JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
11 June 1996

Case T-118/95

Miguel Anacoreta Correia
v
Commission of the European Communities

(Officials – Recruitment procedure – Post in Grade A 1)

Application for: annulment of the decision rejecting the applicant's candidature for the post of Deputy Director-General of the Directorate-General for External Political Relations and of B's appointment to that post.

Decision: Application dismissed.

Abstract of the Judgment

The applicant, a Commission official in Grade A 2, is employed in DG IA (Directorate-General for External Political Relations) as Director for Latin America.

By notice of 6 January 1994 advertising vacant post COM/1/94, the appointing authority of the Commission opened the procedure under Article 29(1)(a) of the Staff Regulations for Officials of the European Communities with a view to filling the post (Grade A 1) of Deputy Director-General of the Directorate-General for External Political Relations (DG IA).

The applicant was the only official to apply for that post within the time-limit set by the vacancy notice.

On 27 April 1994 the appointing authority decided to use the procedure provided for by Article 29(2) of the Staff Regulations. No notice of the opening of that procedure was published.

On the same day, B, a Portuguese diplomat, submitted his candidature for the post.

On 15 June 1994 the appointing authority decided to recruit B and on 20 July 1994 appointed him an official in Grade A 1.

By letter of 24 June 1994, the appointing authority informed the applicant that his candidature had been unsuccessful.

On 14 September 1994 the applicant submitted a complaint against that decision and against the appointing authority's decision to appoint B to the post in question. His complaint was rejected by the appointing authority's decision of 30 January 1995.

Before the vacancy notice was published, an article had appeared in a Portuguese newspaper on 10 December 1993 reporting that the post in question was reserved for a person of Portuguese nationality, that the Portuguese minister responsible had nominated B as the most suitable candidate and that, following a long conversation with B, the competent Member of the Commission had approved that choice.

Another Portuguese newspaper reported on 15 January 1994 that B was to be appointed to the post.

The first plea in law: misuse of powers

The concept of misuse of powers has a precisely defined scope and refers to cases where an administrative authority has used its powers for a purpose other than that for which they were conferred on it. A decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken for purposes other than those stated (paragraph 25).

See: T-106/92 *Frederiksen* v *Parliament* [1995] ECR-SC II-99, para. 47; T-562/93 *Obst* v *Commission* [1995] ECR-SC II-737, para. 62

Information in press articles cannot be regarded as objective, relevant and consistent evidence that, before opening the recruitment procedure, the appointing authority had already selected candidates or decided to appoint B to the post in question (paragraph 30).

It is possible, for instance, that the discussions between the competent Member of the Commission and potential candidates for the post were 'exploratory'. Furthermore, there is nothing to prevent a superior who is directly concerned from meeting a person who may, when the time comes, express interest in a vacant post, provided that such a meeting does not result in any promises being made to that person, especially in the case of posts to be filled in Grades A 1 or A 2 (paragraph 31).

The inference – that B had 'been appointed' to the post in question and was going to 'fill' it – drawn in the press articles from the fact that the competent Member of the Commission had met a number of potential candidates for the post before the vacancy notice was published, was therefore premature (paragraph 32).

Furthermore, in order to fill a vacant post, the appointing authority may directly open the procedure under Article 29(2) of the Staff Regulations where, after assessing whether the post can be filled through one of the procedures listed in Article 29(1), it concludes that none of them is likely to result in the appointment of the person of the highest standard of ability, efficiency and integrity. In the present case, the very fact that the procedure under Article 29(2) was opened suggests that the decision to appoint B to the post in question had not yet been taken when the said press articles appeared (paragraph 34).

See: T-18/92 and T-68/92 *Coussios* v *Commission* [1994] ECR-SC II-171, para. 98; T-586/93 *Kotzonis* v *ESC* [1995] ECR-SC II-203, para. 94

Moreover, no provision of the Staff Regulations gives a candidate in a recruitment procedure the right to have a meeting with his potential future superior or lays down an obligation to invite a candidate to such a meeting as a matter of course (paragraph 36).

