

Decision of the European Ombudsman on complaint 2111/2003/(BB)MF against the European Commission

Decision

Case 2111/2003/BB/MF - Opened on 02/12/2003 - Decision on 10/11/2004

Strasbourg, 10 November 2004

Dear Ms P.,

On 4 November 2003, you made a complaint to me against the European Commission concerning the rejection of your candidature in open competition COM/C/1/02.

On 2 December 2003, I forwarded the complaint to the President of the European Commission. The European Commission sent its opinion on 19 February 2004. On 16 March 2004, I forwarded it to you with an invitation to make observations, which you sent on 24 March 2004. On the same day, you sent me a further e-mail, to which you enclosed a second version of your observations. You asked me to only consider the latest version of your observations.

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

I apologise for the length of time it has taken to deal with your complaint.

THE COMPLAINT

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

The complainant took part in open competition COM/C/1/02 published in the Official Journal No C 18 A of 22 January 2002 and organised by the European Commission in order to constitute a reserve list of typists of French mother tongue.

On 23 July 2003, the European Personnel Selection Office (1) (EPSO) informed the complainant that her name had not been included on the reserve list because she had not obtained the minimum number of points required for practical test f) and for oral test g).

In a letter dated 25 July 2003, the complainant requested some clarifications from the President of the Selection Board concerning her marks in tests f) and g).



For practical test f), the complainant considered that her computer had been too slow and had blocked from time to time. She asked the Selection Board to check the computer and the back-up on the floppy disk.

For oral test g), the complainant considered that the Selection Board had been unable to assess her knowledge of the main developments concerning European unification, given that she had only been asked one question inviting her to give the names of the two French commissioners. The complainant considered that the Selection Board had instead dwelt on her past professional experience. Given that the complainant was over 45 years old, she had the feeling that she was discriminated against because of age.

For both tests f) and g), the complainant considered that, given that she was among the five first candidates to sit the tests, she had had less time to prepare for the competition compared with candidates who had been asked to sit the test in July. She had therefore not been able to benefit from information received from the latter.

On 7 October 2003, EPSO, on behalf of the President of the Selection replied that the Selection Board had confirmed the complainant's marks and made the following comments:

As to oral test g), the complainant had been informed that she had neither demonstrated a good mastery of technical secretarial skills nor convinced the Selection Board of her motivation. In addition, her linguistic knowledge had proved too weak and her knowledge of the main developments concerning European unification and the various Community policies had proved to be insufficient. The Selection Board had asked questions regarding the two French Commissioners and the role of the Commission in the field of trade at both the European and world levels. In addition, the complainant had been asked about the role of Mr Solana and the role of the Commission and its position regarding the war in Iraq. The Selection Board had in no way taken into account the complainant's age. The use of age limits had been abolished just after the publication of the competition.

As to test f), the Selection Board had sent the complainant the evaluation sheet and the comments concerning this test. The Selection Board underlined that all candidates had used the same material and that the complainant could not have been in a less favourable situation than the other candidates. Concerning the fact that the complainant had been among the five first candidates to sit the tests, the Selection Board stated its belief that the time which transpired between the publication of the notice of competition and the examination had been sufficient to allow all candidates to prepare for it.

On 4 November 2003, the complainant lodged a complaint with the European Ombudsman. She alleged that the Selection Board had failed to respond adequately to her letter of 25 July 2003.

THE INQUIRY

The Commission's opinion



The opinion of the European Commission on the complaint was in summary as follows:

Competition COM/C/1/02 was organised to draw up a reserve list of French-speaking typists. The complainant applied to take part in this competition. As she was among the best candidates after the preselection tests, she was invited to participate in the written and oral tests which took place on 2 April 2003.

Point VI B of the notice of competition stated that practical test f) would be marked on a maximum of 20 points and candidates had to obtain a minimum of 10 points. Oral test g) would be marked on a maximum of 30 points and candidates had to obtain a minimum of 15 points.

On 23 July 2003, EPSO informed the complainant that her name was not on the reserve list because she had only obtained 9,5 points for practical test f) and 11 points for oral test g).

In a letter dated 25 July 2003, the complainant requested some clarifications from the President of the Selection Board concerning her marks in tests f) and g).

By letter dated 7 October 2003, EPSO, on behalf of the Selection Board, informed the complainant that the Selection Board had confirmed the marks that it had given to her. EPSO further informed the complainant of the comments of the Selection Board on her tests. As regards the complainant's practical test, the complainant was sent a copy of her evaluation sheet containing the comments of the Selection Board. In order to ensure an equal treatment for all candidates, the Selection Board beforehand established common correction criteria which had been communicated to the examiners in charge of the correction of the tests.

