

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 56
(8 August 2003)**

**Perfecto T. Canlas et al.
v.
Asian Development Bank**

**Robert A. Gorman, President
Martti Koskenniemi, Vice-President
Shinya Murase
Flerida Ruth P. Romero
Khaja Samdani**

1. The Tribunal received Applications from Mr. Perfecto T. Canlas and 55 other members of the Bank's support staff (hereinafter referred to as the "Applicants") between 10 October 2002 and 4 November 2002. The Tribunal invited all of the Applicants, along with the Respondent, to comment upon the possibility of consolidating the 56 cases and, after receiving those comments, the Tribunal issued an order dated 4 February 2003 consolidating the cases and instructing the parties to file respectively a single Answer, Reply and Rejoinder for all of the cases. One of the Applicants, Ms. Ruby Arico, requested and was granted by the Tribunal the right to file her own pleadings and motions. As a result of the Applicants' request for preliminary measures, they were provided with certain documents concerning the promotion case to be discussed below. After the usual exchange of pleadings, the case was listed on 16 July 2003.

2. The Applicants challenge, as a violation of their own terms of appointment and contract of employment, a Present-Incumbent Only ("PIO") promotion of a fellow member of the Bank's support staff, an Associate Project Analyst who the Tribunal shall refer to as Mr. A. His PIO promotion was based upon a settlement agreement between him and the Bank, which was executed on 21 December 2000 and which came to the Applicants' collective attention by 8 February 2001. That agreement settled a dispute reflected in an Application filed with the Tribunal by Mr. A, in which he claimed that the Bank had violated his rights by not giving him a promotion to which he alleged he was entitled under the Bank's governing rules and policies. The 56 Applicants contend that, just as Mr. A was given a PIO promotion as part of the 21 December 2000 settlement agreement, they are similarly situated and they claim an entitlement to such a promotion for themselves as well. They seek compensation for their lost salary differential, as well as for "moral injury" and emotional distress, and for legal costs. They, except for Ms. Arico, also request that the Respondent make public within the Bank the events that led to the promotion of Mr. A, and undertake a review of the relevant Administrative Orders. The Respondent asserts both that the Applications should be dismissed because of the untimely resort to internal remedies, i.e., administrative review, and that if the merits are reached, the Applications should be denied because of failure to prove that the Respondent acted improperly or caused injury to the Applicants.

Factual Background

3. On 8 May 2000, Mr. A filed his Application with the Tribunal. The circumstances of Mr. A's case are described by the Respondent in its Answer here:

[Mr. A] submitted an Application to the Tribunal on 8 May 2000 alleging that the Asian Development Bank's ("ADB's") decision not to upgrade his position or promote him on a personal basis was an abuse of discretion, arbitrary, discriminatory, improperly motivated, and had been made in violation of a fair and reasonable procedure. The Respondent thoroughly reviewed the matter and identified several concerns. It found that the Respondent had made procedural errors, such as not providing a written response to two separate requests of the Private Sector Group ("PSG") Senior Project Analyst [Mr. A] for administrative review. On one occasion, his position was made supernumerary, without any apparent valid basis for doing so. The five PSG requests over a ten year period for reclassification of his position were not all adequately addressed, and the Respondent considered that the generic job description for his position might not have adequately taken into account differences that existed between his duties and those of staff members in his position in other Departments and Offices. Finally, the Respondent was concerned that its policy not to grant PIO promotions to Levels 5, 6 and 7 support staff in any circumstances may not have been sufficiently well justified. In this regard, the Applicant's supervisor had asked that he be promoted in Performance Evaluation Reports ("PERs") on four separate occasions, and in 1999 PSG had recommended a PIO promotion for the Applicant from levels 7 to 9. However, this promotion was denied because of the above policy prohibiting PIO promotions for support staff at this level. Taken as a whole, these concerns led the Respondent to the conclusion that a settlement with the Applicant was warranted.

The Respondent further stated in its answer: "On one occasion the Level immediately below the PSG Senior Project Analyst's Level was reclassified upwards to his Level without a change in his own Level, although he had assisted in recruiting staff at the lower Level and was responsible for supervising them."

