Case 28/87

Edgard Arendt
v
European Parliament

(Officials — Refusal of admission to tests in a competition)

Report for the Hearing 2633
Opinion of Mr Advocate General Darmon delivered on 20 April 1988 2639
Judgment of the Court (Third Chamber), 17 May 1988 2641

Summary of the Judgment

Officials — Recruitment — Competitions — Competition on the basis of qualifications and tests — Assessment of the specific nature of experience

REPORT FOR THE HEARING
delivered in Case 28/87 *

I — Facts and procedure

A. Following Open Competition PE/78/C, Mr Arendt was appointed a member of the temporary staff and, subsequently, from 1 October 1982, a probationary official in Grade C3 in the Treasury and Accounts Division of the European Parliament, as a treasury and accounts clerk. He worked in this post from 1 October 1982 to 31 May 1984.

Following a vacancy notice of 2 May 1984, Mr Arendt applied for a transfer to the

* Language of the Case: French.

Social Affairs Division in the Personnel and Social Affairs Directorate. His application was accepted and he was assigned to this division from 1 June 1984.

B. On 18 November 1985 the European Parliament published Notice of Internal Competition No B/161, with a view to filling B 5/B 4 posts. The notice of competition referred to the following three areas of activity from which candidates had to choose:

'1. Important supervisory duties to ensure sound financial management and the correctness, regularity and legality of administrative and financial acts connected with the implementation of the budget and introduction of management and verification procedures suited to data-processing applications.

2. Application, using also data-processing techniques where appropriate, of the Financial Regulation to commitments, authorizations and, in particular, to payments and the performance of treasury and accounting work. Verification of all accounting documents prior to their entry in the general accounts. Payment to and monitoring and verification of bank accounts and funds. Contacts and collaboration with banks. Coordination of accounting and treasury work.

3. Computer processing of the payment of monies (salaries, mission expenses, overtime, expenses for attendance at meetings, travel expenses, etc.) to all categories of staff and calculation of Members' pension and insurance entitlements'.

Section III of the notice of competition refers to the qualifications and experience required, namely advanced level of secondary education or equivalent professional experience, knowledge or experience in fields similar to the three areas of activity described above, knowledge or experience of data processing and a thorough knowledge of one of the official languages of the Community and knowledge of another of those languages.

Point A of section IV of the notice of competition describes the procedures for admitting a candidate to the tests in the following terms: 'After examining the candidates' files, the Selection Board will draw up a list of candidates who satisfy the requirements set out in the notice of competition. Having determined the criteria for assessing candidates' qualifications and considered those of each candidate which are directly relevant to the duties involved, the Selection Board will, on that basis, draw up a list of candidates to be admitted to the tests. Marking: out of 40. Candidates scoring less than 24 will be eliminated'.

By a letter of 27 May 1986, Mr Arendt was notified by the Chairman of the Selection Board that he had not obtained, in the options that he had chosen, following marking based on the criteria adopted by the Board, the minimum mark of 24 required for admission to the tests. The Chairman's letter referred to the fact that the candidate had not obtained the minimum number of marks because he had obtained too few marks in connection with criteria 1 and 3, adopted by the Board, namely 'general education' and 'specific experience', the other criteria being 'general experience', 'seniority in the service of European institutions' and 'inclusion on a list of suitable candidates in previous

competitions, of an equivalent or superior level, on the basis of qualifications and tests'.

By a letter of 3 June 1986, Mr Arendt asserted that he had training and experience to a level equivalent to secondary education and that, in 1982, he had been appointed to a post of accounts clerk, which showed that he had sufficient 'specific experience'. However, by a letter of 20 June 1986, the Chairman of the Board rejected his complaint.

After having furnished further information to the Board, by a letter dated 20 June 1986, on 30 June 1986 Mr Arendt lodged a complaint with the appointing authority against the rejection of his candidature.

By a letter of 2 December 1986, the appointing authority informed him that it could not substitute itself for the Selection Board, but that it would arrange for the case to be investigated by the legal department, whose opinion would be communicated to the Chairman of the Selection Board.

By a letter of 17 December 1986, the Chairman of the Selection Board provided the applicant with additional explanations, without however reversing his decision of 27 May 1986 rejecting Mr Arendt's candidature.

Subsequently, Mr Arendt brought an action before the Court of Justice for the annulment of the decision of 27 May 1986 rejecting his candidature and for an order that the European Parliament pay to him, in respect of the non-material damage suffered, damages of one unit of account.

The application was received at the Court Registry on 30 January 1987.

On the proposal of the Judge-Rapporteur, having heard the views of the Advocate General, the Court (Third Chamber) decided to open the oral procedure and invited the European Parliament to reply to one question, within a month. The European Parliament complied with this request within the time-limit laid down.

II — Summary of the submissions and arguments of the parties

A. *Error in the reasons given for the Selection Board's decision and the Board's assessment of the applicant's experience*

(a) *Mr Arendt* argues in the first place, that the reasons given in the Board's decision rejecting his candidature were contradictory. In the letter of 27 May 1986, containing the decision in question, it was stated that he had not obtained the minimum number of marks required for criteria 1 and 3, namely 'general education' and 'specific experience'. In the additional explanatory letter which was sent to him on 17 December 1986, the Chairman of the Board drew attention solely to the second aspect, namely lack of sufficient 'specific experience'.

