

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 20
(13 August 1996)**

**Ronald K. Chan
v.
Asian Development Bank**

**Mark Fernando, President
L.M. Singhvi
B. Stern**

1. The Applicant was employed by the Asian Development Bank (the Bank) on 12 December 1978, and rose to the post of Senior Investment Officer. The Applicant filed an Application with the Tribunal on 25 August 1995, challenging the way the Bank handled his divorce and remarriage.

I. The Facts

2. On 8 March 1994, the Applicant divorced his wife, Gresilda Mendoza (Gresilda), in Nevada, USA. The same day, he married Carolina Faustino (Carolina), also in Nevada, USA. Soon after, on 6 April 1994, the Applicant submitted an "Application for Dependency Allowance" to the Respondent's Budget, Personnel and Management Systems Department (BPMSD), wherein he designated Carolina as his spouse for the purpose of dependency allowance payments. On 13 April 1994, the Benefits Officer, Compensation and Benefits Division, BPMSD (BPCB), requested the Applicant to submit in support of his application: "(i) Divorce papers in respect of Ms. Gresilda Chan and (ii) Marriage certificate in respect of Ms. Carolina L. Faustino." The Applicant submitted the requested documents. On 21 April 1994, the Director, BPMSD, approved the deletion of Gresilda and the substitution of Carolina as the Applicant's spouse, effective 8 March 1994.

3. On 7 June 1994, Gresilda wrote the Director, BPMSD, as follows:

I would like to protest my replacement as the dependent of Mr. Ronald Chan per ADB personnel records. I am still his legal wife, since the divorce decree that he obtained is a nullity and his subsequent marriage is not valid. I have never given my consent to the divorce proceedings and I never appeared in court nor signed any papers in connection with said proceedings. The lawyer who allegedly appeared in my behalf at said divorce proceedings is totally unknown to me and I have never authorized him to represent me or sign any papers in my name. . .

I hereby reserve my right to claim pensions, insurance and other benefits that may accrue to me and my children as lawful dependents of Mr. Chan.

4. On 21 July 1994, Director, BPMSD, furnished the Applicant a copy of Gresilda's letter and added that pending resolution of the issues raised by Gresilda's letter, the Bank planned to withhold payment of any cash benefits relative to Carolina. The Respondent requested the Applicant to "provide the Bank with an initial response" to the contents of Gresilda's letter. The Applicant did not deny the lack of any notice of his divorce proceedings to Gresilda. Indeed, in a memo dated 13 January 1995 from the Manager, BPCB, to the Applicant, it was stated that:

You will recall that prior to your memo of 10 August 1994 to Director BPMSD you personally came to see me and admitted that whilst you had discussed divorce with Ms. G. Chan, she was not a party to the proceedings and did not have notice of the proceedings in the USA.

5. On 27 July 1994, the Benefits Officer ordered the Control Officer to "suspend effective 1 August 1994 payment of dependency allowance in respect of Mr. Ronald Chan's dependent, Ms. Carolina L. Faustino." Copies of this memorandum were furnished to the following: the Applicant; Carolina; Human Resources Division, BPMSD, and the Head of Security, OAGS-LS.

6. On 10 August 1994, the Applicant wrote the Director, BPMSD, in reply to his letter of 21 July 1994. The Applicant accepted that certain rights to pension, insurances and other benefits did accrue to his ex-wife, thus partly conceding the claims made by Gresilda in her letter of 7 June 1994. He also requested the Bank to accept a special arrangement whereby both Carolina and Gresilda could be designated as beneficiaries with equal shares, as far as the pension benefits were concerned.

7. On the other hand, the Applicant rejected the remaining part of Gresilda's contention:

"reinstatement" will only find realization if G. M. Chan is able to provide a judgment or court order that will support her allegations. The Bank must recognize under "Good Faith and Credit" policy considerations the judgment I have submitted to BPMSD. BPMSD's decision to withhold payment of any cash benefits to my dependent spouse is arbitrary and unsupported by any authority.

8. The Director, BPMSD, by his letter of 5 September 1994, informed the Applicant that:

The Bank is not in a position to accept your request to have a special arrangement whereby your "present spouse and ex-spouse, could be designated as beneficiaries with equal share." However, issues related to permitting such an arrangement in the Staff Retirement Plan may be reviewed in due course. In any event the particulars of such financial arrangements are quite often settled amongst the parties.

