

## **Decision of the European Ombudsman on complaint 529/97/BB against the European Commission**

Decision

**Case 529/97/BB - Opened on 17/06/1997 - Decision on 30/07/1998**

Strasbourg, 30 July 1998 Dear Mr W., On 3 October 1996 you made a complaint to the European Ombudsman concerning the assessment of your oral test within Internal Competition COM/T/A/96. After having learned from the European Commission that you had on 5 November 1996 submitted an appeal under Article 90 of the Staff Regulations, the Ombudsman had to close your file in accordance with Article 2.8 of the Statute of the European Ombudsman. On 21 March 1997 you presented again your complaint which I forwarded to the President of the European Commission. The Commission sent its opinion on 14 August 1997 and I forwarded it to you with an invitation to make observations, if you so wished. On 23 September 1997, I received your observations on the Commission's opinion. I am writing now to let you know the results of the inquiries that have been made.

### **THE COMPLAINT**

The complainant had participated in an internal competition organised by the European Commission. In the oral test he received 24 out of the required 25 points. He considers that unfair and discriminatory questions were asked of him at the oral test. The complainant explains that he was asked how the BSE crisis could impact on the Inter-Governmental Conference. He had replied that the IGC should consider the appropriateness of maintaining the blocking vote. On further questioning, he asserted that the removal of the blocking vote might be difficult as unanimity would be required at the IGC to remove the requirement for unanimity in those areas where it was currently required. Subsequent questions related to the complainant's nationality. He had replied that he was primarily proud to be European, secondly Welsh, and thirdly British. In his complaint Mr W. wants to stress that the British Government's policy of non-cooperation with the European Union over the BSE affair was high profile at the time of his interview. This being the case it seems to him that questions relating to the BSE affair, and whether or not one was proud to be British should not have been posed to a British member of the Agriculture Department of the Commission. Furthermore, he claims that he was not given details of the assessment of his oral test. On 20 August 1996, the complainant sent a note to DG IX, firstly requesting information on how his performance at the interview was assessed, and secondly requesting annulment of his oral test and a possibility to retake the oral test at a later date. On 17 September 1996, he received a reply from DG IX stating that the assessment of his



points did not enable him to gain the minimum required for the oral test. On 5 November 1996, the complainant submitted an appeal R/1644/96 under Article 90 of the Staff Regulations against the decision of the Selection Board. On 25 February 1997, after having examined his appeal the Appointing Authority confirmed the Selection Board's decision. In his complaint to the Ombudsman, Mr W. alleges an instance of maladministration on grounds of unfairness and discrimination in the assessment of his oral test. Furthermore, the complainant alleges that the Selection Board failed to give him reasons for its decision not to include him on the list of laureats.

## THE INQUIRY

**The Commission's opinion** In its opinion the Commission stated that it cannot make comments other than those extremely explicit and detailed ones which were made in response to your original complaint R/1644/96. Therefore those comments will be summarised as follows: The aim of the Competition COM/T/A/96 was to assess the aptitude of the candidates to ensure varied duties of permanent officials, which go beyond the duties of temporary agents. The aim of the oral test was to appreciate the capacity of oral expression and aptitude of the candidates to duties of A7/A6 administrators. The selection boards are independent and are accorded with a wide margin of discretion. The Appointing Authority cannot annul or modify a decision taken by a board unless a manifest error has been committed. The assessment of candidates' abilities cannot be subject to control by the Community judiciary unless the rules which govern the proceedings of selection boards have been obviously infringed. Therefore, the Appointing Authority could only verify whether the oral test of Mr W. had been conducted in a regular manner or whether manifest errors on behalf of the Board had been committed. During the oral test the Selection Board followed a previously defined working plan which it applied to all candidates. Several general questions were put forward to all the candidates. These questions concerned the candidates' professional abilities, abilities to exercise administrative duties, experience and capacity in the field of administration as well as linguistic skills. The candidates were also asked additional questions in order to evaluate their capacity to answer hostile questions. The same evaluation criteria was applied to the complainant and the other candidates taking part in the oral test. The criteria of evaluation established by the Selection Board were in accordance with the provisions laid down in the Notice of Competition. According to Article 6 of Annex III of the Staff Regulations, the oral test of a competition as well as other phases of a competition are governed by secrecy of the work of a selection board. The Court of First Instance has stated that a selection board cannot be required, when giving reasons for a candidate's failure of a test, to identify the answers which were considered satisfactory or to explain why they were considered unsatisfactory. It is not necessary in order to enable the Court to exercise its power of review. The notification to the candidate's marks of the oral test constitutes a sufficient statement of reasons. (1) The Selection Board acted in conformity with the requirements laid down by the Court of First Instance. According to the Commission, no irregularities had been committed by the Selection Board, which had whilst conducting the oral test respected the provisions laid down in the Notice of Competition. **The complainant's observations** In his observations the complainant maintained his complaint. Furthermore, he explained that following the oral test he had repeated all the questions posed by the Selection Board and his replies to senior colleagues in DGVI who congratulated him on his replies. The complainant found it contradictory to the aim of the examination that his staff report and years of



experience at the Commission were ignored.

## THE DECISION

*1 Assessment of oral examination within Internal Competition COM/T/A/96* 1.1 According to the established case-law, the assessment made by a selection board in a competition when examining the candidates' knowledge and abilities are comparative by nature. Those assessments and the decisions by which the selection board finds that a candidate has failed a test are the expression of value judgments as to the candidate's performance in the test and fall within the wide margin of discretion accorded to the selection boards. 1.2 In assessing the complainant's professional knowledge and abilities the Selection Board was bound to base its decisions on his performance alone, in accordance with the requirements of the Notice of Competition. The assessments and judgments made of the complainant in his staff report and the fact that he has been employed by the European Commission and the fact that after the exam senior colleagues congratulated him on his replies cannot constitute irrefutable proof of a given degree of knowledge or give grounds for supposing that the complainant gave satisfactory answers in the oral test. 1.3 It does not appear from the Ombudsman's inquiries that the Selection Board failed to comply with the rules binding upon it. 1.4 The Ombudsman's inquiries have, therefore, not revealed any instance of maladministration relating to the assessment of the complainant's oral test of Internal Competition COM/T/A/96. *2 Reasoning of the Selection Board's decision* 2.1 Selection boards under due consideration to the case-law of the Court of Justice and principles of good administrative conduct, shall provide applicants with the reasons and elements necessary for understanding the decisions they take. 2.2 The complainant has expressly requested in his letter of 20 August 1996 detailed information on how the Selection Board assessed his performance. The reply by DG IX stated merely that the assessment of the complainant's points according to the criteria used to evaluate the relative merits of the candidates such as oral expression, analytical capacity, ability to synthesize, management experience and skill, administrative ability within the Community and linguistic aptitude, did not enable him to gain the minimum required for the oral test. 2.3 However, it appears that the Commission has subsequently provided the complainant with sufficient reasoning in its decision on his complaint R/1644/96. Therefore, the Ombudsman does not find grounds for consideration of this aspect of the case. *Conclusion* On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman has therefore decided to close the case. Yours sincerely Jacob SÖDERMAN Copy: Mr Jacques Santer, President of the European Commission Mr Jean-Claude Eeckhout, Director in the Secretariat General (1) Case T-291/94, *Pimley Smith v. Commission*, [1995] ECR II-0637, para. 64-65.