CHAHROUR

v.

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

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Lance Bartholomeusz (DLA)
Introduction

1. This is an application by Wasim Chahrour (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 short-list him for the post of Administrative Officer, Relief and Social Services Department (“RSSD”).

Facts

2. Effective 15 January 2007, the Applicant was employed by the Agency as a Computer Teacher, Grade 8, at the Wadi Hawareth School, Beqaa Area, Lebanon, on a fixed-term appointment.

3. Effective 7 October 2009, the Applicant was promoted to the post of Field, Unified Registration System Administrator, Grade 11, at the Lebanon Field Office (“LFO”).

4. On 25 January 2012, the Agency advertised a vacancy announcement for the post of Administrative Officer, RSSD at Grade 14. The vacancy required inter alia:

   A. Academic and Professional

      University degree in Business Administration or related field.

   B. Experience

      Four years experience in senior administrative post. Experience should include the use and application of spreadsheet and database software.

5. A total of 304 applications were received as a result of the vacancy announcement. Twenty-two candidates were initially recommended for a written test. Following consultations with the Department of Human Resources (“DHR”), Amman, the Field Human Resources Officer, Lebanon (“FHR/O/L”) decided to invite to take a written test those candidates with relevant experience prior to completion of their bachelor’s degree because the vacancy announcement did not
specify that the work experience was limited to post university graduation experience. As a result, additional 12 candidates were invited to take a written test. The Applicant was not invited to take the test.

6. By letter dated 28 August 2012, the FHRO/L informed the Applicant that he had not been short-listed for the post of Administrative Officer, RSSD. The letter reads *inter alia* as follows:

> The professional experience stated in the vacancy announcement for the post was four years of experience in a senior administrative post. I have reviewed your application and found that you do not have the relevant experience required. Prior to short-listing any candidates, the Human Resources Office and the hiring department agree on the experience considered relevant to the post. In your application, you listed the following experience: Field Unified Registration System Administrator, Instructor, Teacher Mathematics and Computer, and System and Network Administrator. The screening of candidates was conducted by the Human Resources Office and the Relief and Social Services Program and your experience was not considered relevant to the post. As a result you were not short-listed.

7. By email dated 29 August 2012 to the FHRO/L, the Applicant asked why he had not been invited to take the written test, why other candidates were invited after the initial screening of candidates, and what the basis for evaluating external candidates’ experience was.

8. By email dated 11 September 2012, the FHRO/L responded to the Applicant’s request reiterating that his experience was not considered relevant to the post.

9. By email dated 13 September 2012 addressed to the Acting Director of UNRWA Affairs, Lebanon ("Acting DUA/L"), the Applicant expressed his concerns about the recruitment process and his exclusion from the written test and requested that his case be looked into.

10. By letter dated 21 September 2012, the Acting DUA/L responded to the Applicant’s email as follows:

> [...] In your case, the Human Resources Office and the Hiring Department considered your experience not to be relevant to the
post of Administrative Officer. In order to be fair in the screening process, the Human Resources Office went further and consulted with the IT Department on whether the duties you listed should not be considered to be purely technical, however, the original conclusion was reiterated. Accordingly, your experience was not considered relevant and you were not short-listed for the post.

I am aware that a number of candidates were initially not short-listed for the technical test until a group petition, of which you were one of the authors, requested a review of the decision and the inclusion in the recruitment exercise. The original screening that led to the exclusion of some of these candidates was based on selecting candidates who obtained the relevant experience post their university education. Based on HQ advice and since the Vacancy Announcement did not specify that the experience required should be post the receipt of the university degree, it was decided to re-screen the file and to include candidates who have the relevant experience even if it was not obtained prior the university degree. Accordingly, some of the candidates who were not initially short-listed were invited to the technical test. Your case, where your experience was not considered relevant, is not related to their case.

In relation to applying equivalency in your case, equivalency is only applied when there is no sufficient number of candidates who fully meet the educational and professional requirements for the post. In this case, HR identified 34 candidates who fully met the requirements.

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As for what constituted senior experience, this was determined prior the screening process – following consultations with HQ – that a senior administrative post was placed at Grade 10 and above. The experience of external candidates was evaluated according to their job description and post title where it showed that they held a senior administrative position.

