JUDGMENT OF THE COURT (First Chamber)
16 December 1987 *

In Case 206/85

Maria Beiten, an official of the Commission of the European Communities, residing at 6 square Marie-Louise, Brussels, assisted and represented by Edmond Lebrun, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Tony Biever, 83 boulevard Grande-Duchesse-Charlotte,

applicant,

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 G. Kremlis, a member of its Legal Department, Jean Monnet, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the Selection Board for Internal Competition COM/B/2/82 refusing to admit the applicant to the tests in that competition,

THE COURT (First Chamber),

composed of: G. Bosco, President of Chamber, R. Joliet and F. Schockweiler, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

having regard to the Report for the Hearing and further to the hearing on 27 October 1987,

* Language of the Case: French.

after hearing the Opinion of the Advocate General delivered at the sitting on 18 November 1987,

gives the following

Judgment

1 By an application lodged at the Court Registry on 4 July 1985, Maria Beiten, an official in Category C in the Commission of the European Communities, brought an action for the annulment of the decision, communicated to her on 7 September 1984, of the Selection Board for Competition 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 her to the tests in that competition.

2 By letter of 15 June 1984 from the Head of the Recruitment Devision, Miss Beiten had been informed that the Selection Board for the competition had undertaken a comparative consideration of all the applications, basing its assessment on a series of factors such as working experience before and after recruitment, general and/or special training, further training, staff reports, duties performed at the date on which the applications were received and mobility, but had been unable to include her name in the lists of candidates admitted to the tests.

3 By letter of 12 July 1984, Miss Beiten pointed out that the abovementioned letter did not indicate the criteria adopted by the Selection Board or the aspects on the basis of which it had reached its decision not to include her name in the list of candidates admitted to the tests. Consequently, she asked the Head of the Recruitment Division to provide her with information on that subject as soon as possible.

4 As a result of that request the Head of the Recruitment Division informed Miss Beiten in a letter of 7 September 1984 that the Selection Board had reconsidered

her application and confirmed its previous decision. It is also stated in that letter that the Selection Board decided to admit to the tests only candidates already performing duties at B, BS or BT level, or having all the potentialities necessary for performing such duties.

5 Since the complaint which Miss Beiten lodged against that decision was rejected, she brought the present action.

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 The Commission contends in the first place that the action is inadmissible inasmuch as it was brought out of time. It maintains that the act adversely affecting Miss Beiten within the meaning of Article 90 (2) of the Staff Regulations of Officials is the letter of 15 June 1984 in which she was informed of the decision not to admit her to the tests 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 In that regard, it must be pointed out that the letters of 15 June and 7 September 1984 are standard-form letters, the first of which was sent to all the candidates not admitted to the tests in the competition and the second of which was sent to all those who asked for more details as to the reasons for their exclusion and for a reconsideration of the decision to exclude them. Since the decision contained in the letter of 7 September 1984 was adopted following a reconsideration of the previous decision not to admit the applicant to the tests, which the Selection Board carried out at the applicant's request, it must be held, following the Court's judgment of 11 March 1986 in Case 293/84 *Sorani* v *Commission* [1986] ECR 967, that the second decision replaced the previous decision and cannot be regarded as merely confirming it. The Commission's objection of inadmissibility cannot therefore be upheld.

9 In support of her application, the applicant puts forward the following submissions:

Infringement of Article 25 (2) of the Staff Regulations of Officials and Article 5 of Annex III thereto;

Infringement of Article 5 (3) of the Staff Regulations and of the general principles of equality and distributive justice, and of the principle that every administrative act must be based on reasons which are admissible in law;

Infringement of Article 5 (3) of the Staff Regulations and Article 5 (3) and (4) of Annex III thereto, disregard of the purpose of the competition procedure and failure to observe the principles of equality and distributive justice.

10 In her first submission, under which she alleges that no or no adequate reasons were given for the decision, the applicant claims that the decision of the Selection Board communicated to her on 7 September 1984 contains nothing, however summary, to indicate the reasons for which her individual application was rejected. The reason for which the Selection Board considered that Miss Beiten did not already perform all the duties of an official at the level of Category B or, at very least, did not have all the potentialities for performing them, is to be found neither in the letter of 7 September 1984 informing her of that decision nor in any other document of which she could have had knowledge.

11 The Commission replies that its letter of 7 September 1984 not merely indicated the general critiera adopted by the Selection Board but set out the factors, drawn from the application forms filled in by the candidates themselves, on the basis of which the Selection Board based its consideration of the applications. It adds that, having regard to the very large number of candidates, the Selection Board was not required to explain in detail to each of them why and to what extent the performance of any given duty could or could not be regarded as proof that a candidate had all the potentialities for performing the duties of an official at the level of Category B.

12 In order to determine whether this submission is well founded, a distinction must first of all be drawn between the statement of reasons contained in the letter of 15 June 1984, addressed to all candidates not admitted to the tests, and that

contained in the letter of 7 September 1984, addressed, after reconsideration of their position, only to candidates who had expressly asked for further details of the reasons for their exclusion.

13 As is apparent from a previous decision of the Court (judgment of 9 June 1983 in Case 225/82 *Verzyck* v *Commission* [1983] ECR 1991), in order to make allowance for the practical difficulties which arise in a competition for which there is a very large number of applications, the selection board for such a competition may initially send to a candidate not admitted to the tests merely information on the criteria for selection and the result thereof and not give individual explanations until later and to those candidates who expressly request them.

14 In the light for the foregoing, it must therefore be ascertained whether the letter of 7 September 1984, which is in reply to a letter from Miss Beiten expressly asking for an individual explanation, contains a sufficient statement of the reasons on which it is based to enable the person concerned to judge whether the decision is well founded or whether it is tainted by a defect such as to enable its lawfulness to be challenged.

15 The letter of 7 September 1984 merely states that the Selection Board had considered in depth the contents of each application, took account of a certain number of criteria such as of working experience before and after recruitment, general and/or special training, further training, staff reports, duties performed at the date on which applications were received and mobility, and had discussions with the representatives of the Directorates-General in order to obtain information, in particular their view on the capacities of the candidates to perform duties at Category B level. It in no way indicates the way in which those criteria were applied to Miss Beiten's situation and the information supplied by the representative of the Directorate-General concerned might have led to the conclusion that she did not have all the potentialities for performing duties at Category B level. It follows that the letter of 7 September 1984 cannot be regarded as a decision containing a sufficient statement of the reasons on which it is based, in conformity with the case-law of the Court.

16 The decision of the Selection Board for Competition COM/B/2/82, contained in the letter addressed to the applicant on 7 September 1984, not to admit her to the tests in that competition must therefore be annulled.

Costs

17 Under the terms of 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 failed 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 COM/B/2/82, contained in the letter addressed to the applicant on 7 September 1984, not to admit her to the tests in that competition;

(2) Orders the Commission to pay the costs.

Bosco Joliet Schockweiler

Delivered in open court in Luxembourg on 16 December 1987.

P. Heim
Registrar

G. Bosco
President of the First Chamber