ALI

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 Saber Daoud Abdul Karim 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 (Technical), Jordan Field.

Facts

2. On 19 September 1978, the Applicant entered the service of the Agency as a Teacher “D” in the Amman Area, Jordan, at Grade 6. Following several promotions and upgrades over the years, the Applicant was appointed Area Education Officer, Grade 17, in July 2012. For two years, from August 2012 to August 2014, the Applicant was appointed Officer-in-Charge, Education Programme, Jordan.

3. On 6 August 2014, the newly created post of Deputy Chief Field Education Programme (Technical) (“D/CFEP/T”), Jordan Field, was advertised. The Applicant did not apply for the post.

4. On 25 February 2015, the Agency re-advertised the post internally and externally.

5. The Agency received a total of 171 applications, including the Applicant’s. All applications were reviewed by the Human Resources Department for the essential post requirements outlined in the Post Description and Vacancy Announcement. Eighteen candidates (including the Applicant) were short-listed and invited to take a written test on 9 April 2015. Four candidates (including the Applicant) who scored 50 or above out of 100 were invited to a personal interview scheduled for the month of June 2015.

6. By memorandum to the Director of UNRWA Operations, Jordan (“DUO/J”) dated 3 May 2015, the Applicant complained that the Deputy Director of
UNRWA Operations, Jordan (“D/DUO/J”) was biased against him during previous selection processes in 2014.

7. By letter dated 25 May 2015, the DUO/J responded to the Applicant saying, *inter alia*, that his “concerns raised in [his] complaint” were currently under review by the [UNRWA] Dispute Tribunal” and that the Applicant should wait for the Tribunal’s determination on the merits of his case. As for his concerns that one panel member’s attitude would negatively influence his performance in the next interview, the DUO/J respondent that, as of that time, the names of the candidates who passed the test had not yet been released to the Hiring Manager.

8. On 2 June 2015, a panel of four members (the “panel”) interviewed the four short-listed candidates, including the Applicant. The panel unanimously recommended another (internal) candidate for the post.

9. Following the recommendation of the interview panel, and subsequent endorsement by the DUO/J and the Advisory Committee on Human Resources, the Commissioner-General approved the appointment of the recommended candidate on 11 August 2015.

10. On 3 September 2015, the DUO/J issued Jordan Field Staff Bulletin No. J/49/2015 announcing the appointment of the selected candidate to the post of D/CFEP/T.

11. On 23 September 2015, the Applicant submitted a request for review of the decision not to select him for the post of D/CFEP/T. The Applicant did not get a response.

12. On 17 January 2016, the Applicant filed an application with the UNRWA Dispute Tribunal (the “Tribunal”).

13. On 27 January 2016, the application was transmitted to the Respondent.

14. On 22 February 2016, the Respondent filed his reply.

15. On 22 February 2016, the Respondent filed *ex parte* a motion for imposition of measures to preserve the confidentiality of evidence.
16. By Order No. 014 (UNRWA/DT/2016) dated 24 February 2016, the Tribunal ordered that a redacted version of Annex 18 (the recruitment report) be transmitted to the Applicant who had until 2 March 2016 to provide further comments in relation to the report, if any. The Applicant did not send any comments.

17. Also on 24 February 2016, the Respondent’s reply and referenced annexes, together with the redacted version of Annex 18 were transmitted to the Applicant.

18. By Order No. 027 (UNRWA/DT/2016) dated 31 March 2016, the Tribunal ordered the Respondent to submit to the Tribunal a translation of the reply from English into Arabic on or before the close of business 10 April 2016.

19. On 1 April 2016, in compliance with Order No. 027, the Respondent filed the Arabic translation of his reply. On the same day, it was transmitted to the Applicant.

**Applicant’s contentions**

20. The Applicant contends that:

   i) He was the subject of “clear bias and injustice” by the D/DUO/J;

   ii) He sought unsuccessfully to have the D/DUO/J excluded from the interview panel; and

   iii) He has priority for the post of D/CFEP/T based on his performance and because he has filled it in an acting capacity for two years, with many achievements, in addition to the fact that he holds a PhD from the University of Jordan;

21. The Applicant requests:

   i) An investigation by the Tribunal into the matter;

   ii) Rescission of the impugned decision;

   iii) His appointment to the post of D/CFEP/T; and
iv) Financial compensation for the harm he suffered as a result of his return to South Amman Area.

**Respondent’s contentions**

22. The Respondent contends that:

   i) The selection process was properly conducted in accordance with the Agency’s regulatory framework, free from bias or discrimination;

   ii) The Applicant’s candidacy was given a full and fair consideration; and

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

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

**Considerations**

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

24. Under Area Staff Regulation 4.3:

   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.

25. 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.

26. 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; and 4) constituted a duly qualified panel with a specific mandate, comprised of the D/DUO/J, the Deputy Director of Education, the Chief, Field
Education Programme, Jordan and the Chief Area Officer, North Amman. Sitting as an observer in the interview was the Field Human Resources Officer.

