ORDER OF THE COURT OF FIRST INSTANCE
28 January 1993 *

In Case T-53/92,

Mireille Piette de Stachelski, an official of the Commission of the European Communities, residing at Overijse (Belgium), represented by M. and O. Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of E. Arendt, 8-10 Rue Mathias Hardt,

applicant,

v

Commission of the European Communities, represented by A. M. Alves Vieira, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of R. Hayder, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for an order requiring the applicant's career to be adjusted and an order that damages be paid in respect of the material and non-material damage allegedly suffered by the applicant as a result of her belated admission to Competition COM/B/2/82,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: J. Biancarelli, President, B. Vesterdorf and R. García-Valdecasas, Judges,

Registrar: H. Jung,

makes the following

* Language of the case: French.

Order

Background to the dispute

1 It is indirectly apparent from the application initiating the proceedings and from the objection of inadmissibility raised by the Commission that the applicant is a member of a group of officials and employees of the Commission who in December 1984 brought an action before the Court of Justice for the annulment of the decision of the Selection Board for Internal Competition COM/B/2/82 not to admit them to the tests for that competition (Cases 293/84 and 294/84). The competition in question had been organized with a view to constituting a reserve list of administrative, secretarial and technical assistants in Grades 5 and 4 of Category B.

2 In its judgments in Case 293/84 *Sorani* v *Commission* [1986] ECR 967 and Case 294/84 *Adams* v *Commission* [1986] ECR 977, the Court annulled the decisions by which the Selection Board had refused to admit the applicants in those cases to the tests, on the ground that they had not had an opportunity to state their views on the opinions expressed on them to the Selection Board by their superiors. Following those judgments, in June 1986 the Selection Board invited the candidates concerned to appear before it so that they could reply to the questions which had previously been put to their superiors. By letter of 11 July 1986, the candidates were informed that the decision not to admit them to the tests had been confirmed.

3 Following complaints lodged by certain candidates against the decision of July 1986, the Selection Board invited those candidates to appear before it a second time, in order to give them an opportunity to state their views on the replies given by their superiors to the questions which the Board had put to them. By letter of 12 February 1987, the officials concerned were informed that the Selection Board did not consider that there were any grounds for altering its decision concerning them which had been communicated to them on 11 July 1986.

4 In its judgment in Joined Cases 100, 146 and 153/87 *Basch* v *Commission* [1989] ECR 447, the Court of Justice annulled the decision of the Selection Board in Competition COM/B/2/82 not to admit the applicants to the tests for that competition, on the grounds that it did not contain an adequate statement of the reasons on which it was based and that the procedure followed by the Selection Board was irregular.

5 In compliance with that judgment, the Commission invited the Selection Board to resume its proceedings from the stage where they had been declared by the Court to be vitiated by irregularities.

6 Upon completion of those proceedings, the applicant was invited in May 1991 to take part in the tests for the competition, as a result of which she was included in the reserve list. On 29 October 1991, she was appointed to the post of administrative assistant in Grade B5, step 4.

Procedure and forms of order sought by the parties

7 By memorandum of 11 December 1991, the applicant asked the appointing authority to take a decision placing her in Grade B4, step 8, so as to make good the delay in her career. She pointed out that, statistically, in eight years she should have been promoted at least once from Grade B5.

8 Since the Commission made no express reply to that memorandum, the applicant brought the present action.

9 By application lodged at the Registry of the Court of First Instance on 14 July 1992, Mireille Piette de Stachelski claimed that the Court should:

(i) rule that the pre-litigation procedure constitutes an official complaint;

(ii) hold that the Commission and the Selection Board are responsible for the delay in the applicant's career, and that her career should, therefore, be adjusted by appointing her to Grade 4, step 8;

(iii) order the defendant to pay her BFR 500 000 by way of compensation for material damage, subject to amendment in the course of the proceedings, together with interest at 8%;

(iv) order the defendant to pay her BFR 500 000 by way of compensation for non-material damage, subject to amendment in the course of the proceedings, together with interest at 8%;

(v) order the defendant to pay the costs.

10 By a statement lodged at the Registry of the Court of First Instance on 30 September 1992, the Commission raised an objection of inadmissibility pursuant to the first indent of Article 114(1) of the Rules of Procedure of the Court of First Instance, and applied to the Court for a decision on that objection not going to the substance of the case. Essentially the Commission alleges, first, that the applicant's memorandum of 11 December 1991 constitutes a request and not a complaint, within the meaning of Articles 90 and 91 of the Staff Regulations of Officials of the European Communities (hereinafter 'the Staff Regulations'), and secondly that, contrary to those provisions, the present action has not been preceded by a complaint.

11 The Commission contends that the Court should:

(i) rule that the application is inadmissible;

(ii) make an appropriate order as to costs.

12 By a statement lodged at the Court Registry on 27 November 1992, the applicant claimed that the objection raised by the Commission should be rejected.

The admissibility of the application

13 Pursuant to Article 114 of the Rules of Procedure of the Court of First Instance, if a party applies to the Court for a decision on admissibility not going to the substance of the case, the remainder of the proceedings are to be oral, unless the Court decides otherwise. In this case, the Court considers that it has sufficient information from the documents before it and that no further steps in the proceedings should be taken.