11. By email dated 6 October 2012, the Applicant requested the Acting DUA/L to review the decision not to invite him to take the written test for the post of Administrative Officer, RSSD. In his email, the Applicant noted that:

The consultation with LFO-IT that I asked for was to only determine that my current post is not purely technical and not to judge if my experience is relevant to the post or not because my current post is technically supervised by URS until [sic] in HQ and not to IT-LFO that I do respect. Moreover, I also asked to consult RSSD with the fact that I do have senior administrative skills. I
12. By letter dated 12 October 2012, the Acting DUA/L responded to the Applicant’s request for decision review, upholding the contested decision. In his letter, the Acting DUA/L noted that:

In your case, your experience was not found relevant to the post. This was not checked only with IT but with RSSD. As I explained in my letter to you dated 21 September, screening of applications for any recruitment exercise is carried out by HR then independently by the Hiring Department. In your case, RSSD also found you[r] experience not to be relevant to the post.

13. On 11 December 2012, the Applicant filed an application with the Tribunal.

14. On 13 June 2013, the Respondent filed his reply to the application.

**Applicant’s contentsions**

15. The Applicant contends that:

(i) candidates with bachelor’s degrees who graduated in 2011 and 2012 were invited to take the test, while the Applicant with a Master’s degree was excluded. If the screening criteria was based on experience, his Master’s degree should have been considered as equivalent to three years of experience;

(ii) his nine years of experience in systems administration includes management of systems, not only the provision of technical support;

(iii) based on his current post he has senior administrative experience;

(iv) the consultation with Information Technology ("IT") Department in the LFO that he requested was limited to determining that his current post was not purely technical;

(v) RSSD was not consulted about the Applicant’s senior administrative experience;

(vi) two unqualified candidates were invited to take the test; and

(vii) there was a disagreement between the RSSD and the DHR regarding the screening of candidates and the RSSD did consider the Applicant’s experience to be related to the post.
16. The Applicant requests the following:

(i) an order to restructure the recruitment division of the DHR so that "professional people and consultants put solid backgrounds to achieve high standards of neutrality and transparency";

(ii) an order that the DHR "adapt clear criteria when considering external candidates[.] experience;

(iii) compensation for "frustration as a result of non-professional recruitment exercise that prevent[ed] [him] from the fair competition"; and

(iv) compensation for moral damages.

Respondent’s contentions

17. The Respondent contends that:

(i) the non-selection of the Applicant was proper: the selection process for the post of Administrative Officer, RSSD fully complied with the Agency’s regulatory framework; the Applicant’s candidature was given full and fair consideration; and the Agency’s decision not to select the Applicant was based on the properly formed conclusion that the Applicant did not have the requisite experience;

(ii) as there were 34 suitable candidates to be invited for the written test, contrary to the Applicant’s contention, there was no need to resort to equivalency and the Applicant’s Master’s degree was not counted towards his years of relevant experience;

(iii) the Applicant’s years of experience as a teacher and an instructor did not constitute senior administrative experience as he did not have supervisory responsibilities in these roles;

(iv) the Applicant’s current post at Grade 11 does not constitute senior administrative experience;

(v) contrary to the Applicant’s contention, there was no disagreement between the RSSD and the DHR regarding the Applicant’s case since both departments did not consider him to have the requisite relevant experience;

(vi) the Applicant has not provided any evidence that the Agency’s decision not to select him was arbitrary or capricious, influenced by
prejudice or improper motive or flawed by procedural irregularity or
correct of law;

(vii) the relief sought by the Applicant has no legal basis.

18. The Respondent requests that the Tribunal dismiss the application in its
entierty.

Considerations

19. At the outset, the Tribunal notes that the Applicant is contesting the
decision not to short-list him for the post of Administrative Officer, RSSD. The
Tribunal refers to Judgment Planas UNDT/2009/086 which provides that:

A selection process, being a decision-making process, involves a
series of steps or findings which lead to an administrative decision.
These steps may be challenged only in the context of an appeal
against the outcome of the selection process but cannot be, alone,
the subject of an appeal to the Tribunal. Only if the Applicant
contested the outcome of a selection process for a specific post (the
administrative decision), would the Tribunal be competent to hear
and pass judgment on her application as per article 2 of its statute.

