

Decision of the European Ombudsman on complaint 852/97/JMA against the European Commission

Decision

Case 852/97/JMA - Opened on 01/12/1997 - Decision on 15/09/1998

Strasbourg, 15 September 1998 Dear Mr F., On 15 September 1997 you lodged a complaint with the European Ombudsman concerning the alleged failure of the European Commission to consider your appeal to the decision of the jury not to place you on the reserve list for open competition EUR/B/105. On 1 December 1997, I forwarded the complaint to the President of the Commission. On 9 March 1998 I received the Spanish version of the comments sent by the Commission, which I forwarded to you on 30 March 1998 with an invitation to make observations if you so wished. I have received no reply from you to this last letter. I am writing now to let you know the result of the inquiries that have been made.

BACKGROUND

The complaint In December 1996, the complainant participated in a competition for accountants and auditors (EUR/B/105) organized by the European Commission. Having successfully completed the written tests of the competition, he was invited to take part in the final interviews which were held in May 1997. Even though Mr F. obtained the required marks in the oral exams, he was not among the first 140 successful candidates, and hence his name was not included on the reserve list for this competition. Although Mr F. asked the Selection Board to re-examine his marks, this appeal was unsuccessful. The complainant referred in the complaint to his professional experience with different services of the Commission since March 1993, including his post as internal auditor in the Directorate General for Industry (DG III). In the complaint, Mr F. asked the European Ombudsman to take the necessary steps with the Commission to have his name added to the reserve list.

THE INQUIRY

The Commission's opinion The European Commission's comments on the complaint are in summary the following: As set out in the basis of the Notice for open-competition EUR/B/105 (OJ C 159A, 4.6.1996), the selection of candidates was to take place on the basis of a "cascade" system (points VII, VIII and IX). Accordingly, candidates to be selected had first to reach a minimum mark, and from those successful applicants only a pre-determined number was to be taken. Hence, their position in the list was of utmost relevance. The Commission explained that 205 candidates participated in the oral tests. In accordance with point IX of the



Notice of the competition, only 140 of these candidates were to be included on the reserve list, provided that they had reached, at least, 65.50 points. Since the complainant only obtained 63 points, he could not be taken into account in the selection of the 140 candidates for the competition's reserve list. Furthermore, the Commission pointed out that, having placed all the candidates with the best marks on the reserve list, there were still twenty other candidates with better point averages than Mr F. Finally, the Commission pointed out that the tests were a part of an open-competition. This type of procedure is aimed at selecting successful candidates by making a comparative assessment of their performances, and then retaining those most able on the basis of the maximum number fixed in the Notice of the competition. The Commission cannot therefore include the complainant on the reserve list, because this action would be illegal and violate the rules set out in the Notice of the competition. **The complainant's observations** I forwarded the Commission's comments to the complainant with an invitation to make observations, if he so wished, but I received no reply from the complainant.

DECISION OF THE EUROPEAN OMBUDSMAN

On the basis of the information provided by the complainant and the observations submitted by the European Commission, the Ombudsman has reached the following conclusions: 1.1 As the Court of Justice has consistently held, a selection board must follow the provisions laid out in the notice of the competition, and it may not depart from its terms. 1.2. Point IX of the Notice for open competition EUR/B/105 (96/C 159A/02) established that only the 140 candidates having obtained the highest marks in the written composition (test d) and the oral exam should be included in the reserve list for the competition. 1.3. On the basis of the marks obtained by the complainant in the relevant exams -written composition and oral test,- he did not reach the necessary marks to be placed among the best 140 candidates. The decision of the Selection Board not to include the complainant in the final reserve list of the competition was in accordance with the terms of the Notice of the competition, and therefore the Ombudsman finds that there is no instance of maladministration in this case.

CONCLUSIONS

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 cc: Mr Santer, President of the European Commission