

## Decision of the European Ombudsman on complaint 1129/2000/JMA against the European Commission

Decision

**Case 1129/2000/JMA - Opened on 17/10/2000 - Decision on 26/09/2001**

Strasbourg, 26 September 2001

Dear Mr G.,

On 16 September 2000, you lodged a complaint with the European Ombudsman, concerning the decision of the Selection Board in the research selection procedure COM/R/A/04/1999 not to admit you to the written test because of your lack of professional experience.

On 17 October 2000, I forwarded the complaint to the President of the European Commission. I received the Commission's opinion on 31 December 2000, which I forwarded to you on 24 January 2001 with an invitation to make observations. I have received no reply from you.

I am writing now to let you know the result of the inquiries that have been made.

### THE COMPLAINT

The complainant applied to a research selection competition (COM/R/A/04/1999) for the establishment of a reserve list of temporary agents specialized in controlled thermonuclear fusion. It was organized by the Directorate General Research of the European Commission. The selection procedure had three different stages: the first one consisting in a screening of applications based on the information submitted by the candidates, followed by a written test, and an oral interview.

On 1 August 2000 the Selection Board informed the complainant that having assessed his academic background and relevant professional experience, his score had not reached the minimum necessary to pass to the written tests. Although the complainant's marks as regards education were outstanding (37 over 40), the score obtained in relation to relevant professional experience was only 29 over 60, and thus below the minimum threshold set in 30 points. On 8 August 2000, the complainant wrote to the Commission's services responsible for the selection procedure and requested that his application be re-assessed on the grounds that his professional experience had not been properly taken into account. He pointed out that he had had more than ten years experience, eight of which had been devoted to the nuclear field.



Among the institutions for which he had worked, he mentioned the Institute Cyclotron in Leuven (Belgium), the Paul Scherrer Institute in Villigen (Switzerland), the Cyclotron Institute in Texas and the Brookhaven National Laboratory in Long Island (USA). The complainant also referred to his internships in the Nuclear Plant of Zorita (Spain), the UAM Physic Matters' Laboratory (Spain) and CERN.

The reply from the Commission services of 29 August 2000 indicated that the Selection Committee, had re-examined his file, and decided to confirm its previous decision not to admit him to the written tests. The letter explained that the Committee had carried out this first vetting of candidates, on the basis of a comparative analysis of the applicants' qualifications and experience.

The complainant expressed his dissatisfaction for the confirmatory decision of the Selection Committee in an email which he addressed to the Commission services on 5 September 2000. In its reply of 14 September 2000, the Commission repeated the arguments exposed in its previous letter.

In summary, the complainant alleged that the decision of the Selection Board in the research selection procedure COM/R/A/04/1999 not to admit him to take part in the written tests, lacked transparency since despite his requests, he was not been given any reason in support of such refusal.

## THE INQUIRY

### **The Commission's opinion**

The Commission first offered a general overview of the situation, and then referred to the specific allegations made by the complainant. The Commission's opinion also included as an annex a confidential email from Mr Obert, co-chairman of the competition's Selection Committee, dated 14 August 2000. In his email, Mr Obert made some considerations concerning several appeals submitted by three unsuccessful candidates. The relevant part of this correspondence had been quoted in the Commission's opinion.

### *Background information*

The Commission first explained that the complainant had submitted its application to the competition COM/R/A/04/1999. The Notice of the competition set out the selection procedure to be followed by the Selection Committee. The first stage was a "selection based on information contained in the application form", for which the relevant criteria were to be, the level and the quality of the studies as well as the professional experience in relation to the selected field. The Selection Committee was to score both criteria. As regards professional experience, the maximum mark was 60 points whereas 30 points was the minimum mark to pass to the written tests. Since the complainant only obtained 29 points, the Selection Committee informed him by letter of 1 August 2000 that his name had not been retained for the written tests.

On 8 August 2000, the complainant requested that his file be reconsidered. The Selection Committee re-examined his file, but decided to confirm its previous decision. The complainant telephoned several times the secretariat of the Selection Committee and wrote the Head of Unit



responsible for the selection procedure in order to request further details on the Committee's decision. The Commission services replied to his different queries by letter of 14 September 2000.

