

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 49
(21 September 2000)**

**Patrocinio Isleta
v.
Asian Development Bank**

**Robert Gorman, Vice-President
Martti Koskenniemi
Shinya Murase**

1. The Applicant contests several elements in the Bank's decision to advertise in March 1998 for the position of Administrative Officer, Library (known as, and referred to below as, Librarian), Office of Administrative and General Services ("OAGS-LA"). The Applicant had been employed with the Bank since September 1984, and had served as a Technical Assistant, Records, Level 8; was promoted in June 1994 to the position of Senior Technical Assistant, Library (now, Senior Librarian); had served soon after, in substance, as head of the Library during a seven-month period when the Librarian position was vacant; and was further promoted in December 1994 to the position of Senior Librarian, Level 9. In all of these positions, the Applicant received excellent ratings on her performance evaluations. The Applicant holds a Bachelor's degree in Library Science, and a Master's degree in Asian Studies, both from the University of the Philippines. She retired from her Bank employment in August 1999.

2. When the position of Librarian again became vacant in March 1998, the Respondent prepared an advertisement. Listed among the duties of the position were:

Developing and implementing library policies that accord with the Bank's information requirements and internationally accepted library management practices, [and] administer[ing] the full range of library functions, including assessment of new technologies, service development and delivery, identifying and evaluating information needs.

Among the requirements that were listed for the position were:

[A]dvanced degree in library and information science or social science; minimum seven years' professional experience in a large international organization library, including supervisory experience; [and] good working knowledge of library automation, including ILS, Internet, and electronic database retrieval.

The Office of Administrative Services ("OAS"), the so-called user department for the Librarian position, embarked upon an assessment of the skills of persons already employed within the Bank - including, so the Respondent asserts, the Applicant - and decided that there were no such persons already qualified and that the position should be advertised only externally and only on North American internet sites.

3. On 12 March 1998, Budget, Personnel and Management Systems Department ("BPMSD") posted advertisements on the International Federation of Library Associations and Institutes website, and the Jobline Special Libraries Associate website. The deadline for responding to the advertisement was 31 March. The Applicant informally learned of the posting, and applied for

the position in a memorandum of 24 April 1998 addressed to the Manager, BPHR. The Respondent neither informed the Applicant of the receipt of her application for the Librarian position nor interviewed her. On 27-28 April, the person ultimately offered the position was interviewed; a decision to offer her the position was made on 30 April and communicated to her on 11 June 1998; she ultimately accepted on 6 July 1998. The Respondent asserts that the Applicant's bid for the Librarian position, although submitted well past the deadline, was given full consideration, but some doubt is cast upon that assertion by the fact that on 22 May 1998 the Vice President for Finance and Administration -- the highest ranking official in the Bank for personnel administration, and thus presumably well informed -- wrote to the Alternate Director for the Philippines: "To say it straight, her [the Applicant's] candidacy was too late. She expressed her intention after the interview of very senior and excellent candidates. It is really unfortunate because I found out that she is really excellent and appreciated."

4. The Applicant wrote to the Bank to seek further information about the status of her application on 3 June and 30 June 1998; and on 2 July, the Head, Human Resources Division ("BPHR-CS"), informed the Applicant that another person had already been offered the position. After a further exchange of correspondence, the Applicant on 4 September requested administrative review, challenging alleged irregularities in the manner in which the position was advertised and the alleged failure to give her full credit for her qualifications. After being denied relief through administrative review, the Applicant took her case to the Appeals Committee, which on 28 April 1999 recommended dismissal of her appeal. The Appeals Committee concluded that the Bank had not abused its discretion in advertising externally and in awarding the Librarian position to another; but inter alia it criticized the Bank's decision to advertise only in North America and also urged the Bank to institute a policy of acknowledging receipt of job applications.

