JUDGMENT OF THE COURT (FIRST CHAMBER)
20 OCTOBER 1983 [1]

Horst W. Steinfort
v Commission of the European Communities

(Official — Promotion)

Case 299/82

In Case 299/82

HORST W. STEINFORT, an official of the Commission of the European Communities resident in Luxembourg, represented by Victor Biel of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 18 A Rue des Glacis,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Jörn Pipkorn, a member of its Legal Department, acting as Agent, assisted by Robert Andersen of the Brussels Bar, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION to obtain a regrading of the applicant pursuant to the general decision of the Commission of 28 July 1981 on the reinstatement on promotion of officials seconded to the office of a member of the Commission,

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, A. O'Keeffe and G. Bosco, Judges,

Advocate General: G. F. Mancini
Registrar: A. W. H. Meij, Legal Secretary

gives the following

1 — Language of the Case: French.

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and procedure

1. The applicant, Horst W. Steinfort, who was born on 1 February 1920, entered the employment of the Commission on 27 March 1961 in a Grade A 4 post.

From 9 September 1964 until 5 July 1967 he was acting Chef de Cabinet to Mr Margulies, a member of the Commission of the European Atomic Energy Community (the EAEC). During that time he occupied a Grade A 2 post. On the departure of Mr Margulies he was assigned to the Directorate-General for Research in the EAEC, and from 1968 he was assigned as an official in Grade A 3 to Directorate-General XIII, Information Market and Innovation, in Luxembourg.

By letter dated 18 February 1982 the applicant submitted a request to the President of the Commission pursuant to Article 90 of the Staff Regulations for promotion to Grade A 2. In doing so he relied upon a Commission decision recorded in the minutes of a meeting on 28 July 1981 to the following effect:

"Les fonctionnaires de la catégorie A qui sont promus à un poste d'une carrière différente pendant la période de détachement dans un Cabinet réintégreront leur service où la promotion leur est assurée dans un certain délai:

Promotion vers le grade A 1 — A 2 ou A 3: 3 mois

Promotion vers le grade A 5: . . ." [1]

In his letter the applicant maintained that the decision was intended to ensure that an official who had performed the duties of Chef de Cabinet for a number of years was not reinstated in his original department in a lower post than that which he occupied while on secondment. He claimed that, having performed the duties of Chef de Cabinet to a member of the EAEC Commission in an A 2 post, he was entitled to promotion to Grade A 2. Alternatively, he relied on the principle of equal treatment. All Chefs de Cabinet who remained with the Commission when their secondment ended had been promoted to a grade at least equivalent to that attaching to the post which they occupied while on secondment.

When the Commission did not reply within the prescribed period the applicant submitted by letter dated 24 June 1982 a complaint against the implied decision to reject his request.

By letter dated 9 November 1982 the Commission rejected his complaint. In the letter it explained that the decision of

1 — *Translator's note:* the English language version reads: "'A' officials promoted to another career bracket during a period of secondment to a Member's Office shall rejoin the departments in which promotion is accorded them within 3 months in the case of promotion to A 1, A 2 or A 3, or . . . in the case of promotion to A 5."

28 July 1981 was intended solely to specify the maximum period on the expiry of which the official who, while on secondment to a member's office, had been promoted to a post in a different career bracket must return to the department where he had been promoted. In the Commission's view the interpretation given by the applicant to the decision of 28 July 1981 was incompatible with the Staff Regulations. Article 4 of the Staff Regulations provided *inter alia* that no appointment or promotion may be made for any purpose other than that of filling a vacant post. A necessary, but not a sufficient, condition for the applicant to be promoted to Grade A 2 would be that he applied for a vacant post of that nature.

2. By application received at the Court Registry on 1 December 1982 the applicant brought the present action.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court (First Chamber) decided to open the oral procedure without any preparatory enquiry.

II — Conclusions of the parties

The *applicant* claims that the Court should:

Annul the rejection of his complaint;

Rule that the Commission must promote him to Grade A 2 with effect from the date of his complaint;

Order the Commission to bear the costs.

The *Commission* contends that the Court should:

Dismiss the application;

Make an appropriate order as to costs.

