

## **Decision of the European Ombudsman on complaint 1906/2003/ELB against the European Commission**

Decision

**Case 1906/2003/ELB - Opened on 12/11/2003 - Decision on 04/10/2004**

Strasbourg, 4 October 2004

Dear Mrs B.,

On 6 May 2003, your husband lodged a complaint on your behalf (810/2003/ELB) concerning the fact that you had not been recruited by a Community institution. The complaint was declared inadmissible because it did not contain information on the type of selection procedure concerned, the institution which organised it and the relevant dates. The letter of inadmissibility informed your husband of the possibility to renew the complaint and that the complaint should be preceded by the appropriate administrative approaches to the institution concerned.

On 25 September 2003, you made a new complaint to the European Ombudsman against the European Commission concerning the Commission's refusal to recruit you as a temporary agent.

On 12 November 2003, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 8 January 2004 and I forwarded it to you with an invitation to make observations, if you so wished. No observations appear to have been received from you.

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

### **THE COMPLAINT**

According to the complainant, the facts can be summarised as follows:

The complainant applied to become a Category C temporary agent in a selection procedure organised by the Commission. She was asked to provide a copy of the diploma that she had obtained in Mauritius. Her application was rejected because she had not passed one of the subjects of her diploma.

The complainant contacted the Commission, which sent her a reply on 3 July 2003. However, the complainant was not satisfied with the Commission's reply.



In summary, the complainant alleges that:

- the Commission is unduly strict in the interpretation of the required diploma for this post of temporary agent, as its rejection of her application is based only on her insufficient results in one subject;
- other persons are recruited by the Commission as temporary agents even if they do not fulfil all the required criteria.

The complainant argues that she has the relevant professional experience to apply for a temporary post of category C in accordance with Article 5 of the Staff Regulations, which states that: *"Category C shall comprise five grades (...) for staff engaged in clerical duties which require secondary education or equivalent professional experience"*. She points out that she worked for the Commission as auxiliary agent to the satisfaction of her superior during three years and worked in the private sector for seven years as a secretary or assistant. She considers that the Commission should have taken into account this professional experience.

## THE INQUIRY

### The Commission's opinion

The Commission's opinion can be summarised as follows:

On 18 March 2002, Mr Reichenbach, Director General of the Directorate General for Administration (DG ADMIN) issued a note which allowed the recruitment of temporary agents to fill the high number of vacant permanent posts because of the limited number of successful candidates on reserve lists. In these circumstances, the provisions of Article 2 (b) of the Conditions of Employment of Other Servants of the European Communities apply and the conditions of recruitment of officials are applied by analogy to temporary agents.

On 7 February 2003, the Directorate General for Agriculture proposed to DG ADMIN the recruitment of the complainant as a temporary agent of category C on a permanent post.

DG ADMIN requested the complainant to provide the required supporting documents, such as her diplomas and previous work contracts. The complainant provided a document called "General Certificate of Education" from the University of Cambridge. This document states that, in the framework of the complainant's studies at the New Devton College Mauritius in Mauritius, she had obtained grades of D, B, D and C respectively in the following subjects: economics, French, art and principles of accounts. It also states that, consequently, she had only passed two subjects. The Commission therefore considered that the conditions for being recruited as a temporary agent of category C were not met and rejected her application.

According to the Guide to diplomas giving access to category C competitions, the complainant should have obtained a General Certificate of Secondary Education with five passes. Furthermore, the complainant did not provide any official proof of an equivalent qualification.



The fact that the complainant previously worked for the Commission as an auxiliary agent is not relevant. The recruitment of auxiliary agents, provided for by Article 5 of the Conditions of Employment of Other Agents, does not follow the same rules, as the aim is not to fill permanent posts.

The Commission confirms that the criteria for the recruitment of temporary agents were applied rigorously and in accordance with Mr Reichenbach's note of 18 March 2002. The Commission is not aware of any case that could justify the complainant's allegation.

