

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)  
21 February 1995

Case T-506/93

**Andrew Macrae Moat**  
v  
**Commission of the European Communities**

(Officials – Promotion – Consultation of staff reports – Complaint – Failure to give a reasoned reply – Action for annulment – Admissibility – Compensation for damage)

Full text in English . . . . . II - 147

**Application for:** annulment of various decisions of the Commission appointing and promoting officials and compensation for the damage allegedly suffered by the applicant on account of the failure to give a reasoned reply to his two complaints and of his not having being appointed or promoted.

**Decision:** Application dismissed.

## **Abstract of the Judgment**

The applicant had been an official of the Commission in Grade A 4 since 1974. In the light of the record of the whereabouts of his personal file, the existence of which he learnt of in November 1992 and a copy of which he was able to obtain on 8 February 1993, he surmised that the Commission had failed to consult his personal file when carrying out the annual procedures for promotion to Grade A 3 for 1991 and 1992 and when filling three posts of head of unit for which he had applied.

The applicant lodged a first complaint seeking to have his name included on the list of officials most deserving of promotion to Grade A 3 for 1992, annulment of the appointments made to the three posts of head of unit, and compensation for the damage allegedly suffered. He then lodged a second, similar, complaint regarding the promotions to Grade A 3 for 1991. Finally, he lodged a third complaint against the failure to give a reasoned reply to his first complaint. The Commission replied, belatedly, to the applicant's first complaint, whereupon he requested it to provide him with the photocopies of the staff reports which it claimed to have submitted to the Advisory Committee on Appointments (ACA) and with certain information on when and by whom they had been made and where they were kept. He also asked the Commission to justify, in the light of the fourth paragraph of Article 26 of the Staff Regulations, the making of a partial duplicate copy of his personal file.

### **The claim for annulment**

#### *Admissibility*

The subject-matter of the complaints and of the application

No form is prescribed for an official complaint and its content must not be interpreted restrictively but must, on the contrary, be considered with an open mind. The complaint thus complies with the requirements of Article 90(2) of the Staff

Regulations, since the Commission could not be under a misapprehension as to the exact identity of the contested decisions (paragraphs 18 and 19).

See: 133/88 *Del Amo Martinez v Parliament* [1989] ECR 689; T-139/89 *Virgili-Schettini v Parliament* [1990] ECR II-535

The form of order sought in the application is the annulment of the promotion decisions, whereas in his complaints the applicant sought the inclusion of his name on the list of the eleven officials most deserving of promotion to Grade A 3 in 1992 and the annulment of all the lists of officials most deserving of promotion to Grade A 3 in 1991. Even endeavouring to interpret the complaints with an open mind, the relief sought therein thus differs from the form of order sought in the application to the Court, which means that this part of the application is inadmissible (paragraphs 21 and 22).

See: *Del Amo Martinez v Parliament*, cited above; T-57/89 *Alexandrakis v Commission* [1990] ECR II-143

An action brought against a list of officials most deserving of promotion is admissible only to the extent that, firstly, it seeks not the annulment of the entire list but only the annulment of the decision refusing to include the applicant on the list and, secondly, it relates to a promotion within a career bracket. For promotions outside a career bracket, the list is in the nature of a provisional act which does not produce any definitive effect, since the Commission publishes notices of vacancies for which officials who are not included on the list still have the opportunity of applying (paragraph 24).

See: 346/87 *Bossi v Commission* [1989] ECR 303; T-82/89 *Marcato v Commission* [1990] ECR II-735

## Failure to comply with time-limits

Since the rules on the time-limits for lodging complaints and bringing actions are a matter of public policy, any exceptions or derogations must be interpreted restrictively. Thus the mere subsequent discovery by an applicant of an already existing plea or factor cannot, in principle, be treated as a new fact capable of justifying the reopening of time-limits, without undermining the principle of legal certainty, especially as the applicant has not produced any evidence to show that he took all possible steps to discover the alleged procedural defect within the usual time-limits (paragraphs 27 and 28).

## *Substance*

### The single plea alleging an infringement of Article 45 of the Staff Regulations

The consideration of applications for transfer or promotion under Article 29(1)(a) of the Staff Regulations must comply with Article 45 of the Staff Regulations, which expressly provides for the ‘consideration of the comparative merits of the officials eligible for promotion and of the reports on them’. The requirement that the comparative merits of officials must be considered is an embodiment of both the principle of equal treatment of officials and the principle that they are entitled to reasonable career prospects (paragraph 37).

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

The Court finds that it appears from the photocopies and the minutes of the ACA meetings produced by the Commission that the relevant staff report of the applicant was indeed submitted to the ACA, that the ACA did consider his merits, and that the photocopies produced by the Commission are identical to the originals in the applicant’s personal file. As the original of that file was at the Court Registry in connection with another action brought by the applicant, the defendant cannot be criticized for having submitted to the ACA a photocopy instead of the original of the applicant’s staff report (paragraphs 40 to 42).

### **The claim for compensation**

Since the Commission made an offer to the applicant to pay him a sum covering all the expenses directly related to the preparation and lodging of the application and to the consideration of its defence, should he wish to withdraw his action, he cannot assert that the Commission's failure to give a reasoned reply to his official complaints caused him damage, and he must bear the consequences of taking the decision, after being informed of the Commission's position on his claims, to continue the proceedings (paragraph 48).

As the claim for compensation for the damage allegedly suffered by the applicant as a result of not being promoted or appointed is closely linked to the claim for annulment, the inadmissibility of the latter entails the inadmissibility of the former (paragraphs 49 and 50).

See: T-3/92 *Latham v Commission* [1994] ECR-SC II-83

### **Operative part:**

**The application is dismissed.**