

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 32
(6 January 1997)**

**Gayananda Cumaratunge
v.
Asian Development Bank
(No. 2)**

**Robert Gorman, Vice-President
Toshio Sawada
Brigitte Stern**

1. The Applicant was in the employ of the Asian Development Bank (the Bank) from July 1989 to June 1995 and at the time of the contested decision, he was a Benefits Officer (Level 4) in the Compensation and Benefits Division(BPCB) of the Budget, Personnel and Management Systems Department (BPMSD).
2. As in cases of other employees of the Bank, the Applicants performance as a professional staff member for the period 1 April to 31 December 1994 was to be evaluated early in January 1995. The Manager, BPCB, asked the Applicant to review the overall relative performance rating given to him and to make his comments in the blank reserved for comments by the ratee. Thereupon, the Applicant requested the Manager, BPCB, to furnish the overall performance ratings of others in his group maintaining that it was impossible to make comments without knowing the overall ratings given to others. The Manager and the Director, BPMSD, refused this request and the Applicant contended that the refusal constituted denial of due process. The Appeals Committee, characterizing his claim as frivolous, declined jurisdiction, and the Applicant, having exhausted internal remedies, now comes to the Tribunal.
3. The Applicant asks for a remedy by way of grant of compensation stating that rescission or specific performance may be inappropriate in a situation where the Applicant is no longer in the service of the Bank. Alleging violation of law on the part of the Bank, he claims compensation amounting to US\$75,000 as well as legal fees and expenses totalling US\$3,350.
4. The Personnel Policy Statement of the Respondent, incorporated in Administrative Order No. 2.02, provides that the Bank must be guided in its staff management by fair, impartial and transparent personnel policies and practices. The Applicant rests his purported entitlement to disclosure of the performance ratings of his fellow staff members on the Bank's obligation to act transparently.
5. The Bank's decision to keep confidential the overall performance ratings of individual staff members in the Applicants work group is warranted, and is not an abuse of discretion. It is a general principle of staff management that personal data in the personnel files of individual employees are confidential, in light of the employees weighty interest in privacy. The Bank has reasonably balanced that interest with the requirement of transparency in granting access by staff members to their own personal career files under Administrative Order No. 2.08, while refusing access to the personal career files of other staff members. This conforms to the established practice in other international organizations (see In re Ali Khan (No. 2) , ILOAT Judgment No. 557 (1983)).

6. In his Application, the Applicant sought, as a preliminary measure, the production by the Bank of:

- a. Documentary evidence showing the percentage of C1 ratings granted to professional staff in Levels 1-4 (Applicants grouping) in the Budget, Personnel and Management Systems Department (Applicants Department) in the 1994 Performance Evaluation.
- b. Documentary evidence showing the percentages of C1 ratings granted to professional staff in levels 1-4 in each Division in the Budget and Personnel and Management Systems Department in the 1994 Performance Evaluation.

Moreover, the Applicant has relied heavily upon the decision of this Tribunal in *Isip*, ADBAT Decision No. 9 [1996]. In the appropriate circumstances, the requirements of transparency and due process would entitle a staff member to reasonable disclosure of statistical data or other information relevant to his performance evaluation, without infringing upon the privacy interests of others. Under the *Isip* decision, for example, a staff member might need statistical information in order to challenge any virtual quota system, whether or not so described, in the award of performance ratings.

7. That was not, however, the nature of the Applicants initial claim. The *Isip* case had not yet been decided at the time of the Applicants request in January 1995, and he then requested personal information on the individual performance ratings of others in his group. It was that request which led to the refusal by the Manager, BPCB, and the Director, BPMSD, that is being contested in this proceeding. The statistical information described in paragraph 6 above was sought only, and for the first time, in the Application submitted to this Tribunal.

Decision:

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