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[TRIANTAFYLLIDES, J.]

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ANDREAS
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AND OTHERS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS KOUSOULIDES AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 142/61).

Public Officers—Promotions—Promotions to the post of Customs and Excise Officer, 1st grade—Original and subsequent amending decisions of Respondent Commission—Amendment made prior to the communication of the original decision to the persons concerned—Due reasons for such amending decision duly recorded—Nothing improper in this procedure—Seniority—Seniority of Applicants duly taken into account—Striking superiority—No such outstanding or striking superiority of Applicants over the Interested Parties established, so as to lead to the conclusion that the Respondent Commission acted in the matter in excess or abuse of its powers—Confidential Reports on candidates—Presumed to have been duly examined by the Respondent Commission—The “presumption of regularity”—Recommendations by the Head of the Department concerned—Must be given due weight and should not be disregarded without cogent reasons duly recorded—But such recommendations or views need not be invited ad hoc when there exist, as in this case, most recent Confidential Reports on the candidates—Onus—The onus is on the Applicant to establish to the satisfaction of the Court that the Respondent in making the said promotions acted in excess or abuse of powers—And in this case Applicants failed to discharge such burden—And although the Court, had it been acting in the place of the Respondent, might possibly have made a different choice—Still it cannot substitute its own views for those of the Respondent Commission in the selection of the candidates—Because, on the whole, the Respondent did not exceed the proper margins of its discretion.

Public Service Commission—Promotions—Views of the Head of the Department concerned—Need not be invited ad hoc, in writing or orally, when there exist, emanating from such Department,

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most recent Confidential Reports on the candidates—See, also, above.

Administrative Law—Excess and abuse of power—Burden of establishing such excess or abuse is on the Applicant—Discretion—Margins of discretion—Proper margins of discretion not exceeded in this case—Though the Court, had it been acting in the place of the Respondent Commission, might have made a different choice among the candidates for promotion—See, also, above under Public Officers.

Confidential Reports—Confidential Reports on candidates for promotion—See above under Public Officers.

Recommendations and views by the Head of the Department concerned—Due weight must be given—Need not always be invited ad hoc—See above under Public Officers; Public Service Commission.

Discretion—Proper margins of discretion not exceeded in the present case—Therefore, no excess or abuse of powers has been established.

Excess or abuse of powers—Onus to establish such excess or abuse is on the Applicant—Discretion—Proper margins not exceeded—See above under Public officers; Administrative Law.

Abuse of powers—See above.

Promotions—Promotions in the public service—See above.

Seniority—Seniority in selecting candidates for promotion must be given due consideration—See above under Public Officers.

Superiority—Outstanding or striking superiority required in certain cases—Disregard whereof amounts to an excess or abuse of powers in selecting candidates for promotion—Mere superiority not sufficient—See, also, under Public Officers, above.

Regularity—“The presumption of regularity”—See above under Public Officers.

Presumption—“The presumption of regularity”—See above under Public Officers.

By this recourse the Applicants are complaining against the promotions made to the post of Customs and Excise Officer, 1st Grade, of the three Interested Parties, *inter alia*, on the following two grounds:

(1) That the views of the responsible Head of Department were not sought by the Respondent Commission; nor was he invited by it to attend the relevant meetings.

(2) That the Applicants were senior to, and better qualified

than the Interested Parties; that the Applicants' seniority was not taken into account duly or at all; moreover, that the Confidential Reports on the Applicants were better than those on the Interested Parties, and that either such Reports were not before the Commission at the time or they were overlooked without proper cause.

In dismissing the recourse the Court:

Held (1) (A) The relevant legal position, as it appears to me on the basis of the relevant jurisprudence (see Theodossiou and The Republic, 2 R.S.C.C. 44 and subsequent case-Law), is that once recommendations have been made by a Head of Department they should be given due weight and they should not be disregarded without inviting, first the Head of the Department concerned to explain his views to the Public Service Commission, and without giving sufficient reasons for disregarding them—if they are still to be disregarded after hearing the Head of Department.

(B) But I do not think that it has ever been laid down that the views of the Head of the Department concerned have to be invited *ad hoc*, in writing or orally, when there exist already, emanating from the Department in question, most recent Confidential Reports on the candidates—as it was the position in the present case; I do not think, therefore, that I can hold that the Respondent Commission has acted in any way improperly in this connection.

(2) In the absence of any proof to the contrary I must presume, in accordance with the "presumption of regularity", that the Respondent Commission examined the Confidential Reports filed on the candidates and did not resort to guesswork to ascertain their respective qualifications and merits even though this fact is not expressly *mentioned* in the relevant minutes.

