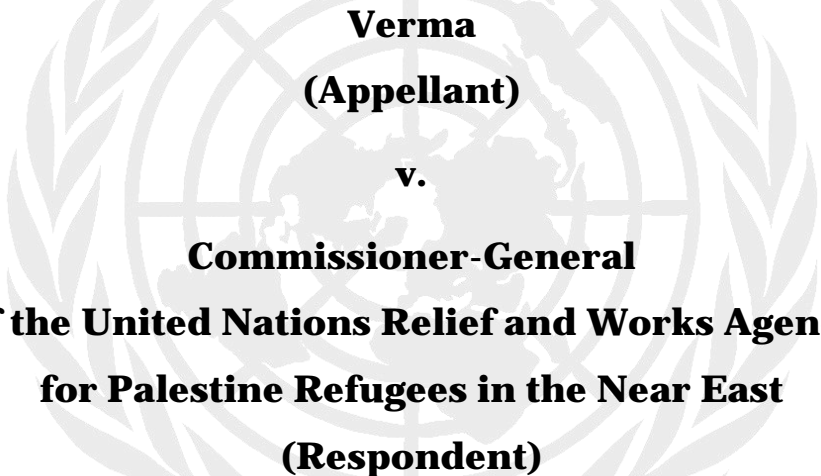




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2018-UNAT-829



**Verma  
(Appellant)**  
**v.**  
**Commissioner-General  
of the United Nations Relief and Works Agency  
for Palestine Refugees in the Near East  
(Respondent)**

**JUDGMENT**

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**Before:** Judge Dimitrios Raikos, Presiding  
Judge Sabine Knierim  
Judge Richard Lussick

**Case No.:** 2017-1118

**Date:** 22 March 2018

**Registrar:** Weicheng Lin

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**Counsel for Mr. Verma:** Amer Abu-Khalaf, LOSA

**Counsel for Commissioner-General:** Rachel Evers

**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:<sup>1</sup>

... 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 (“PM/NBRU”) at the P-4 level. A total of 108 candidates applied for the post. [Mr. Verma] was one of seven internal candidates.

... 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. [Mr. Verma] was not shortlisted for the test and interview as he had been placed in Tranche 2.

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

... On 19 September 2016, [Mr. Verma] requested review of the decision not to shortlist him for the post.

... 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.

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<sup>1</sup> Impugned Judgment, paras. 2-9.

... 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 candidates with a master's degree. Mr. Verma submits that the UNRWA DT erred in fact and law as he possessed this combination of education and years of experience as outlined in his application for the post. Mr. Verma possessed the required amount of experience including the educational requirements on equivalency as well as the desirable qualifications contrary to the Agency's claim. The hiring manager however arbitrarily did not consider the desirable qualifications and the hiring department's failure to follow the Agency's own rules on recruitment amounted to a breach of procedure and a breach of his rights to full and fair consideration.

6. Mr. Verma submits that the UNRWA DT also erred in fact and law in holding that he was not entitled to be considered a priority internal candidate. The UNRWA DT failed to consider the ISPD provisions which state that “[f]irst preference in selection should normally be for internal candidates, where internal or external candidates are equally well qualified (...)” The Agency's only argument for not shortlisting him was that he lacked an advanced degree, which is an error of law as noted above, and which in turn means the presumption of regularity should not stand. Mr. Verma argues that because he meets the requirements for the post, he was in turn entitled to priority consideration as an internal candidate. The UNRWA DT failed to give proper consideration to UNRWA International Staff Regulation 4.5 which states that the fullest regard shall be had, in fulfilling vacancies, to the requisite qualifications and experience of persons already in the service of the Agency and also failed to properly consider General Assembly resolution 59/266, Section-XI on Consultants and individual contractors which indicates that “consultants should be hired only in strict accordance with existing rules (...) and where expertise is not available within the Organization”. In this regard, Mr. Verma argues that the selected candidate was an external candidate serving as a consultant and thus appointed to the post in violation of UNRWA's Organization Directive No. 29 on Hiring of Consultants and Contractors. Based on the foregoing, Mr. Verma submits that giving priority to an external candidate, who does not have the required experience for the post, over himself—an internal candidate—is a breach of his rights per the United Nations Charter and the Rules and Regulations of the Agency.

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 discriminatory against Mr. Verma. In addition, the Commissioner-General argues that the UNRWA DT was correct in finding that Mr. Verma did not produce clear and convincing evidence that the job requirements were tailored to the selected candidate. Mr. Verma's assertions that the three vacancy announcements were cancelled due to the selected candidate's inability to meet the requirements is unsupported by evidence and is Mr. Verma's own subjective assessment. Regarding Mr. Verma's contention that the UNRWA DT did not consider that the selected candidate was placed as Officer-in-Charge of the NBRU project for three years contrary to General Assembly resolution, 59/266, the Commissioner-General submits that the resolution is not germane to the situation and irrelevant to the considerations before the Appeals Tribunal as the scope before the UNRWA DT and now the Appeals Tribunal relates to Mr. Verma's challenge against not being shortlisted.

