

Decision No. 254

Sithamparam Sengamalay,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on January 29, 2001, by Sithamparam Sengamalay against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Francisco Orrego Vicuña (President of the Tribunal), as President, Bola A. Ajibola (a Vice President of the Tribunal), A. Kamal Abul-Magd and Robert A. Gorman, Judges. The President of the Tribunal ordered the Respondent to produce certain documents requested by the Applicant, and a request by the Applicant for oral proceedings was denied. The usual exchange of pleadings took place. The case was listed on November 6, 2001.

2. After serving as Division Chief in three Divisions within the Controller's unit, the Applicant in 1999 and 2000 was the object of three decisions by his departmental Vice President: he was reassigned to a nonsupervisory position, he was then declared redundant, and then the redundancy decision was withdrawn and the reassignment decision was reimplemented. The Applicant contests these decisions, claiming that they were a product of retaliation and abuse of process. He seeks substantial compensation for these decisions, as well as for other alleged acts of harassment and conspiracy, along with the payment of costs; being retired, he does not seek reinstatement.

3. The Applicant joined the Bank in 1981 as a level 23 Financial Analyst in the Eastern Africa Projects Department. He progressed quickly and was selected in November 1987 to be Division Chief of the Europe, Middle East, North Africa, Latin America and the Caribbean Disbursements Division (LOAEL) of the Loan Administration Department (LOA), at level 25; and in November 1991, he became Division Chief of the Asia Disbursements Division of LOA, and was promoted to level 26 in June 1993. LOA was part of the Controller's Vice Presidential Unit (CTR). Among the Applicant's duties in each Division was to supervise some 30 staff members. During this period, the Applicant's overall performance evaluations (OPEs) were on the whole very positive, although there were statements from his own supervisors that his supervisory skills, particularly with respect to poorly performing subordinates, were wanting. It appears that the Applicant took these assessments to heart, for several OPEs comment upon his efforts and improvement in the area of staff supervision.

4. This polarity in performance is illustrated by two instances. In 1991, a complaint was brought against the Applicant by a staff member who alleged unfair treatment and harassment; an inquiry by the Ombudsman resulted in the conclusion that the charges were unsubstantiated, but the then-Vice President and Controller (VP-CTR) informed the Applicant that he had shown "poor judgment and ability in managing [his] staff" and that improvement was needed. In the 1993 Staff Attitude Survey, the Applicant was evaluated as the best manager in LOA vis-à-vis his two peers at that time.

5. In May 1993, the Applicant was appointed to the Division Chief position in the Africa Disbursements Division of LOA (LOAAF), which was apparently an employment unit of problematic performance and low morale among its 35 staff members. In his OPE covering the period March 1, 1993 to February 28, 1994, the Applicant's supervisor – the then-Director of LOA – set forth a strong commendation of his performance:

What Mr. Sengamalay accomplished in the Africa Disbursement Division [LOAAF] within a short period of nine months is highly impressive. He came to a division full of unhappy and demotivated staff members and through his hands-on style of management, and firm persuasion has made them provide

service standards which are comparable to other regions. ... All in all, an outstanding performance.

As to the Applicant's performance at "people management," his Director stated:

Excellent coaching and counseling for weak performers and motivating them to give their best; his effectiveness will increase if he can handle problem cases with the right balance of sensitivity and firmness.

6. The Applicant's view of the matter, as expressed in his pleadings, is that while he earned the support of the majority of his staff, there existed a numerical minority consisting of poor performers or staff who remained persistently unhappy despite his equitable distribution of workload, his efforts to broaden the skills of his staff through various diversity initiatives, and his provision of honest feedback and balanced written evaluations. The Applicant contends that the later efforts to reassign him were initiated by the minority of disaffected staff members.

7. In June 1995, a second staff member filed a complaint against the Applicant, alleging intimidation, discrimination and favoritism. An investigation by a Senior Personnel Officer led to a finding of no support for the allegations; the complaining staff member was found to be shifting to the Applicant blame for the former's deficiencies, but the Applicant was cautioned by the investigator "to be careful about his tempers and/or style of communications."

