

Decision No. 93

Saroj Wahie,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of P. Weil, President, A. K. Abul-Magd and E. Lauterpacht, Vice Presidents, and F. K. Apaloo, R. A. Gorman, E. Jimenez de Arechaga and Tun Suffian, Judges, has been seized of an application, received July 7, 1989, by Saroj Wahie, against the International Bank for Reconstruction and Development. The Tribunal rejected the Applicant's request for oral proceedings as unnecessary. The usual exchange of pleadings took place. The case was listed on January 17, 1990.

The relevant facts:

2. The Applicant joined the Bank on January 14, 1974 as a telephone operator. Since she was an Indian national with U.S. permanent resident status, she was given all expatriate benefits which were attached to her status in accordance with the Bank regulations in force at that time.

3. Two weeks later the Respondent changed its policy on expatriate benefits and the Applicant was given the option to retain her U.S. permanent resident status with the entitlement in effect at the time she joined the Bank or to change to G-4 visa status by June 30, 1974 and thereby become eligible for broader benefits. She chose the latter. Subsequently, she changed again to U.S. permanent resident status, but without losing her expatriate benefits in accordance with the regulations in force at that time.

4. Effective June 1, 1984 the Applicant acquired U.S. citizenship and, consequently, she became ineligible for expatriate benefits.

5. In September 1984 the Applicant began investigating the possibility of renouncing U.S. citizenship and reacquiring G-4 status in order to regain eligibility for expatriate benefits. In pursuing that goal she approached the Director of Personnel who, however, did not encourage her.

6. The Bank's policy on expatriate benefits up to January 28, 1985 was that all non-U.S. staff were eligible for expatriate benefits.

7. On January 30, 1985 the Bank announced to all staff some changes on expatriate benefits the purposes of which were, inter alia, to rationalize the eligibility criteria for such benefits and in particular to restrict the eligibility of those of the staff who were not G-4 visa holders. According to the new Staff Rules, 6.13 and 6.14, effective January 29, 1985, all new staff who had held U.S. permanent resident status or U.S. citizenship at any time in the 12 months prior to appointment to the Bank, would be ineligible for expatriate benefits. Staff who were currently eligible for expatriate benefits, whether they had G-4 visas or permanent resident status, would continue to be eligible for existing benefits so long as their status did not change. Staff with G-4 visas who changed to permanent resident status would lose eligibility for expatriate benefits except for those who had already formally applied for permanent resident status or who did so not later than January 28, 1986.

8. Three years later, on October 19, 1987, the Applicant formally requested the Director, Compensation, to change her status to that of G-4 and give her all the expatriate benefits attached to it, because she could not afford on her own to send her children to school in India nor could she afford to visit her relatives in her home country from time to time.

9. The Applicant also consulted with the Ombudsman who, acting on the Applicant's behalf, wrote to the Director, Compensation, asking him to advise if and under what circumstances the Applicant might reacquire expatriate benefits if she were to relinquish her U.S. citizenship. Furthermore, the Ombudsman stated that it would be appropriate for the Bank to consider the circumstances in which a staff member might relinquish U.S. citizenship and thereby reacquire eligibility for expatriate benefits, since the rules were silent on when, if ever, eligibility for benefits might resume. Finally, the Ombudsman suggested that the rules be interpreted to enable benefits to be reacquired 12 months after relinquishment of U.S. citizenship or permanent resident status.

10. On October 30, 1987 the Director, Compensation, replied that the rule's silence concerning the consequences of relinquishing citizenship of the duty station country did not create a right to the reacquisition of expatriate benefits in that circumstance, and that the clear implication of Staff Rule 6.13, supported by its drafting history, was that there would not be a reacquisition of expatriate benefits. He concluded that the Applicant would not be entitled to expatriate benefits if she gave up her U.S. citizenship.

11. On November 9, 1987 the Bank's Visa Office at the Applicant's request sent a telex to the U.S. General Consul in Toronto, Canada, asking him to assist the Applicant who planned to travel to Canada to formally renounce her U.S. citizenship, thereafter apply for a G-4 visa on her Indian passport and return to the U.S. in order to resume her duties with the Bank. However, the Applicant never made that trip.

12. Some time in September 1988, apparently as a result of the Ombudsman's intervention on behalf of the Applicant, the Vice President, Personnel, stated in a memorandum dated September 15, 1988 addressed to the former:

I regret to say that I cannot make an exception. However, there are some valid issues surrounding this case which I have noted, and have asked [the Chief, Employment and Benefits Division] to advise me on whether the policy should be changed, perhaps as part of the Employment Policy Review.

