



**World Bank Administrative Tribunal**

**2014**

**No. 500**

**Ramnath Venkataraman,  
Applicant**

**v.**

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

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

**Ramnath Venkataraman,  
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, and Mahnoush H. Arsanjani.
2. The Application was received on 5 December 2013. The Applicant was represented by Niranjana Rajagopalan, Advocate, Madras High Court. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges: (i) his resignation; (ii) the Bank's decision not to confirm his appointment; (iii) his interim Overall Performance Evaluation (OPE); (iv) his placement on administrative leave and the restriction of his access to Bank premises; (v) his work on a "[j]ob that [he] did not sign up for"; and (vi) an "[i]nefficient work environment."

FACTUAL BACKGROUND

4. In September 2011, the Bank's General Services Department, Program Coordination Office (GSDPC), which was later renamed General Services Department, Strategy and Finance Unit (GSDSF), advertised a position for a Finance Assistant in Chennai, India. GSDSF which is responsible for financial and system services and help desk support for the various business units within the General Services Department (GSD) established a Center in Chennai to support these units in resource management and financial transactions.
5. In October 2011, the Applicant was selected for the position of Finance Assistant. Although the Letter of Intent sent to the Applicant on 18 October 2011 erroneously listed the position for which the Applicant was selected as "Business Process Assistant" the Applicant's

Letter of Appointment dated 27 October 2011 clarified that the Applicant was offered a Term appointment for two years as “Finance Assistant” at Grade GC in the Bank’s office in Chennai, India, and stated that his appointment was subject to a probationary period of up to one year. The Applicant joined the GSDSF Centralized Transactions Processing Team (“GSDSF Chennai Team”) on 14 November 2011 and reported to Ms. G, Finance Officer, GSDSF.

6. One of the major components of the Applicant’s work program was to undertake transaction processing in the Bank’s Systems, Applications and Products in Data Processing (SAP) framework which included *inter alia*: (i) creating, maintaining and closing contract and payment requests within the SAP framework; (ii) creating service entry sheets (SEs) to record payments to vendors; and (iii) coordinating with relevant business units in the Bank to ensure timely completion of processing.

7. The Applicant was provided with orientation training in his first week including an overview of the GSDSF Chennai Team’s work program. Thereafter, the Applicant was provided with full-time training from 21 November 2011 through 18 January 2012 to facilitate his preparation for the mandatory Transaction Process Learning Module (TPLM). The Applicant completed the TPLM accreditation on 1 March 2012. However, the Applicant worked thereafter in a test SAP environment because he was not deemed qualified to process transactions in the SAP Production environment.

8. In the meantime, on 18 January 2012, the Applicant’s supervisor, Ms. G, assigned him to provide business process support (“BU support”) to another GSD unit, the Corporate Real Estate and Facilities (GSDCR) unit.

9. On 21 March 2012, feedback discussions on the Applicant’s interim OPE (covering the period 14 November 2011 to 13 May 2012) took place. The discussants of the Applicant’s interim evaluation were the Applicant, Ms. G, and Ms. E, Senior Resource Management Officer.

10. From 10 through 19 April 2012, the Applicant’s first dedicated trainer, Mr. Q, Finance Officer, GSDSF, provided mentoring and training to the Applicant and continued to supervise

such training until 22 May 2012. The Applicant worked on mock samples in the test environment of SAP which was checked by Mr. Q. While the Applicant states that he was not able to perform a lot of functions as the test environment did not allow him to do so, the Bank points out that the SAP test environment is the same platform used extensively across the Bank and the GSDSF Chennai Team for learning and practice purposes.

11. At the end of this additional training, the feedback received from Mr. Q was that the Applicant had failed to show a sustained level of attention to detail which was essential to producing good quality transaction processing outputs in SAP. Such feedback was shared at a meeting of Mr. Q with the Applicant and Ms. G held on 22 May 2012. Based on the feedback received, Ms. G decided that the Applicant was not ready to operate in a live SAP transaction processing environment, particularly as there were higher-than-usual volumes typical in the last quarter of every financial year. Therefore, she informed the Applicant that he would be given an additional month's training on transaction processing while concurrently providing BU support to the GSD Translation and Interpretation unit (GSDTI).

12. Thereafter, on 26 June 2012, the Applicant met with Ms. G and Ms. E for OPE discussions for the period covering 14 November 2011 through 13 May 2012. In his interim OPE, signed on 29 June 2012, the Applicant was rated "Fully Successful" in the following areas: (i) backing up business process support; (ii) any other assignments; (iii) client orientation; and (iv) teamwork. The Applicant was rated "Partially Successful" in the following areas: (i) training to become a transaction processor; (ii) drive for results; and (iii) learning and knowledge sharing. In the Supervisor's Overall Comments, Ms. G described the Applicant's assignments up to that point and stated:

[The Applicant] goes through the training aspects while taking over an assignment and he has to focus on gaining control over the processes that he takes on by avoiding errors and seeking guidance as necessary from the other team members and supervisor. In the coming months, [the Applicant] will clearly focus on applying his training on the deliverables, ensuring to follow up on issues proactively to complete the tasks as intended [...] so that he could achieve the expected results. [The Applicant] takes interest in understanding the Lotus Notes database, which is the medium used for submitting expense processing requests and has also suggested an area of improvement that will

help simplify the efforts required to create multiple similar requests for processing. [The Applicant] is an enthusiastic team member and has a keen interest towards organizing teambuilding activities and team meetings. Wish him all the very best!

13. The Applicant's interim OPE did not include a warning that his position might be at risk, nor was he otherwise informed of this possibility at this time.

14. On 16 July 2012, Ms. G met with the Applicant to obtain a further status update on the progress he had made with his transaction processing training. Subsequently, a second trainer, Mr. R, Finance Analyst, GSDSF, was assigned to provide the Applicant with training and mentoring.

15. The Bank maintains that on 29 July 2012, Ms. G and Mr. V (GSDSF's Manager who was visiting from Washington, D.C.) met with the Applicant to discuss his performance and told the Applicant that he would have to demonstrate considerable positive improvement if his appointment was to be confirmed. The Applicant denies that that meeting took place or that he had any such discussion with Mr. V throughout his tenure from November 2011 to February 2013.

