EL MUSSADER

v.

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

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Rachel Evers (DLA)
Introduction

1. This is an application by Hazem El Mussader (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 Head, Field Human Resources Office in the West Bank.

Facts

2. Effective 22 February 1998, the Applicant was employed by the Agency as a Compensation Management Services Assistant. At the time material to the events set forth in the application, the Applicant occupied the post of Head Compensation and Benefits Section, Grade 18, Step 16 in the Department of Human Resources, Headquarters Gaza (“HQ/G”).

3. On 10 February 2015, the Agency issued vacancy announcement 15-FO-WB-09, for the post of Head, Field Human Resources Office, West Bank (“H/FHRO/WB”). The Applicant applied for the post but was not shortlisted for a written test or an interview.

4. Following the Applicant’s request on the status of the recruitment process, the Head Recruitment Section of the Department of Human Resources informed the Applicant, by email dated 14 April 2015, that the Hiring Director had decided to shortlist only Tranche 1 candidates in addition to a pre-approved rostered candidate. Furthermore, she informed the Applicant that he was not included in Tranche 1, as his qualifications as stated in his application were not assessed as fully meeting the requirements for the post.

5. On 7 May 2015, the Applicant submitted a request for decision review of the decision not to classify him as a Tranche 1 candidate.

6. By email from the Special Assistant to the Deputy Commissioner-General, dated 26 May 2015, the Applicant was informed that his request for decision review could not be considered at that point because the selection process had not been concluded. The Applicant was also informed that he had the right to re-submit his request for decision review once the selection process had been concluded.

7. On 22 June 2015, the Advisory Committee on Human Resources recommended the selected candidate for appointment to the post of H/FHRO/WB. The recommendation was confirmed by the Commissioner-General on the same day.
8. On 2 August 2015, the Applicant filed his application with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on the same day.

9. On 1 September 2015, the Respondent filed his reply. The reply was transmitted to the Applicant on 2 September 2015.

10. On 8 September 2015, the Applicant filed a motion to submit observations on the Respondent’s reply.

11. On 10 September 2015, the Applicant’s motion was transmitted to the Respondent.

12. By Order No. 104 (UNRWA/DT/2015) dated 21 September 2015, the Applicant’s motion to submit observations was granted.

13. On 22 September 2015, the Applicant submitted his observations. The observations were transmitted to the Respondent on 28 September 2015.

Applicant’s contentions

14. The Applicant contends:

   i) He fully meets all the requirements established in the vacancy announcement, specifically the requirement of three years of experience at the international level;

   ii) He meets the requirement of two years of international experience outside the duty station of the post, as he has 17 years of experience in Gaza and the advertised post is in the West Bank;

   iii) The policy clearly states that one of the requirements for professional posts is to have two years of international experience outside the duty station of the post. It does not require someone to be an international staff member;

   iv) To consider that “international experience” can only be obtained as an international staff member automatically excludes area staff members, which is discriminatory and arbitrary; and

   v) On 23 June 2014, he applied to an international post at the P-5 level and he was interviewed for that post in October 2014.
15. The Applicant requests:

   i) The opportunity to participate in the selection process for the post of H/FHRO/WB and to be considered for the post; and

   ii) To be compensated for the material and moral damages that he suffered.

Respondent’s contentions

16. The Respondent contends:

   (i) The application was filed prematurely as the selected candidate was appointed on 22 June 2015 and the Applicant filed his request for decision review on 7 May 2015;

   (ii) The selection process was proper; the Applicant did not fully meet all the requirements of the post as set out in the vacancy announcement. Specifically, the Applicant did not have three years of relevant experience in a large governmental, international or commercial organization at the international level outside one’s home country, including experience in developing countries;

   (iii) The Applicant has worked at UNRWA HQ (G) since February 1998, and he is presently the Head, Compensation and Benefits Section in the Department of Human Resources in HQ (G). The Applicant is from Gaza, therefore, his experience has not been “at the international level outside one’s home country”; and

   (iv) The Applicant claims that he has worked many times as an Officer-in-Charge (“OiC”) in different Fields of operation. However, this is not reflected in his Personal History Form (“PHF”), and the submission of a complete PHF is the responsibility of the Applicant.

