

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 13
(8 January 1996)**

**Ivan L. Zimonyi
v.
Asian Development Bank**

**Mark Fernando, President
R. Gorman, Vice-President
T. Sawada
L. M. Singhvi
B. Stern**

1. Mr. Ivan L. Zimonyi ("the Applicant") joined the Bank in July 1972 as a Financial Analyst and served the Bank until his retirement as Controller on 10 October 1995. Prior to his retirement, by a memorandum dated 12 January 1995 addressed to the Director, Budget, Personnel and Management Systems Department ("BPMSD"), the Applicant asked the Bank to include his entire period of service in determining his severance pay benefits.

2. The Bank took the position that service prior to 1 May 1982 would be excluded in computing severance pay. A number of communications were exchanged between the Applicant and the Bank on that issue. Dissatisfied with the position taken by the Bank, the Applicant informed the Bank of his intention to submit his Application directly to the Tribunal, without recourse to the Appeals Committee, stating that it would be "redundant" for him to approach the Appeals Committee "[i]n view of the recent decision by the Appeals Committee to decline jurisdiction in the identical case put forward by Mr. N. Viswanathan."

3. The Applicant proceeded to file this Application contending that Administrative Order 2.05 dated 25 August 1982 which had been followed by the Bank had resulted in discriminatory and unequal treatment between employees first employed by the Bank before 1 May 1982, and those first employed thereafter. The Applicant stated that the Appeals Committee had declined jurisdiction in an identical case, and contended that it was futile for him to have had recourse to that Committee.

4. The Bank objects to the jurisdiction of the Tribunal, firstly, on the ground of non-exhaustion of internal remedies under Article II, paragraph 3(a), of the Statute of the Tribunal; secondly, on the ground of inadmissibility *ratione temporis* under Article II, paragraph 3(b), of the Statute, considering that the claim had been made thirteen years after the introduction of the severance pay scheme; and thirdly, on the ground of irreceivability, considering that the Application does not allege any breach by the Bank of the Applicant's "contract of employment or terms of appointment" as required by Article II, paragraph 1, of the Statute.

5. The only reason which the Applicant gives for not exhausting internal remedies is that his claim for the inclusion of service prior to 1 May 1982 in computing severance pay is identical, in all pertinent respects, to the claim made by Mr. Viswanathan. Having considered Mr. Viswanathan's claim, the Tribunal has held, in Decision No. 12 delivered this day, that the Bank did not act improperly in excluding service prior to 1 May 1982.

6. Accordingly even if the Bank's jurisdictional objections were overruled, and the Applicant's claim was considered on its merits, since the foundation of his case is that his claim is identical

to Mr. Viswanathan's, the Tribunal would be obliged to dismiss his Application in view of the decision in Mr. Viswanathan's case.

7. The jurisdictional issues are therefore moot, and need not be resolved, and the Applicant's claim must necessarily be dismissed.

Decision:

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