

## **ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL**

**Decision No. 16  
(13 August 1996)**

**Duleep Singh  
v.  
Asian Development Bank**

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

1. The Applicant was first employed by the Respondent on 18 December 1980, and he served until 25 August 1994, the date of his sixtieth birthday. At that time, he was employed as Senior Programs Officer in the Programs Department (West). Precisely one year before, on 25 August 1993, the Director, Budget, Personnel and Management Systems Department (BPMSD), wrote to the Applicant informing him "of the Bank's decision that your retirement from the service of the Bank will take effect on 25 August 1994, the date of your 60th birthday." The Applicant contends that the Respondent's attempt to retire him from the service of the Bank was improper and that he is entitled to compensation for lost salary and for termination pay.

2. Section 10(1) of the Bank's Staff Regulations provides:

At any time after any staff member attains the age of sixty, the Bank, and such staff member, shall have the option of terminating his service in the Bank on the payment of such appropriate pension or other retirement benefit as shall be provided in the staff retirement benefit scheme; when such option is not exercised by either the Bank or the staff member, the age of retirement will be sixty-five years.

The Applicant's principal contention is that the Respondent illegally exercised its option to terminate his service before he attained the age of 60 years. He also contends that, under the quoted Staff Regulation, the normal retirement age is 65 and that the Bank's policy of retiring all staff members at 60 is unauthorized.

3. The Tribunal must first decide whether, by notifying the Applicant on his 59th birthday of the Bank's decision that his retirement would take effect on the date of his 60th birthday, the Respondent was impermissibly exercising its option under Section 10(1) of the Staff Regulations, thereby entitling the Applicant to a termination payment under Section 12. On this issue, the Respondent asserts that the Applicant's claim is based on a misinterpretation of Section 10, and that the Bank acts consistently with that Section when it gives notice to a staff member of its decision to exercise its retirement option in advance, that decision taking effect only upon the staff member attaining the age of 60.

4. The Tribunal concludes that the Respondent did not violate Section 10 by notifying the Applicant on his 59th birthday of the effective date of his retirement one year later.

5. The material language of Section 10(1) gives to the Bank "the option of terminating" a staff member's service "at any time after [the] staff member attains the age of sixty." The Bank gave notice to the Applicant on 25 August 1993 that his retirement "will take effect" on 25 August

1994, on which date the Applicant was to become 60 years of age. Thus, although the Bank provided the Applicant with notice while he was still 59, the effect of the notice was not before he was 60. The Tribunal endorses the view of the Appeals Committee that there is a difference between giving notice of termination and the termination itself: Section 10 imposes a restriction only upon the time at which a staff member's service may be terminated and states nothing about the Bank's authority to give prior notice.

6. This interpretation of the Staff Regulations is strongly supported by the practicalities of Bank employment and its termination. There is no reason why a notice should not be given in advance of the date on which a staff member's service in the Bank is to be terminated. On the contrary, fairness requires that such a notice be given, for it enables the staff member to make advance arrangements about his personal and professional affairs upon leaving the Bank. To read into Section 10 a condition that notice of retirement may be given no earlier than a staff member's 60th birthday would lead to either of two unacceptable conclusions. Either the Bank would give such notice and make it effective within such a short period of time thereafter as severely to disadvantage the affected staff member, a result clearly not in the best interests of the staff, or the Bank would have to allow for a fairly extended post-notification time period before making the retirement effective, a result that would contradict the clear language of Section 10 giving the Bank the option to terminate service when a staff member turns 60. In sum, giving notice of retirement in advance of a staff member's 60th birthday is a rational administrative practice, not an arbitrary decision.

7. This conclusion is reinforced by the decision of the Tribunal in Viswanathan, Decision No. 13 [1996]. There, the Applicant was advised on 15 December 1994 that his retirement from the service of the Bank was to take effect on 19 June 1995, the date of his 60th birthday, and he later informed the Bank of his intention to resign effective 3 April 1995. The Tribunal concluded that the true reason for the Applicant's separation from the Bank was his resignation, in view of the fact that the Bank's option to terminate was to be "effective" and "operative" only on 19 June 1995, until which date "a contract of employment between the Bank and the Applicant would have continued to subsist" had he not voluntarily resigned. This confirms the Tribunal's present conclusion that notifying the Applicant in advance of his 60th birthday of the Bank's option to retire him on that date did not constitute a premature termination in violation of Section 10(1) of the Staff Regulations.

8. The second issue which the Tribunal must decide is whether the Bank acted consistently with the Staff Regulations in retiring him before the age of 65 without providing him with a termination payment.

9. There is some question whether the Applicant clearly raised this issue through internal Bank procedures so as to satisfy the requirement in Article II of the Statute of the Tribunal that a staff member, as a condition of applying to the Tribunal, should have first "exhausted all other remedies available within the Bank." Indeed, the Applicant acknowledged in his pleadings before the Appeals Committee:

The Appellant submits the proceedings to exercise an option should only start after the age of sixty years and thus retirement would be 'at any time within the band of years between sixty and sixty-five.' If the Respondent had followed this procedure, then the Appellant would have no cause for grievance.

All of the members of the Appeals Committee, even the dissenting member who chose to discuss this issue on the merits, underlined the fact that the Applicant had not properly

presented it. A generous interpretation of the Applicant's claims submitted to the authorities within the Bank and to the Appeals Committee would, however, suggest that he had, at least tangentially, raised it, and the Respondent has addressed the merits of the issue at length in its pleadings before the Tribunal.

10. The Tribunal need not further address the issue of exhaustion of internal Bank remedies with respect to the claim of termination pay for involuntary retirement before the age of 65, because even were this issue to be addressed on the merits, the Applicant would be unsuccessful; the Tribunal has this day decided by a majority that the Respondent has the authority under Section 10 of the Staff Regulations to exercise an option to retire staff members at the age of 60, upon paying pension and other normal retirement benefits without making additional termination payments for premature termination under Section 12. See Samuel (No.2), Decision No. 15 [1996].

**Decision:**

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