ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

Decision No. 100
(31 January 2013)

Srinivasan Kalyanaraman
v.
Asian Development Bank
(No. 3)

Arnold Zack, President
Yuji Iwasawa, Vice President
Lakshmi Swaminathan
Roy Lewis
Gillian Triggs

1. On 25 July 2012, the Applicant requested the "review" of the Administrative Tribunal's Decision No. 98 of 8 February 2012 in *Kalyanaraman (No. 2)* ("the Decision"). In the Decision the Tribunal dismissed the original Application challenging the decision taken by the Staff Retirement Plan Administration Committee on 24 February 2011 not to restore the Applicant's pension to the amount that it would have been, had he not commuted 50 percent thereof into a lump sum.

2. The Applicant submits that he "raise[s] … appeal for review of the decision". However, according to Article IX, paragraph 1 of the Statute of the Tribunal ("the Statute"), "[a]ll decisions of the Tribunal … shall be final and binding". There is no statutory authorization for "appeal" of a decision.

3. The Applicant repeats the arguments already put forward before the Tribunal, such as the nature of the commutation table and the discounting factors, and criticizes the Decision for its appraisal of the consequences of his seniority or skills. 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."

4. In the Reply dated 18 August 2012, the Applicant asserted that he was requesting "revision" of the Decision. Article XI, paragraph 1 of the Statute provides one exception to the principle of finality of Tribunal judgments, whereby a request for the revision of a judgment is made permissible, provided that three conditions are 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).

5. Furthermore, the request must be submitted within six months after the 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.

6. The rule provided for in Article XI "has to be construed very strictly" (see *Lim (No. 2)* supra). The Applicant, the party requesting revision, has the burden of proving that the request fulfills these conditions.

7. In the Reply, the Applicant asserted that "[t]he Applicant has now discovered a new fact (which was not disclosed by the Respondent Bank to the Tribunal) which clearly explains 1. the discounting factor used in computing lump sum commutation payments with reference to age at retirement of the commuting pensioner and 2. the portion of annual pension forgone for a specified period to compute the commutation lump sum".

8. In *Kalyanaraman (No. 2)*, the Applicant had argued that "in the commutation table … the commuted value of the Retired Participant was 1000% (i.e. 10-times the commuted portion of the pension) at Age 60…. This simply meant that life expectancy was age 70". In Decision No. 98, the Tribunal noted that the same calculation was not imposed at the other ages, and pointed out that "[the Applicant] does not give any explanation concerning the discounting factors" used in the commutation table (para. 20). In the present proceedings, the Applicant claims that "[he] did not get an opportunity to explain" the rationale of the commutation table in the original proceedings and seeks to offer an explanation, namely: "the commutation table is a statement of discounted cash flow assuming a discount rate of 3% per annum to arrive at the multiplication factor to determine the present value of annual payments forgone until the life expectancy age of 70". The Applicant portrays such an explanation or a "FORMULA used in the Commutation Table" as a "newly discovered fact", appending as a supporting document an article from *The*

Economist magazine dated 26 January 2006 which discussed actuarial theories in pension determinations.

9. The explanation given by the Applicant, however, is not a fact, but an argument. Neither is it new; it was not unknown to the Applicant at the time of the delivery of the judgment. In fact, it formed the basis or the "Assumption" of the Applicant's claims. Moreover, the article in *The Economist* had been published more than 5 years before the original Application dated 31 March 2011. The article was easily accessible to anyone, including the Applicant, when he submitted the original Application. The Applicant could have submitted it as a supporting document in the original Application, and he fails to explain why he did not do so.

10. Accordingly, the Tribunal finds that the Applicant's request for revision of its judgment does not fulfill the conditions laid down in Article XI, paragraph 1 of the Statute.

DECISION

For these reasons, the Tribunal unanimously decides to deny the Applicant's request for revision of Decision No. 98 in *Kalyanaraman (No. 2)* (8 February 2012).

Arnold M. Zack

/s/
President

Yuji Iwasawa

/s/
Vice President

Lakshmi Swaminathan

/s/
Member

Gillian Triggs

/s/
Member

Roy Lewis

/s/
Member

Cesar L. Villanueva

/s/
Executive Secretary

At Manila, 31 January 2013.