27. The panel conducted personal interviews with the four short-listed candidates, including the Applicant, and made recommendations on their suitability. More specifically, during the interview, the panel assessed the candidates on the following key competencies: 1) communication skills; 2) planning and organising; 3) creativity and 4) conflict management. There was no consensus, i.e. the panel was split, with regard to the Applicant’s competencies of creativity and planning & organising, whereas the panel found the Applicant partially met the conflict management and fully met the communication skills competencies, respectively. The panel did not recommend the Applicant for appointment, and unanimously recommended another internal candidate.

28. The recruitment report, with the names of the other short-listed candidates redacted, has been transmitted to the Applicant. It provides in meticulous detail the background of the four 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 DUO/J supporting the panel’s recommendation.

29. 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. As held by the United Nations Appeals Tribunal (the “UNAT”) in Onana 2015-UNAT-533, para. 44, “it is not the role of the UNDT or the Appeals Tribunal to substitute its own decision for that of the Secretary General 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.

30. Moreover, the UNAT held in Rolland 2011-UNAT-122, para. 26, that “[t]here is always a presumption that official acts have been regularly performed”. If the Agency shows even minimally that the Applicant’s candidature was given a full and fair consideration, then the presumption stands. Then it is up to the
Applicant to show through clear and convincing evidence that he was denied a fair chance at the selection.

31. However, as the discretion of the Respondent is not absolute, the Tribunal will examine whether the procedures, as set out in the relevant Area Staff Regulations and Rules and other relevant administrative issuances, were followed, and whether the Applicant was given fair and full consideration of his candidature.

32. As held by the UNAT in Abbasi 2011-UNAT-112, at 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.

33. After reviewing and considering the parties’ submissions and the evidence presented in this case, in light of the facts set forth above and the relevant jurisprudence, the Tribunal finds that the Agency conducted the recruitment process in accordance with the applicable Regulations and Rules, procedures and other relevant administrative issuances. The Applicant has not, by a clear and convincing standard or otherwise, presented any evidence to rebut the presumption of regularity in the selection procedure.

Was the selection process for the post of D/CFEP/T flawed by discrimination or prejudice?

34. The record shows that all four short-listed candidates were assessed on each of the four competencies for the post. They were asked the same questions by the panel; their answers were noted; each panel member made comments on the answers of the candidates; and finally, an overall assessment was made on each candidate by the panel. When reading the interview report, which provides details for each candidate interviewed, it is hard to find any bias as alleged by the Applicant.
35. The Tribunal recalls that the Applicant complained in May 2015 against the D/DUO/J to the DUO/J in order to have the D/DUO/J excluded from participating in the interview scheduled for 2 June 2015. The Applicant claimed that the D/DUO/J had been determined to seek his elimination from the selection processes after he had been short-listed for interviews in two earlier competitions for posts in the Education Department.1

36. What evidence has the Applicant submitted to show that the D/DUO/J was biased? He has asserted that, in one of his previous interviews, he felt that she and another panel member were biased against him because of “the way they looked, which made [him] feel stress during the interview”. He has also alleged that she wrote “untrue things” about him and misjudged him “as a follower not a leader”, as she had only a short period of time as his supervisor to make that judgment. Another basis for the Applicant’s claim of bias is that the D/DUO/J and another panel member, who had not worked with him for very long, were not in favour of his selection, whereas the other two panel members with whom he had worked for a very long time were in his favour. Finally, the Applicant alleges that, in the present case, the D/DUO/J rated his work performance as “Fully meets expectations” whereas his immediate supervisor rated his work performance as “Best Performer”. The Applicant claims that he was psychologically affected by this.

37. None of these contentions demonstrates bias against the Applicant, but rather they are decisions reached by a manager in an every day work setting. The Applicant has not submitted one shred of evidence as to a motive, i.e., for what reason would the D/DUO/J have been biased against him? Nor has he brought to light any comments made by her that would indicate bias. Indeed, in his 3 May 2015 letter to the DUO/J, he characterised the bias against him as being for “unspecified reasons”.

38. Moreover, the Tribunal finds that the interview report is revealing. For one of the competencies (Communication Skills), the Applicant received a rating of

1 The applications filed by the Applicant to the Tribunal were dismissed, see Judgments in UNRWA/DT/2015/053 dated 15 November 2015 and UNRWA/DT/2016/032/Corr.1 dated 10 November 2016.
fully meeting the competency. For two of the competencies (Planning and Organising and Creativity), two panel members rated him as only partially meeting the competency. For the fourth competency (Conflict Management) one panel member rated the Applicant as not meeting the competency and two panel members rated him as only partially meeting it. Each panel member expressed his/her opinion about the Applicant’s performance in the interview with regard to each of the competencies and gave a justification for his/her rating. There is no evidence of a pattern of collusion on the part of the panel members or of undue influence on the part of one of the panel members to eliminate the Applicant from consideration.

