

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
22 February 2000

Case T-22/99

Gustave Rose
v
Commission of the European Communities

(Officials – Refusal of promotion – Guide to the promotion procedure –
Protection of legitimate expectations – Misuse of powers –
Examination of comparative merits)

Full text in French II - 115

Application for: annulment of the Commission's decision not to promote the applicant to grade C 1 in the course of the 1998 promotions procedure.

Held: The Commission's decision not to promote the applicant to grade C 1 in the course of the 1998 promotions procedure is annulled. The Commission is ordered to pay the costs.

Summary

*1. Officials – Promotion – Examination of comparative merits – Automatic promotion of officials appearing on the list of most deserving candidates for the preceding year – Unlawful
(Staff Regulations, Art. 45(1))*

2. Officials – Equal treatment – Limits – Advantage unlawfully granted

*3. Officials – Promotion – Examination of comparative merits – Prior consideration of files within each Directorate General – Permissible – Subsequent consideration falling to Promotions Committee and subsequently the appointing authority – Scope
(Staff Regulations, Art. 45(1))*

1. A practice consisting in automatically promoting, unless they were no longer considered deserving of promotion, officials who, in the preceding promotion procedure, appeared on the list of most deserving candidates but had not been promoted manifestly infringes Article 45(1) of the Staff Regulations. First, promotion decisions presuppose an examination, by the appointing authority, of the comparative merits of those officials eligible for promotion as well as of their reports. Secondly, such comparison must be carried out in the context of each promotion procedure.

An official cannot, therefore, reasonably plead a breach of a guide to the promotions procedure in so far as it lays down the abovementioned practice.

(see paras 36 to 38)

See: Case T-3/92 *Latham v Commission* [1994] ECR-SC I-A-23 and II-83, para. 50; Case T-76/98 *Hamptaux v Commission* [1999] ECR-SC I-A-59 and II-303, paras 44, 46 and 49

2. An official cannot rely on the principle of equal treatment to claim the benefit of a practice contrary to the provisions of the Staff Regulations, since no person may plead in his own cause an unlawful act committed in favour of another.

(see para. 39)

See: Case T-30/90 *Zoder v Parliament* [1991] ECR II-207, para. 26

3. In the context of a promotions procedure, the appointing authority is required to make its choice on the basis of a comparative examination of the staff reports and merits of the candidates eligible for promotion. To that end, it has a power under the Staff Regulations to undertake that examination in accordance with the procedure or method which it considers most appropriate.

In those circumstances, prior consideration within each Directorate-General of the personal files of officials eligible for promotion is not likely to hinder proper consideration of their comparative merits and, on the contrary, is in accordance with the principle of good administration.

However, such prior consideration within the Directorates-General cannot take the place of the comparative examination which must be undertaken subsequently by the Promotions Committee. Every official eligible for promotion is therefore entitled to expect the Promotions Committee to compare his merits with those of other officials eligible for promotion to the grade concerned.

By the same token, such appraisal of the comparative merits of all officials eligible for promotion by the Promotions Committee, leading to an initial selection from among those officials and to the establishment of a list of those most deserving of promotion, does not mean that the appointing authority can dispense with appraising the comparative merits of all the officials on that list itself in order to determine which of them ought to be promoted.

In particular, if the comparative examination by the Promotions Committee of the merits of officials eligible for promotion to the grade concerned is not to be rendered purposeless, the appointing authority cannot be permitted to confine itself to examining the comparative merits of those officials ranked highest on the lists drawn up by the various Directorates-General.

(see paras 55 to 59)

See: Case 62/75 *De Wind v Commission* [1976] ECR 1167, para. 17; Case T-557/93 *Rasmussen v Commission* [1995] ECR-SC I-A-195 and II-603, paras 20 and 21; Case T-130/95 *X v Commission* [1996] ECR-SC I-A-603 and II-1609, para. 67; Case T-234/97 *Rasmussen v Commission* [1998] ECR-SC I-A-507 and II-1533, para. 24