

Decision No. 55

Brij Lal Pruthi,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, P. Weil and A.K. Abul-Magd, Vice Presidents, and R.A. Gorman, E. Lauterpacht, C.D. Onyeama and Tun M. Suffian, Judges, has been seized of an application, received November 4, 1986, by Brij Lal Pruthi against the International Bank for Reconstruction and Development. After the usual exchange of pleadings, the case was listed on July 20, 1987.

The relevant facts:

1. In 1980 the World Bank established in New Delhi a Regional Field Office in connection with UNDP projects for which the Bank acted as Executing Agency. Since the Indian Government did not provide the support staff for these projects, the Bank appointed a consultant as Regional Manager who had among other responsibilities the hiring of support staff under the general monitoring of the Headquarters Project Manager.

2. On April 19, 1980 the Applicant was appointed on a trial basis as Office Superintendent in the Regional Field Office at a consolidated salary of Rs.1,200/- per month. On August 19, 1981, the Applicant was apparently given a regular appointment. However, no copy of this initial letter of appointment could be found in the files of the Regional Field Office. On June 13, 1983 the Applicant's appointment was extended to March 31, 1984 and a letter of appointment was issued which stated that his salary would be Rs.2,532 per month as well as other terms and conditions of his employment. Subsequently, several letters of appointment were issued extending his fixed term contract through December 31, 1984.

3. Prior to September 3, 1984 the letters extending the Applicant's fixed term contract described him as Office Superintendent. However the letter dated September 3, 1984, extending the Applicant's fixed term contract to October 31, 1984, referred to him as Administrative Assistant, as did the letter dated November 29, 1984 extending his contract to December 31, 1984.

4. In October 1984 the Regional Manager informed the Applicant that his appointment would not be extended beyond December 31, 1984 because he had reached the age of 65. The Applicant then requested that his appointment be extended to April 30, 1985, to coincide with the date of the completion of the UNDP project for which he was working. The Regional Manager transmitted his request to Headquarters which refused the extension on the ground that the Bank's policy required retirement at the age of 62.

5. During the period of his service with the Regional Field Office and as early as November 27, 1980, the Applicant repeatedly requested that consideration be given to the fixing of his salary in accordance with the UNDP/World Bank rates applicable in India. None of his letters was answered.

6. On December 21, 1984, the Applicant addressed a letter to the President of the World Bank, referring to a Note dated September 11, 1981 written by a Recruitment Officer of the Personnel Management Department, in which it was stated that "to maintain comparability of salary benefits it will be necessary to employ both professional and support staff according to existing UNDP classification and salary scales in India, and to adjust their salaries, as UNDP approves adjustments." In addition, the Applicant referred to a telex message

dated December 24, 1981 from the Headquarters Project Manager to the Regional Manager instructing him to consult with the World Bank Resident Mission in New Delhi, so as to ensure that salary and benefits given to non-professional staff were "not grossly out of line" with those offered by the World Bank in India. The Applicant concluded by requesting payment of the differential amounts of salary for the duration of his employment with the Regional Field Office as well as retirement benefits.

7. On February 22, 1985 an officer from the India Division, South Asia Programs Department, acknowledged the Applicant's letter addressed to the President of the World Bank and informed him that an investigation was being conducted regarding the terms of his employment with UNDP in New Delhi. In his subsequent correspondence with the same Officer the Applicant reiterated his claim for payment of differential salary and retirement benefits and strongly criticized the way the Regional Field Office was managed.

8. On October 2, 1985 the Chief of the India Division, South Asia Programs Department, wrote to the Applicant to apprise him of the findings of the investigation and concluded that he was not entitled to any differential salary and retirement benefits. However, he offered the Applicant on an exceptional basis an ex gratia payment in the amount of four months' salary, i.e. Rs. 13,200 as a full and final settlement of his claim against the World Bank. The Applicant replied that he disagreed with the terms of the Bank's offer and inquired about appeals mechanisms available to him.

9. On March 20, 1986 the Chief of the India Division, South Asia Programs Department, informed the Applicant that the Bank was prepared to honor the offer of the ex gratia payment only until April 15, 1986; he also stated that if the Applicant chose to seek legal redress, the Bank agreed that he might take his case to the Tribunal without prior exhausting the internal means of redress. On May 7, 1986 the Applicant replied that he accepted the Bank's offer, stated that "his letter may be taken as a receipt in full and final settlement," and gave instructions as to where the check should be sent. However, in his following letter dated May 9, 1986 and addressed again to the Chief of the India Division, South Asia Program Department, the Applicant stated that he had to accept the payment of Rs.13,200 under duress and that he was made to sign a receipt in full and final settlement. He also stated that he still did not agree with the settlement and that he wished to take his case to the Tribunal.

The Applicant's main contentions:

10. The Bank failed to fix the Applicant's salary in accordance with the salary scales applied in the World Bank Resident Mission Office in New Delhi, which the Regional Manager in New Delhi was directed to do by the Headquarters Project Manager.

11. The Applicant's salary was set in an arbitrary and discriminatory manner and was contrary to the principles enunciated in the Note of September 11, 1981 written by a Recruitment Officer of the Personnel Management Department.

12. The Applicant was required to meet and met the World Bank employment standards applied to the local support staff in the World Bank Resident Mission in New Delhi. The Regional Manager, on the other hand, did not follow a uniform and systematic policy in the matter of recruitment and terms of appointment concerning the non-professional staff. Since salaries of non-professional staff were not fixed in accordance with the going rate, the Applicant would like the Tribunal to decide whether a starting salary of approximately Rs.1,200 (US\$120) per month would be the going rate for the position of Office Superintendent.

