

On those grounds,

THE COURT (Second Chamber)

hereby:

1. Dismisses the application;
2. Orders the Commission to bear the costs, including those of the applicant.

Due

Pescatore

Chloros

Delivered in open court in Luxembourg on 22 October 1981.

J. A. Pompe
Deputy Registrar

O. Due
President of the Second Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS
DELIVERED ON 17 SEPTEMBER 1981 ¹

*Mr President,
Members of the Court,*

I — It may happen that officials have reason to complain that they are compelled to perform duties on a higher level than those for which they are remunerated by virtue of their grade.

Much less frequent is the case where they insist on performing duties on a higher level than those which may be expected of them, without claiming, in any way the corresponding salary. However, it is the latter situation which forms the subject-matter of these proceedings.

¹ — Translated from the French.

By her application in Case 218/80, Miss Waltraut Kruse requests you to order the Commission to guarantee that her right to perform the duties of a translator will be guaranteed, together with her assignment exclusively to work of that nature.

In her reply, the applicant further seeks a declaration that the Commission has failed to fulfil its obligation to facilitate her further training and instruction and as a result requests that the Commission be ordered to pay to her, for the damage she claims to have suffered under this head, one franc by way of damages.

The applicant has been employed as an official of the Commission since 1961. She was established as from 1 June 1962 as a secretary in Grade C 3, Step 1. In Category C there is the career of secretary/shorthand-typist or clerical officer comprising two grades, namely C 2 and C 3.

She was assigned with effect from 1 April 1963 to the Executive Secretariat of the Directorate-General for Research and Education, Programmes Directorate, and was promoted to Grade C 2/1. Having been transferred several times to various departments, the applicant was assigned, as from 1 March 1973, to the secretariat of the Directorate-General for Research, Science and Education, but she did not receive any further promotion and it seems that she reached the last step of the last grade of her career some long time ago.

As from 1970/71, the applicant was entrusted more and more with the task of translating and drafting documents in several languages. As from March 1973 she was assigned exclusively to that task

and, as appears from her periodic reports, she performed her duties perfectly satisfactorily.

In her periodic report in respect of the period from 1 July 1977 to 30 June 1979, signed by the reporting officer on 3 June 1980, to the question: "Do these duties correspond to the official's qualifications?" the reply was: "The duties correspond neither to her attitude (surely aptitude is meant here) nor to her training. Nevertheless she has been able, thanks to further training and other initiatives, to put to use within the Directorate-General the knowledge acquired thereby, given the fact, moreover, that she states that she is unable, for medical reasons, to undertake any other form of work".

As to her efficiency and conduct in the service, the report gives the following analytical assessment ... "sets her priorities herself; hence unsatisfactory taking her duties as a whole, even if certain tasks are carried out in her own time and at the week-ends"; "only shows initiative when it comes to learning new languages; outsider in all respects".

As from June 1979, in the words of the applicant herself, she was "compelled more and more to forego her work as a translator in order to attend to petty secretarial tasks".

As from 6 June 1979, the applicant was absent owing to sickness. She reported for work again on 7 January 1980, reserving "all her acquired rights". She was again absent owing to sickness on 8 January 1980, although she was offered, on 3 December 1979, an assignment to the library where she would have been able to undertake urgent translation

work, albeit only for one half of the working day.

On 18 April 1980 the applicant lodged a complaint through official channels which was rejected on 28 July 1980.

II — Admissibility

It seems to me very doubtful whether the submissions contained in the application registered on 28 October 1980 are admissible, either because the complaint of 18 April 1980 was out of time or on the ground that the decision of 28 July 1980 rejecting that complaint was merely by way of confirmation of the act adversely affecting the applicant, although the decision to reject the complaint did not itself mention that the complaint was out of time.

The lawyer acting for the applicant was certainly aware of that fact, since, in his reply registered at the Court on 19 January 1981, he made further submissions seeking a declaration that the Commission had failed to fulfil an obligation and for payment of damages. These new submissions, however, are likewise, in my view, inadmissible, at least as to the first head.

The Commission's view is that the applicant does not have a sufficient interest in these proceedings, given the fact that the Invalidity Committee to whom her case has now been referred will shortly conclude whether the applicant is fit to perform the duties pertaining to her category and the Commission therefore requests you to stay the present proceedings until that body has issued its conclusions.

The Head of the Individual Rights and Privileges Division requested the

applicant on 22 September 1980 to let him know as soon as possible the name of the doctor whom she intended to appoint to represent her within the Invalidity Committee. On 27 November 1980 he repeated his request warning the applicant that if he had not received a reply by 15 December 1980 he would request the President of the Court of Justice to appoint a doctor, pursuant to Article 7 of Annex II to the Staff Regulations. We heard at the hearing that that appointment had been made and that the Committee had met the day before on 3 June 1981.

It is therefore not appropriate to accede to the request of the Commission to stay these proceedings and it seems to me logical that the Invalidity Committee should be required to suspend its deliberations to avoid anticipating the judgment of this Court.

III — Substance

I need not dwell on questions of admissibility or sufficiency of interest since I consider that the two heads of claim are unfounded.

1. It is not disputed that the description of the duties and the qualifications required of the applicant answer to the basic post and corresponding career bracket C 2-C 3. Moreover, the applicant has been in receipt, from at least 1973, of the fixed allowance provided by the second sentence of Article 4a of Annex VII to the Staff Regulations (in the version adopted by Regulation No 914/78 of 3 May 1978), the grant of which is linked to the performance of duties as shorthand-typist and copy-typist; in the event of a change of duties the fixed allowance would cease to be paid.

