

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
24 February 1994

Case T-108/92

Giuseppe Caló
v
Commission of the European Communities

(Officials – Procedure for filling a post by way of promotion or transfer –
Qualifications required in the notice of vacancy – Rights of the defence –
Infringement of Article 26 of the Staff Regulations –
Comparative examination of the candidatures –
Grounds given in the decision to reject a candidature)

Full text in French II - 213

Application for: Annulment of the Commission decision rejecting the applicant's candidature for the post of Director declared vacant under Notice of Vacancy COM/103/91 and annulment of all measures subsequently adopted with a view to filling that post.

Decision: Application dismissed.

Abstract of the Judgment

Following publication of a notice of vacancy, the applicant, who was an official in Grade A 3 attached to Department F of the Statistical Office, submitted a candidature for the post of Director in Grade A 2 responsible for the management and coordination of the work of that department.

The secretary of the Advisory Committee on Appointments informed the applicant that after having considered the level of the post to be filled and the qualifications required of holders of the office, as well as all the candidatures submitted, the Committee had decided that his candidature ought not to be taken into consideration. The administration subsequently confirmed to him that it had not been possible to take his candidature into account.

The applicant submitted a complaint against the decision rejecting his candidature, and against all the measures subsequently adopted with a view to filling the post in question. Following the rejection of his complaint the applicant brought the present action.

Substance

The first plea in law based on failure to comply with the notice of vacancy

(a) Admissibility of the plea

While it is true that the opinion of the Advisory Committee on Appointments, the unlawful nature of which is relied on by the applicant in support of his request for the annulment of the decision rejecting his candidature, would appear to be a preparatory act which cannot adversely affect the applicant, the Court nevertheless takes the view that the legality of such an act may be contested incidentally in support of an action brought, as in the present case, against the final decision (paragraph 13).

See: T-27/90 *Latham v Commission* [1991] ECR II-35, para. 26

(b) Substance

The Court finds that the conclusion arrived at by the Advisory Committee on Appointments cannot be understood as meaning that that Committee took the view that the applicant's candidature was inadmissible by reason of the qualifications required, but must rather be understood as an assessment made at the end of a comparative examination of all the candidatures. In those circumstances there are no grounds for the applicant's contention that the institution, in rejecting his candidature, based itself on qualifications other than those specified in the notice of vacancy (paragraphs 14 and 15).

See: 44/85, 77/85, 294/85 and 295/85 *Hochbaum and Rawes v Commission* [1987] ECR 3259, paras 16 to 19

The second plea in law based on infringement of the rights of the defence

The Court finds that there is no evidence to justify the assumption that the applicant's candidature was assessed in the light of conditions other than those specified in the notice of vacancy and rejects as unfounded the second plea based on the assumption that the institution required additional qualifications (paragraphs 20 and 21).

The third plea in law based on infringement of Article 26 of the Staff Regulations

In the absence of anything before the Court to substantiate the applicant's claim that the Secretary-General, when he appeared before the Committee, gave an unfavourable assessment of the applicant's candidature, an assessment of which the applicant was not notified, the Court finds that the information which the Secretary-General provided to the Committee could only relate to general considerations concerning the nature of the post to be filled and did not contain any assessment whatever of the candidatures (paragraph 25).

In the event that the Secretary-General did make a comparative assessment of the various candidatures (something which is not apparent from the documents before

the Court), such an assessment would have been an expression of the administration's discretion under a procedure for filling a post and would not have fallen under the requirements laid down in Article 26 of the Staff Regulations (paragraph 26).

See: T-78/92 *Perakis v Parliament* [1993] ECR, paras 26 to 28

The fourth plea in law based on failure to comply with Article 45 of the Staff Regulations

The Court holds that this plea must, as contended by the Commission, be declared unfounded since the personal files of all candidates were available to the Commission. Moreover, the Commission was able to give its decision with full knowledge of the matter on the basis of the opinion of the Advisory Committee on Appointments, the proposal from the competent hierarchical superiors and the staff reports of each of the candidates, as is clear from the special minutes of its meeting (paragraph 30).

The fifth plea in law based on infringement of Article 25 of the Staff Regulations

The appointing authority is required to give reasons for its decisions of appointment both with regard to the candidate appointed and to the unsuccessful candidates, at least at the stage of rejection of complaints submitted against decisions rejecting candidatures. It is sufficient that the statement of reasons be based on compliance with the conditions which under the Staff Regulations must be satisfied for the procedure to be lawful (paragraph 34).

See: T-52/90 *Volger v Parliament* [1992] ECR II-121

The Court considers that the decision rejecting the applicant's complaint sets out in sufficient detail the grounds on which it is based (paragraph 35).

The sixth plea in law based on the lack of competence of the Advisory Committee on Appointments

Under Article 48(2) of its Rules of Procedure, the Court declares inadmissible this plea which was relied on by the applicant at the stage of the oral procedure and which is not based on any new matter (paragraphs 39 and 40).

Operative part:

The application is dismissed.