



World Bank Administrative Tribunal

2011

No. 454

**Angeline Taderera-Marimbe,
Applicant**

v.

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

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**Angeline Taderera-Marimbe,
Applicant**

v.

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

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, composed of Mónica Pinto (a Vice-President of the Tribunal) as President, Jan Paulsson, Zia Mody, and Francis M. Ssekandi, Judges.
2. The Application was received on 14 October 2010. The Applicant was not represented by counsel. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant is challenging the Bank's failure to promote her to a more senior position.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in 1986 as a Secretary. She is presently a level GC Program Assistant working with the Bank's Capacity Development and Partnerships Unit in the Africa Region ("AFRCP").
5. In 2004, the Applicant earned a Masters' degree in Management and Interdisciplinary Studies from the University of Maryland, University College, with financial support from the Bank.
6. In her Overall Performance Evaluation ("OPE") for 1 April 2005 to 31 March 2006, the Applicant's supervisor stated:

A great and busy year. [The Applicant's] support in the trade workshop ... were highly commendable. [The Applicant] has commendably invested in furthering her education to an M.A. level. She has not seen her career reflect this additional

capacity nor is there scope under her current designation to grow beyond where she now is. *In discussing this with her and other relevant officials, we agreed to help her undertake a Development Assignment in situ (largely by recasting her work program), in order to prepare her grounds for a change to operational analyst.* This will be accompanied by relevant training to strengthen her skills in this new area. (Emphasis added.)

7. In August 2006, the Applicant commenced a developmental assignment as an Operations Analyst with the Africa Regional Partnerships Group (“AFRPG”). On 28 July 2006, the Applicant signed a memorandum which set out the terms of her developmental assignment (“the Memorandum”). The Memorandum stated, amongst other things:

The duration of your assignment is expected to be for one year and will begin on or about August 1, 2006. ... Upon completion of this assignment, expect to continue working in AFRPG at your current grade.

8. Mr. Benno Ndulu, the Applicant’s supervisor during this developmental assignment, prepared her OPE for the period 1 April 2006 to 31 March 2007. The Applicant was rated either “Fully Successful” or “Superior” in all areas.

9. Mr. Ousman Jah subsequently became the Applicant’s supervisor, and prepared her OPE for the period 1 April 2007 to 31 March 2008. The Applicant was similarly rated either “Fully Successful” or “Superior” in all areas. Mr. Jah noted “[The Applicant] has successfully completed her developmental assignment. This has exposed her to work at the professional level and the feedback from the teams she worked with has been highly commendable. There is need to continue to provide her with opportunity for substantive professional-level work to prepare her for a position in the professional cadre.”

10. The Applicant completed her developmental assignment in December 2007 and returned to work at level GC with AFRPG. Mr. Tijan Sallah became the Applicant’s supervisor in January 2009. In her 2008 OPE, following the completion of her developmental assignment, the Applicant’s supervisor noted:

After successful completion of a Master of Science in Management and Interdisciplinary Studies in 2004, the decision was taken by the then AFRPG manager, in consultation with the Front Office, to provide [the Applicant] with the opportunity to develop her competencies in work of a level more in keeping with her academic qualifications and career aspirations. At the time of the 2008 OPE she had successfully completed a [developmental assignment], involving tasks carried out across different AFR units and OPCS thereby demonstrating good ability to work across boundaries. The feedback received then from the different supervisors she worked under was highly positive. ... In 2009 she continued to carry out substantive assignments to further prepare her for a career step-up. ... I am convinced that [the Applicant] has proven herself capable to perform work at a higher grade level than she currently occupies.

11. On 24 March 2009, the Applicant applied for the position of Operations Analyst (level GE) for the Bank's Climate Investment Funds. By e-mail message dated 21 May 2009, the Applicant was advised that she had not been shortlisted for the position. It appears from the record that the Applicant only applied for one level GE job.

12. Sometime before March 2009, a management meeting was called in the Applicant's department to discuss her career progression. A decision was taken in that meeting that the Applicant's supervisor would propose that she be promoted to level GD. In and around 9 June 2009, it appears that Mr. Jah and Mr. Sallah submitted a proposal to the Administrative Client Support Human Resources Committee ("ACS HR Committee") recommending the Applicant for promotion to level GD.

13. By e-mail message dated 19 June 2009, the Chair of the ACS HR Committee stated that she had reviewed the proposal for the Applicant's promotion, but found that the proposal for a level GD promotion could not be supported "on the basis of (i) the size of the unit, (ii) the level of work that will be required in the unit, (iii) the nature of the job, (iv) the overall business case as well as on the basis of (v) the 2008 OPE."

