

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 22
(13 August 1996)**

**Joyce Volante Cabal
v.
Asian Development Bank**

**Mark Fernando, President
R. Gorman, Vice-President
T. Sawada**

1. The Applicant is a regular supporting staff member of the Asian Development Bank (the Bank or the Respondent), who was employed by the Bank in September 1988. In 1994, she was given a "Marginal" rating in her Performance Evaluation Report (PER) that covered the period from 1 April 1993 to 31 March 1994. The Applicant, claiming non-observance of the requirement of objectivity in that evaluation, resorted to the grievance procedure of the Bank, but was unsuccessful. The Appeals Committee of the Bank, by the decision rendered in May 1995, declined jurisdiction, and the Applicant in August 1995 filed an Application with this Tribunal seeking cancellation of the above-mentioned rating, reinstatement of an earlier incomplete report and compensation deemed equitable by this Tribunal. The Respondent requests dismissal of the Application denying an abuse of discretion and claiming that "any procedural deficiencies . . . did not rise to the level of violation of fair and reasonable employment standards"

I. Events during the period between 1 February 1994 and 30 June 1994

2. In February 1994, the Applicant filed a criminal complaint against her supervising staff member, Mr. Jeffrey Liang, for grave oral defamation. According to the Applicant, Mr. Liang had called the Applicant a bitch and insinuated that she was a thief. The Respondent does admit that Mr. Liang used "strong words" and, in March, Mr. Liang sent a note of apology to the Applicant explaining that on the date of the incident he was very busy and under stress and that the strong words were used "in the heat of the moment." However, on 6 April 1994, Mr. Liang was arrested and detained by the Mandaluyong Police in consequence of that complaint.

3. On the following day the Manager, PW2, summoned the Applicant to his office and discussed the apprehension and detention of Mr. Liang. It is now admitted that the Manager then told the Applicant that he wanted her out of his division.

4. On 2 June 1994, two senior supervising staff members of the Applicant provided a signed narrative performance assessment of the Applicant based on their observation of the Applicant's performance from 1 February to 31 March 1994. This PER read as follows:

Ms. Cabal was assigned full time to the current raters as from 1 February, 1994. From that time to the present, she has performed her assigned tasks, which have involved a considerable quantity and varied range of activities, in a fully responsible and competent manner. Her work has always been completed with a minimum of error and on a timely basis and has been of high quality. She has been conscientious and cooperative in responding to her assignments and with a degree of attentiveness that has often enabled her to suggest areas where inconsistencies or errors may have occurred.

The section for "Overall Relative Performance Rating" (C1, C2, C3, Marginal or Unsatisfactory) was left blank, and this PER was thus incomplete.

5. A complete PER was prepared subsequently covering the Applicant's performance for the full year commencing 1 April 1993. Comparison of the performance checklist of this PER (ticking is required) with that of the incomplete PER of 2 June shows that the new evaluation was less favorable to the Applicant. All five officers who had supervised her work during the assessment year including Mr. Liang, as well as the two senior staff members who had provided the earlier assessment, signed the PER, and, on 22 June, the Manager, PW2, signed the section for Overall Relative Performance, where the Applicant was given a "Marginal" rating.

II. Previous Performance of the Applicant

6. The Tribunal agrees with the Respondent that the past performance of the Applicant is not irrelevant in deciding a case of this nature.

7. In one of the PERs, the raters stated:

Since joining PW3, Ms. Cabal has handled her tasks in a fully satisfactory manner. Her capacity to work effectively for long hours under pressure, combined with her good knowledge of Bank procedures and computer software enable her to perform her duties efficiently; in the process Ms. Cabal has shown even good humor and great reliability. (PER March 1990 for the period from September 1989 to March 1990).

8. The Respondent cites a number of critical remarks found in the PERs and related memoranda written by various officers. In one of them, it is stated:

Her performance in typing and clerical assignments is fully satisfactory. However, she does not meet our requirements in respect of administrative and executive secretarial services and we therefore suggest her reassignment to a more suitable posting.

9. The overall ratings given to the Applicant in her PERs were as follows:

Date of PER	Period Covered	Rating
January 1989	September 1988 - December 1988	Fully Satisfactory
August 1989	September 1988 - September 1989	[not given]
March 1990	September 1989 - March 1990	Fully Satisfactory
March 1991	January 1990 - December 1990	Marginal
September 1991	January 1991 - June 1991	Unsatisfactory
February 1992	July 1991 - December 1991	[not given]
June-July 1993	January 1992 - March 1993	Marginal

III. Evaluation of the Assessment

10. The central question to be decided in this case is whether or not the second PER was properly completed substantively and procedurally. The Tribunal first examines the substance of the PER, in which the Applicant was rated "marginal" rather than "C3." The Guidelines for the Performance Evaluation of Supporting Staff at Headquarters (the Guidelines) stipulate that the overall rating of C3 is to be given to staff whose performance is satisfactory but who do not meet requirements in some areas and who need supervisory guidance to improve their performance.

