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[HADJIANASTASSIOU, J.]

—
SAVVAS PETROU
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SAVVAS PETROU,

Applicant,

and

THE REPUBLIC OF CYPRUS THROUGH
THE PUBLIC SERVICE COMMISSION

Respondent.

(Case No. 105/66).

Public Officers—Promotions—Principles applicable—Discretion—Paramount duty of the competent organ or authority to select the most suitable candidate—Regard being had to the totality of circumstances pertaining to each one of the qualified candidates—Including length of service—Which is always a factor to be considered—But not always the exclusive vital criterion—Recommendations of the Head of Department—Due weight should be given to such recommendations—Especially in cases in which the technical staff is concerned—Always being understood that the competent organ or authority in deciding promotions etc. etc. must exercise its own discretion—And not confine itself to mere “covering approval” of such recommendations.

Cyprus Inland Telecommunications Authority—Viz. CYTA—Promotions to the post of Telegraphist Grade II—The CYTA Selection and Promotion Board—The legal status of that Board—See, also, above.

Public Service Commission—Duties—Discretion—Promotions in the technical staff of CYTA (supra)—In the present case the Respondent Commission, in exercising its competence under Article 125 of the Constitution, properly exercised its powers and discretion in selecting the Interested Party for promotion to the post of Telegraphist Grade II as being the most suitable candidate—No abuse of powers by the said Commission—See, also, above under Public Officers; and Cyprus Inland Telecommunications Authority.

Administrative Law—Discretion—Promotions of Public Officers—Principles applicable—Onus on the person complaining to establish to the satisfaction of the Court that the relative decision should be annulled—Abuse of powers—See, also, above.

Promotions—Promotions of public officers—See above.

Selection and Promotion Board—Its legal standing—See under Cyprus Inland Telecommunications Authority, above.

Public Service—See under Public Officers, above.

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By this recourse under Article 146 of the Constitution, the Applicant, a telegraphist Grade III in the service of the Cyprus Inland Telecommunications Authority (CYTA), challenges the validity of the promotion of the Interested Party, S.C., to the post of telegraphist Grade II as such promotion has been decided upon by the Respondent Public Service Commission on the recommendation of the aforesaid Authority, hereinafter referred to as CYTA. Before the establishment of the Republic, CYTA had the powers of appointing all its servants under the provisions of section 10 (1) of the relevant Law, Cap. 302. But for reasons of staff administration, CYTA has agreed to set up a selection and Promotion Board consisting of representatives of both CYTA and the Trade Union of its staff. This Board continued to function even after the establishment of the Republic and remained as an advisory body only; its creation was not based on the provisions of the said Law, Cap. 302 or any other law. On the 11th December, 1965, the aforesaid Board decided not to recommend for promotion to the post of Telegraphist Grade II either the Applicant or the Interested Party, S.C. (*supra*). CYTA, having considered the recommendation of the Board, as well as the views of the General Manager, have written a letter dated the 14th February, 1966, *exhibit 3*, recommending to the Respondent Public Service Commission the promotion of the Interested Party, the aforesaid S.C. On the same day CYTA transmitted to the Commission all relevant documents, including a copy of the minutes of the Board of the 11th December, 1965. On the 23rd March, 1966, the Public Service Commission, now the competent organ for the appointment, promotion etc. etc. of, *inter alia*, the officers of CYTA (see Article 125 of the Constitution), considered the application of the candidates for the filling of the one vacancy in the post of Telegraphist Grade II and after hearing the views of the General Manager

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of CYTA and, also, having considered the recommendations of the said Authority (CYTA) as well as all other relevant material, decided unanimously to accept the recommendation of CYTA and promote to the vacant post the Interested Party.

The main argument of Applicant's counsel was that the words in *Exhibit 3 (supra)*, paragraph 3: "they decided^f to submit for your approval promotions" indicate that the Respondent Commission failed to exercise its own discretion when making the promotion. Counsel for the Applicant further argued that the Respondent Commission by acting contrary to the recommendations of the Selection and Promotion Board of the 11th December, 1965 (*supra*) has, in effect, acted contrary to the recommendations of the Head of the Department, because, the argument went on, once CYTA had delegated its powers for the selection and promotion of its officers to the said Board, the latter became in effect the Head of the Department. The last submission of counsel for the Applicant was that the Respondent Commission failed in their paramount duty in selecting the best candidate in view of the seniority of the Applicant, his experience and training as a Telegraphist.

