

ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)  
28 March 1994 \*

(Officials – Absence of pleas in law – Inadmissibility)

In Case T-515/93,

**B**, an official of the Commission of the European Communities, represented by Luc Govaert, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Lucy Dupong, 14 A Rue des Bains,

applicant,

v

**Commission of the European Communities**, represented by Ana Maria Alves Vieira, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the list published on 11 September 1992 of those considered most worthy of promotion to Grade A 4, and for an order that the Commission pay compensation for the harm suffered,

THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: R. García-Valdecasas, President, B. Vesterdorf and J. Biancarelli,  
Judges,

Registrar: H. Jung,

\* Language of the case: English.

makes the following

## Order

### Facts and procedure

- 1 The applicant, B, is an official in Grade A 5 at the Commission.
- 2 On 10 December 1992 he submitted a complaint under Article 90(2) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') contesting the failure to include him in the list of officials considered most worthy of promotion to Grade A 4. That list was published on 11 September 1992 in Administrative Notice No 734. In his complaint the applicant claims that his staff report contained very good marks and laudatory comments by his immediate superior who, in the general appreciation, furthermore expressed the hope of seeing the applicant promoted to Grade A 4 at the earliest opportunity.
- 3 On 16 June 1993 the applicant received a letter from the Director-General for Personnel and Administration explicitly rejecting his complaint.
- 4 The applicant thereupon brought the present action by application lodged at the Registry of the Court of First Instance on 16 September 1993.
- 5 The application contains a section headed 'Facts and procedure' which sets out briefly the course of the administrative procedure in this case.
- 6 The section of the application headed 'Law' is worded as follows:

'The Commission has already admitted that, in the light of Article 45 of the Staff Regulations, the applicant's name should have been included in the list of those considered most deserving promotion to the Grade A 4 in 1992 ahead of that of the other official who was included but was not promoted.

On these grounds, the applicant requests the Court of First Instance:

- (1) to declare the present application admissible and founded;
- (2) to annul the list of those considered most deserving of promotion to the Grade A 4 that was published on 11 September 199[2];
- (3) to condemn the Commission to pay the applicant compensation in whatever amount the Court considers appropriate;
- (4) to condemn the Commission to pay the applicant's costs.'

7 By a separate document the Commission raised an objection of inadmissibility on 25 October 1993 in which it contended that the Court should:

- '— declare the present application inadmissible;
- condemn the applicant to pay his own costs'.

8 On 26 November 1993 the applicant submitted his observations on the objection of inadmissibility in which he requested the Court:

- '(1) to declare the present application admissible and founded;
- (2) to annul the list of those considered most deserving of promotion to the Grade A 4 that was published on 11 September 1992;
- (3) to condemn the Commission to pay the applicant compensation in whatever amount the Court considers appropriate;

- (4) to condemn the Commission to pay the applicant's costs;
- (5) to stay all further proceedings in the case until after the promotions to A 4 in the 1993 exercise have been decided (at which time the applicant may be in a position to withdraw the application as pointless)'.

### Admissibility

- 9 The Commission considers that the application is manifestly inadmissible because it does not comply with the requirements in Article 44(1)(c) of the Rules of Procedure which provides that an application is to state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based. It contends that the few lines of the section headed 'Law', cited above, do not enable it to assess the pleas in law on which the applicant is founding his application, or to understand what basis there may be for the form of order sought by him. The Commission refers to the case-law of the Court of Justice and of the Court of First Instance (judgment of the Court of Justice in Joined Cases 19/60, 21/60, 2/61 and 3/61 *Fives Lille Cail and Others v High Authority* [1961] ECR 281, 294 and 295; order of the Court of First Instance in Case T-85/92 *De Hoe v Commission* [1993] ECR II-523). In any event, the Commission considers that the claim for compensation made by the applicant in his application was not put forward in the complaint and is therefore inadmissible.
- 10 In support of his application the applicant observes that he has clearly referred to an infringement of Article 45 of the Staff Regulations and also claimed that his staff report, which pursuant to Article 45 should have been compared with those of the other candidates for promotion, was better than the reports of the two officials who were proposed for promotion.
- 11 The Court observes that, under Article 114 of its Rules of Procedure, a party applying to the Court for a decision on the admissibility of the application without going to the substance of the case must make the application by a separate document. The Court may consider that there is no need to open the oral procedure

