

# ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 45  
(19 December 1999)**

**De Armas et al.  
v.  
Asian Development Bank  
(No. 2)**

**Mark Fernando, President  
Robert Gorman, Vice-President  
Martti Koskenniemi  
Thio Su Mien  
Shinya Murase**

1. The Applicants lodged this request on 22 February 1999, asking the Tribunal:
  - a. to order the Bank to implement "without further delay the aspect of Decision No. 39 [in De Armas, delivered on 5 August 1998] regarding third country tertiary education benefits" with retroactive effect from the time the Applicants initiated the grievance process on 24 January 1995, and
  - b. to revise Decision No. 39 in so far as it relates to severance pay.

## **Third Country Tertiary Education Benefits**

2. It is the policy of the Bank to provide Education Grants to partially compensate a professional staff member whose duty station is outside his/her home country ("expatriate staff member") for the additional costs involved in the education of dependent children.
3. In De Armas, Decision No. 39 [1998], IV ADBAT Reports 9 ("Decision No. 39"), the Tribunal considered the claim of 36 Filipino professional staff members that the failure of the Bank to grant them the identical benefits was discriminatory. The Tribunal held that there was no discrimination save in one respect: namely, in connection with the reimbursement of the expenses of a child's tertiary education in a third country (i.e., one which is neither the duty station nor the home country of the expatriate staff member).
4. The rationale for the reimbursement of third country tertiary education costs for an expatriate child was that it is reasonable to provide such education for a child who, having undergone a prolonged period of schooling at the duty station, would face difficulties in being assimilated back into his home country tertiary education system.
5. The Tribunal held, however, that such difficulties in assimilation are not faced by expatriate children who had received their secondary education in their home country; and that if the Bank allows reimbursement of third country tertiary education expenses in respect of such expatriate children, it must allow it for similarly circumstanced non-expatriate children (i.e., those who had received their secondary education in their home country). Accordingly, the Tribunal directed the Bank to eliminate discrimination in that respect.

6. Two of the Applicants made claims for reimbursement of third country tertiary education expenses, to which the Bank responded that the matter was still under review and that no final decision had been taken.

7. After this request was lodged, by a memorandum dated 19 April 1999 the Respondent announced that the President of the Bank had approved the provision of third country tertiary education benefits in respect of the children of Filipino professional staff with effect from 24 January 1995 (the date when the grievance process was initiated).

8. Decision No. 39 has thus been implemented to the full extent claimed by the Applicants, and an order by the Tribunal is unnecessary.

### **Severance Pay**

9. The Bank's Administrative Order ("A.O.") No. 2.05 provides for "Resettlement, Travel and Severance Pay" for a staff member upon separation. These include:

- a. a "Resettlement Allowance", for a staff member with two or more years' service, of one-half month's salary for himself, and one-eighth of a month's salary for his spouse and each eligible dependent; and half those amounts, for a staff member with less than two but more than one year's service;
- b. travel and transportation expenses of a staff member, eligible dependents, and personal and household property, in accordance with the provisions of A.O. No. 2.09; and
- c. "Severance Pay", for a staff member with five or more years' service, of a one-time lump-sum payment, equivalent to two weeks' final net salary for each year of eligible service after 1 May 1982 up to a maximum of one year's net salary for 26 years of service after that date, if the staff member resettles outside the duty station country upon separation; but only two-thirds of that amount if the staff member remains within the duty station country upon separation. (emphasis supplied)

10. In the first case, the Applicants contended that reducing severance pay by one-third, in the case of a staff member who remains in the duty station, actually singles out and discriminates against Filipino staff - who are the ones who usually remain in the duty station after separation. Since the amount of severance pay is directly related to the length of service, they argued that severance pay is remuneration for loyal and dedicated service to the Bank, and that any reduction based on the place of retirement was discriminatory.