The “basic posts and corresponding career brackets in each category and in the Language Service as provided for in Article 5 (4) of the Staff Regulations” (Annex I to the Staff Regulations) and the description of the duties and qualifications required by each basic post and determined by each institution, are intended not merely to enable the administration to require of an official the performance of duties which correspond to his grading and to the description of his duties but also to protect officials against unreasonable demands being made upon them by the administration (judgment of 27 July 1973, *Leandro Tontodonati v Commission of the European Communities* [1973] ECR 779, at p. 785, paragraph 8) where the Court held: “... the administration cannot compel an official to fulfil tasks on a level higher than his grade ...”. Apart from a temporary posting an official may not be called upon to occupy a post in a career bracket in his category or grade which is higher than his substantive career bracket (Article 7 (2) of the Staff Regulations). At most the fact that he agrees to perform duties corresponding to a grade higher than his own may be a factor to be borne in mind in connection with promotion, but does not give him the right to be reclassified (judgment of 19 March 1975, *Gijsbertus Van Reenen v Commission of the European Communities* [1975] ECR 445, at p. 455, paragraph 6; *Lucienne de Roubaix, née De Leye v Commission of the European Communities* [1978] ECR 1081, at p. 1089, paragraph 17).

Apart from a temporary posting, the only means by which an official may duly perform duties on a higher level than those assigned to him is to receive promotion on the basis of a competition or otherwise.

The file shows that the applicant applied to take part in a competition organized in 1975 on the basis of qualifications and tests with a view to constituting a reserve list of assistant translators in Grades A 7-A 8 of the Language Service but she was not admitted to the competition on the ground that she did not have the necessary qualifications either as regards formal qualifications or practical experience. She made no complaint on that occasion.

Furthermore, in her letter of 22 April 1980, the applicant stated “that she in no way disputes her substantive classification in Category C and that she does not intend to claim the benefit of the rights enjoyed by translators duly classified in Category L/A”.

Bearing in mind the particularly laudatory assessments which the applicant received in her periodic reports for the periods 1969 to 1971, 1971 to 1973, 1973 to 1975 and 1975 to 1977, it is very surprising that whilst the applicant was frequently transferred, she never applied to take part in a competition for a post corresponding to the new basic posts of secretarial assistant and administrative assistant classified in Category B, posts which were expressly created by Regulation (EEC) No 1473/72 of 30 June 1972 which was intended to give certain classes of officials who had or might have no chance of advancing beyond the grades in Category C, the opportunity to be promoted to grades in Category B.

Whatever may be the reason for that, I can only state that Article 24 of the Staff Regulations in no way confers the rights which the applicant in her application requests you to recognize in her case. The fact that she was able to acquire

training as a translator and that the translation duties were carried out by her *de facto* to the full satisfaction of her superiors and satisfied a growing need within the departments cannot confer on her an absolute right to continue performing those specialized duties.

2. Paragraphs 3 and 4 of Article 24 of the Staff Regulations are as follows:

“It [the Communities] shall facilitate such further training and instruction for officials as is compatible with the proper functioning of the service and is in accordance with its own interests.

Such training and instruction shall be taken into account for purposes of promotion in their careers.”

Assuming that the obligation to assist (Article 24), which the applicant in her reply claims was not observed, may be construed as broadly as the applicant claims, I consider that the administration has satisfied such obligation to the extent permitted by its own interests.

The doctor treating the applicant certified on 22 October 1979 that “she was fit to resume her duties provided that the nature of the work offered to her corresponds to her qualifications. If not, there are fears that her psychological state may deteriorate again”. Then, on 2 January 1980 he stated “the duties of a translator are alone capable of ensuring her mental stability”.

The Commission appears to have followed that recommendation by informing the applicant in November

1979, through the intermediary of the scientific assistant to the Directorate-General, that she would be assigned to the library for one half of the normal working day and to urgent translation duties for the other half of the day. The Commission argued convincingly that it would not be compatible with the efficient functioning of the departments if the applicant were to undertake translation duties for more than one half of her time. On the other hand, it is only by totally ignoring the important correlation between basic posts and career brackets that it is possible to go further and assign to the applicant exclusively translation duties, as in the past.

3. The lawyer acting for the applicant states “within each category, working conditions, special duties and privileges acquired by the official constitute an indisputable right such that any alteration made unilaterally by the authorities in those conditions, special duties or privileges which has the effect of restricting them or making adherence to them more difficult constitutes a wrongful act”.

That allegation seems to me to be totally without foundation. The applicant had not acquired any prerogative within her category. To require her to resume duties corresponding to her classification subject to the arrangements which were finally proposed to her, does not amount to a “unilateral” measure of such a kind as to impose any liability on the Commission.

I might add that consistent with the preoccupations which led the Commission to set up a “medico-social sector”, the applicant’s case seems to be much more a matter for that sector than for the Invalidity Committee. The

Commission, it seems to me, has made a step in that direction by offering to assign the applicant for one half of her time to translation duties; the applicant should make use of the opportunity offered before the Invalidity Committee issues its conclusions in her case.

I am of the opinion that the application should be dismissed and that the parties should bear their own costs.