

## Decision No. 6

Subramanian Suntharalingam,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, T. O. Elias, P. Weil, Vice-Presidents, A. K. Abul-Magd, R. Gorman, N. Kumarayya and E. Lauterpacht, Members, has been seized of a complaint, received May 14, 1981 by Mr. Subramanian Suntharalingam against the International Bank for Reconstruction and Development. The Respondent submitted an Answer on July 6, 1981, and the Applicant submitted Observations on the Answer of the Respondent on September 4, 1981, together with a request for oral proceedings. The Respondent requested and was granted by the President an opportunity to submit an additional written statement on the Applicant's Observations and request for oral proceedings, and filed this statement on October 15, 1981. The Tribunal has decided that oral proceedings as requested by the Applicant pursuant to Rule 14 (1) are unnecessary and shall not be held. The case was listed on October 20, 1981.

The relevant facts:

1. By letter of appointment dated September 26, 1975 the Applicant was offered a regular appointment to the Bank staff as an Agricultural Credit Specialist, Level L, under the usual terms and conditions. He took up his duties at the Bank on October 31, 1975 and was assigned to the South Asia Projects Department, where he remained throughout his career with the Bank. At the time of his recruitment some reservations as regards his qualifications and experience for Bank work were expressed by those responsible for his recruitment. They recommended that he be tried out as a consultant before being offered a permanent position.
2. In accordance with Bank practice, a preliminary evaluation was requested for the Applicant after his first six months with the Bank. This evaluation was provided by his Division Chief in May 1976 and indicated inter alia that further experience with Bank work and report-writing was necessary before the Applicant could make a full contribution. The Applicant's Anniversary Evaluation Review (AER) for the period October 1975-October 1976 indicated that, while he was showing improvement, further exposure to Bank work was still required. With some hesitation, and on the basis of expected improvement, his confirmation in his position was recommended by his supervisors, and the Applicant's appointment was, in fact, confirmed on December 1, 1976. The Applicant received a normal merit increase for his probationary year.
3. The Applicant's AER for the period October 1976-October 1977 noted that he was continuing to have difficulty adapting to Bank operational methods and procedures. His report-writing and analytical skills were questioned. His second-line supervisor and Assistant Director raised in this Review the issue of his capacity to perform at the full working level and the possibility of his reassignment by the Personnel Management Department to a non-technical position or the possibility of his employment being terminated. The Applicant received a below-norm merit increase for his second year. However, the Applicant did not receive the written explanation of that circumstance, which was then required by Personnel Manual Statement (PMS) 4.01 (para. 17).
4. In the Applicant's AER for the period October 1977-October 1978, his Division Chief, while noting some improvement, questioned the Applicant's competence at his assigned level (L) and his ability to maintain a sustained satisfactory performance, and recommended reassignment. His Department Director stated that the Applicant was not suited to perform projects officer work and again recommended reassignment. The Applicant

received no merit increase for that year. As in the previous year, the Applicant did not receive the written explanation which was required by PMS 4.01.

5. Beginning in 1978, the Personnel Management Department undertook to counsel the Applicant about his performance problems and to identify an alternative assignment for him.

6. In December 1979, all efforts at reassignment having been unsuccessful, the South Asia Projects Department advised the Personnel Management Department that it could no longer employ the Applicant, and urged that he be removed from its payroll. The Personnel Management Department thereupon recommended termination of the Applicant's employment.

7. The Applicant was advised by his Personnel Officer on February 5, 1980 of the Bank's decision to terminate his appointment effective April 15, 1980 and of the arrangements in this matter that the Bank was prepared to make on his behalf. On March 10, 1980 the Applicant was presented with written notice of termination. On April 18, 1980 the Applicant filed an appeal before the Bank's Appeals Committee.

8. On the advice of the Bank's medical advisers, the Applicant was placed on sick leave from April 11 through July 22, 1980. Thereafter, he was placed on six months' special leave. During this period the Applicant's final AER for the period October 1978-March 1980 was submitted by the South Asia Projects Department in memorandum form setting out in some detail the nature of his performance weaknesses.