As far as the oral test was concerned, the complainant considered that the Selection Board had failed to ask her questions in accordance with the notice of competition. The Selection Board stated its belief that the questions which had been put to the candidates had been relevant to the assessment of the knowledge stated in the notice of competitions. These questions covered the different types of knowledge and capacities mentioned in point VI B of the notice of competition, namely specific knowledge, knowledge of the main developments concerning European unification and the various Community policies, knowledge of languages and the candidates' ability to work in a multicultural environment.

In her letter dated 25 July 2003, the complainant stated that the Selection Board had not been able to assess the level of her knowledge of the main developments concerning European unification because she had only been asked one question. In its reply of 7 October 2003, EPSO, on behalf of the Selection Board, reminded the complainant of the various questions which had been put to her concerning the main developments relating to European unification and the various Community policies; the Selection Board had asked questions regarding the two French Commissioners and the role of the Commission in the field of trade both at the European and world levels. In addition, the complainant had been asked about the recent events at the European level and the role of Mr. Solana, the role of the Commission and its position regarding the war in Iraq. These questions perfectly covered the knowledge of the European Union.



Each interview lasted 35 minutes. The candidates were invited to answer a series of questions and to present their Curricula Vitae. The duration of the interview could vary from one candidate to the other, depending on their professional experience and the quality of their answers to the questions raised by the Selection Board.

After the presentation of her Curriculum Vitae, the Selection Board asked the complainant questions relating to her professional experience and to her specific knowledge (in relation with the use of information technology in daily work, Adonis, Outlook, Internet, etc), her knowledge of European matters as mentioned above, and questions relating to her knowledge of languages (in English and in Italian).

According to established case-law, a Selection Board is not obliged to specify those replies given by candidates which were considered insufficient or why these replies were judged insufficient. The correction criteria adopted by the Selection Board before the beginning of the tests belong to the assessments it makes on the respective merits of the candidates. It has also been recognised that the communication of the marks obtained in the different tests is a sufficient reasoning of the Selection Board's decisions. However, in its reply dated 7 October 2003 on behalf of the President of the Selection Board, EPSO gave the complainant explanations as regards her tests. The complainant was namely informed that as regards oral test g), she had neither demonstrated a good mastery of technical secretarial skills nor convinced the Selection Board of her motivation. In addition, her linguistic knowledge had proved too weak and her knowledge of the main developments concerning European unification and different Community policies had proved to be insufficient.

As far as the complainant's practical test was concerned, she was sent a copy of the evaluation sheet of her practical test which contained comments drawn up by the Selection Board. It emerged from the evaluation sheet that the instructions relating to the setting on page/formatting, in the tables and in insertions, displacements and corrections of text had not been carried out in a complete and correct way.

Concerning the complainant's request for her computer and floppy disk to be checked, all provisions had been taken to put at the disposal of the candidates the desired computer configuration (type of keyboard, position of the mouse). The candidates had been invited to inform EPSO of their choice beforehand, using a form enclosed to the letter of notification of the practical test. The day of the practical test, the candidates had been asked to check whether they had the requested keyboard and whether the position of the mouse was correct. They had also had the opportunity to test the computer and to point out any problem to the supervisor. The complainant had not pointed out any anomaly as regards her computer or the floppy disk.

At the end of the practical test, the typed text, saved on a floppy disk, had been printed in the presence of the candidate who had then signed each page of her test. As soon as the test had been printed and signed, floppy disks were emptied of their contents, only the typed text which had been signed being regarded as the test to be corrected. The typed text had then been corrected by an assessor and by a member of the Selection Board. The final mark had been



given by the Selection Board, acting as a college.

Pursuant to the principle of secrecy of the proceedings of the Selection Board, the complainant could not have been given information on the comparison of the candidates' merits.

Concerning the alleged lack of transparency, the Selection Board had provided the complainant with the reasons for its decision not to include her name on the reserve list.

The complainant's observations

The European Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. In her reply dated 24 March 2004, the complainant maintained her complaint and made in summary the following further comments;

Given that she had been among the first candidates to sit the practical test, there had been a certain confusion as regards the organisation of the latter. She had not pointed out the technical problems concerning the slowness of her computer during the test because she had been sitting the examination. The content of the floppy disk should not have been deleted because it could serve as proof in case of problems. By giving her 9,5 points at the practical test whereas the minimum required was 10 points out of 20, the Selection Board had deliberately decided to exclude her from the competition.

Concerning the oral test and the assessment of her knowledge of the main developments regarding European unification, the complainant maintained that she had only been asked one direct question inviting her to give the names of the two French Commissioners. She had then been asked further questions concerning the role of the Commission in the field of trade both at European and world levels, recent events at the European level and the role of Mr. Solana, the role of the Commission and its position regarding the war in Iraq. However, the President of the Selection Board had gone through one question after another, without giving the complainant the time to answer them. The Selection Board had wrongly considered the level of her secretarial skills to be insufficient because the interview had only lasted a few minutes. The Selection Board had wrongly assessed her knowledge of languages, namely of English, since she had obtained 16,5 points out of 20 at the written tests, which established her level.

