

Decision No. 172

Surya Prakash Sethi,
Applicant

v.

International Finance Corporation,
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 July 5, 1995, by Surya Prakash Sethi against the International Finance Corporation. The usual exchange of pleadings took place. The case was listed on November 4, 1997.

2. The Applicant joined the Respondent in 1984. Towards the end of 1992 differences arose between the Applicant and his Division Manager concerning the allocation of resources for performance of his work and these were later brought to the attention of his Department Director. Subsequently, he was relieved of several of his projects and was asked to concentrate on a project in Argentina. There was disagreement between the Applicant and his Division Manager on the processing timetable for the Argentinean project, which timetable the Applicant regarded as unrealistic. The Applicant was then asked to go to Argentina but he was reluctant to do so without his problems with the Division Manager having first been resolved. The Applicant and his Department Director agreed that the Applicant should report directly to his Department Director, whereupon the Applicant made arrangements to travel to Argentina. However, the Department Director changed his mind and directed the Applicant not to travel. These disputes led to the Applicant receiving an adverse Performance Review ("PPR") for the period of April 1, 1992 to March 31, 1993 and a correspondingly low salary increase. He was put on notice under Staff Rule 7.01 to improve his performance within six months and was told that failure to do so would result in proceedings to terminate his employment. The Applicant successfully completed his six months' probationary period.

3. The Applicant requested administrative review of the various events, which culminated in an appeal to the Appeals Committee. The Appeals Committee made the following recommendations to the Respondent:

- 1) that the evaluations of the Division Manager and the Department Director be withdrawn from the 1993 PPR;
- 2) that the Applicant be given a fully satisfactory Salary Review Increase ("SRI") for 1993;
- 3) that all written references to the Applicant being put on notice under Staff Rule 7.01 be removed from his personnel file; and
- 4) that all written references to the insubordination alleged to have occurred in April 1993 be removed from the Applicant's personnel file.

The recommendations of the Appeals Committee were accepted and implemented by the Respondent. The Applicant's 1993 SRI was increased from 1.9% to 3.8%.

4. The Applicant has made three claims against the Respondent in respect of the following:

- 1) the Respondent's failure to provide effective and substantive relief that would restore his career and professional reputation;
- 2) the Respondent's decision to award "inappropriately low and below-norm salary merit awards for the years 1993, 1994 and 1995"; and

3) the Respondent's "abusive employment practices" which caused and continue to cause him loss of reputation and career prospects.

In respect of the first and third claims the Applicant requests that the Tribunal direct the Respondent to reassign him to a position within the World Bank Group that would be seen in the institution as (i) a signal that the Applicant has been restored to the confidence of management and (ii) an effort to undo the wrong committed by the Respondent against the Applicant, or compensation in lieu thereof.

5. The Tribunal notes that the Applicant challenged the Respondent's decision on the award of "inappropriately low and below-norm salary merit awards for the years 1993, 1994 and 1995." In respect of the 1993 SRI, it is clear that the Applicant is contesting the SRI of 3.8% that was awarded following the Appeals Committee's recommendations of March 1995. Being a new decision, it is subject to the requirement of exhaustion of internal remedies as set out in Article II, paragraph (2)(i), of the Statute of the Tribunal. As such remedies were not exhausted, the Applicant's challenge to the SRI of 1993 is inadmissible.

6. In respect of the Applicant's challenge to the SRIs of 1994 and 1995, the Applicant is also required, as just stated, to exhaust internal remedies before making an application to the Tribunal. The Applicant contends that he had challenged the 1994 and 1995 SRIs by treating them as evidence of "on-going reprisals" rather than by way of individual complaints. This may well have been the Applicant's motivation, but the claim before the Tribunal is for a review of the 1994 and 1995 SRIs which are alleged as being inappropriately low and below-norm. A challenge to those decisions has to be preceded by a timely exhaustion of internal remedies. The failure of the Applicant to pursue those remedies renders these claims inadmissible.

7. As for the Applicant's first claim, namely, that the Respondent should provide effective and substantive relief that would restore his career and professional reputation by reassigning him to a position within the World Bank Group to signal that the Applicant has been restored to the confidence of management, this is a matter of discretion which is vested in the Respondent. The Tribunal notes that the Respondent, pursuant to the recommendations of the Appeals Committee, had withdrawn certain evaluations and adverse references from the relevant records, thus correcting the specific decisions that could be considered to have adversely affected the Applicant's career and professional reputation.

8. As for the Applicant's third claim, namely, that the Respondent should end its "abusive employment practices" which caused, and continue to cause, him loss of reputation and career prospects, the Tribunal rejects this for two reasons. One is that this claim lacks specificity. The Tribunal has held that Article XII of its Statute and Rule 7(3) of its Rules contemplate that the Respondent has taken a "'decision' that adversely affects the applicant specifically and that will justify 'compensation ... for the injury sustained'" (*Agodo*, Decision No. 41 [1987], paras. 26-27). The Tribunal has also held that such decisions can be either "claims of nonfeasance [or] ... claims of improper affirmative decisions" (*Robinson*, Decision No. 78 (1989), para. 39). Here, in the third claim, the Applicant has not specified what decision or decisions were or were not taken that adversely affected him; therefore, this claim should be dismissed for lack of specificity.

9. An additional reason is that, in any event, the Tribunal possesses jurisdiction only to decide individual claims and to require the Bank to take or not to take actions in respect of the specific Applicant. The Tribunal does not possess the power to give the Bank general directions regarding "employment practices."

DECISION

For the above reasons, the Tribunal unanimously decides that:

- 1) the Applicant's claim that the Respondent has failed to provide effective and substantive relief that would restore his career and professional reputation is dismissed;
- 2) the Applicant's challenge to the Respondent's decision to award "inappropriately low and below-norm salary merit awards for the years 1993, 1994 and 1995" is inadmissible;

- 3) the Applicant's claim against the Respondent's "abusive employment practices," which caused, and continue to cause, him loss of reputation and career prospects, is dismissed; and
- 4) the request for costs is denied.

Elihu Lauterpacht

/S/ Elihu Lauterpacht
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At Washington, D.C., November 18, 1997