

## Case T-2/90

Ana Fernandes Ferreira de Freitas

v

Commission of the European Communities

(Official — Grading — Additional seniority — Experience)

Judgment of the Court of First Instance (Third Chamber), 7 February 1991 ..... 105

### Summary of the Judgment

- 1. Officials — Recruitment — Competitions — Competition based on qualifications and tests — University qualification required — Meaning — Definition determined by the legislation of the State in which studies were made — Date on which qualification was obtained — Determination by the national authorities — Judicial review — Not within the jurisdiction of the Court of First Instance*
- 2. Officials — Actions — Prior complaint through official channels — Same purpose — Grounds and arguments not relied upon in the complaint but closely linked thereto — Admissibility  
(Staff Regulations, Arts 90 and 91)*
- 3. Officials — Recruitment — Grade and step — Additional seniority — Discretion of the administration — Power not subject to the criteria laid down in Article 5 of the Staff Regulations regarding grading  
(Staff Regulations, Arts 5 and 32, second paragraph)*
- 4. Officials — Recruitment — Appointment in grade and step — Experience counted — Discretion of the administration — Additional seniority — Experience gained prior to the qualification giving access to the competition not taken into account  
(Staff Regulations, Arts 31 and 32, second paragraph)*

5. *Officials — Recruitment — Appointment in grade and step — Internal instructions of an institution regarding the criteria to be applied — Effects in law*

1. In the context of an open competition organized in order to constitute a reserve list of suitable candidates, the requirement of possession of a university degree in order to be admitted to the competition must necessarily be construed in the light of the definition of that phrase in the legislation of the Member State in which the candidate completed the studies on which he relies.

The determination of the date on which the candidate must be regarded as having obtained the degree is exclusively a matter for the administrative authorities in that State and lies outside the jurisdiction of the Court of First Instance. Only the courts of that Member State have jurisdiction to hear a dispute concerning the application by those authorities of the relevant national legislation.

2. The pre-litigation procedure must enable the appointing authority to identify sufficiently clearly the criticisms which the applicant is making of the decision at issue.

However, since that procedure is informal and since those concerned are generally acting at that stage without the assistance of a lawyer, the administration must not interpret the complaints restrictively but, on the contrary, must consider them with an open mind.

When the action is brought, the pleas must have the same subject-matter as those set out in the prior administrative complaint, but the heads of claim set out in the complaint may, before the Court of First Instance, be supported by submissions and arguments which do not necessarily appear in the complaint but which are closely linked to it.

3. Article 5 of the Staff Regulations seeks to provide a general definition of the minimum level required for an official of the grade in question in the light of the nature of the duties to which the posts correspond. It does not concern conditions of recruitment and does not restrict the exercise of the discretion enjoyed by the appointing authority under the second paragraph of Article 32 of the Staff Regulations to allow additional seniority on the basis of an official's education and special experience on recruitment.

4. As regards classification in grade and step on recruitment, the appointing authority enjoys a wide discretion subject to the provisions of Article 31 and the second paragraph of Article 32 of the Staff Regulations and the internal decisions implementing them when assessing the previous experience of a candidate recruited as an official, both as regards the nature and duration thereof

and as regards their relevance to the post to be filled.

The appointing authority does not exceed the bounds of its discretion if it decides that, for the purposes of granting additional seniority, the candidate's special experience, within the meaning of the second paragraph of Article 32 of the Staff Regulations, shall be taken into account only as from the date on which the diploma giving access to the competition which led to the official's recruitment was obtained.

5. A decision by a Community institution, communicated to all its staff, concerning the determination of grade and step on recruitment, is an internal directive which, even if it cannot be regarded as a general implementing provision within the meaning of Article 110 of the Staff

Regulations, must be regarded as a rule of practice which the administration imposes on itself and from which it may not depart without specifying the reasons which have led it to do so, since otherwise the principle of equal treatment would be infringed.

There is nothing in principle to prevent the appointing authority from drawing up rules by means of an internal decision of general effect to govern the exercise of the discretion conferred on it by the Staff Regulations. The need to ensure equal treatment of all the officials recruited under the same competition when the administration makes the assessment required by the second paragraph of Article 32 of the Staff Regulations is an aim which it may legitimately pursue.

## JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)

7 February 1991 \*

In Case T-2/90,

**Ana Fernandes Ferreira de Freitas**, an official of the Commission of the European Communities, residing in Luxembourg, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the applicant's home address, 21 boulevard Grande-Duchesse Charlotte,

applicant,

\* Language of the case French.