



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES N

JUDGE DIMITRIOS RAIKOS , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2017/029, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) on 31 August 2017, in the case of Verma v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East. Mr. Kulendra Kumar Verma filed the appeal on 16 October 2017, and the Commissioner-General filed an answer on 14 December 2017.

Facts and Procedure

2. The following facts were established by the UNRWA DT:¹

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

... On 15 May 2016, the Agency circulated, internally and externally, a vacancy announcement for the post of Project Manager – Nahr el-Bared Reconstruction Unit

... By letter to [Mr. Verma] dated 19 October 2016, the Deputy Commissioner-General affirmed the decision not to shortlist [Mr. Verma], 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.

... On 27 October 2016, [Mr. Verma] filed an application with the UNRWA [DT].

3. On 31 August 2017, the UNRWA DT issued its Judgment dismissing Mr. Verma's application on grounds that he failed to meet his burden in proving that the decision not to shortlist him was unlawful, exercised arbitrarily or capriciously, or was motivated by prejudice or other extraneous factors. The UNRWA DT found that Mr. Verma did not possess the advanced university degree required for the post and was therefore correctly ranked in Tranche 2 as "partially meeting the requirements" and that the hiring director used his discretion to shortlist only Tranche 1 candidates. The UNRWA DT also held that Mr. Verma's claim that he was owed priority consideration as an internal candidate (over the selected candidate, an external candidate serving as a consultant) was without merit as meeting the requisite qualifications was still necessary. The UNRWA DT rejected Mr. Verma's contention that the selected candidate was not an engineer and held a degree in social work and donor relations and not in project management as required by the vacancy announcement. In this regard, the UNRWA DT noted that the vacancy did not limit the required degree to engineering and that the interview panel indicated that the selected candidate demonstrated a range of competencies and project management experience, including the advantage of his knowledge and experience on the NBRU project. Lastly, the UNRWA DT rejected Mr. Verma's claim that the vacancy announcement was tailored towards the selected candidate as the UNRWA DT held Mr. Verma did not provide any evidentiary support to this claim.

Submissions

Mr. Verma's Appeal

4. Mr. Verma requests the Appeals Tribunal to reverse the UNRWA DT Judgment and find procedural error and abuse of power by the Agency that resulted in his loss of job opportunity. Mr. Verma seeks compensation for material and moral damages. Mr. Verma argues that the UNRWA DT erred in concluding that the Agency correctly ranked him as a Tranche 2 candidate for "partially meeting" the requirements because in fact, he met the requirements on an

equivalency basis as provided for in the vacancy announcement and in Sections 26 and 28 of the UNRWA International Staff Personnel Directive (ISPD) No. 1/104.2/Rev.4.

5. P-4 level post candidates with a bachelor's degree only need 10 years of experience to be considered equivalent to cand

7. Mr. Verma argues that the UNRWA DT erred in fact and law in concluding that he failed to establish that the decision not to shortlist him was exercised arbitrarily or capriciously, or was motivated by prejudice or other extraneous factors. In this regard, the UNRWA DT erred in concluding that he did not provide evidence that the vacancy announcement was tailored to the selected candidate. In actuality, the UNRWA DT failed to consider that the position was advertised multiple times, the selected candidate was not successful when it was advertised for the second and third time, and the educational qualifications were the only aspect changed in the fourth re-advertisement. The educational qualifications were changed to include the educational qualifications of the selected candidate and in essence tailor the vacancy as a pretextual means to convert a consultant (a donor relations officer under Special Service Agreement (SSA) contract) to a staff member (P-4 Project Manager). Furthermore, the UNRWA DT erred in failing to consider that the Agency did not provide any reason for cancelling the prior advertisements.

8. Mr. Verma also argues that the UNRWA DT also erred in failing to consider his request that the UNRWA DT order the Agency to produce all records relating to the cancellation of the prior vacancy announcements to determine fairness and integrity of the process. The documents produced by the Agency reflected an erroneous recruitment report, which contained falsified information provided by the selected candidate to the interview panel about his qualifications. Lastly, the UNRWA DT failed to consider that the selected candidate did not have the requisite two years of international experience outside of the duty station in violation of ISPD Section 30. Based on the foregoing, the UNRWA DT erred in fact and law in failing to find that not shortlisting Mr. Verma was motivated by prejudice and other extraneous factors and was arbitrary and capricious as it failed to consider that his educational equivalence met the requirements. The UNRWA DT erred in not finding he should have been given priority as an internal candidate, and failed to consider the efforts taken to tailor the vacancy to meet the educational qualifications of an external candidate, who still did not meet the two-year international experience requirement. Mr. Verma argues the Agency did not adequately provide him feedback on his non-selection as required by the ISPD.

