Case 130/86

Emmanuel Du Besset
v
Council of the European Communities

Order of the Second Chamber of the Court, 23 September 1986 2619

Summary of the Order

1. *Officials — Action — Prior complaint through official channels — Obligatory — Persons seeking a post in the Community civil service*
(Staff Regulations of Officials, Arts 90 and 91)

2. *Officials — Action — Prior complaint through official channels — Complaint not yet rejected — Action inadmissible*
(Staff Regulations of Officials, Art. 91 (2))

3. *Procedure — Costs — Article 70 of the Rules of Procedure — Scope* ratione personae
(Rules of Procedure, Art. 70)

ORDER OF THE SECOND CHAMBER OF THE COURT
23 September 1986 *

In Case 130/86

Emmanuel Du Besset, represented and assisted by D. Delafon of the Grenoble Bar, with an address for service in Luxembourg at the Chambers of Mrs Koller, 3 rue des Arquebusiers,

applicant,

v

* Language of the Case: French.

Council of the European Communities, represented and assisted by D. Lagasse of the Brussels Bar, with an address for service in Luxembourg at the office of Mr Käser, Director of the Legal Department of the European Investment Bank, 100 boulevard Konrad-Adenauer,

defendant,

APPLICATION for the annulment of

(i) the implied decision contained in a letter of 7 May 1986 whereby the appointing authority refused to offer a post to the applicant;

(ii) the express decision contained in the letter of 7 May 1986 rejecting the applicant's request that the period of validity of the list of suitable candidates in Council Competition No A/184 should be extended;

(iii) all the decisions appointing administrators following Council Competition No A/184,

THE COURT (Second Chamber)

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

Advocate General: M. Darmon
Registrar: P. Heim

makes the following

ORDER

1 By application received at the Court Registry on 19 May 1986 Emmanuel Du Besset brought an action for the annulment of several Council decisions.

2 Since the applicant was successful in Council Competition No A/184, his name was placed on the list of suitable candidates drawn up in 1980 at the conclusion of the competition. The period of validity of that list was extended until 1 April 1986. On several occasions, and most recently on 20 March 1986, the applicant pointed out to the Council that he was still waiting for a post.

3 By letter dated 7 May 1986 the appointing authority informed the applicant that it had decided not to extend the period of validity of the list of suitable candidates any more. The action is primarily directed against the refusal to offer him a post, and alternatively the refusal to extend the period of validity of the list of suitable candidates, contained in the letter of 7 May 1986.

4 On 16 July 1986 the applicant submitted to the appointing authority a complaint prior to initiating an action pursuant to Article 90 (2) of the Staff Regulations of Officials of the European Communities.

5 By application on a procedural issue pursuant to Article 91 of the Rules of Procedure the Council raised a preliminary objection as to admissibility and requested the Court to give a decision thereon without going into the substance of the case. In that respect it submits that the action was not preceded by a complaint which was rejected by an express or implied decision.

6 The applicant submits that Articles 90 and 91 of the Staff Regulations ought not to apply in the present case because he is neither an official nor at present a candidate in a competition.

7 The applicant's argument cannot be accepted. It is clear from the established case-law of the Court that Articles 90 and 91 of the Staff Regulations apply not only to those who are officials but also to candidates for a post (see the judgment of 23 October 1975 in Joined Cases 81 to 88/74, *Marenco and Others* v *Commission*, [1975] ECR 1247). The applicant has not ceased to be a candidate because the period of validity of the list of suitable candidates was not extended. Since the measure adversely affecting the applicant originates from the appointing authority the action challenging the measure must necessarily be preceded by a complaint which has been rejected by express or implied decision. The object of that procedure is to allow the administration to reconsider the contested measure. By virtue of Article 91 (2) of the Staff Regulations an action brought before that preliminary procedure has been completed is premature and therefore inadmissible.

8 Since the documents before the Court contain all the facts necessary for a decision it is not necessary to hear the parties.

Costs

9 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 of Procedure provides that the institutions are to bear their own costs in proceedings brought by servants of the Communities. That provision must apply to all persons to whom Article 90 of the Staff Regulations applies.

On those grounds,

THE COURT (Second Chamber),

pursuant to Article 91 of the Rules of Procedure and

after hearing the Advocate General,

makes the following

ORDER

(1) The action is dismissed as inadmissible.

(2) The parties shall bear their own costs.

Luxembourg, 23 September 1986.

P. Heim
Registrar

K. Bahlmann
President of the Second Chamber