JUDGMENT OF THE COURT (First Chamber)
14 November 1985 *

In Case 219/84

Michael Powell, an official of the Commission of the European Communities, residing at 106 Avenue Circulaire, Brussels, assisted and represented by Edmond Lebrun, of the Brussels Bar, and, in the procedure provided for by Article 91 of the Rules of Procedure, by Victor Biel, of the Luxembourg 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 Dimitrios Gouloussis, a member of its Legal Department, with an address for service in Luxembourg at the office of Manfred Beschel, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

CONCERNING, at the present stage of the procedure, the admissibility of the application brought by Mr Powell for the annulment of the Commission's decision of 1 March 1974 appointng him as a probationary official with effect from 11 February 1974 and that of 31 October 1974 establishing him with effect from 11 November 1974, but only in so far as those decisions classify him in Grade A 5,

THE COURT (First Chamber)

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

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

after hearing the Opinion of the Advocate General delivered at the sitting on 6 June 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 28 August 1984, Michael Powell, an official of the Commission of the European Communities, brought an action for the annulment of the Commission's decision of 1 March 1974 appointing him as a probationary official with effect from 11 February 1974 and that of 31 October 1974 establishing him with effect from 11 November 1974, but only in so far as those decisions classified him in Grade A 5 instead of Grade A 4.

2 In a document dated 11 October 1984 the Commission raised an objection of inadmissibility to the application and requested the Court pursuant to Article 91 of the Rules of Procedure to decide on the objection without considering the substance of the case. According to the Commission, the application is out of time because the applicant did not submit a complaint within the period of three months prescribed by the Staff Regulations of Officials of the European Communities against the decision adversely affecting him — namely, his appointment as a probationary official — which was known to him by 19 March 1975 at the latest, that being the date on which he received notification of the decision appointing him as an established official in Grade A 5.

3 The applicant claims in his observations on the objection of inadmissibility that the time-limits for challenging a decision were re-opened by new facts which occurred after 19 March 1975. Among these, he mentions the point that it was only as a result of a note dated 6 January 1984 from Mr Morel, Director-General for Personnel and Administration, that he learned that the Commission Decision of 6 June 1973 on the Criteria Applicable to Grade and Step Classification upon Recruitment had been applied to him, so as to reduce by one year the duly-certificated practical experience of 12 years and three months which he had claimed. He thus became aware for the first time that the appointing authority had considered that he did not fulfil the conditions set out in Article 3 of the decision of 6 June 1973, which provides that the appointing authority may classify a candidate in Grade A 4 if he has 12 years' practical experience.

4 It appears from the documents put before the Court that the Decision of 6 June 1973 on the Criteria Applicable to Grade and Step Classification upon Recruitment and the practice followed in relation to its application were not published until a circular was distributed to Commission staff in March 1981.

5 Section 2 of Annex II to that circular, which sets out the practice adopted by the Classification Committee in applying the decision of 6 June 1973, is entitled 'Career bracket A 7/6' and the second paragraph of Section 2 (a) provides as follows: 'Where university studies are short, practical experience is taken into account only with effect from the fourth year following the completion of advanced secondary studies'.

6 In that regard it should be noted that the aforesaid provision was not such as to make the applicant aware of the criteria which had in fact been applied in fixing his grade and step upon recruitment Since Mr Powell had been recruited to a post in Career bracket A 5 /4, he could not assume that a provision concerning Career bracket A 7 /6 was automatically applicable to him. Furthermore Mr Powell, who had in any event, as is clear from the certificate annexed to his application, pursued university studies of four years' duration, had no reason to believe, on reading the aforesaid provision, that his practical experience, which had in fact commenced at least four years after he completed advanced secondary studies, had been taken into account only from a date subsequent to its actual commencement.

7 In the light of the circular of March 1981, the only view that Mr Powell could take was that he had been classified in grade and step on the basis of a discretionary assessment, as permitted by Article 3 of the Decision of 6 June 1973, on the assumption that his practical experience of 12 years and three months had been taken into account in full. By contrast, he had no reason to believe that the appointing authority had taken the view that he did not fulfil the minimum condition laid down in that article.

8 No evidence has been put before the Court to show that there was any occasion before Mr Powell received the note which was addressed to him on 6 January 1984, on which it was possible for him to become aware that his practical experience had been reduced. Furthermore, the Commission itself has not maintained that the applicant had any such possibility.

9 Consequently, it must be concluded that the circumstances which were brought to Mr Powell's attention by the abovementioned note of 6 January 1984 amount to a new factor of such a kind as to reopen the time-limits for contesting a decision. Since the time-limits reopened as from 6 January 1984 were complied with, the application is admissible.

On those grounds,

THE COURT (First Chamber)

hereby:

(1) Declares the application to be admissible;

(2) Orders that the procedure be resumed with regard to the substance of the case;

(3) Reserves the costs.

Joliet Bosco O'Higgins

Delivered in open court in Luxembourg on 14 November 1985.

P. Heim
Registrar

R. Joliet
President of the First Chamber