4. In the settlement agreement dated 21 December 2000, Mr. A and the Bank (by the Director, Budget, Personnel and Management Systems Department ("BPMSD")) agreed that, in return for Mr. A's relinquishing all claims he might have against the Bank, "The President of ADB has decided to approve the promotion of [Mr. A] on a PIO basis from level 7 to level 8 retroactive to 17 February 1999 and from level 8 to level 9 effective 31 December 2000. Appropriate salary adjustments to reflect such promotions will be made." The parties agreed that the settlement "shall be treated in a confidential manner" and not disclosed to any third parties.

5. Provision for the PIO promotion is made in the Bank's administrative orders at Administrative Order ("A.O.") No. 2.03, para. 6.4, which provides: "The President may decide to grant a staff member a PIO promotion to recognize an individual's outstanding service. Such a promotion is not related to a position opening and has the effect that the incumbent's personal level increases to one level higher than the current personal level." Thus, in the context of Mr. A's PIO promotion, the two-step movement from level 7 to level 9 (with a nearly two year period retroactively inserted between the steps) was in the nature of a personal improvement in status and salary, without any change in his actual position or work responsibilities, without any reclassification of that position into a higher grade level and without the antecedent declaration of any new vacancy.

6. As noted above, at the time of the December 2000 settlement agreement, the Bank's policies were such that although PIO promotions were available to some support staff members, they were not to others: staff members at levels 5, 6 and 7 were ineligible for such promotions.

Promptly after the settlement agreement with Mr. A, however, the Bank reexamined this policy and consulted with representatives of the support staff, who had previously expressed their concerns on the matter. The President of the Bank on 28 March 2001 approved, and on 3 April 2001 Human Resources Division ("BPHR") announced, the so-called 2001 PIO promotion exercise including for the first time support staff at headquarters in levels 5 to 7. The BPHR memorandum of the latter date states that "this initiative ensures a consistent application of human resources policy and aims to improve the overall support staff morale through additional career progression opportunities." In the PIO promotion exercise conducted in June 2001, over 98 support staff at levels 5 to 7 applied for PIO promotions, and 25 were granted them.

7. Meanwhile, because of the confidentiality of the 21 December 2000 settlement agreement with Mr. A, it appears that other members of the support staff did not learn of his PIO promotion until early February 2001. On 8 February 2001, 180 support staff acting through a so-called Core Group wrote to the Manager, BPHR pointing out that "It came to our attention that an Associate Project Analyst (Level 7) in PSG was promoted to Senior Project Analyst (Level 9)," and stating that "We would like to inquire under which existing Human Resources Policy or program the promotion has been processed." On 28 February 2001, the Manager, BPHR responded to the Core Group and stated that the promotion was approved by the President under his vested powers and that the support staff position in question was still classified as a level 7 position. (This latter comment was presumably to assure the other support staff that there was no reason for them to believe that their own positions were improperly graded too low.)

8. On 22 March 2001, in another memorandum to the Manager, BPHR, the Core Group pointed out what it viewed as the lack of transparency in not including the promotion in the Personnel Announcement of the Bank's Human Resources Hotline, and stated that "we hereby submit our request for a review of the administrative decision in promoting [Mr. A]." The memorandum continued in language particularly important to the Application herein:

In this regard, we would like to request the President to exercise the same power to promote all Support Staff with similar duties and accountabilities as the concerned PSG Support Staff including the rest of the Support Staff under the terms and conditions used for the promotion (i.e., no reclassification of the incumbent's position and no available vacancy at a higher level) of the concerned PSG Support Staff.

9. In a responsive memorandum to the Core Group from the Manager, BPHR dated 11 April 2001, he noted the request for administrative review, but asserted that under the governing Administrative Order (A.O. No. 2.06, para. 3.2) "only individual staff members, and not a group of staff, [may] submit a request for administrative review." He also asserted that with the availability of PIO promotions for all support staff since the announcement of the new policy of 28 March 2001, barely two weeks earlier, the Core Group and their support staff colleagues were now able to have their "particular situation" evaluated according to the usual criteria and procedures for such promotions.

10. This was apparently an unsatisfactory suggestion to the Core Group, which wrote again to the Manager, BPHR on 11 May 2001, reiterating the request "to extend the benefit of PIO promotion to all Support Staff with similar duties and accountabilities" as Mr. A "including the rest of the Support Staff." The Manager, BPHR once again, on 7 June 2001, wrote that "only individual staff members, and not a group of staff, can submit a request for administrative review," and that "any request for administrative review can be based only on the specific circumstances of your individual case."

