ABU ZAINEH  

v.  

COMMISSIONER GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES  

JUDGMENT  

Counsel for Applicant:  
Self-represented  

Counsel for Respondent:  
Anna Segall
Introduction

1. This is an application by Dr Tayseer Abu Zaineh (the “Applicant”) against the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), not to select him for the post of Vocational and Technical Education Specialist at the Wadi Seer Training Centre.

2. Pursuant to General Assembly Resolution 64/253 of 24 December 2008, the Joint Appeals Board (the “JAB”) was abolished as of 1 July 2009. Effective 1 June 2010, as set out in Area Staff Regulation 11.1, the Agency established the UNRWA Dispute Tribunal (the “Tribunal”) and all appeals pending with the JAB on the date of its abolition, including this application, were transferred to the Tribunal.

3. As a transitional measure, Article 2, paragraph 5 of the Statute of the Tribunal provides that the Tribunal shall be competent to hear and pass judgment on cases filed prior to the establishment of the Tribunal and in respect of which no report of the JAB has been submitted to the Commissioner-General.

Facts

4. Effective 23 January 1995, the Applicant was engaged by the Agency on a Temporary Indefinite Appointment as a Trade Instructor, Auto Mechanic Grade 9. Following several transfers and promotions, the Applicant occupied the post of Senior Vocational Training Instructor (Mech), Grade 12, at the Wadi Seer Training Centre (“WSTC”), at the time of the events material to the application.¹

5. On 7 May 2008, a vacancy notice was issued for the post of Vocational and Technical Education Specialist (Mechanical Trade – Automotive, Grade 16) (“VTES”) at WSTC in Amman, Jordan. The principal functions, qualifications and experience required for the post were:

¹ The Tribunal notes that the Applicant continues to work at the WSTC.
The principal function of the incumbent of this post: (A) Provides direct technical supervision and support to instructors and Senior Instructors at all UNRWA VTCs; identifies, conducts, implements and evaluates; professional and technical training needs for the instructional staff; develops training materials for in-service training. (B) Introduces, develops, revises and updates study programmes, curricula, syllabi and instructional materials (manuals, schemes of work, case studies, and assignments) for existing and newly introduced courses. (C) Reviews & updates educational technical instructions & guidelines that ensures [sic] the comprehensive running of vocational training centres. (D) Conducts market surveys and studies.

QUALIFICATIONS REQUIRED: (a) Advanced university degree in Mechanical, Electromechanical (Mechatronics) or Industrial Engineering from a recognized university. (b) Certificate or diploma showing a completion of at least one year duration in education or educational psychology or instructor training. (c) ICDL Certificate or other equivalent ICT certificate.

* * *

EXPERIENCE REQUIRED: (A) A minimum of six years experience in technical/vocational education in teaching of technical and industrial drawing subjects related to mechanical and electromechanical structures of which at least four years at senior level. … (D) Good command of English.

Desirable Qualifications: (a) PhD in Mechanical/Electromechanical Engineering or related.

6. The Agency received eleven applications in response to the vacancy notice, including one from the Applicant. The applications were reviewed based on the requirements of the post and the qualifications and experience of the applicants. Two candidates - including the Applicant - who satisfied the requirements of the post description were short-listed and called to sit for a written test on 3 July 2008. As a result of the written test, two candidates - including the Applicant - were interviewed on 20 July 2008.

7. The interview panel issued its report on 20 July 2008. The Applicant was found not suitable for the post.
8. On 30 July 2008, the decision of the panel to appoint the successful candidate was endorsed by the Human Resources Committee. On 2 August 2008, the appointment was approved by the Commissioner-General.

9. On 15 August 2008, the Applicant wrote to the Chief, Human Resources that the interview had been “totally biased”.

10. By letter dated 31 August 2008, the Human Resources Officer at Headquarters advised the Applicant that he had not been selected for the post of VTES.

11. By letter dated 15 September 2008 to the Director of Human Resources, the Applicant requested a review of the impugned decision.

12. By letter dated 29 September 2008, the Director of Human Resources replied to the Applicant indicating, *inter alia*, that the recruitment process had been in compliance with the proper procedures, that his candidacy had been given due consideration and that the decision not to appoint him had been free of any arbitrariness.

13. On 28 October 2008, the Applicant filed his appeal with the JAB.

14. On 10 June 2012, the Respondent filed his reply.

**Applicant’s contentions**

15. The Applicant contends that the selected candidate did not meet the minimum qualifications of the vacancy notice and that the selection panel was biased.

