JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
18 June 1992 *

In Case T-49/91,

Mariette Turner, an official of the Commission of the European Communities, represented by G. Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of A. Schmitt, 62 Avenue Guillaume,

applicant,

v

Commission of the European Communities, represented by G. Valsesia, of its Legal Service, acting as Agent, assisted by D. Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of the Commission's Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision of 23 August 1990 providing for reorganization of the 'medical officers' sector in the Commission,

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

composed of: K. Lenaerts, President of the Chamber, H. Kirschner and D. Barrington, Judges,

Registrar: P. van Ypersele de Strihou, Legal Secretary,

having regard to the written procedure and further to the hearing on 4 June 1992,

gives the following

* Language of the case: French.

Judgment

The facts

1 The applicant is an official in Grade A 4 in the Commission of the European Communities. She performed the duties of medical officer in the 'sickness and accident insurance' unit (unit IX. DO.5, hereinafter 'the unit'). She shared responsibility for the medical officers sector with another doctor, who worked under a renewable contract on a half-time basis, Dr S. In September 1989, a new Head of Unit was appointed, Mr C.

2 On 23 August 1990, a meeting was held at which the Head of Unit, the applicant, Dr S and several officials in grades A and B in the unit were present. The minutes of that meeting, which are signed by all the participants, state as follows:

'At the previous meeting held in July, it was agreed to replace the two secretaries in the medical officers sector to ensure its best possible functioning. That decision was confirmed at the meeting on 23 August.

Implementation of that decision involves the following changes:

1. Mrs R will be transferred in the interests of the service to the accidents and occupational sickness sector as from 3 September and will be replaced by Miss D until the expiry of the latter's contract as a member of the auxiliary staff. On that date (15 January 1991), in accordance with commitments given by DG IX, the "auxiliary" post will be converted into a post for an official (ex-Elfert) and the medical officers sector and Mr C will together choose a suitable replacement.

2. Since Miss A has on several occasions expressed the wish to leave the unit she will, until a post becomes vacant outside the Sickness Fund, be assigned to the postal department, in keeping with the wish expressed by her to Mr C. She will

assume responsibility for the post. She will be replaced by Mrs D who is at present a claims officer in the claims settlement office. The above transfers will take effect as from 1 October and in the month following the change Miss A will familiarize Mrs D with the work to be done on the terms agreed between Dr Turner and Mr M. It is understood that if, after a period of six months, Mrs D's work is not satisfactory to Dr Turner, the claims settlement office will be pleased to take her back as a claims officer.

Mr C will draw up a memorandum to Mrs R to explain that, after considering the benefits and disadvantages of the two options discussed on 22 August, the senior officials in the Sickness Fund have decided that she should be transferred to the accidents sector'.

3 By memoranda sent at the beginning of September 1990 and on 25 September 1990, the Head of Unit informed Mrs R and Miss A of his decisions to reassign them.

4 By memoranda of 13 September and 4 October 1990, they informed the Head of Unit that they deplored those decisions. Mrs R perceived a link between the decision to reassign her and her absence since 18 May 1990 — until mid-November — when she was in hospital and convalescing.

5 On 28 September 1990, Mrs D, a secretary and shorthand typist working as claims officer in the unit, was assigned to the secretariat of the medical officers sector. At the beginning of October 1990 Miss D, a member of the auxiliary staff, was also assigned to that sector pending the appointment of a secretary with the status of an official.

6 By memorandum of 9 October 1990, the applicant informed the Head of Unit that she regretted the transfer of Miss A, which, according to her, resulted from a decision taken by the Head of Unit. She added: 'the decisions taken do not appear to me to be in the interests of the service'.

7 By various memoranda of 17 October, 26 October and 21 November 1990, the applicant drew the attention of her superiors to the deficiencies affecting the functioning of the department, which in her view were attributable to its reorganization.

8 On 23 November 1990, the applicant lodged a complaint against the decision of 23 August 1990 to reorganize the medical officers sector and the subsequent decisions, namely the transfers of Miss A and Mrs R.

9 In December 1990, the applicant continued her exchange of memoranda with the Head of Unit concerning the deficiencies of the secretariat. By memorandum of 7 December 1990, the applicant drew the attention of the Head of Unit to the fact that Miss A, after returning from sick leave, was once again prepared to work in the medical officers sector. As from 1 January 1991, Miss P, a new member of the auxiliary staff, was taken on to replace Miss D.

10 By memorandum of 21 January 1991, the Head of Unit informed the applicant of his decisions to transfer Miss A to the applicant's secretariat as from 15 February 1991, to transfer Mrs D to the claims settlement office and to appoint a 'permanent' member of the auxiliary staff to work alongside Miss A to provide secretarial services. He reserved the right to reassess the performance of Miss A in the following eighteen months and, possibly, to transfer her to another department 'if there was no appreciable progress'. Those decisions were notified to the persons concerned on 28 January 1991.

11 At the end of March 1991, Miss P's contract as a member of the auxiliary staff was not renewed. She was replaced by Miss E, also a member of the auxiliary staff, with effect from 1 August 1991.

