Reports of Cases

JUDGMENT OF THE CIVIL SERVICE TRIBUNAL
(Second Chamber)
30 September 2010

Case F-41/05

Kurt J acobs
v
European Commission

(Civil service — Officials — Appointment — Candidates placed on a reserve list prior to the entry into force of the new Staff Regulations — Classification in grade under the new, less favourable rules — Article 12(3) of Annex XIII to the Staff Regulations)

Application: brought under Articles 236 EC and 152 EA, in which Mr Jacobs seeks annulment of the decision of 11 February 2005 rejecting his complaint against the decisions of 16, 24 and 31 August 2004 and, in so far as is necessary, annulment of the latter decisions in so far as they classify him in a lower grade than that announced in the notice concerning competition COM/B/1/02. He also seeks an order that the Commission pay him damages of EUR 250 000.

Held: The action is dismissed. Each party is ordered to bear its own costs.

Summary

Officials — Status of official — Conditions for acquiring such status not satisfied in the absence of a regular appointment
(Staff Regulations, Art. 3)

According to the principles of law which govern the European Union civil service, the appointment of an official may be effected only in accordance with the requirements and procedures laid down by the Staff Regulations.

Since the legal tie which binds the official to the administration is governed by the Staff Regulations and is not of a contractual nature, Article 3 of the Staff Regulations, the wording of which was not amended by Regulation No 723/2004 amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants, implies that the appointment of an official necessarily has its origin in a unilateral instrument of the appointing authority stating the date on which the appointment takes effect and the post to which the official is appointed. Such an appointment cannot, therefore, result from a supposed voluntary agreement resulting from the acceptance of an offer of employment, a fortiori where the offer of employment stems from agents of the institution who do not have the status of appointing authority.

Consequently, it is only after being the subject of an appointment decision by that authority that a successful candidate in an open competition can claim the status of official and therefore demand the application to him of provisions of the Staff Regulations.

(see paras 43, 44, 52)

See:

18/69 *Fournier* v *Commission* [1970] ECR 249

T-40/91 *Ventura* v *Parliament* [1992] ECR II-1697, paras 40 and 41; T-74/98 *Mammarella* v *Commission* [1999] ECR-SC I-A-151 and II-797, paras 25 to 27; T-58/05 *Centeno Mediavilla and Others* v *Commission* [2007] ECR II-2523, paras 54 and 55