Case 171/89 R

José Maria Gonzalez Holguera
v
European Parliament

(Officials — Interim measures — Suspension of operation)

Order of the President of the Second Chamber of the Court, 13 June 1989 1705

Summary of the Order

Interim measures — Suspension of operation — Conditions for granting — Serious and irreparable damage
(Rules of Procedure, Art. 83(2))

ORDER OF THE PRESIDENT OF THE SECOND CHAMBER
OF THE COURT
13 June 1989 *

In Case 171/89 R

José Maria Gonzalez Holguera, an official of the European Parliament, represented by B. Moutrier, avocat-avoué in Luxembourg, with an address for service at the latter's Chambers, 16 avenue de la Porte-Neuve,

applicant,

* Language of the case: French

V

European Parliament, represented by F. Pasetti Bombardella, jurisconsult, and by M. Peter, Head of Division in the Legal Department, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament,

defendant,

APPLICATION for an order suspending, as an interim measure, the official announcement of the result of the tests in an open competition,

THE PRESIDENT OF THE SECOND CHAMBER,

pursuant to Article 91(4) of the Staff Regulations of Officials of the European Communities and Articles 9(4) and 83 *et seq.* of the Rules of Procedure,

makes the following

Order

1 By an application lodged at the Court Registry on 17 May 1989, José Maria Gonzalez Holguera brought an action under Articles 90 and 91 of the Staff Regulations of Officials for the annulment of the decision of a selection board refusing to allow him to take part in the tests in Open Competition No PE/126/LA based on qualifications and tests (Official Journal 1988, C 114, p. 19), organized by the European Parliament in order to fill a post of Language Adviser (Spanish language), and for the annulment of the tests in that competition and the appointment to be made on the basis thereof.

2 By an application lodged at the Court Registry on the same date, the applicant asked the Court to suspend, by way of an interim measure, the official announcement of the result of the tests in that competition.

3 The applicant, a principal translator in Grade LA/5 at the European Parliament, applied to take part in the competition in question.

4 After establishing the criteria for assessing the candidates' qualifications and assessing the qualifications of each, the Selection Board informed the applicant, by decision of 21 November 1988, that it had been unable to admit him to the written tests on account of his lack of relevant experience in the field of translation and revision.

5 In reply to a complaint dated 6 December 1988, submitted by the applicant pursuant to Article 90(2) of the Staff Regulations, the Chairman of the Selection Board stated in a letter of 19 December 1988 that only candidates who had been engaged primarily in translation on a regular basis for at least three years and who had carried out revision for at least a further two years were able to meet the conditions laid down in the notice of open competition.

6 By a letter which the European Parliament claims to have received on 2 March 1989, the applicant submitted to the President of the Parliament a second complaint in which he maintained, in particular, that the Selection Board for an earlier competition had assessed his practical experience differently and had allowed him to take part in an internal competition organized in order to fill the post of Head of the Spanish Translation Division. The Selection Board for the competition at issue should therefore have given detailed and adequate reasons for the stricter appraisal of his practical experience.

7 Without waiting for a reply to that complaint, the applicant brought the main action and lodged the present application for the adoption of interim measures, both pursuant to Article 91(4) of the Staff Regulations.

8 By letter of 17 May 1989 the President of the European Parliament rejected the second complaint essentially on the ground that the conditions for admission to the two competitions were different and that the Selection Board for the competition at issue was under no obligation either to take into account the earlier assessment of the applicant's experience made by other selection boards or to give exhaustive reasons for its own assessment.

9 The Court has consistently held (see, in particular, the Order of 17 January 1985 in Case 293/84 R *Sorani* v *Commission* [1985] ECR 251) that an application to suspend the operation of any measure adopted by the institutions will only be granted if the factual and legal grounds relied upon establish a prima-facie case for the measures being sought. Moreover, there must be an urgent need for the measures, in the sense that it must be necessary that they be adopted and come into effect before judgment is delivered on the substance of the case in order to avoid serious and irreparable damage to the party seeking their adoption.

10 In that regard, the applicant maintains that his main action is justified and that if the results of the tests in the competition at issue were to be published and a candidate appointed to the post to be filled, the applicant would suffer serious and irreparable damage inasmuch as he would not recover his rights in the event of the annulment of the decision not to admit him to the tests. The applicant refers to the case-law of the Court (in particular the judgment of 21 March 1985 in Case 108/84 *De Santis* v *Court of Auditors* [1985] ECR 947), according to which appointments made after a competition are not to be annulled even if decisions of the Selection Board refusing to admit candidates to tests have been annulled.

11 In its observations the European Parliament contends that the application for the adoption of interim measures should be dismissed. The factual and legal grounds relied upon by the applicant do not establish a prima-facie case for the interim measures sought since the conditions for admission to the two competitions are not comparable. Moreover, the applicant would not suffer serious and irreparable damage even if the results of the tests in the competition in question were announced officially and the successful candidate were appointed head of division since the annulment of the Selection Board's decision would entail the annulment of the entire competition procedure and, consequently, any decision to appoint a head of division.

12 It must be pointed out that the principal claim is for the annulment of both the contested decision of the Selection Board and, consequently, the tests in the competition and any decision appointing the successful candidate to the post.

13 Since the competition in question is an open competition organized not in order to establish a reserve list for future recruitment but with a view to appointing a single candidate to a given post, the annulment of the contested decision of the Selection Board will entail as a consequence the annulment, which is also sought by the

applicant, of the decision appointing the successful candidate which may have been adopted in the meantime (see, in particular, the judgment of 15 March 1973 in Case 37/72 *Marcato* v *Commission* [1973] ECR 361).

14 It follows that, in the event of the annulment of the contested decision of the Selection Board, the applicant will recover his rights as they were before the adoption of that decision and no circumstances justifying the adoption of urgent measures have therefore been established.

15 The application for interim measures must therefore be dismissed and costs must be reserved.

On those grounds,

THE PRESIDENT OF THE SECOND CHAMBER,

by way of interim decision,

after hearing the views of the Advocate General,

hereby orders as follows:

(1) The application for interim measures is dismissed.

(2) The costs are reserved.

Luxembourg, 13 June 1989.

J.-G. Giraud
Registrar

T. F. O'Higgins
President of the Second Chamber