Although the applicant had stated that he had performed accountancy duties since 1984, the Chairman of the Board replied to him that 'the Board's decision not to regard this experience as accountancy experience was based on the following consideration: notwithstanding the wording of Vacancy

Notice No 4330, for a post of accounts clerk, and despite the requirement of "proven knowledge of accountancy" referred to therein, the Board took the view that the description of the duties contained in this notice, in referring to "miscellaneous calculations" did not constitute evidence of accountancy duties, since calculations could not be regarded as equivalent to accounting'.

Mr Arendt maintains that this reasoning is different from that used in the letter of 27 May 1986, from which it is clear that what in fact determined the Board's decision was an insufficient knowledge of accountancy.

In the applicant's view, this reveals a manifest error of assessment on the part of the Board. Vacancy Notice No 4330, as a result of which Mr Arendt was transferred to the Personnel and Social Affairs Directorate required, under the heading 'necessary qualification and experience', 'proven knowledge of accountancy'. In those circumstances it is difficult to understand why the Selection Board for Competition No B/161 found his knowledge of accountancy to be insufficient from the point of view of experience, despite the fact that, two years previously, he had actually been transferred to a post which required 'proven knowledge of accountancy'.

(b) *The European Parliament* states in reply that the letter of 17 December 1986 in no way contradicts the decision of 27 May 1986 rejecting Mr Arendt's candidature. The letter of 17 December merely provided additional information and explanations in response to Mr Arendt's complaint.

As regards the error of assessment, the Parliament notes that, according to a consistent line of decisions, the Court only annuls decisions of the type contested by Mr Arendt where there is an objective and substantive error on the part of the Selection Board. In its view the application must be examined in this light.

The Board in fact based its decision on the description of duties appearing in the notice of competition. It was on the basis of this description of duties and with full knowledge of the relevant information, the necessary documents having moreover been provided by the candidate himself, that the Board reached the conclusion that Mr Arendt's experience was insufficient for him to be admitted to the tests.

B. *Breach of the duty to have regard to the interests of officials and of the rules of good administration*

(a) *Mr Arendt* argues that in view of the information provided to the Selection Board, which showed that he had carried out accountancy duties for a number of years, the Board should not simply have refused to admit him to the tests, without at least obtaining additional information. If there was any doubt, the Board could have made enquiries. By not doing so, it was in breach of its duty to have regard to the interests of candidates and of the fundamental rules of good administration.

(b) The European Parliament considers that the Selection Board had at its disposal all the necessary information, and, moreover, argues that the duty to have regard to the interests of officials is incumbent only on the administration proper and not on a selection board which has a specific task, defined in the Staff Regulations.

The Board could legitimately decide on the basis of the information in the files, since those files were comprehensive and therefore sufficient to enable it to assess the candidatures with full knowledge of the relevant facts.

III — Replies to the question put by the Court

The Court of Justice asked the European Parliament:

1. to describe in detail the duties performed by the applicant since 1984 in his post in the Social Affairs Division;

2. to explain in what way those duties could not be regarded as 'experience in similar fields' to those described under the heading 'nature of duties' in Notice of Internal Competition No B/161.

Reply

On the first point, the European Parliament states that from 1 June 1984 Mr Arendt was assigned to the 'Members' pensions and insurance' department and that, in that post, he carried out the following duties:

1. Application to the members of the auxiliary staff of Member States' social security legislation, including correspondence, problems arising from affiliation of individual staff members, updating of database with reference to information communicated by the social security institutions of the different countries and calculation of contributions to be paid;

2. Calculation of amounts to be reimbursed to members of the auxiliary staff not insured under a compulsory social security scheme;

3. Calculation of contributions to be paid for temporary staff employed for sessions;

4. Determination of the bases for computerized calculation of contributions to accident and sickness insurance for sponsored trainees;

5. Representation of the department in the working group on computers.

With regard to the second point, the Chairman of the Selection Board has informed the Court of Justice that, in order to examine the extent to which the duties carried out by the applicant after 1984 corresponded to the requirements of the notice of competition, the Board relied on the detailed description of the duties appearing in the vacancy notice which had given rise to the applicant's appointment to the post which he had held since June 1984. The Board examined how far duties corresponded to 'options' 1 and 2 in the notice of competition.

No examination was effected in relation to 'option' 3, because, for the purposes of that option, the applicant's specific experience in the Social Affairs Divisions had been taken into consideration.

As far as 'options' 1 and 2 were concerned, the Board took the view that there was no connection whatsoever between the work of calculating contributions carried out by Mr Arendt and the application of the Financial

Regulation, knowledge of which or experience of which were required in the notice of competition in question.

The Board considered that the duties carried out by the applicant, which consisted of applying the social security legislation of the various Member States, involved calculation representing a simple operation of arithmetic, whereas the implementation of the Financial Regulation required a knowledge of the mechanisms and rules of public accountancy provided for in that regulation.

Y. Galmot
Judge-Rapporteur