

Case T-230/99

Hans McAuley
v
Council of the European Union

(Officials – Appointment by way of promotion – Annulment – Consideration
of comparative merits – Manifest error of assessment)

Full text in French II - 583

Application for: annulment of the decisions of the Secretary-General of the Council of 15 December 1998 rejecting the applicant's candidatures for the posts of Head of the English Division of the Translation Department of the Translation and Document Production Directorate of the Administration – Protocol Directorate-General and Linguistic Adviser in that division and appointing B and K to those two posts respectively.

Held: The decisions of the Council of 15 December 1998 appointing K to the post of Linguistic Adviser in the English Division and rejecting the applicant's candidature for that post are annulled. The remainder of the application is dismissed. The Council is ordered to bear its own costs and to pay 50% of those incurred by the applicant. The applicant is ordered to bear 50% of his own costs.

Summary

1. Officials – Vacancy notice – Consideration of comparative merits – Compliance with the conditions set out in the vacancy notice – Judicial review – Scope
(Staff Regulations, Art. 7)

2. Officials – Promotion – Complaint by an unsuccessful candidate – Decision rejecting complaint – Statement of grounds – Scope
(Staff Regulations, Arts 25, second para., 45 and 90(2))

1. For the purpose of verifying whether the appointing authority has made a manifest error of assessment in appraising the merits of the candidates for a vacant post in the light of the requirements arising from the vacancy notice, it is not for the Court to substitute its own assessment for that of the appointing authority, but to establish whether, regard being had to the considerations which may have influenced the administration in making its assessment, the latter remained within reasonable bounds and did not use its power in a manifestly incorrect manner.

(see para. 33)

See: 282/81 *Ragusa v Commission* [1983] ECR 1245, para. 9; T-220/99 *Behmer v Parliament* [2000] ECR-SC I-A-187 and II-851, para. 32

2. The appointing authority is not obliged to issue statements of grounds for promotion decisions, either to the addressees of those decisions, who cannot be adversely affected by them, or to the unsuccessful candidates, who might be harmed by such a statements of grounds.

However, although the appointing authority is not obliged to provide a statement of grounds for promotion decisions, it is obliged to provide a statement of grounds for its decision rejecting a complaint lodged under Article 90(2) of the Staff Regulations by a candidate who is not promoted, the grounds for that adverse decision being deemed to be the same as those for the decision against which the complaint was directed.

That obligation to state, at least at the stage of rejecting the complaint, the grounds on which a contested promotion decision is based is intended, on the one hand, to provide the official concerned with sufficient information to determine whether the act adversely affecting him is well founded and whether it is appropriate to bring legal proceedings before the Court and, on the other, to enable the Court to review the legality of that decision. Since promotion is by selection, the statement of grounds for the rejection of the complaint must deal only with the satisfaction of the legal conditions which under the Staff Regulations govern the regularity of the procedure. In particular, the appointing authority is not obliged to give the candidate who is not selected details of the comparison of his merits and those of the candidate who is promoted or to set out in detail in what way it considered that the appointed candidate fulfilled the conditions in the vacancy notice. It is sufficient that, in its decision rejecting the complaint, the appointing authority inform the official concerned of the relevant individual ground for the rejection of his candidature.

(see paras 50-52)

See: 188/73 *Grassi v Council* [1974] ECR 1099, paras 11 and 12; T-25/92 *Vela Palacios v ESC* [1993] ECR II-201, para. 25; C-115/92 P *Parliament v Volger* [1993] ECR I-6549, para. 22; T-6/96 *Contargyris v Council* [1997] ECR-SC I-A-119 and II-357, para. 148; T-142/95 *Delvaux v Commission* [1997] ECR-SC I-A-477 and II-1247, para. 84; T-3/97 *Campogrande v Commission* [1998] ECR-SC I-A-89 and II-215, para. 112; T-157/98 *Oliveira v Parliament* [1999] ECR-SC I-A-163 and II-851, para. 52