11. Apparently taking account of the suggestion of the Manager, BPHR, the complaining members of the support staff thereupon sent individual memoranda to the Director, BPMSD, dated 29 June 2001 - 6 July 2001. In language substantially identical to that used by the Core Group previously, the Applicants claimed that the promotion of Mr. A lacked transparency and violated prevailing policies of the Bank, and they requested the same promotion. On 31 July 2001, the Director, BPMSD reiterated that only individual staff members could file separate requests for administrative review, that the complaining staff members had not done so in a timely manner, and that in any event each staff member was not entitled to a promotion simply because Mr. A had been granted one "in view of the specific circumstances of that case."

12. Appeals were then filed with the Appeals Committee, in August 2001, by 56 members of the support staff. The proceedings there were suspended while efforts at conciliation were undertaken. Those, however, proved unavailing, and the Appeals Committee, after receiving full pleadings, on 15 July 2002 issued its report and recommendations for each of the complaining staff members. The Appeals Committee first concluded that the appellants had presented their appeals in a timely fashion, after complying with the 90-day time limit for initiating administrative review. On the merits, the Appeals Committee concluded that the Bank did not violate any governing rules or policies, or otherwise abuse its discretion. It therefore recommended that the President reject the claims of each of the appellants, but also recommended that the Bank clarify its administrative orders so as expressly to address the issue of group appeals. The President accepted the former recommendation but there appears to be nothing in the record concerning his treatment of the latter.

Admissibility

13. The Tribunal must first address the Respondent's contention that the Applicants were required by the pertinent Administrative Order to invoke administrative review only on an individual, and not on a group, basis, and that they failed to do that on a timely basis. The pertinent Bank rules are found in Administrative Order No. 2.06, para. 1 which provides:

This Administrative Order sets forth the Bank's rules and procedures to be followed in case of a request for administrative review, or submission of appeal, by an individual staff member of the Bank. A staff member may only request administrative review or submit an appeal in respect of an administrative decision or a disciplinary measure which the staff member alleges to be in contravention of his/her contract of employment or terms of appointment. (emphasis supplied)

Administrative Order No. 2.06, para. 3.2 provides:

If a staff member wishes to have an administrative decision reviewed, the staff member must request the review in writing not later than 90 calendar days after being notified of the decision. (Emphasis supplied)

14. Basing its contentions on the language emphasized above as it has since administrative review was invoked by the Applicants in early 2001 the Respondent urges that the Applicants here erred by submitting a group request for administrative review, through the Core Group, until the end of June 2001, and that by the time individual requests were submitted, on 29 June – 6 July to the Director, BPMSD, this was some two months' late: the complaining staff members had learned of Mr. A's PIO promotion at the latest by 8 February 2001, individual

requests for administrative review should therefore have been submitted within 90 calendar days, i.e., no later than 8 May 2001, but that was not done until 29 June – 6 July.

15. The Tribunal, under Article II, para. 3(a), of its Statute, is instructed that "No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless the applicant has exhausted all other remedies available within the Bank...." The Tribunal has held that such exhaustion requires timely resort to both administrative review and the Appeals Committee. Behuria, Decision No. 8, [1995], I ADBAT Reports 96, para. 23:

...it is not sufficient merely to submit a grievance or an appeal to the internal appeal bodies. Such grievance or appeal must be submitted also in conformity with prescribed time-limits.

It should be noted that the Appeals Committee took jurisdiction of these claims by the 56 Applicants because "it is not clear when the actual counting of days [for seeking administrative review] should begin" and because the staff members had acted in good faith – so that declining to address the merits would be because of a mere "technicality." The Tribunal agrees with this outcome with respect to these Applications, but for somewhat different reasons.

16. First, the purpose of the exhaustion requirement in Article II, para. 3(a) of the Statute of the Tribunal is to assure that staff members promptly and fully make their grievances known so that the most knowledgeable and directly affected parties the staff members and their supervisors may amicably adjust their differences, before resort to the more formal and adversary procedures of the Tribunal. That purpose was just as much accomplished when the Core Group voiced the Applicants' grievances on 8 February, 22 March, 6 April, and 11 May of 2001, as they would have been had 180 staff members (the number of complainants at that time) written separate letters to Human Resources representatives.

