

C/2024/2405

8.4.2024

Appeal brought on 28 November 2023 by PB against the judgment of the General Court (Tenth Chamber) delivered on 20 September 2023 in Case T-293/22, PB v SRB

(Case C-727/23 P)

(C/2024/2405)

Language of the case: French

Parties

Appellant: PB (represented by: N. de Montigny, *avocate*)

Other party: Single Resolution Board (SRB)

Form of order sought

The appellant claims that the Court should:

- uphold the appeal and set aside the judgment under appeal;
- dispose of the case and, as the General Court should have done, annul the decision of 16 July 2021 not to include the appellant's name in the ranking of reclassified staff for the 2021 exercise;
- order the defendant to the appeal to pay the costs incurred by the appellant in these proceedings and at first instance.

Grounds of appeal and main arguments

The appellant raises the following grounds of appeal, which are grouped together by type of plea:

- by rejecting as inadmissible certain annexes submitted by the appellant in the course of the proceedings, the General Court has committed manifest errors in the assessment of their relevance to the examination of the substantive pleas;
- by not drawing any consequences from the SRB's admission during the hearing that only the most recent appraisal report was taken into consideration in the context of the reclassification review at issue, the General Court failed to decide on that point even though the appellant addressed that admission in its oral submissions in reply;
- although the appellant had raised the infringement of the averages covered by the Staff Regulations and the quotas established on that basis through the general implementing provisions ('the GIP'), the General Court failed to rule on an essential point of illegality vitiating the entire reclassification procedure and affecting the appellant irrespective of the individual assessment of each grade, in infringement also of the principle of equal treatment;
- in the examination of the annexes, facts and data provided during the proceedings, the General Court manifestly distorted some of the evidence or made contradictory findings and has unfairly and in contravention of the rules attached to the burden of proof, as well as the application of the presumption of legality from which the administration benefits, systematically placed on the appellant the burden of proving a negative, or the General Court has interpreted the principle of the reversal of the burden of proof very restrictively and, accordingly, infringed the right to a fair trial and to the equality of arms from which all appellants should benefit;
- The General Court has, in a contradictory manner, unfairly applied the rules on the burden of proof to the evidence submitted by the parties by requiring the appellant to provide proof of a negative, when the appellant had merely relied on the claim by the SRB of the existence of a negative fact to reach the conclusion that it was appropriate to assume that the SRB had not applied the GIP where they were found to be illegal, in breach of the presumption that the administration complies with the rules that it has imposed upon itself. The General Court has also therefore, several times, in the context of the review of the rules applicable within the SRB, failed to take into account the way in which the rules were actually applied and relied on pure assertions, devoid of substance, made by the SRB, leading in some instances to a distortion of the evidence and in others to an infringement of Article 54 of the Conditions of Employment of Other Servants of the European Union (the 'COS') and the applicable GIP.

- in the context of the application of Article 54 of the COS to the SRB and the examination of the first, third, fourth and fifth pleas, the General Court unlawfully found that the SRB had a ‘wide discretion’ to organise the reclassification exercise and decide on reclassifications, interpreting that discretion in infringement of Article 110(2) of the Staff Regulations of Officials of the European Union and of the averages and quotas fixed pursuant to the Staff Regulations and reproduced in the applicable GIP, and excluding any defect, irregularity and illegality arising from the actual application of those rules;
 - as regards the examination of the lack of reasoning for the adverse decision, the General Court contradicted itself and infringed the concept of individual, sufficient and non-contradictory reasoning, while taking the view that a reference by way of a decision rejecting a complaint on the non-individualised and unsubstantiated advice of a Joint Reclassification Committee (‘JRC’) was sufficient and could be supplemented at a later stage through the litigation, it also confused the timing of the appellant’s knowledge of the reasoning by referring to the annexes submitted during the proceedings at first instance and claiming that the appellant should have been able to deduce the individual reasoning relating to him on that basis;
 - the General Court incorrectly rejected the argument based on a manifest error of assessment taking the view that it was inadmissible for failure to comply with the principle of consistency, although the complaint contained information about that error;
 - The General Court, again in breach of the rules of procedure relating to the admissibility of a plea and its effectiveness, rejected the plea based on the JRC not having published a closing report, unlawfully taking the view that the request for access to documents was able to compensate for the absence of publication, although the procedures meet different objectives and rules and do not apply to the same documents;
 - lastly, the General Court was manifestly wrong to order the appellant to pay all of the costs of the parties, in breach of the principles applicable to the award of costs, including the principle that the costs are to be shared on the basis of fairness, without taking into account (i) the fact that the SRB had undermined the purpose of the pre-litigation procedure; (ii) the admission of procedural irregularity made during the oral hearing; and (iii) the submission of evidence at the end of the proceedings, on which the General Court largely focussed in order to give reasons for the judgment under appeal;
 - overall, the General Court undermines the coherence of the case-law in the examination of the different legal questions submitted to it.
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