

Decision No. 338

**Padmanabha Rao Hari Prasad,
Applicant**

v.

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

1. The World Bank Administrative Tribunal has been seized of an application, received on October 15, 2004, by Padmanabha Rao Hari Prasad against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Bola A. Ajibola (President of the Tribunal) as President, Robert A. Gorman and Francisco Orrego Vicuña, Judges. The usual exchange of pleadings took place and the case was listed on September 27, 2005.

2. In *Prasad*, Decision No. 334 [2005], the Tribunal came to a determination with respect to the objections to jurisdiction which the Respondent had raised against this application. The Tribunal decided on that occasion that the application was admissible insofar as it concerned claims about (a) the Applicant's 2001-02 Overall Performance Evaluation (OPE), (b) his 2002 Salary Review Increase (SRI), (c) the Respondent's alleged failure to take appropriate action in respect of administrative harassment and a hostile work environment allegedly faced by the Applicant, and (d) the decision to recall the Applicant from his assignment as Country Manager for Lebanon. Other complaints by the Applicant were held not to be admissible. The present judgment concerns the findings of the Tribunal with respect to the merits of the admissible claims, and the facts are accordingly set out as they are relevant to these matters.

3. The Applicant is an Advisor to the Middle East and North Africa Vice Presidency (MNAVVP) assigned to the Quality Assurance Group (QAG). He has worked for the Bank since 1979 and his performance until the events complained of was constantly evaluated as good, leading to his promotion to increasingly senior and managerial positions.

4. The Applicant was appointed on November 1, 1999, to the newly created position of Resident Representative in Beirut, Lebanon, for a three-year term beginning on January 17, 2000. This position was later renamed Country Manager.

5. As the Country Manager for Lebanon, the Applicant reported at first to the Director, Middle East, Mr. Inder Sud, and to the Vice President, Middle East and North Africa (MNA), Mr. Kemal Dervis. These two officials, however, were replaced soon after the Applicant's appointment by Mr. Joseph Saba as Director and Mr. Jean-Louis Sarbib as Vice President.

6. The new Vice President, MNA, introduced a number of changes in the organization and work of the area under his authority, including a redistribution of countries and a stronger emphasis on the management of country portfolios.

7. In the meantime, the Applicant had set up the Lebanon Country Office in Beirut, recruiting staff and organizing the office's work.

8. The Applicant's 2000-01 OPE, covering his first year as Country Manager, was signed by Mr. Sud on April 17, 2001. The Applicant was rated as Outstanding in some tasks, Superior in others and Fully Successful in yet

others. Also in April 2001, the Applicant completed his 360 Degree Feedback Report. Comments made in this connection were mostly positive, although some expressed a negative view of the Applicant's management style. On this basis, Mr. Sud rated the Applicant on the upper side of the scale, the score averaging 4.9 out of 6.

9. From the correspondence of Mr. Sud with the Applicant, however, it appears that Mr. Sarbib was not highly impressed with the Applicant's performance. The Applicant asserts that during a meeting held on June 21, 2001 between him and Mr. Sarbib in Washington, the Vice President expressed concern about the lack of improvement in Lebanon's troubled portfolio and the management of the office. The Applicant also says that at this time the Vice President informed him that he was considering recalling the Applicant from his position as Country Manager, with a decision to be taken a few months later.

10. This criticism was reflected in Mr. Sarbib's assessment of the Applicant's performance at the time he signed the Applicant's OPE for 2000-01 on July 9, 2001. The assessment recognized the fact that the Applicant had established the Lebanon office in difficult circumstances and had consistently provided the Vice President with reliable analyses of the country. The Vice President also indicated, however, that he would like the Applicant to maintain "a more even keel," with particular reference made to the management of the office staff and to taking a stronger leadership role on the portfolio.

11. The second year of the Applicant's work in Lebanon proved to be yet more difficult. The Applicant asserts in this respect that the newly appointed Director, Mr. Saba, was critical of the Applicant's performance for 2001-02 and suggested to him that he should consider returning to Washington before the expiration of his appointment, with June 30, 2002 as an appropriate date of departure. In the meantime, the Applicant began a job search and applied for other positions in the Bank. He also expressed his willingness to set April 30, 2002 as his last day in the Beirut office, and in fact returned to Headquarters by the end of May 2002. Following an illness and surgery, he began to work for QAG, where he had been employed prior to his appointment to Lebanon. The Applicant's search for other positions did not succeed.