17. Even though the pertinent language in Administrative Order No. 2.06, para. 1 appears clearly to contemplate only individual requests for administrative review, as well as for appeals to the Appeals Committee, the Tribunal's implementation of the exhaustion requirement is not so strict: Article II, para. 3, allows the Tribunal to rule an Application admissible, even assuming a technical failure to exhaust, when there are "exceptional circumstances." The Tribunal finds such exceptional circumstances present here. Even assuming (as the Respondent contends) that the 90-day time limit for administrative review began to run when the Applicants learned of Mr. A's promotion in early February, the Bank was fully aware of the substance of the Applicants' claims almost immediately thereafter and it in fact responded on the merits (as well as with procedural objections) from the outset.

18. There is also a second reason why the Tribunal concludes that the exhaustion requirements have been satisfied here in a timely manner. Administrative Order No. 2.06, para. 3.2, provides that the staff member must request administrative review in writing "not later than 90 calendar days after being notified of the decision" that is believed to violate his or her contract of employment. The Respondent, at the time administrative review was requested, reasonably viewed Mr. A's promotion the focus of the Core Group's complaint as providing the dies a quo for the running of the 90-day period. But as the Respondent pointed out time and again in early 2001, Mr. A's PIO promotion in itself caused no adverse impact upon the Applicants, for they were free to request a promotion for themselves, at least after the 2001 PIO exercise was announced to the support staff on 3 April 2001. No "decision" adversely affecting the Applicants was in fact made by the Bank until the Core Group on March 22, 2001 asked that the President promote all support staff with similar duties and accountabilities to those of Mr. A, and this

request was rejected by the Manager, BPHR at a meeting of 6 April 2001 and in a memorandum of 11 April 2001. This "decision" was, of course, within the context of the administrative review process.

19. The Applicants moved well within 90 days to press their claims as individuals to the next step of administrative review, the Director, BMPSD, in memoranda of 29 June - 6 July 2001 to the Director, BPMSD, and he on 31 July 2001 affirmed the decision of the Manager, BPHR. A timely appeal was then taken by the Applicants again as individuals to the Appeals Committee on 29 August 2001. In other words, the first time that the Applicants were clearly informed by the Bank that they could not properly invoke Mr. A's promotion as a reason for getting one themselves and thus the dies a quo was on 6 or 11 April 2001, and review of this decision by the Director, BPMSD was sought in late June to early July 2001. So, even if it were strictly necessary (as the Respondent insists) for administrative review to have been pursued on an individual rather than a group basis, the 90-day requirement of Administrative Order No. 2.06, para. 3.2, has been satisfied and internal remedies timely exhausted.

20. The Tribunal takes this opportunity to emphasize that a staff member should not normally be entitled to assert before the Tribunal that another staff member has been accorded treatment contrary to Bank policies and rules. Article II, para. 1, of the Statute of the Tribunal provides in pertinent part: "The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank alleges non-observance of the contract of employment or terms of appointment of such staff member." (emphasis supplied) The Tribunal has held before that it has the power to rule only upon a staff member's claim that the Bank has rendered a decision that violates that staff member's employment contract and that has adversely affected him or her. [Carolina Chan, Decision No. 21 [1996], II ADBAT Reports 160, para. 12.] Staff members are not empowered to come to the Tribunal for the purpose of challenging violations of contracts of other staff members.

21. Much of what the Applicants have asserted during the processes of administrative review and the Appeals Committee, and now before the Tribunal is of this nature. Simply to assert that Mr. A's promotion was a violation of pertinent administrative orders and other Bank policies does not provide a basis for the Tribunal's jurisdiction. It is only because the Bank rejected the Applicants' requests for identical treatment, and denied them their requested PIO promotion, that the Applicants can facially assert a violation of their own employment contracts, and thus a claim within the jurisdiction of the Tribunal. It remains to determine, however, whether the Applicants have established a convincing case upon the merits.