III — Submissions and arguments

The *applicant* states first of all that the Commission's decision of 28 July 1981 has never been published or brought to the attention of those concerned and that he became aware of it only at the beginning of 1982.

He considers that the decision merely confirms a practice current for some years and its effects are therefore not restricted in time. It covers all secondments to members' offices both in the past and in the future. In the applicant's view he was entitled to promotion on his return to his normal employment in 1967 but he seeks it only as from the date of his complaint.

In the applicant's view the wording of the decision and in particular the words "où la promotion leur est assurée" can have no meaning other that to assure seconded Chefs de Cabinet of promotion within three months after the expiry of their secondment. As for Article 4 of the Staff Regulations, to which the Commission refers in its letter rejecting the request, he states that it is for the Commission to find the means to honour the assurances which it gives to its officials.

Moreover, according to the German text of the letter rejecting the applicant's request, application for a vacant post is not "a necessary, but not a sufficient, condition" for promotion but on the contrary "eine notwendige, aber hinreichende Voraussetzung" [a necessary, but sufficient condition], since the word

"not" was omitted in the German version. However that may be, the applicant applied for Grade A 2 posts on two occasions but the Commission did not appoint him.

The applicant makes the following submissions in support of his application. Since the Commission was bound by the assurance given in its decision of 28 July 1981 to grant the promotion in question to the applicant, its refusal to do so is unlawful. Moreover the refusal amounts to unequal treatment in relation to other staff seconded to members' offices and constitutes a misuse of powers.

Alternatively, that is to say should the application be dismissed as unfounded, the Commission ought nevertheless to be ordered to pay all the costs, since the applicant has been led to bring an action because of the error contained in the letter rejecting his request.

The *Commission* observes that the decision of 28 July 1981 is merely concerned with the rapid reinstatement in their original departments of officials who have been seconded to a member's office and promoted in the meantime. It refers to the note from the President of the Commission and Commissioner O'Kennedy which was the basis of the decision. That note states *inter alia:*

"On 20 June 1979 the Commission decided that officials in Grade A who are promoted while on secondment to a Member's Office should be reinstated in their department before a particular date — within the following 12 months in the case of promotion to Grade A 2, within 6 months in the case of promotion to Grade A 3 and within 3 months in the case of promotion to Grade A 5. No such condition is necessary in the case of promotion within a career bracket (A 5 to A 4 and A 7 to A 6).

Since promotion to Grades A 1, A 2 and A 3 entails the occupation of highly responsible posts which it is essential to fill speedily for the proper functioning of the departments, it seems desirable to shorten the periods agreed on in 1979 and to make them 3 months for all the grades under consideration."

The decision cited by the applicant thus gives no right of promotion to officials seconded to members' offices. Any undertaking to that effect would, moreover, be incompatible with the Staff Regulations. Furthermore, the fact that other staff have been promoted during or shortly after their secondment to a member's office cannot constitute a breach of the principle of equal treatment if such promotion has been made in accordance with the same objective rules of the Staff Regulations.

In the Commission's view the words "où la promotion leur est assurée" used in the decision of 28 July 1981 must be understood as synonymous with "where they have obtained promotion" or "where they have been promoted".

As regards the letter rejecting the request the Commission admits that the word "not" was omitted from the German in the phrase "a necessary, but not a sufficient, condition". It emphasizes never-

theless that an official, whether or not seconded to a member's office, never has a right to promotion. In view of the provisions of the Staff Regulation the fact of having made an application can never lead automatically to promotion.

It adds further that the applicant is a very high-ranking official who ought therefore to have been able to interpret correctly the said decision of 28 July 1981 and the letter rejecting his complaint.

IV — Oral procedure

The parties presented oral argument at the sitting on 15 September 1983.

The Advocate General delivered his opinion at the sitting on 6 October 1983.

Decision

1 By application received at the Court Registry on 1 December 1982 Horst W. Steinfort, an official of the Commission of the European Communities, brought an action for a declaration that he was entitled to be promoted to Grade A 2.