13. The Applicant filed an appeal with the Appeals Committee which in its report dated April 4, 1989, recommended that her appeal be denied and that the relevant Staff Rules be amended expressly to provide for what had been the long-term Bank policy, that is that a staff member could not reacquire expatriate benefits by renouncing U.S. citizenship. In particular the Committee stated:

Although Staff Rules are silent on the question of the re-acquisition of expatriate benefits, the Bank's decision not to allow re-acquisition of expatriate benefits is consistent with prior practice and has been taken without arbitrariness or unfairness to the Appellant; and the Appellant has not been able to demonstrate that her case is unique and compelling, and should therefore not be treated as an exception to Bank policy.

14. On June 30, 1989 the Applicant's attorney requested the Senior Vice President, External Affairs and Administration, to rule ex gratia in favor of the Applicant on compassionate grounds, and, because the Applicant was a lower level staff member who lacked the capacity to understand fully the intricacies of Bank regulations.

#### The Applicant's main contentions:

15. The Respondent should restore the Applicant's right to expatriate benefits upon her renunciation of U.S. citizenship and resumption of G-4 visa status.

16. The Applicant, who was appointed before January 28, 1985 and who acquired U.S. citizenship before January 29, 1986, would again, if she ceased to be a U.S. citizen and resumed G-4 visa status, be eligible for expatriate benefits for the period of service during which she was not a citizen of the U.S. It is conceded that the relevant staff rules are silent as to whether eligibility which was lost by assuming U.S. citizenship could be revived by renunciation of that citizenship and a return to G-4 visa status. The Respondent could not properly

fill the gap in its rules by interpretation.

17. The Respondent, by denying the Applicant the right to reacquire eligibility for expatriate benefits, placed an improper restriction on her freedom to choose her citizenship, notwithstanding the fact that the Bank's Executive Directors opposed such a restriction.

18. At the time of the change of the rules on expatriate benefits, the Applicant, because she was appointed before January 28, 1985, retained the right to choose her citizenship and establish eligibility for expatriate benefits, whereas new staff were hired on the basis that they could not acquire expatriate benefits by changing their status. Consequently, the Applicant who was already a Bank employee at the time of the change had a pre-existing right which was part of her conditions of employment with the Bank.

19. The rules governing eligibility for expatriate benefits are unclear and the Respondent should be estopped from seeking to fill in the gaps by reference to legislative history or purported "practice" of which the Applicant could have had no knowledge. By insisting on an interpretation which is supported neither by the language of the relevant rules nor, indeed, according to the record, by the legislative history or prior practice the Respondent is acting as a judge in its own case. Moreover, the Respondent has failed to show that the relevant rules had a meaning which was known to the staff of the Bank.

20. The ambiguity of the Bank's rules on expatriate benefits has been admitted by the Ombudsman, the Director of Personnel, the Vice President, Personnel, and the Appeals Committee. Where a rule of law is lacking in clarity the Tribunal can decide the issue on equitable grounds, inasmuch as an interpretation in favor of the Applicant would not impose a burden on the Bank or damage its interest in any significant manner, particularly since the Bank has not controverted the Applicant's assertion that on average tax reimbursements cost more than expatriate benefits.

21. Even if the result is more or less a matter of indifference for the Bank, it is very important for the Applicant, since without expatriate benefits she would be unable to educate her children in India and maintain her family ties.

22. The Applicant was denied due process and a fair and impartial hearing before the Appeals Committee. At the hearing she was alone, whereas the Respondent was represented by an attorney and sometime professor of law, and two of the three members of the panel were attorneys. Moreover, the Respondent during the hearing was engaged in a deliberate attempt to impugn the Applicant in seeking to revert to her status as an Indian national.

23. The Tribunal should award the Applicant legal costs to cover at least a portion of the costs incurred by her, since it has been conceded that the policy issues raised by this application were ambiguous. Moreover, the Tribunal's ruling by clarifying those issues will have an impact on the policy of the organization and the rights of other staff.

24. The Applicant requested the following relief:

- (i) rescission of the Respondent's decision denying the Applicant expatriate benefits upon renunciation of U.S. citizenship and resumption of G-4 visa status;
- (ii) alternatively, remand of the case to the Appeals Committee for rehearing with a new panel; and
- (iii) award of reasonable attorneys' fees.

