Cases 259/84 and 259/84 R

Dieter Strack
v
European Parliament

Summary

Officials — Actions before the Court — Prior complaint through official channels — Complaint not yet rejected — Inadmissibility
(Staff Regulations of Officials, Art. 91 (2))

ORDER OF THE FIRST CHAMBER OF THE COURT
31 January 1985 *

In Cases 259/84 and 259/84 R

Dieter Strack,

applicant,

v

European Parliament,

defendant,

APPLICATION for the annulment of the decision dated 21 September 1984 taken by the Selection Board in Competition No PE/27/A,

* Language of the Case: German.

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, T. Koopmans and R. Joliet, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: P. Heim

makes the following

ORDER

1. By application lodged at the Court Registry on 6 November 1984, Dieter Strack, residing at Vulbens, Haute-Savoie, brought an action under Article 91 of the Staff Regulations of Officials of the European Communities for annulment of the decision dated 21 September 1984 taken by the Selection Board in Competition No PE/27/A and, in the alternative, for damages. In its contested decision, the Selection Board refused to fix a new date on which Mr Strack could take the written tests for a competition organized by the European Parliament. Mr Strack also brought an application to suspend the operation of that decision.

2. Mr Strack, an official of the United Nations, submitted his candidature for Competition No PE/27/A, organized by the European Parliament. He was admitted to the written test, but the invitation to take part in that test arrived at Mr Strack's place of residence while he was on holiday. He did not become aware of it in time and was therefore unable to take part in the test.

3. Mr Strack therefore asked the Selection Board for the competition to fix a new date on which he could take the written test. By a decision of 21 September 1984, the Selection Board refused to do so.

4. On 31 October 1984, Mr Strack brought the present action against that decision. On 2 November 1984, he also submitted a complaint to the President of the European Parliament. Several weeks later, on 28 January 1985, Mr Strack also brought an action to suspend the operation of the decision.

5. In support of his application, Mr Strack contends that the invitation was sent to him at a date too close to that of the competition. The notice which he received was thus unreasonably short and contrary to the established practice of the Community institutions.

6. Under Article 92 (1) of the Rules of Procedure, where it is clear that the Court has no jurisdiction to take cognizance of an application, it may by reasoned order declare the application inadmissible. In this case, one of the conditions of admissibility for an action brought under Article 91 of the Staff Regulations is lacking. Article 91

of the Staff Regulations clearly states that an appeal will lie under that provision only if the appointing authority has previously had a complaint submitted to it and the complaint has been expressly or impliedly rejected. In the present case, although a complaint was certainly submitted, the action was brought without waiting for a decision to be given on that complaint.

7. Consequently, it must be held, pursuant to Article 91 of the Staff Regulations and Article 92 (1) of the Rules of Procedure, that the action has been brought without obtaining a decision on the complaint and that it is for that reason inadmissible; the application for the adoption of interim measures brought on 28 January 1985 is therefore also inadmissible.

On those grounds,

having heard the views of the Advocate General,

THE COURT (First Chamber)

hereby orders as follows:

1. The application is dismissed as inadmissible.

2. The applicant is ordered to pay the costs.

Luxembourg, 31 January 1985.

P. Heim
Registrar

G. Bosco
President of the First Chamber