*Specific allegations made by the complainant*

The Commission explained that the successful list of candidates to the competition was established on the basis of a selection procedure. Unlike examinations, a selection procedure entails a comparison among the different applications. At the end of the procedure, the reserve list is established on the basis of the type and number of available posts. At the first stage of this process, there is no evaluation of the applications but rather a comparison among the candidates' qualifications.

As regards the selection procedure for competition COM/R/A/04/1999, 326 applications were received by the Commission. The Notice of the competition stated that only 100 candidates could be admitted to the written tests, although the Committee set this number in 107 due to the identical results obtained by some candidates. The Commission explained that the quality of all participants was generally very high, and therefore that the Selection Committee had to carry out a rigorous selection. It pointed out that two thirds of the initial candidates, among them the complainant, were excluded from the written tests following the first screening of candidates.

This reasoning was clearly stated in the letter of 29 August 2000 that the Commission services addressed to the complainant. The letter informed the complainant of his results in the first stage of the selection procedure. It explained that despite the wealth of his professional experience, it proved less profound than that of the so far successful candidates. The letter also underlined that the decision of the Selection Committee should not be interpreted as a negative assessment made on the complainant's qualifications or on his experience, but a mere result of a comparison on the information contained in the candidates' application forms.

The Commission rejected the alleged "lack of transparency" of the procedure. The institution explained that, at each stage, it informed all candidates of their situation. Moreover, for those applicants who had not been selected, the institution informed them of the specific reason which preclude their passing to the next stage of the procedure, and of the possibility to request a re-examination of the decision. The complainant used this possibility, even though the Selection Committee decided to confirm its previous decision. The Commission considered that no further information could have been given to failed candidates without disclosing the names and qualifications of the successful candidates. Only the Selection Committee had access to that information in order to reach an informed and unbiased judgement.

**The complainant's observations**

To date no observations have been received from the complainant.

## **THE DECISION**

### **1 Reasoning of the decision to exclude the complainant from the competition**

1.1 The complainant alleged that the decision of the Selection Board in the research selection procedure COM/R/A/04/1999 not to admit him to take part in the written tests, lacked transparency since, despite his requests, he was not been given any reason in support of such



refusal.

1.2 The Commission argued that it kept informed all candidates of their situation, at each stage of the selection procedure. For those applicants who had not been selected, the institution informed them of the specific reason which preclude their passing to the next stage of the procedure, and of the possibility to request a re-examination of the decision. The Commission considered that no further information could have been given to failed candidates without disclosing the names and qualifications of the successful candidates.

1.3 In order to assess whether the decision taken by the Selection Committee in relation to the complainant was sufficiently reasoned, the Ombudsman points out that the obligation to state the reasons on which decisions of a selection board in a competition are based must take account of the nature of the proceedings concerned (1) .

The Notice of the competition COM/R/A/04/1999 indicated that the Selection Committee had to carry out the first stage of the selection procedure through a comparative assessment of the information contained in the candidates' application forms. The relevant criteria for this comparative evaluation was the level and the quality of the studies as well as the professional experience of candidates in relation to the selected field.

1.4 Community courts have held that the comparative assessments made by the selection board are reflected in the marks it allocates to the candidates. The marks are therefore the expression of value judgements made concerning each of them. Accordingly, Community courts have concluded that " *communication of the marks obtained [...] constitutes an adequate statement of the reasons on which the board's decisions are based* " (2) .

1.5 The Ombudsman notes that in its letter of 1 August 2000, the Selection Committee had informed the complainant that he had not been selected for the written tests, and explained that despite that his marks as regards education were satisfactory (37 over 40), the score he had obtained in relation to relevant professional experience was only 29 over 60, and thus below the minimum threshold set in 30 points. By informing the complainant of the marks he had obtained, the Selection Committee gave him an adequate statement of the reasons on which the Committee's decisions had been based.

Thus, the Ombudsman concludes that the inquiry has not revealed an instance of maladministration as regards this aspect of the case.

## **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 Ombudsman therefore closes the case.

The President of the European Commission will also be informed of this decision.

Yours sincerely,



Jacob SÖDERMAN

(1) Case T-157/96 PS Affatato v Commission [1998] ECR SC I-A-41, II-97, par. 33; case C-254/95 P Parliament v Innamorati [1996] ECR-I-3423; pp. 24-25.

(2) Id. supra case T-157/96, par. 34 (quoting case C-254/95 P, pp. 26, 28 and 30).