9. The Applicant's case was heard by the Appeals Committee in December 1980. The Applicant attended the hearing in person, was represented by outside counsel, and presented testimony through witnesses. Because the Appeals Committee was delayed in completing its Report, the Applicant was granted an extension of special leave from July 23, 1980 until February 3, 1981. The Committee issued its Report in February 1981, concluding that it could neither uphold the Applicant's claims of discrimination nor recommend reinstatement. The Committee suggested that the Bank offer special help to the Applicant in his search for other employment and that, in the event a lower-level position was not available or was unacceptable to the Applicant, he be recommended for the position of consultant or advisor in the implementation of a Bank-financed project or his availability be brought to the attention of other international institutions. The Applicant was notified by letter of February 15, 1981 that the Vice-President, Administration, Organization and Personnel Management (AOP), had accepted the Committee's recommendation, and that the termination of the Applicant's employment would be considered effective as of February 20, 1981.

10. Although the Applicant had explicitly stated at the Appeals Committee hearing his opposition to reassignment at a lower level, by letter of February 18, 1981, to the Vice-President (AOP), he now expressed his willingness to consider this alternative. The Vice-President (AOP) responded by letter of February 23, 1981, that the Bank was willing, upon certain terms and conditions, to try for a limited period of time to find a suitable position for the Applicant at a lower level. As the terms and conditions were not satisfactory to the Applicant, he rejected the proposal and proceeded to appeal to this Tribunal.

11. A filing received on March 12, 1981 was rejected as incomplete by the Tribunal on March 18, 1981. In an Order made on June 5, 1981 the Tribunal denied the Applicant's request to require the Respondent to maintain the Applicant's G IV visa status and extend his post-termination special leave. The Tribunal considered that, even if the Applicant was not in the United States, he might continue to use local counsel, that he could be allowed reentry at the Tribunal's request on a temporary visa or that the Tribunal might use other procedures which would enable it to conduct a fair trial of the case. It also decided, in response to the Applicant's request for the production of certain documents and for oral proceedings for the purpose of examining 17 witnesses, that he might restate both these requests totally or partially, if necessary, after receiving the Respondent's Answer.

12. The document requested by the Applicant, namely the Respondent's statement on termination procedures, was filed with the Tribunal as part of the record on October 15, 1981 and communicated to the Applicant. The Applicant subsequently did not revive his request for the examination of 17 witnesses.

The Applicant's main contentions:

13. The termination of the Applicant's employment was improper and based on false and erroneous evaluations and he has the proven capacity for the position which he held.

14. The Applicant's performance record was misrepresented in spite of the fact that he was instructed to work on several assignments, without adequate lead time and proper guidance on policy directives, particularly during the first two years of his employment. There was constant harassment, inconsistent work directives, overloading with work, humiliation and abuse from his Assistant Director, which was discriminatory and made it impossible for him to perform adequately. There was improper suppression by his manager, acting in concert with the Personnel Management Department, of commendation for a report written by him and for his effective representation of the Bank. The termination of his employment was consequently the result of discriminatory treatment, harassment and humiliation by his supervisors, collusion between the Personnel Management Department and his supervisor, inconsistent performance evaluation including non-recognition of good-quality work, work overload, and failure to disclose to him adverse comments by certain supervisors which would have aided him in modifying his work performance.

15. Until the time of filing an appeal before the Appeals Committee, the Applicant was not informed of his Assistant Director's adverse comments on his AERs and he was not provided with performance counseling, so that he was deprived of an opportunity to take corrective action.

16. The Bank failed to provide him with oral or written reasons for the termination of his employment.

17. Despite the requirements of PMS 4.01, the Applicant received no written explanation for his below-norm merit increases.

18. The Respondent had no established termination procedures and this fact, in addition to other deficiencies, resulted in the Applicant's being denied the procedural fairness to which he was entitled.