20. Having in mind the above, and taking into consideration the evidence
contained in the file, the Tribunal considers that the decision the Applicant is
contesting is, in fact, his non-selection for the post of Administrative Officer,
RSSD because this was indeed the end result of not inviting him to continue with
the selection process. Therefore, as the Applicant was not short-listed to sit for the
written test, the Tribunal will review the selection process up to this stage.

Was the short-listing process properly conducted?

21. 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.

22. For the purpose of implementation of Area Staff Regulation 4.3, Area
Staff Personnel Directive No. PD/A/4/Part II/Rev.7/Section 1 ("PD/A/4/Part
II/Rev.7/Section 1") provides:
Evaluation of applications

35. After the closing date of a vacancy the Recruitment Administrator reviews the applications, and generates a long list of applicants who meet all or most of the post requirements set out in the job description and vacancy announcement.

36. The shortlist is decided by the Hiring Director in conjunction with the Recruitment Administrator via the e-recruitment system. In the case of Programme or Support Department positions in the Field, the Field Director should ensure appropriate coordination with the relevant Programme or Support Department.

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66. The paramount consideration for selection will be the necessity to secure the highest standards of efficiency, competence, and integrity...

23. The Tribunal notes 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. However, the discretion of the Respondent is not absolute and the Tribunal will examine whether the procedure, as set out in the Staff Regulations and Rules and other relevant administrative 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. (emphasis added)

25. The evidence in the file shows that the Agency has complied with PD/A/4/Part II/Rev.7/Section 1 with regard to advertising the post and short-listing the candidates. The Agency received 304 applications for the post of Administrative Assistant, RSSD. Of these, 22 candidates were initially short-listed for the written test. The evidence shows that the original screening was based on selecting candidates who had obtained the relevant experience after their university education while the vacancy announcement did not specify that the work experience would be limited to post-graduation experience. Therefore, following a group petition to review the screening exercise, the FHRO/L, in consultation with the DHR, decided to invite to take the written test those candidates who had obtained the relevant experience prior to receiving their university degree. As a result, 12 additional candidates were invited to take the written test.

26. While apparently an error occurred in the initial screening of candidates, the Tribunal notes that the Agency took steps to rectify the error prior to conducting the written test, and the Applicant did not suffer any prejudice for such an error.

27. The evidence shows that the Applicant was not invited to take the written test because the Administration properly considered that he did not have the experience required for the post as set out in the vacancy announcement. The vacancy required inter alia:

A. Academic and Professional

University degree in Business Administration or related field.
B. Experience

Four years experience in senior administrative post. Experience should include the use and application of spreadsheet and database software.

28. According to the information recorded in the Online Recruitment Information System ("ORIS") in relation to the Applicant’s academic qualifications and years of experience, the Applicant has a Master’s degree in Management and the following experience:

3[years] 7[months] Field Unified Registration System Administrator – UNRWA
2[years] 8[months] Teacher Mathematics and Computer – UNRWA
2[years] 8[months] Instructor – UNRWA
3[years] 4[months] System and Network Administrator – Mr. Atad Al Kawass

29. The Tribunal finds that the Administration was correct in considering that the Applicant’s experience as a System and Network Administrator did not constitute experience in a senior administrative post. The Applicant notes in his application that his experience in the domain of systems administration involved the management of systems and the provision of technical support. However, he did not provide any evidence that he supervised any subordinates in this role.

30. The Tribunal finds that it is within the discretion of the Administration to evaluate the Applicant’s experience and that the Agency is not at fault for having considered the Applicant’s experience in this domain as being distinct from senior administrative experience which involves the supervision of subordinates. The same reasoning applies to the Applicant’s experience as Teacher and Instructor as in these roles he did not have supervisory responsibilities. The vacancy announcement does mention that the Administrative Officer has a supervisory role in the RSSD. Therefore, experience in the supervision of subordinates was a reasonable criterion to be considered for the screening of candidates.