16. On 8 August 2012, a meeting was held between the Applicant, both his trainers (Mr. Q and Mr. R), and Ms. G. As is also demonstrated by feedback provided by Mr. R in an e-mail to the Applicant dated 7 August 2012, during this meeting, Ms. G noted that the same feedback was still being received from the Applicant's trainers on his work performance, namely that he: (i) needed to pay greater attention to detail when processing transactions; and (ii) continued to display a lack of concentration and focus required for the transaction processing assignment.

17. On 31 August 2012, as part of a number of changes to the Applicant's work environment, Ms. A, Finance Analyst, GSDSF, took over as his trainer and his work station was moved next to hers. The Applicant was provided with SAP framework access to process SESs and Miscellaneous Expense Reimbursement Requests (MERRs) and was eventually assigned to complete such transactions under Ms. A's supervision.

18. The Applicant was provided with SAP access to process commitments (e.g., Purchase Requisitions and Purchase Orders) towards the end of September 2012. During that month, the Applicant's work showed progress as he processed 29% of the team's transactions by handling all the SESs and MERRs during this period. Ms. G recognized the Applicant's improvements by sending him an appreciative e-mail on 11 September 2012.

19. While the Bank claims that Ms. G also met with the Applicant on that day to encourage him to maintain the increase in his work productivity but also to point out to him that his performance behaviors would have to improve for the Bank to consider extending his probationary period, the Applicant denies that such meeting took place. According to the Bank's records, the Applicant routinely reported late for work and, on a number of occasions in September and October 2012, had worked less than the eight and a half work hours expected of the staff members in the GSDSF Chennai Team. The Applicant states that he was permitted by his supervisor to have flexible working hours.

20. From October to December 2012, the Applicant's share of transaction processing ranged between 10% and 14% which, according to the Bank, was lower by comparison to that of the other GSDSF team members with comparable or higher responsibilities in the GSDSF Chennai Team. The Applicant states that in October 2012 he was only on his second month of transaction processing and could not be compared with a seasoned transaction processor.

21. The Bank also points out that in October 2012 the GSDSF Chennai Team began to pilot the provision of services to two units in the Financial and Private Sector Development and External Relations Vice Presidencies. While experienced GSDSF staff members were assigned to work closely with the new units, the Bank claims that the Applicant was requested to volunteer to do more transactions (particularly on SESs and MERRs) but he did not do so. The Applicant denies the Bank's claim.

22. On 14 November 2012, Ms. G sent an e-mail to remind the Applicant to submit his Annual OPE covering the period 2011-2012 so that they could discuss his performance at the end of his probationary period. The Applicant states that he duly submitted the OPE at that time.

In late November 2012, during the GSDSF Chennai Team's off-site training in Goa, India, Mr. V met with the Applicant to discuss his performance. According to the Bank, Mr. V informed the Applicant that, as his manager, he was not inclined to recommend confirmation of his appointment because the Applicant had not shown a sustained improvement in his performance. Subsequently, on 3 December 2012, Ms. G claims that she had an OPE discussion with the Applicant, whereby she reiterated that as his performance continued to fall short of expectations, Mr. V and herself were not inclined to recommend the Applicant's confirmation. The Applicant denies that either the late November or early December 2012 discussion took place.

23. On 13 December 2012, Ms. G had a videoconference with the Applicant and Mr. V during which the Applicant's OPE was discussed. According to the Bank, during this meeting, Mr. V informed the Applicant that he intended to move forward with his recommendation not to confirm his appointment. However, he would not take further steps to allow the Applicant to meet with Human Resources (HR) to obtain clarification on the relevant Staff Rules applicable to his case and to discuss the other options available to him. Subsequent to that videoconference, Ms. G shared with the Applicant a printed version of his OPE with ratings and comments. According to her, the Applicant was not interested in having any discussions on the OPE. The Applicant explains that while Ms. G had given him a printed copy of the OPE, due to his having suffered a physical injury he asked her to wait to have the OPE discussion. However, she did not wait and proceeded to process the OPE.

24. The Applicant's Annual OPE which remained in draft form, undated and unsigned, included the same ratings as his interim OPE. In the Overall Comments it was stated, among other things, that the Applicant's "performance has not met the expectations and it has been decided to not confirm his services with the Bank."

25. On 18 December 2012, Ms. S, Senior HR Business Partner in the Bank's Chennai office, met with the Applicant. At this meeting, according to her and in response to the Applicant's questions, Ms. S pointed out that under Staff Rule 4.01 ("Appointment"), Section 8.05, "a former staff member whose employment terminated because of non-confirmation of appointment under

Rule 7.01, Section 6, ..., may not be reappointed” and discussed the option of resignation with him. The Applicant denies that Ms. S discussed the procedures under the Staff Rules with him.

26. On 26 December 2012, Ms. G sent an e-mail summarizing the discussion that had taken place during the 13 December 2012 videoconference. In addition to reiterating that the Applicant had been notified that his performance had not met expectations and that the decision not to confirm his services had been made, she also summarized the training and guidance that the Applicant had received since joining the GSDSF Chennai Team and the feedback shared with the Applicant on the deficiencies in his technical work and behavioral issues in the past year. The Applicant responded to Ms. G’s e-mail on 30 December 2012 disagreeing with her statements and asserting that if he had failed it was a “collective failure” of the team.

27. Mr. V contacted the Applicant by e-mail on 3 January 2013 in order to follow up on the issues the Applicant had raised in his e-mail of 30 December 2012. As the Applicant’s probationary period had already expired, Mr. V informed the Applicant that he was about to send “the non-confirmation note” to him. He told the Applicant that he could resign subsequently if he wanted to do so.

28. On 7 January 2013, and following further discussions between the Applicant and Mr. V, the Applicant sent a written notice to Mr. V to inform him of his resignation decision and requested that 28 February 2013 be his final working day. On 10 January 2013, Mr. V responded to the Applicant noting his resignation decision. The Bank ceased all further actions in respect of non-confirmation. The Applicant alleges that HR provided him with a laptop at that time to use in order to submit his resignation and that, as he was not happy with HR’s treatment of him, he used it to put his resignation in draft form. Because the Applicant submitted his resignation only in draft form, his resignation was not processed through the system at that time.

