JUDGMENT OF THE COURT (FIRST CHAMBER)
OF 4 DECEMBER 1975 [1]

Mario Costacurta
v Commission of the European Communities

Case 31/75

Summary

1. Officials — Recruitment — Consideration of applications Selection Board — Obligations
(Staff Regulations of the EEC, Annex III, Article 5)

2. Officials — Recruitment — Consideration of applications Experience — Equivalence to a degree — Comparison — Method
(Staff Regulations, Article 5, Annex III, Article 5)

1. The Selection Board must support with sufficiently clear reasons the results of matching the qualifications offered by the candidates against the qualifications required by the competition notice.
2. The difficulty inherent in a comparison between the level of experience of a candidate and the level corresponding to completed studies cannot justify the lack of any attempt to make a more precise analysis nor the lack of any additional criterion of selection.

In Case 31/75

MARIO COSTACURTA, official of the European Communities, residing at 24 avenue de l'Arsenal, Luxembourg, represented by Ernest Arendt, Advocate, with an address for service at 34 B/IV, rue Philippe-II, Luxembourg,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Thomas F. Cusack, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Bâtiment CFL, place de la Gare,

defendant,

1 — Language of the Case: French.

Application for the annulment of the decision of the defendant of 27 June 1974 rejecting the applicant's candidature for the internal competition for the reserve list COM/A/15/73 and the decision of rejection contained in the letter from the defendant dated 13 January 1975 in respect of the administrative complaint made by the applicant on 22 August 1974.

THE COURT (First Chamber)

composed of: A. M. Donner, acting President, J. Mertens de Wilmars and A. O'Keeffe, Judges,

Advocate-General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts and arguments put forward by the parties in the course of the written procedure may be summarized as follows:

I — Facts and written procedure

The applicant has an Italian secondary school leaving certificate (classics) and attended a course for two years at the French Conservatoire des Arts et Métiers. He entered the employment of the High Authority of the ECSC on 1 August 1966 as an auxiliary servant in the Publications Office; he was established in Grade C 3 on 1 October 1968.

After being transferred at his request to the Directorate-General of Personnel in July 1971, he was once again appointed in the Publications Office as Assistant in Grade B 3 with effect from 1 June 1972.

After having applied to take part in the internal competition COM/A/15/73 organized to draw up a reserve list of administrators in the Career Bracket A 7/A 6 he was informed by letter dated 27 June 1974 that he had not been put on the list of suitable candidates drawn up by the Selection Board. In reply to his enquiry the Commission informed him on 5 August 1974 that the reason for the refusal was the 'lack of a university degree and lack of professional experience of an equivalent level'. It added:

'The level of your professional experience has been measured against the criterion of the qualifications of an official who has received a university education, supported by a degree, and is engaged in performing duties appropriate to Category A within the meaning of Article 5 of the Staff Regulations'.

On 22 August 1974 the applicant made a complaint under Article 90 of the Staff Regulations. On 13 January 1975 he received the reply that the Commission did not propose to express a view as to the worth of the reasons given by the selection board.

The applicant thereupon brought the present application which was registered at the Court Registry on 18 March 1975.

The written procedure followed the normal course. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry.

II — Submissions of the parties

The applicant claims that the Court should:

1. Rule that the present application is admissible;
2. Rule that it is well founded.
   - In the first place:
     Rule that the Selection Board or the Commission, as the case may be, has infringed Article 25 of the Staff Regulations and Article 5 of Annex III thereto;
     Rule that the Commission has been guilty of a misuse of powers in refusing to acknowledge that the applicant possesses experience at a level equivalent to a university degree;
     Consequently, annul the decision taken and refer the matter back to the Commission:
   - In the second place:
     Permit the applicant to prove by all legal means and in particular by the hearing of witnesses or by an expert's report that he possesses experience at a level equivalent to a university degree;
3. Order the defendant to pay the costs.

The defendant contends that:

1. The admissibility of the application should be left to the Court's discretion;
2. The Court should declare the application unfounded on all grounds and therefore dismiss it;
3. The Court should order the applicant to bear the costs.

III — Submissions and arguments of the parties

(a) Admissibility

In its defence the *Commission* says that the action may be contested as inadmissible since the Court decided in the judgment of 14 June 1972 (Case 44/71, *Marcato* v *Commission,* Rec. 1972, p. 427) that the only relief which parties have with regard to such decisions of Selection Boards is to bring the matter before the Court without a preliminary complaint to the Commission. The 1972 revision of the Staff Regulations which makes an application to the Court subject to the complaint procedure being pursued before action, does not reverse the rule established by the case-law, since the Commission does not have the power to alter or annul a decision of a Selection Board, the independence of which is enshrined in the Staff Regulations themselves.