14 Pursuant to Article 113 of its Rules of Procedure, the Court of First Instance may at any time of its own motion consider whether there exists any absolute bar to proceeding with the action. That provision, as is also apparent from the settled case-law of the Court of Justice and of the Court of First Instance (see, for example, Case 191/84 *Barcella* v *Commission* [1986] ECR 1541), applies particularly where the procedure laid down in Articles 90 and 91 of the Staff Regulations has been disregarded. When an action brought before the Court of First Instance is manifestly inadmissible, the Court may, according to Article 111 of its Rules of Procedure, give a decision on the action by reasoned order and without taking further steps in the proceedings.

15 In the present case, the Court considers it necessary, before examining if appropriate the objection of inadmissibility raised by the Commission, to ensure of its own motion that the action is not vitiated by any manifest ground of inadmissibility.

The claim for compensation

16 In the absence of a decision adversely affecting the official concerned, the pre-litigation procedure laid down by Article 90 of the Staff Regulations is, in principle, divided into two stages. Under Article 90(1), any person to whom the Staff Regulations apply may submit to the appointing authority a request that it take a decision relating to him. If there is an unfavourable reply or no decision is taken, the person concerned may submit to the appointing authority a complaint against

its express or implied decision, in accordance with the requirements of Article 90(2) of the Staff Regulations. The complaints procedure is intended to compel the authority having control over the official to reconsider its decision in the light of any objections which that official may make (see Case 101/79 *Vecchioli* v *Commission* [1980] ECR 3069, at paragraph 31). The purpose of the pre-litigation procedure laid down in Article 90 of the Staff Regulations, as a whole, is to permit and encourage the amicable settlement of differences which have arisen between officials and the administration (see Case 142/85 *Schwiering* v *Court of Auditors* [1986] ECR 3177, at paragraph 11).

17 With regard to the admissibility of a claim for compensation, it is apparent from the case-law of the Court, as analysed and clarified by the Court of First Instance (see Case T-27/90 *Latham* v *Commission* [1991] ECR II-35, at paragraph 38, and Case T-5/90 *Marcato* v *Commission* [1991] ECR II-731, at paragraph 49), that it is only when there is a close link between an application for annulment and a claim for compensation that the latter is admissible as ancillary to the application for annulment, without the need either for a prior request seeking compensation from the appointing authority for the damage allegedly suffered, or for a complaint disputing the validity of the express or implied rejection of that request.

18 In this case, the application seeks not the annulment of a measure but compensation for material and non-material damage allegedly caused by the fact that the applicant was not admitted to the tests for a competition until eight years had elapsed and several actions had been brought, circumstances which delayed the advancement of her career. The action is therefore based not on the damage resulting from a single measure, the annulment of which is sought, but on several wrongful acts and omissions for which the administration is alleged to be responsible. Consequently, the administrative procedure preceding the commencement of the action should have been set in motion by a request from the person concerned asking the appointing authority to compensate her for the damage (see the order of the Court of First Instance in Case T-29/91 *Castelletti* v *Commission* [1992] ECR II-77) and pursued, if appropriate, by a complaint against the decision rejecting that request.

19 The Court finds that the memorandum sent by the applicant to the appointing authority on 11 December 1991 was not preceded or followed in due time by any other steps taken vis-à-vis the administration, as required by Article 90 of the Staff Regulations.

20 It follows that even if the abovementioned memorandum is to be construed as a complaint within the meaning of the Staff Regulations, as the applicant maintains, it is common ground that the pre-litigation procedure was not conducted in two stages in accordance with Article 90 of the Staff Regulations, since the complaint was not preceded by a request. If, on the other hand, as the Commission maintains, the memorandum of 11 December 1991 is to be viewed as a request, it is likewise common ground that no complaint was lodged against the decision rejecting the request. It clearly follows that the action, in so far as it seeks compensation, was not brought in compliance with the conditions laid down by the Staff Regulations and is thus manifestly inadmissible.

The remainder of the claims

21 With regard to the claim that the Court should 'hold' that the Commission and the Selection Board of the Competition are responsible for the delay in question and that, consequently, the applicant's career should be 'adjusted' by appointing her to Grade B4, step 8, such forms of order manifestly do not lie within the jurisdiction of the Community Court. The Court has no jurisdiction to issue orders of that kind to the institutions (see, in this regard, the judgment of the Court of Justice in Case 225/82 *Verzyck* v *Commission* [1983] ECR 1991). Consequently, the claim is manifestly inadmissible.

22 It follows from all the foregoing considerations, and without it being necessary to rule on the objection of inadmissibility raised by the Commission, that even on the assumption that the action was brought in accordance with the requirements of Article 44(2) of the Rules of Procedure, it must in any event be dismissed as manifestly inadmissible.

Costs

23 In accordance with Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. However, under Article 88 of those Rules, in actions brought by Community servants the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Dismisses the action as inadmissible;

2. Orders the parties to bear their own costs.

Luxembourg, 28 January 1993.

H. Jung — Registrar

J. Biancarelli — President