9. On 4 October 1994, the Applicant sent the Head, OAGS-LS (Head of Security), a memorandum requesting that Gresilda's Bank I.D., which enabled her to enter the Bank's premises, be retrieved in order to prevent any accident or injury from being inflicted on the Applicant or Carolina. The Applicant related that:

[Gresilda] has been quite disruptive inside and outside my office, creating a scene, talking loudly and shouting crude remarks.... Last Wednesday, ... she came to my office and began shouting at me ... and was using objects from my desk to throw at me and also tried to hit me. It was a very traumatic experience for me....

10. The next day, on 5 October 1994, the Applicant filed an appeal with the Appeals Committee for payment of dependency allowance, home leave benefits and all applicable benefits to his lawful spouse, Carolina. Following the Applicant's submission of this appeal, the matter was referred on 11 October 1994 to the General Counsel for consideration. The opinion given on 26 October 1994, by the General Counsel can be summarized as follows:

- a. The decree of divorce (dated 8 March 1994) issued by the Clark County of Nevada between Mr. Ronald Chan and Ms. Gresilda M. Chan is valid and the Bank should act accordingly and recognize the divorce; and
- b. In response to the letter of 7 June 1994 from Ms. Gresilda Chan, the Bank should respond that it is in possession of a Decree of Divorce which in accordance with the laws of Nevada is a legally valid document, as well as a Marriage Certificate confirming the marriage between Ronald K. Chan and Carolina L. Faustino, and that the Bank on the basis thereof has no alternative but to acknowledge the change in the dependency status of Ms. Gresilda M. Chan.

The Respondent immediately granted all benefits due to the Applicant in respect of Carolina, with retroactive effect from 8 March 1994. Thereupon, the Appeals Committee declined jurisdiction.

11. The Applicant then filed another claim for "damages for tangible and intangible injuries." Having exhausted his internal remedies, the Applicant filed this Application on 25 August 1995. He claims that the Respondent violated his right to due process and fair treatment by:

the withholding of payment of benefits in respect of his wife, Carolina Faustino-Chan, as well as damage caused by the insensitive and negligent (if not deliberate and malicious) publicity given by the Bank to the matter

12. It is only in the Reply that the Applicant for the first time claimed that Carolina was prevented from entering the commissary and buying duty-free items, and that the "public refusal" of access to the commissary for his spouse, was a cause of humiliation and anxiety:

The record is likewise bereft of any showing that the Applicant's wife was notified by the Respondent that her use of the Commissary was to be henceforth restricted as a result of the letter of the Applicant's ex-wife. Neither was the Applicant informed of this restriction regarding his wife. This exposed the Applicant's wife to the humiliation of being publicly barred from entering the Bank's Commissary. (emphasis by the Applicant)

13. As a result of the Respondent's violations of his rights, he seeks a monetary award for tangible and intangible damages, exemplary damages and legal costs.

14. The Respondent filed its Answer on 7 November 1995 and its Rejoinder on 28 February 1996, denying that it violated the Applicant's right to due process in temporarily withholding benefits in respect of his wife, while it was awaiting clarification from the Applicant on the status of his relationship with his former wife. Moreover, the Respondent submitted that it acted responsibly, prudently and reasonably in doing so and that, therefore, the Application should be dismissed.

II. The Applicable Law

1. The Applicant is entitled to due process and fair treatment.

15. Article II, section 1 of the Statute of the ADB Administrative Tribunal provides:

The Tribunal shall hear and pass judgment upon any application by which an individual member of the staff of the Bank alleges non-observance of the contract of employment

or terms of appointment of such staff member. The expressions "contract of employment" and "terms of appointment" include all pertinent regulations and rules in force at the time of alleged non-observance including the provisions of the Staff Retirement Plan and the benefit plans provided by the Bank to the staff.

