World Bank Administrative Tribunal

2019

Decision No. 608

Josef Kobli (No. 2),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

(Preliminary Objection)

World Bank Administrative Tribunal
Office of the Executive Secretary

Josef Kobli (No. 2),
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, and composed of Judges Mónica Pinto (President), Abdul G. Koroma, and Janice Bellace.

2. The Applicant's second Application was received on 16 October 2018. The Applicant represented himself. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant seeks a revision of the Tribunal's judgment in *Kobli (Preliminary Objection)*, Decision No. 588 [2018].

4. On 15 November 2018, the Bank raised preliminary objections contesting the admissibility of the Application under Articles XI and XIII of the Tribunal's Statute. This judgment addresses the Bank's preliminary objections.

FACTUAL BACKGROUND

5. The Applicant, a former Bank Consultant, was employed with the Bank from 1993 to 1997, and is the husband of a Bank staff member.

6. The Applicant considers this second Application as a "revision application" of *Kobli (Preliminary Objection)*, Decision No. 588 [2018]. The relevant factual background is recited below.

7. The Applicant states that, on 11 August 2014, he went to the Bank to speak to his wife's supervisor, who had recently denied the Applicant's wife's annual leave request. The Applicant returned to the Bank a few days later on 13 August 2014 and was removed from Bank Group premises by security guards. Some two years later, in December 2016, the Applicant submitted a complaint to the Office of Ethics and Business Conduct (EBC) about the August 13th incident.

8. The first application was received on 29 August 2017 and decided on 18 May 2018.

9. The Applicant's current Application stems from the Tribunal's sustaining the Bank's preliminary objection in that first case. In Decision No. 588, the Tribunal dismissed the Applicant's case for failing to meet the jurisdictional requirements of Article II of the Tribunal's Statute, for failing to relate his claims to his rights as a staff member, and for failing to meet the Tribunal's 120-day filing deadline.

10. The Applicant states that his first application was timely because it was originally submitted to Human Resources (HR) and EBC the day after the August 13th incident. The Applicant then claims that he reported the case to EBC within 19 hours of the incident, claiming:

> The dates of the follow-up written reports/inquiries to the EBC and the HR are as follows: August 14, 2014, August 20, 2014, October 16, 2014, October 19, 2014, January 20, 2015, January 23, 2015, April 23, 2015; i.e. seven (7) times tried, pushed, argued with EBC and subsequently with the HR to start an investigation. (Emphasis removed.)

11. The Applicant then claims that "[b]y December 2016 the environment changed considerably – the manager of EBC was replaced, the consultant was demoted and the Tribunal delivered judgement in the Applicant's wife[']s case. The time was ripe to re-submit the misconduct report to the EBC." (Emphasis removed.)

12. Next, the Applicant claims that he has standing to bring a case before EBC (and presumably the Tribunal) as a spouse of a staff member. The Applicant claims that being an "[i]mmediate family member [of a staff member] is inherently related to the employment contract of the Principal staff member."

13. Lastly, the Applicant claims that this Application is unique (alleging "atrocities," "forced removal," and "conspiracy with nefarious intent"), that his complaints have not been heard by the Tribunal, and that his claims should be addressed by the Tribunal.

14. In conclusion, the Applicant maintains that he has shown how he has met the jurisdictional requirements, that the Bank misled the Tribunal as to his standing (as a family member of a staff member), and that the preliminary objection in Decision No. 588 was unmeritorious.

15. The Bank submitted a preliminary objection on 15 November 2018, requesting that the Tribunal dismiss the Application for not complying with Articles XI and XIII of the Tribunal's Statute.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Bank's Contention

16. In its preliminary objection, the Bank states that the "Applicant seeks to obtain a different result [in Decision No. 588], based on the same facts as presented in that case." The Bank responds to the Applicant's claims by stating that they have all been resolved by Decision No. 588. The Bank asserts that, since the Applicant's claims have all been resolved in Decision No. 588, the Tribunal should not reopen that decision.

17. The Bank's second reason for its objection is that Tribunal judgments are final and not appealable, per the Statute of the Tribunal. The Bank concedes that Article XIII allows a judgment to be revised but asserts that it can be revised only upon a newly discovered fact by the Tribunal and the Applicant. The Bank insists that such is not the case here.

The Applicant's Response

18. The Applicant claims that the preliminary objection is "without legal merit." He further argues that the Tribunal does allow reopening of a case if a decisive fact is discovered that was unknown to the Tribunal and the party requesting reopening. The Applicant argues that "willful deceit certainly qualifies as being a 'new fact.'" The Applicant further claims that there was willful

deceit when the Bank referred to his legal standing under the Staff Rules. He believes that the Bank hid the definition of "immediate family" that is contained in the Staff Rules. The Applicant also believes that his first application was timely, claiming that he had submitted his case to EBC numerous times over three years. The Applicant argues that the last time he submitted his case to EBC was the correct time to resubmit his case to EBC since management there had changed. The Applicant argues that EBC's decision not to investigate created a new cause of action. The Applicant reiterates a lengthy list of issues he raised during the proceedings in Decision No. 588, i.e., that the family of staff members have photo identification badges and UPI numbers, that the Bank is being dishonest, that the family of staff members have "special standing within the Bank," that he does have standing to make a claim against the Bank, and that the Bank is intentionally misleading the Tribunal. The Applicant claims that these are newly discovered facts that would have had a decisive influence on the Tribunal. Lastly, the Applicant asserts that this is a unique case because, among other things, the Tribunal did not decide on the merits of the dispute in Decision No. 588.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