Moreover, the matter should be brought before the Court within the three months provided for in Article 91. In the present case this time-limit has not been observed.

The *applicant* in reply says that in making an administrative complaint to the Commission he was acting in accordance with the case-law of the Court confirming a practice adopted by officials which itself has been raised to a rule of law by the wording of the new Article 91 of the Staff Regulations which stipulates 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 decision or by implied decision'.

The *defendant* in rejoinder says that although in Case 37/72, *Marcato* v *Commission* ([1973] ECR 361), the Court as an exceptional measure accepted the admissibility of the application, this was on grounds of fairness which do not necessarily apply in the present case brought two years after the said judgment was given when the precedent established by it was well-known if not common knowledge.

(b) The substance of the case

1. The first submission: infringement of Article 25 of the Staff Regulations and Article 5 of Annex III to the Staff Regulations

The *applicant* claims that he was rejected at the first stage of the competition, the examination of the applications, contrary to the requirements laid down by the Court in the aforesaid Case 44/71 according to which 'since these (qualifications) must be matched on the basis of objective facts which are moreover known to each candidate in his own case, the results must be supported by sufficiently clear reasons' and the Commission cannot merely indicate 'the qualifications in which the applicant was considered to be deficient'.

Article 25 of the Staff Regulations and Article 5 of Annex III to the Staff Regulations are infringed since the experience of the applicant was comparable to that of the other candidates admitted.

The *Commission* in answer says that the applicant criticizes only the first paragraph of the statement of reasons in question and is disregarding the scope and significance of the second. The competition in question was organized to provide a reserve list for posts in Career Bracket A 7/A 6 in the fields of 'Printing and Publishing'. The candidate in possession of a university degree or having equivalent practical experience needed *in addition* to have experience *appropriate to the duties.* To be in a position to compare the level of experience with the intellectual attainment of a person in possession of a university degree, the Selection Board compared the level of the non-university candidates and the qualifications of an official, considered in the abstract, in possession of a university degree and performing certain administrative and advisory duties. The Selection Board had stated in its statement of reasons how in its view the applicant did not fulfil the conditions for admission to the tests. The established case-law of the Court confirms that it is not at all necessary to set out 'reasons for reasons' and that even a summary statement of reasons, provided that it is clear, is sufficient to satisfy the requirements of Article 25 of the Staff Regulations.

Even an official having 'advisory' duties of the kind described in the report on the applicant covering a period of two years only cannot claim to have the level of experience equivalent to a university degree. Before he was promoted to Category B (in June 1972) the duties of the applicant were those of an operator. While he was attached to the Directorate-General of Personnel he continued to receive a special fixed allowance which implies that his work was at least 50 % that of a typist. The duration of his duties in Category B, which were obviously insufficient to compensate for the absence of a university degree, could not therefore be taken into account by the Selection Board.

The *applicant* in reply says that the second paragraph of the decision of the Selection Board, like the first, is neither

factually nor in law a sufficient statement of reasons according to the established case-law of the Court. The defendant has simply referred to Article 5 of the Staff Regulations without mentioning the criteria which could have guided it.

The *Commission* in rejoinder says that the 'particular criteria' desired by the applicant are not very important in the present case. It was an internal competition in a quite restricted field open in principle to staff in Category B whose experience is with difficulty comparable to a university degree. The Selection Board refrained from laying down in advance criteria for assessing the experience of these candidates in terms solely of the length of this experience. Nor did it establish *a priori* other criteria of assessment such as the quality of the experience or the extent to which it corresponded with the qualifications of an official in possession of a university degree which would comprise in themselves only factors of value-judgments which in their turn would not have been capable of resolving the problem of the difficult matching of a level of experience against the knowledge of a person in possession of a university degree.

2. Second submission: misuse of powers

The *applicant* claims that the large majority of the candidates at the competition in question did not have a university degree.

The applicant had taken part in the internal competitions 152/70 and B 76 for the employment of assistant proof readers in Grade B 3/B 2 to which Messrs Mendosa and Sergio, likewise officials in the Publications Office and not in possession of university degrees, were admitted at a lower grade than his. Nevertheless these officials were allowed to take part in the competition in question and the administration thereby recognized that the applicant had sufficient experience.

The *defendant* states that Mr Mendosa has been in Category B since 1970, after having been a free-lance proof reader from 1967 to 1970. It appears from his report that since summer 1972 he has joined in the preparation for publication of agricultural rules, a fact which no doubt influenced the Selection Board.