29. On 30 January 2013, Mr. V informed the Applicant by e-mail of the same date that he would need to complete the HR actions required of him in terms of the Applicant’s resignation. He added: “If you initiate the same, it will be an acceptance of your resignation. Otherwise I will



need to proceed with a non-confirmation.” The Applicant entered his resignation in the system the next day.

30. In January 2013, the Applicant applied for another job at the Bank (“Senior HR Case Management Assistant position”) at the HR Service Center (HRSSC). He was asked to interview for this position but later the interview was cancelled. The Applicant contacted Ms. S on 21 January 2013 stating that he had been told that “after [his] internal reference check they decided to drop [his] candidature.”

31. The record shows that the Applicant had taken sick leave from 27 December 2012 through 23 January 2013 and had requested sick leave through 31 January 2013. The Applicant had exhausted his sick leave entitlements by the end of January 2013. So Mr. V gave him an additional six manager-approved leave days in January 2013. Mr. V also sought and received approval from the Director, GSD, for administrative leave to be granted to the Applicant for the month of February 2013.

32. On 12 April 2013, the Applicant filed a Request for Review with the Peer Review Services (PRS). PRS found that the Bank’s bases for the non-confirmation decision were reasonable and supported by the evidence, but that the Bank failed to follow a proper process in making this decision. PRS recommended that the Bank compensate the Applicant in an amount of three months of his net salary. The Vice President of Budget, Performance Review and Strategic Planning, after consulting with a representative of the Vice President of Human Resources, accepted the recommendation by PRS and notified the Applicant of his decision on 6 November 2013. In order to receive the compensation, the Applicant was asked to sign a waiver of any further claim before any forum in relation to the disputed matter.

33. The Applicant did not sign the waiver and on 5 December 2013, he filed his Application with the Tribunal. The Applicant requests the Tribunal to order (i) the rescission of his resignation and of the interim OPE and reinstatement with salary at the “market reference point” and all related benefits; (ii) confirmation of “[his] services in the system”; (iii) compensation in the amount of \$90,000 for, *inter alia*: (a) loss of earnings with interest; (b) loss of retirement

benefits and loss of medical assistance; (c) humiliation because he was stripped of his access to the Bank premises; (d) lost opportunities; and (e) defamation and loss of reputation; and (iv) legal costs in the amount of \$21,899.12. In a later pleading the Applicant requested compensation in the amount of \$120,000.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

### *The Applicant's Contentions*

34. The Applicant contends, among other things, that: (i) the Bank had established no work program for him and that for close to eight months of his probationary period he worked as a Business Process Assistant providing BU support pursuant to a job description for which he had not signed up; (ii) the Bank's statements regarding his professional behavior are contradicted by the evidence; (iii) he was not given proper training, guidance, or timely feedback on his performance during his probationary period; (iv) there was a lack of process and no evidence to show that the Applicant could not have performed after confirmation; (v) he was deceived by the Bank and was forced to resign as he was unaware of the policy on non-confirmation; (vi) the decision to place him on administrative leave and to restrict his access to the premises was an abuse of discretion; (vii) the Bank did not want to have him in its employ anymore and therefore did not select him for an interview for the Senior HR Case Management Assistant position; and (viii) there has been loss of opportunities for him and additionally, to date, the Applicant has not been shortlisted for any of the jobs for which he has applied.

### *The Bank's Contentions*

35. The Bank responds, *inter alia*, that: (i) the Applicant's work program had been established and communicated to him from the start and the BU support assignments that were given to the Applicant were well within his work program as "Finance Assistant" in the GSDSF Chennai Team, and supplemented the Applicant's TPLM and transaction processing training; (ii) the Applicant was given ample opportunities to show his suitability for his transaction processing assignment but failed to do so; (iii) there was no abuse of discretion in its decision to recommend the Applicant's non-confirmation because the Applicant: (a) had received adequate training,

supervision and guidance; (b) had been provided with adequate warning that his performance deficiencies and behavioral issues might result in non-confirmation on a number of occasions; (c) was given a fair opportunity to defend himself during a number of face-to-face meetings; and (d) was not provided with an opportunity to comment on the recommendation not to confirm his appointment prior to Mr. V's recommendation being submitted to the Director, GSD, for decision because the Applicant chose to submit his written notice of resignation on 7 January 2013 to Mr. V, thereby stopping his manager's next steps in the non-confirmation process; (iv) the Applicant freely chose to resign and should have been aware that his appointment was subject to the Bank's conditions of employment; (v) there was no improper motive in granting the Applicant administrative leave nor was the Applicant publicly asked to leave the office premises; (vi) there was no improper motive in the Applicant not being selected for an interview for the Senior HR Case Management Assistant position; and (vii) the Applicant was not shortlisted for the positions he applied to because either he did not meet the basic criteria for those positions or they were cancelled due to unrelated business reasons.

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

36. The Tribunal will first examine the Applicant's challenge of the Bank's decision not to confirm his appointment.

#### *NON-CONFIRMATION OF APPOINTMENT*

37. In defining the scope and extent of its review of non-confirmation decisions the Tribunal stated in *McNeill*, Decision No. 157 [1997], para. 30:

The scope and extent of the review by the Tribunal of the Bank's decisions concerning confirmation or non-confirmation of appointment during or at the end of the probationary period rest on the basic idea that the purpose of probation is "the determination whether the employee concerned satisfies the conditions required for confirmation" (*Buranavanichkit*, Decision No. 7 [1982], para. 26), that is to say, in the language of Staff Rule 4.02, the determination whether the probationer is "suitable for continued employment with the Bank Group." The probationer has no right to tenure. ... The assessment of his suitability is a matter of managerial discretion. ...

It is also for the Bank to determine, at the end of the probation or at any time during the probation, whether the probationer has proven either suitable or unsuitable for Bank employment and to terminate his employment whenever it concludes that he is unsuitable. As the Tribunal has repeatedly stated, it will not review the exercise by the Respondent of its managerial discretion unless the decision constitutes an abuse of discretion, is arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

*SUITABILITY FOR CONFIRMATION AND CONTINUED EMPLOYMENT*

38. The Applicant has first maintained that the Bank's decision not to recommend the confirmation of his appointment was arbitrary as he had proved his suitability for confirmation and continued employment and that the Bank had no evidence to the contrary.