8. In January 1996, the then-Ombudsman met with members of the Human Resources team and the Director of LOA to discuss the recurring complaints against the Applicant by his subordinates. Among other things, the then-Director of LOA acknowledged the Applicant's "abrasive personality," but opined that nothing definite had really been proved against him; the Ombudsman commented upon the "fear level" among the Applicant's subordinates that no doubt stifled formal complaints to the then-Director of LOA. In a later meeting, the then-Director of LOA stated that he would not take any action against the Applicant unless the complaining staff members came "face to face to him repeating the same complaint," as he was opposed to acting upon anonymous claims. During the latter 1996 meeting, without the Applicant there, there was discussion about reassigning the Applicant – but no such action was in fact taken at that time.

9. In June 1996, a complaint lodged by another of the Applicant's subordinates, alleging discrimination in performance evaluation and salary review, led to an investigation by a Human Resources Officer and yet another exoneration of the Applicant. In October of that year, the Ombudsman met with the Applicant to inform him of complaints from "about 7 or 8" unnamed staff members, who apparently were support staff who did not work directly with the Applicant. Efforts by the Ombudsman, at the Applicant's urging, to get more detailed feedback proved unavailing due to lack of participation by staff.

10. In late 1996, as a result of what were perceived by African staff members to be discriminatory remarks made at a general meeting by a senior CTR manager (apparently other than the Applicant), a committee was appointed by the Human Resources Vice Presidential Unit (HRS) to initiate a review. That committee, in turn, retained the law firm of Dewey Ballantine (DB) to look into possible discrimination against African staff members in hiring, compensation, career development, and promotion trends within CTR. DB was to examine documents, interview staff on a voluntary and confidential basis, and prepare a final report and recommendations. In addition, DB was asked to provide separate confidential addenda directly to the VP-CTR (who assumed that post in 1995 and who will subsequently feature prominently in the Applicant's disputed reassignment and redundancy), and to the then-Vice President of HRS, identifying particular situations in which CTR staff may have received disparate treatment.

11. In one such addendum, dated May 21, 1997, the Applicant was said to be the target of an unusually high number of complaints by persons of African origin. These complaints, summarized at length in the addendum, did not allege racial discrimination but rather other managerial deficiencies on the Applicant's part, including (in the words of the author of the DB addendum) "abusive, discriminatory or otherwise unfair or unprofessional treatment by this manager," and in particular favoritism and preferential treatment. The Applicant, who saw these accusations for the first time during the course of the pleadings before the Tribunal, points out that they

are anonymous and unsubstantiated. The Respondent acknowledges that the Applicant was not informed at the time of these allegations against him, assertedly so that they would not become a part of his personnel record and so that he could “have another chance.” Although the DB investigator discussed the staff complaints with the then-current LOA Director and his predecessor, both were unwilling to criticize the Applicant without specific, signed statements from his accusers, and they noted that he was highly regarded by the Africa Region staff for whom his Division provided support services.

12. The DB investigator wrote that although the Applicant “has serious management problems which undermine his ability to effectively lead a racially diverse staff. ... I cannot conclude that this manager has acted in a racially discriminatory manner against any African or other black employee.” The DB investigator also concluded that, while it would be inappropriate to “sanction” or “discipline” the Applicant on the basis of the information received, he should be transferred to a non-managerial position.

13. All of the managers in CTR, including the Applicant, were furnished with a Summary Report of the findings of the overall DB investigation. (These contained no particularized criticisms of the Applicant or any other staff members.) This Report was followed by an “action plan,” which included a call for communication and people-management skills for all managers, and ongoing sensitivity training for all managers and staff. A facilitator engaged for such sensitivity training has asserted, in a written statement provided to the Tribunal, that at both the sensitivity-training session and a meeting on September 11, 1998 that was initiated by the Applicant to secure suggestions from the black staff members in his Division, criticisms emerged about the Applicant (including favoritism, abuse and discrimination). The Applicant challenges the accuracy of the facilitator’s version of events; among other things, he asserts that any criticism by staff members were directed not at him but rather at the Disbursement Officers (DOs) whom he supervised and for whom the critical staff members directly worked.