11. The Bank replied that the deduction was applied uniformly to all staff regardless of nationality: thus, where separation occurred while serving in Manila, the deduction was applied to all staff who chose to remain in the Philippines, whether they were Filipino or not, but not applied to all staff (whether Filipino or non-Filipino) who re-settled elsewhere. The Bank submitted further that the purpose of severance pay was not to reward service but to facilitate retirement; expatriates, and all those who chose to re-settle outside their last duty station, face greater disruption and incur more expense than others.

12. The Tribunal held, in Decision No. 39, that:

. . . severance pay - although its amount is based on length of service - is not a reward for service, but a payment towards the expenses of re-settlement; that it is a legitimate

assumption that a staff member who resettles outside the duty station will incur greater expense than a colleague who remains in the duty station; and that it is not discriminatory to grant a smaller allowance to the latter. (para. 92)

13. The Applicants now seek revision of that part of the judgment "on the basis of new information that has a direct bearing on the issue." Article XI of the Statute of the Tribunal sets out its revisionary jurisdiction:

A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.

14. The Applicants rely on an e-mail message of 21 October 1998 announcing the Bank's decision to discontinue severance pay for all staff recruited after 1 January 1999. It is their contention that the basis of that decision was set out in a discussion paper, dated 27 May 1998, on rationalization of staff benefits. That paper had been issued by the Director, Budget, Personnel and Management Systems Department, to the Chair, Staff Council, for the purpose of a discussion in June 1998, and contained the following statements:

- a. Severance pay was introduced ...[in May 1982]... The purpose of the benefit, as defined at the time of formulation, was to assist staff who had stayed long with the Bank in reestablishing social and cultural ties with their respective home countries, and to mitigate difficulties experienced in resettlement. As such, the quantum of payment was based on length of service, under the assumption that cost of resettlement would be related to period of absence. Severance pay was also regarded as a means to reward longer service, with staff requiring a minimum of 5 years of service to qualify for the benefit, and the formula for payment being 2 weeks of salary for each year of service ... This benefit was initially provided to staff who settled outside the duty station, but was subsequently extended to those who also settled in the duty station, with the benefit for the latter category reduced to two-thirds of the computed amount (under the assumption that the cost of resettlement in the duty station would be lower).
- b. The rationale and need for severance pay, and the one-third deduction rule for those who settle in the duty station ... have been bones of contention in the World Bank and in the Bank for some time ... This is particularly so because there are other allowances and provisions provided to facilitate resettlement, even if the amounts for such may be deemed to be meager, relative to severance pay. (emphases supplied)

15. The Applicants contend that the statements underscored constitute "new information." They argue that:

... this new information directly flies in the face of the [Bank's] earlier argument that the purpose of the severance pay is to facilitate resettlement - which is the same argument used by the Tribunal in its decision" . This same new information firmly supports [the Applicants'] contention that severance pay was less related to resettlement and more to reward for length of service, and that any reduction in the amount based on place of resettlement or retirement is clearly discriminatory[;]

and

... in all its pleadings ... [the Bank] denied or hid the fact that "Severance pay was also regarded as a means to reward longer service ..." and that "there are other allowances and provisions provided to facilitate resettlement ..." Because of these facts unknown to the Tribunal, the Tribunal decided on the issue of the severance pay mainly on the assertion of [the Bank] that such severance pay " ... is not a reward for service but a payment towards the expenses of resettlement ... ." By their very nature, these facts, that were denied or hidden by [the Bank] and that clearly reveal the real purpose of the severance pay, would surely have a decisive influence on the judgment of the Tribunal. (emphasis in original)

16. The Tribunal rejects the contention that the fact that there were other allowances to facilitate resettlement was concealed from it. The Tribunal not only referred to A.O. No. 2.05, but expressly stated in its judgment that "[t]he Bank provides severance pay and resettlement allowance to eligible staff members leaving the Bank's employment" (para. 26). Indeed, the Applicants themselves asserted in their Application dated 30 October 1996 (as they had done throughout the grievance procedure) that resettlement after termination of service is separately covered and facilitated "by other employment benefits, such as the repatriation and resettlement allowances."

