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[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

NICOLAOS ARSALIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH—

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and
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1. THE PUBLIC SERVICE COMMISSION,
2. THE CYPRUS INLAND TELECOMMUNICA-
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Respondents.

(Case No. 206/63).

Administrative Law—Public Officers—CYTA posts—Promotions—Recourse against promotions to the post of Officer-in-charge and the post of Supervisor, Flight Information Centre, Nicosia Airport—Respondent Commission had a sufficient picture of the service and merits of candidates concerned and in the light of recommendations of Respondent Authority, it reached a decision which was properly and reasonably open to it and with which this Court should not interfere—Reasonably open to Respondent Authority not to recommend Applicant for promotion—Not established that such course improperly adopted.

Administrative Law—Public Officers—Appointments to promotion posts—No advertisement necessary for appointments to promotion posts because appointing organ has to take into consideration, in filling such posts, only persons in the service entitled to promotion thereto.

Applicant challenges promotions made by Respondent 1 to the post of Officer-in-charge and the post of Supervisor, Flight Information Centre, Nicosia Airport. Such centre, which since 1961 has been operated by Respondent 2, is a service functioning in the area of the Nicosia Airport for purposes of civil aviation.

Held, I. On whether or not this recourse is within time, as provided in Article 146.3 of the Constitution.

(a) The promotions in question were decided upon

on the 5th July, 1963, by Respondent 1. This recourse was filed by Applicant on the 28th September, 1963. On the face of things this recourse would be out of time under Article 146(3), as having been filed more than 75 days after the decision complained of. But under the same provision the period of 75 days begins to run only after publication of the relevant decision or, if there has not been publication, since the time when the person complaining has come to know of such decision. In this Case there does not appear to have been any publication of the decision in question and Applicant's counsel has alleged that he came to know about it in August, 1963, about the 15th of such month. This has not been disputed by any of the Respondents and I, therefore, do hold that in the circumstances this recourse is within time.

II. On the non-advertisement of the posts.

(a) The posts of Officer-in-charge and Supervisor in the Flight Information Centre were quite rightly treated as promotion posts—because of their nature—and for promotion posts no advertisement is necessary at all, because the appointing organ has to take into consideration, in deciding on the filling of vacancies in such posts, only the persons in the service who are entitled to promotion thereto.

(b) In any case, the question of the non-advertisement did not deprive Applicant of promotion to the posts in question because Applicant was in fact duly taken into account as a candidate for the purpose of the sub judice promotions. More-over, Applicant was duly considered when Respondent 2 came to make to Respondent 1 its recommendations for the filling of such vacancies.

III. On the merits.

(a) Applicant has not discharged the onus cast on him of satisfying me that this Court ought to interfere with the promotions in question.

(b) The Respondent Commission had before it a sufficient picture of the service and merits of all candidates concerned and, in the light of the recommendations of Respondent 2, it reached a decision which was obviously properly and reasonably open to it and with which this Court should not interfere.

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(c) Concerning the fact that Applicant was not recommended by Respondent 2, for promotion, I find, on the material before me, that this was a course reasonably open to it and it has not been established that such course was adopted improperly in any way.

IV. As regards costs.

I should not make any order as to costs (subject, of course, to the order already made on the 31st May, 1965).

Order: This recourse cannot succeed and should be dismissed.

Application dismissed.

Cases referred to:

Theodossiou and The Republic, 2 R.S.C.C. p. 44;

Evangelou and The Republic, (reported in this Part at p. 292 ante);

Marcoullides and The Republic, 3 R.S.C.C. p. 30 at p. 34;

Recourse.

Recourse challenging the promotion of the Interested Parties, made by Respondent 1 to the posts of officer-in-charge and Supervisor in the Flight Information Centre, operated in the Nicosia Airport area by Respondent 2.

E. Ioannidou Vrahimi (Mrs.) for the Applicant.

K.C. Talarides and L. Loucaides, Counsel of the Republic, for Respondent No. 1.

A. Hadji Ioannou, for Respondent No. 2.

Cur. adv. vult.

The facts of the Case sufficiently appear in the following judgment delivered by:—

TRIANTAFYLLIDES, J.: By this recourse Applicant is, in effect, challenging the promotions made by Respondent 1, the Commission, of Interested Party A. Nicolaou to the post of Officer-in-charge and of Interested Parties L. Kalimeris, R. Kedemos and S. Aniliades to the posts of Supervisor, in the Flight Information Centre, operated in the Nicosia Airport area by Respondent 2, the Authority. The proceedings

have been discontinued, on the 23rd January, 1965, in so far as the promotions of other Interested Parties were concerned.

The promotions in question were decided upon on the 5th July, 1963, by Respondent 1 (vide *exhibit 7*). This recourse was filed by Applicant on the 28th September, 1963. On the face of things this recourse would be out of time under Article 146 (3), as having been filed more than 75 days after the decision complained of. But under the same provision the period of 75 days begins to run only after publication of the relevant decision or, if there has not been publication, since the time when the person complaining has come to know of such decision. In this Case there does not appear to have been any publication of the decision in question and Applicant's counsel has alleged that he came to know about it in August, 1963, about the 15th of such month. This has not been disputed by any of the Respondents and I, therefore, do hold that in the circumstances this recourse is within time.

