

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 59
(8 August 2003)**

**Cecilia O. Guioguo
v.
Asian Development Bank**

**Robert A. Gorman, President
Martti Koskenniemi, Vice-President
Flerida Ruth P. Romero**

1. The Applicant, a Records Assistant, Support Staff level 4, who applied for the position of Senior Records Assistant, level 5, in the Facilities Management Division ("OAFM"), contests the selection of another staff member, on the ground that the Respondent acted in violation and disregard of its own policy on selection for promotion of staff as laid down in its Administrative Order ("A.O"). No. 2.03.

2. On 9 November 2000, the Respondent, on the Human Resources Division ("BPHR") Intranet, invited applications for the position of Senior Records Assistant, level 5, with a deadline for submission of 23 November 2000. The position is responsible for filing station maintenance, records management audits, report preparation, administrative support and for participating in special records management initiatives, involving, inter alia, implementation of information technology.

3. On 12 December 2000, the Applicant, together with seven other staff members, was interviewed by a Panel composed of the Head, Records and Archives Section ("OAFM-RA") as representative of the requisitioning department, Human Resources ("HR") Officer, Central and Administrative Support Unit ("BPHR-CS") as BPHR representative, and the Senior Counsel, Office of the General Counsel ("OGC"). These panel members were provided the job description for the position, the candidates' information sheets, staff profiles and 1998/1999 Personal Evaluation Reports ("PERs"). On 24 January 2001 the candidates were informed of the selection of Ms. A for the position.

4. Dissatisfied with the decision, the Applicant with four other staff members who were not chosen, arranged a group meeting with Manager, BPHR, on 2 February 2001. At the said meeting, the Manager informed them that according to Administrative Order No. 2.06, para. 3.2, an administrative review can only be submitted by individual staff members. Those present did not believe that the meeting was fruitful as their questions were not satisfactorily answered.

5. The Applicant then filed an individual request for administrative review with the Manager, BPHR, on 23 February 2001 which was denied on 16 March 2001 and thereafter, another one with the Director, Budget, Personnel and Management Systems Department ("BPMSD"), on 11 April 2001 which was denied on 3 May 2001. Similar individual requests were filed by the four other staff members with similar responses from management.

6. Consequently, the Applicant filed on 29 May 2001 an appeal with the Appeals Committee which, after denying a motion for the consolidation of all five cases of the aggrieved candidates, recommended to the President the rejection of the Applicant's claims and the relief sought by her as without merit. The President, on 21 December 2001, communicated to the Applicant his

endorsement of the Report of the Appeals Committee which the Applicant received on 2 January 2002.

7. On 2 April 2002, she filed this Application with the Tribunal. Separate individual appeals were also filed by the other affected staff members. On the same date, the five Applicants filed with the Tribunal a Motion for Consolidation asking that their cases be consolidated. The Respondent objected, recalling that at the Appeals Committee stage, the Applicants had filed a similar Motion for Consolidation which was denied on several grounds: confidentiality; Administrative Order ("A.O.") No. 2.06 which allows appeals to be submitted only by individual staff members; and each Applicant having different qualifications and experiences for the position being applied for. Even after the several Applicants had waived the confidentiality of their work records, the Tribunal decided, because of the possibility that it would have to make comparative individualized assessments of such records, to deny the Motion for Consolidation.

8. The Applicant's principal contention is that the candidate selected trailed the rest by a considerable margin on the basis of pre-Bank experience and relevant work experience, past performance, years of service and potential to perform the major responsibilities of the job successfully. Moreover, the Information Technology ("IT") criterion was given a disproportionate weight. The Applicant also contends that the selection process was in complete disregard of the published specified criteria for the position applied for.

9. Accordingly, she prayed for the following reliefs: US\$20,000 as compensation for lost opportunity for advancement on account of the improper execution of the selection process; US\$10,000 as compensation for moral injury, wounded feelings, mental stress, anxiety and anguish; an order directing ADB to review and revamp its selection process to avoid the recurrence of the same scheme used in the instant case; and US\$5,000 as legal and other costs. It is to be noted that the claims of the five Applicants, as well as the reliefs requested, are identical. Even as they contested the choice of Ms. A on the basis of the criteria and qualifications specified in the Vacancy Announcement, each Applicant expressly declined to ask that he or she be appointed instead, and they indeed uniformly stressed that "there was never a contention for an automatic entitlement for promotion."

10. The Respondent, traversing the Applicant's arguments, declared that as regards the selection of the staff member, the correct procedures were followed and the requirements of due process fully complied with. The Respondent further contends that in no other respect has there been an abuse of the Bank's discretion in the selection of Ms. A.

11. The Tribunal emphasizes that appointment and promotion decisions are matters that are within the Bank's discretion. As it has stated in a related context:

The Tribunal cannot say that the substance of a policy decision is sound or unsound. It can only say that the decision has or has not been reached by the proper processes, or that the decision either is or is not arbitrary, discriminatory or improperly motivated, or that it is one that could or could not reasonably have been taken on the basis of facts accurately gathered and properly weighed. (Lindsey, Decision No. 1 [1992], I ADBAT Reports 5, para. 12)

In relation to the present case, this means that the Tribunal cannot substitute its discretion for that of the Bank. There are two – and only two – questions that the Tribunal must ask itself: was the decision reached in accordance with due process, and was substantive arbitrariness involved?

12. With respect to the issue of due process, the Tribunal finds that the Panel was properly constituted and the members were provided the relevant information to enable them to assess the qualifications, experience and performance of the candidates. All the candidates, including the Applicant, were interviewed and given the opportunity to demonstrate their suitability for the position they had applied for bearing in mind the totality of requirements needed to perform the job. The proper procedures were observed by the Panel and the members treated the Applicants fairly and asked them the same questions in a manner that belied the Applicant's allegation of bias or prejudice in favor of the successful candidate.

13. The Tribunal accordingly concludes that there has been no irregularity of procedure or failure of due process.

14. With respect to the substance of the promotion decision by the Respondent, the Tribunal concludes that there has been no abuse of discretion or failure to apply the relevant administrative orders.

15. In making its recommendation as regards the best candidate for the position of Senior Records Assistant, level 5, the Panel was guided by the relevant provisions, including Administrative Order No. 2.03, para. 4.1 which provides:

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. Length of service in the Bank will be taken into account but by itself will not automatically entitle a staff member to a promotion.

To the allegation of the Applicant that she had longer work experience in the Bank than the selected candidate, the Tribunal notes that this factor "will be taken into account but by itself will not automatically entitle a staff member to a promotion."

16. As regards the contention that the IT criterion was given disproportionate weight, the Tribunal finds that the selected candidate was recommended by the Panel for appointment not on the ground of her good IT knowledge alone, but because she possessed the necessary competencies and was in the judgment of the Panel the most suitable to assume higher level responsibilities.

17. Finally, the Tribunal has been given no reason to doubt that the Panel was guided in its recommendation by the paramount importance of securing the highest standards of efficiency and technical competence as mandated by Administrative Order No. 2.03, para. 4.1.

18. In choosing the successful candidate, the Panel exercised its judgment and discretion. In turn, in endorsing the Panel's recommendation, the President likewise exercised his prerogative to make appointments. Under such circumstances, the Tribunal will not interfere and substitute its judgment for that of the Panel and the President.

Decision

For these reasons, the Tribunal unanimously dismisses the Application.