

Decision of the European Ombudsman on complaint 753/98/PD against the European Commission

Decision

Case 753/98/PD - Opened on 04/09/1998 - Decision on 22/06/1999

Strasbourg, 22 June 1999 Dear Mr L., On 15 July 1998 you lodged a complaint with the European Ombudsman concerning the European Commission. You put forward that the Commission wrongly excluded you from participating in a competition. On 4 September 1998, I forwarded the complaint to the President of the European Commission. On 10 December 1998, I received the opinion of the Commission and I forwarded it to you with an invitation to make observations, if you so wished. On 5 January 1999, I received your observations. I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

The background to the complaint is in brief the following: In March 1998, the complainant applied under an open competition COM/A/4/98, published in the Official Journal 1998 L 44A. The competition was organised in order to constitute a reserve list for principal administrators in the field of public health. The Commission refused to admit the complainant to the competition. According to the Commission, the complainant did not have the professional experience required in the notice of competition. The notice provided: *"Candidates must have had at least 12 years graduate level experience since obtaining the university degree required for admission to the competition, at least 6 years working in the fields described..... The graduate level experience should include two years working in an international organisation or in the field of bi-lateral or multi-lateral cooperation."* According to the Commission, the complainant did not fulfill the requirement of "two years working in an international organisation or in the field of bilateral or multilateral cooperation". The complainant considered this to be wrong because he held a leading post with the Ministry of Health of a Member State. The Commission and the complainant corresponded about this question, but without reaching an agreement. Against this background, the complainant lodged the complaint with the European Ombudsman. He put forward that the Commission's position was wrong.

THE INQUIRY

The Commission's opinion In its opinion, the Commission stated that the Selection Board responsible had established the following criteria for assessing whether applicants fulfilled the requirement of "two years working for an international organisation or in the field of bilateral or multilateral cooperation": - as for international organisations, applicants should have worked for an organisation such as the UN, the WHO, UNICEF or the EU or similar organisation for a



minimum of two years; - as for bilateral or multilateral cooperation, applicants should have worked full time for a minimum of two years' duration, e.g. in the cooperation unit of a national ministry or in the field in developing countries. According to the Commission, the complainant did not meet any of these criteria, as he had worked as the closest political collaborator of a Minister for four years, and such work at political level could by no means be considered equivalent to two years of full-time work within the field of bi- or multilateral cooperation. **The complainant's observations** In his observations, the complainant maintained the complaint. He annexed a letter sent to the Commission on 4 June 1998, that is after the Commission's refusal, by a Director of the Ministry, who is responsible for the department of central administration and international relations. According to the letter, the complainant had often been involved in questions of bilateral and multilateral cooperation.

THE DECISION

1 Exclusion from the competition 1.1 The Commission had not allowed the complainant to participate in a competition on the ground that he had not the kind of professional experience required. The complainant considered this decision to be wrong. 1.2 The question is thus whether the Selection Board has rightly assessed the professional experience of the complainant on the basis of the terms in the notice of competition. The relevant terms are "two years working in an international organisation or in the field of bilateral or multi-lateral cooperation". 1.3 In assessing whether work at the highest level in a national Ministry of Health can be considered as work in bilateral or multilateral cooperation, it shall firstly be observed that prima facie, such work would not normally be qualified as work in bilateral or multilateral cooperation. However, it cannot be excluded that the work actually could involve work in bilateral and multilateral cooperation and thus, nothing seems to hinder that the Selection Board could have opted for a wider interpretation of the terms, so that it covered work such as that of the complainant. On the other hand, nothing appears to hinder that the Selection Board in question retained a more restrictive interpretation of the terms and thus, that the work in question had to have been made full-time in for instance a cooperation unit of a national Ministry; and in that case, the complainant would not qualify. In particular, it shall be noted that this more restrictive interpretation does not go against the reading of the notice and therefore does not breach any legitimate expectations which the citizens may hold. Thus, the Selection Board has not infringed any rule or principle binding upon it, by opting for the more restrictive interpretation. **2 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The President of the European Commission will also be informed of this decision. Yours sincerely
Jacob SÖDERMAN