(3) Nor can I agree with the argument that as "seniority" is not mentioned specifically in the relevant minutes of the Respondent Commission, it, therefore, must have not been taken into account. Seniority was a matter which could clearly be seen on the face of the data set out in the Confidential Reports files and it could not have escaped the notice of the Commission.

(4) (a) Applicant 3 is the only one who attacks the promotions of all Interested Parties (Parlas, Carios, Stephou). But as the promotion of Interested Party Stephou (*supra*) is attacked by all Applicants I shall deal first with the promotions of the first two aforesaid Interested Parties (*supra*) viz-a-viz Applicant 3.

(b) The said two Interested Parties and the Applicant 3 had, all three, equal seniority in the post of Customs and Excise Officer, 2nd Grade. The most recent Confidential Reports on them all were not such as to place Applicant 3 *strikingly ahead* of Interested Parties Parlas and Carios (*supra*), so as to lead to the conclusion that the promotions of the said two Interested Parties were decided upon by the Respondent Commission in excess or abuse of its powers. The Commission preferred the said two Interested Parties to Applicant 3, as it was a matter of choice of the most suitable person. Then, even if the Court were to disagree with the choice so made, it cannot substitute its own views for those of the Commission, so long as nothing has been established entitling it to intervene in the matter under Article 146 of the Constitution.

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(5) *With regard to Interested Party Stephou*

(a) Bearing in mind that the latest Confidential Report on this Interested Party was a good one, even though not as those on some of the Applicants, bearing in mind that most of the Confidential Reports on the Applicants and the said Interested Party were not made by the same Reporting and Countersigning Officers, so as to form a definitely reliable yardstick of the respective merits of the candidates, bearing in mind that the said Interested Party was the only one among all candidates—not junior to him—who possessed additional qualifications in book-keeping and, lastly bearing in mind that it was up to the Applicants to discharge the burden of satisfying the Court that the Respondent Commission acted in excess or abuse of powers (See *Koukoullis* and *The Republic*, 3 R S C C 134), I have reached the conclusion that, though possibly my own choice—had I been acting in place of the Commission—might have been different, I have not been satisfied that the Respondent Commission has exceeded the margins of its discretion in selecting for promotion the Interested Party aforesaid instead of any one of the Applicants.

(b) There has not been established to my satisfaction a case of *striking superiority* of any one of the Applicants over the said Interested Party—when, also, his qualifications are borne in mind—so as to lead me to the conclusion that the Respondent Commission has acted in excess or abuse of powers (see *Evangelou* and *The Republic* (1965) 3 C L R 292).

(6) For all the foregoing reasons this recourse must be dismissed. No order as to costs.

Application dismissed. No order as to costs.

Cases referred to:

Theodosiou and The Republic, 2 R.S.C.C. 44, followed;
Koukoullis and The Republic, 3 R.S.C.C. 134, applied;
Evangelou and The Republic (1965) 3 C.L.R. 292, applied

Recourse.

Recourse against an alleged omission of the Respondent to promote the Applicants to the post of Customs & Excise Officer, 1st grade, from the post of Customs & Excise Officer, 2nd grade, and against the promotions made to the post of Customs & Excise Officer, 1st grade of five Customs & Excise Officers, 2nd grade.

L. Clerides, for the Applicants.

L. Loucaides, Counsel of the Republic, for the Respondent.

G. Tornaritis, for Interested Party Parlas.

Cur. adv. vult.

The following Judgment was delivered by:

TRIANTAFYLIDIS, J.: By this recourse the Applicants are complaining against an alleged omission to promote them to the post of Customs & Excise Officer, 1st grade, from the post of Customs & Excise Officer, 2nd grade, and they are, also, complaining against the promotions made to the post of Customs & Excise Officer, 1st grade of five Customs & Excise Officers, 2nd grade, three Greeks and two Turks.

The complaint against an omission to promote the Applicants is obviously an alternative one and is, in any case, not well-founded, because it is clear that the non-promotion of the Applicants resulted through decisions of the Respondent Commission taken in the exercise of its discretionary powers and it is not merely a result of an omission.

Though in the Application, as drafted, the Applicants appear to be twenty-one, they have been, all along, only twenty, because the name of Applicant 8, Costas HadjiStylianou has by inadvertence been repeated twice, and he figures as Applicant 19, too.

All Applicants have not challenged the validity of the promotions of all Interested Parties, but each Applicant has challenged the validity of the promotion of one or more particular Interested Parties, as set out in Schedule A attached to the Application.