16. The rules and regulations which guarantee to staff members due process and fair treatment in the way the Bank handles all matters relating to their employment with it are the following:

- a. Section 2.1 of A.O. No. 2.02, revised 1 November 1993, which states that the Bank shall be "guided by fair, impartial and transparent personnel policies and practices in the management of all its staff."
- b. Section 2.14 of A.O. No. 2.02, revised 1 November 1993, which explicitly mandates the Bank to "observe due process in all areas of personnel administration."
- c. Chapter 2, page 2, para. xiii of the Personnel Policy Statement in the Personnel Handbook for Professional Staff of the Bank, approved by the Board of Directors on 7 December 1980, which expressly states that:

(xiii) The Bank will observe due process in all areas of personnel administration, in particular in initiating and deciding on the involuntary or premature separation of staff from service.

2. The Applicant is entitled to benefits for a dependent spouse

17. The Tribunal considers it necessary to enumerate the benefits of the Applicant for his dependent spouse: a spouse's pension in the event of death (A.O. No. 3.02, revised 1 November 1993), a dependency allowance (A.O. No. 3.03, revised 1 November 1993), home leave travel (A.O. No. 3.05, revised 1 November 1993), access to the Medical and Dental Retainers Plans (A.O. No. 3.10, revised 1 November 1993), the possibility of coverage by the Group Medical Insurance Plan or GMIP (A.O. No. 3.11, revised 1 November 1993), the possibility of being the beneficiary of premiums from the Group Life, Accidental Death and Disability Plans (A.O. No. 3.12, revised 1 November 1993) as well as under the Workers' Compensation Insurance Plan (A.O. No. 3.13, revised 1 November 1993), the possibility of protection by the Dependents Life and Disability Insurance Plan or DLDIP (A.O. No. 3.14, 1 November 1993), benefits from medical evacuation facilities in case of emergency (A.O. No. 3.17, 1 November 1993), benefits from emergency travel costs (A.O. No. 3.18, revised 14 May 1992), access to the sports and hobby clubs (A.O. No. 3.19, 21 July 1995), and access to duty-free and commissary benefits.

18. The dependency allowance in respect of the dependent spouse is provided for in A.O. No. 3.03. It follows from Article 5 that it is the responsibility of the Director, BPMSD, to decide whether a person is a staff member's dependent spouse, in case of uncertainty.

19. An analysis of the several Administrative Orders granting benefits in respect of the dependent spouse shows that most of them make a reference to A.O. No. 3.03 on dependency allowance, for the determination of eligibility for the benefits they confer. In other words, the determination of the dependent spouse for the purpose of dependency allowance is also crucial for the granting of all the other benefits.

20. The right of access to duty-free and commissary benefits does not result from an Administrative Order, but from the Agreement between the Asian Development Bank and the Government of the Philippines regarding the Headquarters of the Asian Development Bank [Headquarters Agreement] of 22 December 1966. In Article XII, on Privileges and Immunities, Section 45 provides a list of such privileges and immunities. Some are granted to the staff member itself, while others are extended to his spouse, as shown by the following provision:

Section 45

Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for the Bank, shall enjoy the following privileges and immunities:

(a) Immunity from legal process with respect to acts performed by them in their official capacity except when the Bank waives the immunity;

...

(c) Immunity, together with their spouses, dependents, and members of their household staffs, from immigration restrictions, subject to regulations of health and security of the State and alien's registration;

(d) Repatriation facilities in time of international crisis, together with their spouses, dependents and members of their household staffs as are no less favourable than these accorded to diplomatic envoys;

...

(f) The right to import, free of duty and other levies, prohibitions and restrictions on imports, through the medium of the Bank, reasonable quantities, to be agreed upon in accordance with a procedure to be established between the Government and the Bank, of foodstuffs and other articles for personal use and consumption and not for gift or sale. (emphasis added)

The effect of this section seems to be that the duty-free privileges are granted to the staff member and not to his spouse.

21. However, Section 48 of the Headquarters Agreement provides:

All persons enjoying the privileges and immunities specified in this Agreement shall be provided by the Government with a special identity card which shall... certify that the holder enjoys the privileges and immunities specified in this Agreement.

22. The spouse of a staff member receives an ADB I.D., identifying the bearer as a dependent of an ADB staff member. It appears that the practice in the Bank is to allow the wife of a staff member holding such an I.D., to use the commissary, where duty-free items are available, even though such privilege was not specifically granted to her by the Headquarters Agreement.

III. The Facts of the Case in the Light of the Applicable Law

1. The benefits accruing to the Applicant's wife as his dependent spouse.

23. The Tribunal underlines that the Applicant's wife did benefit from some of the privileges granted to a dependent spouse, in her own capacity as a supporting staff member.