14. The Applicant submitted a Request for Review to the Peer Review Services on 30 June 2009. The Peer Review Panel clarified that it understood the issue on appeal to be "a challenge

to the decision not to give the [Applicant] an *in situ* promotion to level GE, and not the decision to review her for a promotion to level GD.” On 12 March 2010, the Peer Review Panel unanimously found that “the Bank did not abuse its discretion by deciding not to review the [Applicant] for, and in effect not to give her, an *in situ* promotion to level GE in 2009” and recommended that the appeal be dismissed and the requested relief denied.

15. By letter dated 10 May 2010, the Vice President, Human Resources (“HRSVP”) advised the Applicant that he had accepted the Panel’s recommendations.

16. On 14 October 2010, the Applicant filed her Application with the Tribunal. She challenges the Bank’s failure to promote her from level GC. As relief, the Applicant claims (i) \$150,000 as compensation; and (ii) foregone salary and pension benefits since 2007. The Applicant also claims costs.

THE CONTENTIONS OF THE PARTIES

17. The Applicant is challenging the Bank’s decision not to promote her. She claims that her work program during her developmental assignment included tasks at the GE level. The Applicant states that “in fact, some of the tasks [she] performed were equivalent to what a retired ... colleague in [her] unit who was at GI level used to do.”

18. The Applicant contends that she has satisfied the requirements for her promotion to a higher grade. She submits that she has proven, in the context of her developmental assignment, that she was capable of undertaking assignments at a higher level. She completed her postgraduate degree in order to qualify for more senior positions. She submits that the Bank’s agreement to fund her postgraduate studies indicates that it saw potential for her career advancement.

19. The Applicant also contends that the Bank's failure to advocate her promotion was borne out of a discriminatory motive. She claims that she knows of other level GC staff members within the Bank who secured level GE appointments, but she was advised that the Bank would not normally promote staff members from level GC to level GE. The Applicant contends that she is a victim of a pattern of discrimination within the Bank in which female staff members from Part II countries are put at a disadvantage in terms of career advancement. The Applicant stated: "From a diversity point of view, as was mentioned by [the Diversity Coordinator] during my Appeals hearing ... there is a pattern in the Unit of not properly addressing employment concerns for women from Part II countries. I fall in that group."

20. Finally, the Applicant claims that her inability to secure a promotion is due to the mismanagement of her career on the part of the Bank. She argues that if the Bank had in place a career development system for promotions, her ability to secure a promotion would not have depended on the subjective requirements of her individual managers. She claims that changes in management have entailed that her career advancement has not been given priority, she has had to prove herself to each new manager in order to make the case for her promotion, and her previous record of achievement was not taken into account. The Applicant argues that "failing to get a champion, change in management, among other management lapses, contributed to [her] career development mismanagement."

21. The Bank asks that the Applicant's claims be dismissed and the requested relief denied. The Bank claims that no representations were made to the Applicant that she would be promoted upon completion of her developmental assignment. It claims that a developmental assignment is not one of the vehicles for promotion contemplated by the Staff Rules. The policy rationale for a developmental assignment is to provide business-driven developmental opportunities for staff.

To that effect, the Bank argues, the developmental assignment was intended to provide the Applicant with an opportunity to broaden her experience so that she would be competitive for GE positions that may arise both within and outside the Africa Region.

22. The Bank argues that the Applicant could not be considered for an *in situ* promotion to level GE. She was considered for a promotion to level GD, but it was determined that her work program at the time did not merit promotion to that level. It argues that to promote the Applicant *in situ*, despite this assessment, would be to treat unfairly other similarly situated staff members.

23. The Bank claims that the Applicant was not treated unfairly. Examples of instances where former level GC staff members secured level GE appointments do not suffice to justify the conclusion that the Applicant was discriminated against. The example identified by the Applicant was dissimilar to her situation, as that staff member was involved in a competitive promotion, as opposed to the *in situ* promotion that the Applicant seeks.

24. The Bank argues that the Applicant's claims that it mismanaged her career are unsustainable. It made efforts to assist the Applicant's career advancement by trying to put her in the best possible position to compete for positions at the higher level. In this regard, the Bank supported the Applicant's postgraduate studies, and placed her on a developmental assignment. It argues that these efforts do not establish an obligation on the part of the Bank to promote the Applicant *in situ* to a position at a higher level.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

25. The Peer Review Panel framed her claim as pertaining to the failure, by Bank management, to propose her for an *in situ* promotion to level GE. The Tribunal determines that her claims relate to the following: (i) the failure, by Bank management, to promote the Applicant

to level GE; (ii) claims that the Bank's failure to advocate her promotion was motivated by discriminatory reasons; and (iii) claims that the Bank mismanaged the Applicant's career.