19. The Applicant seeks removal of the allegedly false or erroneous evaluations and comments from his Personnel File and insertion of positive evaluation and comment. He also seeks rescission of the Bank's decision to terminate his employment on the ground of unsatisfactory performance and reinstatement with compensation of US\$824,950 – for pain and suffering and impairment of health, as punitive damages and for legal fees. If reinstatement is denied, Applicant seeks compensation in the amount of \$1,207,950.00 for loss of career as well as for the other items referred to above.

The Respondent's main contentions:

20. The Applicant was hired as an Agricultural Credit Specialist of whom a diversity of work was expected. As regards the Applicant's claim of an overload of work, no more work was required of the Applicant than of other staff in his position at that level.

21. In respect of the charges of harassment, humiliation and abuse by the Applicant's Assistant Director, while the Assistant Director himself acknowledged that his irritation with the Applicant's performance was at times made clear to him, the record does not support, and the Appeals Committee did not find evidence of, discriminatory treatment towards the Applicant; nor did it find that termination of the Applicant's employment rested on discriminatory considerations.

22. There was no conspiracy or deliberate action to withhold commendation from the Applicant. The record indicates that the report for which commendation was allegedly withheld may have been co-authored and that in any event the failure to advert to it in the 1977-1978 AER was attributable to a perceived lack of importance rather than to any conscious effort to suppress.

23. The Applicant was informed of his Assistant Director's adverse comments on his AER. From April 1978 when the Applicant's deficiencies were brought to the attention of the Personnel Management Department, which then undertook to counsel the Applicant, he was kept fully informed orally by his Personnel Officer of the content of his AERS, and thus had ample knowledge of the situation.

24. From at least 1977 the Applicant received supervision and counselling from his managers and the Personnel Management Department and was given an extended opportunity to develop and improve his performance. The record further shows that the possibility of the Applicant's employment being terminated in the context of his unsatisfactory performance had indeed been raised with him. The notice of termination of the Applicant's employment by letter of March 7, 1981 from the Director of the Personnel Management Department came only after extended discussions with the Applicant concerning the termination of his employment and the reasons for it. In the light of the above, the Applicant was indeed aware of the grounds for the termination of his employment, and it was therefore unnecessary to list them expressly in the written notice of termination. Also the Respondent did have established termination policies and termination of the Applicant's employment was carried out according to these procedures. A two-year effort was made to find suitable alternative placement for the Applicant in the Bank and he was kept apprised of placement efforts and of their unsuccessful results.

25. The absence of written explanation for his below-norm merit increases was a de minimis omission, considering that the Applicant was aware of his unsatisfactory performance.

### Considerations

26. The decision to terminate the Applicant's appointment was based on "his failure to give satisfactory service in the position he occupies", as provided in Administrative Manual Statement No. 108.

27. According to Article V, Section 5 (b) of the Bank's Articles of Agreement the President has the power to dismiss staff members if their services are unsatisfactory. The determination whether a staff member's performance is unsatisfactory is a matter within the Respondent's discretion and responsibility. The Administration's appraisal in that respect is final, unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

28. In urging a reversal of the Bank's decision, the initial application placed its principal emphasis upon improper motivation, resulting from discrimination and personal animosity: in particular, the Applicant complains of having been subject to harassment, humiliation and abuse by his Assistant Director.

29. But in the present case the Tribunal finds nothing in the record that would indicate that any element of prejudice or discrimination had influenced or entered into the finding of unsatisfactory performance made by the Administration. The facts alleged by the Applicant as evidence of harassment and abuse suggest only the existence of some irritation and impatience between a supervisor dissatisfied with the job performance of a staff member and the staff member who has been made aware of that dissatisfaction. A reasonable basis existed for the determination that the Applicant's services were unsatisfactory, and no motive unrelated to the quality of these services has been established.

30. In his observations on the Answer of the Respondent the Applicant asserts as his fundamental grievance that:

"by its failure to establish termination procedures, and otherwise, Respondent denied Applicant the procedural fairness to which he was entitled."

The Respondent answers this charge asserting that:

"Applicant's termination has been carried out in accordance with these [established] procedures, which procedures meet more than acceptable standards of fairness and due process."

