JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
8 June 1995

Case T-583/93

P
v
Commission of the European Communities

(Officials – Decision to reassign duties involving, in particular, the loss of the allowance provided for in Article 56a of the Staff Regulations – Obligation to state reasons)

Application for: annulment of a decision reassigning duties and compensation for the financial damage caused by that decision.

Decision: Annulment and award of damages.

Abstract of the Judgment

The applicant regularly takes part in a shiftwork system and accordingly receives the special allowance provided for by Article 56a of the Staff Regulations of Officials of the European Communities and is entitled to use a free transport service.

In the applicant's staff report for the period from 1 July 1989 to 30 June 1991, which was drawn up in April 1992, the first assessor noted a significant deterioration under the headings 'Efficiency, consistency and versatility' and 'Conduct in the service, sense of responsibility' and under the heading 'General assessment' he made negative comments about the applicant's work. In the appeal assessment, requested by the applicant and drawn up on 24 July 1992, the appeal assessor did not amend the first assessor's analytical assessment and observed that the applicant's immediate superior noted, in the course of the reference period, that the applicant experienced difficulties in accepting a new method of organizing work, which was reflected in a falling off in consistency.

On 22 February 1993 the appointing authority sent the applicant a memorandum in the following terms:

'Despite the many and unstinted efforts to reinstate you in all respects in the fire service, I am sorry to say that the results have been extremely disappointing. I am therefore obliged to withdraw you again from shiftwork ... You are to remain at the station on daytime duty pending assignment to other duties at the centre.'

On 18 May 1993 the applicant submitted a complaint against the decision to reassign him contained in the memorandum. No decision expressly rejecting the complaint was taken within the four month period provided for by Article 90(2) of the Staff Regulations. A decision expressly rejecting the complaint was however taken on 22 December 1993, after the action had been brought before the Court of First Instance.

Admissibility of the claims for a declaration and directions

In proceedings brought under Article 91 of the Staff Regulations, irrespective of whether the application is for annulment or for compensation, it is not for the Court of First Instance to make declarations of principle or to issue directions to Community institutions. First, the Community judicature manifestly has no jurisdiction to issue directions to Community institutions. Secondly, where a measure is annulled, the institution concerned is required by Article 176 of the EC Treaty to take the necessary measures to comply with the judgment (paragraph 17).

Consequently, the claims seeking a declaration by the Court that the applicant should be reinstated in his previous duties must be held to be inadmissible (paragraph 18).

See: T-156/89 *Valverde Mordt* v *Court of Justice* [1991] ECR II-407; T-94/92 *X* v *Commission* [1994] ECR-SC II-481

Claims for annulment

The plea alleging that insufficient reasons were given

Under the second paragraph of Article 25 of the Staff Regulations, any decision adversely affecting an official is to state the grounds on which it is based. That obligation to state reasons forms an essential principle of Community law and its twofold purpose is to make it possible for the decision to be the subject of judicial review and to provide the person concerned with sufficient details to allow him to ascertain whether or not the decision is well founded (paragraph 24).

See: T-1/90 *Pérez-Mínguez Casariego* v *Commission* [1991] ECR II-143; T-80/92 *Turner* v *Commission* [1993] ECR II-1465

A mere measure of internal organization which does not affect the official's position under the Staff Regulations or infringe the principle that the post to which he is assigned should correspond to his grade does not adversely affect the official and therefore the grounds on which it is based need not be stated (paragraph 25).

However, the measure at issue must be regarded as adversely affecting the applicant because it deprives him of the right to the allowance provided for by Article 56a of the Staff Regulations and, in consequence, causes him a not inconsiderable financial loss (paragraphs 29 and 30).

It follows that it is necessary for the Court to decide whether sufficient reasons for the decision at issue were provided (paragraph 31).

See: 338/82 *Albertini and Montagnani* v *Commission* [1984] ECR 2123; C-116/88 and C-149/88 *Hecq* v *Commission* [1990] ECR I-599

For the purpose of ascertaining whether sufficient reasons were given for a decision adversely affecting an official, the wording of a decision rejecting the applicant's complaint which was adopted belatedly, after an action was brought before the Court of First Instance, is not to be taken into consideration. Any statement of reasons contained in such a decision can no longer fulfil its function as regards either the person concerned or the Court (paragraph 32).