12. The Applicant's 2001-02 OPE reflected the deteriorating perceptions of the Applicant's performance by both the Director and the Vice President. Mr. Saba signed the OPE on September 26, 2002, almost six months after this document was forwarded to him by the Applicant for review. The rating of the Applicant's performance had changed rather dramatically from that of the previous OPE, as he was evaluated as Superior with respect to a few categories, Fully Successful in others and Partially Successful in many. No Outstanding evaluations were given on this occasion. The OPE was also critical of the Applicant's portfolio management and handling of the Beirut office, with particular reference made to his disengagement from day-to-day operations. The Applicant's excellent relations with the diplomatic and donor community were noted. Neither the Applicant nor the Vice President signed the OPE.

13. Against this background, the Applicant began two processes for consideration of his complaints. The first was a written complaint against Messrs. Saba and Sarbib to the Department of Institutional Integrity (INT) dated October 28, 2002. This submission involved ten allegations of harassment, including the abusive evaluation of his performance.

14. The INT report on the preliminary inquiry into this matter, issued on January 10, 2003, retained just one complaint, this concerning alleged humiliating and demeaning treatment of the Applicant by Mr. Sarbib. No corroborating evidence of this allegation was found, however, and the investigation was concluded. In respect of all the other allegations of harassment, INT concluded that these issues "appear to constitute grievances that could be handled more appropriately through managerial or CRS [Conflict Resolution System] intervention instead of in a misconduct context."

15. The second procedure begun by the Applicant was his appeal before the Appeals Committee, filed on December 11, 2002. A mediation process that began on January 10, 2003, failed to reach a settlement of the dispute. The pertinent details of the Appeals Committee process were set out in the Tribunal's earlier judgment in this case (Decision No. 334) and need not be repeated here. It should be noted, however, that during this

process the Bank withdrew the Applicant's 2001-02 OPE but, as the Appeals Committee found, this did not dispose of the various complaints made by the Applicant.

16. In its Report dated June 7, 2004, the Appeals Committee concluded that the Respondent had not followed Bank procedures in completing the Applicant's 2001-02 OPE. Consequently, the Appeals Committee found that the Applicant had been harmed by procedural flaws and denied fair treatment. Particular attention was given by the Appeals Committee to its findings that Mr. Saba had not conducted the required performance review discussion with the Applicant, had not provided him with clear feedback regarding the areas in which he needed to improve, had signed the OPE six months after its submission to him, and had not followed any systematic process in collecting feedback. The Appeals Committee found that the mismanagement of the Applicant's 2001-02 OPE had impacted his due process rights as he had been denied the opportunity to explain and defend his performance.

17. The Appeals Committee, however, did not find that the performance evaluation embodied in the 2001-02 OPE, or the manner in which it had been conducted, had been motivated by a desire to harass or retaliate against the Applicant. The Appeals Committee recommended payment of compensation to the Applicant in the amount of three months' salary net of taxes, and costs and expenses in the amount of \$5,000. The Appeals Committee's recommendations were accepted by the Bank on June 10, 2004.

18. The proceedings before this Tribunal commenced on October 15, 2004. The Tribunal will now set out its considerations on the merits of the complaints declared admissible.

19. The Applicant first claims that in handling his 2001-02 OPE, the Bank committed an abuse of discretion that affected his due process rights and failed to conform to the requirements of Staff Rule 5.03, paragraph 2.02, and the obligation thereunder that the supervisor and the staff member discuss the latter's "performance, achievements, strengths, areas for improvement, and future development needs."

20. The Applicant asserts that his communications concerning his performance were left unanswered and that no discussion with either Mr. Saba or Mr. Sarbib took place in the preparation of the OPE, as was required. The OPE was signed by Mr. Saba, who not only failed to comply but also ignored the very instructions which Mr. Sarbib had issued in launching the OPE process for that year. The Applicant explains that in such circumstances he would not sign the OPE.