14. Also in September 1998, the Applicant received feedback from the so-called “360-degree” assessment exercise, undertaken for managers and other staff members and based on peer comments and direct reports. The Applicant’s performance was criticized in the following areas: (i) appraising and developing staff; (ii) valuing diversity and motivating performance; and (iii) building relationships. In an e-mail dated September 7 to the VP-CTR, the Applicant acknowledged those weaknesses and stated his intention to improve. He indicated, among other things, that (as noted above) he was working with facilitators to discuss further with staff in his Division the areas in need of improvement.

15. After relaying further complaints to the Applicant on three or four occasions in 1998 and 1999, the VP-CTR requested in June 1999 – some nine months after the 360-degree feedback exercise – that the Human Resources Officer for CTR conduct a survey of LOAAF staff regarding the Applicant’s management style. The Human Resources Officer prepared questions about the Applicant’s effectiveness at resolving differences, creating a climate of trust, and allocating work fairly, and he instructed each staff member to answer either Yes or No for each, while he waited in their office. The responses from the staff were sharply divided. Within days, on June 17, 1999, a memorandum from “LOAAF Staff” (apparently supported by 22 of 27 staff present) protested that the survey had taken them by surprise and provided no time for reflection, lacked transparency and provided no opportunity for constructive feedback.

16. After a meeting on July 12, 1999 between the Applicant and the VP-CTR, in which the latter urged the Applicant to seek a non-managerial position in the Bank, the Applicant wrote a detailed 11-page memorandum on July 19 requesting that the VP-CTR provide specific details about the source and substance of the staff complaints. The July 19 memorandum, among other things, pointed out the Applicant’s “track record” and accomplishments, and his concerns about the “credibility” of the survey process of June 1999; the Applicant also stated that his “understanding of Bank policy has always been that anonymous complaints made against anyone without any accountability on the part of the complainer [are] not to be entertained by management.”

17. The VP-CTR intentionally chose not to respond to the July 19 memorandum, declining to “fall into th[e] trap” of confronting the Applicant and rebutting his “advocacy.” The VP-CTR wrote in an e-mail the following day to the Human Resources Officer: “His note is full of half truths and I will not respond to it at this stage; its sole

purpose is to stall.” That e-mail referred to an intention to reassign the Applicant to another position, and explained:

I am not transferring him because of unsubstantiated charges [by staff members], I am transferring him ... because it is in CTR’s best interest to rotate its managers, in particular if a new management style might offer some relieve [sic] in a rather suffocating working ambiance .... because Senga and his department need a change and we can very well use his talent elsewhere; that we have discussed this off and on for a few years; ... and that he will do better in a focussed [sic], professional, client driven job.  
...

18. In a letter dated July 22, 1999, the VP-CTR informed the Applicant that he would be transferred, effective September 1, to the post of Principal Financial Management Specialist in the Asia Disbursements Division of the Loan Department (LOAAS), at his current grade level (GH) and pay. He informed the Applicant that the reassignment “is being done for work program reasons and to take advantage of your comparative strengths”; he emphasized that the complaints from staff in LOAAF were not the “main basis” for his decision. The Applicant, however, considered the transfer to be “humiliating” because he would have to report to a Division Chief whom he considered a junior colleague. He requested that the reassignment be delayed; the record leaves unclear whether he went further and requested a declaration of redundancy.

19. On precisely the same day as this notice of the Applicant’s reassignment – July 22, 1999 – the Director of LOA rated the Applicant either fully successful or superior in the six competency categories within the “people management” section of the OPE for the 15-month period ending March 31, 1999.

20. Only four days later, on July 26, the VP-CTR determined, in light of business changes in CTR and a major new initiative (the Loan Administration Change Initiative, or LACI), that the LOA Division Chief positions would be changed so as to place greater weight on leadership skills, and that the Applicant was as a result to be declared redundant. The Staff Rule invoked was 7.01, paragraph 8.02(c), dealing with a determination by management that “[a] position description has been revised ... to the extent that the qualifications of the incumbent do not meet the requirements of the redesigned position.” The management team stated on the severance-request form that while the Applicant was a “traditional manager and a strong administrator, his OPE’s and 360 [degree] feedback reveal that he does not have the skills to effectively lead the change agenda, and to manage staff in a rapidly changing work environment.” The record here leaves some question as to whether the Applicant protested his redundancy.