19. Article XI(1) of the Statute of the Tribunal provides that "[j]udgments shall be final and without appeal." The Tribunal recalls that "previously adjudicated claims that an applicant attempts to submit again in another application are 'irreceivable.'" *Pal (No. 2)*, Decision No. 406 [2009], para. 34, citing *Madabushi*, Order No. 2002-10 [2002], para. 4.

20. The only exception to Article XI finality of judgments is Article XIII of the Tribunal's Statute. Article XIII, in its entirety, states:

> 1. A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.

> 2. The request shall contain the information necessary to show that the conditions laid down in paragraph 1 of this Article have been complied with. It shall be accompanied by the original or a copy of all supporting documents.

21. In *DC (No. 3)*, Decision No. 565 [2017], para. 32, the Tribunal observed that:

> Article XIII(2) provides that a request for revision must "contain the information necessary to show that the conditions laid down in paragraph 1 of this Article have been complied with." The requisite conditions are:
>
> a. Discovery of a fact which was unknown to both the Tribunal and the party seeking revision at the time the judgment was delivered;
>
> b. The fact must be such that it "might have had a decisive influence on the judgment of the Tribunal"; and
>
> c. The request for revision must be submitted within a period of six months after discovery of said fact.

22. When the Tribunal examines applications to revise prior judgments, it does so with a narrow view. The Tribunal has held, in *Kwakwa (No. 2)*, Decision No. 350 [2006], paras. 18–19:

> [T]he character of Article XIII as a very limited exception should be obvious. Its requirements are not fulfilled unless the Tribunal is satisfied that newly discovered facts are potentially decisive.
>
> It is difficult to define in a phrase the nature of factual revelations which might justify the disruption of a *res judicata*; it is a matter to be determined in the particular circumstances of each case. If it were left to any disappointed litigant to assess the relevance and decisiveness of subsequently discovered facts, the ingenuity of pleaders would ensure that few, if any, judgments would ever be final. Unless some restrictive principle fulfills a rigorous screening function, the availability of revision would subvert a fundamental rule of tribunals such as this one: namely that its judgments are definitive. To ensure that Article XIII does not wreak havoc with the rule of finality, enshrined in Article XI, the former must be recognized as available only in exceptional circumstances. The "new fact" must shake the very foundations of the tribunal's persuasion; "if we had known that," the judges must say, "we might have reached the opposite result."

23. The Applicant does not state in this Application that he is filing the Application pursuant to Article XIII, but simply claims to present "new fact[s]" that would permit the revision of the previous judgment.

24. The Applicant reargues elements of his first case but provides no new facts or evidence. Instead, the Applicant presents his interpretations of Staff Rules and legal principles as his basis for reopening his case. The Applicant also claims that the Bank "willfully deceived this Tribunal" as to a number of matters of law and fact, and that this deception constitutes new facts. In this case, the Applicant once again raises issues and "facts" that were contained in his prior submissions in Decision No. 588. The Applicant maintains that the Bank's "deception" "deceived this Tribunal" about: the Staff Rules; the Applicant's legal standing; the Applicant's status in regard to the Bank; the Standards of Professional Conduct; identification badges; and other things.

25. Discovery of willful deception of facts (if unknown to the party requesting revision and the Tribunal) could constitute a basis for the revision of a judgment when discovered. However, such a discovery would still need to comply with Article XIII of the Tribunal's Statute.

26. Here, no new evidence or facts have been presented or alleged in this Application. Even if the allegations by the Applicant were new facts or evidence, the Applicant has not complied with any of the other elements of Article XIII. The Applicant has not shown that the new facts alleged would have been decisive, nor has the Applicant shown that the alleged new facts were unknown to him at the time of judgment. The Applicant has not shown that the alleged new facts were unknown to the Tribunal at the time of judgment. Moreover, the Applicant has not met the six-month requirement, since he has not shown when he learned of any new facts nor that his request was raised within six months of learning such new facts. Thus the Applicant has not provided the information necessary (under Article XIII(2)) to show that the conditions of Article XIII(1) have been met.

27. Lastly, the Applicant claims that because of the uniqueness of his Application the Tribunal should hear his case. The Applicant claims that because Decision No. 588 merely "dealt with the Preliminary Objection" and that the merits of this case "have never been addressed by this Tribunal," they should now be addressed by the Tribunal. Such an argument does not comply with the Tribunal's Statute. A revision of a previous judgment is permissible only when the conditions set out in Article XIII are met. In this case they are not met.

DECISION

The Application is dismissed.

/S/ Mónica Pinto

Mónica Pinto
President

/S/Zakir Hafez

Zakir Hafez
Executive Secretary

At Washington, D.C., 26 April 2019