ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
11 July 1997

Case T-16/97

Bruno Chauvin
v
Commission of the European Communities

(Officials – Judgment of the Court of First Instance – Application for reclassification in grade – Objection of inadmissibility – Material new fact – Admissibility)

Application for: annulment of the Commission's decision of 18 June 1996 rejecting the applicant's request for a review of his classification in grade.

Decision: Application dismissed.

Abstract of the Order

By decision of the appointing authority of 13 February 1995 the applicant was appointed as a probationary official to the post of administrator and provisionally classified in grade A 7, step 1, with effect from 1 February 1995. The applicant was

assigned to the 'Europe, other than EFTA; Mediterranean; ACP countries; and newly independent States' Unit of the Directorate for International affairs relating to agriculture in the Agriculture Directorate-General (DG VI).

By decision of 31 August 1995 the appointing authority definitively fixed the classification of the applicant in grade A 7, step 3. He acknowledged receipt of that decision on 25 September 1995.

By decision of 29 March 1996, which took effect on 1 November 1995, the appointing authority established the applicant in his post.

On 5 October 1995 the Court of First Instance delivered its judgment in Case T-17/95 *Alexopoulou* v *Commission* [1995] ECR-SC II-683.

By decision of 7 February 1996 ('the decision of 7 February 1996'), published in the *Administrative Notices* of 27 March 1996, the Commission amended its decision of 1 September 1983 on the criteria applicable to appointment in grade and classification in step on recruitment ('the decision of 1 September 1983'). In consequence of that amendment, the first paragraph of Article 2 of the decision of 1 September 1983 now provides as follows:

'The appointing authority shall appoint the probationary official in the starting grade of the career bracket to which he has been recruited.

By way of exception to this principle, the appointing authority may decide to appoint the probationary official to the higher grade of the career bracket where the specific needs of the service are such that the official to be recruited has to be particularly well-qualified or where the person recruited has exceptional qualifications.'

On 21 February 1996 the applicant submitted to the appointing authority, pursuant to Article 90(1) of the Staff Regulations of officials of the European Communities ('the Staff Regulations'), a request that his classification in grade be reviewed, having regard to the classification criteria established by the judgment in *Alexopoulou*. He asked to be classified in at least grade A 6.

That request was rejected by decision of the Commission of 18 June 1996 ('the contested decision'), on the ground that the request had been submitted more than three months after the initial classification decision taken in relation to him.

On 24 June 1996 the applicant lodged a complaint against the contested decision. He stated in that complaint: 'The purpose of my request was not to contest an "act adversely affecting me" within the meaning of [Article 90(2)] of the Staff Regulations, since the decision concerning my classification on recruitment was taken in accordance with the classification criteria applying at the time. I was requesting the appointing authority to reconsider my classification on recruitment pursuant to Articles 31(2) and 90(1) of the Staff Regulations, having regard to the [*Alexopoulou* judgment] invalidating the classification criteria applying at the time of my recruitment, and in accordance with the principle of equal treatment.'

In the absence of any response by the Commission to the complaint, that complaint was implicitly rejected on 24 October 1996.

Admissibility

The time-limits prescribed by Articles 90 and 91 of the Staff Regulations for lodging complaints and bringing proceedings are a matter of public policy and are not subject to the discretion of the parties or the Court, since they were established in order to ensure that legal positions are clear and certain. Any exceptions to, or derogations from, those time-limits must be given a restrictive interpretation (paragraph 32).

See: C-246/95 *Coen* [1997] ECR I-403, para. 21; T-131/95 *Progoulis* v *Commission* [1995] ECR-SC II-907, para. 36; T-113/95 *Mancini* v *Commission* [1996] ECR-SC II-543, para. 20

In the present case, the applicant failed, within the period of three months prescribed by Article 90(2) of the Staff Regulations, to lodge a complaint against the appointing authority's decision of 31 August 1995 concerning his classification on recruitment. It follows that the applicant's classification in grade became final upon the expiry of the time-limit for lodging a complaint, namely on 25 December 1995, since he acknowledged receipt of the appointing authority's decision on 25 September 1995 (paragraph 33).