13. There was no appointment letter for the Applicant's service as Office Superintendent, nor fixed terms of employment. If there were any, they were verbal and discretionary. The reason for non-issuance of appointment letters obviously was to dismiss staff without notice and without payment of any benefits which the local laws require. That was also the reason why an attendance register was not maintained.

14. The Applicant was denied retirement benefits, although it is a statutory obligation on the part of employers, both in public and private organizations, to provide such retirement benefits and severance grants. Since the

Applicant's retirement was on the basis of age the Bank should make such benefits available to him.

15. The Applicant accepted the payment of Rs.13,200 under duress. It was not accepted in full and final settlement.

16. The Applicant claims payment (i) for differential salary for the period of his appointment and for notice denied in the amount of Rs. 567,935.00 equivalent to \$US 47,927.00 (rate of Rs. 11.85 to a dollar) and (ii) retirement benefits in accordance with the World Bank Rules less Rs. 13,200 already received.

The Respondent's main contentions:

17. In October 1985 the Respondent offered the Applicant an ex gratia payment in the amount of Rs.13,200 which the Applicant freely chose to accept, as stated in his letter of May 7, 1986, "as a receipt in full and final settlement." Therefore, the Applicant's claim that he settled "under duress" is unsubstantiated. The Applicant has freely agreed to final settlement of his claims in exchange for a payment of money. Therefore, his application should be dismissed because it is based on claims settled.

18. The Applicant belonged to the local office support staff and was not operationally required to meet Bank standards for local Resident Mission support staff. Moreover, this staff was being paid directly from UNDP project funds, rather than general administrative funds of the Bank, and there was no category of Bank staff to which such staff could be readily assimilated. Therefore, a separate employment regime for local office support staff was established by the Regional Manager with the approval of the Headquarters Project Manager.

19. The Applicant was aware of the terms and conditions of his employment at the time of engagement. Therefore, he knew that a retirement program was not included in the benefits offered. He was entirely free to accept or reject the employment offered on those terms and conditions.

20. The Bank had no legal obligation to set the Applicant's salary according to Bank salary scales applicable to the local Resident Mission support staff or to establish a pension scheme for the local office support staff. Moreover, the Applicant's non-eligibility for participation in the Staff Retirement Plan was taken into account in determining his salary. The Bank's Staff Retirement Plan covers some but not all categories of staff. So long as policy formulation is not arbitrary, discriminatory, improperly motivated or reached without fair procedure, there is no violation of the contract of employment or the terms of appointment of a staff member. The salary and benefits policy applicable to local office support staff was not tainted by any of these defects.

Considerations:

21. The Tribunal has to decide the effect of the Applicant's letter of May 7, 1986 on his earlier complaints, namely, that no appointment letter was issued to him when he was appointed by the Respondent; that in fixing payment of his salary, the Regional Manager UNDP/World Bank project violated certain rules as a result of which violation the Applicant was denied the differential in salary to which he was entitled; and that he was not paid retirement benefits.

22. These complaints were investigated by the Respondent and although the Respondent did not find that the Applicant's complaints and claims were well-founded, it offered the Applicant an ex gratia payment in the sum of Rs. 13,200, an amount equal to four month's salary in "full and final settlement of his claim against the World Bank". This was on October 2, 1985.

23. The Applicant maintained his claim to a differential in salary and retirement benefits in his letters of October 22, 1985 and December 31, 1985 addressed to the Respondent, but made no reference to the ex gratia offer. On March 20, 1986 the Respondent set a time-limit on the acceptance of the ex gratia offer by the Applicant, and called the Applicant's attention to alternative remedies open to him should he wish to pursue the matter further.

24. On May 7, 1986 seven months after the offer of the ex gratia payment was made, the Applicant wrote a letter to the Respondent, saying inter alia:

Since I am leaving for America to live with my son, your check for an equivalent amount in dollar currency may please be sent to me to reach me there after May 12 addressed care R. K. Pruthi, 25 Sunset Court, Montville, N.J. 07045, and this letter may be taken as receipt in full and final settlement. (Emphasis added)

25. Two days after this letter, the Applicant sought to resile from his acceptance of the ex gratia offer by alleging that he had accepted the offer under duress. There is no indication what constituted this duress, nor is there anything in the Applicant's letter of May 7, 1986 to suggest that the Applicant was under the constraint of any illegal or improper compulsion in accepting after seven months of reflection the ex gratia payment "in full and final settlement" of his claim.

26. As the Tribunal stated in paragraph 26 of the decision in Mr. Y (Decision No. 25 [1985]):

It would unduly interfere with the constructive and efficient resolution of (a staff member's claim of improper treatment) if the Bank could not negotiate--in exchange for concessions on its part--for a return promise from the staff member not to press his or her claim further. If such an agreed settlement were not binding upon the affected staff member, there would be little incentive for the Bank to enter into compromise arrangements, and there might instead be an inducement to be unyielding and to defend each claim through the process of administrative and judicial review. It is therefore in the interest not only of the Bank but also of the staff that effect should be given to such settlements.

27. The Tribunal concludes that there is no evidence of duress that might affect the validity of Applicant's acceptance of the ex gratia payment as a full and final settlement of his claim.

Decision:

For these reasons, the Tribunal unanimously decides to dismiss the application.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At Washington, D.C., May 26, 1988