17. The Respondent requests the Tribunal to dismiss the application in its entirety.
Considerations

Receivability

18. The first issue the Tribunal must consider is the admissibility of the application. The Respondent claims that the application was filed prematurely, as at the time the Applicant filed his request for decision review, the selection process was ongoing. The Tribunal reminds the Respondent that as soon as a candidate is informed by the Agency that he is not shortlisted, it means that the selection process has ended for him or her. Only in the event when the Agency decides to suspend the selection process without appointing a candidate, the Respondent’s argument about the application being prematurely filed would be correct. However, this is not what occurred in the case at hand, and therefore, the application is receivable.

Merits

19. The Respondent clarified that the Applicant was not shortlisted in Tranche 1 as he did not fully meet all the requirements of the post as set out in the vacancy announcement, and specifically that he did not have “three years of relevant experience in a large governmental, international or commercial organization at the international level outside one’s home country, including experience in developing countries”. For that reason, the Agency considered that the Applicant would not be categorised as a Tranche 1 candidate.

20. Implementing International Staff Regulation 4, International Staff Personnel Directive I/104.2/Rev.3 provides:

27. Where the Hiring Director chooses to consider all qualified applicants, the Recruitment Section will complete reviewing all applications at the close of the advertisement period. The Recruitment Section shall then create a long list based on an initial assessment of the candidates' academic qualifications and working experience as set out in the vacancy announcement. Those candidates who fully meet the minimum requirements shall be termed “Tranche 1”, those who partially meet the requirements or meet on equivalency shall be termed “Tranche 2” and those who do not as “Tranche 3”. Tranche 1 and Tranche 2 candidates comprise the long list.
21. From the abovementioned provisions, it is clear that the Hiring Director is entitled to invite only Tranche 1 candidates for an interview. The Applicant claims that he should have been categorised as a Tranche 1 candidate, as he meets all the requirements of the post as set out in the vacancy announcement, and specifically since he has worked in the Agency’s Compensation and Management Services Division, Department of Human Resources at HQ (G) since February 1998, and is presently the Head of the Section.

22. The relevant vacancy announcement provided:

   Three years of relevant experience in a large governmental, international or commercial organization at the international level outside one’s home country, including experience in developing countries.

23. It is not contested by the Applicant that before being hired by the Agency he had never worked for an international organization outside of his home country. His appointments with the Agency have always been in Gaza. Therefore, the Tribunal finds that the Agency could not have considered the Applicant as having worked outside his home country at the international level. The Applicant claims that he has worked as OiC in different Fields of operation; however, this is not reflected in his PHF, and the Applicant did not claim that he was appointed as OiC outside of Gaza for a period of three years.

24. The Applicant also claims that, on 23 June 2014, he applied for an international post at the P-5 level, and that he subsequently was interviewed for the post. However, the Applicant has not specified whether he was categorised as a Tranche 1 candidate and whether the requirements of the post were the same. Furthermore, each selection process has to stand on its own, and if the Applicant had been shortlisted for an international position once, this does not give him the entitlement to be shortlisted for a next selection process. Moreover, assuming that the Applicant was mistakenly categorised as a Tranche 1 candidate for a position at the P-5 level, the Tribunal wants to emphasise that in instances where the eligibility criteria have been wrongly applied, the Agency has the duty and is entitled to rectify this error.
Conclusion

25. In view of the foregoing, the Tribunal hereby DECIDES:

The application is dismissed.

(Signed)________________________
Judge Jean-François Cousin
Dated this 8th day of December 2016

Entered in the Register on this 8th day of December 2016

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