

Decision of the European Ombudsman on complaint 2289/2003/TN against the European Personnel Selection Office

Decision

Case 2289/2003/TN - Opened on 16/01/2004 - Decision on 08/10/2004

Strasbourg, 8 October 2004

Dear Mr X.,

On 1 December 2003, you made a complaint to the European Ombudsman concerning the European Personnel Selection Office's evaluation of your written test in open competition COM/A/2/02 Agriculture. On 6 January 2004, you submitted additional supporting documents.

On 16 January 2004, I forwarded the complaint to the Director of the European Personnel Selection Office (EPSO). On 10 May 2004, the European Commission submitted an opinion on behalf of EPSO. I forwarded it to you with an invitation to make observations, which you sent on 25 June 2004.

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

THE COMPLAINT

In December 2003, a complaint was made to the Ombudsman concerning the European Personnel Selection Office's (hereafter "EPSO") evaluation of the complainant's written test in open competition COM/A/2/02 Agriculture.

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

By letter of 30 October 2003, EPSO informed him that the mark he had obtained (21) in the written test was not sufficiently high (22) to be admitted to the oral test. However, on the evaluation sheet it was noted that his written test was "a satisfactory test, just meeting requirements". He interprets "requirements" as being the requirement for admission to the oral test, since no other requirements or standards are relevant in the context.

It was also noted on the evaluation sheet that the "candidate missed some major points in Q1a on rural development". According to the complainant, Q1a did not mention rural development



and he is therefore concerned that the wording of Q1a was misleading or that non-transparent criteria were used when marking the answers.

The complainant sent EPSO a letter regarding the matter on 12 November 2003 and received a reply dated 25 November 2003. However, EPSO's reply did not explain what was meant by "just meeting requirements" and it only gave an ambiguous and unspecific explanation of the statement that the "candidate missed some major points in Q1a on rural development".

The complainant alleges that EPSO has failed to deal properly with the points raised in his letter of 12 November 2003, regarding the evaluation of his written test in open competition COM/A/2/02 Agriculture.

The complainant claims that EPSO should clearly explain the terminology used in its evaluation of his answers to the written test, and if an injudicious use of wording was used this should be acknowledged.

THE INQUIRY

The European Personnel Selection Office's opinion

The European Commission submitted an opinion on behalf of EPSO. The opinion makes, in summary, the following comments:

The complainant participated in open competition COM/A/2/02 in the field of agriculture. By letter of 30 October 2003, the complainant was informed of his results in the pre-selection tests and the written test. As he was not among the candidates with the 150 best marks, he was not admitted to the following stage of the competition. The complainant requested a copy of his written test d) and the evaluation form, which were sent to him. By letter of 12 November 2003, the complainant asked for his test to be reviewed.

On 25 November 2003, EPSO replied on behalf of the selection board, informing the complainant that the board upheld its evaluation of his written test, which was judged to be "satisfactory" but which did not receive one of the 150 best marks. In addition, the system used for correcting the written tests was explained in the reply.

Point B.3 in the notice of competition stipulated that only the candidates obtaining the 150 best marks in the written test d) would be admitted to the oral test. A test described as "satisfactory and just meeting requirements" gives a candidate at least the minimum of 20 points, putting him in competition with those other candidates who have also obtained at least the minimum points. The 150th best mark in this test was 22 points and the complainant only obtained 21 points.

As regards the complainant's comments on the terms used by the selection board in the evaluation form, the relevant case law holds that any difficulties experienced by applicants in appreciating certain aspects of the explanations given voluntarily by the selection board do not undermine the reasons for its decision, which were already communicated through the marks being sent to the person concerned (1) . The complainant had chosen to reply to Subject 2, the



title of which was "Rural development and environmental aspects". Question 1a - "On the basis of the documents provided, summarise recent trends in agriculture in the European Union and their impact on the environment" - formed an integral part of Subject 2 and therefore, by definition, concerned rural development and environmental aspects.