39. Staff Rule 4.02 ("Probation") provides in relevant part:

The purpose of the probationary period is to assess the suitability of the Bank Group and the staff member to each other.

40. In defining the concept of unsatisfactory performance in probationary appointments, the Tribunal held in *McNeill*, at para. 34, that:

Regarding probation, the problem is not so much whether the probationer has performed satisfactorily as whether he has proven his suitability to the specific requirements of the Bank regarding the work which he would have to perform if he were to be confirmed.

The Tribunal also recognized in that same judgment at para. 30 that the standards which the probationer should satisfy are established by the Bank and that they

may refer not only to the technical competence of the probationer but also to his or her character, personality and conduct generally in so far as they bear on ability to work harmoniously and to good effect with supervisors and other staff members.... (*Buranavanichkit*, Decision No. 7, [1982], para. 26).

The Tribunal further held at para. 36 of that judgment that

it is not for the Tribunal to pass judgment upon the assessment made by the Respondent of the Applicant's suitability for Bank employment .... It is,

however, for the Tribunal to review whether these decisions constituted an abuse of discretion because, even if resting on proper motives, they nevertheless were based on facts which did not exist, or were based on a manifestly erroneous appreciation of the facts, or were tainted by *détournement de pouvoir*.

41. In light of these precedents, the Tribunal will review the assessment of the Applicant's performance throughout his probationary period and the Bank's conclusion that the Applicant's "performance has not met the expectations and it has been decided to not confirm his services with the Bank."

42. First, and contrary to the Applicant's assertion, the Bank has adequately explained that the Applicant's assignments were within his job description and part of his work program. The record shows that transaction processing in the Bank's SAP system was a major part of the Applicant's accountabilities and for this reason he was given significant training to prepare for the mandatory TPLM. Furthermore, the Bank has persuasively explained that the BU support provided first in GSDCR and later in GSDTI (i) was part of his job description and other staff in his position had undertaken similar assignments and (ii) was intended to enable him to familiarize himself with the transaction processing requestor's perspective and supplement his ongoing TPLM training. The Bank has also shown that the Applicant was assigned the GSDTI BU support at the end of the financial year period as the Applicant, according to the feedback by his trainers, had not shown consistency in his transaction processing so as to be able to process transactions independently in a live SAP environment during that period. It is also evident that the Applicant undertook the BU support assignment to help out with work exigencies of staff that were either going to Headquarters for training or leaving the Bank. In addition, contrary to the Applicant's assertion, the Applicant's provision of BU support was indeed mentioned and appreciated by his supervisor in his interim OPE and also in his Annual OPE.

43. Regarding the TPLM training, the record shows that the Applicant was enrolled for accreditation for TPLM but needed more than eight weeks or 340 business hours of full-time training from 21 November 2011 to 18 January 2012 and, in fact, he did not complete the TPLM accreditation until 1 March 2012. The Bank-wide TPLM program administrator has confirmed that the TPLM training and accreditation process is only expected to take approximately 111

business hours to complete; therefore, the Bank's claim that the Applicant needed significantly more time to complete such accreditation vis-à-vis similarly situated staff is well founded.

44. Furthermore, the record shows that although the Applicant completed his TPLM training, the transaction processing component of his work program was lacking and he could not successfully process mock samples. This is shown by the written declaration of his supervisor before the Tribunal but, more importantly, by the fact that he received a "Partially Successful" rating in his interim OPE regarding this assignment. It is also corroborated by e-mails from his mentor, Mr. Q, and his supervisor, Ms. G, as well as the declaration of Ms. A who mentored the Applicant in September 2012. There seemed to be a consensus between his trainers and his supervisor that the Applicant, even though he had conceptual knowledge of his work, lacked attention to detail which led to material errors when he was processing transactions. In addition, he was not effectively following up on the feedback that had been shared with him by his trainers. It is clear that for these reasons he was given access to SAP in order to process transactions at a later stage in his probationary period in September 2012 and, initially, under the supervision of Ms. A.

45. Another criticism of the Applicant's performance related to his professional behavior was the failure to seek help when needed and to escalate issues to superiors or colleagues when errors or problems were noticed. The Tribunal notes that, in addition to the Applicant's perceived inability to focus, this may have been one of the reasons for his receiving "Partially Successful" ratings in his interim OPE regarding his "Drive for Results" and "Learning and Knowledge Sharing."

46. The record also supports Ms. G's claims that there were other problems in the Applicant's performance behavior as he was not punctual and took long breaks and did not always work the required eight and a half work hours per day. He admits to his tardiness and the fact that on some days he worked fewer hours than required, although he explains that this happened occasionally, while he worked additional hours on other days and, he insists, had permission from his manager to work flexible hours.

47. The Tribunal further notes that the Applicant's performance showed improvement in his transaction processing output during the fall of 2012 as a result of changes that were made in his work environment. This was recognized in an appreciative e-mail by his supervisor as well as in her written declaration before the Tribunal. However, that progress was not sustained and the Applicant's productivity presented issues until the end of the year.

48. It also appears that around September 2012 the Applicant was asked to volunteer to do more transactions (particularly on SESs and MERRs) but he did not do so. The Applicant's supervisor also claims that the Applicant did not attend a full induction training in October 2012, as he was required to do. The Applicant however challenges these assertions. The evidence regarding these particular statements is not conclusive.

49. The Tribunal further notes that while the Applicant claims improper motivation in the assessment of his performance during the probationary period, as well as in the recommendation not to confirm him, he does not provide a plausible explanation for these claims. In this respect, the Applicant has made the claim that his manager, Mr. V, wanted to give his position without a competitive selection process to one of his colleagues at the end of the Applicant's probationary period and that he forced the Applicant to resign in order to replace him. The Bank has acknowledged that the Applicant's colleague was eventually re-assigned to the Applicant's position after his departure. The Tribunal notes that this reassignment, however, in and of itself is not evidence that the decisions not to confirm the Applicant and to allow him to resign were based on extraneous motivations.