The Commissioner-General's Answer

9. The Commissioner-General requests the Appeals Tribunal to dismiss Mr. Verma's appeal in its entirety. With regard to Mr. Verma's claims for priority consideration, the Commissioner-General submits that the UNRWA DT correctly concluded that his claim was

without merit as it was common cause that he lacked the advanced degree expressly required in the vacancy, which correctly placed him in Tranche 2 (partially meets) and therefore was not entitled to priority consideration. The Commissioner-General also submits that Mr. Verma was given feedback in fulfillment of the ISPD, which explained that he was not invited to the test as only Tranche 1 candidates were shortlisted.

10. The Commissioner-General also submits that the UNRWA DT did not err in considering the selected candidate's demonstrated range of competencies and project management experience. Mr. Verma's contention that there is proof that the selected candidate provided false information to the interview panel is evidence outside of the record before the panel and does not render its decision arbitrary or di

the Appeals Tribunal to dismiss Mr. Verma's appeal in its entirety and uphold the Judgment of the UNRWA DT.

Considerations

12. Before embarking on a consideration of the specific arguments made on appeal in this case, it is apposite to recap the jurisprudence of the Appeals Tribunal regarding the scope and exercise of judicial review in relation to matters of appointments and promotions.

13. In terms of the discretion vested in the Administration, under Article 101(1) of the United Nations Charter and Sta

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... 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.

15. The UNRWA DT correctly applied the foregoing principles in considering Mr. Verma's challenge.

28. In considering the suitability of candidates for selection to the Professional category, the following combination of academic qualifications (preferably in a relevant specialisation) from an accredited educational institution and working experience in a relevant field shall be considered equivalent and as a minimum to be appointed at the grade level:

Level of Appointment	Doctorate and years of relevant experience	Masters and years of relevant experience	Bachelor and years of relevant experience
P-1	None	Degree only	2
P-2	Degree only	3	4
P-3	4	5	8
P-4	7	8	10
P-5	9	10	12
D-1	14	15	17
D-2	14	16	17

...

32. In addition to the minimum requirements specified above, the post description and vacancy announcement should describe a number of desirable requirements which the hiring unit should consider in the short-listing and/or selection of candidates.

...

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.

18. In the case at hand, the vacancy announcement No. 16-FO-LB-23 required:

Advanced university degree from an accredited educational institution in project management, administration, political science, international relations, civil engineering or architecture.

Equivalency

When the minimum requirements are not fully met, the Human Resources Department may substitute part of the unmet requirements under UNRWA's

essential post requirement, there is no merit to Mr. Verma's claim, who does not possess such a degree, that he meets the minimum requirements for the post on equivalency. Therefore, the decision of the Agency to shortlist only Tranche 1 candidates, and not Tranche 2 candidates (i.e. those who partially meet the requirements or meet on equivalency) for the post, was properly affected, as correctly found by the UNRWA DT, within the purview of paragraph 36 of the ISPD. Mr. Verma has not established by clear and convincing evidence that the decision not to shortlist him was not a valid exercise of the discretionary power of the Administration.

22. Mr. Verma further submits that the UNRWA DT erred by not finding that he was not given priority consideration as an internal candidate and by not weighing the provisions of the UNRWA Staff Regulations and published International Staff Personnel Directives, requiring that the applications of qualified internal candidates be given due and equal consideration. Mr. Verma points to the following language of UNRWA's International Staff Regulation 4.5 which states, "[w]ith 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".

23. The UNRWA DT relevantly opined:⁵

... In Megerditchian

24. Mr. Verma's claim to "priority consideration" pursuant to UNRWA's International Staff Regulation 4.5 must also fail. Preference shall be given to persons already in the service of the Agency who have the requisite qualifications and experience. In the case at hand, the evidence, as established by the UNRWA DT, shows that Mr. Verma did not meet all of the requirements for the post to which he had applied, as set out in the vacancy announcement, and thus he was rightly placed, as already alluded, by the Agency in Tranche 2 list. The UNRWA DT thus rightly concluded that since Mr. Verma was unsuitable for the post, the failure of the Administration to consider his application in priority as an internal candidate has not vitiated the outcome of the selection process. Mr. Verma has failed to establish that the UNDT committed any errors of law or of fact in reaching this finding.

25. After all, it is not an entitlement of the staff member solely by virtue of being an internal candidate to be given priority consideration for a post. We recall that "priority consideration" cannot be interpreted as a promise or guarantee to be appointed or receive what one is considered in priority for.⁶

26. For the same reasons, we hold as unsound Mr. Verma's contention that the UNRWA DT erred by not finding that "giving priority to an external candidate, who does not have the required experience for the post, over an internal candidate, is a clear breach of his rights to a discrimination free work environment as laid down in the Charter of the [United Nations]". Mr. Verma's argument is clearly misplaced, since he did not establish, as already alluded to earlier in this Judgment, that he has met the specific requirements of the vacancy announcement for the post, by contrast to the selected candidate, who, as found by the UNRWA DT, the "Interview Panel had noted [...] a demonstrated range of competencies and project management experience, including the advantage of his knowledge and experience on the NBRU project".⁷

27. The Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and, thus, is not an opportunity for a dissatisfied party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the lower court. The function of the Appeals Tribunal is to determine if the UNRWA Dispute Tribunal made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as

⁶ Onana v. Secretary-General of the United Nations , Judgment No. 2015-UNAT-533, para. 46, citing Megerditchian v. Secretary-General of the United Nations , Judgment No. 2010-UNAT-088, para. 28.