31. The Bank appears not to have promulgated any formal statement of the procedure to be utilized when terminating the employment of a staff member. A statement which the Bank issued in 1975 and which deals with employee evaluation (Personnel Manual Statement (PMS) No. 4.01) makes reference to a forthcoming statement regarding termination, but no such statement has in fact been issued. The absence of such a statement may regrettably continue to cause some uncertainty on the part of staff members concerning their procedural rights. An undated statement which Respondent filed as a part of the record in this case on October 15, 1981 was apparently not available to the Applicant at the time his employment was terminated. Although, therefore, its text cannot be regarded as controlling, it represents, according to the Respondent, a summary of the termination procedure commonly employed by it. The text also reflects, in the judgment of this Tribunal, the basic requirements of due process in termination cases.

32. The attachment filed by the Respondent provides that "performance difficulties are first brought to the attention of the staff member orally by his immediate supervisors." The record shows that this was done repeatedly. The statement of procedures then provides that "if performance fails to improve, written warning may follow." In this respect, it may be considered that the communication to Applicant of his immediate supervisor's comments in the Anniversary Evaluation Review (AER) process fulfilled this requirement.

33. The statement on termination procedures further provides that "the staff member in difficulty is generally put on notice by his/her Personnel Officer that the ultimate consequence may be termination." The Respondent asserts that from April 1978 the Applicant was kept fully informed of the content of his AER and thus had knowledge of the fact that termination was envisaged by his second-line supervisor as early as March 1978. On the other hand, the Applicant alleges that until he filed his appeal in April 1980, these adverse comments, with their reference to the possibility of termination, had been concealed from him and that had he known of them earlier, he would have taken appropriate action.

34. The record does not contain any document prior to February 1980 which will permit the Tribunal to determine whether the eventuality of termination was in fact brought to the attention of the Applicant before it was actually decided. However, the Appeals Committee, after an extensive inquiry and the hearing of witnesses, found that, according to the general practice then followed throughout the Department, "the Applicant was left unaware, directly, of the evaluation of his second and third line supervisors." It is also a fact that the written confirmation of the decision of termination does not specify the grounds or reasons of the failure to render satisfactory service.

35. Having thus established the existence of these procedural deficiencies, the Tribunal must now determine whether they are important enough to vitiate the decision contested. In order to have this effect, the deficiency must be such that the staff member was not made aware of the respects in which his performance was unsatisfactory, or be such that the staff member was rendered incapable of effectively defending himself in the event of termination.

36. A study of the record clearly demonstrates that from at least 1977 on, the Applicant received repeated and unequivocal indications as to the unsatisfactory character of his job performance and as to the reasons therefor. He received a reduced merit increase for the period 1976-1977 and no merit increase for the period 1977-1978. This latter decision, according to AMS 4.01, paragraph 17, signifies that the performance of the staff member in question "has been termed unsatisfactory." He had access to the comments in the AERs by his immediate supervisor who had in 1977-1978 recommended reassignment to another department. He received extensive counselling concerning his performance weaknesses, and those weaknesses were described in the AERS.

37. It cannot fairly be said that the Applicant was kept unaware of the lack of satisfaction with his service in his department, of the reasons therefor and of the remedial measures which were envisaged, such as the exploration of the possibility of a transfer. He was not deprived of the opportunity to improve his services or rebut the criticism of his performance.

38. As to the possibility of effectively defending himself in the event of termination, the Tribunal notes that when

the Applicant exercised his right of appeal he received a complete copy of his AER and thus had full knowledge of the facts necessary to argue his case properly.

39. Bearing in mind all these circumstances the Tribunal concludes that no fundamental procedural right of the Applicant was violated, and, consequently, that the deficiencies complained of do not suffice to justify the rescission or the remanding of the decision contested.

### Decision

For the above reasons the Tribunal unanimously decides to reject the Application.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga  
President

C. F. Amerasinghe

/S/ C.F. Amerasinghe  
Executive Secretary

At The Hague, November 27, 1981