Merits of the Case

22. The Applicants are in the rather uneasy position of arguing that the PIO promotion that was given to Mr. A, after the settlement of his case initiated before the Tribunal, was improper, contrary to Bank rules and policies, and an abuse of discretion ("an act of inexcusable bribery," in the words of the Application) while at the same time arguing that they are entitled to a promotion just like it. Viewed most charitably, the Applicants' principal claim is that the promotion of Mr. A is discriminatory and thus an abuse of discretion, because they have not been given a PIO promotion even though they have the "same duties and accountabilities" as support staff as did Mr. A. Another significant contention is that the Applicants were adversely affected by the lack of transparency in the promotion of Mr. A; particularly criticized are the promise of confidentiality made by the Bank in the settlement agreement and the Bank's failure properly to record the promotion on the Bank's Human Resources Hotline.

23. The Applicants rely on many provisions in the Administrative Orders to buttress their claim on the merits. To quote the language from the more pertinent administrative orders:

A.O. No. 2.02, para. 2.1: "[T]he Bank . . . is guided by fair, impartial and transparent personnel policies and practices in the management of all its staff."

A.O. No. 2.03, para. 1.4: "Selection for promotion will be competitive, based on specific criteria, the relative merits of eligible staff and in accordance with established procedures to determine the most suitable candidate to be appointed."

A.O. No. 2.03, para. 4: "Subject to the paramount importance of securing the highest standards of efficiency and technical competence, promotion will be based on merit and capacity to assume increased responsibilities."

A.O. No. 2.03, para. 6.3: "Promotion will be based on merit. Selection criteria for promotions include (a) the key skills, background, and experience required of the position; (b) the critical outputs that ensure success in the position; (c) relevant demonstrated achievements of candidates for the position; and (d) length of service in the Bank and seniority in the present position."

A.O. No. 2.03, para. 6.4: "The President may decide to grant a staff member a PIO promotion to recognize an individual's outstanding service. Such a promotion is not related to a position opening and has the effect that the incumbent's personal level increases to one level higher than the current personal level."

A.O. No. 3.01, para. 3: "Salary administration of staff members will be guided by the following principles: ... (c) ADB systematically evaluates the relative weight of each position in the salary structure, determines the equitable remuneration for similar responsibilities internally and externally, and rewards staff according to performance, salary relativity, and other relevant factors. (d) Salaries are administered in a manner that is both equitable and transparent to all staff."

24. The Applicants' precise claim appears to have been modified in moving from administrative review and the Appeals Committee to their Applications here. During internal review, the Applicants appeared to claim that they, as support staff with the same duties and accountabilities as Mr. A, were ipso facto and as a matter of law entitled to the same two-level promotion. Before the Tribunal, however, the Applicants claim that they have been "deprived of a similar opportunity [as Mr. A] to have been considered by the President for a PIO promotion"; and their principal prayer for relief is for "compensation damage equivalent to at least the Applicant's current annual salary for having been deprived of the opportunity for similar promotion granted" to Mr. A.

25. Whether viewed as a claim of entitlement to the same PIO promotion as awarded to Mr. A, or merely as a claim to the opportunity to be considered by the President for such a promotion, it is the conclusion of the Tribunal, for the reasons given below, that the position of the Applicants is unpersuasive.

26. If the Applicants are complaining about the latter the Bank's failure to afford an opportunity to be considered for a PIO promotion the Tribunal finds that that claim is now moot, and it indeed was moot early in the administrative review process, when BPHR on 3 April 2001 issued a notice to all staff members of the 2001 PIO promotion exercise and invited eligible staff to

apply. The Applicants were informed that, for the first time, "This year, the PIO promotion is open to all levels of HQ support staff members," including those from levels 5 to 7 (as well as those at levels 8, 9 and 9A). General criteria were listed for promotion from levels 1-7, including years served, quality of performance ratings, and absence of disciplinary actions; very similar criteria were set forth for promotions from higher-level positions.

27. It may be assumed making inferences that are the most favorable to the Applicants that all of the Applicants would have facially been eligible for consideration for a PIO promotion under the criteria announced in the first days of April 2001. Yet, despite being so reminded on several occasions by the Manager, BPHR, and the Director, BPMSD, the Applicants continued to press their claims for administrative review of the PIO promotion that had been awarded to Mr. A. If what the Applicants were seeking was, as they now state, an opportunity to be considered for a promotion in the same fashion and on the same terms as Mr. A, the Tribunal concludes that their claims became moot no later than 3 April 2001, some 18 months before they filed their applications with the Tribunal. The Applicants have given the Tribunal no satisfactory explanation whatever as to why their requests for the "opportunity to be considered" should not be dismissed as moot.

