

OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 11 December 1986 *

*Mr President,
Members of the Court,*

1. This is the fourth case to challenge before the Court of Justice a decision taken by the Selection Board for Internal Competition No CC/A/8/85 organized by the Court of Auditors refusing to admit a candidate to the competition. In that respect I refer to the Report for the Hearing drawn up in the present case and to the judgments of 23 October 1986 in Case 321/85,¹ and in Joined Cases 322 and 323/85.²

Basically the applicant, Henri Maurissen, considers that the two decisions adopted by the Selection Board, the first on 2 August 1985 and the second on 28 October 1985 having regard to the supplementary observations submitted by Mr Maurissen in response to the invitation in the letter from the Chairman of the Selection Board of 12 August 1985, were vitiated by a manifest error in the assessment of his experience with IBM from 1976 to 1983, first as a 'financial analyst associate' and then as a 'productivity project analyst'.

For its part the Court of Auditors contends that the documents originally supplied by

the applicant did not make clear either the level of the post of financial analyst associate or how long he worked as a productivity project analyst. As for the documents submitted in support of the supplementary observations, they were not admissible and in any event did not establish the precise length of his experience in an activity corresponding to the university-level education requirement.

2. Two questions arise. Was the Selection Board entitled to refuse to take account of the documents submitted by Mr Maurissen in support of his observations? If not, were the documents such as to allow the Selection Board to determine whether the aforesaid duties performed at IBM were of a satisfactory level and for a sufficient period, fixed at three years by the Selection Board, to constitute 'equivalent professional experience' for the purposes of point IV.1(b) of the notice of competition?

3. As the Court held in one of the aforesaid judgments of 23 October 1986 (Case 321/85),

'the duty of the administration to look after the well-being of its officials, which also applies to Selection Boards... reflects the balance of the reciprocal rights and obligations established by the Staff Regulations in the relationship between the official authority and the civil servants'.

* Translated from the French.

¹ — Case 321/85 *Hartmut Schwiering v Court of Auditors* [1986] ECR 3199.

² — Joined Cases 322 and 323/85 *Volker Hoyer and Others v Court of Auditors* [1986] ECR 3215.

The Court went on to state that:

'A particular consequence of this duty and of the principle of good administration is that when the official authority takes a decision concerning the situation of an official it should take into consideration all the factors which may affect its decision and that when doing so it should take into account not only the interests of the service but also those of the official concerned' (paragraph 18).

The Court annulled the decision at issue adopted in relation to Mr Schwiering on the ground that the Selection Board had failed to apply in the applicant's interest the provisions of the second paragraph of Article 2 of Annex III to the Staff Regulations on the procedure for competitions to the effect that candidates 'may be required to furnish additional documents or information'.

The same Selection Board referred expressly to that provision when inviting Mr Maurissen to provide 'any additional observations', which might, if appropriate, enable the decision of 2 August 1985 to be reconsidered. It nevertheless informed the applicant that he could not submit any

further supporting documents for consideration.

4. I think that such a restriction is contrary to the duty to have regard to the welfare of officials, in particular in the case of an internal competition for which there is only a limited number of candidates. The Selection Board could not, therefore, refuse to take account of documents produced in support of observations which it had itself invited on the ground that they had not been lodged at the outset.

In its letter of 28 October 1985, the Selection Board stated that the experience acquired by Mr Maurissen in the job of financial analyst associate as well as that he acquired as productivity project analyst could have been regarded as experience of the kind required by point IV.1(b) of the notice of competition.

It thus appears that the level of experience to be taken into account was no longer at issue but only its duration. It has, however, never been disputed that from 1976 until 1983 Mr Maurissen held successively the two jobs referred to above. There can also be no doubt that those jobs lasted more than the three years which the Selection Board itself regarded as sufficient.

5. It follows that the Selection Board had all the information it needed to determine whether the applicant satisfied the conditions to be admitted to the competition. I therefore consider that the decisions were adopted in breach of the duty to have regard to the applicant's welfare and are vitiated by manifest errors of assessment. In my opinion they should consequently be annulled and the defendant institution should be ordered to pay the whole of the costs.