

Decision of the European Ombudsman on complaint 1135/2004/OV against the European Personnel Selection Office

Decision

Case 1135/2004/OV - Opened on 27/04/2004 - Decision on 26/10/2004

Strasbourg, 26 October 2004

Dear Mr X.,

On 14 April 2004, you made a complaint to the European Ombudsman against the European Personnel Selection Office concerning your exclusion from competition COM/B/2/02.

On 27 April 2004, I forwarded the complaint to the Director of EPSO. EPSO sent its opinion on 2 July 2004, pointing out that you had made an appeal on the basis of Article 90 (2) of the Staff Regulations. On 23 August 2004, EPSO sent a copy of the reply of the Appointing Authority of 17 August 2004 to your appeal.

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

THE COMPLAINT

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

The complainant participated in open competition COM/B/2/02 (administrative assistants in the fields of "archives/records management" and "documentation/library", the complainant chose the first option) organised by the European Personnel Selection Office (EPSO) (1) . The complainant passed the pre-selection tests and was then invited to submit an official application.

By letter of 15 January 2004, the Selection Board however informed the complainant that he could not be admitted to the oral tests, because contrary to the competition notice, the complainant's further training had no relation with the functions described under point A.II.1 of the competition notice. By letter of 29 January 2004 to the Selection Board, the complainant asked for a reconsideration of the decision excluding him from the oral exam. He pointed out that he has a diploma of "secretariat management/languages, option business translator" which has important points in common with the functions described in point A.II.1 of the competition



notice. Moreover, the duration of his additional education was three years, which is longer than the two years required by the competition notice.

On 19 February 2004, the Selection Board confirmed its previous decision, stating that point A.II.1 of the competition notice provides that candidates *"must have successfully completed a course of advanced secondary education and obtained a certificate, as well as further training, duly certified, lasting at least two years, in a field relevant to the duties"*. The Selection Board stated that the complainant's diploma of secretariat management with specialisation in business translation could not be considered as relevant to the duties of the field of archives/records management.

On 14 April 2004, the complainant made the present complaint to the Ombudsman. He observed that the competition in question was a competition for B posts (assistants) for which no university diploma is required. However, in Flanders there exists no education of 2 years for a diploma in archives/records management, except a university education. Therefore there appears to be discrimination compared with other Member States. The complainant is convinced that his training "secretariat management/languages" was very relevant to the duties described in point A.II.1 of the competition notice. Also the complainant's employment contracts and certificate of his current employer show that archive management forms part of his daily duties.

In his complaint the Ombudsman, the complainant thus alleged that the decision of the Selection Board not to admit him to the oral test of competition COM/B/2/02 was unjustified.

THE INQUIRY

EPSO's opinion

In its opinion of 25 June 2004, EPSO informed the Ombudsman that on 14 April 2004, the complainant had lodged an appeal on the basis of Article 90.2 of the Staff Regulations, with the same allegations as those set out in the complaint to the Ombudsman. On 23 August 2004, EPSO sent a copy of the Appointing Authority's reply of 17 August 2004 to the complainant's appeal.

THE DECISION

1 The alleged unjustified exclusion from the oral test

1.1 The complainant alleged that the decision of the Selection Board not to admit him to the oral test of competition COM/B/2/02 was unjustified. The complainant argued that the competition in question was a competition for B posts (assistants) for which no university diploma is required. However, in Flanders there exists no education of 2 years for a diploma in archives/records management, except a university education. The complainant is also convinced that his training "secretariat management/languages" was very relevant to the duties described in point A.II.1 of the competition notice. Also the complainant's employment contracts and certificate of his current employer show that archive management forms part of his daily duties.



1.2 EPSO pointed out that the complainant made an appeal on the basis of Article 90 (2) of the Staff Regulations, which contained the same allegations as those set out in the complaint to the Ombudsman. On 23 August 2004, EPSO sent a copy to the Ombudsman of the Appointing Authority's reply of 17 August 2004 to the complainant's appeal.

1.3 According to Article 2.8 of the Ombudsman's Statute, *"no complaint may be made to the Ombudsman that concerns work relationships between the Community institutions and bodies and their officials and other servants unless all the possibilities for the submission of internal administrative requests and complaints, in particular the procedures referred to in Article 90 (1) and (2) of the Staff Regulations, have been exhausted by the person concerned and the time limits for replies by the authority thus petitioned have expired"* (2) .

1.4 Considering that the complainant has made an appeal on the basis of Article 90 (2) of the Staff Regulations at the same time as the complaint to the Ombudsman, the Ombudsman has to terminate his inquiries into this complaint on the basis of Article 2.8 of the Ombudsman's Statute.

1.5 The Ombudsman however points out that, if the complainant is dissatisfied with the answer of 17 August 2004 to him Article 90 (2) appeal, he has the possibility to make a new complaint to the Ombudsman.

2 Conclusion

The Ombudsman closes his inquiry into the present complaint on the basis of Article 2.8 of the Ombudsman's Statute.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) See OJ C 314 A/12.

(2) Decision of the European Parliament on the Regulations and General Conditions governing the performance of the Ombudsman's duties, OJ 1994 L 113/15.