UNRWA DISPUTE TRIBUNAL

Case No.: UNRWA/DT/LFO/2016/037
Judgment No.: 029 (UNRWA/DT/2017)
Date: 31 August 2017
Original: English

Before: Judge Jean-François Cousin

Registry: Amman

Registrar: Laurie McNabb

VERMA

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 Kulendra Verma (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 shortlist him for the post of Project Manager – Nahr el-Bared Reconstruction Unit.

Facts

2. Effective 10 June 2014, the Applicant joined UNRWA as Head, Reconstruction Unit, Nahr el-Bared Camp Reconstruction Project, on a fixed-term appointment at the P-3 level.

3. On 15 May 2016, the Agency circulated, internally and externally, a vacancy announcement for the post of Project Manager – Nahr el-Bared Reconstruction Unit (“PM/NBRU”) at the P-4 level. A total of 108 candidates applied for the post. The Applicant was one of seven internal candidates.

4. The hiring department shortlisted five candidates for a written test in conjunction with personal interviews. The five external candidates met all the requirements of the post and had been placed in Tranche 1. The Applicant was not shortlisted for the test and interview as he had been placed in Tranche 2.

5. By email to the Head, Recruitment Section (“HRS”), dated 2 September 2016, the Applicant inquired about the status of his application for the post of PM/NBRU. By email dated 4 September 2016, the HRS informed the Applicant that he had not been invited for the test and the interview, as only Tranche 1 candidates had been shortlisted.

6. On 19 September 2016, the Applicant requested review of the decision not to shortlist him for the post.

7. By a report dated 27 September 2016, the Interview Panel recommended the selected candidate, and on 28 September 2016, the Director of Human Resources approved the recommendation and referred the selection decision to the Advisory Committee on Human Resources.

8. By letter to the Applicant dated 19 October 2016, the Deputy Commissioner-General affirmed the decision not to shortlist the Applicant, noting that he did not have the required
advanced university degree as stipulated in the vacancy notice, which was why he was not placed in Tranche 1.

9. On 27 October 2016, the Applicant filed an application with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 1 November 2016.

10. On 1 December 2016, the Respondent submitted his reply. The reply was transmitted to the Applicant on 4 December 2016.

11. On 6 December 2016, the Applicant filed a “Motion for Leave to Submit Observations on the Reply of the Respondent” and a “Motion for Leave to Submit Supplementary Evidence”. On 7 December 2016, both motions were transmitted to the Respondent.

12. By Order No. 104 (UNRWA/DT/2016) dated 18 December 2016, the Tribunal granted the Applicant’s motions.

13. On 22 December 2016, the Applicant filed his observations and supplementary evidence. The submissions were transmitted to the Respondent on 27 December 2016. On 5 January 2017, the Applicant filed a correction note with respect to typographical errors in the submission of 22 December 2016. The correction note was transmitted to the Respondent on 5 January 2017.

Applicant’s contentions

14. The Applicant contends:

i) He has 21 years of proven international experience in engineering projects, and since he was appointed as Head of the Reconstruction Unit in June 2014, his duties have also included substantial responsibilities of the post of PM/NBRU;

ii) The Agency advertised the vacancy announcement four times since 2013. The third advertisement in December 2013 was cancelled because the currently selected candidate had withdrawn his application for not meeting the educational qualifications and the required experience at that point in time;

iii) The fourth vacancy announcement was tailored towards the selected candidate, who is not an engineer and who has expertise in the field of social work and donor
relations, rather than project management, which was required by the vacancy announcement;

iv) The vacancy announcement for the post was re-advertised for the fourth time in May 2016, because, at that point in time, the selected candidate had reached the educational qualifications and the required experience of the advertised position;

v) The Agency did not apply the provision of the General Assembly ("GA") Resolution A/59/266 Section XI with respect to consultants and individual contractors. Contrary to the GA Resolution, a consultant was appointed as Officer-in-Charge ("OiC") of the NBRU project. While he, the Applicant himself, is a staff member, he had to report to a consultant, as the said consultant became his first reporting officer;

vi) The selected candidate was an external candidate who had been working as a consultant. Since he, the Applicant, is an internal candidate, he should have had priority over external candidates; and

vii) His university degree in Civil Engineering, together with his 21 years of proven work experience in construction projects, 8 of which have been within the UN system, should have warranted consideration for the position.

15. The Applicant requests the Tribunal to review the selection process and reverse the decision not to shortlist him for the post of PM/NBRU.