24. Moreover, the Tribunal notes that Carolina did not receive all the possible benefits that could theoretically have been enjoyed by a dependent spouse, because the Applicant decided to retain some benefits for Gresilda.

25. Finally, if the benefits due upon death, sickness and serious emergencies and the benefits to which Carolina was entitled in her own capacity as a staff member are disregarded, the remaining benefits in respect of the Applicant's spouse are: the dependency allowance, home leave travel and - resulting from continuing practice - the access to the commissary. These were all temporarily suspended after Gresilda had questioned the validity of the Applicant's new marriage.

2. The temporary suspension of dependent benefits is not a denial of due process or fair treatment.

26. In several statements, the Applicant insists on the fact that the Respondent had decided to withhold payment of benefits in respect of Carolina indefinitely. The Tribunal finds this plea unsubstantiated, both on an analysis of the Bank's position at the time the benefits were withheld and on a reference to subsequent events.

27. The Tribunal notes that in its memorandum dated 21 July 1994, the Respondent clearly indicated that it planned to withhold payment of cash benefits to the Applicant's dependent wife "pending resolution of the issues raised by [Gresilda's] letter." This shows that the withholding was only to be temporary. This is confirmed by the next paragraph of the same document in which the Respondent asked for a quick solution of this private matter:

The Bank hopes that you and Ms. G. M. Chan will soon resolve amongst yourselves the issues raised in her 7 June 1994 letter. Should this not be possible within a reasonable period of time, the Bank will advise you of the course of action that the Bank wishes to take with a view to resolving these issues. (emphasis added)

The Respondent clearly stated that it envisaged - and called for - a quick solution: in other words, it can be said that at the time of suspension, the Bank not only intended the suspension of payment of the dependency allowances to be temporary, but also hoped that this temporary suspension would be for a short period of time.

28. It is true that regardless of who was the Applicant's legal spouse at the time, the Bank could not have made any mistake, had it paid the Applicant, because it was the Applicant himself who was, and continued to be, the one and only person entitled to receive payment of such benefits, in terms of Administrative Order No. 3.03, Article 2 on Eligibility:

A regular staff member or a staff member appointed for a fixed-term of one year or more shall be eligible for the dependency allowance, in respect of dependent spouse. (emphasis added)

Likewise, Article 3.1 states:

An eligible professional staff member shall be entitled to a dependency allowance of 5 per cent of net annual salary but not to exceed \$ 3500 per annum for dependent spouse.... (emphasis added)

29. It is not in dispute that the Applicant had a spouse. The only question was whether his spouse was Gresilda or Carolina, and the answer depended on the validity of the decree of divorce.

30. It cannot therefore be accepted, as stated in the Respondent's memorandum dated 5 September 1994, that the Bank was obliged to withhold the payment of dependency allowance to the Applicant:

Pending resolution of the issues raised by Ms. G.M. Chan's 7 June letter, the Bank is obliged to withhold payment of any cash benefits to your dependent spouse....

Among the considerations for the Bank withholding any such payment is the possibility that the Bank would pay a person such cash benefits and then be informed by a court of law that the payment should have been made to another person.

Not only could the Respondent have continued to make dependency allowance payments to the Applicant but even if it had made a payment erroneously there was a procedure for recovery, set out in A.O. No. 3.03, Section 4.3.

31. The subsequent action of the Bank also shows that the measures taken were only provisional. Firstly, Carolina who was shown as the legal spouse on the BPCB's records, remained recorded as such. Secondly, after having decided to withhold payment of dependency allowance on 27 July 1994, the Respondent resumed such payment immediately after the opinion given by the General Counsel on 26 October 1994.

32. Therefore, it is the Tribunal's view that the temporary suspension of payment of the dependency allowance did not result in material damage to the Applicant.

33. In view of the fact that the Respondent's conduct has shown that the suspension of dependency status was only temporary, the Applicant attempted to assert the Respondent's responsibility on an alternative basis, for its so-called "intention":

While indeed the withholding of payment of dependency benefits to the Applicant was temporary, the intention of the Respondent was to withhold such payment on an indefinite basis. (emphasis by the Applicant)

The Tribunal finds that there is no evidence whatever to prove such an intent; and indeed any such intent is contradicted by the Respondent's subsequent conduct. In any event, there is no legal basis for the Respondent to be responsible for an "intent" that has not materialized into action.

