

Case T-58/91

Dierck Booss and Robert Caspar Fischer

v

Commission of the European Communities

(Officials — Promotion — Recruitment to Grade A 2 —
Vacancy notice — Posts reserved for the nationals
of certain Member States)

Judgment of the Court of First Instance (Fourth Chamber), 3 March 1993 II - 149

Summary of the Judgment

1. *Officials — Vacant posts — Filling by promotion — Consideration of the comparative merits of the candidates — Introduction of a requirement not in the vacancy notice — Not permissible*
(Staff Regulations, Arts 29(1)(a) and 45(1))
 2. *Officials — Actions — Prior complaint through official channels — Subject-matter and legal basis to be the same — Submissions and arguments not appearing in the complaint but closely linked thereto — Admissibility*
(Staff Regulations, Arts 90 and 91)
 3. *Officials — Recruitment — Criteria — Geographical balance — Posts in Grades A 1 and A 2 — Filling thereof in consideration of candidates' nationality — Not permissible unless in the interest of the service*
(Staff Regulations Arts 27, first and third paras, and Art 29)
1. In the context of a procedure to fill a vacant post by promotion under Article 29(1)(a) of the Staff Regulations, the appointing authority is required to consider the comparative merits of the candidates, as provided for in Article 45(1) of
- the Staff Regulations, within the legal limits which it has imposed on itself by the vacancy notice. That obligation is not satisfied if the appointing authority becomes aware of conditions specially required to fill the vacant post only after the vacancy

notice has been published, regard being had to the candidates who have come forward, and if it interprets the wording of the vacancy notice in a way which seems to it to be in the best interests of the service. Any other solution would deprive the vacancy notice of its basic function in the recruitment procedure, namely to give those interested the most accurate information possible of the nature of the conditions required to fill the post in question.

In the absence of specific provisions in the Staff Regulations governing promotion to Grade A 2, those principles must be applied in the context of a procedure to fill a post in that grade. Accordingly, the appointing authority cannot require candidates for such a post to have a particular qualification which was not expressly mentioned in the vacancy notice or which did not necessarily follow from the description of the post to be filled and the corresponding duties indicated in that notice.

2. The rule requiring consistency between the prior complaint through official channels and the action requires, on pain of inadmissibility, that a plea put forward before the Community judicature shall have been relied on already in the complaint, so that the appointing authority shall have been in a position to know in sufficient detail, at the stage of the complaint through official channels, of the criticisms which the person concerned is making against the contested decision. However, while the form of order sought from the Court may contain only heads

of claim based on the same matters as those relied on in the complaint, those heads of claim may be developed at the litigation stage by the presentation of submissions and arguments which need not necessarily appear in the complaint but must be closely linked to it. Therefore, where a complaint challenges a decision to appoint an official and alleges misuse of power inasmuch as the candidate appointed was chosen in advance by the administration, that head of claim may be validly developed in the application to the Court by the presentation, for the first time, of the complaint alleging infringement of the third paragraph of Article 27 of the Staff Regulations, which provides that no posts are to be reserved for nationals of any specific Member State.

3. The rule in the third paragraph of Article 27 of the Staff Regulations that no posts are to be reserved for nationals of any specific Member State must be observed in all the recruitment procedures provided for in Article 29 of the Staff Regulations, including the recruitment according to the procedure provided for in Article 29(2), of Grade A 1 and A 2 officials.

Although the first paragraph of Article 27 of the Staff Regulations provides that officials are to be recruited on the broadest possible geographical basis from among nationals of Member States, it does not, however, allow the administration to reserve a post for a candidate of a specific nationality unless such action is justified on grounds connected with the proper functioning of the service.