21. Apparently realizing that the contemporaneous and positive comments by the Director of LOA on the Applicant’s OPE were inconsistent with the asserted rationale for both the reassignment and redundancy of the Applicant, the VP-CTR tersely noted, in his section of the OPE, that “[the Director] and I have a different opinion on Senga’s different formidable strengths and sometimes weaknesses – which can happen in this judgmental exercise ....”

22. After further formal steps were taken, the Applicant on October 7, 1999, was informed of his redundancy effective December 15, at which date he would be placed on administrative leave during the usual eight-month job search and notice periods. His redundancy benefits package totaled \$285,564, including more than \$33,000 in education and training assistance. When, on December 15, the Applicant wrote to the VP-CTR seeking the details of LOAAF staff complaints against him, as he had requested to no avail on July 19, 1999, the VP-CTR explained that there was no need for such details because, among other things, the complaints had not been placed in the Applicant’s career file and “did not form the main basis of any decisions.”

23. On January 24, 2000, the Applicant filed a statement of appeal with the Appeals Committee, in which he challenged: (i) the decision to declare his position redundant; (ii) the decision to “demote and transfer” him to a non-managerial position; (iii) the delayed and inadequate reply by the VP-CTR to the Applicant’s memorandum of July 19, 1999; and (iv) the “continuous harassment” inflicted by the VP-CTR in 1998-99 “based on unsubstantiated accusations.”

24. The VP-CTR, on February 25, 2000, informed the Applicant that, upon reviewing the appeal to the Appeals



Committee, he had concluded that while changes resulting from the LACI had in fact affected what was required for the Division Chief position, the position “has not been redesigned with the degree of formality required” by the pertinent staff rule, so that “the decision to declare your employment redundant should be withdrawn.” Instead, the Applicant would be reassigned to the position of Principal Financial Management Specialist, level GH, and he was told to report to that post on March 13, 2000. He was also separately informed of the Respondent’s intention to contact Harvard University to apprise them of the unavailability of training funds (part of the aborted redundancy package) for the Applicant’s intended study there.

25. The Applicant promptly returned to the Appeals Committee and sought provisional relief against, among other things, the withdrawal of the redundancy and the discontinuation of the benefits forthcoming under his redundancy package. He claimed to have taken irreversible steps towards beginning his next career, including further education, training and living arrangements. Mediation efforts suggested by the Bank failed, and in the meantime the Applicant refused to report to his newly reassigned post, due to health reasons. The Appeals Committee moved to a prompt decision of the Applicant’s appeal on the written pleadings.

26. The Appeals Committee filed its report on July 14, 2000. It concluded that the decision of the VP-CTR to rescind the redundancy and to reimpose the reassignment was “retaliatory on its face,” as the motivation and timing of the decision had the effect of penalizing the Applicant for having brought his appeal. The Committee also found a violation of proper process in the failure by the VP-CTR to respond promptly to the Applicant’s July 19, 1999 memorandum. The Appeals Committee recommended that the Applicant be permitted to retire with compensation replicating the redundancy severance package, that he be granted \$10,000 for the delayed response to his July 19, 1999 memorandum, and that he be awarded costs. The Vice President of Human Resources, although concluding that the Appeals Committee’s findings were “flawed” in light of the lengthy history of concerns about the Applicant’s ability to manage, decided to accept the Committee’s recommendations on condition that the Applicant waive any further right to appeal.

27. When the Applicant expressed his desire to retire with both the redundancy-based severance package and an unreduced pension (under the so-called Rule of 50), objection from the Respondent and an adverse interpretive ruling from the Appeals Committee ultimately led to the Applicant’s filing of this application with the Tribunal on January 29, 2001. (In the meantime, the Applicant retired from the Bank on September 30, 2000, and he is receiving an annual unreduced pension pursuant to the Staff Retirement Plan.)

28. The Applicant challenges as retaliatory and an abuse of process a number of decisions by the Bank: (i) the initial decision to reassign him; (ii) the decision to rescind the reassignment and to declare him redundant; and (iii) the subsequent decision to rescind the redundancy and to reassign him. For these, and for other alleged wrongdoing including harassment and conspiracy, the Applicant seeks compensation in the amount of \$2.18 million and costs in the amount of \$54,467.12.