In dismissing the recourse, the Court:

Held, (1) I am satisfied that the *sub judice* decision of the Respondent Commission was not simply a question of the Commission approving the promotions suggested by CYTA in their letter, *Exhibit 3 (supra)*, but a decision of its own reached by the said Commission unanimously and after due consideration of relevant factors. The present case, therefore, can be distinguished from the decision reached on the point of "covering approval" in *Kalisperas and The Republic*, 3 R.S.C.C. 146; *vide*, also *Neophytou and The Republic*, 1964 C.L.R. 280, at p.297.

(2) The Selection and Promotion Board (*supra*) cannot be said that, for purposes of recommending promotions to the Respondent Public Service Commission, has become the Head of Department. CYTA, as it is shown in *exhibit 4* was and remains the competent organ under the law, qualified to make the recommendations to the Commission for promotion.

(3) It is true that the Applicant had longer service in the Department, seniority ranking equal. But length of service, though always a factor to be considered, is not always the exclusive vital criterion in deciding promotions. The Public Service Commission, in effecting promotions, has a paramount

duty to select the most suitable candidate for the particular post, having regard to the totality of circumstances pertaining to each one of the qualified candidates, including length of service. Principles laid down in *Theodossiou and The Republic*, 2 R.S.C.C. 44, applied.

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(4) I am satisfied that the Respondent Commission, having considered the qualifications, length of service, training and experience required under the relevant schemes of service, *exhibit 2*, as well as the views of the General Manager, who was present at the relevant meeting of the Commission, and the recommendations of CYTA, properly exercised its discretion in selecting and promoting the Interested Party as being the most suitable candidate. *Vide: Marcoullides and The Republic*, 3 R.S.C.C. 30, at p. 31 where it was held that "The Public Service Commission should always take into consideration all recommendations of the Electricity Authority in matters of this nature, and, *a fortiori*, in cases in which the Technical staff of the Authority is concerned". *Vide also: Theodossiou and The Republic (supra)* and *Saruhan and The Republic*, 2 R.S.C.C. 133.

(5) Having reached the conclusion that it was reasonably open to the Respondent Commission on the material before it to come to such conclusion, in spite of the fact that Applicant had longer service, I am not satisfied that the Commission has acted in abuse of its powers and as the Applicant failed in discharging the onus cast upon him of establishing to my satisfaction that the appointment of the Interested Party should be annulled, the application cannot succeed. *Vide Koukoullis and The Republic*, 3 R.S.C.C. 134, *Uludag and The Republic*, 3 R.S.C.C. 131 and *Saruhan and The Republic (supra)*.

Application dismissed.
No order as to costs.

Cases referred to:

Kalisperas and The Republic, 3 R.S.C.C. 146;

Neophytou and The Republic, 1964 C.L.R. 280 at p. 297;

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

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

Saruhan and The Republic, 2 R.S.C.C. 133;

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Koukoullis and The Republic, 3 R.S.C.C. 134;

Uludag and The Republic 3 R.S.C.C. 131.

Recourse.

Recourse against the decision of the Respondent to promote the Interested Party Socratis Charalambous, to the post of Telegraphist Grade II, in preference and instead of the Applicant.

L. Clerides for the Applicant.

K. Talarides, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:

HADJIANASTASSIOU, J.: In this recourse, the Applicant, under Article 146 of the Constitution, challenges the validity of the promotion of the Interested Party, Mr. Socratis Charalambous, to the post of Telegraphist Grade II, and seeks a declaration, that the decision of the Respondent, Public Service Commission, to promote the Interested Party, in preference and instead of the Applicant, is null and void, and of no effect whatsoever.

The admitted facts, as briefly as possible, are as follows:

The Applicant, who is a graduate of the Commercial Academy of Limassol, was appointed in October, 1960, as a Clerical Assistant in the Cyprus Inland Telecommunications Authority (hereinafter to be referred to as "The Authority").

