

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 48
(21 September 2000)**

**Mohammed I. Haider
v.
Asian Development Bank
(No. 2)**

**Robert Gorman, Vice-President
Martti Koskenniemi
Shinya Murase**

1. This is an Application for the revision of Haider, Decision No.43 [1999]. In that Decision, the Tribunal concluded that the Applicant had failed to establish that the Respondent's decision not to confirm his appointment beyond a probationary period of one year was made by abuse of discretion, arbitrariness, improper motivation and bias, or lack of due process, and thus the Tribunal dismissed the Application. In the present case, the Applicant requests the Tribunal to revise its previous decision in light of subsequently acquired documentation and of the Tribunal's exclusion of certain facts and lack of due process, and prays for his reinstatement in the Bank retroactive to the date of his non-confirmation.

2. Article XI, paragraph 1 of the Statute of the Tribunal empowers the Tribunal to revise a judgment in the specified circumstances, namely, "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 [the requesting] party." The principles of finality and of res judicata of Tribunal judgments are well established through the language of this provision and by the previous decisions of this Tribunal as well as by other administrative tribunals under comparable provisions. Requests for revision of a judgment must satisfy the conditions laid down therein, as this Tribunal clearly stated in Viswanathan (No.2), Decision No. 33 [1997], III ADBAT Reports 63, 64, para. 80, that:

[T]he decisions of the Tribunal are "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)).

3. The Applicant's request for reconsideration is based largely on two grounds: he alleges first that he has discovered certain key documents which were not disclosed by the Respondent to the Tribunal, and secondly that certain critical information was not considered or given proper weight, or was misinterpreted or deliberately excluded by the Tribunal in reaching its previous decision. The Respondent rejects all these allegations and requests that the Applicant's prayer for relief be denied.

4. First, the Applicant claims that certain documents of decisive importance were illegally or improperly withheld by the Respondent. One of the documents submitted by the Applicant is a facsimile in which an incidental "cc" reference was made by a third party consultant outside the Bank, who indicated the Applicant as Mission Leader in one of the projects in which the Applicant had been involved. Also submitted are some documents which allegedly demonstrate

the Applicant's substantive contribution to the work of the Bank. The Applicant has further submitted a series of documents concerning his work performance, though the Tribunal notes either that a great many of these allegedly additional documents had already been submitted to this Tribunal as Annexes to the original Application or that the other documents are of no significance.

5. The Tribunal finds it unable to accept the Applicant's assertion that the Respondent intentionally withheld these documents. While they are supposed to prove the Applicant's allegedly substantive contribution to the work of the Bank and his good work performance, the Tribunal is far from being convinced by the Applicant's argument that these documents might have had any influence on its previous decision, let alone the "decisive influence", the condition required for its revision under Article XI of the Statute.

6. In this connection, the Applicant argues that the principle of *res judicata* of a Tribunal decision is based on the assumption that it has been reached with substantive and procedural due process being afforded to the Applicant, and that, because of the alleged gross irregularity in the proceeding of the Respondent's withholding the material evidence, the principle does not apply here. In so doing, the Applicant bases his argument in part on the Rules of Civil Procedure and the relevant court cases of a Member State of the Asian Development Bank. Being an international institution, the Administrative Tribunal is normally regulated by the internal law of the Bank and by international law, independent of domestic laws of member countries. A reference to domestic laws may not be inappropriate in certain exceptional situations if it is made for the purpose of interpretative analogy or as evidence of general principles of law that may be considered applicable by the Tribunal where the relevant law is lacking either in the form of written law or unwritten law. However, the present issue is not such that warrants reference to a domestic law in order to fill the *lacunae in law*, since the applicable law in this case is clearly established, as described in para.2 above.

7. Second, the Applicant pleads that the Tribunal committed a number of errors in evaluating and interpreting facts and documents presented. The Applicant also claims that the Tribunal's legal reasoning in reaching the previous decision should be reconsidered. However, the Tribunal observes that these assertions merely represent the Applicant's dissatisfaction with the consideration by the Tribunal of the facts already before it when the judgment was delivered and of its assessment of such facts as well as its legal evaluation based on the same facts and arguments presented by the Applicant. Such a claim for reopening the case would be a misuse, if not an abuse, of the process of the Tribunal. Obviously, it is totally inadmissible under Article XI of the Statute (see *Wilkinson* (No. 2), Decision No. 34 (1997), III ADBAT Reports 67).

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

9. The Applicant has requested to hold oral proceedings under Rule 14 of the Rules of the Tribunal. Noting that the decision to accord oral proceedings rests with the discretion of the Tribunal and that it may be held only when it finds such proceedings are necessary, the Tribunal decides that there is no such necessity in this case, and accordingly, that the request be denied.

Decision:

10. For these reasons, the Tribunal unanimously decides to refuse the Applicant's request for revision of its judgment in *Haider*, Decision No.43 [1999].