An official cannot challenge the conditions of his initial recruitment once it has become definitive (paragraph 34).

See: 190/82 *Blomefield* v *Commission* [1983] ECR 3981, para. 10; *Progoulis* v *Commission*, cited above, para. 38

The very aim of the applicant's request of 21 February 1996 was to challenge the conditions of his initial recruitment, in particular his classification in grade (paragraph 35).

Even assuming that the request of 21 February 1996 must be construed restrictively, that is to say, as seeking only an assessment of the applicant's qualifications with a view to the possible application of Article 31(2) of the Staff Regulations, that request nevertheless potentially constituted an indirect challenge to the appointing authority's decision of 31 August 1995, which had become final (paragraph 36).

Although Article 90(1) of the Staff Regulations provides that any official may request the appointing authority to take a decision relating to him, that right does not allow an official to circumvent the time-limits prescribed by Articles 90 and 91 for lodging complaints and bringing proceedings by indirectly calling in question, by means of a request, a previous decision which has not been challenged within the period prescribed. Only the existence of material new facts may justify the submission of a request for a review of such a decision (paragraph 37).

See: 127/84 *Esly* v *Commission* [1985] ECR 1437, para. 10; 161/87 *Muysers and Tulp* v *Court of Auditors* [1988] ECR 3037, para. 11

It is therefore necessary, at this point, to consider whether either the judgment in *Alexopoulou* or the decision of 7 February 1996 is capable of constituting a material new fact allowing the submission, following the expiry of the time-limit for lodging a complaint, of a request for reclassification (paragraph 38).

Apart from the parties, the only persons concerned by the legal effects of a judgment annulling a measure are the persons directly affected by the measure which is annulled, and a judgment can constitute a new fact only in relation to those persons (paragraph 43).

See: 43/64 *Müller* v *Councils of the EEC; EAEC and ECSC* [1965] ECR 385, at 397; 34/65 *Mosthaf* v *Commission of the EAEC* [1966] ECR 521, at 531; 125/87 *Brown* v *Court of Justice* [1988] ECR 1619, para. 13; *Progoulis* v *Commission*, cited above, para. 41

In the present case, the applicant does not claim to have been directly concerned by the measure annulled by the judgment in *Alexopoulou*. That judgment cannot therefore be regarded as a material new fact capable of causing time to start running afresh for the purposes of enabling the applicant to lodge a complaint (paragraph 44).

Moreover, the Court of Justice has held, in proceedings for revision of a judgment delivered by it, that a judgment delivered in the interim by the Court of First Instance, containing a legal assessment of what could possibly be characterized as new facts, cannot in any circumstances itself constitute a new fact. There was nothing to prevent officials from challenging their classification in grade at the time of their recruitment by asserting that the provisions on which the classification decision was based were unlawful (paragraph 45).

See: C-403/85 REV *Ferrandi* v *Commission* [1991] ECR I-1215, para. 13

Nor, by its very nature and its legal scope, could the decision of 7 February 1996 amending the general decision of 1 September 1993 constitute a new fact. That decision had neither the purpose nor the effect of calling in question administrative decisions which became final before it entered into force (paragraph 46).

See: 15/73 to 33/73, 52/73, 53/73, 57/73 to 109/73, 116/73, 117/73, 123/73, 132/73, 135/73 to 137/73 *Schots-Kortner and Others* v *Council, Commission and Parliament* [1974] ECR 177, para. 39; *Brown* v *Court of Justice*, cited above, para. 14

Since the applicant is unable to put forward any new facts which cause time to start running afresh in relation to the periods prescribed by Articles 90 and 91 of the Staff Regulations, he is out of time for the purposes of contesting the decision of 31 August 1995 fixing his classification in grade, which became final on 25 December 1995 (paragraph 53).

Operative part:

The application is dismissed as inadmissible.