JUDGMENT OF THE COURT (Third Chamber)
2 October 1986 *

In Case 75/85

V. R., a former probationary official of the Commission of the European Communities, residing at 237 A via Salaria, Rome, represented by Guido Napoletano and Giulio Ippolito of the Rome Bar, with an address for service in Luxembourg at the Chambers of Blanche Moutrier, 16 avenue de la Porte-Neuve,

applicant,

v

Commission of the European Communities, represented by Guido Berardis, a member of its Legal Department, with an address for service in Luxembourg at the office of Georgios Kremlis, likewise a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the decision to dismiss the applicant and for damages,

THE COURT (Third Chamber)

composed of: U. Everling, President of the Chamber, Y. Galmot and J. C. Moitinho de Almeida, Judges

Advocate General: M. Darmon
Registrar: H. A. Rühl, Principal Administrator

having regard to the Report for the Hearing and further to the hearing on 13 March 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 29 May 1986,

* Language of the Case: Italian.

gives the following

JUDGMENT

1 By an application lodged at the Court Registry on 21 March 1985, V. R., a former probationary official of the Commission of the European Communities, brought an action for

(i) the annulment of the Commission's decision of 19 July 1984 dismissing him at the end of his probationary period and of the decision rejecting his complaint against his dismissal and all measures preparatory thereto, and

(ii) compensation for material and non-material damage.

2 The applicant, who has a degree in physics and specializes in statistics, passed the tests in Open Competition No. COM/A/313 which was held by the Commission in order to constitute a reserve of administrators in Grades A 7 and A 6. The notice of competition stated that the duties to be carried out were 'administrative, advisory and supervisory duties, following general guidelines, relating to the economic aspects of Community activity'. From the various options available, the applicant had chosen in his application the options 'Econometrics and statistics' and 'Macroeconomics, including monetary and fiscal policy'.

3 In Vacancy Notice No COM/305/82 the Commission declared vacant an administrator's post in Grade A 7/6 in the special department 'Community loans — Development of instruments'. On 2 August 1983 Mr R was appointed a probationary official in Grade A 6 in that department as from 15 July 1983. However, since the administration decided on 1 August 1983 to transfer the post in question to the Medium-term Projections Division as from 15 July 1983, the applicant actually began his probationary period in that division.

4 On 21 March 1984 the applicant's immediate superior drew up the end-of-probation report required by Article 34 (2) of the Staff Regulations. In it he stated in substance that Mr R did not have the ability to carry out the duties corresponding to his post, and in support of that assessment it was explained that

'Mr R undoubtedly possesses high qualifications in mathematical statistics and in data-analysis techniques' but that 'his knowledge of macroeconomics is, however, more limited and his ability to write reports has proved inadequate'. The report went on to state that 'Mr R's abilities are not such as to enable him to play an adequate part in the Directorate-General's main activities, namely conducting economic policy studies and drawing up reports on them'. Mr R's superior therefore recommended that he should be dismissed at the end of his probationary period.

5 Consequently, the Director-General for Personnel and Administration notified the applicant, by letter of 18 April 1984, that in view of his end-of-probation report he had no alternative but to conclude that he should be dismissed but that the administration was nevertheless prepared to give him a further opportunity to prove his abilities by asking him to complete 'a comparative analysis of a statistical nature' under the supervision of two tutors during an additional three-month period. The applicant agreed to that proposal and the details of the required study were sent to him by the administration by letter dated 25 April 1984.

6 On 10 July 1984 the tutors submitted their comments on the study carried out by the applicant. Although they acknowledged that Mr R possessed the theoretical knowledge needed to carry out that type of study and that he had tried to propose solutions to resolve the problem set, they stated that the study showed 'an inability to synthesize, reflected in his difficulty in distinguishing between the essential and the minor', 'an inability to step back from the statistics to see the significance of the phenomena observed' as well as 'an excessive use of obscure scientific language'. In view of those factors, the tutors concluded that the study 'does not enable any useful conclusions to be drawn, such as a reader might expect'.

7 By decision of 19 July 1984 the appointing authority dismissed the applicant with effect from 31 August 1984 after taking into consideration the assessments of his aptitude and performance contained in the end-of-probation report and the assessments of the study he made at the end of the supplementary probationary

period. It appeared from those assessments that Mr R had not 'shown sufficient professional aptitude to be established in the grade relating to his post'.

