the SRI issue was not so considered; the Applicant asserts that this issue is inextricably linked to the OPE and the motives of his managers in connection therewith. Were it not for the arbitrary performance evaluation, the Applicant argues, there would have been no other basis for deciding on an equally arbitrary SRI, of which he learned even before the OPE was completed and signed by the Director. He further argues that the Appeals Committee considered that damage to the Applicant's career and reputation was among the issues for its consideration, and that this question cannot be separated from the OPE, the SRI and the evaluation process followed.

31. In examining the record before the Appeals Committee and the proceedings conducted by that body, the Tribunal is satisfied that the SRI question was present both directly and indirectly in the Appeals Committee's considerations. It cannot be doubted that the broad reference made by the Appeals Committee to damage to the Applicant's career and reputation, noted above, inescapably entails the effects the wrongful procedure could have on the SRI. More explicit yet, the record of the oral hearing shows that the question was discussed at several points. The fact that the Appeals Committee did not specifically address the SRI in its recommendations does not deprive the Tribunal of jurisdiction to consider a matter which was indeed raised and discussed before that body.

Exhaustion of internal remedies in respect of alleged administrative harassment and an allegedly hostile work environment

32. The claim of administrative harassment and a hostile work environment is well documented in the record. It was expressly considered by the Appeals Committee in discussing its determination that the issue had not been rendered moot by the Bank's withdrawal of the OPE. Moreover, the record contains more than a few references to the issue of harassment and an allegedly hostile work environment. The Appeals Committee's Report also considered the matter.

33. It must be recalled too that INT recommended that the question be submitted to the review of management or the CRS. The pertinent INT document was requested and produced during the proceedings before the Appeals Committee. The fact that this recommendation was issued after the Statement of Appeal had been filed does not detract from its value in guiding the parties towards consideration of the matter and potential settlement. In fact, as noted above, on the very date the INT recommendation was issued, the Bank invited the Applicant to begin mediation procedures.

Exhaustion of internal remedies in respect of the decision to recall the Applicant

34. A third issue dividing the parties' opinions concerns the decision to recall the Applicant from his assignment as Country Manager in Lebanon. Although the Respondent argues that this was only a "suggestion," the Applicant believes it was rather an "order" stemming from the flawed procedures that were at the time being followed for his evaluation and that ultimately resulted in the 2001-02 OPE.

35. Here too, the record reveals many references to the decision to recall the Applicant from Lebanon. Moreover, it is quite apparent that this decision was inextricably related to the process and procedures of evaluation that were being followed at the time. To the extent that the process and procedures might have been flawed, or the evaluation might have resulted from an abuse of discretion and arbitrariness (a question that pertains to the merits), this would have had an inescapable effect on the decision to recall itself. The Tribunal is accordingly satisfied that the issue was properly a part of the complaint and procedure before the Appeals Committee.

Internal remedies and the questions of a pattern of continuing mismanagement and a re-entry guarantee

36. The case concerning the claim of continuing mismanagement of the Applicant's career and obstruction of his career prospects, as well as that of the alleged breach of a re-entry guarantee purportedly offered to him, is different. While the record of the oral hearing before the Appeals Committee does indeed contain references to

such other issues, the Statement of Appeal does not claim that there has been a continuing mismanagement, nor does it invoke past events or decisions that could substantiate the Applicant's views in this connection. The Applicant's submissions to the Tribunal do raise claims of "continuing mismanagement" and a "pattern of harassment," but not in connection with past events, and only in respect of the re-entry guarantee, the failure to offer the Applicant a position upon his return from Beirut, and the alleged obstruction of his career prospects that would have followed.

37. It therefore cannot be held that the question of a "pattern of" or "continuing" mismanagement was properly submitted to the internal remedies available. To the extent that mismanagement has been alleged, this is not different from the claims about the 2001-02 OPE, administrative harassment, a hostile work environment or the decision to recall the Applicant and the ensuing damage to the Applicant's career and reputation. Such alleged events and consequences all fall within the period discussed in this case. This conclusion is confirmed by the fact that all of the Applicant's complaints relate to the performance evaluation by Mr. Sarbib and Mr. Saba after they took office as Vice President and Director, respectively.

38. Yet the Applicant argues that his complaints relate to incidents that are inextricably and necessarily bound up with the performance evaluation for 2001-02, not incidents in an earlier period. *Malekpour* (Decision No. 320 [2004]) and *Hudes* (Decision No. 323 [2004]) considered whether a pattern of continuing mismanagement could be said to be inherent in claims before the Appeals Committee. In *Malekpour*, at para. 21, the Tribunal, after examining the argument that there had been old decisions arising in the mid-1990s which had led to a 2002 OPE, referred to *Jalali* (Decision No. 148 [1996], para. 35) in "reject[ing] such a litigation strategy as an indirect way of avoiding the requirement of exhaustion of internal remedies." So too in *Hudes*, the Tribunal noted that its jurisprudence, with particular reference to *Malekpour*, "disfavors the notion that an applicant can preserve untimely claims by means of a 'one ball of wax' theory" (*Hudes*, para. 28). Also, in *Yoon* (No. 5), Decision No. 329 [2004], para. 21, the Tribunal held that disparate claims could not be transformed "into a single pattern of abuse merely by labeling them as such."

39. The Applicant argues that *Barnes* (Decision No. 176 [1997], para. 29) and *Chhabra* (Decision No. 139 [1994], para. 57) show that there can be inconsistencies and instances of mismanagement that must, if taken together, be considered to have resulted in unreasonableness and arbitrariness. This can indeed be the case, provided such matters are directly, not indirectly or remotely, related to the decision examined. It must also be noted, as the Tribunal did in *Hudes*, at para. 30, that in *Chhabra*, jurisdiction in connection with past decisions was not timely objected to before the Appeals Committee and hence could not later be opposed before the Tribunal. Moreover, in *Barnes* the Tribunal was not requested to exercise jurisdiction in respect of earlier and separate Bank decisions.

40. In the instant dispute, the Applicant has denied any such strategy to raise past decisions or events. Be that as it may, issues concerning a "pattern of" or "continuing" mismanagement were not submitted to internal remedies. Accordingly, the Tribunal finds that it does not have jurisdiction over such claims or the related claim about a breach of a re-entry guarantee.

41. A last complaint brought to the Tribunal by the Applicant concerns the allegation that the Respondent's attorney attempted to tamper with the testimony of prospective witnesses during the Appeals Committee process. The Tribunal rejects this complaint as it considers that the Applicant did not produce any evidence to support this allegation.

Decision

For the above reasons, the Tribunal decides that:

- (1) the application is admissible insofar as it concerns claims about
 - (a) the 2001-02 OPE,
 - (b) the 2002 SRI,

(c) the Respondent's alleged failure to take appropriate action in respect of administrative harassment and a hostile work environment allegedly faced by the Applicant, and

(d) the decision to recall the Applicant from his assignment as Country Manager for Lebanon; and

(2) the Respondent shall pay the Applicant costs in the amount of \$2,000.

/S/ Bola A. Ajibola
Bola A. Ajibola
President

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

At London, England, May 13, 2005