Furthermore, each written test was corrected anonymously in accordance with the same criteria applied to all candidates by at least two markers, who passed on their marks and comments to the selection board. After taking note of these comments, the board decided on the marks for each test, again on an anonymous basis.

The complainant's observations

In his observations, the complainant makes, in summary, the following remarks:

In his letter of 12 November 2003, he queried the "interpretation of the written test questions, the criteria used to correct the respective answers and the consequent accuracy of the evaluation of [his] written test answers". None of these points were satisfactorily clarified by EPSO in its reply of 25 November 2003. Nor does EPSO's opinion clarify the main thrust that, in light of the comments made in the evaluation of the test, question 1a was worded in a misleading manner and/or improperly evaluated. Either the selection board wished candidates to give emphasis to "rural development" when answering question 1a, in which case it would have been correct in penalising the complainant for failing to do so, but negligent in wording the question without any indication that it specifically encompassed "rural development" as a major component; or "rural development" was not an issue in question 1a, as evidenced by the question's wording, in which case the complainant should not have been penalised for missing some points on this subject. The title of Subject 2 was "Rural Development and Environmental Aspects". This subject encompassed questions 1a, 1b and 2. Based on the specific wording of questions 1a and 1b, it is clear that candidates should concentrate on "the impact on the environment" when answering 1a and on "relevant rural development measures" when answering 1b.

In his observations, the complainant further asks for clarification as to whether his test was re-examined by independent correctors who were not aware of the marks previously awarded and their associated comments. He also states that he would like the Commission to provide him with a copy of the evaluation grid and the criteria used to assess the candidates' answers.

THE DECISION

1 Preliminary remark

1.1 The complaint concerns the European Personnel Selection Office's evaluation of the complainant's written test in open competition COM/A/2/02 Agriculture.

1.2 In his observations on the opinion sent on behalf of the European Personnel Selection Office (EPSO), the complainant asks for clarification of how the re-examination of his test was carried out. He also requests access to a copy of the evaluation grid and the criteria used to assess the candidates' answers. These requests do not constitute part of the original complaint and the complainant does not appear to have brought them to the direct attention of EPSO. The



Ombudsman therefore suggests that the complainant contact EPSO directly regarding the matter. If the complainant does not receive a satisfactory response from EPSO within a reasonable time, he could consider submitting a new complaint to the Ombudsman, if he considers the circumstances to constitute a possible instance of maladministration.

2 The alleged failure to deal with the points in the complainant's letter

2.1 The concern brought forward in the complainant's letter to EPSO of 12 November 2003 was based on two main points: 1) The statement that his test was "a satisfactory test, just meeting requirements"; and 2) The assertion that he "missed some major points in Q1a on rural development". The Ombudsman will examine these two points separately.

3 The statement that the test was satisfactory

3.1 The complainant alleges that EPSO failed to explain what was meant by the statement in the evaluation form that his test was "a satisfactory test, just meeting requirements". According to the complainant, the term "requirements" can only be interpreted as being the requirement for admission to the oral test, since no other requirements or standards are relevant in the context.

3.2 The opinion sent on behalf of EPSO argues that in its reply to the complainant, EPSO explained that his written test was judged to be "satisfactory" but that it did not receive one of the 150 best marks. In the opinion it is further explained that according to the notice of competition, only the candidates obtaining the 150 best marks in the written test would be admitted to the oral test. A test described as "satisfactory and just meeting requirements" gives a candidate at least the minimum of 20 points, putting him in competition with those other candidates who have also obtained at least the minimum points.

3.3 The Ombudsman notes that EPSO has explained that a test described as "satisfactory and just meeting requirements" is a test obtaining at least the minimum of 20 points, putting the candidate in competition with those other candidates who have also obtained at least the minimum points. The Ombudsman finds it obvious that at the time of marking the written tests and filling out the evaluation forms, it was not yet possible to say which would be the 150 best candidates to be allowed to participate in the oral test. At that time, it was only possible to determine who had obtained the minimum of 20 points. In view of the above, the Ombudsman considers the statement concerned to be sufficiently explained and therefore finds no maladministration by EPSO as regards this aspect of the complaint.