See: T-52/90 *Volger* v *Parliament* [1992] ECR II-121; C-115/92 P *Parliament* v *Volger* [1993] ECR I-6549

In the present case, it follows that the Court may not take account of the reasons given in the decision rejecting the complaint but only of those contained in the memorandum of 22 February 1993. After considering that memorandum, the Court observes that the statement of reasons provided therein seems prima facie insufficient, in that it does not enable the grounds for removing the applicant from shiftwork and reassigning him to another department to be identified with sufficient precision (paragraph 33).

At this stage in its reasoning, the Court of First Instance examines the background to the decision at issue, since the obligation to state reasons laid down in the second paragraph of Article 25 of the Staff Regulations is fulfilled if the measure which is the subject-matter of the action was taken in circumstances known to the official and enabling him to understand the scope of a measure which concerns him personally (paragraph 36).

See: *Hecq* v *Commission* and *Turner* v *Commission*, cited above

The Court considers that it has not been shown that the circumstances in which the disputed decision was taken were so well known to the applicant that the mere statement that 'the results have been extremely disappointing' enable him to identify with sufficient precision the reasons for his removal first from shiftwork and then from the firefighters' group. In particular, the Court considers that the Commission cannot rely on the fact that the applicant's staff report for the period from 1 July 1989 to 30 June 1991 contained various observations concerning his conduct in the fire brigade. In order to demonstrate that the circumstances in which the decision at issue was taken were known to the applicant, as required by the abovementioned case-law, the Commission ought in the present case to have shown that the applicant, once reinstated on shiftwork, had been clearly informed by reference to specific events of those aspects of his conduct which were regarded as inadequate (paragraphs 35 and 36).

It follows that the decision contained in the memorandum addressed to the applicant on 22 February 1993 does not provide a sufficient statement of reasons and must be annulled (paragraph 38).

The claims for compensation

The Court considers that the applicant is entitled to receive compensation for the financial losses suffered as a direct result of the adoption of the decision at issue (paragraph 43).

As regards, first of all, the loss of the right to use a free transport service, the Court considers it appropriate to quantify that loss *ex aequo et bono* for the whole of the period in question at LIT 2 000 000, including interest (paragraph 46).

As regards, secondly, the special allowance for shiftwork provided for by Article 56a of the Staff Regulations, the Court observes that the Commission does not challenge the argument that, had it not been for the decision at issue, the applicant would have continued to receive that allowance every month from 1 March 1993 onwards under the usual conditions. Accordingly, the Court orders the Commission to pay the applicant the sums which he would have received by way of shiftwork allowance as from 1 March 1993 until a decision has been taken regularizing his present position (paragraphs 47 and 48).

Failing agreement on the calculation of those sums within a period of three months from delivery of this judgment, the parties are ordered to submit their figures to the Court (paragraph 49).

As regards the applicant's claim for default interest, the Court of First Instance notes first of all that for such a claim to be admissible before the Court where the contested decision is annulled it need not have been expressly mentioned in the administrative complaint. The Court considers that the claim should be upheld and that, in so far as it concerns the shiftwork allowance, the rate of default interest should be set at 8% per annum to run from the date on which the complaint was lodged, namely 18 May 1993 (paragraphs 50 and 51).

See: T-4/92 *Vardakas* v *Commission* [1993] ECR II-357; T-15/93 *Vienne* v *Parliament* [1993] ECR II-1327

Operative part:

1. The decision contained in the memorandum addressed to the applicant on 22 February 1993 by Mr A is annulled.

2. The Commission is ordered to pay the applicant the sum of LIT 2 000 000 in damages as compensation for the loss of the right to use a free transport service.

3. The Commission is ordered to pay the applicant the sums which he would have received by way of shiftwork allowance as from 1 March 1993 and until a decision has been taken regularizing his present position. Default interest at the rate of 8% per annum running from 18 May 1993 is to be added to those sums. Failing agreement on the calculation of those sums within a period of three months from delivery of this judgment, the parties are ordered to submit their figures to the Court of First Instance.