11. As noted in paragraph 4 above, two senior supervising staff members had made a favorable assessment of the Applicant's performance in an incomplete PER. In the subsequent and complete PER, all five officers for whom the Applicant worked during the relevant period graded the Applicant in the following way:

Column 2	performance that meets requirements	as to knowledge of job and conceptual skills
Column 3	performance that does not fully meet requirements	as to attendance and punctuality, quality and quantity of work, initiative, resourcefulness, planning, organizing work and problem solving skills
Column 4	marginal performance	as to communications, human relations, teamwork and dependability

Even though the number of boxes ticked for "Marginal" rating is far less than that ticked for the rating "not fully meet requirements", the raters could justifiably have evaluated the overall performance of the Applicant "Marginal."

12. In support of that rating, a narrative performance assessment consisting of an attachment more than two pages long was also duly prepared. The Tribunal, therefore, finds in respect of information and evaluation that the PER met the requirements of the Guidelines.

13. The Tribunal next examines whether or not the procedure was flawed. The Guidelines lay down the procedure to be followed in the performance evaluation process and specify the persons responsible for evaluation. Under the section on Delegation of Responsibilities and Accountabilities, the Guidelines provide:

Where the manager is not the direct supervisor . . . , the evaluation of the staff's performance should be jointly carried out by the manager, the supervising professional staff and the senior supporting staff, where applicable, unless the manager so decides to delegate such responsibility to the professional staff and the senior supporting staff, where applicable. The professional staff in the different units and sections should subsequently meet with the manager to agree, on a consensus basis, on the evaluation of staff in the division.

A collegial judgment is made through deliberation by persons who could have differing opinions.

14. In this case, the record shows that the evaluation was carried out by the Manager, PW2, and all the supervising staff members for whom the Applicant had worked during the relevant

period, and the finding was endorsed by the Deputy Director and Head of Department. The procedure followed was thus in conformity with the requirements of the Guidelines. The Tribunal agrees with the Respondent that the fact that a supervising officer strongly expresses his dissatisfaction with a subordinate's work or performance would not usually disqualify him from participating in a PER in respect of that subordinate.

15. Nevertheless the Tribunal holds that there were extraordinary circumstances in this case; a supervising staff member who had been arrested because of the Applicant's complaint was among the raters, and so too was the Manager, PW2, who had expressed his wish to see the Applicant out of his division. As to such expression of wishes by the Manager, the explanation of the Respondent in its Answer was evasive. It stated:

The Respondent submits that the then Manager, PW2 . . . has denied having uttered the remarks attributed to him. Assuming, arguendo, the alleged remarks of the then Manager, PW2, were made, such remarks, though unfortunate, reflected the department's and division's dissatisfaction with the Applicant's performance as she had failed to improve her performance As the Applicant stated . . . the alleged remarks were made "in exasperation" (emphasis added). The Manager's exasperation is understandable given the Applicant's history of performance

This explanation was amended later as follows:

The Respondent, after further investigation into this matter, admits that [the] Manager, PW2, said to the Applicant "I want you out of my division" and notes that the reason for this statement was that Manager, PW2, was disappointed that the Applicant did not earnestly attempt to settle her dispute with Mr. Liang amicably and had initiated action to have him arrested

The Applicant thus contends:

The act of the Manager, PW2, in filling out Part. 3.2 of Applicant's PER and in rating performance as marginal was highly irregular, tainted as it was with vengefulness and reprisal The supervisors, who were all subordinates of the Manager, PW2, and who were naturally fearful of contradicting his judgment, could not but concur.

The participation of Mr. Liang and the Manager, PW2, in such an extraordinary case as this was likely to create an appearance of bias and partiality on the part of the raters, giving rise to an apparent absence of objectivity in the rating process. The relevant PERs should not be relied upon.

16. The Applicant claims monetary compensation. This case, however, is not one of denial of promotion or unjust dismissal. The Applicant's past performance discussed in paragraphs 6 - 9 and comments made by various persons in the second evaluation exercise reveal that the Applicant is wanting in ability in some respects and has problems in human relations. Nevertheless she was given time to improve the quality of her services, and was continued in her employment by the Respondent.

17. For the reasons stated above, the Tribunal decides to set aside the contested PER of the Applicant. The Tribunal, however, declines to order reinstatement of the earlier PER signed by two supervising staff members. That evaluation can no longer be relied upon after those officers joined in the preparation of the second PER. The Bank is directed to use the services of the

Applicant in an appropriate department setting goals toward which the Applicant should strive.
No compensation is awarded.

Decision:

For these reasons, the Tribunal unanimously decides to set aside the Applicant's PER for 1993/94. All other requests in the Application are dismissed.