



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Appeal Chamber)
30 November 2011

Case T-51/08 P

European Commission
v
Daniel Dittert

(Appeals — Civil service — Officials — Promotion — 2005 promotion procedure — Priority points — Points not allocated owing to a technical problem — A* Promotion Committee — Allocation of a lower number of points than had been proposed by the applicant's superior — Failure to include the applicant in the list of officials eligible for promotion)

Application: Appeal brought against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 22 November 2007 in Case F-109/06 *Dittert v Commission* ECR-SC I-A-1-383 and II-A-1-2131, seeking to have that judgment set aside.

Held: The appeal is dismissed. The Commission is to bear its own costs and pay the costs incurred by Mr Daniel Dittert.

Summary

1. *Officials — Actions — Acts adversely affecting an official — Promotion system established by the Commission — Failure to allocate priority points — Act subject to appeal — Condition (Staff Regulations of Officials, Arts 45, 90 and 91)*

2. *Officials — Promotion — Consideration of comparative merits (Staff Regulations of Officials, Arts 38(f) and 45)*

3. *Officials — Promotion — Consideration of comparative merits (Staff Regulations, Art. 45)*

4. *Officials — Promotion — Consideration of comparative merits (Staff Regulations, Art. 45)*

5. *Officials — Promotion — Consideration of comparative merits (Staff Regulations, Art. 45)*

1. In the promotion system implemented by the Commission, a decision not to allocate priority points which is the result of an oversight, and not of a deliberate choice founded on an assessment of the merits of the official concerned, constitutes a breach of procedure if, without that procedural irregularity, the decision not to allocate priority points could have had a different content.

(see paras 59, 60)

2. It is apparent from Article 38(f) of the Staff Regulations that an official on secondment retains his post, his right to advancement to a higher step and his eligibility for promotion. It follows that those officials who pursue their career in their original directorate-general must not be treated differently from the others in the matter of promotion and must benefit from the same possibilities as their colleagues assigned to the same directorate-general.

In this connection, an institution cannot reasonably rely on the alleged difficulty of comparing the respective merits of seconded officials and non-seconded officials, since the career development reports of seconded officials are drawn up by their original directorate-general and not by their superiors in their host institution. The comparison of the merits of seconded officials with those of non-seconded officials therefore remains possible, and indeed essential in order to ensure the equal treatment of all officials.

(see paras 62, 66, 67)

3. There is nothing to prevent a breach of procedure which occurred during the procedure for allocation of priority points within a Commission directorate-general from being corrected by the appointing authority at a later stage of the promotion procedure. However, it is necessary that that corrective intervention is conceived of and takes place in accordance with the general characteristics of the promotion system implemented by the Commission's internal rules.

In this respect, under that system, every official, whether seconded or not, has the right to two consecutive examinations of his merits, each of which may in itself increase his chances of promotion: a comparative examination within his directorate-general, carried out by the Director General, which may result in the award of priority points, and then a comparative examination extended to all the directorates-general, carried out by the Promotion Committee and the appointing authority, which may result in the award of additional priority points. The primary function of that examination extended to all the directorates-general is not therefore to replace the examination carried out by the various directorates-general but to supplement it by the award, if appropriate, of additional priority points.

Furthermore, in a promotion system based on the quantification of merits, characterised by the annual award to officials of merit points and additional priority points, the possibility the appointing authority has of making a corrective intervention may only remedy a breach of procedure committed, for example, in respect of an official, in the consideration of his comparative merits at the level of his directorate-general, where it guarantees for the official concerned treatment which is as favourable as that which would have been applied to him in the absence of that breach. That principle is not complied with in the case where the appointing authority does not consider itself in any way bound by the formal assurances given by the Director General concerned, as regards what his intentions would have been with respect to that official in the absence of the breach of procedure committed, even though the sole purpose of the Director General's action was to correct a breach of procedure such as to compromise the validity of a decision fixing the total number of points, in accordance with the principle of sound administration and the duty of the administration to have regard for the welfare of officials.

(see paras 70-73,75)

See:

T-432/04 *Parlante v Commission* [2007] ECR-SC I-A-2-133 and II-A-2-921, paras 59, 64 and 68

4. The rules for promotion implemented by the Commission provide for the participation of the Directors General in the promotion procedure by means of the award of the priority points for their directorate-general. It is therefore proper for a Director General who has been prevented, following a technical problem beyond his control, from making a decision on the file of one of his subordinates, to forward to the competent Promotion Committee and the appointing authority the relevant information relating to the consideration of the comparative merits of the official concerned within his directorate-general. Far from putting that official in a more favourable position than that of other officials in the same directorate-general, such conduct is on the contrary in accordance not only with the principle of sound administration and the duty to have regard for the welfare of officials, but also with the principle of equal treatment.

(see para. 81)

5. The promotion system established by the Commission is based on the quantification of merits, characterised by the annual allocation to officials of merit points and additional priority points, so as to enable the comparison of merits to be made more easily and more objectively. In such a system, the number of points accumulated by the officials eligible for promotion is decisive for the purposes of their promotion, in the sense that those of them who exceed the promotion threshold will be, in principle, *ipso facto* promoted.

(see para. 93)

See:

Parlante v Commission, para. 59