JUDGMENT OF THE COURT (First Chamber)
26 September 1985 *

In Case 231/84

Angelo Valentini, an official of the Commission of the European Communities, residing in Brussels, represented by Marcel Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser, Dimitrios Gouloussis, acting as Agent, with an address for service in Luxembourg at the office of Georges Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision refusing to review the applicant's initial grading,

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, T. Koopmans and R. Joliet, Judges,

Advocate General: G. F. Mancini
Registrar: H. A. Rühl, Principal Administrator

after hearing the Opinion of the Advocate General delivered at the sitting on 21 May 1985,

gives the following

* Language of the Case: French.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an application lodged at the Court Registry on 14 September 1984, Mr Angelo Valentini, an official of the Commission of the European Communities, brought an action for the annulment of the Commission's decision of 21 June 1984 refusing to amend, with retroactive effect, his initial grading.

Background to the dispute

2 The applicant, who was a successful candidate in an open competition, was appointed as a probationary official of the Commission in Grade L/A 8, Step 2, by decision of 10 March 1975 which took effect on 1 March 1975. He was assigned to the post of assistant translator and was established as an official on 1 December 1975. After being promoted in the course of 1976 to Grade L/A 7, the applicant was transferred from the Language Service to the same career bracket in Category A following an internal competition. By decision of 7 February 1978 he was appointed as an administrator in Grade A 7, Step 1, in Directorate-General XX (Financial Control).

3 In March 1981 the Director General for Personnel and Administration sent a circular to all members of staff containing the text of the 'Decision on the Criteria Applicable to Grade and Step Classification upon Recruitment', adopted on 6 June 1973.

4 Having taken note of that circular, the applicant submitted a request on 4 June 1981 to the Director General for Personnel and Administration for a review of his initial gradings in 1975 on recruitment and in 1978 on his appointment as administrator. In his view such a review was justified since the decision of 6 June 1973 showed that, at the time, the Commission had not taken proper account of the relevant experience which he had acquired before 1975.

5 The Grading Committee rejected that request by letter of 3 November 1981 on the ground that it could not change the opinion it had previously expressed as to his grading. When the applicant asked the Committee to state the reasons for its decision and to specify which grading criteria it had applied, he received a memorandum dated 12 May 1982 from the Director General for Personnel and Administration in which the latter explained the Committee's reasoning, adding that both of the grading decisions at issue had been adopted in conformity with the relevant regulations and that there was no cause to amend them.

6 On 22 March 1983 the applicant, who in the meantime had been promoted to Grade A 6, requested the Grading Committee to reconsider the abovementioned grading decisions and emphasized once again his views on the matter. In his reply dated 28 April 1983, the Director General for Personnel and Administration informed the applicant that he was bound 'as the appointing authority' to uphold the contested gradings.

7 On 25 November 1983 the applicant sent a further letter to the Grading Committee, repeating his request for a review of his administrative position. In that letter he maintained that neither the Director General for Personnel and Administration nor the Grading Committee had ever given an exhaustive reply to the arguments which he had set out in his previous requests. On 6 December 1983 the applicant again wrote to the Grading Committee. In reply, the Director General for Personnel and Administration informed the applicant on 6 January 1984 that he could not accede to his request for a review of his grading.

8 Further to that reply, the applicant submitted a complaint on 5 April 1984 under Article 90 (2) of the Staff Regulations in which he sought the retroactive amendment of the decision classifying him in Grade L/A 8, Step 2, in 1975 and an appointment to Grade L/A 7 on the basis of the abovementioned decision of 6 June 1973. In support of his complaint, which was addressed to the President of the Commission, the applicant relied on the provisions of the new 'Decision on the Criteria Applicable to Grade and Step Classification upon Recruitment' which replaced the decision of 6 June 1973 and which was published in the Administrative Notices of 21 October 1983.

9 By a memorandum of 21 June 1984 the Director General for Personnel and Administration rejected the complaint on the ground that Mr Valentini had been correctly graded in accordance with the decision of 6 June 1973 and that, in addition, the publication in 1983 of a fresh decision on the matter could not have the effect of re-opening the period prescribed by Articles 90 and 91 of the Staff Regulations, since the length of that period was a matter of public policy.