⁷ Impugned Judgment, para. 29.

prescribed in Article 2(1) of the Appeals Tribunal Statute. An appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective. It follows that an appellant must identify the alleged defects in the impugned judgment and state the grounds relied upon in asserting that the judgment is defective.⁸

28. It is obvious that Mr. Verma was not satisfied with the UNRWA Dispute Tribunal's decision. He has failed, however, to demonstrate any error in the UNRWA DT's finding that the Agency's decision not to shortlist him resulted from a valid exercise of its discretionary power and was not tainted by improper motives or otherwise unlawful. He merely voices his disagreement with the UNRWA DT's findings and resubmits his submissions to this Tribunal. He has not met the burden of proof of demonstrating an error in the impugned Judgment such as to warrant its reversal.⁹

29. This is especially true with regard to Mr. Verma's assertion that the vacancy announcement was tailored towards the selected candidate. In particular, in his submissions before the Appeals Tribunal Mr. Verma argues that the UNRWA DT "erred when it did not seek clarification from the Agency for multiple announcement of the vacancy for PM/NBRU, appointment of the selected candidate as Officer-in-Charge for the position even after having been unsuccessful during the selection process and providing him with an opportunity to gain valuable experience by keeping the post vacant for three years". Yet, the UNRWA DT considered all the relevant evidentiary material and concluded that Mr. Verma had not provided any evidence in support of his allegation that the vacancy announcement had been tailored towards the selected candidate.¹⁰ We are satisfied with this conclusion. Mr. Verma has not rebutted the presumption of regularity which attaches to the selection process. Besides, the first instance Judge has broad discretion to determine the admissibility of evidence and the weight to accord evidence before him or her.¹¹ The findings of fact made by

⁸ El Saleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East Judgment No. 2015-UNAT-594, para. 30; Achkar v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, Judgment No. 2015-UNAT-579, para. 15 and citations therein; Ruyooka v. Secretary-General of the United Nations, Judgment No. 2014-UNAT-487, para. 24.

⁹ Ruyooka v. Secretary-General of the United Nations, Judgment No. 2014-UNAT-487, para. 24; Gehr v. Secretary-General of the United Nations, Judgment No. 2012-UNAT-236, para. 37; see also Abbassi v. Secretary-General of the United Nations, Judgment No. 2011-UNAT-110, para. 27; Crichlow v. Secretary-General of the United Nations, Judgment No. 2010-UNAT-035, para. 30.

¹⁰ Impugned Judgment, para. 30.

¹¹ Lemonnier v. Secretary-General of the United Nations, Judgment No. 2017-UNAT-762, para. 37, citing Ljungdell v. Secretary-General of the United Nations, Judgment No. 2012-UNAT-265, para. 26.

the UNRWA DT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute when there is an error of fact resulting in a manifestly unreasonable decision, which is not the case here. We hold that the UNRWA DT gave careful and fair consideration to Mr. Verma's arguments regarding the legality of the selection exercise. Moreover, Mr. Verma has failed to discharge his burden of proving through clear and convincing evidence that he was denied a fair chance of selection.

30. Finally, Mr. Verma, in the same vein, submits that the UNRWA DT erred when it accepted that the interview panel had noted the selected candidate's demonstrated range of competencies and project management experience including his knowledge and experience in the NBRU project, when it has been clearly proven, with evidence, in the "Observations to Respondent's Reply with Supplementary Evidence" that the selected candidate had provided false information to the interview panel to demonstrate his competencies and project management experience; it also erred in its decision by not considering the fact that the selected candidate did not have the requisite two years of international experience outside the duty station of the post in violation of Section 30 of the ISPD, which provides that the relevant experience includes a minimum of two years of international experience outside the duty station of the post.

31. Nevertheless, as Mr. Verma was, as determined by the Appeals Tribunal earlier in this Judgment, lawfully not one of the five short-listed candidates, due to his not meeting the specific requirements of the vacancy announcement for the post, and therefore he had no chance of selection, he lacks standing in this regard to challenge the qualifications of the selected candidate, in support of his own interest in the position. Consequently, the UNRWA DT Judgment under appeal correctly determined, although with a different reasoning, that the above arguments of Mr. Verma had no merit.

32. From the foregoing, we hold that Mr. Verma has failed to establish that the UNRWA DT committed errors on questions of fact and law such as to warrant a reversal of its Judgment.

33. Our conclusion that the UNRWA DT did not make any errors of law or fact in dismissing Mr. Verma's challenge of the decision not to select him precludes Mr. Verma from seeking compensation. Since no illegality was found, there is no justification for the award of any compensation. As this Tribunal stated before, "compensation cannot be awarded when