8 After having lodged a complaint pursuant to Article 90 (2) of the Staff Regulations, which was rejected by the Commission by a decision of 13 December 1984, the applicant brought this action.

The claim for the annulment of the decision to dismiss the applicant

9 As regards the claim for the annulment of the decision to dismiss the applicant and of the measures preparatory to or confirming that decision, the applicant's submissions consist of three complaints, namely inconsistencies in the statement of reasons on which the contested decisions were based, breach of Article 4 of the Staff Regulations and of the prohibition of discrimination and breach of Article 34 of the Staff Regulations.

10 The applicant contends first of all that the contested measures contain contradictory statements of reasons and are vitiated by manifest error. The end-of-probation report of 21 March 1984 did not specify the knowledge which he allegedly lacked. As for the report of 10 July 1984, the statement of reasons is contradictory in so far it criticized him for lacking the ability to synthesize when he was asked to make an analysis and not a synthesis of the problem set. The latter report was also wrong in suggesting that excessive use was made of scientific language in the study requested. In support of those contentions the applicant has produced two evaluations of his study by university professors. Should it be necessary, he also asks the Court to order an expert's report on the scientific value of the study.

11 The Commission observes first of all that the administration must make a general assessment of the probationary official's ability to carry out particular duties. It denies the existence of any contradiction between the assessments contained in the report of 10 July 1984 and what the administration asked the applicant to do, since in view of the department's work it is inconceivable that an analysis should be made without reaching concrete conclusions. Finally, the Commission states that the applicant's inaptitude for work in an administrative department is confirmed by his inability to express himself appropriately. In this regard it explains that it is

necessary to assess not only the scientific value of his work but also his effectiveness in a public administration.

12 It should be borne in mind first that the second paragraph of Article 25 of the Staff Regulations provides that 'any decision adversely affecting an official shall state the grounds on which it is based'. According to established case-law, the purpose of the requirement of a statement of reasons is to enable the Court to review the legality of the decision and to provide the person concerned with details sufficient to enable him to ascertain whether or not the decision is well founded. More particularly, in the case of a decision not to establish a probationary official, the statement of reasons must indicate the essential considerations which led the institution to conclude that the abilities and conduct of the probationary official did not justify his establishment.

13 In the present case, the preamble to the decision of 19 July 1984, read with the assessments of the applicant's professional abilities contained in the administration's reports of 21 March and 10 July 1984, to which that preamble refers, shows that the Commission based its decision on a number of factors relating to Mr R's ability to carry out his duties properly and to the quality of his work. An analysis of them reveals that the alleged shortcomings relate, on the one hand, to Mr R's knowledge and, on the other hand, to his ability to write reports. The contested decisions therefore indicate with sufficient clarity and detail the reasons for which the Commission considered that it was not in the interests of the service to establish the applicant.

14 Contrary to the applicant's submissions, that statement of reasons does not disclose any contradiction or manifest error of fact. Although the reports of 21 March and 10 July 1984 both recognize that the applicant is highly qualified in statistics, it was found in both reports that his knowledge of macroeconomics was limited and above all that the quality of his written reports was insufficient. In that regard, no reliance may be placed on the fact that the report of 10 July 1984 draws attention to an inability to synthesize whereas the study the applicant was required to carry out consisted in an analysis, since analysis and synthesis are two complementary methods of finding a solution to the problem set by the required study, that is to say, they enable conclusions to be drawn at the economic level from statistical data.

15 Only the administration has the power to assess the merits of officials. Its judgment cannot therefore be invalidated by experts' opinions on the scientific value of the study in question. Consequently, the Court need not consider the experts' opinions produced by the applicant for this purpose or order an expert's report on the study.

16 Since the applicant has not proved that the reasons given for the contested measures were contradictory or manifestly wrong, the first submission must be rejected.

17 The applicant alleges in the second place that his posting to the Medium-term Projections Division was contrary to the second paragraph of Article 4 of the Staff Regulations since no vacancy notice, as prescribed by that provision, had been issued for the post in question. Vacancy Notice No COM/305/82 was in fact for an administrator's post in the special department 'Community loans — Development of instruments'. He should therefore have been appointed to that department. Mr R also contends that the change of posting was contrary to the prohibition of discrimination since it meant that he served his probationary period in a post for which he was less suited.