5. The Applicant, in this application to the Tribunal, contests as an abuse of discretion the decision of the Respondent not to advertise internally the vacancy in the Librarian position, and also claims that this decision violated the Bank's administrative orders and other pertinent documents governing staff promotions and filling of vacancies. She does not deny that the selection of the present incumbent for that position was a valid exercise of the Bank's discretion and was properly motivated; as she states in her pleadings, "What she questions is the manner by which this discretion was exercised by the Respondent" (emphasis added). As remedies, the Applicant requests: that the Respondent acknowledge its failure to advertise the vacancy internally, that it compensate the Applicant in the amount of one year's salary for the lost opportunity to "compete in an open, fair, and transparent evaluation" for the Librarian position as well as for related opportunities upon her retirement from the Bank, and additional compensation for moral and mental injuries.

6. A central issue presented is whether the advertising and selection procedures utilized in connection with the March 1998 vacancy in the Librarian position complied with the governing regulations of the Respondent and was otherwise a proper exercise of the Bank's discretion. In pertinent respects, the Bank's administrative orders, at the time the position was advertised and offered, provided as follows:

Administrative Order ("A.O.") No. 2.01, para. 2.1: Subject to the paramount importance of securing the highest standards of efficiency and technical competence, recruitment and appointment of staff to ADB will be made with due regard to selection of personnel on as wide a geographical basis as possible, from among the nationals of member countries of ADB.

A.O. No. 2.02, para. 2.10: The Bank seeks to accord full and fair opportunities for eligible staff to compete for promotion to higher levels and for filling vacancies as they occur. Selection for promotion will be competitive, based on specified criteria and relative merits of eligible staff, and will be in accordance with established procedures to determine the most suitable candidate to be appointed.

A.O. No. 2.03, para. 3.2: In general, the Bank's policy is to fill positions from within and thus enable qualified staff to achieve promotion to higher position levels.

Moreover, Section 5.3.1 of the Personnel Handbook provides: "External recruitment will be resorted to when the positions are entry level positions which do not deprive existing staff of promotion opportunities"

7. The Respondent contends, and it is true, that there is no automatic requirement that position openings must be advertised internally. Of interest is that in the midst of the circumstances involved in this case - on 14 May 1998, more than two months after the Librarian position was advertised, some three weeks after the Applicant had applied for that position, and some two weeks after the position was offered to another (the present incumbent) - A.O. No. 2.03 was revised to read in pertinent part as follows:

Para. 1.4: In general, it is the Bank's policy to fill positions from within and thus enable qualified staff to achieve promotion to a higher level. For this reason, positions will generally be advertised internally.

Para. 5.1: Announcements for professional and supporting staff vacant positions shall be advertised on the Notice Board and be included in the computerized Bulletin Board for BPHR Announcements for a period of two calendar weeks.

Despite the Respondent's repeated efforts, both in administrative review and in its pleadings here, to suggest that the Applicant is wrongly relying, retroactively, on this revised administrative order, the Applicant has just as repeatedly made it clear that her reliance is not on an application of the revised A.O. 2.03 to a situation she acknowledges had largely run its course on the date of revision. Rather, she relies on the unamended A.O. 2.03, as well as on the other administrative orders as written at the time of the advertisement and job offer.

8. That unamended administrative order, although not mandating internal advertising of all open positions, explicitly states in para 3.2 that the Bank's general policy is "to fill positions from within and thus enable qualified staff to achieve promotion to higher position levels." At the least, this implies that existing staff members are to be treated fairly, should not be peremptorily disregarded in advertising and filling position vacancies, and should be given transparent consideration in that process. Indeed, such entitlements are no more than are expressly set forth in A.O. No. 2.02, paras. 2.1 and 2.14, which respectively obligate the Bank to be guided by "fair, impartial and transparent personnel policies and practices in the management of all its staff" and to "observe due process in all areas of personnel administration."

9. The question is therefore whether the failure to advertise internally in particular instances constitutes an abuse of discretion, by virtue of being arbitrary, discriminatory or carried out without fair process. In this case, the Respondent contends that, before it decided to advertise the Librarian position externally only, it examined the qualifications of staff members within the Bank and determined that none -- including the Applicant -- met the requirements of the position.

10. The Bank, in the exercise of its discretion, may indeed determine that the qualifications for a posted position are sufficiently unique or demanding that there is a need to turn to external advertising for suitable candidates. A.O. No. 2.01, para 2.2, for example, refers to "the paramount importance of securing the highest standards of efficiency and technical competence," and A.O. No. 2.03, para 3.1, directs that "[p]romotion will be based on merit and capacity to assume increased responsibilities." But before the Bank makes such a determination, it is clear from the administrative orders quoted above that it must treat staff members fairly, and that any assessment of their qualifications that is undertaken must therefore be fair in both substance and process.

