

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 19
(13 August 1996)**

**Sutanu Behuria
v.
Asian Development Bank
(No. 3)**

**R. Gorman
T. Sawada
L.M. Singhvi**

1. In 1993, the Applicant was serving as Programs Officer, Level 4, assigned to Division East 2 (PE2) of the Programs Department (East)(PED). In that year, it became likely that Kazakhstan and another country of the Central Asian Republics (CARs) would become member countries of the Bank, and preparation began for commencing the Bank's operations in that region: prospective personnel arrangements were discussed within the Bank. In January 1994, Kazakhstan became a member nation, and, in February 1994, the Bank issued vacancy notices for the positions of Senior Economist, Level 5, and Senior Programs Officer, Level 5, to accommodate such enlargement of the membership. The Applicant was eager to be promoted to either of the positions and filed applications, but the Selection Panel Board which met in March 1994 did not select the Applicant for either position.

2. In October 1994, on the grounds that he had been deceived in his legitimate expectations and that due process had been absent, the Applicant filed a formal grievance with the Director, Budget, Personnel and Management Systems Department (BPMSD). Having been unsuccessful, he filed an appeal with the Appeals Committee and, soon after that, resigned from the Bank. The Appeals Committee declined jurisdiction in April 1995 and, in July 1995, the Applicant filed an Application with this Tribunal seeking promotion to Senior Economist, compensation commensurate to the salary of a Level 5 officer, and compensation for humiliation and costs for preparing the present appeal.

3. The Tribunal first examines whether a legitimate expectancy of promotion had been created, as the Applicant claims, by a) encouragement by the Manager, PE1, to apply for promotion; b) documents relating to the staff arrangement of PED; and c) his assignment to work for Kazakhstan.

4. As to the encouragement of the Manager, PE1, the Applicant submits to the Tribunal a memorandum for internal advertising of staff positions and a note handwritten by the Programs Manager, which reads: "Mr. Behuria Please reply". This, as the Applicant claims, can be characterized as encouragement to apply for promotion, but it is manifestly absurd to claim that mere encouragement to apply for a position creates legitimate expectancy of promotion.

5. In December 1993, in a memorandum to the Manager of the Human Resources Division, BPMSD (BPHR), the Director, PED, wrote:

[W]e strongly request following personnel actions to be taken, in view of urgency:

(i) Mr. Behuria of PE2 be transferred to PE1 to fill the economist position (D); . . .

This might have created some personal expectation in the mind of the Applicant, but the statement above is simply a request, and the Applicant should have known that a final decision could not have been made alone by the Manager, BPHR.

7. To come to a fair conclusion, the Tribunal must consider all the pertinent facts together in addition to evaluating each relevant incident or document in isolation. In this case, however, even a synthesis of the whole sequence of events does not lead to a finding that a reasonable expectation for promotion had been created.

8. The Tribunal now addresses itself to the Applicant's claim of "irregular procedure." The position in question is a Level 5 position and, in such case, the Bank must follow the procedure set out in the following provisions of the Administrative Orders 2.03 and 2.01:

Administrative Order No. 2.03, paragraph 3.5:

Professional Staff promotions to a new or different job are open to competition among Bank staff Such promotions are subject to internal advertisements and the Selection Panel process. Professional Staff positions to which this process applies are those in Levels 5 to 10.

Administrative Order No. 2.01, paragraph 4.4:

(a) For positions in Levels 5 to 6, the Panel is comprised of:

- Director, BPMSD as Chairman; and
- Two Department/Office Heads, one of whom will be from the Department/Office with the vacancy, and selected with a view to avoid any possible conflict of interest.

9. The record shows that the vacancies had been advertised and a panel meeting did take place on 11 March 1994. The panel was composed of the Officer-in-Charge, BPMSD, acting in behalf of the Director, BPMSD, and the Directors of two departments. The Tribunal finds that the process of selection was in accordance with the requirements of the Administrative Orders.

10. The Applicant attaches great importance to an earlier memorandum of 8 February 1994 written by the Personnel Officer, BPHR, and addressed to the Manager, BPHR. It states:

The following is a summary of the staffing issues and appropriate actions to be taken, which I have discussed with Director, PED

[Staff member A] will be charged against this position and occupy it as a Level 4 officer

A Level 5 Sr. Programs Officer position (#5571) will be transferred to PE1 to work on CARs. This position will be advertised. [Staff member B], who was occupying this

position at Level 4 will either be charged against position #5541... or be temporarily classified as supernumerary. It is anticipated that [Staff member B] will apply for the Level 5 position in PE1

The Applicant asserts that "the decision to . . . deny me the promotion had been taken prior to the convening of the Selection Panel and that the memorandum above is evidence of the fact that a decision had been taken prior to the panel meeting." The Respondent's answer is as follows:

The fact is . . . that the commencement of operations in CARs in 1994, prompted a series of discussions on personnel and staffing matters of PED between PED and BPHR. The BPHR Memo summarized these discussions. Holding such meetings and discussions on general personnel administration matters . . . is normal in any organization, particularly under the situation as the Respondent was initiating new operations which require staffing arrangements.

11. The Respondent's explanation is not sufficiently persuasive, and, in the Personnel Officer's memorandum, the Officer's thoughts are often expressed in such a definitive way as might give an impression to the readers that subsequent deliberations at the Selection Panel could have been influenced by some prior arrangements. Nevertheless, the evidence before the Tribunal is not sufficient for it to conclude that prior decisions had been made and that the Selection Panel did not make an objective and independent determination.

12. The Applicant cites and relies on Lindsey, Decision No. 1 [1992]. In that case, the Tribunal found that there had been a promise by the Bank to extend the Applicant's term of employment "subject to further review" and that the promise had created a reasonable expectation for an extension. Since the Bank failed to conduct such further review, the decision of the Bank not to extend was invalidated by failure to afford due process. In the present case, however, an assessment of the events or documents relied upon by the Applicant leads to the conclusion that they could not have created a legitimate expectation, and the selection process was not irregular.

13. With respect to the Applicant's claim for compensation for the work he performed for Kazakhstan, the Tribunal finds that it is the practice of the Bank not to make extra payment when an officer on a temporary assignment performs the work normally carried out by an officer of a higher level. The Applicant is not entitled to compensation for humiliation since he should not have nourished an illusory expectation for promotion.

Decision:

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