28. As noted above, however, the Applicants both during their resort to internal remedies and in their pleadings here have claimed more than a mere opportunity to be considered, but are rather claiming an entitlement to an automatic PIO promotion. They claim this by virtue of their being support staff with the same "duties and accountabilities" as Mr. A at the time of his promotion. The Applicants rest this claim in large measure upon various paragraphs in Administrative Order Nos. 2.03 and 3.01, as set forth in paragraph 23 of this judgment, supra. Those provisions require, in substance, that promotions be based on comparative merit and experience and that they be awarded in a fair, equitable and transparent fashion.

29. Although the Applicants appear to claim that their positions as staff members are equivalent in every pertinent respect to that of Mr. A, the Tribunal cannot so conclude. The PIO promotion is expressly meant to be tailored to the individual accomplishments of a particular staff member, whose promotion is otherwise constrained by the more general rules regarding job classifications, grade levels and promotion to vacancies. As already noted, Administrative Order No. 2.03, para. 6.4, provides in pertinent part: "The President may decide to grant a staff member a PIO promotion to recognize an individual's outstanding service."

30. The Tribunal thus rejects, as a matter of law, the Applicants' contention that they are entitled to the same treatment as Mr. A simply because they too are members of the support staff, or because they too are graded at level 7 or 8, or because they too have equivalent duties and accountabilities, or because they too have a positive work record.

31. For one thing, the kinds of work done, even among staff members at the same grade level, can vary depending upon Office and Department. Obviously, too, the employment records of all staff members taking account of educational and work experience, seniority, disciplinary record, appraisal by supervisors, PERs and salary increases, and the like are necessarily as variant as the number of individuals considered. Yet, although the burden of proving a violation in a comparative-promotion case lies with the applicant, the Applicants here have refrained from introducing such detailed and essential information into evidence. They have made it clear that their Applications are based upon a general legal entitlement. In their Replies, for example, they waive the confidentiality of their respective PERs for purposes of resolving this dispute, but state that "nothing in this authorization admits to any supposition that the same is vital or relevant to such adjudication."

32. Moreover, Mr. A's situation resulting in his PIO promotion was, in the judgment of the Tribunal, particularly uncommon. His promotion was awarded in the context of: his having filed with the Tribunal an Application claiming an unlawful denial of a promotion in the face of repeated recommendations for promotion and reclassification; the Bank determining that several of his material contentions had merit; and the two parties reaching a settlement that brought about Mr. A's two-level PIO promotion and the withdrawal of his Application before the Tribunal. On their face, these circumstances differentiate the situation of Mr. A from those of the Applicants here, and undermine their claim to identical treatment.

33. The Tribunal notes, in any event, that the production of evidence about the individualized work records of all of the 56 Applicants would not be appropriate for the first time to the Tribunal itself. The Bank has made available, since early 2001, internal procedures whereby requests and recommendations for PIO promotions may be considered for all Headquarter support staff members at all grade levels through the usual agencies that make decisions with respect to such promotions. It is through this system that the Applicants' claims of excellence and comparability should be tested, by qualified decisionmakers on full and individualized employment records and not by the Tribunal based upon a potentially less-than-full record. It is in circumstances such as this that the wisdom of the requirement of exhaustion of internal remedies becomes particularly evident.

34. Although the Tribunal agrees with the Respondent that negotiated settlements of disputes are to be encouraged, and not unduly scrutinized by the Tribunal, there may well come a point at which the terms of a settlement might be so unjust or discriminatory as to constitute an abuse of the Bank's discretion. This might be the case, for instance, were the Bank to use the device of settlement so as to set aside its applicable rules in an arbitrary manner or so as to provide unreasonable advantage to particular staff members.

35. The Tribunal concludes that the settlement here, although sharply criticized by the Applicants, is not such a situation. The two-level promotion on a present-incumbent-only basis, without formal reclassification of his position, was responsive to the claims being pressed by Mr. A. Although the Applicants point out that Mr. A's promotion deviated from several of the usual rules and procedures in the case of promotions, these departures were not unreasonable, given the extraordinary circumstances of the dispute, and given the Bank's judgment, made in good faith, that settlement on the agreed upon terms was in the best interest of the Bank and was commensurate with the harm done to Mr. A. The Tribunal gives considerable weight to the fact that, although Mr. A as a level 7 Project Analyst was not eligible for a PIO promotion according to the Bank's rules in effect at the time of his application to the Tribunal, the Bank's agreement in December 2001 to award him such a promotion was accompanied by a directive to review those rules and, soon after, by a newly declared policy extending eligibility for PIO promotion to all HQ support staff, regardless of grade level.

