

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

MICHAEL KARAMICHALIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 241/66).

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KARAMICHALIS

v.

REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

*Public Officers—Promotions—Post of Forest Ranger—
Applicant found unfit for promotion under a material
misconception regarding applicant's merit—Consequently,
the sub judice decision has to be annulled.*

*Administrative law—Misconception of fact—Decision of the
respondent not to promote the applicant to the post of
Forest Ranger annulled because it was based on a miscon-
ception regarding his merits.*

It is common ground that the only reason why the applicant was not promoted is the statement made by the Head of his Department regarding his alleged misconduct which caused embarrassment at the Forestry College in England. It is also clear that neither the Head of Department nor the respondent knew at the time, nor indeed did they find out subsequently, what the conduct which caused the embarrassment was; and that the decision was taken without the applicant having been either informed or heard on this matter.

Annulling the refusal complained of, the Court :-

Held, (1). In the light of the facts of this case the decision of the respondent not to promote the applicant was in fact based on a misconception regarding his merits.

(2) All the respondent Commission had before them was the statement by the Head of Department to the

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effect that he had received information that applicant's conduct in England had caused embarrassment to certain bodies and persons there. But neither the Head of his Department nor the Commission knew what exactly the applicant was supposed to have said or done and were not, therefore, in a position to judge for themselves whether it amounted to misconduct as to render the applicant unfit for promotion.

*Sub judice decision annulled.
Respondent to pay £35 towards
applicant's costs.*

The facts sufficiently appear in the judgment of the learned Judge.

Recourse.

Recourse against the decision of the respondent Public Service Commission to appoint to the post of Forest Ranger, the Interested Parties in preference and instead of the applicant.

L. Clerides, for the applicant.

G. Tornaritis, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :-

L. LOIZOU, J.: The relief claimed by the applicant in this case is :

“(A) Declaration that the appointments or promotions to the post of Forest Ranger and/or any one of them made by the respondent in preference or instead of the applicant and published in the Official Gazette dated 15th September, 1966 No. 523, first column, are null and void and of no effect whatsoever.” and

“(B) And/or a declaration that the decision of the

respondent as evidenced in the publication of the 15th September, 1966 aforesaid not to appoint or promote him to the aforesaid post either in addition or in substitution of anyone of the persons named in the said same publication is null and void and of no effect whatsoever, and/or the omission of the respondent to so appoint or promote the applicant as aforesaid ought not to have been made and whatever has been omitted in that respect should have been done."

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At the opening of the hearing of the case learned counsel for the applicant abandoned his claim for relief (B) and relied only on the claim for relief (A).

The facts of the case are shortly as follows :

The applicant is a Forester 1st Grade. He has entered the service as a Forest Labourer on the 1st August, 1943; six months later he became a Forest Foreman and in September, 1951 he became a Forest Guard thereby entering the permanent staff of the department. Between 1957 and 1959 he attended the Forestry College at Prodromos and upon his graduation he was promoted to his present post on the 1st August, 1959. Since then — with a break of about a year — he had been posted to the Research section of the Department. In 1965 he was selected for a scholarship for higher studies in England at the Commonwealth Forestry Institute at Oxford. He returned to Cyprus sometime in July, 1966.

The appointments challenged by this recourse were made by the Public Service Commission on the 21st July, 1966. There were in all 16 vacant posts of Forest Rangers all of which were filled from among the officers holding the substantive post of Foresters 1st Grade. The applicant was one of the candidates. The minutes of the meeting of the Commission have been produced and are *exhibit 1* in these proceedings. The appointments were published in the Gazette No. 523 of the 15th September, 1966, under Not. No. 1066. The applicant was not included among the persons promoted and the reason for this clearly appears from the minutes of the meeting of the Commission (*exhibit 1*). The relevant part reads as follows :

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"The Commission considered particularly the claims of Mr. M. I. Karamichalis who had recently returned from scholarship in the U.K. and whose Annual Confidential Reports were very satisfactory. Mr. Seraphim informed the Commission orally that Mr. Karamichalis had been on an 'In-Service Training in Forest Research' in the United Kingdom, that from information received he had caused considerable embarrassment to the Commonwealth Forestry Institute of the University of Oxford, the British Council, the Forestry Commission and a number of individuals and that as a result of this his course of training had to be terminated prematurely. Full details of Mr. Karamichalis' conduct and behaviour were not available and Mr. Seraphim promised that he would bring to the notice of the Commission any written information which he might receive."

It may be stated at this stage that inspite of the fact that the Department requested such information from the Commonwealth Forestry Institute it was never given and in fact it was stated to this Court that the Commission in view of this decided to disregard the whole thing and, as otherwise the applicant was in all respects fit for promotion, they decided at a meeting which was held after the filing of this recourse, i.e. on the 14th November, 1966 to offer him secondment to the temporary (Development) post of Forest Ranger. The minutes of this meeting are *exhibit 5*. This they did but the applicant rejected the offer; the offer was repeated again by the letter of the Commission dated 7th May, 1968 (*exhibit 2*), but was again rejected by the applicant and was as a result cancelled.

However that may be, the issue in this case is the validity of the decision of the 21st July, 1966. It is common ground that the only reason why applicant was not promoted is the statement made by the Head of his Department regarding his alleged misconduct which caused embarrassment at the Forestry College in England. It is also clear that neither the Head of his Department nor the respondent knew at the time, nor indeed did they find out subsequently, what the conduct which caused the embarrassment was; and that the decision was taken

without the applicant having been either informed or heard on this matter.

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In the course of the hearing of the recourse learned counsel for the applicant limited his application to the annulment of the promotion of the eight out of the sixteen Interested Parties i.e. the last seven appearing in the list and the fourth from the top who, he said, were junior in the service to the applicant.

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It was submitted by learned counsel for the applicant that in the circumstances of this case the respondent acted under a misconception of facts as to the merits of the applicant and that, therefore, the decision complained of should be annulled.

Learned counsel for the respondent, on the other hand, has stated that the applicant was not considered fit for promotion in view of the submission made by the Head of his Department regarding his conduct in England; at a later stage learned counsel said that the applicant was not even considered by the Public Service Commission in view of the allegation of misconduct. It does not appear to me that this latter submission is borne out by the minutes of the meeting (*exhibit 1*); but in any case, learned counsel said, the Public Service Commission acted rightly because in view of the said allegations it was as if the applicant had a criminal case pending against him.

Having given the matter due consideration I have come to the conclusion that in the light of the facts and circumstances of this case the decision of the respondent not to promote the applicant was in fact based on a misconception regarding his merits. All that they had before them was the statement by the Head of his Department — no doubt made in absolute good faith — to the effect that he had received information that applicant's conduct in England had caused embarrassment to certain bodies and persons there. But neither the Head of his Department nor the Commission knew what exactly the applicant was supposed to have said or done and were not, therefore, in a position to judge for themselves whether it amounted to misconduct or such

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misconduct as to render the applicant unfit for promotion.

In the last analysis either the decision by virtue of which the applicant was penalized was based on mere suspicion or assumption as to the nature of the misconduct or else it was based on the judgment or the conclusions reached by a person unconnected with the respondent i.e. the person who gave the information to the Head of applicant's Department. Either alternative is, in my view, equally fatal to the validity of such decision.

For all the above reasons this recourse must succeed and the decision complained of, in so far as it relates to the eight Interested Parties aforesaid, should be declared null and void.

With regard to costs I consider that in all the circumstances the respondent should pay £35 towards applicant's costs.

*Sub judice decision annulled;
order for costs as aforesaid.*