21. As a result of such irregularities, the Applicant believes, Mr. Saba's ratings and comments lacked balance and objectivity, being manifestly unreasonable, arbitrary and capricious. It is further argued that the 360 Degree Feedback Report for 2001 was deliberately disregarded as it contained positive comments about the Applicant's performance. Positive comments were also provided by a number of witnesses before the Appeals Committee and this, the Applicant asserts, cannot be altered by the Respondent's use of selective contrary testimony by a few individuals not free from hostility over past grievances. Neither can the Respondent rely on anonymous complaints that were never brought to the Applicant's attention. This, in the Applicant's view, has resulted in further adverse discrimination and outright violation of his right to due process as he was denied the possibility of defending his performance.

22. The Respondent argues in respect of this first complaint that the evaluation of staff performance is essentially a discretionary act based on the judgment of management. In the Respondent's view, the Applicant's 2001-02 OPE was based on an objective and reasonable assessment of his performance. This performance, it is asserted, deteriorated over the course of the 2001-02 OPE review period, particularly in respect of the Applicant's management of the country portfolio for Lebanon. This aspect of his performance went against the Bank President's specific instructions to professionalize the management of the MNA Region. It is further argued that this situation resulted in the Applicant becoming disengaged and uninterested at work, and in his over-delegation of work to staff.

23. The Respondent further explains that the evaluation was based on first-hand findings by Mr. Saba, particularly during his visit to the Country Office in the summer of 2002, and the Respondent argues that this

was confirmed by the testimony given at the Appeals Committee proceedings by both Bank and government officials. All such findings and observations, it is argued, were given to the Applicant by means of pertinent feedback, which was provided both in writing and orally.

24. The Respondent asserts that it has been open to discussing the Applicant's evaluation since the withdrawal of his 2001-02 OPE, but that he has failed to pursue such a possibility. Moreover, the fact that the Applicant has demonstrated good performance over the years does not mean, in the Respondent's line of argument, that he is immune from criticism or that he cannot be appointed to an adequate position elsewhere. In addition, the Respondent mentions that it has already paid compensation for the procedural deficiencies found by the Appeals Committee in this matter.

25. The first question the Tribunal needs to examine is whether there were in fact procedural violations during the 2001-02 OPE process, as the Applicant alleges. Staff Rule 5.03, paragraph 2.02, mandates that the manager or designated supervisor and the staff member "shall meet and discuss the staff member's performance" The essential steps in the process must all be memorialized in writing and relate to the review period under consideration. Moreover, as instructed by Mr. Sarbib in respect of the 2001-02 OPE process, discussion of performance does not replace the need for ongoing feedback throughout the year in question, which should be provided so that the staff member "should be able to anticipate the nature of this year-end discussion and resultant ratings on the OPE."

26. The Tribunal must examine whether the facts in this case meet the standards governing the OPE process. The meaning and extent of the rule in question, and of the policies relating to its implementation, have been considered by the Tribunal in various judgments. The Tribunal has no doubt about the fact that an evaluation is a discretionary act entailing an exercise of judgment by management (*Malekpour*, Decision No. 322 [2004], para. 15), or about the fact that management's appraisal of performance is final. (*Desthuis-Francis*, Decision No. 315 [2004], para. 19.) Neither has the Tribunal any doubt, however, that the finality of discretionary acts is conditioned upon their not involving an abuse of discretion or other forms of arbitrariness or discrimination. (*Saberi*, Decision No. 5 [1981], para. 24.)

27. The Tribunal has in the past underlined the strict requirements governing the provision of feedback to staff members. (*Yoon (No. 5)*, Decision No. 332 [2005], para. 65.) The Tribunal concludes, however, as the Appeals Committee did in its Report, that no specific performance discussions were held in the instant case between the Applicant and Mr. Saba, or for that matter Mr. Sarbib, and no adequate feedback was provided during the period reviewed. Discussions of a general nature, or those held before the actual OPE process, do not satisfy this requirement. Moreover, no discussions were held after the withdrawal of the OPE. In such a situation, the Respondent must take a proactive role since the obligation to guide the affected staff member falls upon the Respondent and not the other way round.

