

In Case 17/83

ANGEL ANGELIDIS, an official of the Commission of the European Communities, resident in Brussels, represented by Edmond Lebrun of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Tony Bieber, 83 Boulevard Grande-Duchesse-Charlotte,

applicant,

v

COMMISSION OF THE COMMUNITIES, represented by its Legal Adviser, Dimitrios Gouloussis, acting as Agent, assisted by Daniel Jacob of the Brussels Bar, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for annulment of the Commission's refusal to grant the applicant additional seniority of two steps,

THE COURT (Second Chamber)

composed of: K. Bahlmann, President of Chamber, P. Pescatore and O. Due, Judges,

Advocate General: C. O. Lenz

Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Statement of facts

Angel Angelidis, a Greek national, obtained a degree in agricultural science

on 12 January 1970 from the School of Higher Agricultural Studies, Athens, on 8 June 1974, a doctorate in agriculture from the Technical High School for Advanced Agricultural Studies, Madrid, and, on 12 June 1975, the title of Doctor of Economics ("Docteur d'État en Sciences Economiques") at the University of Montpellier I.

After having been, from 1970, an adviser, first, to a number of agricultural undertakings, then, at the Centre for Planning and Economic Research, Athens, and, finally, at the Greek Ministry for Coordination, Mr Angelidis took part in the negotiations leading to the accession of the Hellenic Republic to the Communities, as an adviser to the Greek Ministry for Coordination. In February 1979, he was nominated head of the Agriculture Division in that Ministry.

As a result of a competition limited to Greek nationals, Mr Angelidis, by a contract of 11 July 1979, which took effect on 19 July, was engaged by the Commission of the European Communities as a member of the temporary staff in the capacity of translator at the Directorate General for Personnel and Administration. He was classified in Grade L/A 7, Step. 3.

On 1 September 1979, Mr Angelidis was transferred to the Commission's Directorate General for Agriculture and assigned to the Directorate for International Affairs.

By a contract of 11 August 1980, Mr Angelidis was engaged by the Commission, with effect from the preceding 1 January, as a member of the temporary staff in the capacity of administrator at the Directorate General for Agriculture, Directorate for Agricultural Legislation, Division for Matters Common to Several

Products and Conditions of Competition. He was classified in Grade A 7, Step 3.

Having been successful in a competition organized for the purpose of recruiting principal administrators of Greek nationality, Mr Angelidis was appointed as a probationary official by a Commission decision of 4 May 1982, with effect from the preceding 1 April. He was assigned to the post which he occupied at the Directorate General from Agriculture and classified in Grade A 5, Step 1.

By a letter of 14 June 1982, lodged at the Secretariat General of the Commission on 5 July, Mr Angelidis submitted a complaint, pursuant to Article 90 (2) of the Staff Regulations, seeking additional seniority of 48 months, that is, two additional steps, with the result that he would be placed in Step 3 of Grade A 5. He considered that that additional seniority was due to him, pursuant to the second paragraph of Article 32 of the Staff Regulations, by virtue of his occupational experience of 12 years.

Mr Angelidis's complaint did not receive an express reply from the Commission.

By a decision of 14 December 1982, which took effect on 1 January 1983, Mr Angelidis was established in his post, without change of grading.

II — Written procedure and conclusions of the parties

On 1 February 1983, Mr Angelidis brought this action against the implied rejection of his complaint which was deemed to have resulted, on 5 November 1982, from the Commission's failure to reply.

The applicant, in his application, claims that the Court should:

Declare that the action is admissible and well-founded;

Consequently,

- (a) annul the decision assigning him to a step in the measure of 4 May 1982, appointing him a probationary official with effect from 1 April 1982 and in consequence in the measure of 14 December 1982 establishing him in his post with effect from 1 January 1983;
- (b) declare that he must be classified in Step 3 of Grade A 5 in the said measures;
- (c) annul the implied rejection of the complaint made in this respect on 5 June 1982;
- (d) order the defendant consequently to rectify the situation of the applicant, particularly with regard to his remuneration;
- (e) order the Commission to pay the costs.