The complainant states that, according to Article 5 of the Staff Regulations, C posts require knowledge at the secondary education level, or equivalent professional experience. Nonetheless, the Commission can, in accordance with the case-law of the European courts (see Case C-108/88 *Jaenicke Cendoya v. Commission* [1989] ECR 2711), always apply stricter or more specific rules when it organises competitions or selections of temporary agents.

The Commission concludes that the complainant did not have the required level of education for being recruited as a temporary agent on a permanent post and that the refusal to grant her a contract was justified.

#### **The complainant's observations**

No observations were received from the complainant.

## **THE DECISION**

### **1 Allegation that the Commission is unduly strict in the interpretation of the required diploma**

1.1 The complainant applied to become a Category C temporary agent in a selection procedure organised by the Commission. The complainant alleges that the Commission is unduly strict in the interpretation of the required diploma for this post, as its rejection of her application is based only on her insufficient results in one subject. The complainant argues that she has the relevant professional experience to apply for a temporary post of category C in accordance with Article 5 of the Staff Regulations. She points out that she worked for the Commission as an auxiliary agent to the satisfaction of her superior during three years and worked in the private sector for seven years as a secretary or assistant. She considers that the Commission should have taken into account this professional experience.

1.2 According to the Commission, the complainant provided a document called "General Certificate of Education", stating that she had only passed two subjects. According to the Guide to diplomas giving access to category C competitions, the complainant should have obtained a General Certificate of Secondary Education with five passes. Furthermore, the complainant did not provide any official proof of an equivalent qualification. The Commission thus considered that the conditions for being recruited as a temporary agent of category C were not met and rejected her application. As regards Article 5 of the Staff Regulations, the Commission argues that, in accordance with the case-law of the European courts, it can always apply stricter or more specific rules when it organises competitions or selections of temporary agents.



1.3 The Ombudsman notes that the complaint deals with a selection procedure for temporary agents, in which the Commission applied the conditions governing the recruitment of officials by analogy. The Ombudsman recalls that, according to the case-law of the European courts (1) , Article 5 of the Staff Regulations seeks to provide a general definition of the minimum level required for an official of the category in question and does not concern conditions of recruitment, which may be more rigorous. The Ombudsman, therefore, takes the view that it was within the Commission's legitimate authority to establish conditions relating to the qualifications required for being recruited as a temporary agent for the posts in question and that, having established such conditions, the Commission was obliged to apply them.

1.4 The Ombudsman notes that the conditions for the posts in question were stated in a note from the Director General of DG ADMIN dated 18 March 2002 authorising the recruitment of temporary agents on permanent posts and included the condition that candidates for Category C posts should have a diploma marking the successful conclusion of lower secondary education. The Ombudsman points out that the requirement of professional experience of three years acquired after the diploma is a further condition and not an alternative to the possession of a diploma.

1.5 The Ombudsman also notes that the Guide to diplomas giving access to Category C competitions states that candidates should obtain a General Certificate of Secondary Education with five passes or equivalent qualifications. After having examined the General Certificate of Education obtained by the complainant, the Ombudsman notes that the complainant passed only two subjects. Furthermore, there is no evidence in the Ombudsman's file that the complainant has equivalent qualifications.

1.6 In the light of the above, the Ombudsman considers that the explanation given by the Commission for the rejection of the complainant's application appears reasonable and that there is no maladministration as regards this aspect of the complaint.

## **2 Allegation that other persons are recruited even if they do not fulfil all the required criteria**

2.1 The complainant alleges that other persons are recruited by the Commission as temporary agents even if they do not fulfil all the required criteria.

2.2 According to the Commission, the criteria for the recruitment of temporary agents were applied rigorously and in accordance with Mr Reichenbach's note of 18 March 2002. The Commission denies that it is aware of any case that could justify the complainant's allegation.

2.3 The Ombudsman takes the view that the complainant has not provided any evidence to support the allegation that candidates have been recruited as temporary agents even though they did not fulfil the required criteria. The Ombudsman therefore finds no instance of maladministration as regards this aspect of the complaint.

## **3 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,

P. Nikiforos DIAMANDOUROS

(1) Case C-108/88 *Juan Jaenicke Cendoya v. Commission* , [1989] ECR 2711.