JUDGMENT OF THE COURT (Third Chamber)
6 June 1985 *

In Case 146/84

Giovanni De Santis, an official of the Court of Auditors of the European Communities, represented by Victor Biel, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 18 A Rue des Glacis,

applicant,

v

Court of Auditors of the European Communities, represented by its Secretary, Jean-Aimé Stoll, acting as Agent, assisted by Lucette Defalque, of the Brussels Bar, with an address for service in Luxembourg at the Court of Auditors, 29 Rue Aldringen,

defendant,

APPLICATION for an adjustment of the applicant's classification in grade and step,

THE COURT (Third Chamber)

composed of: C. Kakouris, President, U. Everling and Y. Galmot, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

after hearing the Opinion of the Advocate General delivered at the sitting on 2 May 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 application lodged at the Court Registry on 12 June 1984 Giovanni de Santis, an official of the Court of Auditors of the European Communities, brought an action for a declaration that he is entitled to be classified in Grade B 2 and to have an additional period of seniority of 54 months taken into account in his classification in step.

2 The applicant was appointed a probationary official in Grade B 3, Step 3, as from 1 January 1983 following a competition for an assistant in Career Bracket B 3/B 2 in which he was successful. Prior to that appointment the applicant had been in the service of the Court of Auditors since 1978, that is to say for a period of 54 months, as a member of its temporary staff, first in Grade A 4 and then in Grade A 6, and had taken part in a number of competitions for posts at various levels in order to be appointed an official. Following the aforementioned competition, by a letter dated 21 December 1982, the President of the Court of Auditors offered him an appointment as a probationary official in Grade B 3, Step 3, and he accepted that offer by a letter dated 22 December 1982.

3 At the end of his probationary period on 29 September 1983, it was decided to establish the applicant in his post with effect from 1 October 1983. That decision, adopted pursuant to Article 34 of the Staff Regulations of Officials, makes no reference to the applicant's classification in step.

4 On 20 December 1983 the applicant submitted a complaint pursuant to Article 90 (2) of the Staff Regulations seeking an improved classification in grade and step. He took the view that the particular circumstances of his case required use to be made of the possibility provided for in Article 31 (2) of the Staff Regulations of appointing him to the higher grade of his career bracket; he also claimed that, notwithstanding the additional seniority which he had been given for his experience in accordance with the second paragraph of Article 32 of the Staff

Regulations, account had to be taken, for the purpose of his classification in step, of an additional 54 months' seniority for his service as a member of the temporary staff of the Court of Auditors.

5 That complaint was rejected by a decision of 15 March 1984 on the grounds that the applicant had accepted the classification offered to him, that the classification was in conformity with the second paragraph of Article 32 of the Staff Regulations and that Article 3 of Decision No 81-5 of the Court of Auditors on the criteria applicable to appointment in grade and to classification in step reserves Grade B 2 for promotions within a career bracket and therefore excludes the application of Article 31 (2) of the Staff Regulations to that grade.

6 By this action the applicant is pursuing his claim for an amendment of his classification in grade and step.

7 The applicant contends first of all that, in order to take account of his exceptional qualifications and career, the Court of Auditors ought to have applied Article 31 (2) of the Staff Regulations and appointed him to the higher grade of his career bracket.

8 The Court of Auditors disputes the contention that in the applicant's case there are exceptional circumstances which may justify the use of the possibility provided for in Article 31 (2) and refers to its Decision No 81-5 of 3 December 1981 which excludes recruitment to Grade B 2.

9 In this regard it should be recalled that Article 31 (1) of the Staff Regulations lays down the rule, from which the competent authority may derogate within certain limits under Article 31 (2), that officials in Category B are to be appointed 'to the starting grade for the post for which they have been recruited', in this case, Grade B 3. As the Court has already held in its judgment of 28 March 1968 (in Case 33/67 *Dietrich Kurrer* v *Council of the European Communities* [1968] ECR 127) the appointing authority must reconcile the use of its power under Article 31 (2) with the observance of the requirements arising from the concept of a career bracket within the meaning of Article 5 and Annex I to the Staff Regulations. It is not

therefore permissible to recruit staff to the higher grade of a career bracket save in exceptional cases where the application of Article 31 (2) is justified by the specific needs of the service, which call for the recruitment of a specially qualified official.