The Commission, in its defence, claims that the Court should:

Dismiss the application as unfounded;

Order the applicant to pay the costs.

The written procedure followed the normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court (Second Chamber) decided to ask the Judge-Rapporteur to meet the parties' representatives with a view to seeking with them a solution to the dispute.

The meeting between the Judge-Rapporteur and the representatives of the parties took place on 6 October 1983. The parties were able to express their points of view at that meeting, in the light of the information provided by the Judge-Rapporteur and of the questions put by him.

Following upon that meeting, the Commission re-examined the applicant's situation and informed the Court, on 15 November 1983, that, in the light of the fresh information provided by the applicant's representative, it was prepared to take into account relevant experience totalling nine years and one month, so that the application of Article 2 of the Staff Regulations would cause the applicant to be assigned to Step 2 of Grade A 5. However, the Commission pointed out that the application of Article 32 of the Staff Regulations to this case had, in its opinion, no solid legal basis and that it would raise serious practical problems concerning the previous classification of several hundred officials.

The applicant having expressed his views, on 25 November 1983, on the Commission's statement, the latter, by a letter of 19 December 1983, informed the Court that, since the essential point of the dispute was a question of law, namely, the interpretation of Articles 32 and 46 of the Staff Regulations, and since that concerned a fairly large number of officials, it was not in a position to agree to a settlement of the action by classifying the applicant in Step 2 of Grade A 5.

Under those conditions, the Court (Second Chamber), upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, decided to open the oral procedure without any preparatory inquiry.

The parties were invited to take account, in their pleadings, of the points of law laid down in the meantime in the judgment of the Court (Second Chamber) of 1 December 1983 (Case 190/82) *Adam Blomefield v Commission* [1983] ECR 3981).

III — Submission and arguments of the parties during the written procedure

The *applicant* makes a single submission in support of his application alleging infringement of the Staff Regulations (in particular Article 5 (3), the second paragraph of Article 32 and Article 46), of the Commission Decision of 6 June 1973 on the criteria applicable to grade and step classification upon recruitment (in particular Article 5 (1) and the table annexed to that decision), and of general principles and rules of law, in particular the principles of equality, of objectivity, of distributive justice and the principle *patere legem quam ipse fecisti*. The effect of those provisions and principles is that the applicant should have had the benefit, on account of his relevant experience of more than 12 years, of additional seniority of 48 months at the time of his appointment as an official, and, consequently, he should have been classified in Step 3 of Grade A 5.

The *Commission* contends that a former member of the temporary staff appointed as an official cannot claim the benefit of Article 32 of the Staff Regulations, the relevant provision being Article 46 of those regulations. In any event, the applicant has not proved that he has relevant and specific experience such as to justify the additional seniority of two steps which he claims.

A — *The legal aspects*

The *applicant* complains that the Commission, when it appointed him as a probationary official and, consequently, when it established him, classified him in Step 1 of Grade A 5 without any additional seniority in breach of the applicable rules and principles.

(a) According to the second paragraph of Article 32 of the Staff Regulations, the appointing authority may, taking into account the training and special experience for the post of the person concerned, allow additional seniority in his grade, which is not to exceed 72 months in Grades A 1 to A 4, L/A 3 and L/A 4 and 48 months in other grades. Moreover, Article 5 (1) of the Commission Decision of 6 June 1973 on the criteria applicable to grade and step classification on recruitment provides that, in consideration of any experience which a candidate may have going beyond that taken into account in determining the grade at which he is appointed, the appointing authority must grant additional seniority in accordance with the table annexed to that decision.

That table shows that relevant experience of at least 11 years entitles an official in Grade A 5 to additional seniority of 48 months, which is equal to two steps.

The applicant claims that he has proved that he possesses the necessary experience. However, the Commission has wrongly refused to apply to his case Article 32 of the Staff Regulations and the relevant provisions of the decision of 6 June 1973.

Contrary to the Commission's contention, Article 46 of the Staff Regulations is not applicable in this case.

