ORDER OF THE COURT (First Chamber)
8 November 1988 *

In Cases 264/88 and 264/88 R

M. Valle Fernandez, residing at Rocourt (Belgium), represented by D. Ramboer, of the Seraing Bar, with an address for service in Luxembourg at the Chambers of A. May, 31 Grand-rue,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser, J. Griesmar, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of three decisions of the Selection Board for Competition COM/D/577 of the Commission, the payment of damages and the adoption of urgent interim measures,

THE COURT (First Chamber)

composed of: R. Joliet, President of Chamber, Sir Gordon Slynn and G. C. Rodríguez Iglesias, Judges,

Advocate General: J. Mischo
Registrar: H. A. Rühl, Principal Administrator

* Language of the Case: French.

makes the following

Order

1 By application lodged at the Court Registry on 28 September 1988, Marcelino Valle Fernandez brought an action for the annulment of three decisions notified on 27 June 1988 in which the Selection Board for Open Competition COM/D/577 upheld its previous decisions not to admit him to the tests for that competition and for an order that the Commission make good the damage which those decisions had caused him. By application lodged at the Court Registry on the same day, the applicant sought the suspension of the operation of the decisions which he is seeking to have annulled.

2 The notice of Open Competition COM/D/577 stipulated 'candidates must specify the field chosen (only one) on the application form'. The application form again stated that 'Candidates may select only one field'.

3 The notice of competition contained in addition a Section IV headed 'Reconsideration of applications', which was worded as follows:

'Any candidate who feels that a mistake has been made regarding eligibility may ask to have his/her application reconsidered. Within 30 days of the date postmarked on the letter stating that he/she has been excluded from the competition, the candidate should send a letter quoting the number of the competition to the Chairman of the Selection Board, care of the Recruitment Division, at the following address: Commission of the European Communities, rue de la Loi 200, B-1049 Bruxelles.

The Selection Board will then reconsider the application, taking the candidate's comments into account, within 30 days of the date postmarked on the letter requesting reconsideration.'

4 On three separate application forms the applicant submitted his candidature for the competition in the respective fields of 'messengers', 'warehouse assistants' and 'workshop assistants'.

5 By three decisions notified on 5 May 1988 the Selection Board refused to admit the applicant to the tests on the ground that: 'contrary to the stipulations in Section I of the notice of competition which stated that applicants must specify the field chosen (one only) he had applied in several fields'.

6 On 16 May 1988 the applicant sent the Chairman of the Selection Board a request to have the decisions reconsidered. He stated that the notice of competition did not state that 'the submission of several applications in various fields, with each application confined to a single field, might be a ground for rejection'.

7 By three decisions notified on 27 June 1988, which are the subject of the present application, the Selection Board 'decided to uphold the decision which had already been taken'.

8 On 8 July 1988, the applicant's counsel sent a letter to the Chairman of the Selection Board in which he requested that his client should be admitted to the tests, failing which, he said, his client would bring an action before the Court. He sent the same letter to the head of the Commission's Recruitment Division.

9 On 5 August 1988, the head of the Recruitment Division sent the applicant's counsel a negative reply.

10 Under Article 92 (2) of the Rules of Procedure, the Court may at any time of its own motion consider whether there exists any absolute bar to proceeding with a case.

11 The Court has consistently held that the normal legal remedy against a decision of a selection board is a direct application to the Court but if the person concerned has made a complaint to the appointing authority, the time-limit for bringing an action runs from the day of the express or implied reply to that complaint (judgment of 14 July 1983 in Case 144/82 *Detti* v *Court of Justice* [1983] ECR 2421; judgment of 7 May 1986 in Case 52/85 *Rihoux* v *Commission* [1986] ECR 1555).

12 It is first necessary to consider whether the action was brought within the period laid down in the Staff Regulations of three months from the decisions of the selection board. Where a decision adopted by a selection board upon a request for reconsideration contains no new factor in relation to the original decision, it is the original decision which must be challenged within the period of three months. The procedure for reconsidering decisions of the Selection Board provided for in Section IV of the notice of competition in question is moreover framed in such a way that the person concerned may still challenge the original decision of the Selection Board within the period of three months provided for by the Staff Regulations. In the present case, since the decisions adopted by the Selection Board on the request for reconsideration contain no new factors, the applicant ought to have applied to the Court within three months of the original decisions of the Selection Board which were notified on 5 May 1988. Since the action was brought on 28 September 1988 it is evident that the time-limit was not observed.

13 It is further necessary to consider whether the applicant made a complaint within the meaning of Article 90 (2) of the Staff Regulations in order to check whether, in that case, the action was brought within the period of three months laid down in the Staff Regulations from the express or implied reply to that complaint. It is apparent from the aforementioned provision that a complaint must be addressed to the appointing authority. In the present case the Commission itself is the appointing authority. The applications for reconsideration were, however, addressed, not to the appointing authority, but to the Chairman of the Selection Board and to the official of the Commission responsible, under the terms of the notice of competition, for receiving applications for the reconsideration of decisions of the Selection Board. They therefore do not constitute complaints within the meaning of Article 90 (2) of the Staff Regulations.

14 It follows from the foregoing that the application in Case 264/88 is out of time and must therefore be dismissed as inadmissible.

15 In consequence the application for suspension of the operation of the decision not to admit the applicant to the tests must also be rejected as inadmissible (see order of 31 January 1985 in Cases 259/84 and 259/84 R *Strack* v *Parliament* [1985] ECR 453).

Costs

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

On those grounds,

having heard the views of the Advocate General,

THE COURT (First Chamber)

hereby:

(1) Dismisses the application in Case 264/88 as inadmissible;

(2) Dismisses the application in Case 264/88 R as inadmissible;

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

Delivered in open court in Luxembourg on 8 November 1988.

J.-G. Giraud
Registrar

R. Joliet
President of the First Chamber