31. The Tribunal also finds that the Applicant’s experience as Field Unified Registration System Administrator, at Grade 11, may not qualify as senior
administrative experience. Even if it did qualify, this experience falls short of the four years of experience required by the vacancy announcement. The record shows that the FHRO/L consulted with the DHR about what is considered to be senior administrative experience. In an email dated 16 June 2012, the Officer-in-Charge of the Recruitment Section, DHR advised the FHRO/L that “senior administrative experience within UNRWA is Admin. Officer posts”. In his reply, the Respondent noted that this is “at a minimum, at the level of an administrative officer, i.e. grade 14”. The Tribunal notes that the evidence in the file contradicts the Respondent’s argument. In a letter to the Applicant dated 21 September 2012, the Acting DU/L mentioned that “[a]s for what constituted senior experience, this was determined prior the screening process – following consultations with HQ – that a senior administrative post was placed at Grade 10 and above”. While the Tribunal points out the contradicting information in the case file, it considers that the Applicant did not suffer any harm as a result of it.

32. Even if the Applicant’s experience as Field Unified Registration System Administrator was relevant for the vacant post, it remains that the Applicant did not meet the requirements for the post of Administrative Officer as set out in the vacancy announcement at the time of his application. The Applicant’s experience in that post, at the time of his application, was for a period of 3 years and 7 months while the vacancy announcement required 4 years. Therefore, the Tribunal considers that the Agency did not err in not short-listing the Applicant for the written test as he did not meet the mandatory requirements of the vacancy announcement at the time of his application.

33. The Applicant alleges that his Master’s degree should have been considered as equivalent to 3 years of experience. The Tribunal refers to paragraphs 45 and 46 of PD/A/4/Part II/Rev.7/Section 1 which provide that:

45. If an insufficient number of candidates who fully meet the post requirements remain during or at the end of the assessment process, the Hiring Director can request the Recruitment Administrator to conduct a second review of applications received to identify further potential candidates.

46. Where, as a result of a second review, applicants are identified who are potentially suitable but do not meet the post requirements
set out in the vacancy notice, the Hiring Director has the option to request an equivalency determination from the Recruitment Administrator...

34. The Tribunal notes that in the selection process at hand, where there were 34 candidates who fully met the post requirements, there was no need to resort to any equivalency. Therefore, the Applicant's argument in this regard has no basis.

35. The Applicant argues that RSSD was not consulted about the Applicant's senior administrative experience and that the consultation with IT in the LFO that he requested was limited to determining that his current post was not purely technical. The evidence shows that there were in fact consultations between the Human Resource Services Division, LFO and the RSSD in relation to the screening of candidates, including the Applicant, as demonstrated in several exchanges of emails dated 28 August 2012. The evidence also shows that the Applicant's experience was checked with IT and RSSD as mentioned in the Acting DUA/L's letter dated 21 September 2012 and in the DUA/L's letter dated 12 October 2012. Indeed, after checking his experience with IT, DHR concluded that his duties as Field Unified Registration System Administrator were purely technical. Therefore, the Applicant's allegations in this regard have no grounds.

36. The Applicant further argues that two unqualified candidates were invited to take the test. The Tribunal will not examine the merits of this argument as the Applicant does not provide any convincing evidence in support of his allegations, and this issue, in any event, did not have any impact on the outcome of his application.

37. The Applicant contends that there was a disagreement between the RSSD and the DHR regarding the screening of candidates and that the RSSD did consider the Applicant's experience to be relevant to the post. The Applicant relies on an email dated 28 August 2012 from the Officer-in-Charge, RSSD to the Human Resources Career Management Officer, Lebanon to support his argument. However, this email concerns another candidate whose administrative experience was in education and it does not serve to prove that there was any disagreement in relation to the Applicant's candidacy. The evidence, in fact, shows that both departments did not consider him to have the mandatory relevant experience.
38. In light of the above, the Tribunal finds that the decision not to invite the Applicant to take the written test was properly taken and that the Applicant has not provided any convincing evidence that this decision was arbitrary or capricious, tainted by prejudice or improper motives or flawed by procedural irregularity or error of law.

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

39. Having determined that the short-listing process for the post of Administrative Officer, RSSD was properly conducted, and that the Respondent’s decision not to select the Applicant was not tainted by error of law, procedural irregularity or by bias, the Tribunal finds that there is no basis in fact or in law for the remedy sought by the Applicant.

Conclusion

40. Given all the above, the application is dismissed.

Judge Bana Barazi

Dated this 30th day of October 2014

Entered in the Register on this 30th day of October 2014

Laurie McNabb, Registrar, UNRWA DT, Amman