The subject-matter of this recourse, as already stated, is *exhibit 7*, the decision of Respondent 1, because it is this organ which made the promotions attacked by this recourse. Respondent 2 had no competence to make such promotions and did not make them. So this recourse as against Respondent 2 cannot succeed and has to be dismissed. Of course, any action taken by Respondent 2 in the matter of such promotions and sufficiently connected with the eventual decision of Respondent 1 in such matter does constitute a factor relevant to the validity of the *sub judice* decision of Respondent 1.

The posts concerned in this recourse are posts at the Flight Information Centre. Such Centre, which since 1961 has been operated by Respondent 2, is a service functioning in the area of the Nicosia Airport for purposes of civil aviation.

The history of events in this Case, on the basis of evidence which I accept, is as follows:—

Applicant who at the material time was a Telegraphist, grade I, had worked at the Flight Information Centre continuously from 1947 to 1961, with some interruptions only between 1949 and 1951. During his service there he was called upon to act as a Supervisor—or Overseer, as a Supervisor was called at first—(vide *exhibits 1, 2 and 16*). No

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substantive post of Supervisor did exist at the time; such post was first created after Respondent 2 took over the said Centre.

On occasion he even relieved the Officer-in-charge of the Centre, (vide *exhibits 15 and 17*).

On the 14th September, 1961, the Applicant was transferred, as from the 18th September, 1961, to the Central Telegraph Office in Nicosia, in the interests of the service (vide *exhibit 3*). Applicant protested against such transfer orally and in writing (vide *exhibit 4*) but he took no legal steps against it by way of court proceedings. He was assured that his case would be duly borne in mind (vide *exhibit 5*) and that such transfer would turn out to his benefit, as advancement in the Telegraph Office was easier, in the circumstances.

After the transfer of Applicant to the Central Telegraph Office, it appears that the Interested Parties were placed by Respondent 2 in the respective posts to which eventually they were eventually promoted by Respondent 1—the substantive post of Supervisor having in the meantime been included in the 1962 Establishment of Respondent 2, (vide *exhibit 14*).

Mr. S. Kokkinides, the Secretary of Respondent 2, who was at the time the Personnel and Welfare Officer of such Respondent, has produced the letters relating to the postings, as above, of Interested Parties Kalimeris and Aniliades and dated 7th July, 1962, (vide *exhibit 12*); he has also given evidence, which I accept, that similar letters have been addressed to the other Interested Parties. Copies of such letters were sent to Respondent 1 for appropriate action on its part and, as apparently there was some delay in the matter, a reminder was sent to such Respondent on the 14th September, 1962, (vide *exhibit 13* and the relevant evidence of Mr. Kokkinides).

The posts in question were never advertised either at large or among the staff of Respondent 2. They were treated as promotion posts.

In July 1963 Respondent 1 came to deal with such posts and Mr. Kokkinides attended the relevant meeting of Respondent 1 for the purpose of giving any necessary information; he left before Respondent 1 took its decision.

The said meeting took place, as stated earlier in this judgment, on the 5th July, 1963, and at it the *sub judice* promotions were decided upon (vide *exhibit 7*). They were communicated to Respondent 1 by Respondent 2 by letter of the 10th July, 1963, (vide *exhibit 11*).

Mr. Kokkinides has given evidence that the four Interested Parties were recommended by Respondent 2 to Respondent 1 for promotion to the posts in question; he also stated that Applicant was not so recommended. Though the said recommendations could not be traced—and I do find this to be a most undesirable state of affairs—I have decided to accept as reliable the relevant evidence of Mr. Kokkinides and, also, of Mr. D. Proestos, a member of Respondent 1. I have decided to accept their evidence, (even though admittedly such witnesses appear to have given self-conflicting, in certain respects, evidence) because having followed their demeanour I have no doubt that both the said witnesses were truthful witnesses and any lapses in their evidence were due to faulty recollection of events dating quite some time back in the past.

The first complaint of Applicant is that the posts in question were not advertised. On behalf of Respondent 1 it has been submitted that no need for advertisement arose because such posts were promotion posts. I am prepared to agree with this submission. The posts of Officer-in-charge and Supervisor in the Flight Information Centre were quite rightly treated as promotion posts—because of their nature—and for promotion posts no advertisement is necessary at all, because the appointing organ has to take into consideration, in deciding on the filling of vacancies in such posts, only the persons in the service who are entitled to promotion thereto.

In any case, the question of the non-advertisement did not deprive Applicant of promotion to the posts in question because Applicant was in fact duly taken into account as a candidate for the purpose of the *sub judice* promotions. This is clearly stated in the evidence of Mr. Kokkinides who, as already stated, was present when the Commission dealt with the vacancies in question. Moreover, again according to the evidence of Mr. Kokkinides, Applicant was duly considered when Respondent 2 came to make to Respondent 1 its recommendations for the filling of such vacancies.