(b) Article 46 is to be found in Chapter 3 of Title III of the Staff Regulations, entitled "Reports, Advancement to a Higher Step and Promotion". The Staff Regulations provide for two means of filling vacant posts: promotions and other methods of appointment. Article 46, by reason of the very place which it occupies in the Staff Regulations, can only be applicable to cases of promotion and not to the other methods of appointment.

The content of Article 46 itself demonstrates that it cannot apply, without discrimination, to an appointment following upon an open competition since this, by definition, will lead, at least to some extent, to the appointment of persons outside the Community institutions.

According to the Court's case-law, Article 46 applies to advancement to a higher step at the time of promotion.

It is thus clearly impossible to regard as a promotion the applicant's appointment as a probationary official, all the more so as

it took place as a result of an open competition.

(c) The decision appointing the applicant as a probationary official expressly refers to Article 32, and not to Article 46, of the Staff Regulations.

(d) The provisions relied upon by the Commission in support of its position are totally irrelevant.

Article 15 of the Conditions of Employment of Other Servants and Article 9 of the decision of 6 June 1973 concern members of the temporary staff, not officials.

Article 8 of the decision of 6 June 1973 refers to a very specific case, that of a member of the temporary staff appointed as a probationary official, as a result of an internal competition, to a post in the same career bracket with classification in the same grade. It is wholly artificial and unjustifiable to deduce from that specific provision a more general principle applicable, in particular, to the case of a member of the temporary staff appointed as a probationary official, as a result of an open competition, to a post in a higher career bracket with, by definition, classification in a higher grade.

(e) The supposed lacuna in the Staff Regulations or in the decision of 6 June 1973 may be explained by the fact that the problem of the step classification of a former member of the temporary staff appointed as an official to a post in a higher career bracket must be dealt with according to the clear wording of Article 32 of the Staff Regulations and Article 5 (1) of the decision of 6 June 1973.

(f) The Commission's argument based on the principle of equality proceeds

from a comparison of two situations which are completely different, and which thus objectively justify different solutions. There is no connection between a recruitment procedure by open competition and a promotion procedure. Officials cannot be promoted from Grade A 7 to Grade A 5.

In fact, the Commission's argument itself leads to real discrimination. It amounts to distinguishing, as regards step classification, between the successful candidates in an open competition, with the members of the temporary staff being classified on the basis of Article 46 and the candidates from outside the Communities on the basis of Article 32 of the Staff Regulations. Even though they have relevant experience of the same length, a member of the temporary staff would thus be classified in Step 1 of Grade A 5 whilst an external candidate would be classified in Step 3 of that grade. Nothing can justify such a distinction.

The *Commission* contends that the relevant provision in the applicant's case is Article 46 of the Staff Regulations and not Article 32.

(a) According to Article 15 of the Conditions of Employment of Other Servants, temporary staff are to be graded initially in accordance with Article 32 of the Staff Regulations and, in the event of assignment to a post corresponding to a higher grade his grading is to be determined in accordance with Article 46 of the Staff Regulations. Thus, only the initial classification of the temporary employee is determined in accordance with Article 32 of the Staff Regulations. It may be deduced from that, by virtue of the principle of the continuity of careers, that a later classification, even as an official, cannot be based on the said Article 32.

Moreover, Article 9 of the Commission decision of 6 June 1973 provides that that decision is to apply by analogy to the appointment of temporary staff.

(b) No provision of the Staff Regulations or of the decision of 6 June 1973 expressly deals with the problem of the step classification of a former member of the temporary staff who, having been appointed to a post in a given career bracket, is appointed, as an official, to a post in a higher career bracket. However, according to Article 8 of the decision of 6 June 1973, a member of the temporary staff appointed as a probationary official to a post in the same career bracket with classification in the same grade is, on the day of his appointment as a probationary official, entitled to the seniority acquired since his appointment as a member of the temporary staff. That provision is to be found under the general title "Temporary Staff Appointed as Officials". The fact that it mentions expressly only the case of a member of the temporary staff appointed as an official to a post in the same career bracket is because that is the most common situation (*plerumque fit*). Article 8 of the decision of 6 June 1973 is no more than the application of a general principle by which the appointment of a former member of the temporary staff as an official does not give rise to a fresh assignment to a step. In this way, the principle of career continuity from the time at which the member of the temporary staff is engaged by the Commission is established.

