

Case T-25/90

Richard Schönherr

v

Economic and Social Committee of the European Communities

(Official — Amendment of a promotion decision — Comparative consideration of merits — Duty to state reasons)

Judgment of the Court of First Instance (Fifth Chamber), 30 January 1992 II - 65

Summary of the Judgment

1. *Officials — Promotion — Administration's discretion — Judicial review — Whether there was in fact a consideration of comparative merits*
(*Staff Regulations of Officials, Art. 45*)
 2. *Officials — Promotion — Complaint by a candidate who was not promoted — Decision rejecting the complaint — Reasons — Scope*
(*Staff Regulations of Officials, Arts 45 and 90(2)*)
 3. *Officials — Promotion — Consideration of comparative merits — Action taken by a consultative body not required by the Staff Regulations*
(*Staff Regulations of Officials, Art. 45*)
1. In order to evaluate the interest of the service and the merits to be taken into account in connection with the decision
- on promotion provided for in Article 45 of the Staff Regulations, the appointing authority has a wide discretion, and in

that respect review by the Community judicature must be confined to the question whether, having regard to the bases and procedures available to the administration for its assessment, it has remained within the proper bounds and has not used its authority in a manifestly incorrect manner.

The discretion enjoyed by the appointing authority presupposes careful consideration of the candidates' files. Faced with a body of sufficiently consistent evidence that supports the complaint of the lack of any real consideration of the candidates' comparative merits, it is for the defendant institution to show, by objective evidence amenable to judicial review, that it observed the guarantees given by Article 45 of the Staff Regulations to officials eligible for promotion and considered the comparative merits.

2. Although the appointing authority is not required under Article 45 of the Staff Regulations to state reasons for its promotion decisions, especially as regards candidates who have not been promoted, it is nevertheless required under Article 90(2) of the Staff Regu-

lations to state reasons for a decision rejecting a complaint challenging a promotion. However, since, under Article 45 of the Staff Regulations, promotions are "by selection", the reasons need be concerned only with the fulfilment of the legal conditions on which, under the Staff Regulations, the validity of the promotion depends. That does not mean that the institution concerned must set out in detail in what way it considered that the appointed candidate fulfilled the conditions in the vacancy notice.

3. Where an institution sets up an internal advisory committee not provided for by the Staff Regulations in order to obtain an opinion, regarding appointments to certain posts, in relation to the abilities and aptitudes of candidates, having regard to the qualifications required, this constitutes a measure designed to ensure that the institution, as appointing authority, has a better basis for carrying out the comparative examination of the merits of the candidates, as required by Article 45 of the Staff Regulations.

It follows that an opinion expressed by a joint committee on promotions must be one of the factors on which the appointing authority bases its own assessment of the candidates, even if it considers itself obliged not to follow it.