Case C-318/92 P

Andrew Macrae Moat
v
Commission of the European Communities

(Appeal clearly unfounded and clearly inadmissible)

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Summary of the Order

1. *Appeals — Statement in the appeal of the pleas in law and legal arguments relied on — Plea in law insufficiently precise — Inadmissible*
(Rules of Procedure of the Court of Justice, Art. 112(1))

2. *Appeals — Pleas in law — Mistaken assessment of the facts — Inadmissible*
(Statute of the Court of Justice EEC, Art. 51)

ORDER OF THE COURT
1 February 1993 *

In Case C-318/92 P,

Andrew Macrae Moat, an official of the Commission of the European Communities, residing in Brussels, represented initially by Eric Moons, then by

* Language of the case: English.

Luc Govaert, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Lucy Dupong, 14A Rue des Bains,

appellant,

APPEAL against the order of the Court of First Instance of the European Communities in Case T-72/91 of 22 May 1992 between *Andrew Macrae Moat* and *Commission*, seeking to have that order set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by Thomas F. Cusack, Legal Advisor, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, of its Legal Service, Wagner Centre, Kirchberg,

respondent,

THE COURT,

composed of: O. Due, President, C. N. Kakouris, G. C. Rodríguez Iglesias, M. Zuleeg and J. L. Murray, (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse, M. Diez de Velasco, P. J. G. Kapteyn and D. A. O. Edward, Judges,

Advocate General: M. G. Tesauro,
Registrar: J.-G. Giraud,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By appeal lodged at the Court Registry on 24 July 1992, Andrew Macrae Moat lodged an appeal under Article 49 of the Protocol on the Statute of the Court of Justice of the EEC and the corresponding provisions of the Protocols on the Statutes of the Court of Justice of the ECSC and EAEC against the order of the Court of First Instance of 22 May 1992 in Case T-72/91 (*Moat* v *Commission* [1992] ECR II-1771) by which that Court dismissed Mr Moat's application for an order requiring the Commission to promote him to Grade A3, to pay him a salary corresponding to that grade with retroactive effect from 1 December 1986, and to pay him damages.

2 By that order, the Court of First Instance dismissed Mr Moat's action as inadmissible.

3 Mr Moat asks this Court to annul that order and declare the acts done by the Commission in breach of the Staff Regulations to be unlawful and order it to compensate him for the material and non-material damage which he claims to have suffered as a result of those acts.

4 His appeal is based on two main pleas in law and an alternative plea.

5 The first plea concerns the way in which the Court of First Instance interpreted the subject-matter of the appellant's complaints of 14 February 1991 and 25 April 1991. According to him, in declaring the action relating to those two complaints inadmissible, the Court of First Instance misconstrued the concept of an act adversely affecting the official contained in Articles 90(2) and 91(1) of the Staff Regulations.

6 The second plea concerns the finding by the Court of First Instance that in so far as it concerned the complaint of 14 February 1991 the action was out of time and consequently inadmissible. Although the appellant accepts that the Court of First Instance is bound by the case-law of the Court of Justice on the imperative nature of time-limits for bringing proceedings, he considers that the Court of First Instance was wrong not to examine the other considerations of public interest which he had advanced. In his view, equity or natural justice or both should have led to a different ruling by the Court of First Instance.

7 The appellant claims, in the alternative, that 'the various hearings of the Inter Service Group and the various contacts which he had with the Commission's Staff Regulations Division, at the Commission's invitation, constitute new facts which justify an extension of the time-limit for his application'.

8 The Commission contends that the appeal is inadmissible on the ground that it does not properly identify the points of law upon which it is taken.

9 Under Article 119 of the Rules of Procedure the Court may at any time dismiss the appeal where it is clearly inadmissible or clearly unfounded.

10 As regards the first plea, according to which the Court of First Instance misconstrued the concept of an act adversely affecting the official, it must be observed first of all that in so far as the action concerned the complaint of 14 February 1991, the Court of First Instance confined itself to the finding that the action was inadmissible on the ground that it had been brought after the period laid down by Article 91(3) of the Staff Regulations had expired. On this point, the first plea must be dismissed as unfounded.

11 As regards the complaint of 25 April 1991, it is to be observed that the Court of First Instance found that, according to what the appellant himself had stated, he did not request the annulment of any measure. On this point, the first plea must therefore be dismissed as unfounded.

12 Finally, in so far as the appellant, in his complaint of 25 April 1991, had requested damages in compensation for the harm which he considered himself to have suffered as a result of the Commission's unlawful acts and omissions, the Court of First Instance rightly held that because it had no legal effects such conduct could not be described as an act or acts adversely affecting the official and that the administrative procedure must commence, in accordance with Article 90(1) of the Staff Regulations, with a request submitted by the person concerned asking the appointing authority to make good that harm. On this point, the first plea must therefore likewise be dismissed as unfounded.

13 As regards the second plea, according to which the Court of First Instance ought to have ruled differently on the admissibility of the action in relation to the complaint of 14 February 1991, it must be borne in mind that, according to Article 112(1)(c) of the Staff Regulations, the appeal must contain the pleas in law and legal arguments relied on.

14 In his appeal, however, the appellant confines himself to contending that the Court of First Instance ought to have construed Article 91(3) of the Staff Regulations differently for reasons of equity and/or natural justice, without stating anything further in this regard. The second plea must therefore be dismissed as inadmissible.

15 As regards the alternative plea, it is sufficient to observe that the appellant advances no legal argument in support of the submission that the facts he mentions warranted an extension of the time-limit for bringing proceedings. Consequently, since under Article 51 of the Protocol on the Statute of the Court of Justice of the EEC an appeal is to be limited to points of law, the alternative plea must also be dismissed as inadmissible.

16 Pursuant to Article 119 of the Rules of Procedure, Mr Moat's appeal must accordingly be dismissed as clearly unfounded as regards the first plea and as clearly inadmissible for the rest.

Costs

17 Under Article 69 of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Under Article 70 of those rules, in proceedings between the institutions and their servants the institutions are to bear their own costs. However, under Article 122 of those rules, Article 70 is not applicable to appeals brought by an official or other servant of an institution against that institution. Since Mr Moat has failed in his appeal, he must be ordered to pay the costs of these proceedings.

On those grounds,

THE COURT

hereby orders:

1. The appeal is dismissed.

2. Mr Moat is ordered to pay the costs of these proceedings.

Luxembourg, 1 February 1993.

J.-G. Giraud — O. Due

Registrar — President