The Interested Party, who is a graduate of Paphos College, started working as a casual worker "μεταβιβαστής" on the 1st January, 1960, at Paphos Telegraph Office of CYTA. On the 9th October, 1960, the Interested Party joined the permanent staff of CYTA and, was posted to the Limassol office. In January, 1961 he became a night operator, and in 1962 he was appointed as a Clerical Assistant.

On the 1st January, 1964, there was a re-organization in the Authority and the Applicant, the Interested Party, as well as a number of other officers became Telegraphists Grade III by a decision of the Commission dated the 30th October, 1964, and marked *exhibit 1*.

Exhibit 1 reads as follows:

“The Commission after hearing the explanations of the Secretary of the Authority to the effect that the Clerical Assistants who have been recommended for appointment as Telegraphist, Grade III, have in fact been performing the duties of Telegraphist since the date of their appointment although styled Clerical Assistants and, bearing in mind that they have thereby acquired the necessary knowledge, experience and ability required for the post of Telegraphist, Grade III, for which they have been recommended, decided that these Clerical Assistants (the names of 15 persons including the Applicant and the Interested Party are mentioned) be appointed to the post of Telegraphist Grade III, w.e.f. 1.1.64”.

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In 1964 there was a number of vacant promotion posts of Telegraphists Grade II and the publication for such posts was made internally for the information of all concerned on the 8th November, 1965. The scheme of service was produced and marked *exhibit 2*. There was only one post allocated for the Limassol Telegraph office of CYTA and there were ten candidates for that post including the Applicant and the Interested Party.

In the relevant scheme of service, *exhibit 2*, the qualifications laid down are as follows:

- (a) To be graduate of a recognised Secondary School.
- (b) To possess a good knowledge of one of the official languages and good knowledge of the English language both written and spoken. Knowledge of the other official language an advantage.
- (c) To be able to type on the teleprinter 50 w.p.m. plain language.
- (d) To possess satisfactory knowledge of the International Telegraph Rules and Regulations.
- (e) To read Five Unit Slip at the rate of 15 w.p.m.
- (f) To have three years of service as a Telegraphist Grade III.

Note: Any promotion will be effected only after the required

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trade examinations to be set from time to time by the Authority.

The Authority, before the establishment of the Republic had powers of appointing all its servants under the provisions of section 10(1) of Law, Cap. 302. But for reasons of staff administration, the Authority had agreed to set up a Selection and Promotion Board consisting of representatives of both The Authority and the trade union of the CYTA staff. This Board continued to function even after the establishment of the Republic and remained as an advisory body only. Its creation was not based on the provisions of Law Cap. 302 or any other law.

On the 11th December, 1965, a meeting of the Board was held under the Chairmanship of Mr. Kokkinides, the Secretary of the Authority, and after considering the applications of ten Applicants they decided not to recommend for promotion either the Applicant or the Interested Party. Instead they selected Andreas Panteli and A. Ioannou whom they recommended to the General Manager as being the most suitable candidates. (Vide the minutes *exhibit 3A*).

In fact the function of this Board, once they had decided the names of the persons to be recommended, was to place a copy of the minutes before the General Manager of CYTA, who in his turn after considering such minutes submitted those recommendations as well as his own observations to the Authority, which is the competent organ for making recommendations for promotions to the Public Service Commission.

The Authority of CYTA having considered the recommendations of the Board, as well as the views of the General Manager, have written a letter dated the 14th February, 1966, *exhibit 3*, recommending to the Commission the promotion of the Interested Party.

On the same date the Authority transmitted to the Commission all relevant documents, including a copy of the minutes of the Board, *exhibit 3A*, as well as a list *exhibit 3B*, showing the names of Savvas Petrou and Socratis Charalambous, their years of service, salary and qualifications.

On the 23rd March, 1966, the Commission at their meeting considered the applications of the candidates for the filling

of the one vacancy at the Limassol Telegraph Office. After hearing the views of the General Manager of the Authority, Mr. A. Stylianides, and after considering the qualifications, experience in telegraphy and merits of the Applicants, and having considered all the recommendations of the Authority decided unanimously that Mr. S. Charalambous (the Interested Party) be promoted to the post of Telegraphist Grade II. (Vide the minutes *exhibit 4*).