## Considerations

29. As the Tribunal has stated on many occasions, decisions such as those relating to redundancy, or to reassignment and transfer, are discretionary decisions for the management of the Bank, and are subject only to limited review by the Tribunal. Such decisions will not be set aside unless they constitute an abuse of discretion, being arbitrary or capricious, discriminatory, or influenced by a lack of due process. (See, e.g., *Yoon* (No. 2), Decision No. 248 [2001], para. 28, with respect to redundancy; and *Sweeney*, Decision No. 239 [2001], para. 49, with respect to reassignment.) If this were simply a case of a unit Vice President deciding to reassign a supervisory staff member to a non-managerial position, based upon a reasonably founded belief that the staff member’s technical abilities were strong and his managerial skills were less impressive, the Tribunal would decline to reverse that reassignment decision. This is particularly so when the new position is at the same grade level and the same salary as the managerial position from which the staff member is transferred.

30. Nor would the Tribunal conclude that the reassignment was an abuse of discretion simply because, as in this case, the unit Vice President’s impression of the staff member’s management skills is markedly less enthusiastic than that of the staff member’s immediate supervisor. Of course, there must be a reasonable basis

for such a less enthusiastic evaluation, and the Tribunal concludes that in this case there was. There was a strong division of views about the Applicant's skills at motivating and developing his subordinates, and the Applicant was not unaware of this fact. A recurrent theme in the Applicant's OPEs through the years was that he lacked tact and sensitivity in managing the weaker performers within his Division. The Bankwide "360-degree" exercise in September 1998 generated criticism of the Applicant's performance in several related areas: appraising and developing staff, valuing diversity and motivating performance, and building relationships. Criticisms of the Applicant's management abilities were the subject of several discussions in 1998 and 1999 between the Applicant and the VP-CTR. To his credit, the Applicant acknowledged his weaknesses, and recurrently made efforts to rectify them.

31. The VP-CTR was therefore not unreasonable in believing that the Applicant could be of greater effectiveness to the Bank as a Principal Financial Management Specialist in LOAAS, a non-managerial position within CTR. Although the Applicant contends that the staff rules did not give that power to the VP-CTR, that contention is clearly unpersuasive. Staff Rule 5.01, paragraph 2.05, provides: "A department director, or the *senior manager responsible for the position*, may reassign a staff member to a non-managerial position within the department or unit to which the staff member is currently assigned after consultation with the staff member and the Manager, Human Resources Team, or a designated official." (Emphasis added.)

32. But that power must be exercised through appropriate procedures and with proper motive. The Applicant contends, among other things, that the VP-CTR was biased against him and "harassed" him throughout 1998 and 1999 by constantly pressuring him to leave his managerial post, and by relying upon unfounded, unverified and anonymous staff complaints. Two principal incidents cited by the Applicant in support of this contention are the DB investigation and report of 1996-97 and the June 1999 survey conducted by the Human Resources Officer.

33. The Applicant contends, inter alia, that the DB investigation in 1996-97 had "targeted" him, and that the DB addendum of May 21, 1997 – which was based on allegedly improperly gathered information and was never shared with the Applicant – planted the seed for biased motivation against him on the part of the VP-CTR. The Tribunal concludes, however, that there is insufficient support in the record for the Applicant's contention that he was so targeted by the DB investigation. The precipitating incident for the DB study was an allegedly discriminatory remark by another manager at a general meeting, and the terms of reference were to explore discrimination against African staff members in hiring, compensation, career development, and promotion trends within CTR. The criticisms that emerged concerning the Applicant's style of management were incidental. There is also doubt that the Applicant was significantly and directly injured by the addendum. As the Respondent has noted in explaining why the addendum was not shared with the Applicant at the time, it was not made a part of his personnel record so that he could "have another chance." Perhaps most significantly, the DB addendum was given to the VP-CTR and to the then-Vice President of Human Resources in May of 1997, while the adverse actions taken by the former, and challenged here, did not begin until July 1999 – more than two years later. Had the VP-CTR been significantly influenced by the DB addendum in a campaign to reassign or terminate the employment of the Applicant, he would surely have acted well before the summer of 1999.