50. The Tribunal has found that the Bank's decision to reassign its staff members is a discretionary decision and will only be set aside if it constitutes an abuse of discretion. (*See e.g. Sengamalay*, Decision No. 254 [2001], para. 29 and *Sweeney*, Decision No. 239 [2001], para. 49.) Furthermore, the applicable version of Staff Rule 5.01, paragraph 2.05 ("Reassignment Within the Same Department") 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.

51. As the Bank explains, reassignment can take place when the Bank exercises a right to reorganize and reassign its staff in the interests of the organization. In this case, the manager wanted to bolster the GSDSF Chennai Team after the Applicant's post had remained vacant. Such a reassignment decision made in order to meet the unit's business needs and taking into account the reassigned staff member's skills and views does not constitute an abuse of discretion, nor has the Applicant in the current case shown that it reflects an improper motivation.

52. The Tribunal concludes that while the Applicant has challenged the assessment of his performance by the Bank, and, notwithstanding the absence of contemporaneous communications as to some of the Bank's assertions, the totality of the evidence including the Applicant's OPEs, the statement by his supervisor in her 26 December 2012 e-mail, her written declaration and the concurring statements and contemporaneous e-mails by the Applicant's trainers and colleagues supports the Bank's finding that the Applicant had not proven his suitability for continued employment with the Bank. The evidence also shows that the Applicant's managers took into account all relevant factors in the assessment of his performance and did not give undue weight to negative factors. (*See Romain (No. 2)*, Decision No. 164 [1997], para 19; and *Lysy*, Decision No. 211 [1999], para. 68.) Furthermore the Tribunal is satisfied that the assessment of the Applicant's performance and the resulting determination on his non-confirmation was based on facts and was not inspired by any bias, prejudice or inappropriate purpose.

*FAIR TREATMENT OF PROBATIONER/GUARANTEES OF DUE PROCESS/ADEQUATE GUIDANCE AND  
TRAINING*

53. In reviewing the procedural aspects of this case, the Tribunal recalls its early jurisprudence where it discussed the right of the probationer to fair treatment. In *Salle*, Decision No. 10 [1982], para. 50, the Tribunal emphasized "the importance of the requirements sometimes subsumed under the phrase 'due process of law'." It held that:



The very discretion granted to the Respondent in reaching its decision at the end of probation makes it all the more imperative that the procedural guarantees ensuring the staff member of fair treatment be respected.

54. It also held in *McNeill*, at para. 44:

While the probationer has no right to be confirmed, he has the right to be given fair opportunity to prove his ability, and the Tribunal will review whether this right has been respected and whether the legal requirements in this regard have been met.

55. Furthermore in *Zwaga*, Decision No. 225 [2000], paras. 37 and 38, the Tribunal reaffirmed its earlier jurisprudence:

In connection with probation, the Tribunal has singled out “[t]wo basic guarantees” as “essential to the observance of due process”:

First, the staff member must be given adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached. Second, the staff member must be given adequate opportunities to defend himself. (*Samuel-Thambiah*, Decision No. 133 [1993], para. 32.)

In addition, the Tribunal has held that one of the basic rights of an employee on probation is the right to receive adequate guidance and training (*Rossini*, Decision No. 31 [1987], para. 25) and that it is its duty to make sure that the Bank’s obligation to provide a staff member on probation with adequate supervision and guidance has been complied with in a reasonable manner. (*Salle*, Decision No. 10 [1982], para. 32.)

56. Staff Rule 4.02, paragraph 2.02, states in pertinent part:

During the probationary period, the Manager or Designated Supervisor shall:

- a. as soon as practicable, meet with the staff member to establish the staff member’s work program; and
- b. provide the staff member feedback on the staff member’s suitability and progress based on achievement of the work program, technical qualifications and professional behaviors.

57. First, the Applicant states, that, contrary to the above-mentioned requirement of the Staff Rule, no work program was established at the beginning of his probationary period. The record, however, shows that the Applicant started his TPLM training one week after he joined the Bank. This indicates that it had been explained to him from the beginning that his main task would be that of a transaction processor. The record also shows that the Applicant's supervisor and a number of the members of the GSDSF Chennai team presented to him during the first week of his appointment an overview of the duties of his position as part of his orientation training. Furthermore, as discussed above, and contrary to the Applicant's assertions, the BU support that the Applicant was working on was part of his job description as Finance Assistant. It was also assigned to him to supplement the training for his main task as transaction processor because his training took longer than that of other staff.

58. Second, the Applicant denies that he was provided with the feedback required to be provided to a staff member on probation pursuant to Staff Rule 4.02, paragraph 2.02(b). He states that all the feedback he was given was about what to do in the future and not about how his performance was in the past. The record, however, shows that a number of formal training status update meetings were arranged to ensure that the Applicant was provided with such relevant feedback. One such official meeting was the one provided on 22 May 2012 between the Applicant, Mr. Q and Ms. G, where it is evident that Mr. Q had shared feedback on the areas where the Applicant's performance needed improvement. There is also evidence of training status update meetings on 16 July 2012 and, later, on 8 August 2012 while the Applicant was also supervised by Mr. R. The record also shows that feedback was provided to the Applicant by Ms. A particularly on his transaction processing output during her time as a trainer.

59. In addition, there is evidence that discussions were held between the Applicant, Ms. E and Ms. G on 21 March 2012 and again on 26 June 2012 in relation to his interim OPE. Ms. G states that during these discussions the Applicant was given feedback and was informed of the need for improvement in his performance. While such discussions are not documented in minutes of meetings, it is well documented that the Applicant was provided with feedback on his performance as his supervisor prepared an interim OPE for him, despite the fact that the applicable version of Staff Rule 4.02 does not require it. A review of his interim OPE shows that

the Applicant was informed of areas in which his performance was “Partially Successful” and therefore needed improvement, namely his transaction processing training, “Drive for Results” and “Learning and Knowledge Sharing.” While the Applicant complains that this interim OPE was signed over a month later than it should have been, the Tribunal notes that even at the time of its signature there was significant amount of time left and opportunity for the Applicant to improve his performance particularly as he had additional relevant feedback from his trainers.

