

Decision of the European Ombudsman on complaint 137/2002/(BB)OV against the European Commission

Decision

Case 137/2002/OV - Opened on 21/02/2002 - Decision on 13/11/2002

Strasbourg, 13 November 2002

Dear Mr S.,

On 21 December 2001, you made a complaint to the European Ombudsman concerning the pre-selection test of open competition COM/B/1/01. Your previous complaint ref. 1542/2001/BB had been considered inadmissible, because it had not been preceded by appropriate administrative approaches.

On 21 February 2002, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 28 May 2002. I forwarded it to you with an invitation to make observations, which you sent on 31 July 2002.

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

In my opening letter I informed you that according to the established case-law of the Community courts, Selection Boards enjoy wide powers of appraisal regarding the procedures for and content of the tests in a competition. Therefore, the inquiry conducted by the European Ombudsman will be limited to the question whether the Selection Board has acted within the limits of this power.

THE COMPLAINT

According to the complainant, the relevant facts were as follows:

The complainant participated in open competition COM/B/1/01, but did not obtain the minimum required mark in pre-selection test (a) and was thus excluded from the competition. According to the complainant, this test, which consisted of a series of questions to evaluate the candidates' verbal and numerical reasoning capabilities, was imprecise and inexact and should therefore not be taken into account in the evaluation. The complainant therefore complained to the Selection Board.



In its reply, the Selection Board maintained its previous decision to exclude the complainant from the competition. The Selection Board observed that the verbal and numerical test which the complainant criticised was applied to all candidates and allowed to evaluate the candidates in an appropriate way.

On 21 December 2001, the complainant lodged the present complaint with the Ombudsman. The complainant 1) alleged that pre-selection test (a) of open competition COM/B/1/01 did not constitute an adequate basis to evaluate the verbal and numerical capacities, as this test was imprecise and inexact in its form and content, and 2) claimed that the Selection Board should continue to correct his written test.

THE INQUIRY

The Commission's opinion

In summary, the Commission's opinion made the following points:

In accordance with Article 1 of Annex III of the Staff Regulations, the Appointing Authority established the notice of competition COM/B/1/01, as for all open competitions.

Point VII.A of the notice of competition foresaw four pre-selection tests based on the principle that for every question there was only one correct answer. The notice of competition described test (a) as *"a test comprising a series of multiple choice questions to assess the general ability, in particular the verbal and numerical reasoning capacities"* of the candidates.

Such a verbal and numerical reasoning test evaluates the general aptitude of the candidates to perform duties in the institution throughout their career. It complements the other tests, particularly the evaluation of specific knowledge in the field of the competition.

The Selection Board was obliged to respect the terms of the notice of competition. It chose the content and questions of test (a) in order to meet the objective fixed by the Appointing Authority for this test. In doing so, the Selection Board stayed within the limits of its powers and competence as regards the content of the test.

The complainant's observations

The complainant observed that it was clear that the Selection Board had acted within the limits of its power, and that it was not opportune to criticise it for the types of tests chosen.

The complainant nevertheless asked the Ombudsman to use his prerogatives as an Ombudsman in order to suggest to the Selection Board to still correct his written test, notwithstanding his inferior mark obtained in pre-selection test a). In order to sustain his request, the complainant argued, firstly, that on the day of the examination there was a temperature of 30° in the examination room in Brussels, secondly, that 5 questions of the test had been annulled, and thirdly, that six months later in normal examination conditions, he obtained on a similar test of mark of 33.514/40 (open competition COM/B/2/01).



THE DECISION

1 The alleged inadequacy of pre-selection test (a)

1.1 The complainant alleged that pre-selection test (a) of open competition COM/B/1/01 did not constitute an adequate basis to evaluate the verbal and numerical capacities of the candidates, as this test was imprecise and inexact in its form and content.

1.2 The Commission observed that, as regards the value of a verbal and numerical reasoning test in the framework of an open competition, this type of test was introduced in order to evaluate the general aptitudes of the candidates to perform duties in this institution all along their career. This test of a more general nature completed the other tests, particularly the one concerning the evaluation of the specific knowledge in the field of the competition.

1.3 As indicated to the complainant in his letter of 21 February 2002, the Ombudsman points out that his inquiry in this case is limited to the question whether the Selection Board has acted within the limits of its legal authority.

1.4 The Ombudsman has analysed pre-selection test a) of open competition COM/B/1/01 and came to the conclusion that nothing in it could suggest that the Selection Board has acted outside the limits of its legal authority. Moreover, in his observations, the complainant accepted that the Selection Board had acted within the limits of its power. No instance of maladministration was therefore found with regard to this aspect of the complaint.

2 The claim for further correction of the test

2.1 The complainant claimed that the Selection Board should continue to correct his written test. In his observations, the complainant argued that on the day of the examination there was a temperature of 30° in the examination room in Brussels, that 5 questions of the test had been annulled, and that six months later in normal examination conditions, he obtained on a similar test of mark of 33.514/40 (open competition COM/B/2/01).

2.2 In the absence of maladministration, the Ombudsman considers that there is no legal basis for him to make any suggestion concerning how the complainant's written tests in competition COM/B/1/01 should be dealt with.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Commission. The Ombudsman therefore closes the case.

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

Yours sincerely,

Jacob SÖDERMAN