34. In conclusion, the Tribunal finds that although the Respondent could have acted differently, the suspension of the payment of dependency benefits for approximately 3 months was not, in all the circumstances, a denial of due process or fair treatment.

3. The reactions of the Bank to the marriage of the Applicant do not constitute a denial of due process or fair treatment.

35. According to the Applicant, several actions or reactions of the Bank in relation to his marriage constitute a denial of due process or fair treatment, through the insensitive and negligent (if not deliberate and malicious) publicity given to the temporary withholding of the Applicant's dependency benefits:

- a. The fact that the Respondent belatedly sought the opinion of the Office of the General Counsel (OGC);
- b. The fact that the suspension of dependency allowance was notified to some staff members;
- c. The fact that the Respondent did not notify the Applicant that the use of the commissary by his wife was restricted; and
- d. The fact that the Respondent arrogated upon itself the judicial prerogative of determining the validity of the Applicant's divorce.

All these actions resulted in "physical suffering, mental anguish, serious anxiety, extreme embarrassment, social humiliation and besmirched reputation."

- The fact that the Respondent belatedly sought the opinion of the Office of the General Counsel is not a denial of due process or fair treatment.

36. The Applicant contends that the Respondent is responsible for having belatedly sought the opinion of the OGC, only after it received notice that the Applicant submitted his appeal to the Appeals Committee and that it should have referred the matter to the OGC at the outset.

37. The Tribunal does not consider that it was obligatory to seek the opinion of the OGC at the beginning. Nowhere is there any indication that the General Counsel has to decide on the qualification of a dependent spouse. On the contrary, Article 5 of A.O. No. 3.03 on Dependency Allowance clearly indicates the staff members responsible for the implementation of the A.O.:

5.1 The Director, Budget, Personnel and Management Systems Department is responsible for the interpretation and equitable application of this Order.

5.2 The Controller is responsible for the payment of dependency allowance in accordance with this Order.

38. This procedure has been duly followed in the replacement of Gresilda by Carolina in the records of the BPCB. On the Application for Dependency Allowance, the following decision was signed by the Director, BPMSD: "Delete Gresilda and in lieu add W (Carolina) effective 08 March 1994." Then, on 21 July 1994, the new Director, BPMSD, wrote to the Applicant informing him of his decision to withhold payment of any cash benefits to his dependent wife. The 27 July memorandum suspending payment of dependency allowance in respect of Carolina was addressed by the Benefits Officer, BPCB, to the Control Officer, also in accordance with Article 5 of A.O. No. 3.03.

39. The opinion of the General Counsel was asked when the appeal of the Applicant was filed with the Appeals Committee, as is usually the case when an appeal is filed. The fact that the Applicant was immediately thereafter reinstated in all his rights as far as his dependent wife was concerned, shows the good faith of the Respondent, rather than a denial of due process or fair treatment.

- The fact that the suspension of dependency allowance was notified to some staff members is not a denial of due process or fair treatment.

40. The letter of 21 July 1994 in which the Respondent indicated to the Applicant that it planned to withhold payment of cash benefits relative to his dependent spouse was also sent to Carolina, and to the Manager, BPCB. This is quite understandable, as one of the important cash benefits of a spouse is the spouse's pension in case of death of the staff member. This explains why the 21 July 1994 letter was sent to the Manager, BPCB, as he was in charge of the Staff Retirement Plan, and was the one who had to determine the eligibility of the person to whom a pension should be paid in case of death of a staff member.

41. The 27 July 1994 memorandum sent to the Control Officer was also sent for information to four other persons. Among those persons were the two persons mainly concerned by the decision, the Applicant and Carolina. Thus, only two other persons were informed by that note that the payment of dependency allowance in respect of Carolina was to be suspended effective 1 August 1994. One of the two persons informed was a member of the Human Resources Division, BPMSD, which department was in charge of the implementation of dependency benefits, and the other was a member of Security, which department was in charge of controlling access to the commissary. The information given was the minimum required in the interests of good administration.

42. The Tribunal cannot accept the contention that there was "undue publicity" as a result of the Bank's action. It was the conduct of the Applicant, Gresilda and Carolina that was primarily responsible for publicity.