The Bank's decision not to promote the Applicant to level GE

26. The Applicant does not specifically identify the administrative decision which she is challenging in this regard. The Applicant merely argues that she should have been promoted to level GE. Her claims may be viewed broadly as pertaining to the Bank's failure to propose that she be promoted *in situ* to level GE.

27. The Applicant claims that she was informed by the Bank that, in order to be promoted to level GE, she would need to gain a postgraduate degree and she was advised that a developmental assignment would help her find a position at that level. The Applicant claims that she has since satisfied these requirements for promotion. She further submits that it was "intimated" to her, in her 2006 OPE, that she would be promoted following the developmental assignment.

28. The Tribunal will address whether the Bank made a promise to the Applicant that, upon satisfying the conditions imposed, she would be promoted to level GE. In *Moss*, Decision No. 328 [2004], para. 45, the Tribunal expressed the need for "an unequivocally proved promise, a clear and irrefutable commitment or assurance."

29. In the Applicant's 2006 OPE, as set out above, her supervisor explained that she would be placed on a developmental assignment "in order to prepare her grounds for a change to operational analyst." The same supervisor explained the circumstances in which the Applicant was placed on a developmental assignment as follows:

[The Applicant] had completed her Masters by the time I took up my position as Manager, AFRPG. She expressed her concern that despite her academic achievement she could not make further progress career wise as she had reached close to the top of levels under the professional group of team assistants, where

she belonged. I explained to her that the only way she could make further progress is to qualify to enter a different professional family group and then seek a position under that group. After consultation with HR it was advised that she be given a [developmental assignment] to help her prepare entry into the Operations family, which she requested. *The understanding was that following successful completion of her [developmental assignment] she would apply to join the Operations family group and if successful she would seek recategorization into a position in that group subject to availability of such a position.* The successful completion of [the developmental assignment] would be the first step towards recategorization. (Emphasis added.)

30. The Bank's Developmental Assignment Implementation Guidelines define the purpose of a developmental assignment as follows:

A Developmental Assignment is one of the principal means for providing business-driven developmental opportunities for Bank Group staff. Developmental Assignment is specifically targeted to enable staff to:

- (a) Acquire new knowledge and skills, or significantly enhance current skills through on-the-job experience.
- (b) Gain a broader perspective of the [World Bank]'s work.
- (c) Observe and work along side more experienced staff and receive coaching and/or mentoring that results in meaningful professional growth through job enrichment.
- (d) Make meaningful contributions to work programs outside his/her normal job functions.

31. The Tribunal notes that the purpose of the developmental assignment was to expose the Applicant to different responsibilities so as to make her more competitive for positions she might consider suitable. The placement of a staff member on a developmental assignment at a higher level does not entail a commitment to promote the staff member to that level upon its completion.

32. In *Visser*, Decision No. 217 [2000], para. 35, the Tribunal distinguished its decision in *Bigman*, Decision No. 209 [1999], in which it found that the Bank had made a legally valid promise. The Tribunal noted in *Visser*:

[The applicant] was aware that there were uncertainties to be resolved about how to make use of his expertise, what work he was to do and about the source of funds to pay him. These uncertainties negate any inference of a promise or assurance giving rise to any entitlement on his part.

33. There is nothing in the record which indicates that the Bank made a promise that she would be promoted to level GE upon completion of the developmental assignment. The Applicant's supervisor stated in her 2006 OPE that the purpose of her developmental assignment was to "prepare her grounds for a change to operational analyst." This did not establish a commitment to promote the Applicant once she completed the developmental assignment. The Memorandum made it clear that she was expected to return to her current grade once the assignment was complete. The Applicant herself admitted, in the context of the hearing before Peer Review Services, that no one had told her that she would be recommended for a promotion to level GE. The Tribunal therefore finds that the Bank did not make any promise to promote the Applicant *in situ* from level GC to GE.

Allegations that the Bank's decision not to advocate her promotion was unfair and discriminatory

34. The Applicant challenges the sincerity of the Bank's claims that it was not possible to promote her directly from level GC to level GE. The Applicant submits, as evidence, the case of one GC level staff member who applied for and secured a GE level position. She claims that the Bank should have similarly promoted her directly from level GC to GE, and argues that she was unfairly treated by the Bank. The Applicant also argues that "there is a pattern in the Unit of not properly addressing employment concerns for women from Part II countries" and that she falls into that group.

35. The Bank admits that there are examples where former level GC staff members have secured level GE positions. The Bank argues, however, that the Applicant's position is

dissimilar to those cases, as she is seeking an *in situ* promotion, whereas the examples cited involved a competitive promotion.