11. It is the conclusion of the Tribunal that the pre-advertisement assessment of possibly eligible staff members, purportedly undertaken by the Bank in this case, fails to satisfy those requirements. There is, for example, no contemporaneous evidence in the record presented by the Bank that shows that any such assessment, let alone a full and fair one, was undertaken. It may be, as the Bank states, that there is no formal provision for committee review at such a stage; but other than after-the-fact assertions, there are no memoranda or other documents that reflect even an informal review of the qualifications of the pertinent staff members - and in particular when, by what means, and by whom such an informal review was carried out.

12. In addition, the Respondent's attempt to portray the Applicant as demonstrably lacking in the qualifications set forth in the advertisement is unconvincing. Among the requirements set forth in the advertisement posted on the internet was an "advanced degree in library and information science or social science." The Bank, in its pleadings, repeatedly emphasizes the first part of the requirement and stresses the Applicant's lack of advanced academic work in information science. But, in addition to her Bachelor's degree in library science, the Applicant was the recipient of a Master's degree in Asian Studies - something the Respondent altogether overlooks. This is surely an "advanced degree in . . . social science," and one that would appear to be particularly pertinent to a Librarian serving the Asian Development Bank. The Bank also distorts one of the other major requirements listed in the advertisement: "minimum seven years' professional experience in a large international organization library, including supervisory experience." The Bank repeatedly asserts in its pleadings - as it did in its explanatory communications to the Applicant on 13 August 1998 and 5 February 1999 - that the candidate was expected to have "experience in other multilateral organizations" (emphasis added) so as to facilitate the transition of the Bank into an electronic environment. But the advertisement did not, in its terms, require that the candidate's library experience be outside of the ADB; taken literally, and substantively, the Applicant's experience with the Bank fell clearly within the listed requirements in the advertisement that was about to be posted to the internet.

13. The Respondent's decision, therefore, to post the Librarian vacancy notice only externally, on the ground that no staff members were suitable, was based either on a misinterpretation of the clear language of the notice or upon lack of attention to the Applicant's qualifications, let alone an apparent indifference to the fact that her job performance throughout the years had been rated at the highest levels. Such treatment falls short of what is required of the Bank in its own regulations. The Bank's decision to post the Librarian advertisement only externally deprived the Applicant of a fair opportunity to apply for the position in a timely fashion. Moreover, to the extent that it may well manifest a premature and narrow assessment of the Applicant's abilities, the Bank's pre-advertisement decision could at least in theory have affected the Bank's judgment when, at a later date, it competitively evaluated the Applicant against the other candidates for the position.

14. It should be emphasized that there is nothing to prevent the Bank, when it ultimately chooses from among competitive candidates for a position such as the Librarian, from taking into account the fact that the only multinational organization for which the Applicant has worked is the ADB while another candidate has worked for some other organization, particularly one that has a library that is farther along in implementing electronic techniques; or from taking into account that the Applicant's graduate degrees are less substantial or pertinent than those of another candidate. It is presumably for this reason that the Applicant does not challenge the Bank's claim that it had validly exercised its discretion in awarding the position to the present incumbent. Weighing such qualifications of a number of candidates is at the heart of the Bank's recruitment and promotion process, which are all directed to what A.O. No. 2.02 describes as "the paramount importance of securing the highest standards of efficiency and technical competence." All that the Tribunal holds here is that it was improper for the Bank to conclude, after the position description was drafted and before it was posted, that the Applicant failed to satisfy the requirements listed there when in fact she apparently did satisfy them, at least those discussed above.

15. A related failure on the part of the Bank to satisfy the requirement of fair and transparent treatment of staff members in the promotion process concerns the consideration that appears to have been given to her application for the position, which she forwarded to the Manager, BPHR on 24 April 1998. The Respondent contends that the Applicant was given a full and fair assessment for the post after that date, so that no harm was done to her from the earlier failure to have posted the advertisement internally as well as externally, or from its later decision to award the position to another.