36. The only other significant claim raised by the Applicants is that the Bank's two-level PIO promotion for Mr. A was invalid because it lacked transparency as is required by a number of Administrative Orders. See paragraph 23, supra. There is no dispute that the terms of the 21 December 2000 settlement agreement were initially kept confidential, as the agreement itself required: "The parties agree that the terms of this Settlement Agreement shall be treated in a confidential manner and that no information thereon or copies thereof shall be released to any third party." The Applicants point out that no public mention was made by the Bank of Mr. A's promotion, as it allegedly should have been, in the February 2001 BPHR Personnel Announcement; and that it was not published until the 30 March 2001 announcement and only

then because of the pressure exerted by the Applicants, then in the midst of administrative review. The Applicants also claim that the fact that Mr. A's was a two-level promotion was not disclosed by the Bank until they had already taken their cases to the Appeals Committee. The Respondent acknowledges the lack of transparency in this matter, but excuses it as an incident of a good-faith settlement, which is to be encouraged, and as a means of protecting Mr. A's privacy and "because the Respondent anticipated that if the promotions were made public, support staff colleagues of [Mr. A] might become upset and annoyed, and make [his] working situation difficult."

37. The Tribunal agrees with the Respondent that a resolution of this issue involves an accommodation of the values of privacy and encouraging settlement of disputes, against the very high value placed by the Bank's Administrative Orders upon transparency in personnel decisions including promotions. In making such an accommodation in this particular case, it is necessary to take account of any discernible injury to the Applicants. As to the Bank's failure to publish a notice of Mr. A's promotion until March 2001 rather than in February, it is not possible to find any material injury to the Applicants. Indeed, the Applicants were by their own admission aware of the promotion no later than 8 February 2001, and they were already well along in the process of administrative review directed against that promotion when the February and March Personnel Announcements were published.

38. Nor have the Applicants shown that they were materially harmed by the late disclosure that Mr. A's promotion was in two steps from level 7 to level 9. Moreover, the Bank's felt concerns regarding Mr. A's privacy and the negative reactions of his co-workers were hardly unfounded, as evidenced by the prompt, forceful and widely supported legal attack upon the promotion of Mr. A once it came to light in spite of the fact that his settlement was a major factor in the Bank's decision, soon after, to make the PIO promotion exercise available to all support staff members, including those at levels 5 through 7.

39. One aspect of the long-preserved confidentiality of Mr. A's promotion does, however, trouble the Tribunal. It was apparently not until the Respondent filed its Answer in this proceeding, on 7 April 2003 after securing a waiver from Mr. A that the Applicants were informed in any detail of the nature of Mr. A's application to the Tribunal filed on 8 May 2000, of the Bank's reasons for concluding that many of his claims had merit, or of the text of the settlement agreement of 21 December 2000. The lack of such information must surely have hampered the Applicants in formulating and presenting their claims in administrative review, before the Appeals Committee, and even before the Tribunal. Until the disclosure by the Bank of such information, it would have been difficult, for example, for the Applicants to appreciate the extent to which their claims to a PIO promotion were or were not as compelling as those of Mr. A. Much of the uncertainty and confusion with respect to both the admissibility issue and the merits can be attributed to the confidentiality surrounding the central facts of the promotion of Mr. A. Although it might not be surprising that the Bank chose to adhere to the assurance of confidentiality it gave in the settlement agreement, it is equitable that the Respondent share the costs, some tangible and some intangible, suffered as a result by the Applicants. The compensation awarded to the Applicants is not meant by the Tribunal to reflect their attorney's fees, which have in any event not properly been documented. Rather, it is designed to recompense the Applicants for the impairment of their right generally to be informed of the personnel actions taken by the Bank with respect to their fellow staff members.

Decision

For these reasons, the Tribunal unanimously decides that:

1. the Bank shall pay Ms. Arico PhP 6,000 and each of the remaining 55 Applicants PhP 4,000; and
2. all other claims are denied.