Case 74/85 R

Jacqueline Remy
v
Commission of the European Communities

'Officials — Suspension of the operation of a decision'

Summary

Application for the adoption of interim measures — Suspension of operation — Provisional measures — Conditions governing the grant thereof
(Rules of Procedure, Art. 83 (2))

ORDER OF THE PRESIDENT
OF THE SECOND CHAMBER OF THE COURT
29 March 1985 *

In Case 74/85 R

Jacqueline Remy, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Nicolas Decker, 16 Avenue Marie-Thérèse,

applicant,

v

Commission of the European Communities, represented by Dimitrios Gouloussis, a member of its Legal Department, acting as Agent, with an address for service in

* Language of the Case: French.

Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION to suspend the operation of the decision of the Selection Board not to admit the applicant to Competition No COM/A/8/84, and for an order authorizing her, without prejudice, to sit the essay paper designed to test candidates' general knowledge and judgment and, if successful, to take part in the training programme to be organized by the Selection Board,

THE PRESIDENT OF THE SECOND CHAMBER,

pursuant to Articles 9 (4) and 96 of the Rules of Procedure,

makes the following

ORDER

1 By an application lodged at the Court Registry on 21 March 1985 Jacqueline Remy, an official in Grade B 2 at the Commission of the European Communities, brought an action for the annulment of the decision of the Selection Board in Competition No COM/A/8/84 not to admit her to that competition.

2 In addition, by an application for the adoption of interim measures, which was lodged at the Court Registry on the same day, the applicant asked the Court to order the Commission to suspend the operation of the Selection Board's decision and to authorize her to sit the essay paper designed to test candidates' general knowledge and judgment and, if successful, to take part in the training programme provided for in the Notice of Competition, which was intended to prepare the candidates for the final tests.

3 The application for interim measures was notified to the Commission, which submitted its written observations. Since the written observations contained all the information necessary to rule on that application, it was not considered necessary to hear the parties' oral argument.

4 On 30 July 1984 the applicant, a Commission official since 1963, submitted an application to take part in Internal Competition No COM/A/8/84, which was to be held on the basis of qualifications and tests to constitute a reserve of administrators (Career Bracket A 7-6). However, the Selection Board in that competition informed her, by letters of 9 January and 11 February 1985, that she could not be admitted to the tests because she did not possess the qualifications required in the Notice of Competition. The applicant considered that that decision was vitiated by the lack of an adequate statement of grounds and that it infringed the first paragraph of Article 5 of Annex III to the Staff Regulations of Officials and the principle of equal treatment and non-discrimination as between officials. She therefore brought the main action and lodged this application for interim measures.

5 According to Article 83 (2) of the Rules of Procedure, the applicant must state the circumstances giving rise to urgency and the factual and legal grounds establishing a *prima facie* case for the interim measures applied for.

6 In that regard the applicant refers to the submissions set out in the main application and emphasizes in addition that there is urgency within the meaning of Article 83 (2) inasmuch as the Selection Board proposes to organize in May or June 1985 a test consisting of a paper designed to test candidates' general knowledge and judgment. To prevent the applicant from taking part in that test would in fact amount to preventing her from participating in the subsequent training programme provided for in the Notice of Competition, a programme which could not be organized for one person.

7 In its written observations the Commission contends that the application for interim measures should be dismissed. It stresses that a measure which would make the main action devoid of purpose cannot be regarded as provisional. In addition, there are no circumstances giving rise to urgency since there is no risk of irreparable damage to the applicant. If the Court upheld the main action and annulled the Selection Board's decision, the implementation of that judgment would require

the administration to take appropriate measures to place the candidate in the situation in which she would have been if her application had not been rejected. Consequently, the Board would have to resume its work and it is incorrect to claim, as the applicant does, that the training programme in question could not be organized for one person.

8 In considering the problem raised by this application, it must be recalled that the main action seeks the annulment of the decision of the Selection Board not to admit the applicant to the competition. According to Article 185 of the Treaty, that action does not have suspensory effect. The Court may, however, if it considers that the circumstances so require, order that the operation of the contested act be suspended.

9 In the application for interim measures, the applicant is not seeking the suspension of the operation of the contested measure but is in fact asking the Court to order, on a provisional basis, that she be admitted to the tests. The applicant is therefore asking the Court to make an order for a provisional measure which it could not order, definitively, in the main action.

10 As the President of the Second Chamber held in his order of 13 January 1978 (Case 4/78 R *Salerno* v *Commission* [1978] ECR 1), an order that a candidate be admitted to a competition would amount not to a suspension of the operation of the contested measure but to a complete reversal, even though only provisional, so that the main action would lose its purpose. Accordingly the Court has no jurisdiction to order, by means of a measure suspending the operation of the contested decision or another interim measure, the admission of the applicant to the test in question.

11 Moreover, the Court takes note of the Commission's statement regarding the implementation of the final judgment if given in the applicant's favour and, in particular, regarding the possibility of organizing training for the applicant.

12 It follows from the foregoing that the application for the adoption of interim measures must be dismissed.

On those grounds,

THE PRESIDENT OF THE SECOND CHAMBER,

by way of interlocutory decision,

having heard the views of the Advocate General,

hereby orders as follows:

(1) The application for the adoption of interim measures is dismissed.

(2) Costs are reserved.

Luxembourg, 29 March 1985.

P. Heim
Registrar

O. Due
President of the Second Chamber