39. Likewise, for a second candidate, the interview report shows that each of the four panel members gave this candidate a rating of either fully meeting or exceeding each of the competencies, with the exception of one panel member who rated the person as only partially meeting one of the competencies. It is clear from the report that this candidate performed far better in the interview than the Applicant did. Disappointing as this may be for the Applicant, the process was followed, and there has been no evidence submitted indicating that the panel was biased against the Applicant or that it favoured another candidate. The Applicant was simply outperformed in the interview.

40. The Applicant claims that the D/DUO/J “can select anyone but [him] regardless of how incompetent or lacking post requirements that person is”. What is the basis for this claim? The Applicant has provided none. It is the Applicant’s burden of proof to show through clear and convincing evidence – not through speculation or unsubstantiated allegations – that he was denied a fair chance of promotion because of bias on the part of the D/DUO/J. The Applicant clearly did not provide any evidence to the Tribunal of any bias or arbitrariness on the part of the Agency, more specifically the D/DUO/J. The Applicant is reminded, as held by the UNAT in Staedtler 2015-UNAT-547, para. 33, that:

Allegations of bias and discrimination are very serious charges which should not be lightly made. They have to be established on the balance of probability by the person alleging same.
41. Being an educated person (the Applicant holds a PhD), and having received two previous Judgments from the Tribunal in applications he had filed contesting other non-selection decisions, the Applicant should know that he needs more than unsubstantiated statements as evidence of the D/DUO/J’s alleged bias against him. The Tribunal is also surprised that the Applicant took the Respondent’s reply (Annex 3 of his application) for the Tribunal’s Judgment. The Applicant is reminded – as he was reminded in the two Judgments referred to earlier – that he was assessed at the interview on key competencies required for the post of D/CFEP/T, not on his work performance or his achievements for the past years in the Agency.

42. The Applicant claims that he has priority for the post of D/CFEP/T because he has been acting in that post for two years. The Applicant stands to be corrected: he was in an acting capacity in another post, not the post at issue in this application. Furthermore, being in a post in an acting capacity does not give a staff member priority for the post. All candidates in a selection process are treated on an equal basis based on their performance in the test and interview.

43. In his application, the Applicant wrote the following:

   The matter I would like to raise is your reply to a former complaint I’ve submitted to the Tribunal. In that reply you stated that the candidate’s performance in the interview is the decisive criterion. In principle I agree with that. However, this completely applies when there are external candidates. However; when all the candidates are from the Agency, then the candidate’s file is very important. I do not think that an interview of half an hour will be more insightful or fairer than a complete file of the employee’s performance during working at the Agency [sic].

   Firstly, a correction of the Applicant’s choice of words. The Applicant filed an application not a complaint, and the Applicant did not receive a reply from the Tribunal but a Judgment. Secondly, the Applicant is reminded that the selection process is made in compliance with the Agency regulatory and administrative framework, and it is the employer, not the employee, who sets up the selection procedure and applies the published criteria to all of the interviewed candidates, without preference given to any of them, based on the needs of the Agency. Thirdly, the interview’s duration is not to assess an internal candidate’s work
performance, but to evaluate him/her with regard to the specific competencies of the post. The Tribunal notes that the Agency is well cognizant of the Applicant’s past achievements and has given the Applicant several promotions in the past.

44. The Applicant has gone through two previous competitions and filed applications contesting his non-selection in those competitions. Reading the interview reports in the two previous competitions, or asking for feedback on his performance after his unsuccessful interviews, could help the Applicant understand why he was not recommended for the three different posts in the Education Department or could help him improve his performance in future interviews.

45. The Tribunal would like to remind the Applicant one last time that his non-selection was not based on the evaluation of his work performance or on the satisfaction of his immediate supervisor. His non-selection was based on the evaluation of his written test and his performance at the interview on key competencies.

46. Given all the above, the Tribunal does not find any error of law, procedural irregularity, bias, prejudice or ill motive on the part of the Respondent when he did not select the Applicant for the post of D/CFEP/T. Nor did the Applicant provide any evidence of bias or procedural irregularity by the Respondent that could have flawed the contested decision.

Is there any legal basis for the remedies sought by the Applicant?

47. The Applicant requests the Tribunal to conduct an investigation into the matter, reverse the Respondent’s decision and award him financial compensation for the psychological impact that the impugned decision has had on him. The role of the Tribunal is to make determinations with respect to applications filed with the Tribunal based on the evidence presented by the parties, i.e. the Applicant and the Respondent.

48. Having determined that the selection process for the post of D/CFEP/T 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/T.

49. As the Applicant has not provided any evidence of the harm he has suffered as a result of his return to the South Amman Area, the Tribunal finds that there is no legal basis to award him any financial compensation.

Conclusion

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

(Signed)  
Judge Bana Barazi  
Dated this 18th day of January 2017

Entered in the Register on this 18th day of January 2017

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