THE DECISION

1 The scope of the Ombudsman's inquiry

1.1 On 4 November 2003, the complainant lodged a complaint with the European Ombudsman concerning the rejection of her candidature in open competition COM/C/1/02. She alleged that the Selection Board had failed to respond adequately to her letter of 25 July 2003 in which she had requested some clarifications from the President of the Selection Board concerning her marks in test f) and g).

In her letter, the complainant raised in summary the following points:

For practical test f), the complainant considered that her computer had been too slow and had blocked from time to time. She asked the Selection Board to check the computer and the



back-up on the floppy disk.

For oral test g), the complainant considered that the Selection Board had been unable to assess her knowledge of the main developments concerning European unification, given that she had only been asked one question inviting her to give the names of the two French Commissioners. The complainant considered that the Selection Board had instead dwelt on her past professional experience.

Given that the complainant was over 45 years old, she had the feeling that she was discriminated against because of age.

For both tests f) and g), the complainant considered that, given that she had been among the five first candidates to sit the tests, she had had less time to prepare for the competition compared with candidates who had been asked to sit the test later. She had therefore not been able to benefit from information received from the latter.

1.2 The Ombudsman notes that the Commission has not only given its opinion on the above-mentioned allegation but has also given its opinion on further allegations, (e.g. the alleged failure of the Selection Board to give the complainant information on the comparison of the candidates' merits, an alleged lack of transparency). However, in the letter opening the present inquiry, the Ombudsman had limited the latter to the complainant's allegation that the Commission had failed to respond adequately to her letter of 25 July 2003. The Ombudsman notes that the complainant did not ask him to extend the scope of his inquiry. In the Ombudsman's view, the scope of his inquiry should therefore be limited to the above-mentioned allegation.

1.3 In her observations dated 24 March 2004, the complainant pointed out that, by giving her 9,5 points at the practical test whereas the minimum required was 10 points out of 20, the Selection Board had deliberately decided to exclude her from the competition. She further pointed out that the Selection Board had wrongly considered the level of her secretarial skills to be insufficient because the interview had only lasted a few minutes. The Selection Board had wrongly assessed her knowledge of language, namely of English, because she had obtained 16,5 points out of 20 at the written tests, which proved her level. The complainant thus appeared to make new allegations.

1.4 Pursuant to Article 195 of the Treaty establishing the European Community, *"the European Ombudsman shall conduct inquiries for which he finds grounds"*.

Concerning the allegation that, by giving her only 9,5 points at the practical test the Selection Board had deliberately decided to exclude the complainant from the competition, the Ombudsman considers that the complainant has not submitted any evidence to support her case.

Concerning the allegation that the Selection Board had wrongly assessed her knowledge of languages, namely of English, the Ombudsman considers that the complainant has not



submitted any evidence to show that the assessment of her candidature by the Selection Board was wrong.

Concerning the allegation that the Selection Board had wrongly considered the level of her secretarial skills to be insufficient because the interview had only lasted a few minutes, the Ombudsman notes that, in its opinion, the Commission stated that each interview had lasted 35 minutes. According to the Commission, the duration of the interview could vary from one candidate to the other, depending on their professional experience and the quality of their answers to the questions raised by the Selection Board. In the light of these comments, the Ombudsman considers that the complainant has not submitted sufficient evidence to show that the Selection Board had wrongly considered the level of her secretarial skills to be insufficient.

1.5 In view of the above, the Ombudsman considers that there are insufficient grounds to extend his inquiry so as to cover the complainant's further allegations. The complainant could however consider the possibility to lodge a new complaint with the European Ombudsman as regards these further allegations.

2 The alleged failure of the Commission to respond adequately to the complainant's letter dated 25 July 2003

2.1 The complainant applied to take part in competition COM/C/1/02 organised by the Commission to draw up a reserve list of French-speaking typists. As she was among the best candidates after the preselection tests, she was invited to participate in the written tests. Point VI B of the notice of competition stated that written test d) would be marked out of a maximum of 20 points and that candidates had to obtain a minimum of 10 points. Given that the complainant had not obtained the minimum of ten points required by the notice of competition for test d) but obtained 7,1 points out of 20, she had been informed of her exclusion from the competition. The complainant alleged that the Commission failed to respond adequately to her letter of 25 July 2003 in which she requested some clarifications from the President of the Selection concerning her notes in test f) (practical test) and test g) (oral test).

2.2 The Commission stated that, in its reply dated 7 October 2003, EPSO, on behalf of the President of the Selection Board, gave the complainant explanations as regards her tests.