Nor does the fact that B submitted his candidature on the same day as the procedure under Article 29(2) was opened amount to either proof or even objective and conclusive evidence that, before the recruitment procedure was opened, a choice had been made or a decision taken to appoint B to the post in question. It cannot be ruled out that, following his meeting with the competent Member of the Commission, B had followed the progress of the recruitment procedure very closely and was informed at the appropriate time of the opening of the procedure under Article 29(2) so that he was able to submit his candidature that day (paragraph 37).

The second plea in law: infringement of Articles 7 and 27 of the Staff Regulations

The complaint makes no reference to an infringement of Articles 7 and 27 of the Staff Regulations or to a breach of the principle of non-discrimination. Nor does it contain any argument from which the defendant institution, even endeavouring to interpret the complaint with an open mind, could have inferred that the applicant wished to plead an infringement of Articles 7 and 27 of the Staff Regulations or breach of the principle of non-discrimination (paragraph 44).

See: T-57/89 *Alexandrakis* v *Commission* [1990] ECR II-143, para. 9

This plea is therefore inadmissible (paragraph 45).

The third plea in law: infringement of Article 29 of the Staff Regulations

Where, as in this case, there is only one candidate for a post after the procedure under Article 29(1)(a) of the Staff Regulations is opened, the appointing authority is not under a duty first to assess the merits of that person. Article 29(1)(a) of the Staff Regulations does not give officials eligible for promotion a personal right to promotion. On the contrary, the appointing authority may directly open the procedure under Article 29(2), in order to attract one or more other candidatures and thus be in a better position to choose the person most suitable for the post to be filled, and proceed to a comparative consideration of the merits (paragraphs 54 and 55).

See: 123/75 *Küster* v *Parliament* [1976] ECR 1701, paras 10 and 17

Furthermore, even though the vacancy notice was undeniably succinct, that fact alone did not prevent the applicant from duly submitting his candidature, particularly since, having been a Commission official since July 1987 and in a senior post in DG I itself since January 1992, he could not have been unaware of the nature of the post in question and the general conditions required for appointment thereto (paragraph 58).

The fourth plea in law: infringement of the obligation to undertake a comparative examination of the merits of the applicants

The decision rejecting the applicant's complaint, as well as the defence and rejoinder, clearly set out the reasons why the appointing authority decided to accept

B's candidature for the post in question. Consequently, there is no reason to doubt that the appointing authority did undertake a comparative examination of the candidatures (paragraph 65).

Secondly, although the vacancy notice was succinct, it enabled all those concerned to submit candidatures in full knowledge of the facts and the appointing authority was under no duty to call the applicant to interview so that he could effectively present his candidature (paragraph 66).

The fifth plea in law: a manifest error of assessment

As regards posts to be filled in Grades A 1 or A 2, in particular, the appointing authority has a broad discretion when comparing the merits of the candidates, which is open to review only in cases of manifest error. Furthermore, the appointing authority is entitled to choose one eligible candidate in preference to another for reasons concerning the interests of the service. In the present case, B's knowledge and experience, which led the appointing authority to accept his candidature instead of that of the applicant, were clear from the decision rejecting the complaint, from the defence and rejoinder, and from the hearing. The applicant has produced no evidence to show that the appointing authority committed a manifest error of assessment in its consideration of the comparative merits of the candidates (paragraphs 75 and 76).

See: 151/80 *De Hoe* v *Commission* [1981] ECR 3161, para. 16; T-20/89 *Moritz* v *Commission* [1990] ECR II-769, para. 29; *Kotzonis* v *ESC*, cited above, para. 81

The sixth plea in law: failure to state reasons

The appointing authority is not obliged to give reasons for promotion decisions in respect of candidates who have not been promoted but it is obliged, on the other hand, to state reasons for a decision rejecting a complaint submitted by a candidate who has not been promoted, since the reasons for the latter decision are deemed to be the same as those for the decision which was the subject of the complaint. That also applies to a decision to make a particular appointment, following a procedure under Article 29(2) of the Staff Regulations (paragraph 82).

See: C-343/87 *Culin* v *Commission* [1990] ECR I-225, para. 13; *Kotzonis* v *ESC*, cited above, para. 105

Operative part:

The application is dismissed.