Before: Judge Bana Barazi
Registry: Amman
Registrar: Laurie McNabb

ALI
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 Saber Daoud Abd-Alkareem Ali (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 Deputy Chief Field Education Programme, Jordan.

Facts

2. On 19 September 1978, the Applicant entered the service of UNRWA as a Teacher “D” in the Amman Area. In August 2007, he was appointed Area Education Officer, Grade 13, in the North Amman Area. On 1 March 2009, his post was reclassified and the Applicant was promoted accordingly from Grade 13 to Grade 15. The Applicant was later transferred to the South Amman Area. For two years, from August 2012 to August 2014, the Applicant was Acting Deputy Chief Field Education Programme (“D/CFEP”).

3. In May 2013, the post of D/CFEP was advertised, the Applicant applied, but the recruitment was later cancelled. In October 2013, the post was re-advertised and the Applicant again applied. He was short-listed, sat for the written test and was then invited for an interview on 22 December 2013. No candidate was ultimately selected.

4. In January 2014, the post of D/CFEP was advertised for a third time. The Applicant again applied to the vacancy and was again short-listed. On 17 March 2014, he sat for a written test and on 7 May 2014, he was interviewed by a panel.

5. An interview panel (the “panel”) of four persons interviewed three candidates, including the Applicant. Two panel members found the Applicant suitable for the post, however, two found him unsuitable. The other candidates were also found unsuitable. None of the candidates was ultimately selected for the post.

6. On 4 August 2014, the Applicant was orally informed by the Director of UNRWA Operations, Jordan (“DUO/J”) that he had not been selected to the post of D/CFEP.

7. On 17 August 2014, the Applicant returned to his original duty station as Area Education Officer, South Amman Area.
8. On 31 August 2014, the Applicant submitted a request for decision review of the decision not to select him to the post of D/CFEP. The Agency did not respond to the request.

9. On 21 December 2014, the Applicant filed his application with the UNRWA Dispute Tribunal (the “Tribunal”).

10. On 21 January 2015, the Respondent filed his reply.

Applicant’s contentions

11. The Applicant contends:

   (i) His qualifications fully met the requirements of the advertised post;

   (ii) His professional experience met the requirements of the post;

   (iii) He was acting D/CFEP for two years and received excellent performance feedback;

   (iv) He was encouraged to apply for the post of D/CFEP; he passed the written exam and performed well in the interview; and

   (v) His supervisor, the newly appointed Chief, Field Education Programme, was satisfied with his performance.

12. The Applicant requests:

   (i) The Tribunal to reverse the Respondent’s decision not to select him to the post of D/CFEP; and

   (ii) The Tribunal to order financial compensation for his psychological distress caused by the Respondent’s decision.

Respondent’s contentions

13. The Respondent contends:

   (i) The selection process for the post of D/CFEP was properly conducted; and

   (ii) There is no basis for the remedies sought by the Applicant.

14. The Respondent requests that the Tribunal dismiss the application in its entirety.
Considerations

Was the selection process for the post of D/CFEP properly conducted?

15. The Tribunal recalls that this was the third time the post of D/CFEP had been advertised. In fact, this advertising period attracted a total of 216 candidates: 179 external and 37 internal, 123 being female candidates and 93 being male candidates. It is also important to note that this was the second time within a six-month period that the Applicant had taken a written test and been interviewed for the same post.

16. 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.

17. In accordance with Area Staff Personnel Directive A/4 Part II Rev.7 (“PD/A4”) on staff selection, the Agency’s objective is to fill a vacant post with the most qualified candidate. PD/A4 contains clear procedures that the Agency is required to follow when selecting a staff member for employment.