60. Another instance of feedback provided by Ms. G was the e-mail that she sent him on 11 September 2012 appreciating his efforts and encouraging him to keep up the good work as his performance had improved.

61. The Tribunal therefore finds that that the Bank met its obligation under the Staff Rule to provide the Applicant with the required feedback.

62. Staff Rule 4.02 further provides at paragraph 3.02:

At any point during or at the end of the probationary period, the staff member’s Manager may recommend to end a staff member’s employment by non-confirmation of appointment. The written recommendation to not confirm must be supported by: prior written notice to the staff member concerning deficiencies in his/her performance, technical qualifications, or professional behaviors; reasonable guidance and opportunity to demonstrate suitability for the position, and warning that failure to do so may result in termination. The staff member shall be provided an opportunity to comment on the recommendation. The recommendation, together with any comments of the staff member, shall be submitted to the Manager’s Manager (at Level GI or above) for decision, which shall be made in consultation with the Manager, Human Resources Team and with notice to the staff member’s Vice President. Termination procedures are specified in Section 6 of Staff Rule 7.01.

63. First, in reviewing the procedural requirements under the Staff Rule as well as under its jurisprudence, the Tribunal notes that the requirement to provide the staff member with prior written notice concerning deficiencies in his/her performance, technical qualifications, or professional behaviors, was met in the Applicant’s case as the interim OPE provided the Applicant with such notice.

64. Secondly, the Tribunal notes that an opportunity was given to the Applicant to demonstrate his suitability for the position while he was also provided thereafter with adequate guidance and training. In this respect, due to the nature of the Applicant's duties and the fact that one of the major components of his work program was to undertake transaction processing in the Bank's SAP framework, the Applicant was provided with full-time training in order to facilitate his preparation for the mandatory TPLM. As seen above, the Applicant was afforded more than 340 business hours of full-time training and completed his TPLM accreditation on 1 March 2012 approximately three and a half months after starting his TPLM training in mid-November 2011 although after 18 January 2012 he was also providing BU support to GSDCR. Notably, while the Applicant was providing BU support to GSDCR he was also offered training regarding this task.

65. The Applicant was also offered detailed hands-on transaction processing from the senior transaction processors in the team who covered different sessions between March and April 2012. Subsequently, the Applicant worked in a test SAP environment as it was considered risky to transition the Applicant to transaction processing in a live SAP environment at this stage. The record shows that Mr. Q, a senior Transaction Processor provided such training and supervision to the Applicant from early April until 22 May 2012. Contemporaneous e-mails and the written declaration of Ms. A show that from mid-July to 30 August 2012 Mr. R provided additional hands-on transaction processing training to the Applicant which was followed by additional training and supervision by Ms. A during the month of September 2012. The Applicant then was provided initially SAP access to process two types of expense transactions (SEs and MERRs) under Ms. A's supervision and, at the end of September 2012, he was given SAP access to process commitments (e.g., Purchase Requisitions and Purchase Orders).

66. The question, however, is whether the Applicant was provided with warning that failure to demonstrate his suitability for the position may result in termination as required by the Staff Rule. The Tribunal notes that the interim OPE did not include such warning. The Bank, however, claims that it had warned the Applicant that his performance deficiencies and behavioral issues might result in non-confirmation on a number of other occasions such as in a 29 July 2012 meeting of Mr. V and Ms. G with him and later during a meeting of Ms. G with

him on 11 September 2012, on the same day when she sent him the e-mail appreciating his work, as well as in late November 2012 in a meeting of the Applicant with Mr. V. The Tribunal notes, however, that the Bank cannot support its claims of verbal warnings with contemporaneous written documentation. The Applicant denies that he received such warning in these meetings and even that some of the meetings took place at all.

67. The Bank also claims that this warning that management was inclined to start the process to recommend his non-confirmation was also reiterated in end-of-year OPE discussions of the Applicant with Ms. G on 3 December 2012, and on 13 December 2012, the latter of which was also attended by Mr. V. The Applicant acknowledges that the decision not to confirm his services was first communicated to him in his videoconference with Ms. G and Mr. V on 13 December 2012. It is also evident that written notice of non-confirmation was given to him in his Annual OPE prepared at the end of December. It should be noted in this respect that the applicable version of the Staff Rule did not require that a formal OPE be prepared at the end of the probationary period but the Applicant's supervisor prepared such nonetheless. An additional notice of the decision not to confirm the Applicant's services was given to him in an e-mail of Ms. G of 26 December 2012 which referred to the discussion of 13 December 2012. The Tribunal notes that, while these notices summarized the Applicant's deficiencies of performance and announced the reasons for the decision not to confirm him, they did not give the Applicant a warning of an imminent non-confirmation if his performance did not improve as the decision had already been made, according to the Bank, in November 2012. These notices rather announced to him a final decision. Nor was there time or opportunity, as his probationary period had reached its end, for the Applicant to improve his performance. Therefore these notices cannot be considered as fulfilling the requirement of paragraph 3.02 of Staff Rule 4.02 of giving the Applicant warning of an imminent non-confirmation.

68. The Tribunal also notes that according to the PRS report, which referred to Mr. V's testimony, Mr. V acknowledged that such warning of non-confirmation had not been given to the Applicant.

69. Furthermore, the Tribunal notes that, instead of an unequivocal warning of imminent termination, the Applicant's supervisor as well as his manager gave him mixed messages.

70. For example, the Bank claims that on 11 September 2012, Ms. G had met with the Applicant and gave him warning that if his performance did not improve his appointment would not be confirmed, while also encouraging him to continue his progress. Yet in her e-mail to him of the same date she stated that she "sincerely appreciate[d] the focus and commitment to process transactions with fine quality" and stated "Keep it up! Look forward to your continued excellence!" These comments certainly did not warn the Applicant of an imminent non-confirmation.

