

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 11
(8 January 1996)**

**Sutanu Behuria
v.
Asian Development Bank
(No. 2)**

**R. Gorman, Vice-President
T. Sawada
B. Stern**

1. The Applicant is a former professional staff member of the Asian Development Bank ("Bank" or "Respondent"), who was appointed to the position of Programs Officer, Level 4, in 1991. When his Manager prepared the Performance Evaluation Report ("PER") evaluating the Applicant's performance during the twelve months that ended in March 1994, he graded the Applicant in column 2 (performance that meets requirements) rather than in column 1 (performance that exceeds requirements) as to three out of nine items of the checklist of the report. The overall rating given to the Applicant was C2 rather than C1. The Applicant was dissatisfied with such rating and resorted to the grievance procedure of the Bank claiming "bias" on the part of the Manager. In the course of the grievance procedure, he also asserted that he was entitled to payment for "additional work." The case was eventually presented to the Appeals Committee which declined jurisdiction, finding that the Applicant's claims lacked merit. Having been unsuccessful, the Applicant in May 1995 filed an Application with this Tribunal.

2. The Applicant seeks the following relief:

- a. the checklist items on his PER be upgraded as requested, namely, from column 2 to column 1 as to the three items;
- b. the overall rating be upgraded to C1 and the consequent salary increase be made;
- c. payment be made to him at the average salary of a Level 5 Officer for the period he worked as Senior Executive Officer;
- d. payment be made to him for the period he worked as Economist for Kazakhstan;
- e. Compensation of one year's salary be made for the anxiety, stress and mental agony he allegedly had to endure; and
- f. Compensation "to the tune of \$10,000" be made for the time and effort involved in preparing the appeal.

In connection with these demands, he asserts that, in the PER exercise,

- a. there was bias on the part of the Manager;
- b. the Director, Programs Department (East) ("PED"), failed to exercise his responsibility; and

c. there was failure to follow due process.

3. Decisions with respect to the evaluation of staff members' performance are within the discretion of the Bank (see Tay Sin Yan, ADBAT Decision No. 3 [1994], para. 30). Such discretion, however, is not unlimited and the Tribunal must ensure that the exercise by the Bank of its discretion is not arbitrary, discriminatory, unreasonable, improperly motivated, or adopted without due process (see Lindsey, ADBAT Decision No. 1 [1992], para. 12).

4. The three checklist items as to which the Manager graded the Applicant in column 2 rather than column 1 were "Planning and Organizing Work", "Quality, Accuracy and Timeliness of Work" and "Teamwork." The Applicant maintains that the Manager harbored bias and that the grading in column 2 on the above three items resulted from such bias. The Applicant attempts to explain why he came to believe that the Manager was biased.

5. As to "Planning and Organizing Work", the Applicant states:

"[F]or four months of the year, I was called upon to perform the duties of Senior Executive Officer (a Level 5 position) and for about two months of the year, I was performing 3 jobs at the same time"

He goes on to state: "These responsibilities were assigned to me by Director, PED which Manager, PE2 [Programs Department (East), Division East 2], denigrated by stating that they were of my 'own seeking'." The Applicant seems to assert that there was bias because the Manager denied the fact that the management had requested him to take up the extra responsibilities and because due credit was not given to his contribution. According to the Applicant, the Director, PED, was also biased because the Director told the Applicant, as to the Applicant's assignment as an economist for Kazakhstan, that the work was not additional to his normal work for Indonesia and that there should be no double counting.

6. It is the conclusion of the Tribunal, however, that performing some extra duties is usually expected of the Bank's staff. Whether or not some extra work was of one's "own seeking" is immaterial. Although the Appellant argues that the rating given to him is unjust because he performed some extra work and that he would have been given a higher rating had there not been bias, the Tribunal is not persuaded by that argument.

7. With respect to "Quality, Accuracy and Timeliness", the Applicant claims that he always delivered his work on time. He then refers to an occasional paper authored by him, and accuses the Manager for having kept his paper deliberately for two months as the result of which it could not be recognized as his achievement. On this delay, the Manager explained that "other pressing items of work" had prevented him from studying the paper earlier. Moreover, the Manager's evaluation of the paper was by no means negative. He wrote:

"This is operationally a useful paper as it sets out the system of land administration in Indonesia, highlighting the inadequacies and peculiarities of the system The matter for consideration is how best to make its contents known to Bank Staff working in Indonesia."