18 It should be observed in this regard that, as the Commission has pointed out, Article 4 of the Staff Regulations concerns the internal publication of vacant posts. That provision should be read in conjunction with Article 29 (1) of the Staff Regulations, which fixes the order in which the institution must examine the various possibilities of filling vacant posts, giving priority in this regard to the staff of the Communities over external candidates. Since the purpose of the provision in question is therefore to protect the interests of the staff of the institution, it follows that external candidates such as the applicant may not plead breach of that provision.

19 Similarly, the applicant's complaint that the Commission assigned him to a post which did not suit his abilities, in breach of the principle of equal treatment, cannot be accepted because it has not been proved that the duties which the applicant was required to perform did not correspond to the description of duties in Notice of Competition No COM/A/313, the competition on the basis of which he had been recruited. It is in fact undisputed that both the work of the division to which the applicant was assigned (Medium-term Projections), and, more

particularly, the subject of the statistical study to be carried out during the supplementary probationary period are covered by at least one of the options offered in the notice of competition in question and chosen by the applicant in his application, namely 'Econometrics and statistics'.

20 Consequently, the submission that the second paragraph of Article 4 of the Staff Regulations was infringed and the prohibition of discrimination breached must also be rejected.

21 The applicant contends thirdly that Article 34 (1) of the Staff Regulations, which fixes the length of the probationary period for officials in Category A at nine months, was infringed. He argues that that period may not be extended in any circumstances, even with the agreement of the official concerned, except in one of the cases exhaustively listed in that provision, which did not arise in this instance.

22 In reply, the Commission states that it was decided to extend the probationary period in the interests and with the agreement of the applicant, who would otherwise have had to be dismissed at the end of the nine-month period on the basis of the report of 21 March 1984. The Staff Regulations do not prevent the administration from adopting a more favourable attitude towards officials for reasons of fairness.

23 It should be pointed out in this regard, as is clear from the foregoing explanations, that the inadequate ability and efficiency of the applicant referred to in the end-of-probation report of 21 March 1984 were sufficient to justify not etablishing him at the end of the probationary period laid down in the Staff Regulations. The decision, taken with his consent, to extend his probationary period in derogation from Article 34 (1) of the Staff Regulations was therefore taken in his interests in order to give him a further opportunity to show that he possessed professional abilities which he had not satisfactorily demonstrated during the probationary period.

24 In those circumstances, the applicant may not plead that the decision in question should not have been adopted, since the decision gave him an advantage which he freely accepted. The submission that Article 34 (1) of the Staff Regulations was infringed must therefore be rejected as well.

25 For those reasons, the first head of claim must be dismissed.

The claim for the amendment of the statement of reasons on which the decision to dismiss the applicant is based

26 Since the main claim for the annulment of the contested measures cannot be upheld, it is necessary to examine the subsidiary claim that the statement of reasons for those measures should be amended so that they are not defamatory. The applicant is in effect seeking an order prohibiting the Commission from stating that he lacks the professional abilities required in order to be established.

27 It must be pointed out in this regard that any decision not to establish an official at the end of his probationary period necessarily involves making assessments that disclose a lack of the qualities required for the duties in question. The institution cannot therefore be prohibited from including such assessments in the statement of reasons on which such a decision is based.

28 This head of claim must therefore also be dismissed.

The claim for damages

29 As regards the claim for compensation for material and non-material damage, the applicant contends that the administration's assessments of his professional abilities may injure his reputation and that the delay in defining his position due to the extension of his probationary period left him in a position of uncertainty which prevented him from finding other employment.

30 In this regard it need only be pointed out that the applicant has not succeeded in showing that the Commission's decisions which may be prejudicial to him, in particular the decision of 18 April 1984 extending his probationary period and the decision of 19 July 1984 to dismiss him, are vitiated by illegality of the kind on which he might rely to his advantage.

31 Consequently, this head of claim must also be dismissed.

Costs

32 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party must be ordered to pay the costs if they have been asked for in the successful party's pleading. However, Article 70 of the Rules of Procedure provides that the institutions are to bear their own costs in actions brought by servants of the Communities.

On those grounds,

THE COURT (Third Chamber)

hereby:

(1) Dismisses the application;

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

Everling Galmot Moitinho de Almeida

Delivered in open court in Luxembourg on 2 October 1986.

P. Heim
Registrar

U. Everling
President of the Third Chamber