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The main argument of Applicant's counsel before me was that the words in *exhibit 3*, paragraph 3, "they decided to submit for your approval promotions" constitute a serious consideration, enabling the Court to annul the promotion of the Interested Party, because the said words indicate that the Commission failed to exercise its discretion when making the appointment.

I am satisfied that the Commission has dealt with the applications for promotion *i.e.* the filling of the one vacancy in Limassol Telegraph Office, after considering all material before it as well as the recommendation of the Head of Department and it properly exercised its discretion in deciding to promote the Interested Party. Its decision was not simply a question of the Commission approving the promotions suggested by the Authority in their letter, *exhibit 3*, but a decision of its own reached by the Commission unanimously, and after due consideration. The present Case, therefore, can be distinguished from the decision reached on the point of "covering approval" in *Kalisperas and The Republic*, 3 R.S.C.C. p. 146. Vide also *Costas Neophytou and The Republic*, 1964 C.L.R. 230 at p. 297.

Counsel further submitted that the Commission in promoting the interested Party acted contrary to the recommendation of the Selection and Promotion Board. He argued that because the Authority had delegated its powers for the selection and promotion of its officers to the Board, the said Board had become the Head of the Department.

The admitted facts as well as the copy of the minutes of the meeting of the Board, *exhibit 3A*, indicate that the Selection and Promotion Board had been created after an agreement between the Authority and its staff concerning the selection and promotion of personnel and as it has consultative capacities only, it cannot be said that for purposes of recommending

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promotions to the Commission, the said Board had become the Head of Department. The Authority, as it is shown in *exhibit 4*, was and remains the competent organ under the law, qualified to make the recommendations to the Commission for promotions. In my view there is no question of the Authority having delegated its powers to the said Board. The Authority, of course, had to consider, but was not bound to adopt the recommendations of the Board.

The last submission of counsel was that the Respondent Commission, failed in their paramount duty in selecting the best candidate in view of the seniority of the Applicant, his experience and training as a Telegraphist.

It is true that the Applicant had longer service in the Department, seniority ranking equal. It was decided in *Michael Theodossiou and The Republic*, 2 R.S.C.C. p. 44 that "the Public Service Commission in effecting promotions, has a paramount duty to select the most suitable candidate for the particular post, having regard to the totality of circumstances pertaining to each one of the qualified candidates, including length of service, which though always a factor to be considered is not always exclusive vital criterion for such promotion".

I am satisfied that the Public Service Commission, having considered the qualifications, length of service training and experience required under the schemes of service *exhibit 2*, as well as the views of the General Manager who was present and the recommendations of the Authority, properly exercised its discretion in selecting and promoting the Interested Party as being the most suitable candidate and, therefore, the Court will not interfere with the discretion of the Commission. Vide *Andreas Antoniou Marcoullides and The Republic*, 3 R.S.C.C. p. 30 where at p. 31 it was held "the Public Service Commission should always take into serious consideration all recommendations of the Electricity Authority in matters of this nature, and, *a fortiori*, in cases in which the technical staff of the Authority was concerned". Vide also *Michael Theodossiou and The Republic (supra)* and *Salih Shukri Saruhan and The Republic* 2 R.S.C.C. p. 133.

Having reached the conclusion that it was reasonably open to the Commission on the material before it to come to such conclusion, in spite of the Applicant having longer service,

I am satisfied from the facts before me that the Commission has acted in abuse of its powers; and as the Applicant failed to discharge the onus cast upon him of proving that the appointment of the Interested Party should be annulled, the application cannot succeed. Vide *Koukoulis and The Republic*, 3 R.S.C.C. p. 134, *Mustafa Hamza Uludag and The Republic*, 3 R.S.C.C. p. 131; and *Saruhan and The Republic (supra)*. In the result the Recourse fails and is dismissed. In the circumstances I make no order as to costs.

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Application dismissed.
No order as to costs.