34. But the DB addendum should not for that reason be altogether ignored by the Tribunal. It bears noting that the author of the addendum was clearly roaming beyond the terms of reference when he relied upon and attached to the addendum a long list prepared by the Ombudsman of criticisms of the Applicant's management skills, while expressly concluding that the Applicant was not responsible for any anti-African discrimination. Moreover, the criticisms listed were reported to the two Vice Presidents anonymously, making it difficult or impossible for them to assess how seriously to take them. Even less weight could be accorded to these charges because the Applicant was never shown the list at the time – and not until the Respondent was ordered by the Tribunal to produce it – so that he was altogether deprived of the opportunity to defend himself.

35. It also bears noting that the DB investigator, in passing this list of anonymous and otherwise undisclosed accusations to the VP-CTR, did not merely indicate that they warranted further pursuit through appropriate Bank channels. Rather, he concluded his observations with a recommendation that was reminiscent, in almost

the precise terms, of the decision of the Vice President and Controller some two years later. The DB investigator stated:

I recommend that this division chief, Mr. Senga Sengamalay, be moved to another position in the Bank. ... By moving him out of his current position the Africa Loan Disbursement Division and the Loan Department will benefit from increased morale and productivity. ... Here, we are not proposing that this manager be disciplined; we recommend only that he be transferred. Further, we would suggest that he be moved to a position where his technical skills and obvious competence can be fully utilized, but where he need not manage other staff.

This may well have influenced the VP-CTR in assessing the Applicant's future in LOA.

36. The DB addendum was only one part of a larger pattern of troubling actions taken by the Respondent that raise serious issues of due process in connection with the decision to reassign the Applicant. The Respondent also acted unfairly with respect to the June 1999 survey concerning the Applicant's management skills. This was only nine months after the 360-degree feedback exercise and very shortly before the OPE for 1998-99 was to be completed using the standard techniques and safeguards for evaluation of staff members. The June 1999 survey, administered to staff members in the Applicant's Division in the presence of the Human Resources Officer, required Yes-No responses to nine listed traits that were phrased positively (e.g., allocates work and tasks fairly – without regard to sex, nationality and race). Eleven staff members answered positively and seven answered negatively to all of the questions, while twelve gave mixed answers. Shortly afterward, a substantial majority of the Division staff joined in a memorandum to the Director of LOA criticizing the survey as non-transparent, intimidating and lacking in constructive feedback.

37. The physical environment in which the survey was administered, the either-or nature of the requested answers, particularly for a manager such as the Applicant who had a "polar" history of supervisory strengths and weaknesses, and the lack of an opportunity for the Applicant to respond to the survey, were not designed to secure a fair appraisal of the Applicant's abilities. Nor has the Respondent adequately explained why it was thought necessary to improvise such a survey instrument precisely at the same time as the formal annual evaluation process was about to get under way. It would almost appear as if the survey was designed to precipitate a preordained conclusion of division within the ranks and to perhaps outweigh the results of the more formal OPE that was imminent. To the extent the Respondent relied upon the survey results to transfer the Applicant – and later to reimplement that decision after the redundancy decision was withdrawn – those decisions strike the Tribunal as unfairly grounded.

38. It was therefore not surprising when, shortly after the Human Resources survey, the Applicant on July 19, 1999 wrote to the VP-CTR seeking details about the nature and sources of the complaints against him, and raising issues, inter alia, about the anonymity of responses and the Bank's policy discouraging reliance upon anonymous accusations. A principal finding of the Appeals Committee was that the VP-CTR acted improperly in dismissively declining to respond to the Applicant's memorandum of July 19. The Tribunal agrees.

39. The VP-CTR, on July 20, wrote to the Human Resources Officer (who had conducted the survey a month before) that he had no intention to respond to the July 19 memorandum, that the Applicant was engaged in "advocacy" and merely "stalling" and that the July 19 memorandum was filled with "half truths." It would have been far better had the VP-CTR promptly addressed those alleged "half truths" with the Applicant rather than ignoring them. The failure to respond to the July 19 memorandum was more than a mere discourtesy. It was an implicit representation to the Applicant that he had little to be concerned about regarding the staff complaints, when in fact they were a key element in the reassignment and redundancy decisions which were to be made by the VP-CTR in only a matter of days. Moreover, the failure to respond deprived the Applicant of an opportunity to defend himself against the staff accusations about which he had little or no detail as to both substance and source. Indeed, such an opportunity was explicitly disparaged by the VP-CTR as "advocacy" and "stall[ing]." The latter term confirms the conclusion that as of July 20, the VP-CTR had made up his mind to remove the Applicant from his position, by one means or another – and that conformity to the dictates of transparency and due process was regarded as dispensable.

