

**ADMINISTRATIVE TRIBUNAL OF THE
AFRICAN DEVELOPMENT BANK**

QUORUM :	Justice Mohammed Bello,	President
	Professor Maurice Glélé Ahanhanzo,	Vice -President
	Justice Lombe Chibesakunda,	Member
	Dr. Ahmed El-Kosheri,	Member

APPLICATION N° 2000/07

C. M. R., Applicant
African Development, Respondent

Judgment of the Tribunal – delivered on Wednesday 25 July 2001

I. THE FACTS

1. The Applicant, a Gabonese National, entered the services of the Bank as a finance Officer on 10 December 1979. In 1985 he was admitted to permanent career service and rose to the rank of Senior Financial Analyst.
2. In 1997, the Bank decided that a new job classification system be put in place. The classification exercise was implemented in three phases. In the first phase, running from July to October 1997, incumbents in positions throughout the Bank's services were asked to write their position descriptions in such a manner as to clearly reflect the duties they performed. These position or job descriptions were then validated by the managers of the incumbents. In the second phase, the Respondent constituted two job Evaluation Committees (one for professional category or PL positions and the other for general services category or GS positions) consisting of representatives of staff members with external Job Evaluation Experts serving as their technical advisors. These Committees examined all the position descriptions that had been written and graded them against the Job Evaluation Standards. Job profiles were then prepared and again validated by the managers of the relevant units. In the third phase, the Steering

Committee chaired by the Vice-President CMVP and comprising senior managers, the Chairperson of the Staff Council and the lead Job Evaluation Consultant, then scrupulously reviewed the results recommended by the Job Evaluation Committees for consistency across the institution.

3. It is within this context that the position of the Applicant, identified as number 2634, was classified in the professional category at the level of PL5, or "Senior Financial Analyst". The Applicant, contesting his classification, filed an appeal with the Job Evaluation Appeals Committee.
4. He challenged the scores of 1382 assigned to him by the Job Evaluation Committee and awarded to each of the seven factors his own scores.
5. But before the Job Evaluation Appeals Committee sat to hear his appeal, he realized that he prematurely appealed before he had all the information. So he again revised his scores.
6. On 22 February 1999, he was advised by Mrs Lafoon in a memorandum that the Job Evaluation Appeals Committee would not consider his revised proposals as that would have given rise to a series of arguments in that the deadline had already passed. He was advised by Mrs. Lafoon that his appeal will be heard on 17 June 1999. He, therefore, decided to present his revised proposals before the Job Evaluation Appeals Committee orally.
7. On 17 June 1999, the Job Evaluation Appeals Committee heard his appeal, refused to consider his revised proposals, upgraded his scores to 1422, but still rejected his proposed upgrading to PL.3, thus recommending his position to still be graded at PL5.
8. This decision was communicated to the President of the Bank. The President of the Bank accepted the Job Evaluation Appeals Committee's recommendations to grade him at PL5. On 3 December 1999, the Vice-President informed him of this decision.

9. On 20 December 1999, the Applicant sought personal intervention of the President of the Bank. He wanted to meet him personally to explain what happened at the Job Evaluation Appeals Committee since the Committee refused to consider his revised memorandum of appeal. The President never responded.
10. Having exhausted all the channels, the Applicant came to the Tribunal.

II. CONTENTIONS BY THE PARTIES

11. The Applicant's Contentions: The main contention by the Applicant before the Tribunal was that the evaluation of the Applicant's position was based on the documents which he submitted on 12 October 1998, the documents which were based on an incomplete information. The Applicant argued that the Financial Analyst profile mentioned as Annex to the rejoinder dated February 1999 marked "draft", only dealt with 12 professionals. The Financial Analyst position was not mentioned. Annex 5, which was undated and had no reference number, had 24 professionals including that of the financial analyst. So that means that in reality Annex 5 was not submitted to the Job Evaluation Appeals Committee.
12. The other points raised by the Applicant in his written application, which were not orally submitted to the Tribunal but which the Applicant nonetheless invited us to consider, are summarized as follows:
 - i The Job Classification Officer, Mrs Lafoon, was not present at the Job Evaluation Appeals Committee's proceedings and as such the report submitted was riddled with errors and inconsistencies.
 - ii. The Appeal procedures were improper as the Technical Adviser Mrs Flynn exercised undue influence over the proceedings.
 - iii The classification of the Applicant's position did not reflect the weight, difficulties and complexity of his position, nor the level of his competence. There was no in -depth analysis of the job profile.

- iv On equality, that the Bank did not exercise the principle of the equality because according to him his colleagues in other departments, for instance, Mr. S. (Education Expert) and Mr. B. (Country Economist), whose job content and complexity were the same as his and who were originally graded as PL5, were reclassified PL4 even before they appealed.
13. Consequently the Applicant urged the Tribunal to order re-evaluation of his position to level PL3.