10 By its internal Decision No 81-5, on the criteria applicable to the appointment in grade and classification in step of its personnel, the Court of Auditors laid down that, in the case of certain career brackets, exceptional circumstances and specified periods of experience justify appointment to the higher grade, but it has provided in Article 3 (2) of that decision that 'no appointment may be made to Grades B 2, C 2 or D 2, since those grades are reserved for promotions within the career bracket'. At the hearing the Court of Auditors explained that Article 3 (2) was adopted in order to maintain promotion opportunities and to ensure the consistent progress of officials' careers during a specific period following the establishment of the institution.

11 In that regard it must be stated that in principle nothing prohibits the appointing authority from laying down in a general internal decision rules governing the exercise of the discretion which it has under the Staff Regulations. With regard to the exercise of the appointing authority's discretion under Article 31 (1) of the Staff Regulations, its concern to ensure the consistent progress of serving officials' careers is an aim which it may legitimately pursue.

12 However, in this case, it is not necessary to consider whether Article 3 (2) of Decision No 81-5 of the Court of Auditors may exclude absolutely, even in exceptional cases, the possibility for the appointing authority to make appointments to the higher grade of Career Brackets B 2, C 2 and D 2. There is no evidence to suggest that the appointing authority exceeded its discretion in deciding that neither the applicant's qualifications nor the requirements of the service with regard to the post in question were so exceptional as to justify departure from the rule that appointments are made to the starting grade of Career Bracket B 3 / B 2.

13 With regard to his classification in step, the applicant considers that, in addition to his experience justifying the allowance under Article 32 (2) of the Staff Regulations of 48 months' additional seniority in step, the Court of Auditors should have taken into account his 54 months of service as a member of the temporary staff of the Court of Auditors by maintaining the seniority he had thereby acquired.

14 The Court of Auditors contends that the applicant was allowed the maximum period of seniority in step permitted under Article 32 of the Staff Regulations and that where temporary staff are recruited as officials that provision does not allow a distinction to be made between their experience in general and their service with the institution.

15 Article 44 of the Staff Regulations provides that an official who has been at one step in his grade for two years is automatically to advance to the next step in that grade. Unless otherwise provided, that period of seniority starts from the official's appointment to his post.

16 Where an official is appointed on his recruitment, the first paragraph of Article 32 provides that: 'An official shall be recruited at the first step in his grade'. The second paragraph of that article then provides: 'However, the appointing authority may, taking account of the training and special experience for the post of the person concerned, allow additional seniority in his grade'. That seniority is limited to 48 months, that is to say two steps, in the grade in question. The applicant does not dispute that he has been allowed the maximum seniority permitted under that provision.

17 No provision of the Staff Regulations allows account to be taken, in the form of accumulated seniority as provided for in Article 44, of a period during which an official previously served his institution as a member of its temporary staff. As the Court held in its judgment of 12 July 1984 in Case 17/83 *Angel Angelides* v *Commission* [1984] ECR 2907, the position of an employee who obtains his first

definitive appointment after a period of service as a member of the temporary staff is in fact governed by Article 32 of the Staff Regulations.

18 Therefore the applicant's previous experience as an official, including his experience as a member of the Court of auditors' temporary staff, could be taken into account only on the basis of Article 32 of the Staff Regulations.

19 It follows from the foregoing that the applicant's claim for an amendment of his classification is unfounded with regard to both his grade and his step.

20 It is therefore unnecessary for the Court to consider of its own motion the point — not raised by the Court of Auditors — whether the application is inadmissible for not fulfilling the requirements laid down in Article 91 of the Staff Regulations in view of the fact that the applicant failed to challenge within the prescribed period the decision of 21 December 1982 appointing him as an official and classifying him in grade and step.

21 The application must therefore be dismissed.

Costs

22 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, Article 70 of the Rules provides that, in proceedings brought by officials, the costs incurred by the institutions against whom an action has been brought by a servant of the Communities are to be borne by such institutions. Since the applicant has failed in his submissions, he must be ordered to pay his own costs.

23 The Court considers that it is not appropriate in this case to exercise the discretion provided for in Articles 70 and 69 (3) of the Rules of Procedure and order the applicant to pay to the Court of Auditors, as it has requested, costs considered to have been unreasonably or vexatiously incurred.

On those grounds,

THE COURT (Third Chamber)

hereby:

(1) Dismisses the application;

(2) Orders each party to pay its own costs.

Kakouris Everling Galmot

Delivered in open court in Luxembourg on 6 June 1985.

P. Heim
Registrar

C. Kakouris
President of the Third Chamber