The Applicant accuses the Director, PED, for lack of directorial responsibility because he had found the Applicant's paper mediocre despite the fact that the paper was later accepted for publication after review by four persons.

8. The Tribunal concludes, with respect to the evaluation by the Applicant's Manager, that his assessment of the Applicant's paper was on the whole quite sympathetic, rather than negative, and undermines any claim of bias. With respect to the Director, given the necessarily subjective nature of assessments about written work, a less than enthusiastic evaluation by him cannot in itself be properly characterized as a lack of directorial responsibility.

9. With respect to "Teamwork" on the PER, the Applicant condemns the Manager for his statement that the Applicant's colleagues had felt "threatened." The Applicant maintains that the Manager acted against the Guidelines for the Performance Evaluation of Professional Staff because the Applicant was not told of such remarks. The Guidelines provide:

"Performance evaluation should be a continuous process in which the immediate supervisor regularly provides feedback to the staff member on his or her performance. The annual performance evaluation is intended to reinforce this feedback mechanism."

Moreover, the statement of the Manager -- that the Applicant's colleagues felt threatened -- was characterized by the Applicant as a lie.

10. The Tribunal notes that "Teamwork" is defined in the PER as

"the degree to which the Ratee effectively interacted, cooperated and coordinated with other staff in the work units in the Bank in reaching Bank objectives."

It entails a delicate evaluation of many factors, including the problems that the Applicant apparently had in his interrelations with his colleagues. This was fully explained to him in the narrative portion of the PER which was endorsed not just by his immediate supervisor but also by his Department Director and Deputy Director. The Tribunal finds no evidence of bias.

11. It is true, as the Applicant says, that prejudice is usually concealed and its existence has to be established by inference. Yet, in the view of the Tribunal, the allegations of the Applicant are not sufficient to establish bias or lack of responsibility on the part of his Manager or the Director with respect to the three items of the PER. The Applicant has, basically, asserted his disagreement with several of the Respondent's assessments of his performance; but this cannot take the place of proof of discrimination or bias, which the Tribunal finds to be absent from the record.

12. As to the overall rating, the Tribunal notes that such rating is intended to be both comprehensive and comparative, i.e., it takes into account a multiplicity of performance factors as well as the performance of other staff members doing comparable work. The following joint comment of the Manager, Deputy Director, and Head of the Department in the 1993-1994 PER needs to be quoted at length:

"Ratee has shown considerable ability to competently handle a range of assignments from administrative tasks to research. His initiative in developing two papers relevant to operational issues is especially noteworthy. Ratee's effectiveness and contribution to Department's activities will substantially further increase, with greater attention to interpersonal relationships, and the gentle art of persuasion and consensus-building while working in teams. Ratee's work would benefit also from his setting himself higher standards in pursuing them with patience than settling for less. Recent change in

Ratee's country assignment would provide the Ratee challenging opportunities to fully realize his potential."

While this observation gives the Applicant credit for his considerable ability to handle various assignments and for the papers written by him, it expressly elaborates on the Applicant's shortcomings in handling personal relations. On the rating scale of his 1993-1994 PER, the number of column 1 ratings he obtained was twice as many as the number of column 2 ratings. This, however, does not require the raters to award an overall rating of C1 to the Applicant. It is possible that the evaluators made relatively great account of the Applicant's shortcomings in his handling of personal relations. Moreover, the overall rating on PER reflects a comparative evaluation of a staff member's performance in light of the quality of the work done by all of his departmental co-workers. The Applicant has failed to establish that, quite apart from his service viewed in absolute terms, his overall performance satisfies the high comparative standard necessary for the top rating. Finally, the evaluation was based not on the opinion of one individual but on the views of three persons. The Tribunal cannot order setting aside of the evaluation which it finds not to be unreasonable.