III. THE RESPONDENT'S RESPONSE

14. The Respondent in response argued that the classification challenged by the Applicant was based on the classification system evaluated by the Bank in a painstaking effort. They, through evidence of the witnesses called by the Applicant, emphasized the distinction between the exercise of classification of positions and the assessment of the performance of an incumbent of a position. They contended that the classification exercise entailed working out job profile, job responsibilities and the importance of a position to the Bank, which exercise was different from assessing the performance of an incumbent to a position. Citing the UN Administrative Tribunal decision in *Moserl* restated in paragraph 5.3 of the Presidential Instruction 004/98 they argued that the classification of the position is totally dependent on the nature and complexity of the duty of an assignment. It is dependent on the content, weight and complexity of that given position. It has nothing to do with the assessment of the performance of an incumbent of that position. This exercise of job classification was done by classification experts who were objective and independent. The Job Evaluation Appeals Committee had obtained the necessary information and took into account the multi-sectoral aspect of the financial analyst.

¹ UNAT- judgment n° 338 (1987) p.162

15. On the alleged discrimination they argued that the fact of pointing out that certain divisions proposed to recruit Financial Analyst in Grade PL4, or to convert a Financial Analyst position into PL4 for recruitment, did not amount to discrimination against the Applicant. In effect, the job profile provided actually for the Financial Analyst, from Grade PL5 to PL3, four positions. This classification was dependent on the job content, weight and complexity of the position. The differentiation between the position of financial analyst PL5 and PL3 clearly stemmed from the job profile in case of the employees of the Bank as described in a document entitled "Occupational Profile Financial Analyst", even though it was undated. The Applicant was given this document in the convocation to the Job Evaluation Appeals Committee. The Applicant was therefore graded appropriately in PL5 as his own proposed scores would have brought him to a grade higher than that of his immediate supervisor.
16. They also stated that it was not appropriate for the Applicant to compare himself to Mr. S. (Education Expert) and Mr. B. (Country Economist) because they had different assessments, in view of their different job content, weight and complexity. Accordingly, it was pointed out that the comparison between the Applicant and the others was misconceived, as such comparison would only be possible if the Applicant had established before the Tribunal that functions and the complexity of the job of Financial Analyst were identical to Mr. S.'s and Mr. B.'s. They explained that within the Bank it is allowed for employees to apply for vacant positions of a high grade or even to change one's position to another of a high grade.
17. On the question of fairness, their contention was that the Job Evaluation Appeals Committee acted properly in rejecting the amended documents filed in April 1999 because, according to them, the rules did not allow for such amendments to the documents to be filed later, considering the dead-line stipulated for submitting an appeal. However, they pointed out that the rejection by the Job Evaluation Appeals Committee, to consider the amended documents filed in April 1999, did not prevent the Applicant from developing his arguments orally, and meeting the full description of his job to the Job Evaluation Appeals Committee when it sat on 17 June 1999. He was present at this meeting.

18. On the question of abusing the discretionary powers by the Bank's President, they argued that the Applicant did not show any excesses in implementing this classification process. They submitted that in order to succeed the Applicant must satisfy the Tribunal that there was an abuse in exercising these discretionary powers as per established International administrative law. The President is the final arbiter for such matters. He is not bound to accept any recommendation from the Evaluation Committee nor from the Appeals Committee. They also submitted that the Bank had a right to amend a text of the working conditions as long as it respected the acquired rights of members of staff (grandfathering). It was also argued that, in general, each organization has in principle the power to change or amend rules governing labour relationships.
19. They submitted that the rules governing job classifications were different from the process of assessing staff performance. These two processes were being carried out in the Bank simultaneously.
20. On the allegation against Mrs Lafoon and Mrs Flynn they denied these allegations and argued that these two ladies were experts in their own field and were invited to assist.

IV. THE PROCEEDINGS.

21. In the present case, oral hearing was held on 12 April 2001. During the hearing two witnesses, Mr. Ehounou and Mr. Ogunjobi, gave evidence.

V. THE LAW

22. According to a well-established general rule regularly held by International administrative tribunals, the assignment of grades to posts within the context of an operation of classification or reclassification constitutes an exercise of discretionary power. On various occasions, these tribunals have expressed their reluctance to interfere in the grading of posts, which necessarily involves the evaluation of the jobs undertaken by each staff member, the complexity of the tasks assigned to him, as well as the degree of the responsibility involved, together with whatever other pertinent factors on which the grading depends. The said evaluation could only be performed by experienced and sufficiently trained personnel.
23. According to this case law the Tribunal cannot interfere with any decision being impugned unless it was taken without authority or shows some procedural or formal flaw or mistake of fact or law or overlooks some material facts or draws a normal mistaken conclusion from the facts.

24. In the present case the Tribunal's findings are that the Applicant failed to convince the Job Evaluation Appeals Committee of such irregularities or that the decision being impugned was taken without authority. He failed to show to us that the Job Evaluation Appeals Committee's decision that was accepted by the Bank's President was tainted with any of such fatal flaws.

VI. THE DECISION

In view of these reasons given, the application is dismissed

Honorable Justice Mohammed Bello - President

Mrs. Albertine Lipou Massala - Executive Secretary

COUNSEL FOR THE APPLICANT

- Maître Bamba Oulé Diabaté
assisted by

- Mrs. Billau Kadiatou

REPRESENTATIVE OF THE RESPONDENT

- Mrs. Omérine Ninon, Representative of the Human Resources Department
(CHRM)

COUNSEL FOR THE RESPONDENT

- Mr. George Deodat Aron

assisted by

- Mr. Alfred Zebi