As regards Mr Sergio, who was put on the local staff of the Commission on 9 October 1967, at the time when he made application for the competition in question he had been a clerk for three years with a local authority in Italy, a compositor or operator for four years in the printing works, three years in various administrative functions in the sphere of printing and publication and six months as a proof reader. His experience was thus greater than that of the applicant. It is true it would seem difficult to compare his experience with the knowledge of a holder of a university degree, but the defendant is not qualified to answer for the Selection Board which did not have to give reasons for its 'favourable' decisions. The fact that the Court might consider the admission of Mr Sergio to the competition to be improper is not capable of vitiating the whole of the competition procedure on the ground of nullity nor of adversely affecting the applicant who objectively had no possibility of being admitted to the competition.

The *applicant* in reply says that he fulfils the criteria to which the Commission refers.

(a) Criterion of the general nature of the qualifications required to be an official in Category A

In accordance with the notice of competition it appears from the applicant's report that he was, like Mr Mendosa, 'an official having advisory duties required, subject to general directions, to perform difficult and complex tasks in connexion with printing'. The Selection Board did not

specify the duration of practical experience to be regarded as equivalent to a university degree. Moreover the Court recognized in Joined Cases 18 and 19/64, *Alvino and Others* v *Commission*, [1965] ECR 789 at p. 798, that:

'The fact that a candidate performs activities in his employment at a level comparable to those performed by an official who has received a university education, supported by a degree, and who is engaged in performing duties appropriate to Category A within the meaning of the Staff Regulations is in itself proof that ... the official ... possesses ... experience in employment equivalent ...'

Finally, the applicant rejects the defendant's argument based on the fixed allowance.

(b) Criterion of the duties relating to the posts to be filled

Only the candidate Beltrano was rejected for lack of experience appropriate to the duties; the applicant is not therefore in this category.

(c) Criterion of the relationship between the experience acquired and the field 'Printing and Publication'

The applicant's practical experience is comparable with, if not superior to, that of the other candidates: he took up employment with the Publications Office one and a half years before Mr Mendosa began there as a freelance. Their careers were identical after they were both appointed to Grade B 3 on the same day. Moreover, all the assistant proof readers, including the applicant, and not only Mr Mendosa, took part in the preparation of regulations.

As for Mr Sergio, who was appointed to Grade B in 1973 and who, when he made application to take part in the competition in question, had spent four years as a compositor or operator in the printing works and only six months as a proof reader, his experience was very inferior to that of the applicant who, during the same period, had totalled five years as operator and three years as assistant proof reader.

Finally, although Messrs Sergio and Mendosa were not successful in the competition in question, this did not mean that it would have been the same for the applicant.

Finally, the competition cannot constitute a legal basis for acts of appointment and promotion.

The *defendant* in rejoinder says that it is clearly stated in the second paragraph of Article 5 (1) of the Staff Regulations that the duties in Category A are not only advisory but '... administrative and (advisory) duties which require university education or equivalent practical experience'.

The assessments contained in a periodic report relate solely to the official concerned and his personal and individual merits. It follows that the applicant cannot infer from this assessment any opinion on the nature of the duties which he is performing or even less on the level, quality or extent of experience acquired in the performance of these duties. The duties of proof reader come exclusively under Category B. Those of operator/compositor under Category C. The experience acquired by the applicant in the performance of his duties as operator/compositor cannot in any way be taken into account as qualification to admission to a competition intended to fill posts of Category A.

The defendant did not seek to contest that the applicant had '... certain experience appropriate to the duties', but the fact must not be lost sight of that this is the second of the two conditions for admission to the tests, quite separate from the first. It appears from the Selection Board's decision that it

excluded the applicant solely because he did not satisfy the first condition for admission. The fact that the applicant was successful in 1967 in a competition for posts in Category B is irrelevant.

The applicant's experience is neither comparable nor superior to that of the other candidates admitted to take part in the tests. Until 1971 it was only clerical. On the other hand, Mr Mendosa began in 1967 as a freelance proof reader, a task which the applicant did not perform until his appointment to Category B in June 1972. As for Mr Mendosa's taking part in the preparation of agricultural regulations, proof readers in 'publications' (to which the applicant belongs) do not take part in the preparation of regulations save in so far as these are published in publications other than the Official Journal or, of course, after their publication in the Journal.

As regards Mr Sergio, he spent three years with Directorate-General IX in Brussels (1970-1973). His experience was varied there and apparently embraced a certain degree of responsibility before his appointment as assistant proof reader (Grade B 3) in the Publications Office. He has been in Category B since September 1972.

Moreover, when applying for the competition in question, the applicant had experience as an assistant proof reader for approximately two years and not three years. His appointment to the office as assistant proof reader took effect on 1 June 1972. The time-limit for making application to take part in the competition in question expired on 25 February 1974 and the competition took place during June and July of the same year.