In view of that principle, former temporary staff appointed as probationary officials cannot, at that time, claim the benefit of Article 32 of the Staff Regulations.

(c) The application of Article 32 to former temporary staff would have consequences which are incompatible with the principle of equal treatment.

In such a case, and all other things being equal, a former member of the temporary staff appointed as a probationary official in a given grade would have the benefit of a higher step classification than would an official promoted to the same grade, but who had been recruited *ab initio* as an official.

Similarly, in the case of two hypothetical officials with equivalent experience, there is no objective reason why one should have the benefit of classification in a higher step solely because he was appointed to a given grade as a result of an open competition whilst his colleague obtained the same grade by promotion.

(d) The fact that Article 46 of the Staff Regulations is to be found under the heading "Chapter 3 — Reports, Advancement to a Higher Step and Promotion" is in no way decisive. In the absence of provisions dealing expressly with the problem of the step classification of a former member of the temporary staff appointed to a post in a higher career bracket, the appropriate solution, in accordance with the principle of career continuity, is to apply Article 46 by analogy.

(e) The fact that the decision appointing the applicant as a probationary official expressly refers to Article 32 of the Staff Regulations is also not decisive. That decision was drawn up on a printed form, used in the great majority of cases in which persons from outside the Communities are recruited as probationary officials.

B — The factual elements

The *applicant* indicates that, according to Article 2 of Annex II to the Commission decision of 6 July 1973, experience is assessed with regard to the post to be filled regard being had to all the employment pursued by the candidate before recruitment (relevant experience), and is calculated from the time at which the candidate was awarded the first qualification giving access pursuant to Article 5 of the Staff Regulations to the category in which the post is to be filled.

In the light of those provisions, the applicant had, at the time of his recruitment as an official, more than 12 years' relevant experience.

(a) From 12 January 1970, the date on which he obtained his degree in agricultural science, he worked as an agricultural expert. Until the end of 1975 he did this exclusively in the private sector as an adviser to agricultural undertakings. From the end of 1975 until he was engaged by the Commission on 19 July 1979, he worked both in the private sector and in the public sector. From 1 September 1979 until the date of his appointment as a probationary official, he was a member of the temporary staff of the Directorate General for Agriculture.

(b) The circumstance that, from 1970 to the end of 1975, the applicant's experience was exclusively acquired in the private sector in no way signifies that it was not relevant. It would be arbitrary to limit the applicant's relevant experience to the period during which he was in the Greek civil service, namely,

from October 1975. The applicant was engaged as an adviser to the Greek Ministry of Coordination precisely because of the special experience he had already acquired in the private sector, and later appointed to that Ministry on the basis of all his previous experience in agricultural science.

The applicant's relevant experience in agricultural science forms a single whole.

(c) That the Commission should contest the relevance of the applicant's experience during the period from 1970 to the end of 1975 is uncalled for.

In that context, it should be noted in particular that the notice of the competition as a result of which the applicant was appointed as an official required only that the candidate's post-university experience be partially relevant. The Commission's argument amounts to "neutralizing" the 1970-75 period in the applicant's twelve years' experience, all of which is relevant with regard to the post to be filled, even though, to be admitted to the competition relating to that post, it was sufficient that a part of the minimum seven years' experience required be relevant.

(d) The Commission's argument amounts to a misinterpretation of both the third paragraph of Article 2 of its decision of 6 June 1973, according to which experience is to be calculated from the time at which the candidate was awarded the qualification giving access to the category in which the post falls, and of the system of additional seniority

itself, which was established by that decision.

"Neutralizing" the early years of the applicant's experience with regard to the post to which he was to be appointed contradicts or duplicates the fact that the level of that post required a longer period of relevant experience.