16. The Applicant requests that the Agency “give every candidate equal opportunity on the bases of meets the minimum qualification and experience given in the vacancy notice, that ensuring fair and professional criteria” [sic].
Respondent’s contentions

17. The Respondent contends that the selection process for the post of VTES was properly effected, and requests that the Tribunal reject the application.

Case Management Hearing

18. On 25 June 2012, the Tribunal held a case management hearing at the Jordan Field Office in Amman, specifically to ask the parties if they had any new and relevant evidence to submit in this case. At the hearing, the Applicant read from a two page document which the Tribunal entered into evidence as Annex 15, bringing forward no new arguments or evidence.

19. The Applicant corrected a mistake in the Respondent’s reply, i.e. the date of his appointment being 23 January 1995, not 1 March 1999. Counsel for the Respondent apologised for the mistake, however adding that this mistake does not affect the substance of his reply.

Considerations

Main Issues

Was the selection process for the post of VTES properly conducted?

20. It is important to look at the legal and administrative framework applicable in the case at bar. Area Staff Regulation 4.3 provides:

Due regard shall be paid in the appointment, transfer and promotion of staff to the necessity for securing the highest standards of efficiency, competence and integrity.

21. For the purposes of implementation of Area Staff Regulation 4.3, former Area Staff Personnel Directive A/4 Part II Rev. 6/Amend.2 (“PD No. A/4 Part II”) in effect at the material time provides, in relevant part:

4. OBJECTIVE

The Agency’s recruitment process must result in the filling of Area posts by the best candidates who are professionally qualified and
personally motivated to contribute to the achievement of the Agency’s goals and objectives.

22. Former PD No. A/4 Part II also provides for the recruitment strategy to be implemented by the Agency, the assessment of the candidates through tests when appropriate as well as by interview panels duly constituted, which have a specific mandate and an interview protocol. The interview panel’s minutes, conclusions and recommendations are signed by the panel chairperson and members and then referred to the appointing authority for decision.

23. The Tribunal would like to recall that the Commissioner-General has broad discretion in making decisions regarding appointments. In reviewing such decisions, it is not the role of the Tribunal to substitute its own decision for that of the Respondent regarding the outcome of the selection process. In other words, it is not for the Tribunal to assess the merits of the candidates for the position in question as to who was the most suitable. However, the discretion of the Respondent is not unfettered and the Tribunal will examine whether the procedure, as set out in the Staff Regulations and Rules and other relevant issuances, was followed, and whether the staff member was given fair and adequate consideration. As held by the United Nations Appeals Tribunal in Abbasi 2011-UNAT-112, paragraph 26:

The UNDT has jurisdiction to rescind administrative decisions concerning the selection of staff on certain grounds. A decision not to select a staff member may be rescinded in circumstances where he or she did not receive fair and adequate consideration, there has been any kind of discrimination or bias against the staff member, or the proper staff selection procedures were not followed.

24. When the Applicant alleges that the exercise of the Respondent’s discretionary authority was arbitrary or capricious, motivated by prejudice or extraneous factors, or flawed by procedural irregularity or error of law, he bears the burden of proving prejudice and must provide convincing evidence that the Respondent’s decision was tainted. As held by the United Nations Appeals Tribunal in Rolland 2011-UNAT-122, paragraph 26:

There is always a presumption that official acts have been regularly performed. This is called a presumption of regularity. But
this presumption is a rebuttable one. If the management is able to even minimally show that the Appellant’s candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of proof shifts to the Appellant who must show through clear and convincing evidence that she was denied a fair chance of promotion.

25. Looking at the evidence in the file, the Tribunal notes that the Applicant was one of two candidates short-listed for a written test. The Applicant took the test and was interviewed. The interview panel assessed the Applicant and found that:

He came across as mature and presented himself well. However he had difficulties in understanding and answering some of the panel’s questions. He could not convince the panel of his supervisory skills. His technical answers were mostly general and lacked substance. His long experience indicates that he has good knowledge in teaching and may be able to undertake some of the required tasks of the post in a practical sense. Also, the panel members had doubts with regard to his abilities to manage people and to lead a team. He was unable to convey to the panel any improvements he may be able to introduce. He was also not convincing in his responses.

26. The Tribunal also notes that prior to being informed on 31 August 2008 that he had not been selected for the post of VTES, the Applicant had written two weeks earlier - on 15 August 2008 - to the Chief, Human Resources that:

The questions were irritating and underestimate my qualifications and abilities. Moreover, the interview was totally biased and this affects the whole atmosphere negatively. It was clear the panel decision was taken previously not to appoint any specialist from the WSTC.

