ALI
v.
COMMISSIONER-GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Rachel Evers (DLA)
Introduction

1. This is an application by Ilhab Ahmad 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 one of the posts of Information and Communications Technology, Service Desk Officer, Lebanon Field Office.

Facts

2. Effective 7 June 2010, the Applicant was employed by the Agency on a fixed-term appointment, Grade 10, as Computer Lab Technician, in the Lebanon Field Office (“LFO”). This is the Applicant’s current post.

3. On 7 March 2017, the Agency published, internally and externally, a vacancy announcement for three posts of Information and Communications Technology Service Desk Officer (“ICT SD Officer”), Grade 13.

4. By an undated letter to the Field Information and Communications Technology Office (“FICTO”), the Field Human Resources Office (“FHRO”) recommended a set of screening criteria and a list of university degrees falling within the definition of “other related discipline”.

5. The Agency received 462 applications for the posts, including the Applicant’s. All applications were reviewed by the FHRO and the relevant Hiring Department. The Applicant was assessed as “Tranche 3” candidate, as he held only a degree in Management Information Systems (“MIS”). Consequently, the Applicant was not shortlisted and was informed accordingly on 12 October 2017.

6. By emails to the Head, Field Human Resources Office, LFO (“H/FHRO/L”) dated 16, 19 and 27 October 2017, the Applicant inquired why he had not been shortlisted.

7. By emails to the Applicant dated 18 and 27 October 2017, the H/FHRO/L responded to the Applicant’s inquiries.
8. Fourteen candidates had been assessed as “Tranche 1” candidates, shortlisted and invited for a written test on 20 October 2017. From the 14, six candidates were then invited for a personal interview. As a result of the interviews, the Interview Panel (the “Panel”) recommended the appointment of the first three ranked candidates to the three vacant posts.

9. On 21 November 2017, the Applicant requested review of the decision not to select him for one of the posts of ICT SD Officer.

10. On 7 December 2017, the Director of UNRWA Affairs, LFO (“DUA/L”) approved the Panel’s recommendations.

11. On 16 February 2018, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 19 February 2018.

12. On 21 March 2018, the Respondent filed a “Motion for Extension of Time” to file his reply outside the 30-calendar day time limit set out in Article 6(1) of the Rules of Procedure of the Tribunal. The motion was transmitted to the Applicant on the same day.

13. By Order No. 060 (UNRWA/DT/2018) dated 2 April 2018, the Respondent’s motion was granted.

14. On 16 May 2018, the Respondent filed a motion for further extension of time to file his reply. The motion was transmitted to the Applicant on 17 May 2018.

15. By Order No. 091 (UNRWA/DT/2018) dated 27 May 2018, the Tribunal granted the Respondent’s motion.

16. On 26 June 2018, the Respondent filed his reply. It was transmitted to the Applicant on 28 June 2018.

17. On 12 July 2018, the Respondent filed a motion for extension of time to translate his reply. The motion was transmitted to the Applicant on 15 July 2018.

19. On 1 October 2018, the Respondent filed the Arabic translation of his reply. This was transmitted to the Applicant on the same day.

**Applicant’s contentions**

20. The Applicant contends:

   i) He entirely fulfils the requirements of the advertised posts and his certificate in MIS is Information Technology (“IT”) related;

   ii) He previously applied for other IT related positions and was always invited for the written test; and

   iii) The Agency did not take into account his seven years of experience at UNRWA on an equivalency basis.

21. The Applicant requests:

   i) The Agency to accept his certificate in MIS when he submits applications for different positions at the Information and Communications Technology (“ICT”) section; and

   ii) An apology for the psychological harm that he suffered.

**Respondent’s contentions**

22. The Respondent contends:

   i) The selection process was properly effected; the Applicant’s candidacy was given a full and fair consideration;

   ii) The Agency’s decision not to shortlist the Applicant for further consideration for the ICT SD Officer posts was reasonable;
iii) The Applicant did not possess a relevant university degree, as he had a degree in MIS and was, therefore, not shortlisted;

iv) Fourteen candidates were shortlisted for further consideration and the Hiring Department complied with applicable provisions when deciding not to have regard to candidates who might meet equivalency requirements;

v) The H/FHRO/L, on two separate occasions, explained to the Applicant the reason for not shortlisting him;

vi) The Applicant has failed to sustain the burden of proof required to establish by convincing evidence that the decision not to select him for one of the three posts was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law; and

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

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

Considerations

24. The Applicant contests the decision not to select him for one of the posts of ICT SD Officer, Grade 13. It is not disputed between the parties that the Applicant was not shortlisted as he held only a degree in MIS.

25. The vacancy announcement reads, in relevant part, as follows:

**PERSONAL & PROFESSIONAL COMPETENCIES**

(A) Academic and Professional

A university degree in computer science, information technology, electrical or computer engineering or other related discipline (emphasis in original).
26. It is clear from the FHRO’s recommendations to the FICTO that the Applicant’s degree in MIS is not listed as one of the other related discipline in accordance with the aforementioned vacancy announcement.

27. Area Staff Personnel Directive A/4/PartII/Rev.7/SectionI on Area Staff Selection Policy (“PD/A/4”), effective 1 July 2009, provides as follows:

**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.

[…]  

**Second review and equivalency**

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 fully 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. Where candidates do not meet the post requirements on an equivalency basis, the Hiring Director may recommend a candidate for appointment at one grade lower than the full grade of the post (emphasis in original).

28. In accordance with the requirements of PD/A/4, fourteen candidates, fully meeting the requirements of the advertised posts, were assessed as “Tranche 1” candidates and, accordingly, were shortlisted and invited for a written test. In addition, contrary to the Applicant’s contention, given the number of candidates who fully met the requirements of the advertised posts, the Hiring Director, in
consultation with the Recruitment Administrator, exercised his discretionary authority and decided not to have regard for candidates who might have met the posts’ requirements on an equivalency basis.

29. It follows from all of the foregoing that the Applicant has failed to sustain the burden of proof required to establish that the decision not to select him for one of the posts of ICT SD Officer was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law.

Conclusion

30. In view of the foregoing, the Tribunal DECIDES:

The application is dismissed.

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Judge Jean-François Cousin

Dated this 22\textsuperscript{nd} day of May 2019

Entered in the Register on this 22\textsuperscript{nd} day of May 2019

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Laurie McNabb, Registrar, UNRWA DT, Amman