JUDGMENT OF THE COURT (Second Chamber)
5 February 1987 *

In Case 306/85

André Huybrechts, an official of the Commission, residing at Wezembeek (Belgium), assisted and represented by E. Lebrun, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of T. Biever, 83 boulevard Grande Duchesse Charlotte,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser, D. 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 Building, Kirchberg,

defendant,

APPLICATION for annulment of the decision rejecting the applicant's candidature for the post of Head of Division (Career Bracket A 3) at the Commission and of the decision appointing another candidate to the post,

THE COURT (Second Chamber)

composed of: T. F. O'Higgins, President of the Chamber, O. Due and K. Bahlmann, Judges,

Advocate General: M. Darmon
Registrar: S. Hackspiel, Administrator

having regard to the Report for the Hearing and further to the hearing on 21 October 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 9 December 1986,

* Language of the Case: French.

gives the following

Judgment

1 By application lodged at the Court Registry on 11 October 1985 André Huybrechts, a Principal Administrator in the Energy, Mining and Industry Division of Directorate-General VIII (Development) of the Commission of the European Communities, brought an action for the annulment of the decision of 19 December 1984 appointing another candidate to the post of Head of the said Division and the subsequent decision rejecting his candidature for that post.

2 In support of his claims the applicant basically makes the following three submissions:

(i) Infringement of the Staff Regulations and in particular Article 45 (1) thereof, inasmuch as there was no consideration of the comparative merits of the candidates;

(ii) Infringement of the Staff Regulations, in particular Articles 5 (3), 7 (1), 27 and 45 (1), and disregard of essential procedural requirements and the duty to have regard to the applicant's interests, inasmuch as there are no legally acceptable grounds for the contested decisions;

(iii) Misuse of powers.

3 Reference is made to the Report for the Hearing for further particulars of the facts of the case and the arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The first submission

4 The applicant states that to his knowledge neither the Advisory Committee on Appointments to Grades A 2 and A 3 nor the Commission, as appointing authority, had been in possession of the personal files of the candidates.

5 In order to consider the merits of that submission the Court requested the Commission to produce copies of the opinion of the Advisory Committee and the minutes of the meeting at which the Commission reached a decision on the post in issue. The documents so produced confirm beyond doubt that the Advisory Committee and the Commission as appointing authority considered the comparative merits of the candidates on the basis of not only their applications but also their personal files.

6 In view of that confirmation and in the absence of any evidence to the contrary it must be held that the first submission is unsubstantiated.

Second submission

7 The applicant states that of all the candidates he was the oldest, the most senior in the department and in Grade A 4 and had the longest experience in the relevant field. He was first deputy and then acting Head of Division for 16 months, his last Staff Report was full of praise and the Director responsible for the division considered that he was by far the best candidate. The duty to have regard to his interests demanded that after 26 years of faithful service in Grade A 4 he should be promoted to Grade A 3, thus allowing him to accomplish a normal career. In those circumstances the appointment of another applicant requires a convincing statement of reasons, which is absent not only in the decisions at issue but also in the administrative file produced to the Court.

8 As the Court held *inter alia* in its judgment of 30 October 1974 (Case 188/73 *Grassi* v *Council* [1974] ECR 1099), there is no need to state reasons for a promotion decision for the benefit of the person to whom it is addressed or for the benefit of unsuccessful candidates, since a statement of reasons might harm some if not all of them. Consequently, the absence in the contested decisions themselves of any statement of reasons does not constitute an infringement of essential procedural requirements.

9 It must also be remembered that, according to established case-law of the Court (see *inter alia* the judgments of 21 April 1983 in Case 282/81 *Ragusa* v *Commission* [1983] ECR 1245, and 23 October 1986 in Case 26/85 *Vaysse* v *Commission* [1986] ECR 3131), the appointing authority has a wide discretion in assessing the interests of the service and the qualities to be taken into consideration in making a decision to promote an official pursuant to Article 45 of the Staff Regulations, and the Court must restrict itself to consideration of the question whether, having regard to the various considerations which have influenced the administration in making its assessment, the latter has remained within reasonable limits and has not used its power in a manifestly incorrect way.

10 Although the applicant is older and more senior than the successful candidate, the information concerning their merits and qualifications (both having been included by the Advisory Committee among the three candidates meriting special consideration) has revealed no manifest error which would permit the Court to censure the Commission's judgment. In that respect it must be added that neither the fact of having occupied the post in an acting capacity nor length of service in Grade A 4 constitute decisive grounds overriding the interests of the service, which is the decisive criterion determining the choice of candidates to be promoted in a case such as the present.

11 The applicant's second submission must therefore be rejected.

Third submission

12 The applicant submits that the true aim of the decisions at issue was not to fill a vacancy with the most suitable candidate but to find a post with the Commission which would suit the chef de cabinet of a retiring Member of the Commission. It is alleged that that submission is supported not only by the arguments put forward by the applicant in support of the first two submissions but also by the fact that publication of the vacancy notice was delayed so as to be open to the appointments occurring at the end of a term of office of the Commission and that as early as 7 November 1985, that is to say, more than a month earlier, the result of the promotion procedure had been predicted in a trade union circular.

13 As the applicant himself concedes, the appointment of a member of a Commissioner's cabinet to a post in a department of the Commission instead of another candidate from the same department does not constitute a misuse of power if the appointment is justified by a comparison of the merits of the candidates at issue. The above consideration of the first two submissions has revealed nothing to show that that was not the case here.

14 It is true that the vacancy notice was published more than a year after the former incumbent had left the post and very close in time to the end of a term of office of the Commission. The Commission, however, has explained that the delay was due to the fact that until 1 April 1984 the post which became vacant following the departure of the former Head of Division had been transferred from that division to another following the transfer of an official. The vacancy notice was not published until the following October because the Commission considered that priority should be given to the filling of other posts.

15 The Court considers that the evidence before it does not provide grounds for rejecting the explanations given by the Commission and hence that it is not established that in fact the decision to fill the vacancy with a member of the cabinet of a retiring .Commissioner was taken before comparison of the merits of the candidates for the post.

16 It follows that the application must be dismissed in its entirety.

Costs

17 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of the Rules of Procedure the institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT (Second Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the parties to bear their own costs.

O'Higgins Due Bahlmann

Delivered in open court in Luxembourg on 5 February 1987.

P. Heim
Registrar

T. F. O'Higgins
President of the Second Chamber