(e) The applicant was admitted to a competition for recruitment to A 3 posts, in which one of the special conditions of admission was to have a "long" period of post-university experience related to the post chosen by the candidate. One of the posts chosen by the applicant for that competition was that of adviser in the Directorate General for Agriculture.

The use of a flexible formula with regard to the required experience allows the conclusion to be drawn in the absence of detail regarding the criteria used by the selection board for that competition, and in the light of the conditions laid down in the context of other recruitment competitions, that that selection board considered that the experience required was well above that which the Commission admits that the applicant possesses.

(f) The Commission's argument based on the fact that the applicant was engaged as a translator in Grade L/A 7, Step 3, and was transferred to a post in Grade A 7, Step 3, in the Directorate General for Agriculture is totally irrelevant.

The appointment as a translator was based on the applicant's linguistic experience. The conversion of his contract from that of a member of the

temporary staff in Grade L/A 7, Step 3, to that of a member of the temporary staff in Grade A 7, Step 3, was purely an administrative adjustment without re-consideration of his classification.

In any event, one error does not justify another.

(g) When the applicant was appointed as a probationary official, the Commission did not undertake a fresh classification procedure. The Grading Committee, set up by Article 6 of the decision of 6 June 1973, was thus not consulted and could not have expressed an opinion on the applicant's step classification.

The fact that the Grading Committee was not consulted constitutes a procedural irregularity which should be condemned.

In fact the Commission is putting itself in the place of the Grading Committee.

The *Commission* points out that, in its view, the relevant provision in this case is not Article 32 of the Staff Regulations and it contends that, in any event, the applicant can only claim to have, at most, a little more than nine years' experience.

(a) The only specific experience which may be taken into account, regard being had to the type and the level of the post to which the applicant was appointed on 1 April 1982, was that which he acquired in the period following his appointment in 1975, as an independent adviser to the Greek Ministry of Coordination.

(b) During the period from January 1970 to June 1975, the applicant spent two years doing his military service, followed by studies at the Technical High School for Advanced Studies, Madrid, and at the University of Montpellier I.

However, as regards the length of experience, not all activities engaged in from the time of the award of the first university degree are necessarily taken into account in fixing the step. Account is taken only of activities which constitute experience specific to the post to be filled.

Moreover, the provision under which experience is calculated from the award of the first degree has no purpose other than to prevent account being taken of experience acquired before the award of that degree.

(c) The Grading Committee, on 26 October 1979, recommended that the applicant be placed in Grade A 7, Step 3. That classification was not in fact as a translator, but as an administrator. On 1 January 1980, that part of the applicant's experience considered relevant with regard to the A 7 post which he occupied at that time was considered not to be greater than seven years.

(d) The notice of the competition organized for the purpose of recruiting heads of division of Greek nationality was limited, by a flexible formula, to requiring that candidates have "long professional experience". In fact, the selection board, taking account in particular of the lower age-limit fixed by the notice of competition, decided to

admit any candidate who could give evidence of experience or further studies, or both, of at least 10 years in addition to his university degree. In the case of the applicant, the selection board, taking account of the experience acquired and the further studies in relation to the posts chosen, calculated his experience, in the broadest sense of that term, at 10, and not at 12, years. However, since experience is assessed in relation to the post to be filled, the length of the applicant's experience as fixed by the selection board cannot be simply transposed for the purpose of determining the step to be granted to him, in the light of the post occupied since 1 April 1982.

(e) The fact that the Commission, applying Article 46 of the Staff Regulations, did not consult the Grading Committee at the time when the applicant was recruited as an official, is not of such a nature as to entail the annulment of the contested decision, even if it were in theory to be regarded as a procedural irregularity. It is clear from the settled case-law of the Court that an irregularity in the procedure leading up to a decision will entail the nullity of that decision only if it can be shown that, were it not for the irregularity, the administrative procedure might have led to a different result.

IV — Oral procedure

At the sitting on 9 February 1984, the applicant, represented by E. Lebrun, and the Commission, represented by D. Jacob, presented oral argument and replied to questions raised by the Court.