Oral observations were made by the applicant, represented by Mr Decker, Advocate of the Luxembourg Bar, and the Commission, represented by Mr Cusack, at the hearing on 30 October 1975.

The Advocate-General delivered his opinion at the hearing on 20 November 1975.

Law

1 The application filed at the Court Registry on 18 March 1975 seeks the annulment of the defendant's decision of 27 June 1974, confirmed by letter on the following 5 August, informing the applicant that the Selection Board had excluded him from the competition COM/A/15/73 organized to draw up a reserve list of administrators in Career Bracket A 7/A 6 to fill posts in this career bracket in the 'Printing and Publishing' field and the rejection arising from the Commission's letter of 13 January 1975 of the administrative complaint submitted by the applicant on 22 August 1974.

Admissibility

2 The defendant contests the admissibility of the application on the ground that it was not made within the period prescribed by Article 91 of the Staff Regulations.

3 The amendment of the Staff Regulations in 1972 did not revoke the rule that the only recourse which persons concerned have with regard to such decisions is to bring the matter before the Court without making a prior complaint to the Commission since the latter does not have the power to alter or annual a decision by a Selection Board.

4 Reasons of fairness laid down by way of exception in previous cases cannot prevail when the said rule is well established, if not common knowledge.

5 However since in the present case the events took place when the new Staff Regulations were applicable, it would be contrary to the rules of fairness to hold it against the applicant for having followed the procedure clearly laid down in Articles 90 and 91 as amended.

6 During the oral procedure the Commission complained that the applicant had not submitted his complaint to it until the Selection Board, having finished its work and submitted its report to the appointing authority, was *functus officio.*

7 However it was for the Commission to forward to the Selection Board the first request for an explanation sent to it by the applicant on 28 June 1974, that is to say, before the tests took place.

The substance of the case

8 The applicant claims that in not giving a sufficient statement of the reasons for the decision to exclude him from the competition in question, the Selection Board infringed Article 25 of the Staff Regulations and Article 5 of Annex III.

9 The report by the Selection Board and the letter in confirmation from the defendant dated 5 August 1974, mentioning 'the lack of a university degree and equivalent experience' and some experience appropriate to the duties, was simply referring to Article 5 of the Staff Regulations without stating sufficiently precise criteria.

10 The task of the Selection Board consists of at least two separate stages, the first being an examination of the applications in order to select the candidates admitted to the competition and the second being an examination of the abilities of the candidates for the posts to be filled in order to draw up a list of suitable candidates.

11 Whilst the second stage consists mainly of comparison, and is accordingly covered by the secrecy inherent in the task of a Selection Board, the first, particularly where the competition is based on formal qualifications, entails the matching of the qualifications offered by the candidates against the qualifications required by the notice of competition.

12 Since these must be matched on the basis of objective facts which are moreover known to each candidate in his own case, the results must be supported by sufficiently clear reasons.

13 This was not so in the present case, since the report by the Selection Board and the letter from the Administration of 5 August 1974 were limited to saying 'the level of your experience has been ... measured against the criterion of the qualifications of an official who has received a university education, supported by a degree, an is engaged in performing duties appropriate to Category A within the meaning of Article 5 of the Staff Regulations'.

14 The difficulty inherent in such a comparison cannot justify the lack of any attempt to make a more precise analysis nor the lack of any additional criterion of selection.

15 The competition COM/A/15/73, however, was intended to constitute a reserve list for the recruitment of administrators in Career Bracket A 7/A 6.

16 Therefore the exclusion of the applicant from the list of candidates did not affect the admission to the list of the persons selected by the Selection Board as fulfilling the conditions listed in the notice of competition.

17 The rights of the applicant will be sufficiently protected if the Selection Board reconsiders the question of the applicant's suitability for being included in the list of candidates and if such be the case it admits him to the

competition without the selection already made by the Selection Board being affected.

18 It suffices therefore to annul the decision of the Selection Board to exclude the applicant from the competition and the Commission's decision rejecting the administrative complaint made by the applicant on 22 August 1974.

19 Since the applicant has succeeded on the first submission in the application, it is not necessary to examine the second.

Costs

20 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

21 The Commission has failed in its submission and must therefore pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

(1) Annuls the decision of the Selection Board in competition COM/A/15/73 not to admit the applicant to the competition and the decision contained in the Commission's letter of 13 January 1975 rejecting the applicant's complaint;

(2) Orders the Commission to bear the whole of the costs.

Donner Mertens de Wilmars O'Keeffe

Delivered in open court in Luxembourg on 4 December 1975.

A. Van Houtte
Registrar

A. M. Donner
Acting President