18. Looking at the record, the Tribunal notes that the Agency implemented the required recruitment procedures as set out in PD/A4 that is it: 1) advertised the vacant post; 2) short-listed the qualified candidates; 3) invited them to take a written test; 4) constituted a duly qualified panel with a specific mandate comprised of the Director of Education (“DE”), the Deputy Director of UNRWA Operations, Jordan (“D/DUO/J”), the Head Field Human Resources Office (“H/FHRO”) and the CFEP; 5), which conducted personal interviews with the three candidates; and 6) made recommendations on the suitability of the candidates.

19. The recruitment report is very detailed providing the background of the three interviewed candidates as well as: 1) their performance during the interview; 2) the panel’s minutes; 3) the panel’s conclusions and recommendations; 4) the signatures of the panel members; and 5) the decision of the Field Office Director.

20. During the interview, the following key competencies were assessed: 1) technical knowledge and skills; 2) teamwork; 3) communication; 4) problem solving; 5) time management; and 6) creativity. The DE and CFEF, both of whom had worked with the
Applicant during his two-year period as Acting D/CFEP, found him suitable for the post. The other two panel members, the D/DUO/J and the H/FHRO, who had not worked closely with the Applicant, found him unsuitable for the post. The D/DUO/J and H/FHRO noted that:

Given his insight into all items relevant to the advertised position due to his current engagement some of his responses fell considerably short of expectations.

 […]

During the interview Dr. Saber did not come across as a strategic person. His answers were more superficial and lacking vision. He is getting advantage of information he has access to being acting on the position rather than his own views and ideas. He failed to demonstrate leadership skills and appeared as a follower rather than a leader.

21. The Tribunal recalls that the Commissioner-General has broad discretionary authority 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 issuances, was followed, and whether the staff member was given fair and adequate consideration.

22. As held by the United Nations Appeals Tribunal (the “UNAT”) 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.

23. In view of all the above, the Tribunal finds that the Agency conducted the recruitment process in accordance with the applicable Regulations and Rules, procedures and other relevant issuances. The Tribunal also finds that the Applicant was given fair and adequate consideration throughout the recruitment process.
Was the selection process for the post of D/CFEP flawed by procedural irregularities or error of law?

24. In Rolland 2011-UNAT-122, paragraph 26 the UNAT stated:

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. In his request for decision review, the Applicant indicated that “the post was re-advertised for the second time with no results” and that, in his opinion, this “indicates that something went wrong when no one was selected including me.” This is the only reference in the record pointing to the Applicant’s perplexity about his non-selection as well as the selection of no other candidate. In his application, the Applicant does not raise any breach of regulations or rules, and does not point to any bias, procedural irregularity or prejudice on the part of the Respondent during the recruitment process.

26. Having examined the evidence at hand, the Tribunal does not find any error of law, procedural irregularity or prejudice on the part of the Respondent when he did not select the Applicant for the post of D/CFEP. Nor did the Applicant provide any evidence of bias or procedural irregularity by the Respondent that could have flawed the contested decision.

27. The Tribunal would like to remind the Applicant that his non-selection was not based on the evaluation of his work performance or the satisfaction of his immediate supervisor while he was acting D/CFEP. Rather, his non-selection was based on the evaluation of his written test and his performance at the interview on key competencies. It is unfortunate for the Applicant as well as for the Agency that the panel members were so divided about his performance in the interview, following what must have been a costly two-round recruitment process – in terms of human efforts, time and money – where a considerable number of candidates had to be assessed, short-listed, given a written test and finally interviewed.
Is there any legal basis for the remedies sought by the Applicant?

28. The Applicant requests the Tribunal to reverse the Respondent’s decision and award him financial compensation for the psychological impact that the impugned decision has had on him.

29. Having determined that the selection process for the post of D/CFEP 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 to reverse the decision not to select the Applicant to the post of D/CFEP.

30. Furthermore, as the Applicant has not provided any evidence of psychological damage, the Tribunal finds that there is no legal basis to award any financial compensation.

Conclusion

31. For the reasons provided above, the application is dismissed.

(Signed)
Judge Bana Barazi
Dated this 15th day of November 2015

Entered in the Register on this 15th day of November 2015

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