40. This is further illustrated by the circumstances in which the Applicant's 1998-99 OPE was prepared and the circumstances in which his redundancy was declared (and then promptly withdrawn). Quite extraordinarily, after a meeting with the VP-CTR and the Human Resources Officer on July 22, 1999, with the Applicant being the subject of discussion and reassignment about to be imposed, the Director of LOA completed the Applicant's OPE form for 1998-99 and rated him "fully effective" or "superior" with respect to all elements in the management-skills category. On July 28, however, the Human Resources Officer, in a memorandum to the VP-CTR, stated that he was "upset" by the inconsistency between the OPE assessment and the precisely contemporaneous reassignment and redundancy decisions communicated to the Applicant on July 22 and July 26, respectively. The VP-CTR responded that it was too late to change the OPE comments of the Director of LOA because the Applicant had already seen them. This suggests that had the Applicant not seen those positive comments, efforts might have been made to induce the Director of LOA to write less positive comments. When he completed his part of the OPE form, the VP-CTR simply took issue with the positive assessment by the Director of LOA of the Applicant's managerial skills. It is thus difficult for the Tribunal to give full credit to the assurance given to the Applicant at that time by the VP-CTR that the complaints of his subordinate staff members were not the "main reason" for the reassignment. At the least, it appears indisputable that they were a significant reason.

41. The circumstances surrounding the declaration of redundancy also, in the Tribunal's judgment, contribute to a troubling pattern that, in its totality, amounts to a denial of due process. The decision to declare the Applicant's position redundant was first announced on July 26, 1999 and formally communicated to the Applicant on October 7, 1999. It was then withdrawn on February 25, 2000. The Applicant challenges the redundancy decision before the Tribunal as an abuse of discretion, being a product of ill will on the part of the VP-CTR and in violation of the process expressly set forth in the staff rules relating to redundancy. The Respondent contends, however, that it acknowledged the flaw in the redundancy decision – that the redesign of his position lacked the "degree of formality required" – after reviewing that decision in light of the Applicant's appeal to the Appeals Committee. The Respondent therefore argues that the issue is moot, a point that the Applicant contests.

42. The Tribunal sustains the Respondent's view that the Applicant cannot formally contest the redundancy decision after it was promptly withdrawn voluntarily by the Respondent, indeed precisely as a result of the Applicant's challenge before the Appeals Committee only one month before. Although the Applicant contends that the Respondent should be barred from retracting its redundancy decision because of his significant reliance on that decision – in the form of redirecting his own and his family's activities – there is little evidence in the record of such reliance. In such circumstances, any provable economic loss might be awarded by the Tribunal, but there is little reason to forbid the Respondent to revoke the redundancy decision itself. It defies logic to permit the Applicant to challenge both his redundancy and its prompt withdrawal.

43. But even though the challenge to the redundancy is moot, that does not mean that the facts surrounding the declaration and the withdrawal must be ignored by the Tribunal. The timing and circumstances may reflect on the Respondent's motivation and on whether the overall treatment of the Applicant, in particular his reassignment – initially on July 22, 1999 and later reimplemented on February 25, 2000 – constituted an abuse of discretion. What is quite evident is that the redundancy declaration was highly irregular in its haste and in its dubious substantive basis. The Respondent itself acknowledged at the time of its withdrawal of the redundancy decision that it had failed to comply with the pertinent staff rules. As noted above, the redundancy was initially implemented under Staff Rule 7.01, paragraph 8.02(c), which applies when "[a] position description has been revised, or the application of an occupational standard to the job has been changed, to the extent that the qualifications of the incumbent do not meet the requirements of the redesigned position." The management team at the time explained that the Applicant's OPEs and 360-degree feedback "reveal that he does not have the skills to effectively lead the change agenda, and to manage staff in a rapidly changing work environment."