and may give a decision on the application by reasoned order. In the present case, the Court considers that it is sufficiently informed by the documents before it and decides that it is not necessary to take any further steps in the proceedings.

- 12 The Court of First Instance observes that, under the first paragraph of Article 19 of the Statute of the Court of Justice of the EEC, which is applicable to the Court of First Instance pursuant to the first paragraph of Article 46 of that Statute, and Article 44(1)(c) of the Rules of Procedure, an application is to state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based. The Court of First Instance considers that, irrespective of questions of terminology, the presentation of those matters must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to exercise its review. In order to ensure legal certainty and the proper administration of justice, if an action is to be admissible under the abovementioned provisions, the essential factual and legal elements upon which the action is based must be apparent, at the very least in summary form, but coherently and comprehensibly, from the application itself (see the judgments of the Court of Justice in Case C-347/88 *Commission v Greece* [1990] ECR I-4747, paragraph 28, and in Case C-52/90 *Commission v Denmark* [1991] ECR I-2187, paragraph 17 et seq.; see also the order of the Court of First Instance in Case T-85/92 *De Hoe v Commission*, cited above, paragraph 20).
- 13 More particularly, according to the order in *De Hoe*, although it must be accepted that the statement of the pleas in law on which the action is based need not conform with the terminology or the list in the Rules of Procedure and it may be sufficient for those pleas to be presented in terms of their substance rather than of their legal classification, that is however on condition that those pleas are sufficiently clear from the application. Furthermore, a mere abstract statement of the pleas in the application does not satisfy the requirements of the Statute of the Court of Justice of the EEC or the Rules of Procedure and the words 'a brief statement of the grounds' and 'a summary of the pleas in law' used in those instruments mean that the application must specify the nature of the plea in law on which the application is based (judgment in *Fives Lille Cail*, cited above, and order in *De Hoe*, cited above, paragraph 21).

- 14 In the present case, the Court of First Instance finds that the application does not contain, either in its factual section, or in its section entitled 'Law', a statement, even in summary form, of the pleas in law or matters of law relied on in support of the action. As the Commission has correctly stated, the section entitled 'Law', cited above, does not enable it to assess the pleas on which the applicant founds his application, or to understand what basis there may be for the form of order sought by him. Accordingly, it does not enable the Commission to draw up its defence properly. In those circumstances, the Court of First Instance considers that the application, in the form submitted to it for its appraisal, does not enable it to exercise its review of either the legality of the contested decision or the cogency of the applicant's claim for compensation.
- 15 It follows from all the foregoing that the application does not satisfy the minimum requirements for the admissibility of an action under the first paragraph of Article 19 of the Statute of the Court of Justice of the EEC and Article 44(1)(c) of the Rules of Procedure. The action must therefore be dismissed as inadmissible.

### Costs

- 16 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Article 88 of those Rules provides that in proceedings brought by servants of the Communities the institutions are to bear their own costs. However, that provision is without prejudice to costs held to have been unreasonably or vexatiously caused within the meaning of the second subparagraph of Article 87(3) of those Rules. The Court of First Instance considers that the last-mentioned provision of the Rules of Procedure ought to be applied where an action is brought in the circumstances of this case. Accordingly, the applicant must be ordered to pay the whole of the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

1. The action is dismissed as inadmissible.
2. The applicant shall pay the whole of the costs.

Luxembourg, 28 March 1994.

H. Jung  
Registrar

R. García-Valdecasas  
President