

## Case T-18/90

**Egidius Jongen**

v

**Commission of the European Communities**

(Officials — Appointment — Classification in grade and step on recruitment — Previous experience — Correspondence between grade and post — Equal treatment of officials — Principle of the protection of legitimate expectations and duty to have regard for the interests of officials)

Judgment of the Court of First Instance (Third Chamber), 7 May 1991 ..... 189

### Summary of the Judgment

1. *Procedure — Application initiating the proceedings — Plea in law based on breach of a provision not expressly referred to in the application — Admissibility — Conditions*
2. *Officials — Recruitment — Appointment in grade — Appointment in a higher career bracket — Discretion of the administration — Judicial review — Limits (Staff Regulations, Art. 31(2))*
3. *Officials — Actions — Prior administrative complaint — Plea in law not mentioned expressly in the complaint but referred to implicitly — Admissibility (Staff Regulations, Arts 90 and 91)*
4. *Officials — Posting — Correspondence between grade and post — Assignment to a post corresponding to a higher grade — Right to reclassification — No right (Staff Regulations, Art. 7(1))*

5. *Officials — Recruitment — Appointment in grade and classification in step — Assurances — Failure to comply with the Staff Regulations — Legitimate expectation — None*

(*Staff Regulations, Arts 31 and 32*)

1. The absence of an express reference in the application initiating the proceedings to the provision the breach of which provides one of the pleas in the application is not such as to render that plea inadmissible in view of the fact that the arguments developed by the applicant in his application and the additional particulars supplied during the proceedings enabled the defendant adequately to defend its interests and the Court to exercise its supervision.
  2. The option available to the administration under Article 31(2) of the Staff Regulations to appoint a newly-recruited official to the upper grade in the starting or intermediate career bracket must be construed as an exception to the general classification rules and as a decision which lies within the discretion of the administration. In those circumstances, judicial control is limited to ensuring that the decision making the appointment was not adopted on the basis of a misappreciation of the facts.
  3. In order for a plea not expressly referred to in the prior administrative complaint to be admissible before the Court, it is sufficient that the applicant should have referred to it implicitly at that stage.
- Since the pre-litigation procedure is informal in character and those
- concerned are generally acting without the assistance of a lawyer at that stage, the administration must not interpret the complaints restrictively but, on the contrary, must consider them with an open mind.
  4. The principle that grade and post must correspond, as laid down in Article 7(1) of the Staff Regulations, was introduced for the benefit of officials inasmuch as it guarantees in theory that each official shall be assigned to a post in his category or service and not to a post in a lower grade. That principle, which also allows any official to refuse assignment to a post corresponding to a grade higher than his own, except in the case of a temporary post, does not, however, confer any right to reclassification in a higher grade in a case where an official agrees to perform duties corresponding to that higher grade. Such a situation is no more than a factor to be borne in mind in connection with promotion.
  5. With regard to classification in grade and step at the time of recruitment, the administration is under an obligation to comply with Articles 31 and 32 of the Staff Regulations and the terms of the Notice of Competition. Assurances which do not take account of the relevant provisions cannot therefore give rise to a legitimate expectation on the part of the person concerned.