44. Two observations will suffice. One is that the Respondent, by its own contemporaneous admission, failed to take the time and care that is required for the formal redesign of a position as contemplated by paragraph 8.02(c). The VP-CTR, on February 25, 2000, stated that the Applicant's position "has not been redesigned with the degree of formality required" so that the "decision to declare your employment redundant should be



withdrawn.” Once again, it seems that efforts were made to circumvent the governing redundancy principles and procedures in order to hasten the Applicant’s departure from his post as Division Chief. Second, in light of the comments made by those involved in the redundancy process, it is doubtful that the VP-CTR was being fully candid when he told the Applicant that staff criticism was not the “main reason” for the decision to move him to a non-managerial post within LOA. Again, the Tribunal finds that even if not the main reason, staff relationships were surely a substantial reason.

45. The Tribunal observes that particularly troubling features of the techniques used by the Respondent to gather appraisals of the Applicant’s staff relations were their anonymity, their lack of specificity and the failure to afford the Applicant an opportunity to respond. These features fall short of the Bank’s own guidelines for providing staff members with constructive feedback. The Applicant consistently maintained that the complaints leveled against him by subordinates were of questionable worth, arguing that the complaining staff members did not work for him directly and were criticizing only at second hand, that the critics were typically the poorer performers who often shifted blame to others, and that their complaints were frequently without factual basis. In the judgment of the Tribunal, the VP-CTR could not have fairly weighed the criticisms against the Applicant – most pertinently in the DB addendum in 1997 and the Human Resources survey in June 1999 – unless the Applicant was informed of the criticisms in some detail and given, absent exceptional circumstances, at least some information about the identity of the complaining staff members. The Tribunal recalls that on three earlier occasions when subordinates of the Applicant had formally leveled complaints against him for abusive and discriminatory management practices – in 1991, 1995 and 1996 – and when impartial investigations were undertaken, the Applicant was exonerated while the bulk of the responsibility for the poor working relationship was held to lie with the accusers. It appears to the Tribunal that the Applicant was to a significant degree unfairly disadvantaged by the one-sided, generalized and untested form in which information about his staff-management skills was gathered.

46. The Tribunal therefore concludes that the Respondent abused its discretion when it reassigned the Applicant in July 1999 and then reimplemented that decision in February 2000 upon withdrawing the declaration of the Respondent’s redundancy. The Appeals Committee viewed the reinstitution of the reassignment as retaliatory, a punishment for having invoked the Committee’s jurisdiction. It rested on the fact that the Applicant apparently believed the reassignment to be much less palatable than the redundancy, and the Committee invoked the *Samuel-Thambiah* decision (Decision No. 133 [1993]) for the principle that the Respondent cannot impose a harsher sanction when a staff member invokes administrative review of a more lenient one. It is, however, not altogether clear whether the reimposition of the reassignment was truly retaliatory or was rather the natural consequence of the decision to withdraw the flawed redundancy decision.

47. This need not be resolved, however, because even if it was merely the latter, the decision to reassign the Applicant to the non-managerial position of Principal Financial Management Specialist was based upon a series of actions on the part of the Respondent that in their totality constituted a failure of due process and thus a violation of the Applicant’s terms of appointment and conditions of employment.

48. It is therefore necessary to assess the appropriate remedy for the Respondent’s improper actions. The Applicant, who left the Bank through early retirement, has disclaimed any interest in securing reinstatement to his position as Division Chief or indeed to any other position within the Bank. For the flawed decision to reassign the Applicant, the Tribunal concludes that compensation should be awarded to him in the amount equivalent to eighteen months of his final net salary at the time of his retirement.

## **Decision**

For the above reasons, the Tribunal decides that:

- (i) the Respondent shall pay the Applicant compensation in the amount equivalent to eighteen months of his final net salary;
- (ii) the Respondent shall pay costs in the amount of \$20,000; and

(iii) all other pleas are dismissed.

/S/ Francisco Orrego Vicuña

Francisco Orrego Vicuña

President

/S/ Nassib G. Ziadé

Nassib G. Ziadé

Executive Secretary

At Washington, D.C., December 4, 2001