28. The Tribunal has also held that the assessment of performance has "to take into account all relevant and significant facts that existed for that period of review" (*Romain (No. 2)*, Decision No. 164 [1997], para. 19), so as to ensure a reasonable basis for the OPE ratings and comments. Particular reference has been made to the troubling features of appraisals based on anonymity, and suffering from a lack of specificity and failures to afford the staff member an opportunity to respond. (*Sengamalay*, Decision No. 254 [2001], para. 45; *Baartz*, Decision No. 198 [1998], para. 30.) The gathering of information for the evaluation of performance in this case does not appear to have been sufficiently comprehensive, and the facts and testimonies on which the appraisal relies are rather selective. Witnesses at the Appeals Committee stage offered a mixed set of testimonies, some being positive, some negative and some vague. They thus do not lend themselves to the sort of definitive conclusions the Respondent wishes to draw from them.

29. More serious is the fact that the Applicant was not afforded an opportunity to discuss the criticisms against him in a timely manner, an opportunity which became clearly available only during the Appeals Committee proceedings. There was no occasion at the OPE stage for the Applicant to properly defend himself or to explain issues relevant to the appraisal then being conducted. Dissatisfaction with the Applicant's management of the Country Office was conveyed to him in various conversations by Mr. Saba, and earlier by Mr. Sarbib, but these

were not detailed in the evaluation process. Mr. Saba also gathered information adverse to the Applicant during a visit to Lebanon, but this was not brought to the Applicant's attention. The OPE was signed after a six-month delay and never finalized.

30. It is quite plausible that a number of the criticisms made in respect of the Applicant's performance in the Country Office were true, as evidenced by some of the witnesses' statements at the Appeals Committee hearings and by some of the comments made in the 360 Degree Feedback Report. This, however, does not alter the obligation of the Respondent to fully respect due process rights and conduct a fair and reasonable process of performance evaluation and accordingly to provide an opportunity to correct the mistakes that any staff member has made, including those in higher management.

31. The Tribunal has also held that although a change in a staff member's assessment by his supervisors, relative to prior evaluations, cannot in itself be regarded as an abuse of discretion, an abrupt change unaccompanied by adequate descriptive statements may suggest a "degree of inconsistency in the exercise of managerial responsibilities." (*Marshall*, Decision No. 226 [2000], para. 24.) In the present case, the Applicant's earlier positive evaluations contrast abruptly with the 2001-02 OPE evaluation, which came at a time when both the Director and the Vice President of MNA were changed. The argument that Mr. Sarbib was not involved in the Applicant's OPE preparation has been put forth by the Respondent to offset views in the record that the Applicant was not to the liking of the new Vice President. This is not quite convincing as it is only too evident that Mr. Saba was very much aware of the Vice President's views on the Applicant. The Tribunal concludes that Staff Rule 5.03 and the Applicant's due process rights were violated with respect to the 2001-02 OPE.

32. The second claim the Applicant brings to the Tribunal is that the Bank abused its discretion by assigning him a performance rating of 3.1 and a salary increase of 1.3% in the 2002 SRI. It is argued in this connection that a 3.1 performance rating is the lowest in the range of "satisfactory" and that a 1.3% salary increase was the minimum possible in respect of that rating, which could have gone as high as 5.1% in the Applicant's grade. The Applicant argues that the SRI decision was taken well before the managerial assessment section of the OPE was prepared, and that no explanation was given or information conveyed to him as to the rationale for this decision. The Applicant asserts that these ratings remain in his personnel file and that they convey an unmerited warning signal to potential hiring managers. He requests that the Tribunal order the deletion of these ratings from his file.

33. The Respondent believes differently, arguing that various elements are taken into account in such a decision, including not just performance but also, for example, comparative criteria and the available budget. For the Applicant to receive a salary increase, it is explained, the SRI had to be assigned despite the OPE not having been completed. In any event, the Respondent argues further that the SRI was in the Fully Satisfactory range and was based on an OPE in which the Applicant was awarded several Partially Successful ratings. The Respondent also asserts that since the possibility of discussing the OPE evaluation is always open, a discussion resulting in a change of performance evaluation would lead to the SRI being changed accordingly.

34. The Respondent rightly recalls the Tribunal's statement that given "the various decisional elements that are properly taken into account in making such a comparative assessment, it is difficult to support a claim of abuse of discretion" with respect to an SRI assessment. (*Marshall*, para. 24.) Yet, the Tribunal has also linked the SRI process quite specifically to the performance evaluation of a staff member, which for its part is embodied mainly in the pertinent OPE. In a recent case, the Tribunal held that despite the effort of the Respondent to explain that the OPE measures individual performance while the SRI concerns a comparative performance with peers and colleagues at the same grade level within the same department, "if there is any appreciable difference between these two processes, it is in all probability a difference in emphasis, rather than a fundamental cleavage." (*Desthuis-Francis*, para. 32.)