16. Yet there is a serious question here, given the fact that the candidate ultimately offered the post was interviewed on 27-28 April and was given the offer on 30 April. It is clear that the Applicant's expression of interest was communicated quite late in the day, well beyond the 30 March 1998 deadline for applications. It is compelling evidence that on 22 May, the Vice President for Finance and Administration, the highest ranking official for personnel matters, wrote to an Alternate Director: "To say it straight, her candidacy was too late. She expressed her intention after the interview of very senior and excellent candidates. It is really unfortunate because I found out that she is really excellent and appreciated." The failure to advertise internally the Librarian position resulted in the Applicant's learning of the posting informally which resulted in her late application which in turn apparently resulted in the Bank's failure to consider her application on the merits -- despite the Respondent's protestation to the contrary. If this is so, it is obvious that the Applicant was treated unfairly, regardless whether the job applicant who was ultimately chosen had superior qualifications.

17. The Tribunal is compelled to comment upon the curious geographic restriction that was imposed upon those outside the Bank to whom the internet advertisement was directed. The Respondent concluded that the sorts of skills and experience it sought for the Librarian position were likely to be found only in North America, and its advertisement was directed accordingly. On the record of this case, this restriction reflected an unsupported – and seemingly unsupportable – national stereotype that, as the Appeals Committee noted, discriminatorily disadvantages Europeans, Asians, and Australians, at the least. It is also an arbitrary disadvantage to the Bank, which is to be guided in its recruitment policies by a concern for merit and capability. Particularly pertinent is A.O. 2.02, para 2.1, which provides: "Subject to the paramount importance of securing the highest standards of efficiency and technical competence, recruitment and appointment of staff to ADB will be made with due regard to the selection of personnel on as wide a geographical basis as possible, from among nationals of member countries of ADB." Moreover, it may well have been that the Bank's arbitrary

predilection for a North American for the Librarian post in fact did result in an ill-considered assessment of the Applicant's qualifications.

18. The Applicant also complains of the fact that her application for the Librarian position was not formally acknowledged by the Bank, and that she was not interviewed for the position. She relies upon A.O. No. 2.01, para. 4.1, which in pertinent part provided, in its earlier form:

The Human Resources Division (BPHR) . . . is responsible for the overall recruitment process, including finalization of a position description, the wording and placement of advertisements, receipt and acknowledgment of replies from candidates and the arrangement of interviews.

It should be obvious from this language in context that the fact that this administrative order makes BPHR the Division within the Bank that is "responsible for" acknowledgments and interviews cannot reasonably be understood to require BPHR to take these actions in every instance in which it advertises a vacant position; the Bank knows how to write mandatory language when it so intends.

19. Nonetheless, acknowledgments -- which in the normal situation would take little time -- would certainly be both respectful of the applicant staff members and helpful in establishing a record of the Bank's personnel transactions. The Tribunal therefore joins the Appeals Committee in suggesting that the Bank give consideration to altering its practices in this regard. Interviews, on the other hand, are far more demanding of time and personnel, and in many instances would be predictably fruitless, even for those who satisfy the minimal experience and skills requirements set forth in an advertisement.

20. Accordingly, it is the conclusion of the Tribunal that the Bank's decision to advertise the Librarian position only externally, purportedly because no staff members could qualify for the post, was an abuse of discretion and in violation of the Bank's administrative orders and other controlling regulations. It is also likely that such decision resulted, ultimately, in a failure to give the Applicant full and fair consideration of her belated application for the position. Regardless whether the individual ultimately chosen for the post was of outstanding qualifications, and indeed might have been demonstrably more qualified than the Applicant (about which the Respondent has provided no evidence at all), the Applicant has been injured by these procedural violations. The Tribunal therefore concludes that the Bank should pay the Applicant \$20,000 for all resulting economic and moral injury. The Applicant's request for costs is denied, in view of her failure to prove that she actually incurred expenses in preparing for herself the very fine pleadings she filed in this case.

Decision:

21. For these reasons, the Tribunal unanimously decides that:

- a. the Bank shall pay the Applicant compensation in the sum of US\$20,000;
- b. the claim for costs and all other claims by the Applicant are dismissed.