

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
9 July 2002

Case T-233/01

Daniel Callebaut
v
Commission of the European Communities

(Officials – Promotion – Absence of definitive staff report –
Consideration of comparative merits)

Full text in French II - 625

Application for: annulment of the Commission's decision of 14 August 2000 not to promote the applicant to Grade B 2 in the 2000 promotion procedure.

Held: The Commission's decision of 14 August 2000 not to promote the applicant to Grade B 2 in the 2000 promotion procedure is annulled. The Commission is ordered to pay the costs.

Summary

1. Officials – Promotion – Consideration of comparative merits – Consideration of staff reports – Incomplete personal file – Irregularity entailing annulment of a decision not to promote the official – Conditions – Decisive effect on the promotion procedure – Administration’s obligation to adduce proof of the genuineness of the consideration of comparative merits (Staff Regulations, Arts 43 and 45)

2. Officials – Promotion – Consideration of comparative merits – Absence of definitive staff report – Irregularity constituting a substantive defect (Staff Regulations, Art. 45)

1. The staff report constitutes an indispensable criterion of assessment each time an official’s career is taken into consideration with a view to adopting a decision concerning his promotion. However, the fact that, throughout the promotion procedure, an official’s staff report was not included in his personal file does not necessarily mean that the promotion procedure was marred by an irregularity. When the promotion decision is made, all candidates do not necessarily have to be at exactly the same stage regarding the state of their staff reports and the appointing authority is not obliged to postpone its decision if the most recent report on one or other of the candidates is not yet final as a result of referral to the appeal assessor or to the Joint Committee on Staff Reports.

However, there is a procedural irregularity where the staff report is missing not as a result of the normal course of the reporting procedure but of a substantial delay in that procedure, which is attributable to the administration. That irregularity is not such as to entail annulment of a decision not to promote an official unless and in so

far as the absence of the staff report was capable of having a decisive effect on the promotion procedure, in particular where that absence could not be offset by means of other information relating to the merits of the person concerned. In that context, it is for the administration to prove by objective evidence amenable to judicial review that it complied with the safeguards provided for by Article 45 of the Staff Regulations for the protection of officials eligible for promotion and that it considered the comparative merits of the candidates for promotion.

(see paras 29-32, 35, 36)

See: 263/81 *List v Commission* [1983] ECR 103, para. 27; C-68/91 P *Moritz v Commission* [1992] ECR I-6849, para. 16; T-58/92 *Moat v Commission* [1993] ECR II-1443, para. 59; T-557/93 *Rasmussen v Commission* [1995] ECR-SC I-A-195 and II-603, para. 33; T-144/95 *Michaël v Commission* [1996] ECR-SC I-A-529 and II-1429, para. 52; T-82/98 *Jacobs v Commission* [2000] ECR-SC I-A-39 and II-169, paras 34, 36 and 40; T-202/99 *Rappe v Commission* [2000] ECR-SC I-A-201 and II-911, paras 39, 40, 43 and 45

2. The consideration undertaken within the Directorates-General cannot take the place of the comparative consideration which must be undertaken subsequently by the Promotion Committee. Every official eligible for promotion is entitled to expect the Promotion Committee to compare his merits with those of other officials eligible for promotion to the grade concerned. It follows that a promotion procedure is marred by an irregularity constituting a substantive defect in so far as, in the absence of an official's definitive staff report, the Promotion Committee did not undertake a consideration of the comparative merits of all the candidates for promotion, as required by Article 45 of the Staff Regulations.

(see paras 46, 48)

See: T-234/97 *Rasmussen v Commission* [1998] ECR-SC I-A-507 and II-1533, para. 24; T-22/99 *Rose v Commission* [2000] ECR-SC I-A-27 and II-115, para. 57