#### The Respondent's main contentions:

25. The Applicant lost her eligibility for expatriate benefits when she became a U.S. citizen, and she cannot now acquire eligibility by renouncing her U.S. citizenship and resuming G-4 visa status.

26. The Respondent's established and consistent policy clearly indicated that maintenance of the status conferring eligibility has long been an essential element of entitlement to expatriate benefits. Consequently, it was entirely proper for the Respondent to condition eligibility on the satisfaction of this condition which is pertinent to the purposes for which the expatriate benefits are provided.
27. The Respondent's interpretation of Rules 6.13 and 6.14 is not capricious, nor is it arbitrary or improperly motivated. To the contrary, it is supported by the legislative history of those rules which shows that there was no intent that the new rules should change the prior policy. Such interpretation precludes reacquisition of eligibility and this is consistent with explicit and consistent policy prior to the issuance of those rules in 1985. Rules 6.13 and 6.14, as they were formulated in 1985, merely restated the Bank's existing policy on expatriate benefits.
28. The Respondent's policy on expatriate benefits was not arbitrary, discriminatory or improperly motivated or established without a fair procedure. The conditioning of eligibility for home country travel and education benefits on continued maintenance of the status that once conferred eligibility, was consistent with the purpose of expatriate benefits which recognize, inter alia, the specific needs that expatriate staff have over and above those of national staff.
29. The Applicant has not demonstrated that her situation was unusual, compelling or unique, justifying an exception to Bank's policy. She has only stated that the loss of benefits made a difference to her personal finances. However, the Applicant purposefully traded the financial advantages of expatriate benefits for the security of knowing that she could remain and obtain employment in the U.S. should she cease to be employed by the Respondent. If the Applicant now wishes to reassume the risk of not being able to remain and obtain employment in the U.S., she is free to do so, but there is no reason for the Respondent to depart from its clear policy because of her change of mind.
30. There was no violation of due process before the Appeals Committee and the Applicant's assertion of a lack of fairness is unsubstantiated. Moreover, the Applicant's request for a remand of her case to the Appeals Committee should be dismissed, because the Tribunal cannot hear appeals against recommendations of that Committee.
31. The Tribunal should deny the Applicant's request for attorneys' fees, because there are no circumstances in this case that would warrant a departure from the Tribunal's normal practice of leaving the parties to bear their own costs.

#### Considerations:

32. The main issue in this case is whether the Respondent has failed to observe the conditions of employment of the Applicant by indicating that it will refuse to regrant her, upon renouncing the citizenship of her duty station country, the expatriate benefits she will lose as a result of previously having acquired that citizenship.
33. The controlling rules are Staff Rule 6.13 on eligibility for home country travel and Staff Rule 6.14 on Education Benefits. Para. 2.01 of both rules reads:
- A staff member appointed on or before January 28, 1985, whose service has been continuous since that date, is eligible for [home country travel/education benefits] in respect of that period of service during which he is not a citizen of the duty station country. However, eligibility will cease when the staff member becomes a citizen of the duty station country, or becomes a permanent resident of the duty station country on the basis of a petition or an application filed after January 29, 1986.
34. The Applicant contends that the Respondent cannot validly refuse to grant her expatriate benefits if she renounces her duty station country citizenship for two reasons:
- a. The second part of the rule starting with the word "However" does not apply to her since she became a

U.S. citizen before January 28, 1985. Accordingly, the Tribunal does not have to decide whether that part of the Rule refers to temporary or permanent loss of eligibility based on acquiring U.S. citizenship.

b. The wording of the first sentence of the Rule applicable to the Applicant links eligibility for the benefits to “that period of service during which (the staff member) is not a citizen of the duty station country.”

35. The Respondent, on the other hand, argues that while para. 2.01 does not state that eligibility for expatriate benefits cannot be reacquired by renunciation of citizenship, it does not provide expressly or impliedly that renunciation of the acquired citizenship restores eligibility.

36. In ruling upon the application the Tribunal will have to interpret the controlling Staff Rule. As to the Applicant’s first argument in para. 34 above, the Tribunal concludes that the second sentence in Staff Rules 6.13 and 6.14, para. 2.01, is applicable to the Applicant. That sentence, by virtue of its punctuation and purpose, distinguishes between staff members who become U.S. citizens and those who become permanent residents. It is only with respect to the latter group – which does not include the Applicant – that any application filing date becomes pertinent.

