

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**DECISION NO. 99
(15 August 2012)**

**Ms. D
v.
Asian Development Bank
(No.2)**

**Yuji Iwasawa, Vice President
Claude Wantiez
Lakshmi Swaminathan**

1. The Applicant requests revision of the Administrative Tribunal's Decision No. 95 of 8 September 2011. In that Decision the Tribunal dismissed the Application after finding that proper procedures had been followed in the Bank's decision not to confirm the Applicant's appointment at the completion of her one-year probationary period.
2. The Applicant requests revision based on two grounds: (i) the proper Performance Development Plan ("PDP") review procedure was not followed by PRCM when conducting the PDP review of the Applicant's performance at the end of one year work; and (ii) the CD, PRCM did not hold independent discussions with several staff with whom she had worked.
3. According to Article IX, paragraph 1 of the Statute of the Tribunal ("the Statute"), "All decisions of the Tribunal ... shall be final and binding." Article XI, paragraph 1 of the Statute provides for one exception to this principle of finality of Tribunal judgments, whereby a request for the revision of a judgment is made permissible subject to three conditions being met:

- a) "Discovery of a new fact
- b) Which at the time of the delivery of the judgment was unknown both to the Tribunal and the party
- c) Which by its nature might have had a decisive influence on the judgment." (*Lim (No. 2)* Decision No. 81 [2007] VIII ADBAT Reports, 55, para. 2) (emphasis added).

It is also necessary that the request must be submitted within a period of six months after that party acquired knowledge of such fact. Paragraph 2 of Article XI provides that the Applicant's request shall contain the information necessary to show that the conditions laid down in paragraph 1 have been complied with, as well as giving all supporting documentation.

4. The rule provided for in Article XI "has to be construed very strictly" (see *Lim (No. 2)* supra). It is the party who requests the revision, i.e. the Applicant, who has the burden of proving that his or her request fulfills these conditions.

5. The Applicant essentially repeats the arguments already put forward before the Tribunal. She argues that she has the voice recording of the meeting held on 17 November 2009. However, she cannot seek to introduce this as a new fact since she has acknowledged "I have kept the voice record on this meeting" and hence it was in her possession well before her Application of 2011. As held in *de Alwis (No. 2)* Decision No. 66 [2004], VI ADBAT Reports, p. 35, para. 17, "[w]hat the Applicant is asking the Tribunal to do is to review its decision with which [the Applicant] is not satisfied, on the basis of the same facts and arguments, by alleging mistakes of law and mistakes in the appraisal of facts, which are not permissible grounds of review."

6. In as much as her request contains no requisite new fact as specifically required by the Statute, the Tribunal finds that her request does not fulfill the above conditions and therefore denies the request.

7. In her request for revision of the Decision, the Applicant reiterates her request that an oral hearing be held. The logical consequence of not permitting a revision of the Decision is that the Applicant's request for an oral hearing must be denied as well.

DECISION

8. For these reasons, the Tribunal unanimously decides to deny the Applicant's request for revision of its Decision in *Ms. D*, Decision No. 95 (8 September 2011).