71. Another equivocal episode was the response that the Applicant received from his manager, Mr. V, when he asked his permission to open a basketball academy. The Bank maintains that Mr. V had verbally notified the Applicant during a meeting in late November 2012 that he would recommend his non-confirmation. But only a few weeks earlier in an e-mail dated 25 October 2012 Mr. V informed the Applicant that he could not grant him permission to open the basketball academy "in parallel to your full-time job with our team." He explained among other things that "I feel that a full-time job is a commitment that one makes to oneself, and the organization, in that the focus will be on putting the best foot forward in all circumstances at work." He added: "You have been with us for less than a year, and the learning is on-going." In the light of Mr. V's communication, the Applicant responded on 29 October 2012 "With due respect to what you have written, I am going ahead and dropping the idea of opening an academy ... I also take this as an opportunity to substantiate the long term commitment that I have given to the Bank." At that late stage in his probationary period, and despite Mr. V's commendable efforts to assist him in performing better, the Applicant may have gained the impression that there was a future in his employment with the Bank in which he should place his commitment.

72. The Tribunal finds that in both these two aforementioned instances there was a lack of warning of non-confirmation if the Applicant's performance did not improve.

73. While the Bank also states that not providing the Applicant with early warning was justified in the Applicant's cultural environment as he might be demoralized, the Tribunal notes that not informing the Applicant of the grave consequences of his failure to improve his performance may have denied him the opportunity to fully realize the seriousness of his situation and thereby increase his efforts to prove his suitability for continued employment.

74. Finally, the Tribunal notes that paragraph 3.02 of Staff Rule 4.02 requires that when a manager's recommendation is made not to confirm a staff member, the staff member shall be provided an opportunity to comment on the recommendation. After that, the recommendation, together with any comments of the staff member, is submitted to the Manager's Manager, which in the Applicant's case was the Director, GSD, for decision. The Tribunal notes that this last step in the process never took place because the Applicant entered into discussions about resigning from the Bank instead of having his employment terminated on the grounds of non-confirmation. The Tribunal notes that since the Bank had allowed the Applicant to resign, and the resignation procedure was to be followed, after the Applicant submitted his resignation in draft form, the Bank could not be expected to follow the procedure under the Staff Rule for the recommendation of non-confirmation.

75. At the same time, the Tribunal notes that the discussions about the option for the Applicant to resign appeared to have started only after the Applicant was informed of a decision, and not a recommendation, not to confirm him. Even though the Bank states that Mr. V, his manager, had informed the Applicant in late November 2012, during a retreat in Goa, India, of his decision not to recommend his confirmation, the non-confirmation was communicated to the Applicant as a decision in the overall comments by his supervisor, Ms. G, in his Annual OPE that remained in draft form, as well as in her e-mail to him of 26 December 2012 which summarized the discussion of 13 December 2012. In addition, the Tribunal notes that the decision was presented to have been taken by Mr. V, the Applicant's manager, and not the Director, GSD, contrary to the requirement under the Staff Rule that such final decision be taken by the Manager's Manager. Moreover, the Tribunal notes that neither the Annual OPE nor the e-mail of 26 December 2012 gave the Applicant the opportunity to respond effectively to his supervisor's comments on the deficiencies of his performance and to the non-confirmation

decision before such decision was taken. That decision had already been made by late November 2012 as the Bank states. This is all the more so as the Applicant had not been given warning earlier in the probationary period of such imminent non-confirmation. Furthermore, the record does not sufficiently support the Bank's claim that the Applicant was given an opportunity to defend himself effectively prior to a non-confirmation decision in the numerous meetings with his trainers and his supervisor, particularly as there is no contemporaneous written evidence that he was given a warning during these meetings that his appointment might not be confirmed if his performance did not improve. Therefore, the Tribunal finds that the Applicant was not afforded in this case the opportunity to respond effectively to the reasons that led to a decision on non-confirmation before such decision was made.

76. Accordingly, the Tribunal finds that the Bank failed to (i) adequately warn the Applicant that he faced termination unless he remedied the defects in his work performance and demonstrated suitability for his position and (ii) afford the Applicant the reasonable opportunity to respond to the decision on non-confirmation. These procedural failures by the Bank affected the right of the Applicant by depriving him of the reasonable opportunity to remedy the defects in his work performance and, to respond, in his own defense, to the decision on non-confirmation. Hence compensation is merited for these procedural irregularities.

#### *RESIGNATION*

77. The Applicant claims that the Bank in fact compelled him to resign in order to avoid revealing that it had not followed the applicable Staff Rule and due process with regard to his non-confirmation. Notwithstanding the Tribunal's finding that the Applicant did not have the opportunity to respond effectively before a decision was made in his case, the Tribunal does not find evidence that the Applicant's resignation was coerced. The record shows that even though Mr. V sent the Applicant the e-mail of 3 January 2013 and informed him that he needed to have an answer from him before he proceeded with the non-confirmation, the Applicant notified him of his decision to resign on 7 January 2013 but then did not officially submit his resignation in the system until 31 January 2013 and after further prompting by Mr. V. The Tribunal notes that the Applicant's one-year probationary period had already expired at the time of these



communications and Mr. V would have had to follow the relevant procedure on non-confirmation if the Applicant decided not to resign. His reminders to the Applicant cannot be interpreted as coercion considering that the Applicant was given over a month during January to consider the option to resign.

78. The Tribunal further notes that, despite the Applicant's assertions about not having been informed about the different reasons for termination under the Staff Rules, he ought to have known the Staff Rules. These were part of his conditions of employment as it was clearly stated in his letter of appointment of 27 October 2011 that his appointment was subject "to the conditions of employment of the World Bank Group as at present in effect and as they may be amended from time to time." The Tribunal has ruled that staff members have a duty to familiarize themselves with the Staff Rules, and that ignorance of the law is no excuse. (*See e.g. Guya*, Decision No. 174 [1997], para. 7; *Koudogbo*, Decision No. 246 [2001], para. 31; *Mitra*, Decision No. 230 [2000], para. 9.) Moreover, the fact that the Applicant was discussing in late December the possibility of resignation so as to preserve his right to be re-employed by the Bank in the future indicates that he must have been aware, either through discussions with Mr. V or Ms. S that the option of resignation would preserve for him the right to work for the Bank in the future while the termination through non-confirmation would not.