The *applicant* pointed out with regard to the legal aspects of the case, that the

Court, in its judgment of 1 December 1983 in the *Blomefield* case declared that the Commission decision of 6 June 1973, an internal directive, cannot lay down rules derogating from the provisions of the Staff Regulations, in this case from the second paragraph of Article 32.

As regards the facts, it should be noted that, during the procedure, the Commission stated that it was prepared to take account, in favour of the applicant, of relevant experience totalling nine years and one month. According to Annex II to the decision of 6 June 1973, the applicant's period of compulsory military service, that is, two years, must be added to that, with the result that the applicant should have been classified in Step 3 of Grade A 5. The purpose of taking military service into account in the calculation of additional seniority is to maintain equality between officials, that is, between male and female officials, on the one hand, and between male officials who are nationals of a Member State in which military service is compulsory and male officials who are nationals of other Member States in which there is no compulsory military service, on the other. It is intended to neutralize the handicap which certain officials suffer at the time of their recruitment, by virtue of being obliged to perform military service and, in certain cases, to perform a relatively long period of military service.

The *Commission* repeated its argument that a former member of the temporary staff appointed as an official cannot claim the benefit of Article 32 of the Staff Regulations.

At the request of the Court, the Commission submitted to it, on 2 May 1984, a list of more than 100 officials whose position is similar to that of the applicant. The latter reminded the Court, on 11 May 1984, that he had been

appointed as an official as a result of an open competition whereas the cases presented by the Commission were rectifications taking place generally in the context of internal competitions. On 17 May 1984, the Commission informed the Court that all the cases raised the

same legal problem, namely, that of the classification of a member of the temporary staff appointed as an official.

The Advocate General delivered his opinion at the sitting on 21 June 1984.

Decision

- 1 By an application lodged at the Court Registry on 1 February 1983, Angel Angelidis, an official of the Commission of the European Communities, brought an action seeking the annulment of the decision relating to his step classification, contained in the instruments of 4 May and 14 December 1982 appointing the applicant as a probationary official and as an established official in Grade A 5 respectively, and assigning him to the Directorate General for Agriculture as a principal administrator.
- 2 The documents before the Court indicate that the applicant was engaged, in the first place, by a contract of 11 July 1979 as a member of the temporary staff in the capacity of translator at Grade L/A 7, Step 3. By a contract of 11 August 1980, he was transferred to a post of administrator in the Directorate General for Agriculture, still as a temporary employee, in Grade A 7, Step 3, keeping the seniority acquired in his previous post. Having been successful in Competition No COM/A/377, he was appointed, by a decision of 4 May 1982, as a probationary official in the capacity of principal administrator in Grade A 5, Step 1.
- 3 On 14 June 1982, Mr Angelidis submitted a complaint, registered on 5 July 1982, seeking additional seniority of 48 months and therefore classification in Step 3 of Grade A 5. No reply was made to that complaint. By a decision

of 14 December 1982, the applicant was established in the same capacity and at the same grade and step.

- 4 The subject of the dispute is the applicant's step classification. Mr Angelidis considers that in the light of his experience before entering the service of the Communities, he should have been classified, at the time of his appointment as an official, in Step 3 of his grade, by virtue of the second paragraph of Article 32 of the Staff Regulations and Article 5 of the Commission decision of 6 June 1973 on the criteria applicable to grade and step classification upon recruitment.
- 5 The applicant claims that the Court should:
 - (a) annul the decisions of 4 May and 14 December 1982 in so far as they concern his classification in step; and
 - (b) declare that he must be assigned to Step 3 of Grade A 5.
- 6 The Commission's principal argument is that Article 32 of the Staff Regulations, relied upon by the applicant, is not relevant. That article applies only to cases of recruitment. However, Mr Angelidis was not recruited as a result of the contested decisions because he was a member of the temporary staff before being appointed as an official. His case must therefore be dealt with by analogy with Article 46 of the Staff Regulations, which deals with promotions. However, in view of the distance separating Grade A 7, Step 3, previously occupied by the applicant, and Grade A 5, Mr Angelidis could only obtain the first step in his new grade.
- 7 In the alternative, the Commission contends that even if the applicant's appointment to Grade A 5 must be regarded as a recruitment, he does not meet the conditions laid down by the decision of 6 June 1973 because his experience has not been sufficiently long. The Commission has already recognized that he has seven years' experience, which was one of the

conditions of Competition No COM/A/377. However, the table annexed to the decision of 6 June 1973 grants additional seniority only in respect of previous experience of more than eight years.

