

JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
26 February 2003

Case T-59/01

Albert Nardone
v
Commission of the European Communities

(Action for annulment – Former official –
Request for invalidity pension)

Full text in French II - 323

Application for: as a principal claim, the annulment of the Commission decision of 20 March 2000 refusing to grant the applicant an invalidity pension.

Held: The application is dismissed. The parties are ordered to bear their own costs.

Summary

1. Officials – Invalidity – Initiation of the invalidity procedure – Conditions (Staff Regulations, Art. 78; Annex VIII, Art. 13)

2. Officials – Invalidity – Obligation of the administration to determine whether an official who has resigned is fit for work – None (Staff Regulations, Art. 78)

1. It follows from the provisions of Article 13 of Annex VIII to the Staff Regulations that the procedure to establish invalidity may be initiated only in relation to an official who is obliged to end his service because he is suffering from invalidity. Consequently, an official who left the service several years ago and who suffers from an illness which would render him incapable of performing his duties if he were still in active employment is not entitled to request, on that ground alone, the initiation of the procedure to establish invalidity. Furthermore, that official also does not satisfy the second of the cumulative conditions laid down in Article 13, which states that an official requesting an invalidity pension must be acquiring pension rights at the time when the Invalidity Committee recognises him to be suffering from total permanent invalidity.

(see paras 31-33)

See: 12/83 *Bähr v Commission* [1984] ECR 2155, paras 12 and 13; T-295/97 *Coussios v Commission* [1999] ECR-SC I-A-103 and II-577, paras 37 and 38

2. It is not apparent from the case-law of the Court or from any other source of Community law that there is a general obligation for a Community institution to determine whether an official who has left voluntarily is fit for work.

Where an official considers that his state of health makes it necessary for him to leave the service, it is for him to submit a request before leaving, in accordance with Article 90 of the Staff Regulations, for the award of an invalidity pension under Article 78 of the Staff Regulations. Since officials are deemed to be familiar with the provisions of the Staff Regulations, an official finding himself in such a situation must take advantage of this option if he wishes to receive an invalidity pension. Not to do so must be regarded as failure to exercise due care, particularly as he is bound to be more familiar than the institution to which he is attached with his medical history and his state of health at the time of his resignation. Thus, unless there are exceptional circumstances, it may not be alleged that an institution, at least in the case of an official who leaves voluntarily without being asked to do so by that institution, has failed to convene an invalidity committee on its own initiative when the official concerned had not himself made such a request.

(see paras 38, 40)

See: *Bähr v Commission*, cited above; T-27/99 *Drabbe v Commission* [2000] ECR-SC I-A-213 and II-955