JUDGMENT OF THE COURT (First Chamber)
11 March 1986 *

In Case 293/84

Vincenzo Sorani and 10 other officials of the Commission of the European Communities, 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,

applicants,

v

Commission of the European Communities, represented by its Legal Adviser, Dimitrios Gouloussis, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the Selection Board for Internal Competition No COM/B/2/82 not to admit them to the tests for that competition,

THE COURT (First Chamber)

composed of: R. Joliet, President of the Chamber, G. Bosco and T. F. O'Higgins, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

after hearing the Opinion of the Advocate General delivered at the sitting on 12 December 1985,

gives the following

* Language of the Case: French.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an application lodged at the Court Registry on 5 December 1984, Vincenzo Sorani and 10 other officials in Category C in the service of the Commission of the European Communities brought an action for the annulment of the decision of the Selection Board for Competition No COM/B/2/82, an internal competition based on qualifications and tests held for the purpose of constituting a reserve list of administrative assistants, secretarial assistants and technical assistants, not to admit them to the tests for that competition.

2 The applicants were informed by letters from the head of the Recruitment Division dated 15 June 1984 that the Selection Board for the competition, after a comparative examination of the applications and basing its assessment on a number of factors such as professional experience before and after recruitment, general or specialized education, further training, the periodic assessments of the candidates made by their superiors, the duties performed at the date on which the applications were submitted and mobility, considered that it could not place their names on the list of candidates admitted to the tests.

3 The staff concerned asked the Selection Board to reconsider their applications and if it decided to maintain its previous decision, to state in each case the conditions required for admission to the tests which had not been fulfilled.

4 In a letter of 7 September 1984, addressed to each of the applicants and drafted in the same terms, the head of the Recruitment Division informed them that the Selection Board had reconsidered their applications and had decided to confirm its previous decision.

5 On 5 December 1984, the applicants brought this action, and at the same time asked the Court, in a separate document submitted under Article 83 of the Rules of Procedure, to 'decide and order that the procedure in Competition No COM/B/2/82 be suspended until a decision has been given on the substance of the case'.

6 By order of 17 January 1985, the President of the First Chamber, by way of interim decision, dismissed the application and reserved the costs.

7 The defendant, the Commission, contends first of all that the action is inadmissible on the ground that it was brought out of time. It contends that the letter of 15 June 1984 notifying the applicants of the decision not to admit them to the tests must be regarded as the act adversely affecting the applicants within the meaning of Article 90 (2) of the Staff Regulations of Officials, and not the letter of 7 September 1984 which merely confirmed that decision and provided a more detailed statement of the reasons on which it was based.

8 For their part, the applicants consider that the letter of 7 September 1984 contained new factors and reasons not contained in the letter of 15 June 1984.

9 In those circumstances, the Court must first consider whether the Selection Board merely provided a more detailed statement of the reasons on which its decision was based, as the Commission contends, or whether it adopted what was in effect a new decision, as the applicants claim.

10 There is no doubt that the decision contained in the letter of 7 September 1984 was adopted following a reconsideration of the previous decision not to admit the applicants to the tests, which the Selection Board carried out at the applicants' request.

11 Not only does the text of that letter expressly mention a 'reconsideration' of the applications, but the fact that 18 candidates who had been initially excluded were later admitted to the tests also shows that that reconsideration did take place and was carried out in a thorough manner.

12 In the light of the foregoing considerations, it must therefore be held that the decision contained in the letter of 7 September 1984 replaced the previous decision and cannot be regarded as merely confirming it. The action is therefore admissible.

13 In support of their action, the applicants put forward the following submissions:

(a) failure to state the reasons on which the decision was based, or at least an erroneous statement of those reasons;

(b) the unlawful nature of the Selection Board's interview with the candidates' superiors without giving the latter an opportunity of commenting on the opinions expressed on them;

(c) manifest errors, which caused the candidates, or at least some of them, to be excluded;

(d) breach of the principle of legitimate expectation.

14 The submission set out at (b) must be considered first, by virtue of its importance as a matter of principle.

15 In that submission, the applicants claim that the fact that the Selection Board, when considering the applications, interviewed the candidates' superiors, in the person of the assistants to the Director-General of each of the Directorates-General to which the candidates were assigned, without also interviewing the candidates in order to permit them to comment on the opinion expressed on them by their superiors constitutes a breach of the principle of legitimate expectation since all officials are entitled to expect fair treatment on the part of the administration and, in particular, respect for the *audi alteram partem* rule.

16 The Commission replies that the assistant to the Directors-General were neither the competitors nor the adversaries of the candidates and they are not therefore entitled to rely on a right of reply. Furthermore, the interview with the assistants was only one of the factors taken into account in analysing each candidate's application and the assistants' opinion was not decisive.

17 For the purposes of considering this submission, it should be noted that in the context of a competition the Selection Board is called upon to assess factors known to the candidates, whether it be qualifications that they hold, tests which they have undergone or periodic assessments of which they are aware and on which they have had an opportunity to comment. That constitutes a guarantee that the competition will be properly conducted and a protection against arbitrariness, inasmuch as the candidates are aware of all the factors which entered into the Selection Board's assessment and are therefore well placed to contest that assessment if they consider that it is wrong.

18 If, on the other hand, the Selection Board bases its decision at least in part, as it did in this case, on factors such as information supplied by, and the opinions of, the candidates' superiors, of which the candidates concerned have no knowledge, those candidates have no opportunity to defend themselves against statements made by third parties which, though they may well be perfectly correct, may also be incorrect for one reason or another.

19 The fact that the candidates did not have an opportunity to state their views on the opinions expressed on them by their superiors thus constitutes a breach of a principle which the Selection Board ought to have respected and vitiates the procedure which led to the decision not to admit the applicants to the tests for the competition in question.

20 The decision of the Selection Board for Competition No COM/B/2/82 not to admit the applicants to the tests for that competition must therefore be annulled.

Costs

21 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. Since the Commission has been unsuccessful in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

(1) Annuls the decision of the Selection Board for Competition No. COM/B/2/82 contained in the letters drafted in identical terms sent to each of the applicants on 7 September 1984 refusing to admit them to the tests for that competition;

(2) Orders the Commission to pay the costs, including those of the application for the adoption of interim measures.

Joliet Bosco O'Higgins

Delivered in open court in Luxembourg on 11 March 1986.

P. Heim
Registrar

R. Joliet
President of the First Chamber