Respondent’s contentions

16. The Respondent contends:

i) The shortlisting process for the post of PM/NBRU was properly effected. Furthermore, the Commissioner-General has broad discretionary authority in personnel matters;

ii) As set out in the vacancy announcement, the academic and professional requirement for the post was an “advanced university degree”, and the Applicant did not allege that he possessed one. Therefore, he was correctly placed in Tranche 2;
iii) The prerequisite was an advanced university degree in project management, administration, political science, international relations, civil engineering or architecture;

iv) The hiring director decided to shortlist only Tranche 1 candidates as there were five candidates who fully met the post requirements; this is in line with International Staff Personnel Directive No. I/104.2/Rev.4/Amend. 1 (“ISPD No. I/104.2”), paragraph 36;

v) The selected candidate possessed an advanced university degree and the Interview Panel remarked on his demonstrated range of competencies and project management experience, including the advantage of his knowledge and experience on the NBRU project;

vi) The hiring department has the discretionary power to advertise the post internally and externally;

vii) The vacancy announcement did not list engineering or architecture as the sole relevant qualification;

viii) Apart from a mere allegation, there is no evidence that the previous vacancies of the post were closed for the sole purpose of allowing the selected candidate to gain the necessary expertise in the post; and

ix) The Applicant’s allegations with respect to the Agency placing the selected candidate as OiC of the NBC project are not relevant.

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

Considerations

18. The Applicant contests the decision not to shortlist him for the post of PM/NBRU, Grade P-4. The Applicant was placed in Tranche 2 and was not shortlisted for a test and interview.

19. The United Nations Appeals Tribunals (“UNAT”) has held, inter alia, in Ljungdell 2012-UNAT-265 as follows:
30. Under Article 101(1) of the Charter of the United Nations and Staff Regulations 1.2(c) and 4.1, the Secretary-General has broad discretion in matters of staff selection. The jurisprudence of this Tribunal has clarified that, in reviewing such decisions, it is the role of the UNDT or the Appeals Tribunal to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals’ role is not to substitute their decision for that of the Administration.

20. With regard to which party bears the burden of proof in a non-selection case, in Rolland 2011-UNAT-122, the UNAT held, in relevant parts, as follows:

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.

21. In the present case, the Applicant claims that his university degree in Civil Engineering and his extensive work experience should have warranted consideration for the position.

22. ISPD No. I/104.2 provides in relevant part:

35. 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.

36. The Recruitment Section’s long list is made available to the Hiring Director for assessment and short-listing. Any changes of the short-list by the Hiring Director will be provided to the Recruitment Section with rationales to justify short-list determinations. The Human Resources Department shall validate the final short list.

23. Vacancy announcement No. 16-FO-LB-23 lists as essential post requirement:

- Advanced university degree from an accredited educational institution in project management, administration, political science, international relations, civil engineering or architecture.
24. The Respondent claims, and the Applicant does not contest, that the Applicant lacked the advanced university degree as required by the vacancy announcement. The Tribunal notes that, as it has been appropriately raised by the Respondent, the Applicant did not meet the minimum requirements for the post. Therefore, by application of the above provisions, he was rightly ranked as a Tranche 2 candidate who partially met the requirements of the post. Furthermore, the hiring director used his discretionary authority by deciding to shortlist only the five Tranche 1 candidates for an interview.

25. Furthermore, the Applicant claims that he was not given priority consideration as an internal candidate in contradiction with International Staff Regulation 4.5.

26. International Staff Regulation 4.5 provides as follows:

   With due regard to the recruitment of fresh talent, and on as wide a geographical basis as possible, preference shall be given to persons already in the service of the Agency who have the requisite qualifications and experience.

27. In Megerditchian 2010-UNAT-088, the UNAT held as follows:

   27.[…] In addition to having the requisite qualifications, Megerditchian was also required to pass an interview before being given priority consideration. She did not establish any evidence that the interview process was flawed.

   28. It should be emphasised that “priority consideration” cannot be interpreted as a promise or guarantee to be appointed or receive what one is considered in priority for. To hold otherwise would compromise the highest standards of efficiency, competency, and integrity required in selecting the best candidate for staff positions under Article 101 of the Charter.

28. Therefore, the Tribunal holds that the Applicant’s claim with regard to being given priority consideration as an internal staff member is without merit.

29. The Applicant claims that the selected candidate was not an engineer and that the selected candidate’s expertise was in the field of social work and donor relations, rather than in project management as required by the vacancy announcement. However, the Respondent correctly submits that the vacancy announcement did not solely list engineering or architecture as a relevant qualification. Furthermore, the Interview Panel had noted the selected candidate’s demonstrated range of competencies and project management experience, including the advantage of his knowledge and experience on the NBRU project.
30. With respect to the Applicant’s claim that the vacancy announcement was tailored towards the selected candidate, the Tribunal holds that the Applicant has not provided any evidence in support of this allegation.

As the Applicant has the burden to prove that the contested decision was unlawful, the Tribunal considers that he has failed to establish by clear and convincing evidence that the decision not to shortlist him for the post of PM/NBRU was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors.

Conclusion

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

The application is dismissed.

(Signed)
Judge Jean-François Cousin
Dated this 31st day of August 2017

Entered in the Register on this 31st day of August 2017

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