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Therefore, the above first contention of Applicant fails.

Applicant has next contended that the promotions of the Interested Parties were made in disregard of his seniority and past service in the Flight Information Centre and that in the circumstances this is a sufficient ground to annul such promotions.

As regards seniority Interested Parties Nicolaou and Kalimeris had equal seniority with Applicant. Interested Parties Kedemos and Aniliades were his juniors in the post of Telegraphist, grade I.

From *exhibits 1 and 19* (the latter being a copy of *exhibit 9*) it is clear that all Interested Parties had acted as Supervisors at the Flight Information Centre, like Applicant, in the past.

Interested Parties Kalimeris, Nicolaou and Kedemos had served at the said Centre at all material times but Interested Party Aniliades served there—according to his evidence on the point, which I believe—from about 1948 to 1955, when he was transferred to the Nicosia and, later, Limassol Telegraph Offices due to friction with the then Officer-in-charge of the Centre. He returned to the Centre, simultaneously with Applicant's transfer to the Central Telegraph Office, Nicosia, in September, 1961.

The four Interested Parties were recommended by Respondent 1 for promotion, whereas Applicant was not; (and for the effect of such recommendations, vide *Theodossiou and The Republic*, 2 R.S.C.C. p. 44).

In the light of all the above considerations I am not of the view that Applicant has discharged the onus cast on him of satisfying me that this Court ought to interfere with the promotions in question.

It was certainly reasonably open to the Respondent Commission to promote to the promotion posts concerned persons who were at the time employed in the work of the Flight Information Centre and who were recommended for promotion by the Respondent Authority.

The fact that two of them were juniors to Applicant as Telegraphists, grade I, is not a factor sufficient in the circumstances of this Case to lead me to the conclusion that Respondent 1 has acted in excess or abuse of powers. Senio-

riety is only one of the relevant factors to be taken into account in such a case (vide *Evangelou and The Republic*, reported in this Part at p. 292 *ante*). Nor do I regard, as a factor sufficient to lead me to the aforesaid conclusion, the fact that Interested Party Aniliades had left the Centre between 1955-1961. He had worked there long enough before then to know the work—he had also acted during that period as Supervisor (vide *exhibit 19*)—and had returned there in 1961 to resume the same work. It is clear from the relevant evidence that he had not been moved from there in 1955 for incompetence or inefficiency, but for other reasons.

I feel quite certain that what must have weighed decisively with the Respondent Commission—and should have thus weighed—is the fact that the Interested Parties had been recommended for promotion by the Respondent Authority and that they were to be promoted to posts in the technical staff of the Authority, (vide *Marcoullides and The Republic*, 3 R.S.C.C. p. 30, at p. 34). I am of the opinion that the fact that Applicant had himself worked at the Flight Information Centre until 1961, or that Interested Party Aniliades had been away from such Centre from 1955 to 1961—for reasons other than incompetence or inefficiency—could not have properly outweighed the effect of the relevant recommendations of Respondent 2 in the circumstances of this particular Case.

On the totality of the material before me I am satisfied that, irrespective of questions of detail, the Respondent Commission had before it—thanks, also, to the attendance at its meeting of Mr. Kokkinides—a sufficient picture of the service and merits of all candidates concerned and, in the light of the recommendations of Respondent 2, it reached a decision which was obviously properly and reasonably open to it and with which this Court should not interfere.

Concerning the fact that Applicant was not recommended by Respondent 2, for promotion, I find, on the material before me, that this was a course reasonably open to it and it has not been established that such course was adopted improperly in any way.

Counsel for Applicant, in an able effort to present as best as possible her client's case, has referred me to Kyriakopoulos, on Greek Administrative Law, 4th edition, volume III, pp. 315-321, in relation to the law governing promotions

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of civil servants in Greece. But though I have gone into what is stated there, I have not found therein anything which would lead me to a different conclusion in these proceedings, bearing especially in mind that such matter in Greece is governed by specific legislative provisions which do not exist in Cyprus.

Lastly, I should observe that though Applicant may well feel aggrieved that he possibly missed the opportunity of being promoted to the post of Supervisor—together with some of his former colleagues at the Flight Information Centre—because of his transfer in 1961 to the Central Telegraph Office, there is no certainty on the other hand that he would have been promoted otherwise; it is not all persons who continued working as Telegraphists, grade I, at the Flight Information Centre who were promoted on the 5th July, 1963. In any case, I cannot, in this recourse, go into the merits of the transfer of Applicant away from the said Centre in 1961 and I cannot give in these proceedings redress to Applicant against such transfer. Applicant could have, if he so wished, attacked such transfer at the time by appropriate proceedings, but he did not choose to do so.

For all the above reasons, I find that this recourse cannot succeed and should be dismissed.

Regarding costs I have decided that I should not make any order as to costs (subject, of course, to the order already made on the 31st May, 1965).

*Application dismissed. Order
as to costs as aforesaid.*