12 Between 5 March and 15 April 1991, the applicant exchanged various memoranda with the Head of Unit, in which she complained of the situation in her secretariat and proposed that Miss P, who had passed a competition, should be recruited definitively.

13 By memorandum of 25 April 1991, the Head of Unit indicated that he was not in principle opposed to the appointment of Miss P, but that she could not be appointed unless a specific post was declared vacant and the appointment could only be made in accordance with the order of priority determined by DG IX.

14 On 26 April 1991, the applicant complained to the Head of Unit that ten or so medical files had without her knowledge been removed to the accidents sector so that certain medical documents could be photocopied there, which, in her view, constituted a flagrant breach of medical secrecy attributable to the problems with the secretariat in her sector.

15 By letter of 5 June 1991, in the absence of a response to her complaint, the applicant, acting through her lawyer, asked the Director-General of DG IX to reply without delay. She received no reply.

Procedure

16 In those circumstances, by application lodged at the Registry of the Court of First Instance on 21 June 1991, the applicant brought the present action.

17 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fifth Chamber) decided to open the oral procedure without any preparatory inquiry.

18 The hearing was held on 4 June 1992. The representatives of the parties presented oral argument and answered the questions put to them by the Court.

Forms of order sought

19 The applicant claims that the Court of First Instance should:

— declare the action admissible and well founded;

— consequently, annul the decision of 23 August 1990 providing for reorganization of the medical officers sector;

— order the defendant to pay the costs in their entirety.

The Commission contends that the Court of First Instance should:

— declare the action inadmissible, or at least unfounded;

— order the applicant to bear her own costs.

The claim for annulment of the contested decision

20 The Court considers that, in order to adjudicate on the present application, which seeks the annulment of the decision of 23 August 1990 providing for reorganization of the medical officers sector, it is necessary to examine separately the two measures comprised in that decision, namely the transfer of Miss A and the transfer of Mrs R.

The first aspect of the contested decision

21 The Commission pleads that the action is inadmissible in so far as it relates to the transfer of Miss A. It states that, following the complaint submitted by the applicant, the contested decision was partially withdrawn and Miss A was reassigned to her previous duties with the applicant. The decision is therefore no longer open to criticism in that respect since an official who persists in pursuing an action against a measure which has in the meantime been withdrawn by decision of the administration no longer has an interest in bringing an action (judgment of the Court in Case 124/78 *List* v *Commission* [1979] ECR 2499).

22 It contends that the fact that the reassignment of Miss A to the applicant's department was decided upon subject to the proviso that there would be a review after 18 months has no bearing on the admissibility of the application in so far as it relates to Miss A's situation. If Miss A were in fact transferred anew on that date, only the decision taken at that time could, possibly, be the subject of an action.

23 The applicant, for her part, observes that the reassignment of Miss A was decided upon by the Head of Unit subject to the following condition:

'At the end of a reasonable period, which should be around 18 months, I shall discuss matters with the head of the claims settlement office, in particular, to establish whether Mrs A has succeeded in modernizing the sector and whether her relations with the settlement office are satisfactory. I reserve the right to transfer Mrs A anew if there is no appreciable progress'.

The conditions surrounding that reassignment show, in the applicant's view, that the contested decision was not withdrawn in that regard.

24 The Court observes, having regard to settled case-law (see, in particular, the judgments of the Court of Justice in Joined Cases 5/62 to 11/62 and 13/62 to 15/62 *Società Industriale Acciaierie San Michele and Others* v *High Authority* [1962] ECR 449 and in Case 124/78, cited above, paragraph 7; and the judgment of the

Court of First Instance in Case T-54/90 *Lacroix* v *Commission* [1991] ECR II-749, paragraph 38), that the applicant stated at the hearing that she did not challenge the fact that a person's interest in bringing an action is to be appraised at the time when the action is brought.

25 The Court finds in the present case that when the application was lodged, on 21 June 1991, the decision transferring Miss A had been withdrawn. In fact, by decision of 21 January 1991, Miss A was reassigned to the applicant's secretariat with effect from 15 February 1991, subject to reappraisal of her performance after about 18 months.

26 It follows that the application must be declared inadmissible through lack of an interest in bringing an action in so far as it relates to the transfer of Miss A. The fact that the transfer was withdrawn subject to reappraisal after 18 months is not material. It is not such as to vest the applicant with a present interest, since it does not in itself adversely affect her. At most, she could, if the reappraisal ultimately led to Miss A being transferred anew, challenge that transfer.

The second aspect of the contested decision

27 The applicant claims that any administrative decision of a general nature, such as a decision reorganizing a department, must be in the general interest. However, the contested decision of 23 August 1990 to reorganize the medical officers sector is not based, in her view, on any serious and objective analysis and resulted in the adoption of implementing measures which had a catastrophic effect on the secretariat.