43. Firstly, the Applicant himself gave information of the unusual situation in which he was. For example, the Manager, BPCB, was notified by the Applicant himself of his new situation: in his 10 August 1994 letter, the Applicant referred to an earlier request he had made to the Officer, BPCB, in order to have a special arrangement whereby both his present wife and his ex-spouse could share in equal parts the benefits of a pension in case he died. Also, the Security was informed of the difficulties resulting from the Applicant's divorce and remarriage, by the Applicant himself: when he reported to the OAGS - LS, the problems he faced with Gresilda, and asked the Security to take back from her ADB I.D.

44. It is also clear that the intrusions of Gresilda into the Applicant's office gave a great deal of publicity to his situation.

45. Of course, much publicity would also have been given to the Applicant's situation by his present spouse's behaviour, if indeed she had insisted on having access to the commissary, as will be discussed below.

46. It is the Tribunal's view that the notifications made by the Bank were strictly limited to the needs of the good administration of the Bank and that this very restricted communication did not amount to "insensitive and negligent (if not deliberate and malicious) publicity", as claimed by the Applicant.

- The fact that the Respondent did not expressly notify the Applicant that the use of the commissary by his wife was restricted, is not a denial of due process or fair treatment.

47. The Applicant has claimed that the failure of the Bank to notify him that the use of the commissary by Carolina was restricted, exposed his wife "to the humiliation of being publicly barred from entering the Bank's Commissary."

48. At the outset, the Tribunal wishes to mention the general context in which this issue was raised. Section 45 of the Headquarters Agreement appears to make no difference, as far as the privileges and immunities are concerned between professional staff and supporting staff, as the section uses the general word "staff." The fact that the Bank only allows professional staff to enjoy duty-free privileges may be a sensitive issue, and may well explain why the denial of access to the commissary provoked such a strong reaction from Carolina and, as a consequence, from the Applicant.

49. Both the Applicant and Carolina had received the letter of 21 July 1994, in which the Respondent had clearly indicated its policy "to withhold payment of any cash benefits to your dependent wife." They could have reasonably inferred that this included the benefit of access to the commissary. The Applicant - as well as Carolina - had also received the memorandum of 27 July 1994 suspending dependency allowance, and they were both aware that this memorandum had been sent to the Head of Security. They could have deduced very easily that one reason why this memorandum had been sent was to ask the Head of Security to prevent Carolina from entering the commissary.

50. Although the Respondent had not listed all the cash benefits that were temporarily suspended in respect of Carolina as a dependent spouse, the Tribunal considers that the information given to the Applicant and Carolina was clear enough, and that they should reasonably have understood that the access to the commissary was for the moment not open to Carolina. It is not the duty of the Respondent to restate on all occasions for its staff members what are their rights. Nul n'est censé ignorer la loi. And the Tribunal holds that the lack of precise notification cannot be considered as a denial of due process or fair treatment.

51. It seems that the Applicant claims for something more than the failure to notify, although it is not perfectly clear from the pleadings whether Carolina felt publicly barred by the mere transmittal of information to the Head of Security, or whether she was actually prevented from entering the premises.

52. Whichever is the case, the Tribunal finds that the Bank cannot be held responsible for any moral injury suffered.

53. If the "humiliation" resulted only from the notification to the Head of Security, this measure has already been considered by the Tribunal to be in conformity with good administrative practices, and does not amount to a public refusal of access, with adverse consequences to the Applicant.

54. If the "humiliation" resulted from the fact that Carolina was actually barred when she presented herself at the entrance to the commissary, then it means that, at a time which the Applicant has never specified in his pleadings, Carolina had decided - with or without the Applicant's knowledge - in spite of warnings that her dependency benefits were temporarily suspended, to present herself at the commissary. This would mean that she took the risk of

being publicly barred from entering the commissary, just to buy - to use the Applicant's own words - "a few dollars' worth of groceries." The Tribunal holds that any "humiliation" resulted primarily from Carolina's deliberate act, and that any resulting moral injury cannot be attributed to the Respondent's acts.

- The allegation that the Respondent arrogated to itself the judicial prerogative of determining the validity of the Applicant's marriage is not established and therefore there was no denial of due process or fair treatment.