11. The Commissioner-General further submits that Mr. Verma has failed to identify any reversible error by the UNRWA DT. Regarding Mr. Verma's request for material damages for loss of opportunity and financial loss, there is no legal basis for considering such an award. In addition, Mr. Verma did not proffer any evidence of his alleged loss. The standard for compensation in non-selection cases is whether a staff member would have had a significant chance of promotion and where an irregularity has no impact on the status of a staff member because he had no foreseeable chance for promotion, he is not entitled to rescission or compensation. Mr. Verma had no foreseeable chance for promotion as he was correctly placed in Tranche 2 and only Tranche 1 candidates were shortlisted for interviews. Lastly, regarding moral damages, Mr. Verma has not provided any evidence to support his claims of alleged stress, anxiety and discrimination suffered. For the foregoing reasons, the Commissioner-General urges

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 Staff Regulations 1.2(c) and 4.1, the Secretary-General has broad discretion in matters of staff selection. The jurisprudence of the Appeals Tribunal has clarified that, in reviewing such decisions, it is the role of the Tribunals 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.<sup>2</sup>

14. We have also stated that:<sup>3</sup>

... The Dispute Tribunal possesses jurisdiction to rescind a selection or promotion process, but may do so only under extremely rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection/promotion.

... All candidates before an interview panel have the right to full and fair consideration. A candidate challenging the denial of promotion must prove through clear and convincing evidence that procedure was violated, the members of the panel exhibited bias, irrelevant material was considered or relevant material ignored. There may be other grounds as well. It would depend on the facts of each individual case. (...)

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<sup>2</sup> *Riecan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-802, para. 13; *Al-Mussader v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-771, para. 15; *Kucherov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-669, para. 27, citing *Niedermayr v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-603, para. 21 and citations therein; *Ljungdell v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-265, para. 30 and citations therein.

<sup>3</sup> *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, paras. 20-21 and 26; see also *Niedermayr v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-603, para. 23, and *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, para. 27.

...

... 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 to the selection process. As discussed in more detail below, the UNRWA DT did not make any errors of law or fact in dismissing his application.

16. Mr. Verma submits that the UNRWA DT erred in fact and in law when it concluded that he did not meet the minimum requirements of the post and was, therefore, rightly ranked as a Tranche 2 candidate (partially meets the requirements) despite the fact that Tranche 2 candidates also included candidates who met the requirements on equivalency, which the UNRWA DT failed to consider. He thus argues that the selection process did not comply with the applicable procedures. Mr. Verma further argues that he has experience in carrying out all the duties outlined and that he holds the required amount of experience, including the educational requirements on equivalency basis and, in particular, professional knowledge and experience required in the post description, competencies and desirable qualifications. He further contends that, whilst for professional posts, possession of a minimum first-level university degree is a mandatory requirement, which cannot be substituted by additional years of relevant experience, the Agency considered instead the advanced university degree as an essential requirement despite it not being explicitly stated in the vacancy announcement

17. UNRWA's International Staff Personnel Directive I/104.2 (Qualifications and Experience Requirements for Professional Posts) provides in relevant part:

26. For professional posts, possession of a minimum of a first level university degree (preferably in a relevant specialisation) is a mandatory requirement, which cannot be substituted by additional years of relevant experience.

27. The Agency verifies the standing for institutions conferring accredited degrees through a UNESCO [the United Nations Educational, Scientific and Cultural Organisation] database. Upon selection, candidates will be requested to provide proof of degree.



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 equivalency determination guidelines with a combination of relevant academic qualification, additional professional training and/or progressive relevant work experience. Note: Work experience alone or formal qualifications with no relevant work experience are not considered sufficient for an equivalency determination.

19. With respect to the required advanced university degree for the post, the UNRWA DT found as follows:<sup>4</sup>

... The Respondent claims, and the Applicant does not contest, that the Applicant lacked the advanced university degree as required by the vacancy announcement. The [UNRWA DT] 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.

20. We find no reasons to differ from that conclusion. A plain reading of paragraph 35 of the ISPD supports the finding of the UNRWA DT that the selection exercise should be based on the assessment of the candidates' academic qualifications and working experience as set out in the vacancy announcement and that those candidates who partially meet the minimum requirements or meet on equivalency are placed in Tranche 2 as opposed to those who fully meet them and are placed in Tranche 1. Accordingly, the UNRWA DT's ruling that the Agency could not have considered Mr. Verma as having fully met the vacancy announcement's explicit requirement (i.e. of an advanced university degree) is in compliance with the above-mentioned provision of the ISPD.

21. Additionally, the Agency (hiring unit) lawfully proceeded with shortlisting the five candidates who had met all the requirements of the post and had been placed in Tranche 1 for a written test, per the combined provisions of paragraphs 32 and 35 of the ISPD, whereby the post description and vacancy announcement can set out the desirable requirements which the hiring unit should consider in the shortlisting of candidates. In any case, since the vacancy announcement explicitly lists an advanced university degree as an

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<sup>4</sup> Impugned Judgment, para. 24.

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:<sup>5</sup>

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

... [I]n 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.

... 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.

... Therefore, the [UNRWA DT] holds that [Mr. Verma's] claim with regard to being given priority consideration as an internal staff member is without merit.

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<sup>5</sup> Impugned Judgment, paras. 27-28.

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.<sup>6</sup>

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".<sup>7</sup>

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

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<sup>6</sup> *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.

<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> The findings of fact made by

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<sup>8</sup> *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.

<sup>9</sup> *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.

<sup>10</sup> Impugned Judgment, para. 30.

<sup>11</sup> *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

no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair".<sup>12</sup>

34. Accordingly, the appeal fails.

**Judgment**

35. The appeal is dismissed and Judgment No. UNRWA/DT/2017/029 is hereby affirmed.

Original and Authoritative Version: English

Dated this 22<sup>nd</sup> day of March 2018 in Amman, Jordan.

*(Signed)*

Judge Raikos, Presiding

*(Signed)*

Judge Knierim

*(Signed)*

Judge Lussick

Entered in the Register on this 23<sup>rd</sup> day of May 2018 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar

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<sup>12</sup> *Kucherov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-669, para. 33, citing *Wishah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-537, para. 40 and citations therein; see also *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-508; *Oummih v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-420; *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-095.