

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 21
(13 August 1996)**

**Carolina Faustino Chan
v.
Asian Development Bank**

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

I. Summary of the Facts

1. The Applicant was employed as a Secretary in the Project Economic Evaluation Division of the Respondent's Economics and Development Resource Center on 15 February 1982. She married Ronald Chan (Ronald), a professional staff member of the Respondent, on 8 March 1994 in Nevada, USA. This case arises from the Respondent's temporary suspension of the benefits to which Ronald was entitled in respect of his dependent spouse (the dependency benefits) upon receipt of a letter from Ronald's former spouse, Gresilda Mendoza (Gresilda), who questioned the validity of his divorce from her and his remarriage to the Applicant.

2. The relevant facts are fully set out in the decision of the Tribunal in Ronald Chan v. Asian Development Bank (Decision No. 20 [1996]) rendered this same day.

II. Statement of the Issues

1. The Applicant's claim to due process and fair treatment

3. The Applicant claims that the Respondent grossly violated her right to due process and fair treatment. In her Reply, the Applicant recognizes that while her Application "traces its roots from the Respondent's indefinite suspension of payment of dependency benefits to (Ronald), the suspension was followed by 'contemporaneous and subsequent acts' on the part of the Respondent" (emphasis by the Applicant), which violated her "own right to due process and fair treatment." The Applicant alleges that those contemporaneous and subsequent acts were exclusively directed against her and consisted of the instructions given to the Head of Security to "disregard the marital status of the Applicant", and the "trial by publicity of her marriage." The Applicant does not seek redress for the Respondent's suspension of payment of her husband's dependency benefits, but only for the disregard of her marital status.

4. A copy of the 27 July 1994 memorandum of the Benefits Officer, Compensation and Benefits Division, Budget, Personnel and Management Systems Department (BPCB), was furnished to the Head of Security. The Applicant alleges that "this inexplicable and humiliating act of the Bank could only be interpreted as an act of malice in view of the fact that the Applicant was also a member of the Bank's staff." Moreover, the Applicant contends that "in instructing its Security to disregard the Applicant's marriage, word started to get around that the validity of the Applicant's marriage was in question", "aspersions were cast on [her] character" and, as she later stated before the Appeals Committee, she felt "shame and embarrassment" in being seen "as an immoral person cohabiting with a man without the benefit of marriage." Not only was the letter sent to the Head of Security, but the Applicant alleges that she never received any information to the effect that she could not use the commissary.

Worse, the record is bereft of any showing that the Applicant was notified by the Respondent that her use of the Commissary was to be henceforth restricted as a result of the letter of the ex-wife of the Applicant's husband. Neither was the Applicant's husband informed of this restriction. This glaring omission betrayed Respondent's utter callousness to the sensitive nature of the matter. This resulted in the humiliation to the Applicant when she found out that she was publicly barred from entering the Bank's commissary. (emphasis by the Applicant)

The Applicant states that in so preventing her from entering the commissary, the Respondent "besmirched" her reputation by portraying her as a "mere concubine" of Ronald.

5. The Applicant alleges that the conduct of the Respondent caused her "sleepless nights, physical suffering, emotional distress, mental anguish and serious anxiety", and she seeks a monetary award of US\$1,000,000 to compensate her for the gross violation by the Respondent of her right to due process and fair treatment as well as exemplary damages and legal costs.

2. The Respondent's objection to jurisdiction and its denial of violation of due process or fair treatment

6. The Respondent contends that the Tribunal lacks jurisdiction to decide on the questions raised in the Application under the terms of Article II(1) of the Statute, which 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. (emphasis added)

7. The Respondent submits that Ronald's dependency allowance and other dependency benefits relate to Ronald's terms of employment in his capacity as a staff member of the Respondent and bear "no connection to the terms of employment of the Applicant."

8. The Respondent further denies that it violated the Applicant's right to due process when it furnished the Head of Security a copy of the 27 July 1994 memorandum. The Respondent also denies that it had at any time "improperly disclosed any confidential correspondence or information" relating to the marriage of the Applicant.

9. Moreover, the Respondent states that its actions "clearly evidenced the Respondent's desire to resolve the outstanding issues ... in a professional, forthright manner with consummate respect for the interests of all parties concerned."

10. The Respondent further points out that the Applicant's alleged sleepless nights, mental anguish, serious anxiety and besmirched reputation "were caused, in fact, by the obvious problems in which she found herself in relation to Ronald and his ex-spouse", and were neither caused by, nor connected to, the Applicant's employment relationship with the Respondent. Consequently, the Respondent submits that the Application should be dismissed.

III. The Tribunal's Considerations

1. The Applicant has a right to due process and fair treatment.

11. The Applicant's right to due process and fair treatment is ensured by the following provisions:

- 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 Supporting 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 Tribunal has no jurisdiction to entertain a claim that does not concern the Applicant's terms and conditions of employment with the Bank.

12. The dependency benefits relate exclusively to Ronald's terms of employment and bear no connection whatsoever with the Applicant's terms of employment. If any rights to due process were infringed, such violations would concern her in her capacity as a dependent of a professional staff member - and therefore a claim could be raised by Ronald and has been so raised - and not in her own capacity as a supporting staff member. Even if certain acts were specifically directed to her, - such as the information given to the Security in order to prevent her from entering the commissary, or a subsequent refusal of access if indeed that did happen - those acts were directed at her as Ronald's spouse, not as the staff member Carolina.

13. Even assuming that there was any undue publicity prejudicially affecting the Applicant as a staff member in respect of her reputation, the Tribunal does not consider it necessary to enter into an analysis of the events complained of by the Applicant in this case, as the Tribunal has already decided in *Ronald Chan v. Asian Development Bank* (Decision No. 20 [1996]) rendered this same day, that any "undue publicity" given to the situation of Ronald and the present Applicant was not a result of the Bank's action.

14. The Tribunal agrees with the conclusion reached by the Appeals Committee on 28 July 1995:

The main issue in this Appeal was whether or not the Bank's action in temporarily withholding Mr. R. Chan's dependent benefits was a breach of the terms and conditions of employment between the Bank and Mr. Chan. The Committee is of the view that the Bank's action did not concern the terms and conditions of the Applicant's employment with the Bank.

Decision:

The Tribunal decides unanimously that it has no jurisdiction to entertain the Applicant's claim, and therefore dismisses it.