55. The claim of the Applicant in this regard seems two-fold: first, that the Respondent acted ultra vires; second, that in using this undue prerogative, it disregarded the Applicant's marriage.

56. The Tribunal holds that the Respondent has no authority to review the validity of the divorce or marriage of one of its staff members. That is left to the competent authorities, ultimately, in case of dispute, a competent court of justice.

57. Therefore, it is true, as asserted by the Applicant, that the Respondent should have accorded to the documents -- decree of divorce, certificate of marriage -- a basic presumption of validity. This is in fact what the Respondent did, when it deleted the name of Gresilda and promptly replaced it by the name of Carolina. The Tribunal also notes that never has Carolina's name been deleted thereafter.

58. However, the Respondent has a duty of caution when it has to determine whether a person is a staff member's spouse, in case of uncertainty. It could be held responsible for not having exercised due diligence in case it recognizes a spouse, for example on the basis of a fabricated certificate. The Tribunal shares the view of the Appeals Committee that "[s]ince BPMSD had been charged with the responsibility of ensuring [that] benefits are administered in accordance with the Bank's policies and Administrative Orders, it needed to be reasonably assured that payments of benefits were made on the basis of correct information."

59. Therefore, once the Respondent was alerted by the letter of Gresilda of 7 June 1994 that the decree of divorce as well as the certificate of marriage might be a nullity, the Respondent had to be prudent and stay further action until more information was received. To seek information on the situation was not in any way to disregard the Applicant's marriage.

60. The Applicant claims that the Respondent acted "without affording the Applicant any opportunity to make any submission on the matter." This statement is clearly contradicted by the facts.

61. By letter of 21 July 1994, the Respondent asked for information in response to Gresilda's allegations, but in his reply of 10 August 1994, the Applicant failed to counter them.

62. Furthermore, the Respondent had admitted Gresilda's allegation that she had not been notified of the divorce proceedings. It is quite reasonable to assume that in most jurisdictions a divorce obtained without the knowledge of one of the parties, is a nullity, and the Respondent was justified in entertaining some reasonable doubt, which does not amount to an illegal disregard of the validity of the marriage.

63. The Tribunal finds that there is no evidence of any other act or omission whereby the Respondent disregarded the Applicant's marriage, as contended by the Applicant.

64. The Tribunal holds that the Respondent did not attempt to arrogate to itself the power to determine the legal validity of the Applicant's marriage, and agrees with the Respondent's contention, that "(t)he Respondent's decision temporarily to withhold dependency benefits of the Applicant (was) concerned not so much with the validity of his new marriage as with the scope of the administration of dependency benefits by the Respondent."

65. The Tribunal also holds that it is not the Respondent's prerogative to render a value judgment about the personal lives of its staff members. This was underlined by the Respondent itself, which tried to stay as much as possible outside the "turmoil" created by the Applicant's divorce and subsequent marriage. For example, in the memorandum of 5 September 1994 addressed by the Director, BPMSD, to the Applicant, the Respondent clearly indicated that it would prefer to have the issues relating to the validity of the divorce and remarriage, raised by the Applicant's ex-spouse, settled among themselves, rather than to have to intervene.

66. Finally, the Tribunal finds that when the 10 August 1994 letter was written by the Applicant, the only thing he could complain of was the suspension of the payment of dependency allowance for ten days. The language used by the Applicant was quite disproportionate to the action complained of:

The Bank's action in this regard is humiliating, defamatory and casting doubt on my character, alleging that I have committed fraud. This has caused me mental anguish and exacted profound emotional stress.

This language is already "pre-contentious", and raises some doubts about the willingness of the Applicant to clarify the issues. This gives some weight to the Respondent's contention that the Applicant attempted "to exploit a situation which in reality is purely an administrative handling of a slightly unusual situation where a staff member divorces his wife without her knowledge and remarries the same day."

67. The Tribunal recognized that the Applicant might have suffered some pain of mind. While the statement of the Director, BPMSD, of 23 February 1995 to the Applicant, to the effect that a claim for moral damages does not fall within the scope of the Grievance and Appeals Procedures, is incorrect, the Tribunal considers that, in the present case, the mental suffering of the Applicant is not the result of any denial of due process or fair treatment by the Respondent but a consequence of the personal situation of the Applicant and his ex-wife's behaviour.

Decision:

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