

Decision of the European Ombudsman on complaint 489/98/OV against the European Commission

Decision

Case 489/98/OV - Opened on 18/05/1998 - Recommendation on 04/11/1999 - Decision on 12/04/2000

Strasbourg, 12 April 2000 Dear Mr P., On 1 April 1998 you made a complaint to the European Ombudsman concerning the failure of the European Commission to reinstate you at the end of your unpaid leave on personal grounds and to refuse to pay you a compensation for the loss of salary and the reduced pension.

THE DRAFT RECOMMENDATION

By decision dated 4 November 1999, following an inquiry into the complaint and given that it was not possible to find a friendly solution between the parties, the Ombudsman addressed the following draft recommendation to the Commission in accordance with Article 3(6) of the Statute of the Ombudsman: *The Commission should compensate the complainant for the material damage he directly suffered as a result of the Commission's service related fault which is the failure to undertake a detailed examination of the complainant's qualifications for the posts which were vacant after the expiry of his leave on personal grounds.* Full details of the inquiry and the draft recommendation are provided in the decision of 4 November 1999, a copy of which was also forwarded to the complainant.

THE COMMISSION'S DETAILED OPINION

The Ombudsman informed the Commission that, according to Article 3 (6) of the Statute, it should send a detailed opinion before 29 February 2000 and that the detailed opinion could consist of acceptance of the Ombudsman's draft recommendation and a description of how it has been implemented. On 13 March 2000, the Secretary General of the Commission sent to the Ombudsman the following detailed opinion: "(...) *The Commission regrets that Mr P.'s professional abilities in relation to each vacant post corresponding to his grade were not checked at the time and that as a result the procedure for establishing whether he satisfied the requirements for each of these posts did not actually take place. The Court has consistently ruled that failure by the administration to verify systematically the abilities of the official in relation to each vacant post in which he could have been reinstated constitutes a service-related fault for which the administration could be held liable if after such an examination, even carried out subsequently, it transpires that there was a vacant post in which the individual concerned could have been reinstated. In such a case, the Commission is required to make good the material damage suffered by the official as a result of not being reinstated in the post thus identified.* In



this case and at this stage in the procedure, there is no evidence that such an examination would have led to the identification of a post in which Mr P. could have been reinstated. But nor do we not have the necessary information to establish that Mr P. did not satisfy the requirements for each of the 25 vacant posts which would have enabled him to be reinstated in one of them. In view of the foregoing, and on the basis of the Ombudsman's recommendation, the appointing authority agrees to award Mr P. compensation equivalent to two months salary for the damage he suffered, subject to deduction of any net earned income received by him for the same period while engaged in other activities. After careful examination of the Commission's detailed opinion, the Ombudsman considers that the measure it describes is satisfactory to implement the draft recommendation.

THE COMPLAINANT'S OBSERVATIONS

On 6 April 2000 the complainant sent his observations on the Commission's detailed opinion. He observed that the compensation for material damage which the Commission has agreed to pay and which is supported by case-law seemed correct and just. He however pointed out that, as to the concrete payment of this compensation, he had not received any news from the Commission, as the office of the Ombudsman was his only channel of communication with the Commission.

THE DECISION

1. On 4 November 1999, the Ombudsman addressed the following draft recommendation to the Commission, in accordance with Article 3(6) of the Statute: *The Commission should compensate the complainant for the material damage he directly suffered as a result of the Commission's service related fault which is the failure to undertake a detailed examination of the complainant's qualifications for the posts which were vacant after the expiry of his leave on personal grounds.* 2. On 13 March 2000, the Commission informed the Ombudsman of its acceptance of the draft recommendation and of the measure which it has taken to implement it. The measure which consists of awarding the complainant a compensation equivalent to two months salary for the damage he suffered appears to be satisfactory and the Ombudsman therefore closes the case. The President of the European Commission will also be informed of this decision. Yours sincerely Jacob SÖDERMAN