35. The Vice President's instructions in launching the 2001-02 OPE also relied on this distinction between the OPE and the SRI, although he explained that there is nevertheless a close connection between the two:

[T]he OPE measures performance against individually set standards (i.e., the results agreement), whereas

the SRI measures performance in relation to other staff.

In practical terms, individuals who receive many high or very high ratings on their OPEs should generally receive relatively high SRI ratings, and those who receive low ratings on their OPEs should generally receive SRI ratings lower than average. However, it is conceivable, and even likely, that a staff member who receives high ratings on the OPE may not receive the highest rating on the SRI. Managers should be able to explain to staff members how the SRI rating was determined and the rationale for the SRI the staff member received.

36. It must also be noted that the Respondent admits in its argument the connection between the OPE and the SRI evaluations when it states that if a discussion about the former results in a change of performance evaluation, this will lead to a corresponding change in the SRI evaluation.

37. The Tribunal notes too that in the present case there is no evidence whatsoever that the Applicant's SRI assessment took into account his OPE, which had not yet and never was completed, discussed or signed. Even if the SRI was directed to measure a different kind of performance, it lost all connection with the Applicant's individual performance because the OPE was non-existent. Not even the general correlation between the OPE and the SRI envisaged in the Vice President's 2001-02 OPE launch message could have been achieved, and even less so the specific connection which the Tribunal discussed in *Desthuis-Francis*, as quoted above.

38. Neither is there a connection between the percentage of the Applicant's salary increase in 2002 and the prior history of the Applicant's salary review increases, which evidences much higher percentage rises save in 1994, when a 1.7% increase was assigned. It follows that no proper explanation could be given to the Applicant about how the rating was determined and the rationale established for the SRI, and in fact none was even offered or suggested, thereby also running a course inconsistent with the Vice President's message referred to above.

39. The Tribunal can only conclude in this light that the Respondent abused its discretion in respect of this claim. Moreover, the Tribunal notes with more general concern that on occasion Bank managers have entirely de-linked the SRI assignment from the OPE process, eventually reaching results that are inconsistent with the concept of an overall performance evaluation. Differences between one and the other assessment there can certainly be, but they cannot contradict each other without a most convincing explanation. Such a result might be tainted by arbitrariness, particularly if used to penalize the staff member because of differences between the manager and that staff member, or some other kind of bureaucratic infighting.

40. The Tribunal turns now to the third issue within its jurisdiction. The Applicant claims that the Bank abused its discretion by recalling him early from the Country Manager position which he had held in Lebanon. In the Applicant's view, this decision was adopted probably in February 2001 and certainly by June 2001, at which time there were two evaluations of his performance, namely the 2000-01 OPE and the 360 Degree Feedback Report, both of which provided a most positive evaluation of his performance. The Applicant alleges that these were deliberately ignored by Mr. Sarbib in adopting the decision for an early recall. Neither was the decision documented or explained in a memorandum, nor were any of his managers' negative perceptions conveyed to him in a detailed manner.

41. The Applicant argues that the fact that he agreed to return to Headquarters in May 2002 rather than wait until September 2002, the date the Respondent states that it in effect suggested, in no way indicated agreement with the recall decision and, furthermore, no such offer was made to him. He explains that his date of return responded to his need to search for alternative positions in the Bank, and was the natural thing to do under the circumstances. It cannot be held to mean disengagement from work.

42. The Respondent argues that, contrary to the Applicant's assertions, his performance was deteriorating and this had a negative impact on both relations with the Lebanese government and staff morale in the Country Office, as evidenced by several witnesses' statements during the Appeals Committee proceedings. It is further

asserted that several Lebanese government officials expressed their concerns about the Applicant's performance. (See generally *Skandera*, Decision No. 2 [1981], which discusses the role of national officials in Country Office personnel decisions.) It is explained that in spite of these deficiencies, the decision to recall meant only that the Applicant had to return in September 2002, a couple of months earlier than the original end-date of his term in December 2002. The early May return which the Applicant chose placed an additional burden on the Country Office as there was no one slated to replace him. The Respondent believes that no finding of an abuse of discretion could be attached to its decision in light of the facts of the case.