79. The Applicant has not shown that his decision to resign was coerced.

#### *ADMINISTRATIVE LEAVE AND RESTRICTION TO ACCESS*

80. The Applicant claims that his placement on administrative leave was an abuse of discretion. He points out that, contrary to the Bank's claims, if he intended to misuse his SAP access he would have done so before 26 December 2012. He also claims that the Bank has not provided a proper explanation as to why his access to the premises was cut off and asserts that it was so that he would not obtain relevant evidence to make his defense stronger. He also asserts that the way in which his access to the Bank's premises was restricted within a span of an hour insulted and jeopardized his image in front of his co-workers. He goes on to say that he was

publicly removed from his work place and was not even provided a chance to say goodbye to his colleagues.

81. The Bank responds that there was no improper motive in granting the Applicant administrative leave. The Applicant had already exhausted his sick leave because of a non-work related injury he had sustained in December 2012 and had asked for additional time to look for another job. It states that Mr. V acted reasonably by trying to accommodate the Applicant's request to: (a) allow the Applicant to recuperate fully from his injury; and (b) give the Applicant more time to look for another job during his remaining time with the Bank. Moreover, the Bank states that it was mindful that the Applicant continued to have access to the SAP framework and considered that providing paid administrative leave to the Applicant was desirable because it minimized the risks of the Applicant potentially compromising the integrity of the SAP system. It further claims that at no time was the Applicant escorted from the office premises or publicly asked to leave the office premises.

82. The Tribunal has held in its consistent jurisprudence that decisions to place a staff member on administrative leave and restrict their access to the premises are matters of managerial discretion. It has however affirmed the Bank's obligation to respect the requirements of due process when taking such decisions. (*Yoon (No. 13, No. 14, No. 16, No. 17, and No. 18)*, Decision No. 447 [2011], paras. 72 and 75-78; *Q*, Decision No. 370 [2007], paras. 37 and 41.)

83. The record shows that the Applicant in his e-mail to Ms. G of 30 December 2012, copied to Mr. V, stated in reference to Mr. V: "You wanted me to succeed even after leaving GSDSF. You gave me so much of leave and time till Feb 28 which is an indication of your leadership traits and the good man you are." The Applicant's appreciative contemporaneous e-mail to Mr. V regarding the granting of leave to him shows that he was aware of the reasons for which he was placed on administrative leave. Furthermore, this statement from the Applicant and the record support the Bank's contention that, as the Applicant had already exhausted his sick leave entitlements by the end of January 2013, Mr. V gave the Applicant an additional six manager-approved leave days in January 2013 and sought approval from the Director GSD for administrative leave to be granted to the Applicant which the Director approved.

84. Regarding the Bank's claim on the risk of the Applicant "potentially compromising the integrity of the SAP system," the Tribunal has held that it would be a reasonable security measure in certain circumstances to deny or restrict access of a staff member to the Bank's buildings or to a specific office, or to condition the access to the availability of an escort. The Tribunal has held that access to the Bank's buildings is an issue connected with Bank security. (*Dambita*, Decision No. 243 [2001], para. 27.)

85. Contrary to his contention, the Applicant has not shown that his placement on administrative leave was for improper motives such as to prevent him from entering the Bank's offices to collect evidence to support his case, or that the reasons for his placement on administrative leave were not communicated to him nor can it be concluded from the record that his restriction from access jeopardized his reputation with his co-workers. Therefore his claims of improper motivation are not substantiated by the record.

#### *NON-SELECTION TO HR POSITION AND OTHER JOB POSTINGS*

86. Regarding the Applicant's claim of improper motivation in his non-selection to the Senior HR Case Management Assistant position and his exclusion from competition for various job postings after he chose to resign from the Bank, the Tribunal recalls its finding in *Riddell*, Decision No. 255 [2001], para. 23 that

no staff member has a right to be selected to a particular position or to be included in a list of candidates for a position. The decision to select an applicant for a particular position, or to include him or her in a list of candidates, is discretionary and the Tribunal will not overturn such a decision unless it finds that it is tainted by bias or abuse of discretion.

87. With regard to the Senior HR Case Management Assistant position, the Bank has persuasively explained that even though the Applicant was initially on a shortlist for the position, he was not asked to attend the interview because the hiring manager considered that the Applicant at Grade GC was applying for a position at Grade GD without having relevant HR-related experience for the position while there were other more senior candidates with relevant experience. The Bank has also explained that, notwithstanding the Applicant's claim that he was

dropped from the shortlist because it could be seen in the Bank's HR records that the Applicant had not been confirmed, its records on the Applicant would not have reflected his non-confirmation at that time, around 21 January 2013, because Mr. V had refrained from taking any further actions when he received the Applicant's resignation notice on 7 January 2013. The Applicant's resignation would have been reflected in the HR system only after 31 January 2013 when it was submitted.

88. Furthermore Ms. S's written declaration before the Tribunal and description of each of the job postings to which the Applicant applied but not shortlisted supports her claim that the Applicant was not selected for each of these positions either because he did not qualify under the basic selection criteria or because the position was cancelled.

89. Finally, regarding the Applicant's claim that there is no guarantee that his future applications will be treated fairly because Ms. S heads the HR Department in Chennai and to-date "every single job that [he] applies for [has] been cancelled," the Tribunal notes that Ms. S has explained that the cancellation notifications that the Applicant received with respect to his unsuccessful job applications were a result of a system-wide update which applies to all candidates and were not only applied to him in a deliberate effort to deny him a fair chance to apply for these positions. The Applicant has not produced evidence showing otherwise. The Tribunal finds his claims unsubstantiated by the record.

#### *Overall Conclusion*

90. The Tribunal recognizes that failure of the Bank to adhere to its own rules represents a procedural irregularity which, when affecting the rights of a staff member, may merit compensation as a remedy. In assessing compensation the Tribunal considers the gravity of the irregularity, its impact on an applicant and all other relevant circumstances in the particular case.

91. In the instant case, the Tribunal observes that by not complying with Staff Rule 4.02, the Bank failed to (i) adequately warn the Applicant that he faced termination unless he remedied the defects in his performance; and (ii) afford the Applicant a reasonable opportunity to respond to

the decision not to confirm his appointment. Taking into consideration these procedural irregularities and the circumstances of the case, the Tribunal awards the Applicant compensation in the amount of three months' salary net of taxes.

#### DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of three months' salary net of taxes.
- (2) All other pleas are dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 26 September 2014