ORDER OF THE COURT
30 September 1992 *

In Case C-294/91 P,

Elfriede Sebastiani, an official of the European Parliament, residing in Wellen (Federal Republic of Germany), represented by Paul Greinert, Rechtsanwalt, Trier, with an address for service in Luxembourg at the Secretariat of the European Parliament, Kirchberg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) in Case T-163/89 of 25 September 1991 between Elfriede Sebastiani and the European Parliament, seeking to have that judgment set aside,

the other party to the proceedings being:

European Parliament, represented by Jorge Campinos, Jurisconsult, and Manfred Peter, Head of Division, acting as Agents, assisted by Alex Bonn, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 22 Côte d'Eich,

THE COURT,

composed of: O. Due, President, R. Joliet, F. A. Schockweiler and F. Grévisse (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de

* Language of the case: German.

Almeida, G. C. Rodríguez Iglesias, M. Zuleeg, J. L. Murray and D. A. O. Edward, Judges,

Advocate General: F. G. Jacobs,
Registrar: J.-G. Giraud,

after hearing the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 21 November 1991, Mrs Elfriede Sebastiani brought an appeal under Article 49 of the Statute of the Court of Justice of the EEC and the corresponding provisions of the Statutes of the Court of Justice of the ECSC and EAEC against the judgment of the Court of First Instance of 25 September 1991 in Case T-163/89 *Sebastiani* v *Parliament* [1991] ECR II-715 dismissing Mrs Sebastiani's application in which she claimed that the Court of First Instance should order the European Parliament to:

(1) compensate the applicant for the harm caused to her by its refusal to assign her on a temporary basis to a Grade B 3 post in the German Translation Division;

(2) promote the applicant with retrospective effect to Grade B 3 or promote her to a higher grade;

(3) rectify the discriminatory and inequitable aspects of its personnel policy.

2 In the judgment appealed against, the Court of First Instance held that the second head of claim was not admissible on the ground that the Community judicature was not entitled to issue directions to the administration.

3 It next held that the third head of claim was not admissible on the ground that the claims put forward in support of it were not personal to the applicant, since they concerned the general personnel policy of the Parliament, and on the ground that the Community judicature was not entitled to issue directions to the administration.

4 The Court of First Instance then dismissed the first head of claim, holding that none of the pleas put forward by the applicant concerning the refusal to assign her on a temporary basis were well founded.

5 With respect to that head of claim, the Court of First Instance first rejected the plea alleging breach of the principle of equal treatment, holding that the applicant had not substantiated the plea with precise factual evidence enabling it to conclude that the appointing authority, following a manifest error of assessment or a misuse of powers, had infringed that principle, and that it was moreover not apparent from the documents before it that the appointing authority had used its powers for purposes other than those for which they had been conferred on it.

6 The Court of First Instance secondly rejected the plea alleging breach of the principle of the protection of legitimate expectations, finding that, despite being expressly invited to do so, the applicant was unable to adduce written proof that her superiors had given her assurances as to her administrative position such as to give rise to legitimate expectations on her part.

7 Thirdly, it rejected the plea alleging infringement of Article 45 of the Staff Regulations, which establishes the criteria for promotion, finding that according to the organization plan no Grade B 3 post was vacant in the relevant department until 1 January 1990.

8 Fourthly, it rejected the plea alleging infringement of Article 7(2) of the Staff Regulations, concerning temporary postings, on the same ground.

9 The Court of First Instance concluded that in those circumstances Mrs Sebastiani's application could only be dismissed; 'it [was] not necessary to order the production of the documents sought by the applicant in her originating application' (paragraph 51 of its judgment).

10 In support of her appeal, the applicant claims that the procedure before the Court of First Instance was irregular in so far as that Court, first, did not consider all the pleas and offers of evidence in support which were submitted to it, secondly, required from the applicant evidence which could not be provided and, thirdly, considered evidence which was inappropriate in the context of ascertaining whether the Parliament had been responsible for discrimination or serious negligence towards the applicant.

11 The European Parliament's principal submission is that the appeal is inadmissible, essentially on the basis that the decision of the Court of First Instance on whether the evidence offered by the applicant was admissible falls within that Court's absolute power to assess the facts and cannot therefore be the subject of an appeal, which lies only on questions of law. The Parliament adds that the appeal must in any event be dismissed as unfounded, since the Court of First Instance committed no procedural irregularity in the judgment appealed against.

12 The pleas relied on by Mrs Sebastiani in support of her appeal must be rejected.

13 First, the applicant may not validly invoke the errors allegedly committed by the Court of First Instance in assessing the evidence necessary for a consideration of the merits of the action in order to dispute the inadmissibility of the second and third heads of claim.

14 Neither, secondly, may the applicant validly invoke those alleged errors in order to dispute the dismissal on the merits of the first head of claim. The applicant does not deny that no Grade B 3 post was available until 1 January 1990 in the German

Translation Division. The appointing authority, which could not properly assign Mrs Sebastiani by a temporary posting or through promotion to a post at that grade, as pointed out by the Court of First Instance in the judgment appealed against, was therefore bound to refuse the measure sought by the applicant. Accordingly, the Court of First Instance could only dismiss the claims in the application seeking compensation for the harm allegedly caused by that measure.

15 It follows from the foregoing that Mrs Sebastiani's appeal is manifestly unfounded and must be dismissed pursuant to Article 119 of the Rules of Procedure.

Costs

16 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Article 70 of those Rules provides that in proceedings brought by servants of the Communities, the institutions are to bear their own costs. However, by virtue of Article 122 of those Rules, Article 70 is not to apply to appeals brought by officials or other servants of the institutions. Since Mrs Sebastiani's appeal has been unsuccessful, she must be ordered to pay the costs.

On those grounds,

THE COURT

hereby orders:

1. The appeal is dismissed;

2. Mrs Sebastiani shall pay the costs.

Luxembourg, 30 September 1992.

J.-G. Giraud
Registrar

O. Due
President