ALLOUCHE

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 Samir Allouche ("Applicant") against the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA ("Respondent"), to disqualify him from the recruitment process for the post of Head, Assessment Unit ("H/AU"), Lebanon Field Office ("LFO").

Facts

2. Effective 23 September 1999, the Applicant was employed by the Agency on a fixed-term appointment, Grade 9, Step 1, as Technical Instructor Computer Information System, at the Siblin Training Centre ("STC"), LFO.

3. On 26 February 2003, the disciplinary measures of a written censure and a suspension without pay for one week were imposed on the Applicant for disclosing a confidential exam to an ex-STC graduate, despite being instructed to keep this document confidential.

4. Effective 1 September 2005, the Applicant was appointed to the post of School Supervisor "Computer", Grade 12, at the Education Department, LFO. The Applicant’s post was reclassified to Education Specialist and he was promoted to Grade 13, effective 1 November 2011.

5. Effective 1 January 2015, the Applicant was appointed to the post of Assessment Coordinator, Grade 15. This was the Applicant’s post at the time material to the present application.

6. On 2 January 2019, the Agency published the vacancy announcement for the post of H/AU, Grade 16. The Applicant applied for the post on 11 January 2019 and certified that he had never been the subject of a disciplinary measure.

7. The Agency received 153 applications. Fourteen candidates, including the Applicant, were invited for a technical test. Four candidates, including the
 Applicant, were invited for a personal interview. The Interview Panel recommended the Applicant as the second priority candidate.

8. By email dated 27 March 2019, the Director of UNRWA Affairs, Lebanon (“DUA/L”) informed the Applicant that he was disqualified from the recruitment process for the post of H/AU, as he had provided untruthful answers to questions No. 27 and No. 30 of his application pertaining to whether he had been the subject of a disciplinary process and whether he had received a disciplinary measure.

9. On 1 April 2019, the Applicant submitted his request for decision review.

10. By letter dated 29 April 2019, the Deputy Commissioner-General affirmed the impugned decision.

11. On 7 May 2019, the DUA/L approved the appointment of the first recommended candidate for the post of H/AU and the Applicant’s disqualification from the selection process.

12. On 21 June 2019, the present application was filed with the UNRWA Dispute Tribunal (“Tribunal”). The application was transmitted to the Respondent on 26 June 2019.

13. On 26 July 2019, the Respondent filed his reply. The reply was transmitted to the Applicant on 28 July 2019.

14. On 8 August 2019, the Applicant filed a motion for leave to file observations on the Respondent’s reply. The motion was transmitted to the Respondent on 13 August 2019.

15. By Order No. 176 (UNRWA/DT/2019) dated 3 September 2019, the Tribunal granted the Applicant’s motion to submit observations on the Respondent’s reply.

16. On 12 September 2019, the Applicant submitted his observations. The Applicant’s observations were transmitted to the Respondent on the same day.
Applicant’s contentions

17. The Applicant contends:

   i) The disciplinary measures were imposed on him 16 years ago; since then, he has applied and has been appointed for different posts and no one addressed this issue;

   ii) The disciplinary measures were imposed on him a long time ago, therefore he forgot about them; there was no disciplinary process;

   iii) He has been using the same application for the vacant posts since 1999 and did not realise that there was a question related disciplinary measures; the censure letter is kept in his file so there was no need to hide it;

   iv) There were other reasons behind the decision to disqualify him, i.e. to select another candidate; and

   v) He has been working at the Education Department for 20 years; he has received several awards due to the quality of his work and productivity; he has been acting H/AU for six months and his supervisors were satisfied with his performance.

18. The Applicant requests rescission of the impugned decision.

Respondent’s contentions

19. The Respondent contends:

   i) The decision to disqualify the Applicant was properly effected; it was a proper exercise of the Agency’s discretion;

   ii) The Applicant was disqualified on the grounds that he had provided untruthful answers in his personal history form;

   iii) The Applicant does not deny that he provided untruthful answers; the failure to disclose his past misconduct casts doubts on his integrity; integrity was one of the key competencies for the post of H/AU;
iv) The fact that this issue was not raised on previous occasions is of no avail;

v) The Applicant failed to prove that the decision to disqualify him from the recruitment process for the post of H/AU was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law; and

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

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

Considerations

21. The Applicant contests the decision to disqualify him from the recruitment process for the post of H/AU. Following a competitive recruitment process, the Applicant was recommended by the Interview Panel as the second priority candidate for the said vacant post.

22. By email dated 27 March 2019, The DUA/L disqualified the Applicant from the recruitment process due to his failure to disclose in his application the fact that he had previously been the subject of disciplinary measures. The Applicant does not contest his failure to disclose the disciplinary measures. He claims that he forgot about the disciplinary measures, as they had been imposed on him 16 years ago and, since that time, he has been appointed to different posts.

23. It is clear from Annex No. 14 of the Respondent’s reply that the Applicant responded “No” to the following two questions in his application submitted on 11 January 2019:

27. Have you been the subject of a workplace disciplinary process or other similar process or a workplace investigation or similar process of which you are aware?

30. Have you received a disciplinary measure or administrative measure following a disciplinary process?
24. In addition, he certified as follows at the end of his application:

   I certify that the statements made by me in answer to the foregoing questions are true, complete and correct in all respects to the best of my knowledge and belief. I understand that any misrepresentation or material omission made on a personal [h]istory form renders me liable to termination.

25. In the Tribunal’s view, the Applicant’s negative answers, given his declaration at the end of the application, cannot be considered as simple omissions. The Applicant provides inconsistent explanations in his application. First, the Applicant claims that he “forgot” about the disciplinary measures, as they had been imposed on him a long time ago, and since that time, he has been selected for different posts without facing any problem in the previous recruitment processes. Next, the Applicant claims that, to his understanding, there was no disciplinary process in his case, therefore he answered “No” to question No. 27. Finally, he submits that he was using the same application for vacant posts since 1999 and did not realise that there was a need to modify the questions pertaining to the disciplinary measures. The Tribunal considers that the Applicant is not being honest in his explanations and that his claims cast further and serious doubt on the Applicant’s integrity.

26. Area Staff Regulations provide, in relevant parts, as follows:

   **REGULATION 1.4**

   Staff members shall conduct themselves at all times in a manner befitting their status as employees of the Agency.

   **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 (emphasis in original).

27. Area Personnel Directive No. PD/A/4/PartII/Rev.7, effective 1 July 2009, also provides as follows:

   74. The Agency is committed to selecting staff members who exhibit the highest standards of integrity, neutrality and impartiality.
28. Accordingly, it is clear that the paramount consideration for recruitment is to secure the highest standards of efficiency, competence, and integrity. Therefore, the Tribunal holds that the DUA/L properly exercised his discretionary authority in deciding to disqualify the Applicant from the recruitment process for the post of H/AU. Furthermore, it is not the function of the Tribunal to substitute its own decision for that of the Agency. As the United Nations Appeals Tribunal (“UNAT”) stated in *Sanwidi* 2010-UNAT-084, paragraph 40:

> When judging the validity of the Secretary-General’s exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

29. It follows from the foregoing that the Applicant has failed to sustain the burden of proof required to establish that the decision to disqualify him from the recruitment process for the post of H/AU was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law. Consequently, the application must be dismissed.
Conclusion

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

The application is dismissed.

Judge Jean-François Cousin

Dated this 30th day of September 2020

Entered in the Register on this 30th day of September 2020

Laurie McNabb, Registrar, UNRWA DT, Amman