

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
17 December 1995

Case T-166/95

Mary Karagiozopoulou
v
Commission of the European Communities

(Officials – Internal competition for advancement from Category C to Category
B – Decision of the selection board failing candidates in the oral test –
Principle of equal treatment – Assessment by the selection board)

Full text in French II - 1065

Application for: annulment of the decision of the Selection Board for
Internal Competition COM/B/9/93 to award the applicant,
for the oral test, a mark below the minimum required and
not to enter her on the list of suitable candidates.

Decision: Application dismissed.

Abstract of the Judgment

The applicant, an official of the Commission in Category C, entered Internal
Competition COM/B/9/93, which permitted advancement from Category C to

Category B and was held for the purpose of drawing up a list of suitable candidates for posts as administrative assistants in Grades 5 and 4 of Category B to carry out supervised administrative duties consisting of routing office work as administrative assistant, secretarial assistant and technical assistant.

The applicant obtained a satisfactory result in the pre-selection test and the drafting test and was admitted to the oral test, which was held on 17 October 1994.

By letter of 18 November 1994 the applicant was informed that since she had failed to obtain the minimum number of points required in the oral test her name had not been entered on the list of successful candidates.

On 13 December 1994 the applicant submitted a request pursuant to Article 90 of the Staff Regulations of Officials of the European Communities (Staff Regulations) seeking an amendment of the Selection Board's negative decision. That request was subsequently reclassified as a complaint and supplemented by a further memorandum of 28 February 1995. It was expressly rejected by the Commission in a decision notified to the applicant on 27 June 1995.

Substance

First plea in law, alleging manifest error of assessment and breach of the principle of equal treatment and non-discrimination

In order to be properly constituted for the purposes of the Staff Regulations and Article 3 of Annex III thereto, the Selection Board must be composed in such a way

as to ensure an objective assessment of candidates' performance in the tests. The requirements which the abilities of the members of the Selection Board must satisfy vary, however, according to the circumstances of each particular competition (paragraph 34).

See: T-32/89 and T-39/89 *Marcopoulos v Court of Justice* [1990] ECR II-281, para. 37;
T-156/89 *Valverde Mordt v Court of Justice* [1991] ECR II-407, para. 106

The requirements regarding the linguistic knowledge of the members of a Selection Board vary according to the importance which a perfect command of a language has for the post to be filled. In the case of a competition for conference interpreters, a perfect command of languages is clearly of the utmost importance and the selection board must be composed accordingly. For such a competition case-law requires that at least one voting member have a perfect command of the candidate's target language and also actual experience as a conference interpreter (paragraph 35).

See: *Marcopoulos v Court of Justice*, cited above; T-43/91 *Hoyer v Commission* [1994] ECR-SC II-297, para. 51 et seq.

That does not apply, however, where, as in the present case, the competition concerns advancement from Category C to Category B and is designed to draw up a list of suitable administrative assistants. In that case a candidate's perfect command of the language is not particularly a special quality, as in the case in a competition for interpreters. For that reason it is necessary to have regard to the wording of the notice of competition, which states that the interview between the Selection Board and the candidates was intended to assess 'according to the elements which had come to light in the written tests, the candidates' ability to express themselves orally and their suitability to perform Category B duties'. The judgment passed on candidates' suitability in the oral stage of the selection procedure is essentially based on the substance of their answers and the reasoning ability and logical approach disclosed by those answers. It is in that way, moreover, that the Selection Board was able to supplement its assessment of the candidates who were successful in the written test on a basis other than their theoretical knowledge and

drafting skills and thus be in a position to evaluate their general ability to perform Category B duties (paragraph 36).

In those circumstances, the Selection Board's concern to ensure absolutely equal treatment for candidates must be reconciled with the requirements of good administration. To require that at least one member of the selection board have a perfect command of the language used by each of the candidates in a case such as this would place a disproportionate burden on the recruitment system. It follows that interpretation, which allows all candidates to express themselves in their mother tongue, provides a satisfactory guarantee that all candidates are treated equally (paragraph 37).

As regards the applicant's claim that she received excellent assessments from her superiors, it should be pointed out that the present case concerned a competition based on tests and that the Selection Board did not award the applicant the minimum mark required in the oral test (paragraph 42).

Such a decision on the part of the Selection Board constitutes the expression of a value judgment on a candidate's performance in the oral test and falls within the wide discretion of the Selection Board. The Community judicature has no jurisdiction to review it unless the rules which govern the proceedings of the Selection Board have clearly been infringed (paragraph 43).

See: T-46/93 *Michaël-Chiou v Commission* [1994] ECR-SC II-929, para. 48; T-291/94 *Pimley-Smith v Commission* [1995] ECR-SC II-637, para. 63; T-153/95 *Kaps v Court of Justice* [1996] ECR-SC II-663, para. 38

It follows that, whatever the applicant's merits, they cannot suffice to establish the existence of a manifest error in the assessment by the Selection Board of her performance in the oral test (paragraph 44).

Second plea in law, alleging a breach of the fifth paragraph of Article 5 of Annex III to the Staff Regulations

The notice of competition provides that 'the Selection Board shall draw up the list of suitable candidates, consisting of no more than the 60 candidates who have obtained the best total marks in tests (a), (b) and (c)'. It follows that, since the Selection Board was bound by the wording of the notice of competition, it was not entitled to draw up a list containing more than 60 candidates (paragraph 54).

See: T-158/89 *van Hecken v ESC* [1991] ECR II-1341, para. 23

Although the fifth paragraph of Article 5 of Annex III to the Staff Regulations provides that the list of suitable candidates is wherever possible to contain at least twice as many names as the number of posts to be filled, it is merely a recommendation to the Selection Board, intended to facilitate the appointing authority's decisions, and is therefore not capable of authorising the Board to go beyond the framework imposed on it by the notice of competition (paragraph 55).

Operative part:

The application is dismissed.