ORDER OF THE COURT

26 September 1994 *

In Case C-26/94 P,

Mrs X, an official of the Commission of the European Communities, residing at St. Gilles, Brussels, represented initially by Carine Thiel, of the Luxembourg Bar, and subsequently by Jean-Marie Flagothier, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Carine Thiel, 3 Rue de la Loge,

appellant,

APPEAL against the judgment of 25 November 1993 of the Court of First Instance of the European Communities (Third Chamber) in Joined Cases T-89/91, T-21/92 and T-89/92 *X* v *Commission of the European Communities* ([1993] ECR II-1235), seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by Gianluigi Valsesia, Principal Legal Adviser, and Ana Maria Alves Vieira, of its Legal Service, acting as

* Language of the case: French.

Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida, M. Diez de Velasco, D. A. O. Edward (Presidents of Chambers), C. N. Kakouris (Rapporteur), R. Joliet, F. A. Schockweiler, G. C. Rodríguez Iglesias, M. Zuleeg and P. J. G. Kapteyn, Judges,

Advocate General: F. G. Jacobs,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 25 January 1994, Mrs X brought an appeal under Article 49 of the Statute of the Court of Justice of the EEC and the corresponding provisions of the ECSC and EAEC Statutes of the Court against the judgment of the Court of First Instance of 25 November 1993 in Joined Cases T-89/91, T-21/92 and T-89/92 *X* v *Commission* [1993] ECR II-1235 by which it, first, held that there was no need to give a decision in Cases T-89/91 and T-21/92 and, secondly, dismissed Case T-89/92.

2 It is apparent from the documents before the Court that the action in Case T-8/91, brought by Mrs X, sought the annulment of the decision of the promotions committee not to include her name on the list of officials most deserving of promotion for 1991. The action in Case T-21/92 sought the annulment of a memorandum of 17 December 1991 from the Director-General of Personnel and Administration informing the appellant of the reopening of the promotions procedure in relation to her. The action in Case T-89/92 sought the annulment of the decisions adopted by the Commission on the promotion of officials to Grade B 3 for 1991.

3 It appears from the judgment appealed against that during the proceedings the applicant stated that she considered the pleas submitted in Cases T-89/91 and T-21/92 to have been 'absorbed' by those submitted in Case T-89/92. In those circumstances, the Court of First Instance held that there was no need to give a decision on those cases since they had become devoid of purpose (paragraph 22 of the judgment appealed against). The appeal does not call in question that part of the judgment.

4 As regards Case T-89/92, it appears from the judgment appealed against that the applicant had put forward in support of her action for annulment a plea in law comprising two parts alleging, first, infringement of Article 45 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') and also of the 'implementing provisions contained in the decision of the Commission of 21 December 1970, as amended by the decision of 14 July 1991' ['1971' was meant], inasmuch as the defendant had refused to consider the comparative merits of the officials eligible for promotion and, secondly, a manifest error of assessment (paragraph 23).

5 The Court of First Instance, after examining a witness, found that it had been proved to the requisite legal standard that the examination carried out by the promotions committee had been undertaken with all the care required to satisfy Arti-

cle 45 and to comply with the principle of sound administration (paragraph 47). It also found that the promotions committee, whose conclusions had served as the basis for the decision of the appointing authority, had not committed any manifest error of assessment (paragraph 51).

6 Consequently, the Court of First Instance held the plea put forward by the applicant to be unfounded and therefore dismissed Case T-89/92.

7 As is apparent from the form of order sought in the appeal, the appellant now requests the Court to set aside that judgment of the Court of First Instance in so far as it dismissed Case T-89/92.

8 In support of its appeal, the appellant relies on a ground of appeal alleging infringement of Article 45(1) of the Staff Regulations and of the implementing provisions contained in the decision of the Commission of 21 December 1970, as amended by the decision of 14 July 1971, inasmuch as the appointing authority on the one hand refused to examine the comparative merits of the officials eligible for promotion and of the reports on them and, on the other, committed a manifest error of assessment of the merits of the applicant by basing itself on criteria other than those prescribed in the aforementioned article. In that connection the appellant criticizes the finding of the Court of First Instance that the promotions committee had considered the comparative merits of the officials eligible for promotion and had not committed a manifest error of assessment.

9 In its reply, the Commission requests the Court to declare the appeal to be manifestly inadmissible, pursuant to Article 119 of the Rules of Procedure, because it merely reproduces the plea in law submitted at first instance.

10 According to the first paragraph of Article 49 of the Statute of the Court of Justice of the EEC, an appeal must be directed against a decision given by the Court of First Instance.

11 Moreover, according to Article 51 of the Statute of the Court of Justice of the EEC, an appeal is to be limited to points of law and is to lie on grounds of lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interest of the appellant or the infringement of Community law by the Court of First Instance. Article 112(1)(c) of the Rules of Procedure of the Court of Justice provides that an appeal must contain the pleas in law and the legal arguments in support of the form of order which the appellant requests the Court to grant.

12 It follows from those provisions that an appeal must indicate precisely the contested elements of the judgment which it is requested to have set aside and also the legal arguments which specifically support that request.

13 That requirement is not satisfied by an appeal which confines itself to repeating or reproducing word for word the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that court; in reality, such an appeal amounts to no more than a request for a reexamination of the application submitted to the Court of First Instance, a matter which falls outside the jurisdiction of the Court, by virtue of Article 49 of its Statute, cited above (see the order in Case C-244/92 P *Kupka-Floridi* v *Economic and*

Social Committee [1993] ECR I-2041, paragraphs 7 to 10; see also the judgment in Case C-354/92 P *Eppe* v *Commission* [1993] ECR I-7027, paragraph 8, and the order in Case C-338/93 P *De Hoe* v *Commission* [1994] ECR I-819, paragraph 19).

14 In the present case the appellant, by means of the plea put forward, contests in part the finding of fact of the Court of First Instance that the selection board considered the comparative merits of the candidates and did not commit a manifest error of assessment; for the rest, the appellant merely reproduces the plea put forward at first instance.

15 In those circumstances, the plea in law put forward and, therefore, the appeal, must be dismissed as manifestly unfounded in accordance with Article 119 of the Rules of Procedure.

Costs

16 Under Article 70 of the Rules of Procedure, in proceedings between the Communities and their servants the institutions are to bear their own costs. Nevertheless, it follows from the second paragraph of Article 122 of the Rules of Procedure that that rule does not apply in the case of an appeal brought by an official or other servant of an institution. In such proceedings Article 69(2) of the Rules of Procedure, which provides that the unsuccessful party is to be ordered to pay the costs, must therefore be applied. In the present case, the appellant has been unsuccessful; she must be ordered to pay the costs of these proceedings.

On those grounds,

THE COURT

hereby:

1. Dismisses the appeal;

2. Orders the applicant to pay the costs of the proceedings.

Luxembourg, 26 September 1994.

R. Grass

Registrar

O. Due

President