Case 152/87

Matthew Montgomery
v
European Parliament
(Inadmissibility)

Order of the Court (Fourth Chamber), 8 December 1987 4899

Summary of the Order

Officials — Applications to the Court — Prior complaint through official channels — No proof that a complaint was lodged — Inadmissibility
(Staff Regulations, Arts 90 and 91)

ORDER OF THE COURT (Fourth Chamber)
8 December 1987 *

In Case 152/87

Matthew Montgomery, an official of the European Parliament, residing at 6 Op de Woleken, Niederanven (Luxembourg), represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Yvette Hamilius, 11 boulevard Royal,

applicant,

v

* Language of the Case: French.

European Parliament, represented by Francesco Pasetti-Bombardella, Jurisconsult, and Manfred Peter, Head of Division, acting as Agents, with an address for service in Luxembourg at the Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION essentially for the annulment of the Decision of 16 July 1986 concerning liability for the costs of the Medical Committee

THE COURT (Fourth Chamber),

composed of G. C. Rodríguez Iglesias, President of Chamber, T. Koopmans and C. Kakouris, Judges,

Advocate General: J. Mischo
Registrar: P. Heim

after hearing the Advocate General,

makes the following

Order

1 By an application lodged at the Court Registry on 14 May 1987, Matthew Montgomery, an official of the European Parliament, brought an action for, first, the annulment of the decision of 16 July 1986 amending the decision of 7 July 1986 in so far as it makes him liable for the costs of the Medical Committee appointed pursuant to Article 23 of the Rules on the insurance of Officials of the European Communities against the risk of accident and occupational disease and, secondly, an order that the defendant pay the costs pursuant to Article 69 (2) or the second subparagraph of Article 69 (3) of the Rules of Procedure, including expenses necessarily incurred for the purpose of the proceedings, in particular costs relating to the address for service, travel and subsistence expenses and the remuneration of a lawyer pursuant to Article 73 (b) of the Rules of Procedure.

2 It appears from the file that Mr Montgomery, an official who entered the service of the European Parliament on 18 November 1981 was, from 1981 to 1983, assigned to the printshop of that institution. On 3 May 1983 he complained of hearing problems and was examined by Dr Moutrier who concluded in his report that:

'For that reason Mr Montgomery should avoid excessive exposure to noise as much as possible, and in any case is advised to wear ear-protectors.'

3 On the instructions of the European Parliament, the applicant underwent an examination by Dr de Meersman on 23 March 1984. By a letter of 25 June 1984 the defendant institution passed on to him the following information:

'Dr de Meersman has concluded that your ailment should be recognized as being of an occupational nature. He considers that for the time being there is no permanent invalidity and it is possible that the lesions will disappear completely within a year following your first examination, that is to say by about March 1985.'

4 The European Parliament submitted Mr Montgomery's case to the Medical Committee as provided in Article 23 of the Rules on the insurance of Officials of the European Communities against the risk of accident and occupational disease, which found that:

'The state of Mr Montgomery's hearing has not reached the stage of disease and he is therefore not suffering from an occupational disease.

We advise that Mr Montgomery should not be subjected and should not subject himself to excessively noisy environments.'

5 On the basis of that opinion, on 7 July 1986 the European Parliament rejected Mr Montgomery's application for recognition that he was suffering from an occupa-

tional disease. On 16 July 1986 that decision was amended by another decision which maintained the rejection of his complaint and stated that the applicant was to bear the cost of his doctor's fee and half of the fee of the third doctor on the Medical Committee. It is the latter decision which is the subject of this application.

6 On 18 June 1987 the European Parliament raised an objection of inadmissibility under Article 91 of the Rules of Procedure on the ground that no previous complaint had been submitted, alleging that it had never received the complaint the applicant claimed to have submitted dated 15 October 1986. The defendant institution raises several points in that connection. First, the copy annexed to the application does not bear the applicant's signature, nor is it countersigned by his immediate superiors. Secondly, the annexed copy bears no indication that it was registered and no receipt is attached thereto, although, in accordance with a notice of 13 November 1975, which is one of the documents issued to personnel when they enter the institution's service, correspondence addressed to the appointing authority must either be left with the mail department so that it can be duly registered or sent by registered post with acknowledgment of receipt; none of the competent departments of the European Parliament had knowledge of the aforementioned complaint before the application in question was notified to them. Thirdly, although in his application the applicant mentions his complaint and its implied rejection several times, the application never expressly seeks the annulment of the alleged implied decision of rejection, which is the sole decision, under Article 91 of the Staff Regulations, capable of justifying the application.

7 By a document lodged at the Court's Registry on 19 August 1987, Mr Montgomery reaffirmed that he had indeed submitted a complaint through the internal mail and within the prescribed period against the decision of 16 July 1986 which adversely affected him. He states that he did not receive a receipt and was not informed that the complaint had been registered and asserts that the defendant institution did not include among 'the documents issued to personnel' on his entry into service the notice of 13 November 1975. As regards the European Parliament's statement that the application does not seek the annulment of the alleged implied decision of rejection, which is the sole decision capable of justifying his application under Article 91 of the Staff Regulations, the applicant relies on the judgment of 20 March 1984 in Joined Cases 75 and 117/82 *Razzouk and Beydoun* v *Commission* [1984] ECR 1509, according to which the rejection of

the complaint, because of its purely confirmatory nature, is not of itself an act capable of being contested. He concludes that the Court should declare the objection of inadmissibility unfounded.

8 Article 91 (2) of the Staff Regulations of Officials provides that:

'An appeal to the Court of Justice of the European Communities shall lie only if:

the appointing authority has previously had a complaint submitted to it pursuant to Article 90 (2) within the period prescribed therein, and

the complaint has been rejected by express decisions or by implied decision.'

9 However, Mr Montgomery has not adduced any evidence to prove that the alleged complaint was actually submitted. Document No 7 annexed to the application has no probative value. That document is in fact a copy of an incomplete document, neither signed by the applicant nor countersigned by his immediate superiors, which bears no indication of registration and to which no receipt is attached.

10 Accordingly the action must be dismissed as inadmissible.

Costs

11 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 (Fourth Chamber)

hereby:

(1) Dismisses the application as inadmissible;

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

Luxembourg, 8 December 1987.

P. Heim
Registrar

G. C. Rodríguez Iglesias
President of the Fourth Chamber