17. The Applicants' next contention is that the discussion paper had revealed a new fact: that "severance pay was also regarded as a means to reward longer service." That fact, they claim, was concealed from the Tribunal, and it firmly supports their contention that "severance pay was less related to resettlement and more to reward for length of service." They allege that the real purpose of severance pay "is primarily to reward longer service or loyalty."

18. That contention is based upon a misunderstanding of the Tribunal's conclusion (in Decision No. 39) that severance pay "is not a reward for service". The Tribunal had to deal with the Applicants' submission that the grant of severance pay (and other benefits) to expatriate staff members violated the principle of "equal pay for equal work", because, they said, the Bank should have ignored the personal circumstances of expatriate staff (namely their expatriate status) which were irrelevant. The Tribunal held that when the Bank had to determine the remuneration of staff members, the principle of "equal remuneration for work of equal value" applied, and the Bank was not required to take into account the personal circumstances of staff members. However, when the Bank had to decide what employment benefits it would grant to its staff, generally their personal circumstances were very relevant. Thus the Tribunal drew a clear distinction between remuneration for service and employment benefits.

19. On that basis, the Tribunal held that "severance pay - although its amount is based on length of service - is not a reward for service" (para. 92) (emphasis supplied), because severance pay is not remuneration commensurate with the value of the service rendered, but only a benefit to offset some of the costs of resettlement. The difference in the amount paid was no discrimination because the Bank assumed, legitimately, that a staff member who resettles outside his last duty station would incur greater expense than another who continues to stay in his duty station.

20. There is thus no inconsistency between the discussion paper and Decision No. 39. The discussion paper records that severance pay was a benefit (i.e., not remuneration); the original purpose of severance pay was to facilitate resettlement in the home country; the longer a staff

member's period of service, the longer his period of absence from home; and the longer his absence, the greater the difficulties, and the expenses, of resettlement. Accordingly, the quantum of payment was based on the length of service. When that benefit was later extended also to staff members who settled in the duty station, they were paid one-third less on the assumption that their expenses of resettlement would be lower.

21. The Applicants assume that the Tribunal's conclusion that severance pay "is not a reward for service" is contradicted by the statement in the discussion paper, that "severance pay was also regarded as a means to reward longer service." In reality, however, the two phrases - "reward for service" and "reward longer service" - do not mean the same thing. The Tribunal held that severance pay is not a "reward for service", because it is not remuneration commensurate with the value of the service rendered. Although it is not remuneration based on the value of service, it is an employment benefit; and because the amount of the benefit is based on, and increases in proportion to, the length of service, that benefit, in effect, "rewards" length of service. Thus the discussion paper relates to matters which were known to the Tribunal, and which are entirely consistent with the Tribunal's conclusion. They could not possibly have influenced the Tribunal to decide Decision No. 39 any differently.

22. Furthermore, the statement that "[s]everance pay was also regarded as a means to reward longer service" (para.14, supra) (emphasis supplied) cannot reasonably be interpreted as meaning that severance pay was "less related to resettlement and more to reward for length of service", or that its real purpose was "primarily to reward longer service or loyalty." (emphasis supplied)

23. But even assuming that the statement can be so interpreted and that it is inconsistent with the Tribunal's conclusion, it is nevertheless not a "fact", and certainly not one which might have had a decisive influence on the judgment of the Tribunal. If, when severance pay was first granted, there had been a contemporaneous statement in a document issued by or with the authority of the Bank, as to the purpose of severance pay, such a statement might perhaps have been treated as a "fact" relevant to determining the real purpose of severance pay. But the statement which the Applicants rely on appears in a document prepared more than fifteen years after severance pay was first introduced. That document is not one which can be regarded as an authorized statement of Bank policy or practice, but is only a discussion paper, setting out the views of one or more officials; and any statement therein - whether it relates to facts, opinions, problems, or issues - cannot be treated as anything more than tentative.

24. The Tribunal holds that the Applicants have failed to satisfy the conditions laid down in Article XI of the Statute.

**Decision:**

For the above reasons, the Tribunal unanimously decides to refuse the Applicants' request for revision of its judgment in De Armas, Decision No. 39 [1998], IV ADBAT Reports 9.