- 8 The parties' arguments make it necessary to define the scope of Article 32, concerning recruitment, and of Article 45 concerning the determination of step in cases of promotion to a higher grade.
- 9 According to the first paragraph of Article 32: "An official shall be recruited at the first step in his grade". The second paragraph adds: "However, the appointing authority may, taking account of the training and special experience for the post of the person concerned, allow additional seniority in his grade", which is limited to 48 months, or two steps, in the grade in question.
- 10 According to the first paragraph of Article 46, an official appointed to a higher grade is to have, in his new grade, the seniority corresponding to the notional step equal to or next above the notional step reached in his former grade, plus the amount of the two-yearly increment for his new grade, subject to the proviso that, according to the third paragraph of the same article, an official appointed to a higher grade is always to be classified not lower than the initial step for that grade.
- 11 The provisions concerning promotions, of which Article 46 forms part, whether from the point of view of their wording or from that of their context, are intended to govern the advancement, in their respective categories and branches, of employees of the Community who, at the time of their promotion, already have the status of officials. Those provisions are thus not adapted to the position of an employee who, after a period of service as a member of the temporary staff, obtains, by means of an open competition, his first definitive appointment within the Community administration after completing the required probationary period.

- 12 On the other hand, the applicant's case is governed by Article 32, whose very purpose is to govern the position of an employee who has become an official of the Community for the first time as a result of a recruitment procedure which will normally have been a competition.
- 13 It follows that the Commission, when it appointed the applicant following upon the competition, was required to consider the possibility of additional seniority under the terms of the second paragraph of Article 32, in the light of the criteria laid down in its decision of 6 June 1973. Since the Commission applied Article 46 in determining the applicant's step in his grade, it cannot have considered the possibility of taking the applicant's previous experience into account pursuant to the aforementioned provisions. The decisions of 4 May and 14 December 1982 must therefore be annulled in so far as they concern the applicant's classification in step.
- 14 However, the applicant also asks the Court to declare that he must be assigned to Step 3 of Grade A 5.
- 15 That ancillary claim is inadmissible inasmuch as it goes beyond the power of review conferred on the Court, in regard to staff cases, by the Treaties and by the provisions of Article 91 (1) of the Staff Regulations.
- 16 As the Court had occasion to emphasize in its judgment of 1 December 1983 (Case 190/82 *Blomefield v Commission* [1983] ECR 3981), the appointing authority has a wide discretion, within the limits laid down by the second paragraph of Article 32, in assessing the previous experience of a person appointed as an official both as regards the nature and the duration of that experience and its relationship, be it close or otherwise, to the requirements of the post to be filled.
- 17 In this case, it will be for the Commission to reconsider the applicant's position and apply to it the criteria laid down in Article 32 of the Staff Regulations and the decision of 6 June 1973 with a view to arriving at a decision on the applicant's classification in step.

Costs

- 18 Under the terms of Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs.
- 19 As the Commission has failed in its principal submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. Annuls the Commission's decision of 4 May 1982 appointing the applicant as a probationary official in Grade A 5, Step 1, and its decision of 14 December 1982 establishing him in the same capacity in so far as they concern the classification in step;
2. Dismisses the remainder of the application;
3. Orders the Commission to pay the costs.

Bahlmann

Pescatore

Due

Delivered in open court in Luxembourg on 12 July 1984.

For the Registrar

H. A. Rühl

Principal Administrator

K. Bahlmann

President of the Second Chamber