28 She contends that to replace two experienced medical secretaries who are officials by unqualified persons without experience in an area as delicate as that of medicine is not in the interests of the service. If they fail to grasp their responsibilities, non-specialized secretaries are liable to commit breaches of medical confidentiality. In that regard, she points out that, several months after it was decided to move Miss A away from the medical officers sector secretariat by compulsory transfer, it was

decided to bring her back, but no satisfactory solution was arrived at regarding the other secretary, Mrs R, whose transfer had been decided upon.

29 The applicant notes that no reference is made anywhere to a general 'mobility' decision taken by the Commission, defining the framework within which the secretariat of the medical officers sector was to be reorganized. Since the contested decision was not in the general interest or in the interests of the service and did not come within any mobility framework defined in advance, the Commission cannot invoke the interests of the service as the basis of that decision.

30 Moreover, she considers that, by acting as it did, the Commission was in breach of the principle of sound management and proper administration. Continuity of the service — essential for its proper functioning — could not be assured. As a result the applicant was confronted with unforeseeable difficulties and was compelled to undertake activities which did not correspond to her duties as a medical officer.

31 The Commission, after raising several objections of inadmissibility, states that it has been consistently held that it is for the institution 'to determine the internal organization of its departments' and that it enjoys a 'wide discretion' in that regard (judgments of the Court of Justice in Case 5/70 *Prelle* v *Commission* [1970] ECR 1075, in Case 14/79 *Loebisch* v *Council* [1979] ECR 3679 and in Case 61/70 *Vistosi* v *Commission* [1971] ECR 535; and judgments of the Court of First Instance in Case T-108/89 *Scheuer* v *Commission* [1990] ECR II-411 and in Case T-46/89 *Pitrone* v *Commission* [1990] ECR II-577). It considers that, in the present case, the applicant has not shown that the Commission misused that discretion by replacing the two secretaries concerned.

32 It contends that the application is manifestly without foundation.

33 The Court considers that, without its being necessary to consider the objections of inadmissibility raised by the Commission, the application must be declared unfounded in so far as it relates to the second aspect of the contested decision.

34 A preliminary point, rightly noted by the Commission, is that it has been consistently held that the Community institutions have a broad discretion to organize their departments to suit the tasks entrusted to them and to assign staff available to them in the light of such tasks, on condition however that the staff are assigned in the interests of the service and in conformity with the principle that assignment must be to an equivalent post (see the judgments of the Court of Justice in Case 19/87 *Hecq* v *Commission* [1988] ECR 1681, in Case 69/83 *Lux* v *Court of Auditors* [1984] ECR 2447, in Case 176/82 *Nebe* v *Commission* [1983] ECR 2475, in Case 60/80 *Kindermann* v *Commission* [1989] ECR 1329 and in Case 61/70, cited above). Such discretion is indispensable in order to achieve effective organization of work and to adapt that organization to varying needs (see the judgment of the Court of Justice in Case 124/78, cited above, and the judgment of the Court of First Instance in Case T-108/89, cited above, paragraph 37).

35 Since the applicant did not deny at the hearing that her post corresponded to her grade even after the reorganization of the medical officers sector, her argument seeks essentially to show that by making the contested transfer the Commission failed to fulfil its duty to provide the applicant with adequate working conditions for the achievement of the tasks entrusted to her, which is an obligation imposed by the Staff Regulations, in particular Article 7 thereof, and the principles on which they are based (judgment of the Court of First Instance in Case T-108/89, cited above, paragraph 31).

36 In the present case, when the decision to transfer Mrs R was taken on 23 August 1990, she had been absent on sick leave for more than three months. As the applicant emphasized on several occasions in her written submissions and at the hearing, the interests of the service and the performance of the tasks entrusted by the Commission to medical officers require the latter to have competent, discreet and dependable secretarial services, since they rely to a great extent for their work on their secretariat which must be constantly at the disposal of officials who are ill.

37 In those circumstances, the applicant cannot claim that it is contrary to the interests of the service and to the principle of sound management to transfer from a service in which constant and dependable presence is necessary to another department of an official who had been absent for more than three months at the time of transfer and whose absence continued for nearly three months more.

38 Furthermore, whilst it may be regretted that a large number of secretaries passed successively through the secretariat of the medical officers sector, it must be observed that that is the result not of the contested decision of 23 August 1990 but of a series of subsequent decisions which are not at issue in the present proceedings.

39 In any event, moreover, by signing without reservation the report of the meeting of 23 August 1990 — which contains no indication of the applicant having stated during that meeting that the decision in question did not facilitate 'the best possible functioning' of the medical officers sector — the applicant, at the very least, considered when that decision was adopted that it was in the interests of the service, even though it cannot be argued that she thereby unequivocally acquiesced in that decision.

40 It follows that, in so far as it relates to the second aspect of the contested decision, the application must be rejected.

41 It follows from all the foregoing that the application must be dismissed in its entirety without its being necessary to give a decision as to whether or not the measure against which the action was brought adversely affects the applicant.

Costs

42 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, Article 88 of those Rules provides that in proceedings brought by servants of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. Dismisses the application;

2. Orders the parties to bear their own costs.

Lenaerts Kirschner Barrington

Delivered in open court in Luxembourg on 18 June 1992.

H. Jung K. Lenaerts

Registrar President