13. The Applicant contends that due process was not followed in the PER exercise and gives four reasons. First, on "Teamwork", the Manager relied on the adverse statement by a colleague related to the previous assessment year. Second, although assessment should be a continuous process, the Manager during the assessment year did not inform the Applicant of the views allegedly held by his colleagues. Third, the Manager did not give the Applicant adequate opportunities to discuss his rating on "Quality, Accuracy and Timeliness" and "Planning and Organizing Work." Fourth, before the completion of the evaluation process, Applicant asserts that the Manager stated that the Applicant's supervisors "had decided not to give" a C1 rating to the Applicant.

14. As to the first point, the reference to the comments of a colleague regarding an earlier year was related merely to illustrate the Applicant's continuing difficulty in working successfully as part of a team and appears not necessarily to have influenced directly the 1993-94 PER. On the second point, the fact that the evaluation is a continuing process does not require the Manager, from time to time before the annual evaluation, to call the attention of the ratee to what had been said about the ratee within the department. As to the third point, the Applicant in Attachment 1 to the PER refers to the discussions he had with the Manager, PE2, after completion of the first draft of Sections 2.1 (Performance Checklist) and 2.2 (Narrative Assessment by the Rater) of the PER, and this shows that the Applicant did have an opportunity to discuss his rating, which in fact led to a partial revision of the draft by the Manager. As to the fourth point, the Tribunal is unable to ascertain whether the Manager's utterance improperly manifested prejudice or merely apprised the Applicant of a tentative assessment, so that it is not possible for the Tribunal to conclude that there was denial of due process.

15. In passing, however, the Tribunal wishes to interject the following observation.

As discussed above, in claiming absence of due process, the Applicant stated that the Manager during the assessment year did not call the attention of the Applicant to what were believed to be shortcomings in the way the Applicant associated with his colleagues. It was brought up for the first time when the PER was being prepared. The Respondent argues that "there is no requirement that a supervisor must call to the attention of a staff member each deficiency in job performance at precisely the time such deficiency is manifested While it is true that the performance assessment is an ongoing process, failure to provide explicit performance assessments on a continuous basis does not result in the formal evaluation at year's end being

rendered procedurally deficient." Certainly a supervisor need not inform each prospective ratee of disagreeable remarks made within or without the department each time such remarks arouse the supervisor's attention. Even though it does not make the evaluation process legally deficient, to call the prospective ratee's attention to such remarks, or to any incidents reflecting adversely on performance, for the first time at the discussion of the PER, is not a thoughtful approach, particularly if the shortcoming was of such nature that it might affect the PER at the end of the year. In any community, including the work place, something more than what is legally correct is desirable. Under some circumstances, lack of thoughtful consideration can be viewed as verging on abuse of discretion or denial of due process.

16. With respect to the Applicant's claim for compensation for his temporary service as Senior Executive Officer (a Level 5 position) and as Economist for Kazakhstan, he fails to demonstrate that the Bank customarily awards extra compensation for such service.

As noted already in connection with the Applicant's claim concerning one of the checklist items, "Planning and Organizing Work", performing extra work appears to be what is normally expected of the Bank's staff. The Personnel Handbook for Professional Staff states:

"3.7 Working Hours and Official Holidays

The Bank's normal working hours are 8:00 am to 4:30 pm, Monday through Friday. It needs to be recognized, however, that, as for all executives and senior professionals, your task may involve working outside normal hours and outside the five-day working week.

It is not the Bank's policy to pay you for this time; rather, it is regarded as part of your professional commitment."

Although this refers only to working outside normal business hours, it is reasonable to hold that the principle of not making additional payment would apply also to the handling of work additional to one's principal responsibilities. The Tribunal endorses the position that was articulated by the Appeals Committee in this case:

"It is not an infrequent occurrence in the Bank for a staff member to be the officer-in-charge of a division or even a department. It is also a common practice for professional staff to carry out the functions of other staff when such other staff are absent in addition to their own. These are time-honored practices in the Bank and professional staff are given recognition, not financial compensation, for such extra duties. . . .

[T]he Applicant's] additional workload and any higher level responsibilities undertaken during that time were reflected in the PER under Dependability/Responsibility, where he was given the highest rating, and not in terms of compensation."

17. In view of the assessment of the Applicant's claims set forth in the paragraphs above, the Tribunal holds that the Applicant's claim must be dismissed and no compensation awarded.

Decision:

For these reasons the Tribunal unanimously decides to dismiss the Application.