43. The Tribunal must examine first the question of motivation in the context of this claim. While the Applicant believes that the decision to recall him evidenced ill-will on the part of Mr. Sarbib which tainted the decision with improper motivation, Mr. Sarbib has testified that, to the contrary, he was "very happy" when taking on the position of Vice President to find out that the Applicant was the Country Manager for Lebanon. In Mr. Sarbib's view, however, as the Applicant's performance deteriorated, the decision to recall the Applicant had to be made. In any event, as noted, the Respondent asserts that Mr. Sarbib did not make this decision, nor was he involved in assessing the Applicant's performance, as these matters were within Mr. Saba's responsibility.

44. The Tribunal has held that it cannot "conclude that [a] reassignment was an abuse of discretion simply because, as in this case, the unit Vice President's impression of the staff member's management skills is markedly less enthusiastic than that of the staff member's immediate supervisor" (*Sengamalay*, para. 30); however, such a less enthusiastic evaluation has to be founded on a reasonable basis (*id.*).

45. In the present case, both the Applicant's immediate supervisor and the Vice President shared a critical view of the Applicant's performance, but this assessment contrasted rather dramatically with earlier ones. In fact, the Applicant's previous supervisor, Mr. Sud, had made a positive evaluation of the Applicant's performance which was embodied in the 2000-01 OPE and accepted by Mr. Sarbib at the time he took office.

46. The comments made by Mr. Sarbib on that occasion, while evidencing the need to change some aspects of the Applicant's management style, did not amount to an outright criticism of his performance. The 360 Degree Feedback Report was also, as noted above, mostly positive about the Applicant's performance, with few exceptions. It is clear from the facts of the case that, as in *Niedzviecki*, "none of these strongly positive assessments of his managerial accomplishments was given weight, or was apparently even considered." (*Niedzviecki*, Decision No. 189 [1998], para. 20.) It is rather the negative aspects alone that were given attention in adopting the recall decision.

47. While a change in perception and evaluation was perfectly possible, the fact that existing assessments were ignored raises questions about the impartiality and objective nature of the decision made to recall the Applicant.

48. Mr. Sud had warned the Applicant in writing at the outset that Mr. Sarbib did not like him and that the Vice President had come in with preconceived ideas. Although the Respondent disqualifies Mr. Sud's views as lacking credibility, there is other evidence that corroborates the substance of his warning. Mr. John Wetter, the Bank's Senior Country Economist in Lebanon, testified that, following the Bank President's visit to the Beirut Country Office in January 2001, and a visit by Mr. Sarbib the following month, it became clear that the visits had not gone well and that there was no "positive chemistry" between the Applicant and either the President or the Vice President.

49. The Tribunal, as noted above, does not find convincing the Respondent's argument that Mr. Sarbib was not involved in the performance evaluation or in the decision to recall the Applicant. This may have been true formally, but certainly not in substance since both Mr. Sarbib and Mr. Saba were very much part of these processes and also quite aware of the Bank President's views on the need to reorganize the MNA Region. The decision to recall the Applicant responded more to this reality than to any specific performance problem. The Bank's decision to recall him appears in fact to have been entirely disconnected from the performance evaluation that, in the Respondent's view, lent it support.

50. While the decision to reassign the Applicant was within the Respondent's discretion, the transparency and openness that should always characterize such a step were lacking in this case, thus leading inevitably to the Tribunal's finding of an abuse of discretion in respect of this claim as well.

51. The Applicant claims in addition that the Respondent did not follow up diligently on the charges of administrative harassment which he had brought to the attention of INT against Mr. Sarbib. It was noted above that INT had concluded that nine of the ten complaints could be best handled through managerial action or the Bank's CRS, while just one was retained but dismissed for lack of corroborative evidence. The whole file was then referred to the Vice President of Human Resources (VPHR) for managerial action. At the same time, in a meeting held with the Applicant on January 30, 2003, INT asked him to contact HR for further information on the appropriate action for dealing with such complaints. The VPHR then concluded that as the various employment-related issues raised by the Applicant were at that time subject to proceedings before the Appeals Committee, such proceedings were the appropriate CRS alternative recommended by INT.