27. At the hearing, the Applicant was asked how he was able to know on 15 August 2008 that the interview was biased since he was advised of his non-selection for the post only on 31 August 2008, i.e. two weeks later. He replied that he could guess it from the attitude of the members of the interview panel none of whom, he added, had a PhD. The Tribunal would like to remind the Applicant that, in order for the Tribunal to consider any allegation made by either side, documentary evidence is required. The Tribunal will not take into account mere statements by the parties, i.e., unsubstantiated allegations, as they do not
constitute probative evidence. Accordingly, the Tribunal cannot take the Applicant’s interpretation of the attitude of members of the panel or the fact that none of them had a PhD as evidence of their bias.

28. Also at the hearing, the Applicant was asked why he had waited for nearly a month after the interview to write his 15 August letter alleging the interview had been “totally biased”. He replied that he had been busy with his doctoral dissertation, and that he did not know about the Staff Regulations and Rules and needed to inquire whether he should appeal. The Tribunal finds his explanations unconvincing, and would like to remind the Applicant that ignorance of the Regulations and Rules is no excuse.

29. The Applicant has not provided evidence - convincing or otherwise - that the Agency has not complied with former PD No. A/4 Part II with regard to advertising the post, short-listing and assessing the candidates. The Tribunal notes that eleven applications were received for the post of VTES, and two candidates including the Applicant were assessed as satisfying the requirements of the post description set out in the vacancy notice. A technical test was administered. Two candidates including the Applicant passed the test and were interviewed by a properly constituted interview panel of four persons, i.e. the Chief, Technical & Vocational and Training Division, the Head Finance Unit, the VTES Mechanical Trades and the Senior Personnel Assistant (Entitlement). The interview panel drew up a report of the interviews, identifying and assessing the strengths and deficiencies of the Applicant, as well as the strengths, qualifications and experience of the other (external) candidate against the stated post requirements as established in the vacancy notice. The report also included the panel’s unanimous recommendation of the other candidate for the post. The decision of the panel to appoint the successful candidate was endorsed by the Human Resources Committee on 30 July 2008, and was approved by the Commissioner-General on 2 August 2008. The Tribunal fails to see any impropriety, bias, error of procedure or error of law in any of the steps taken above by the Agency and, ipso facto, in the Agency’s decision not to select the Applicant to the post of VTES.
30. The Applicant also made allegations with regard to the selected candidate’s insufficient qualifications and experience as required for the post. Although it is not quite appropriate to comment on the qualifications or lack of qualifications of another candidate, for the sake of clarity, the Tribunal notes that the record confirms the selected candidate’s sufficient academic qualifications and professional experience per the vacancy notice for the post of VTES, issued on 7 May 2008. Moreover, the Tribunal notes that a PhD is not a required qualification, but instead is listed as “Desirable Qualifications”. The Applicant is reminded that the interview panel, as evidenced by the record, took into consideration not only the results of the two short-listed candidates at the written test, but also the results at the interview. The overall assessment by the panel members of the combined results found the other candidate was suitable for the post.

31. The Applicant has indicated in his application that he had sat at a written test for the same post on 26 August 2007 and that no further steps had been taken. The Applicant is reminded that any issue he has with the previous interview process is not part of the present application, and the Tribunal will not examine it.

32. The Tribunal finds that the evidence in the file confirms that the Agency has complied with its Area Staff Regulations and Rules and with the applicable staff selection procedures in the case at bar. The Tribunal also finds that the Applicant has failed to produce evidence of any lack of compliance by the Agency with its Area Staff Regulations, Rules and Personnel Directives in the selection process, and of any impropriety or prejudice on the part of the Agency in not selecting the Applicant for the VTES post.

*Is there any legal basis to the remedy sought by the Applicant?*

33. Having determined that the selection process for the VTES post was properly conducted, and that the Respondent’s decision not to select the Applicant was not tainted by error of law or by bias, the Tribunal finds that there is no basis in fact or in law for the remedy sought by the Applicant.

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2 See paragraph five above.
Conclusion

34. The Tribunal finds no merit to this application. The application is dismissed in its entirety.

(Signed)

Judge Bana Barazi
Dated this 2nd day of July 2012

Entered in the Register on this 2nd day of July 2012

(Signed)
Laurie McNabb, Registrar, UNRWA DT, Amman