

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 33
(6 January 1997)**

**Narayanaswami Viswanathan
v.
Asian Development Bank
(No. 2)**

**Mark Fernando, President
Robert Gorman, Vice-President
Toshio Sawada
Brigitte Stern**

1. The Applicant made an Application to the Tribunal, received 6 June 1995, in respect of the Bank's decisions to retire him before his 65th birthday, and to refuse him severance pay for the years he worked with the Bank before 1 May 1982.
2. The Applicant had voluntarily tendered his resignation effective 3 April 1995, thereby terminating his employment even before his 60th birthday on 16 June 1995 - the date on which the Bank's decision to retire him would have become operative.
3. The Tribunal dismissed the Application on 8 January 1996 (Viswanathan, ADBAT Decision No. 12 [1996]), holding, in regard to the issue of retirement, that:

The exercise of the Bank's option was to be effective only on 16 June 1995. A contract of employment between the Bank and the Applicant would have continued to subsist until that date. Although his resignation, effective on 3 April 1995, may well have been emotionally motivated by the notification of the Bank's decision to exercise its option under Section 10, this was nonetheless a voluntary decision by the Applicant which brought his employment to an end. When the Applicant applied to the Tribunal [i.e. on 6 June 1995], his employment had already been terminated on 3 April 1995 by his own act prior to the date when the exercise of the option became operative. The Tribunal therefore does not need to address the question of the age of retirement, and the purported illegal action of the Bank in that context.

4. The Applicant now asks the Tribunal to set aside that part of its judgment as relates to the issue of retirement, pursuant to Article XI of the Statute of the Tribunal, which empowers the Tribunal to revise a judgment in the circumstances specified therein:
 - a. 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.

- b. The request shall contain the information necessary to show that the conditions laid down in paragraph 1 of this Article have been complied with

5. What the Applicant claims are new facts are merely statements made by the Bank in its submission dated 5 January 1995 to the Appeals Committee and in its Rejoinder before the Tribunal dated 6 December 1995. Both these documents were filed with the Tribunal, and the facts and contentions therein were known both to the Tribunal and to the Applicant at the time the Tribunal delivered its judgment.

6. Further, even if the Tribunal were to assume that these were new facts of which it was unaware when it delivered that judgment, it cannot be said that they might have had a decisive influence on that judgment, because the Applicant's contention that the Bank was not entitled to retire him at the age of 60 would not have succeeded, for the reasons set out in Samuel (No. 2), ADBAT Decision No. 15 [1996], delivered on 13 August 1996.

7. The Tribunal holds that the Applicant has failed to satisfy the conditions laid down in Article XI of the Statute.

8. Article IX of the Statute provides that the decisions of the Tribunal shall be final and binding, so that there is no appeal against them. What the Applicant is asking the Tribunal to do is to review its decision with which he is not satisfied, on the basis of the same facts and arguments, by alleging mistakes of law and, perhaps, mistakes in the appraisal of facts, which are not permissible grounds of review (see *In re Villegas* (No. 4), ILOAT Judgment No. 442 (1981)).

9. Because its original decision was by a full panel, the Tribunal had determined, in terms of Rule 5A of its Rules of Procedure, that this case warranted consideration by a panel consisting of all its members. However, on account of illness one member was unable to attend this plenary session of the Tribunal. In the exercise of its powers under Rule 23, and considering that Rule 5, paragraph 4, provides that three members of the Tribunal shall constitute a quorum for plenary sessions, the Tribunal decided that this case should be determined by the four members present at this plenary session.

Decision:

For the above reasons, the Tribunal decides to refuse the Applicant's request for revision of its judgment in *Viswanathan*, ADBAT Decision No. 12 [1996].