2 The applicant entered the employment of the Commission in 1961 as a Principal Administrator in Grade A 4 and from 1964 to 1967 performed the duties of Chef de Cabinet to Mr Margulies, a member of the EAEC Commission. At the end of that secondment, during which he occupied a Grade A 2 post, he was assigned to the EAEC Directorate-General for Research and then in 1968 promoted to Grade A 3 in Directorate-General XIII of the Commission, Information Market and Innovation. By letter dated 18 February 1982 he requested that the Commission promote him to Grade A 2 on the basis of a decision taken by the Commission in July 1981.

3 Since the application is almost exclusively based on the said decision of July 1981 it is appropriate to refer first of all to its terms. The decision, which has never been published, appears in the minutes of the sitting of the Commission on 28 July 1981. Under the heading "Reinstatement on promotion of officials seconded to a Member's Office" the minutes read as follows:

"On a proposal from the President and Mr O'Kennedy the Commission adopted the following decision:

1. 'A' officials promoted to another career bracket during a period of secondment to a Member's Office shall rejoin the departments in which promotion is accorded them" [... réintégreront leur service où la promotion leur est assurée ...] "within 3 months in the case of promotion to A 1, A 2 or A 3 or at the end of the Commission's term of office in the case of promotion to A 5.

2. In the case of promotions within the same career bracket and promotions to A 5 ..."

4 In the applicant's view the decision means that officials of Category A who are seconded to a member's office are entitled to promotion within a particular period after their reinstatement in their original department and that period is three months in the case of promotion to Grade A 2. That interpretation of the decision is confirmed by the clause "où la promotion leur est assurée" and in particular by the word "assurée" which would have no meaning if former staff of a member's office were not to be promoted.

5 In the view of the Commission the decision relates not to the right to promotion of officials who have been seconded to a member's office but to the period within which officials promoted while on secondment should be reinstated. That such is its purport, as appears *inter alia* from the wording of the decision and from the fact that it has never been published as being of a purely internal nature, is demonstrated by the note from the President of the Commission and from Mr O'Kennedy which was the basis of the decision.

That note contains the following sentence:

"Since promotion to Grades A 1, A 2 and A 3 entails the occupation of highly responsible posts which it is essential to fill speedily for the proper functioning of the departments, it seems desirable to shorten the periods agreed on in 1979 and to make them 3 months for all the grades under consideration."

6 The interpretation given by the Commission must be followed. The argument favoured by the applicant would render the main clause in the decision at issue ("Officials ... shall rejoin the departments ... within 3 months ...") meaningless. Moreover, since that hypothesis would have the effect of conferring retroactively promotion to high grades on all officials who have been seconded to a member's office it would depart from the procedure under the Staff Regulations governing promotion without regard for the difficulty of finding sufficient posts corresponding to such grades.

7 The other complaints made by the applicant, such as discriminatory treatment and misuse of powers by the Commission, are not sufficiently precise to warrant consideration.

8 The application must therefore be rejected.

Costs

9 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of the Rules of Procedure, in proceedings brought by staff of the Communities the institutions are to bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

2. Orders the parties to bear their own costs.

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 20 October 1983.

P. Heim
Registrar

T. Koopmans
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 6 OCTOBER 1983 [1]

Mr President,
Members of the Court,

1. The application of 1 December 1982 with which the present case was begun concerns a request for promotion to Grade A 2 made to the Commission of the European Communities by Horst W. Steinfort, an official thereof.

Let me summarize the facts. The applicant entered employment with the Commission on 27 March 1961 as a Principal Administrator in Grade A 4. From 9 September 1964 to 5 July 1967 he was seconded to perform the duties of Chef de Cabinet to Mr Margulies, a member of the Commission of the EAEC, for which he held a post in Grade A 2. At the end of the secondment he worked for the EAEC Directorate-General for Research and since 1968 when he was promoted to Grade A 3 he has worked in Directorate-General XIII, Information Market and Innovation.

By letter dated 18 February 1982 Mr Steinfort requested the President of the Commission to be promoted to Grade A 2. He based his request on the Commission's decision relating to the "Reinstatement on promotion of officials seconded to a Member's Office", adopted on 28 July 1981 (Doc. COM(81) Min. 615). More precisely the applicant referred to paragraph 1 thereof which provides: "Les fonctionnaires de la catégorie A qui sont promus à un poste d'une carrière différente pendant la

1 — Translated from the Italian.