

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 14
(8 January 1996)**

**Peter J. Nelson
v.
Asian Development Bank
(No. 2)**

**Mark Fernando, President
R. Gorman, Vice-President
L.M. Singhvi**

1. This is an application for the revision of Decision No. 7 delivered on 31 March 1995. The facts relating to the original Application filed by the Applicant on 23 March 1994 are set out in that Decision.

2. The Applicant's claim arose from the non-renewal of his fixed-term contract in October 1986. The Applicant alleged victimization consequent on his refusal to accede to requests from senior Bank officials to falsify data regarding projects, particularly an Edible Oil Project in Burma, in order to induce the Board of Directors to approve loans. He further alleged that after he left the Bank, the Bank held an inquiry, of which he had no notice, and found him guilty of giving information to the press; and that the Bank informed him - he did not say how - that this would be held against him. He also claimed that the Bank thereafter prevented him from securing employment by giving unfavourable references to international organizations to which he had applied for employment; he mentioned only one instance, in or about July 1987, but without providing details.

3. The Applicant sought the following relief:

- a. a direction that adverse findings recorded in his personal file be expunged after a fresh inquiry, with his participation, and that retractions be issued to the appropriate institutions;
- b. damages for the Bank having blocked his employment elsewhere;
- c. reinstatement at a level appropriate to his current qualifications and experience or compensation ("for the Bank's criminal action") in a sum equivalent to salary from termination until age of retirement; and
- d. disciplinary action against staff members responsible for misrepresentation to the Bank and to member Governments of facts affecting him.

4. In its Answer of 15 July 1994, without replying to the merits, the Bank pleaded that the application was inadmissible *ratione temporis* and that the claim for re-employment was outside the jurisdiction of the Tribunal. Upon the application of the Bank, the Tribunal decided to consider the jurisdictional issues as they appeared to be distinct and separable from the merits, and because of the nature of the matter and the time that had elapsed after the occurrence of the events mentioned in the Application. Consequently, the Bank did not plead on the merits.

5. The Tribunal concluded that the Applicant's claim for re-employment was based on treatment prior to October 1986 culminating in an alleged unfair refusal to renew his contract. It therefore held that, by virtue of Article II read with Article XIV of its Statute, the Tribunal had no jurisdiction to entertain that claim as it was in respect of a grievance arising before 1 January 1991. The Tribunal also held that the Applicant's complaint as to the correctness of his personal records was a grievance which arose, and of which he had knowledge, prior to 1 January 1991; and that the allegation that the Bank had furnished unfavourable references also arose before that date. The request for disciplinary action against other staff members was held to be inadmissible under Article II, paragraph 2, and Article II, paragraph 3(a), of the Statute of the Tribunal. In regard to the Applicant's plea that his Application be admitted, notwithstanding non-compliance with Article II, paragraphs 3(a) and (b), the Tribunal held that there were no "exceptional circumstances."

6. By a letter dated 15 August 1995, the Applicant requested a review of the Decision of the Tribunal on the ground that, after that Decision, he had discovered a letter dated 23 February 1987 from the Bank to him. He alleged that

"this letter confirms that despite my denial of having provided information to the press, I was judged in a 'kangaroo court' without right of representation or reply, ADB management clearly stated in their evidence such as it was that I had not been victimised and that there was no such incriminating evidence in the file I had been asking to have reviewed."

7. The Applicant had not alleged the existence of this letter in any of his earlier pleadings and submissions; but he did make a general allegation about "the Bank's holding on file a damaging record against the Applicant to which he has not been allowed to respond and containing inaccurate details including reasons for termination." The Bank had thus never been placed in the position of having specifically to deny the existence of that letter. However, in regard to the Applicant's claim that it held on file a damaging and inaccurate record, the Bank stated

"The fact that an institution maintains files relating to a former employee's period of employment and to complaints and allegations of mistreatment made by the former employee during and after termination of employment cannot in itself constitute a cause of action. Any responsible organization would maintain such records. The Respondent confirms that it maintains such files in relation to Mr. Nelson." (Emphasis supplied).

8. Article XI of the Statute provides:

"Article XI, para. 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."

9. The "fact" on which the Applicant relies is that he was judged by a "kangaroo court". Because he pleaded in his Application that the Bank had held an inquiry, it is clear that this was a matter which was known to him even before the recent discovery of the letter dated 23 February 1987. That letter is therefore only evidence of that "fact"; it is not a new fact.

10. In any event that letter would have had no influence whatever on the decision of the Tribunal that the Applicant's claims were inadmissible *ratione temporis*.

Decision:

For these reasons the Tribunal unanimously decides to dismiss the Application.