As far as the complainant's practical test was concerned, she had been sent a copy of the evaluation sheet of her practical test which contained comments drawn up by the Selection Board. It had emerged from the evaluation sheet that the instructions relating to the setting on page/formatting, in the tables and in insertions, displacements and corrections of text had not been carried out in a complete and correct way.

As to oral test g), the complainant had namely been informed that she had neither demonstrated a good mastery of technical secretarial skills nor convinced the Selection Board of her motivation. In addition, her linguistic knowledge had proved too weak and her knowledge of the main developments concerning European unification and different Community policies had proved to be insufficient.

As for the complainant's request that her computer had been too slow and had blocked from



time to time and her wish that the Selection Board should check the computer and the back up of the floppy disk, the Commission stated, in its opinion, that candidates had had the opportunity to test the computer and to point out any problem to the supervisor. The complainant had not pointed out any anomaly as regards her computer or the floppy disk.

As for the complainant's consideration that the Selection Board had been unable to assess her knowledge of the main developments concerning European unification in oral test g), the Commission stated, in its opinion, that in its reply of 7 October 2003, EPSO, on behalf of the Selection Board, had reminded the complainant of the various questions which had been asked to her concerning the main developments regarding European unification and different Community policies; the Selection Board had asked questions regarding the two French Commissioners and the role of the Commission in the field of trade at both European and world levels. In addition, the complainant was asked about the recent events at the European level and the role of Mr. Solana, the role of the Commission and its position regarding the war in Iraq. These questions had perfectly covered the knowledge of the European Union.

As for the complainant's consideration that for both tests f) and g), she had had less time to prepare for the competition compared with candidates who had been asked to attend the test later and that she had therefore not been able to benefit from information received from the latter, the Commission made no comments in its opinion on this point. Nor did it make any comments on the complainant's feeling that she had been discriminated against on the grounds of age because she had considered that the Selection Board had dwelt on her past professional experience.

2.3 As for the complainant's allegation that her computer had been too slow and had blocked from time to time and her request that the Selection Board should check the computer and the back-up of the floppy disk, the Ombudsman notes that EPSO, in its reply of 7 October 2003 on behalf of the Selection Board, underlined that all candidates had used the same material and that the complainant could not have been in a less favourable situation than the other candidates. The Ombudsman further notes that, in its opinion, the Commission stated that candidates had had the opportunity to test the computer and to point out any problem to the supervisor. As soon as the test had been printed and signed, floppy disks were emptied of their contents, only the typed text which had been signed being regarded as the test to be corrected. According to the Commission, the complainant had not pointed out any anomaly as regards her computer or the floppy disk. The Ombudsman therefore considers that the Commission and/or EPSO appear to have responded adequately to the complainant's letter of 25 July 2003 as regards this point.

As for the complainant's consideration that the Selection Board had been unable to assess her knowledge of the main developments regarding European unification in oral test g), given that she had only been asked one question inviting her to give the names of the two French Commissioners, the Ombudsman notes that EPSO, in its reply on behalf of the Selection Board of 7 October 2003, pointed out to the complainant the various questions which had been put to her regarding the main developments concerning European unification and various Community policies. The Ombudsman further notes that, in her observations, the complainant stated that



she had been asked further questions by the Selection Board when she presented her Curriculum Vitae. The Ombudsman therefore considers that the Commission and/or EPSO appear to have responded adequately to the complainant's letter of 25 July 2003 as regards this point.

As to the complainant's feeling that she had been discriminated against on the grounds of age because she considered that the Selection Board had dwelt on her past professional experience, the Ombudsman notes that EPSO, in its letter of 7 October 2003, had already explained that the Selection Board had in no way taken into account the complainant's age. The Ombudsman considers that the Commission and/or EPSO thus appear to have responded adequately to the complainant's letter of 25 July 2003 as regards this point.

The Ombudsman further notes that, as to the complainant's consideration that for both tests f) and g), she had had less time to prepare for the competition compared with candidates who had been asked to sit the test later and that she had therefore not been able to benefit from information received from the latter, in its letter of 7 October 2004, EPSO, on behalf of the President of the Selection Board, had already stated that it considered that the time which transpired between the publication of the notice of competition and the examination had been sufficient to allow all candidates to prepare for it. The Ombudsman therefore considers that the Commission and/or EPSO appear to have responded adequately to the complainant's letter of 25 July 2003 as regards this point.

2.4 In these circumstances, the European Ombudsman considers that there appears to have been no maladministration on the part of the Commission.

3 Conclusion

On the basis of the 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,

P. Nikiforos DIAMANDOUROS

(1) The European Selection Personnel Office is responsible for the organisation and the management of competitions for recruitment to institutions of the European Union since January 2003.