36. The Applicant argues that she should have been promoted from level GC to level GE, just as other staff members have. The Applicant admits that she only applied for one position at level GE. She stated that she “did one [application], and then [she] stopped.” The Tribunal notes from the record, however, that there was no practice of promoting staff *in situ* from level GC to level GE in the Africa Region, or elsewhere in the Bank. The Tribunal is unable to conclude on the basis of the record before it that the Bank’s decision not to appoint her *in situ* to a level GE position was discriminatory.

37. The Applicant contends, in three short sentences, that she is a victim of a pattern of discrimination within the Bank whereby employment concerns of women from Part II countries are not properly addressed. The Applicant refers to evidence given by a staff member who served as the Diversity Coordinator in the Applicant’s region during the Peer Review hearing which, she argues, suggests the existence of a pattern of discriminatory practices within her Unit. The Tribunal notes that the Diversity Coordinator provided evidence that, in order to address this perceived pattern, a meeting was held to discuss the particular cases of the career progression of some staff members, including the Applicant. The Diversity Coordinator recounts that, as a result of this meeting, “the decision-makers, the management, [were] prepared to move [the Applicant] from C to D. And to look at this a year later to see if she now moved into the E position.” The Applicant’s supervisors accordingly proposed that she be promoted to level GD. The Chair of the ACS HR Committee reviewed this proposal, but found that there was no business case for this *in situ* promotion.

38. The Tribunal has previously held that a staff member must provide evidence of discrimination specific to his or her case. In *AI*, Decision No. 402 [2010], para. 47, the Tribunal held that “every applicant must show that he or she – and not other people – have been the victim of discrimination.” The Applicant received positive performance evaluations from her managers, and had been encouraged to pursue more senior positions elsewhere in the Bank. While the Bank was not able to establish a business case to promote the Applicant *in situ*, and the Applicant had been advised that there was no scope “under her current designation to grow beyond where she is now,” it took steps to encourage the Applicant’s career development, for example by paying for most of her postgraduate education and exposing her to responsibilities of a higher level in the context of the developmental assignment so as to put her in good stead to be recruited to a more senior position elsewhere. The Tribunal thus finds that the Applicant’s allegations in this regard are unfounded.

Applicant’s allegations that the Bank mismanaged her career

39. The Applicant argues that the failure “to get a champion, change in management, among other management lapses, contributed to [her] career development mismanagement.” The Tribunal has previously found instances where the Bank was responsible for mismanaging a staff member’s career. In *Chhabra*, Decision No. 139 [1994], para. 57, the Tribunal found that

although no particular decision of the Respondent is to be quashed, the Respondent’s behavior towards the applicant ... taken as a whole, constitutes mismanagement of the applicant’s career. It reveals errors of judgment which taken together amount to unreasonableness and arbitrariness. Such behavior falls short of the standards of treatment required of the Bank under the Principles of Staff Employment.

40. In *Durrant-Bell*, Decision No. 24 [1985], para. 36 the Tribunal noted certain discrepancies and inconsistencies in the Bank’s treatment of the applicant which it found “must have left the applicant without the indispensable clarity as to the exact position of the

Respondent concerning her worthiness, entitlement to promotion on the basis of merit and performance, and her right accurately to assess the prospects of her career with the Respondent.”

In that case, the Tribunal found that there were discrepancies in the Bank’s evaluation of that applicant’s performance, which varied between finding that she had performed well enough to warrant a promotion and finding that she was not capable of performing at a higher grade.

41. Unlike the circumstances in *Durrant-Bell*, there were no inconsistencies in the Bank’s approach to the Applicant’s career prospects. The Bank did not, for example, abruptly change the tenor of its assessment of the Applicant’s performance without clear basis. At no point did the Bank promise the Applicant that she would be promoted upon completion of her developmental assignment and then revoke this promise. The Bank has provided the Applicant with many opportunities to broaden her experience and develop her qualifications in order to put her in better stead to secure a more senior position. This conviction that the Applicant was capable of carrying out more senior jobs continued to be expressed by her various supervisors.

42. The Tribunal did not find that the decision not to promote the Applicant *in situ*, from level GC to level GE, was unreasonable or arbitrary. Accordingly, the Tribunal does not find that the Applicant’s career has been mismanaged by the Bank.

43. The Tribunal observes that the Applicant concedes that she only made one application for level GE positions in other departments in the Bank. The Applicant does not appear to have taken advantage of the opportunities for her career advancement that may have existed in other departments within the Bank.

44. The Tribunal notes that the Applicant’s performance has been consistently praised, and her supervisors have recognized that she was capable of performing functions of a more senior level and the need to support her efforts in this regard. The Tribunal strongly urges the Bank to

continue its efforts to support the Applicant's career progression, and to submit again to the ACS HR Committee a proposal for the Applicant's promotion *in situ* to level GD.

DECISION

For the reasons given above, the Tribunal dismisses the Applicant's claims.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, DC, 25 May 2011