4 The assertion that some major points on rural development were missed

4.1 The complainant alleges that EPSO failed to explain the assertion in the evaluation form that he had "missed some major points in Q1a on rural development". Since Q1a did not mention rural development, he is concerned that the wording of the question was misleading or that non-transparent criteria were used when marking the answers. In his letter of 12 November 2003, the complainant queried the "interpretation of the written test questions, the criteria used to correct the respective answers and the consequent accuracy of the evaluation of [his] written test answers". According to the complainant, none of these points was satisfactorily clarified by EPSO, either in its reply of 25 November 2003, or in its opinion.

4.2 The opinion submitted on behalf of EPSO argues that the complainant had chosen to reply to Subject 2, the title of which was "Rural development and environmental aspects". Question 1a - "On the basis of the documents provided, summarise recent trends in agriculture in the



European Union and their impact on the environment" - formed an integral part of Subject 2 and therefore, by definition, concerned rural development and environmental aspects. Each written test was corrected anonymously in accordance with the same criteria applied to all candidates by at least two markers, who passed on their marks and comments to the selection board. After taking note of these comments, the board decided on the marks for each test, again on an anonymous basis. Upon the complainant's request that his written test should be reviewed, EPSO informed him that the selection board had decided to uphold its evaluation of his test.

4.3 The Ombudsman notes that, in his letter to EPSO, the complainant explained that Question 1a did not make specific reference to rural development and that, accordingly, the comment that he missed some major points on rural development raises fundamental questions concerning the interpretation of the written test questions; the criteria used to correct the respective answers; and the accuracy of the evaluation of his written test answers.

4.4 The European Code of Good Administrative behaviour establishes that, when answering correspondence, the institution shall try to be as helpful as possible and shall reply as completely and accurately as possible to questions which are asked (2) . However, in considering the application of the principles of good administration in the present case, the Ombudsman underlines that recruitment to the Community institutions is governed by specific rules laid down in the Staff Regulations and in the case law of the Community courts. Moreover, the Ombudsman considers that for practical and legal reasons there must be limits to the extent to which EPSO can engage in a dialogue with a disappointed candidate concerning the questions in a test.

4.5 As regards the complainant's points about the interpretation of Question 1a and the criteria used to correct the answers, the Ombudsman understands EPSO's reply to be in substance, that rural development was relevant in both Question 1a and Question 1b, since Subject 2, of which both questions constituted part, was about both rural development and environmental aspects. In the Ombudsman's view, EPSO's reply appears reasonable. The Ombudsman is not aware of any rule or principle that would require the selection board, in a case such as the present, to focus each question exclusively on one of two aspects of the overall subject of the test. In view of the above, the Ombudsman considers that EPSO has satisfactorily dealt with the points in question.

4.6 As regards the accuracy of the evaluation of the complainant's written test, the Ombudsman notes that, at the complainant's request, the selection board appears to have reviewed the test and to have informed the complainant of its decision to uphold its earlier decision on the evaluation. The Ombudsman therefore finds that EPSO has satisfactorily dealt with this point made by the complainant.

4.7 In view of the findings in points 4.5 - 4.6 above, the Ombudsman finds no maladministration by EPSO in its dealing with this aspect of the complaint.

5 The claim that EPSO should clearly explain the used terminology

5.1 The complainant claims that EPSO should clearly explain the terminology used in its evaluation of his answers to the written test, and if an injudicious use of wording was used this



should be acknowledged.

5.2 In view of the conclusions in paragraphs 3.3 and 4.7 above, the Ombudsman finds no reason to pursue the complainant's claim.

6 Conclusion

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

The Director of EPSO will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Case T-33/00, *Natalia Martínez Páramo and Others v. Commission of the European Communities* [2003] ECR IA-00105; II-00541.

(2) Article 12 of the European Code of Good Administrative Behaviour, available on the Ombudsman's website: <http://www.ombudsman.europa.eu>. [Link]