52. The Applicant argues that he never received any information from the VPHR on the managerial action taken in respect of his complaints, and that a message left with an HR officer did not receive any reply, thus again evidencing that the Bank was not acting reasonably in his case and that in fact a complaint of harassment was ignored. In the Applicant's view, the competent authority had an obligation to look into the facts, and this was not done. The Applicant further argues that it is inconsistent for the Bank to consider the Appeals Committee the appropriate venue to handle the matter while its jurisdiction was being objected to by the Bank itself.

53. The Respondent believes that the VPHR acted reasonably in the circumstances of the case and that nine of the ten complaints referred to her by INT concerned allegations of employment action or inaction, and were indeed before the Appeals Committee by the Applicant's own choice. In the Respondent's view, there was no evidence supporting the tenth complaint referred to the VPHR, and so there was no basis on which to undertake a further inquiry under Staff Rule 8.01, as that rule envisages situations of misconduct that were not present in this case.

54. The Respondent further argues that the mere fact of submitting a claim to the Appeals Committee does not mean that such a claim will necessarily be addressed on the merits, as it must comply with jurisdictional requirements and the Respondent has the right to object to jurisdiction. It follows, in the Respondent's argument, that the Applicant's allegations of inconsistency are not tenable. No more acceptable is the allegation that the Applicant should have been advised by the VPHR on the options available to him after the INT referral, as the simple fact is that the VPHR does not serve as an advisor to staff regarding their avenues of recourse for grievances.

55. The Tribunal is persuaded by the Respondent's arguments on this claim. Most of the complaints brought by the Applicant before INT were connected to his employment situation and the Respondent's actions or inactions in such respect. This included the abusive evaluation of his performance and all of what was being considered by the Appeals Committee in the context of the Applicant's claims. This was the CRS mechanism the Applicant had chosen and it was reasonable for the VPHR to let this course of action reach a conclusion. This approach by the VPHR does not detract in any way from the Respondent's right to object to jurisdiction in such proceedings. It is also right to argue that the VPHR does not and cannot advise staff members about the best choice available to pursue a grievance, as this would indeed compromise her eventual role in any such proceeding.

56. Absent any evidence of misconduct in the wake of INT's investigation, Staff Rule 8.01 was not applicable to the Applicant's complaint of harassment and no further inquiries were then justified. The Tribunal has held that in the absence of evidence to substantiate serious accusations made by a staff member against his supervisor, as an Ethics Office investigation had established in that case, it is "not an abuse of discretion for the Bank to endorse those findings and to refrain from disciplining the accused staff member for misconduct." (*McKinney* (No. 2), Decision No. 206 [1999], para. 37.)

57. After having examined each complaint on its own merits, the Tribunal must still look at the aggregate of factors that led to wrongful decisions by the Bank. The Applicant has rightly explained that there is an established order of things in the Bank's procedures and requirements concerning a staff member's career development, beginning with a proper performance evaluation embodied in an OPE and eventually including a 360 Degree Feedback Report. This is followed by performance ratings and an SRI assignment which, although not identical to the OPE evaluation, must not be inconsistent with it unless there is a very satisfactory explanation for such a departure. The third step is that the process can lead eventually to a reassignment of the staff member, just as it can lead to termination or other measures.

58. In the Applicant's case, it is argued, the order was reversed. There was first a decision to recall the Applicant and next a performance rating undertaken in conjunction with the SRI, with all of it entirely decoupled from an OPE evaluation that was not completed, signed or even lasting, as it was ultimately withdrawn. Moreover, an earlier OPE and 360 Degree Feedback Report were not taken into account.

59. In light of the facts of the case and the chronology of events, the Tribunal must conclude that this argument is correct. The Bank has every right to reassign an official whose performance is unsatisfactory, but this assumes that such performance will be properly evaluated. It also assumes that if the performance evaluation is bad, this will most probably be followed by bad performance ratings and SRI results. Only at the end of the appropriate chain of events will the decision to reassign be reasonably reached.

