

1984 May 17

{PICKS J }

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STAVROS MASOURAS,

Applicant

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondents

(Case No 437/82)

Practice—Pleadings—Averments therein bind the parties who cannot recede therefrom in the absence of amendment—Mis-statement in opposition—Of no consequence because it related to a fact extraneous to the sub judice decision in no way affecting it

Administrative Law—Misconception of fact—Not of itself decisive unless it had a material bearing on the sub judice decision 5

Public Officers—Bias—Mere assertion of unequal or discriminatory treatment in the hands of the superiors of an officer does not prove the truth of the allegations—And existence of strained relationship between an officer and his superiors in the context of their relationship at work, does not offer evidence of bias 10

The applicant in this recourse challenged the validity of the decision of the respondents to promote the interested parties to the post of Shift Charge Engineer "B" in preference to and instead of himself. The sub judice decision was reached after reflecting on the merits, qualifications, as well as the seniority of the candidates. In so doing the respondents took into account the views and recommendations of the General Manager as well as those of the departmental heads. The interested parties were selected in preference to the applicant notwithstanding his substantial seniority. The seniority of the applicant was duly noted, nevertheless the interested parties were chosen because their performance at work was rated as being much better. 15 20

In support of the prayer for annulment Counsel for the applicant relied upon two legal grounds namely (a) misconception of facts (b) bias. It was argued by counsel that misconception of fact was evidenced by a statement in the opposition which was erroneous; bias was based on an exchange of letters between applicant and the Personnel Manager and on a letter he addressed to the Chairman of the Board of the Authority, wherein he was complaining of unfair treatment. His complaints, however, were dismissed as unfounded.

Held, (1) that though averments made in the pleading of a party bind the parties who cannot resile therefrom in the absence of amendment, the mis-statement in this case embodied in the opposition is of no consequence because it related to a fact extraneous to the sub judice decision, in no way affecting it.

(2) That mere assertion of unequal or discriminatory treatment in the hands of the superiors of an officer does not prove the truth of the allegations; that evidence must be adduced to substantiate them and none was given in this case; that on the other hand the existence of a strained relationship between an officer and his superiors in the context of their relationship at work, does not offer evidence of bias (see *Kontemeniotis v. The C.B.C.* (1982) 3 C.L.R. 1027, 1034, 1035); that applicant singularly failed to establish that his superiors were guilty of bias towards him; accordingly the recourse must fail.

Application dismissed.

Cases referred to:

Kontemeniotis v. C.B.C. (1982) 3 C.L.R. 1027 at pp. 1034, 1035.

Recourse.

Recourse against the decision of the respondents to promote the interested parties to the post of Shift Charge Engineer "B" at Dhekelia Power Station in preference and instead of the applicant.

A. Poetis, for the applicant.

A. Stylianidou (Miss) for *G. Cacoyiannis* with *S. Poyiuros*, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. Stavros Masouras, the applicant, is in the service of The Electricity Authority of

Cyprus. He was among the candidates listed as eligible for promotion to the post of Shift Charge Engineer 'B' at the Dhekelia Power Station of the respondents. Promotions were considered at the Board meeting of the respondents of 10th February, 1982. They decided to appoint the interested parties. The decision was reached after reflecting on the merits, qualifications, as well as the seniority of the candidates. In so doing they took into account the views and recommendations of the General Manager as well as those of the departmental heads. The interested parties were selected in preference to the applicant notwithstanding his substantial seniority. The seniority of the applicant was duly noted; nevertheless the interested parties were chosen because their performance at work was rated as being much better on consideration of their performance at work. Applicant was rated as an officer of lesser ability in comparison to the interested parties.

The decision is challenged as illegal implying thereby that it was taken contrary to the law, violative of the schemes of service and the product of a defective decision because of abuse or excess of power. It is the contention of applicant that it was founded on a misconception of facts and liable to be set aside because of the bias of the superiors of the applicant against him. His superiors were, allegedly, hostile to the applicant.

No facts were cited either in the application or the address submitted on behalf of applicant indicating that the decision was taken in breach of the law or that the decision-taking-process followed any course other than that ordained by law. Moreover, nothing was shown to suggest any violation of the scheme of service or any part of it. Eligibility was determined by reference to the qualifications envisaged by the scheme of service. All the parties listed as candidates for promotion possessed the qualifications required by the scheme.

In essence, the application was pressed before the Court only in relation to two of the legal grounds relied upon in support of the prayer for annulment, namely, (a) misconception of facts, and (b) bias.

Misconception of facts, it was argued, is evidenced by the statement made in para. 4 of the opposition erroneous in that in 1972 applicant was not transferred from Moni to Dhekelia

Power Station because of any inability or difficulty on his part to perform his duties, as alleged therein. Correspondence on the subject produced before the Court indicates the transfer took place at his request for reasons personal to the applicant.

5 Although paragraph 4 reveals a significant misconception, like every misconception, it is not of itself decisive unless it had a material bearing on the sub judice decision. The facts before the Court suggest that it had none. In a statement before the Court counsel for respondents clarified that the circumstances

10 of the transfer of the applicant in 1972, an event that occurred about 10 years prior to the sub judice decision, were neither considered nor taken into account in arriving at the decision complained of. There is nothing before the Court to contradict the statement. On the contrary, study of the decision itself

15 and events that preceded it tend to affirm its correctness.

Examination of paragraph 4, read in the context of the opposition as a whole, suggests that reference to the circumstances attending the transfer of 1972 was made solely for the purpose of giving an account of the service of the applicant and not

20 as a fact taken into consideration in making the promotions. Also this is the picture that emerges on a study of the decision and the material taken into consideration in arriving thereat. I confess I was troubled by this mis-statement because of the implications of averments made in the pleading of a party. Such

25 averments bind the parties who cannot resile therefrom in the absence of amendment. However, the mis-statement in this case embodied in the opposition is of no consequence because it related to a fact extraneous to the sub judice decision, in no way affecting it.

30 The decision is founded on evaluation of the merits of the candidates and their worth as it emerges from their performance at work. Nothing has been produced or indicated before me to contradict this evaluation except for the contention that the evaluation of the services of the applicant made by his superiors

35 was tainted with bias. Bias is said to arise from the friction that existed between applicant and his superiors.

To substantiate bias applicant made reference to an exchange of letters between him and the Personnel Manager and a letter he addressed to the Chairman of the Board of the Authority.

To the Personnel Manager he complained of unfair treatment in connection with a change of his duties, a charge the Personnel Manager dismissed as unfounded. A letter was then addressed to the Chairman of the Authority repeating complaints of unfair treatment while accusing, in effect, the Management of the Authority of cultivating a climate of patronage. In the same letter a heap of accusations is levelled against the Personnel Manager and other officers of the Authority. 5

Mere assertion of unequal or discriminatory treatment in the hands of the superiors of an officer does not prove the truth of the allegations. Evidence must be adduced to substantiate them and none was given in this case. On the other hand the existence of a strained relationship between an officer and his superiors in the context of their relationship at work, does not offer evidence of bias. The subject was discussed by the Full Bench in *Kontemeniotis v. The C.B.C.*, (1982) 3 C.L.R. 1027, 1034, 1035. I shall not probe the matter further for whatever was said there in this connection applies equally to the facts of the present case. Applicant singularly failed to establish that his superiors were guilty of bias towards him. 10 15 20

In the light of the foregoing, the recourse is dismissed. Let there be no order as to costs.

Recourse dismissed. No order as to costs.