10 The applicant has brought this action in furtherance of his request for an amendment of his initial grading. The Commission has raised an objection of inadmissibility pursuant to Article 91 of the Rules of Procedure, and has requested the Court to give a decision on that objection without considering the substance of the case.

Admissibility

11 The Commission contends that the action is inadmissible on the ground that it was not preceded by a complaint within the meaning of Article 90 (2) of the Staff Regulations. The document which the applicant described as a complaint, namely his letter of 5 April 1984, was really no more than a note manifestly sent out of time, and he did not at the time lodge any complaints against the contested decisions establishing his initial grading. Since those decisions can no longer be contested, the applicant cannot, merely by submitting a 'complaint' dealing with the same subject as those measures, re-open a period which he has allowed to expire.

12 The Commission further claims that a mere notice concerning grading criteria, such as that published in the Administrative Notices of 21 October 1983, cannot be such as to override the rules on time-limits laid down by the Staff Regulations. Furthermore, the sole purpose of that publication was to give officials graded in accordance with the decision of 6 June 1973 the opportunity of applying for a review of their administrative position on a purely voluntary basis. That publication cannot therefore be relied upon in support of the admissibility of this action.

13 The applicant, however, maintains that the aforementioned notice of 21 October 1983 should be regarded as a new event which is sufficiently substantial to justify his request of 25 November 1983 to be regraded. In his view, the arguments adduced by the defendant would have the effect of restricting the right of an official adversely affected by an administrative measure to rely on the procedures provided for by Articles 90 and 91 of the Staff Regulations.

14 Article 90 (1) of the Staff Regulations provides that any official may request the appointing authority to take a decision relating to him. However, according to a consistent line of decisions of the Court, that right does not allow an official to set aside the time-limits laid down in Articles 90 and 91 for the lodging of a complaint and an appeal by indirectly calling in question by means of a request a previous decision which has not been challenged within the period prescribed. Only the existence of new substantial facts may justify the submission of a request for a review of such a decision.

15 It must also be borne in mind that, in its judgment of 1 December 1983 (Case 190/82, *Blomefield* v *Commission*, [1983] ECR 3981), the Court held the Commission's publication in 1981 of its decision of 6 June 1973 to be a new event of such a nature as to afford grounds for requests from officials for a review of their initial grading. Hence it is clear that, having regard to the background to this dispute, the applicant was entitled to submit to the defendant administration in June 1981 a request for regrading which, moreover, was expressly rejected. The complaint which preceded these proceedings was not, however, directed against the decision rejecting that request.

16 Consequently, the Commission's objection of inadmissibility must be upheld. Although in certain circumstances an official may submit to the appointing authority a request calling in question a grading decision which had not been contested within the prescribed period and although such a request may, if rejected, give grounds for a complaint and possibly an action under Articles 90 and 91 of the Staff Regulations, the official concerned cannot, by lodging a second or even a third request, re-open or extend the period prescribed for the submission of that complaint.

17 The outcome of the action would be the same even if the applicant's letter of 25 November 1983 were to be regarded as a request made on the basis of the Commission's publication in October 1983 of certain information concerning problems of grading. In the circumstances, the circular published in March 1981 had already afforded the applicant an opportunity to submit, under Article 90 (1) of the Staff Regulations, a request calling in question his previous grading. Accordingly, the notice published in 1983 could no longer have the same effect in relation to the applicant.

18 On those grounds the action must be declared inadmissible.

Costs

19 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of the Rules of Procedure, the institutions are to bear their own costs in proceedings commenced by employees of the Communities.

On those grounds,

THE COURT (First Chamber)

hereby:

(1) Dismisses the application as inadmissible;

(2) Orders the parties to bear their own costs.

Bosco Koopmans Joliet

Delivered in open court in Luxembourg on 26 September 1985.

P. Heim
Register

G. Bosco
President of the First Chamber