37. It is a recognized principle of interpretation that the different parts of a legal text should be read together. It is also accepted that any reading of the text that results in making one part thereof superfluous or merely repetitive should not be adopted. Applying these principles to para. 2.01 of Rules 6.13 and 6.14, the Tribunal concludes that the two sentences of the paragraph establish two interrelated and complementary rules:

a. a staff member appointed on or before January 28, 1985 (which is the case of the Applicant) is eligible for expatriate benefits if two conditions are fulfilled, namely:

- (i) his or her service has been continuous since that date;
- (ii) he or she is not a citizen of the duty station country.

b. eligibility will cease on the staff member’s acquisition of the citizenship of the duty station country.

A reading of the second sentence of the paragraph as merely providing for a temporary suspension rather than a permanent cessation of the benefits during the period of citizenship with the possibility of regaining said benefit on the subsequent renunciation of the citizenship would render that second sentence a mere repetition of the first, a conclusion that runs against the accepted rules of interpretation.

38. In deciding to acquire U.S. citizenship on June 1, 1984 the Applicant should and could have investigated the legal and financial consequences of her decision due to the absence of any provision allowing restoration of financial benefits in case of subsequent renunciation of that citizenship. On her appointment to the Bank the Applicant was informed of the conditions of eligibility for Home Leave, Education and Repatriation Benefits, by a letter dated March 7, 1974. In that letter the Applicant was informed of the Personnel Manual Circular No. 820-2-74 dated February 20, 1974 concerning elimination of discrimination in access to staff benefits which stated that:

All expatriate staff appointed by the Bank Group on or after January 1, 1974 will be eligible for expatriate benefits ... under the following terms and conditions provided that if stationed at headquarters, the staff members who join the Bank Group in permanent-resident status and who change to G-4 Status on or before confirmation of appointment and thereafter maintain such status shall also be eligible for expatriate benefits.

The information in the letter should have alerted the Applicant to the fact that eligibility required maintaining the status of a non-citizen of the duty station country.

39. In reaching this conclusion the Tribunal has borne in mind its understanding of the rationale behind the whole system of expatriate benefits and the proper approach to citizenship as a reflection of allegiance to and connection with a particular State. To provide for the reacquisition of certain economic benefits when a staff member renounces his or her nationality might encourage a casual approach to the responsibilities and

implications of citizenship. The Applicant does not conceal the real purpose of her decisions first to acquire U.S. citizenship and then to consider renouncing it. In her application before the Tribunal she “affirms that she took U.S. citizenship because of rumors that the Bank was planning a reduction in force and if deprived of a job she felt that she would stand a better chance of finding another one in the U.S. marked if she had U.S. citizenship”. She equally admits that her desire to renounce U.S. citizenship stems, partly at least, from her realization that her decision to take U.S. citizenship had cost her her eligibility for expatriate benefits.

40. The Tribunal does not accept the Applicant's contention that by denying her reeligibility for expatriate benefits if she renounces her U.S. citizenship the Respondent would be interfering with the right of staff members freely to acquire and reassume their citizenship. The Applicant remains free to renounce her previously acquired U.S. citizenship and to revert to the G-4 visa status, but she cannot use that freedom as the basis for requiring the Respondent to grant her certain benefits. The Respondent's regulation of eligibility for expatriate benefits is a proper exercise of its power to regulate the rights and obligations of staff members.

41. The Tribunal concludes that, by denying the Applicant's request to regain expatriate benefits on her renunciation of U.S. citizenship, the Respondent has not violated any element of the Applicant's rights under her contract of employment or terms of appointment.

42. The Applicant also contends that she did not receive a fair trial before the Appeals Committee. For this reason she requests the Tribunal to order that the case be remanded to the Bank's administration in accordance with Article XII(2) of the Statute of the Tribunal. In support of that request the Applicant refers to what she considers to be three procedural defects: (a) that she did not get adequate expert assistance before and during the hearing; (b) that the hearing panel was weighted in favor of Management; and (c) that the Respondent made certain unfair and prejudicial attacks against her motives in acquiring U.S. citizenship and in eventually considering renouncing it. The Tribunal cannot find any ground for these contentions. The principles contained in Staff Rule 9.03 on the Appeals Committee have been respected by the Respondent and none of the Applicant's procedural guarantees under this rule or the general principles of law has been violated.

Decision:

For the above reasons the Tribunal unanimously decides that the application be dismissed.

Prosper Weil

/S/ Prosper Weil  
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe  
Executive Secretary



At Washington, May 25, 1990