60. To isolate such a decision, or for that matter the SRI, from a proper performance evaluation fundamentally alters the logic of the process and may result, as in this case, in an abuse of discretion when the Bank adopts decisions that could otherwise be entirely justified. There may be cases in which a reassignment has to be effected promptly in the best interests of the institution, but even then the matter has to be handled with respect for due process rights, and in the open and transparent manner that has to govern professional relations, including most certainly a discussion of the performance issues concerned. Procedures or investigations that may end up being surreptitious cannot be upheld as proper and rightful.

61. The Tribunal now turns to the discussion of remedies. An OPE process that has been tainted by procedural irregularities and has adversely impacted the Applicant's rights would normally be quashed by the Tribunal, but as the OPE was withdrawn and never finalized there is nothing to quash, nor has this been requested.

62. The situation is different, however, with respect to the performance rating and ensuing salary increase percentage assigned to the Applicant in the context of the SRI process. In this case, the rating and increase were indeed finalized and are a part of the Applicant's personnel file. The Applicant requests that these be removed from that file.

63. The Tribunal cannot substitute its judgment for the performance rating and salary increase percentage determined by the Bank. However, references to this matter and information about it in the Applicant's personnel file are likely to further affect his career prospects in the Bank. Because the SRI determination was affected by the irregularities noted above, such references and information shall be deleted from the Applicant's personnel file.

64. The Applicant has also requested compensation for the damage he has suffered, in an amount equivalent to three and a half years of his net salary, less the three months which have already been paid out in accordance with the Appeals Committee Report. He also requests costs. The Applicant argues that he has suffered damage as a result of both the irregularities noted above and his recall from the Country Office. He further asserts that his present employment in QAG is temporary and not likely to continue for long. On these grounds, the Applicant believes that his career has been compromised and that he can find no other position in the Bank, so that early retirement is the only option now available to him.

65. The Respondent objects to any such compensation in the belief that no damages have been suffered by the Applicant. The Applicant, it is argued, has not been discharged from the Bank, and his current position is at the same grade level as was his position as Country Manager. It is also asserted that if the Applicant so wishes

he could apply for other positions in the Bank, but that he has not done so, and that if he decides to take early retirement this is a personal decision not attributable to the Bank.

66. The Applicant's complaints about his present position causing him damage and forcing him to take early retirement are not convincing, for in fact it has not resulted in a deterioration of his grade level. Nor is there any evidence that his employment is coming close to an end. It is also right to argue, as the Respondent has done, that a decision to take early retirement is strictly personal and, as the Tribunal has held, "the concept of 'resigning in protest' has no place in the relationship between a staff member and the Bank." (*Sweeney*, Decision No. 239 [2001], para. 71.) Nor does it have legal consequences.

67. That being so, there is still the question of the Applicant's career prospects in the Bank. These no doubt have been affected by the aggregate of decisions and measures discussed. The Applicant most certainly can seek other positions in the Bank, but this effort is not helped by the present background conditions surrounding his employment.

68. In view of these considerations, the Tribunal concludes that two decisions are appropriate in this connection. The first is to direct the Respondent to assist the Applicant effectively and genuinely in a search for a different position, should he wish to do so after his 2002 SRI has been purged from his personnel file.

69. The second decision concerns the awarding of compensation, which is indeed due for the aggregate of irregularities and infringements of due process rights noted above. These have inevitably resulted in upsetting the Applicant's career in the Bank and constitute an abuse of discretion that the Tribunal cannot condone. The Tribunal will accordingly grant compensation in the amount equivalent to two years of the Applicant's current net base salary, additional to the three months already paid by the Bank upon the recommendation by the Appeals Committee.

Decision

For the above reasons, the Tribunal decides that:

- i) the Respondent shall eliminate any reference to or information on the 2002 SRI performance evaluation and salary increase from the Applicant's personnel record;
- ii) the Respondent shall effectively assist the Applicant in conducting a search for a different position in the Bank, at the Applicant's request;
- iii) the Respondent shall pay the Applicant compensation in the amount equivalent to two years' current net base salary, additional to the three months already paid; and
- iv) the Respondent shall reimburse the Applicant for costs in the amount of \$15,000.

/S/ Bola A. Ajibola

Bola A. Ajibola
President

/S/ Nassib G. Ziadé
Nassib G. Ziadé
Executive Secretary

At Washington, DC, November 4, 2005