As during the last hearing of this Case counsel for Applicants conceded that the Applicants, being all Greeks, could not maintain that legitimate interests of theirs had been affected, in the sense of Article 146.2 of the Constitution—so as to enable them to challenge the promotions of the Turkish Interested Parties—in view of the fact that the relevant vacancies had been earmarked for Turkish candidates in any case, and as the ground originally raised in the Application to the effect that the vacancies were wrongly allocated between Greek and Turkish candidates has not been pursued further, we are no longer concerned with the promotions of the Turkish Interested Parties and to the extent to which the recourse relates to their promotions it is to be regarded as having been struck out accordingly.

Out of all the twenty Applicants we are concerned, at this stage, with only Applicants 2, 3, 8, 9, 12, 15, 17, 18, 20 and 21. This recourse, in so far as the rest of the Applicants—1, 4, 5, 6, 7, 10, 11, 13, 14 and 16—are concerned has been abandoned by them at different stages of these proceedings and to that extent the recourse stands struck out accordingly.

Thus, due to developments in the meantime and in the light of Schedule A we are faced now with the position that Applicants 2, 8, 9, 12, 15, 17, 18, 20 and 21 attack only the promotion of Interested Party Spyros Stephou (or Stephanou, as he is described in Schedule A) and Applicant 3 attacks the promotion of the said Interested Party but also the promotions of Interested Parties Christodoulos Parlas and Andreas Lardis.

This recourse was filed on the 27th November, 1961, and has taken nearly six years to be determined; this is, indeed, a most undesirable state of things but, unfortunately, due to circumstances appearing in the hereinafter set out history of the proceedings, it could not have been avoided.

The Case came up, originally, for Directions, on the 20th January, 1962; the Interested Parties, except one, appeared and obtained leave to take part in the proceedings through counsel of their own.

The hearing commenced in February, 1962, but it had to be adjourned, more than once, on the joint application of the parties, with a view to the possibility of an out-of-Court solution of the matter; in the end no solution was found and, eventually, the Case was fixed for completion of the hearing in October, 1963; before that, however, the President of the Supreme Constitutional Court, before which the hearing of the Case had

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commenced, resigned and so the hearing turned out to be abortive and had to commence de novo.

After the enactment of the Administration of Justice (Miscellaneous Provisions) Law 1964 (Law 33/1964) the new hearing of this Case could have taken place, but Applicants insisted still to proceed, also, against the promotions of the Turkish Interested Parties.

Accordingly, the Case could not, for quite some time, be fixed for hearing because the Turkish Interested Parties, or their counsel, could not be notified of the new date of hearing due to the current anomalous situation in Cyprus. At last this became possible early this year and the Case was heard on the 2nd and 16th May, 1967; as aforesaid, during the hearing the recourse as against the promotions of the Turkish Interested Parties was eventually abandoned.

The main submissions of counsel for Applicants at the new hearing may be summarized as follows:

(A) That though the original decision, regarding the promotions in question, which was taken on the 1st June, 1961 (see *exhibit 1*) was subsequently amended on the 29th June, 1961 (see *exhibit 2*)—and two of those promoted on the 1st June, 1961, had their promotions cancelled and two others, Interested Parties Lardis and Stephou, were promoted instead—due reasons for such a course were not recorded in the relevant minutes of the Respondent Commission.

(B) That the views of the responsible Head of Department were not sought by the Commission; nor was he invited by it to attend the relevant meetings.

(C) That the Applicants were senior to, and better qualified than, the Interested Parties; that the seniority of Applicants was not taken into account duly or at all; moreover, that the Confidential Reports on the Applicants were better than the Confidential Reports on the Interested Parties, and that either such Reports were not before the Commission at the time or they were overlooked without proper cause.

Regarding submission (A), above, it is useful to quote the relevant decisions of the Commission, which are *exhibits 1 and 2* respectively, and read as follows:

“1.6.61 at 9.30 a.m.

Filling of vacancies in the Customs Department.

Filling of vacancies in the post of Customs & Excise Officer, 1st grade.

10 vacancies were allocated.

6 to Greeks.

4 to Turks.

It was decided by majority of 9 to 1 (Mr. Tryfonides dissenting) that the Commission should dispense with the interview of candidates for this post.

The Commission decided that the following be promoted/seconded to the post of Customs & Excise Officer, 1st grade, w.e.f. 1.6.61:

Greeks

1. Petros Antoniou,
2. Leandros Theodossiades,
3. John Evripidou,
4. A. Philippou,
5. Pheidias Kyprianou (secondment),
6. Christodoulos Parlas.

Turks

.....”

“29.6.61 at 5.00 p.m.

Promotions to the post of Customs & Excise Officer, 1st grade.

The Commission has reconsidered the promotions made from Customs & Excise Officer, 2nd grade to 1st grade and on further examination of the respective officers promoted, decided that the decision taken for the promotions of Mr. Leandros Theodossiades and Mr. Anastassis Philippou should be cancelled.

The Commission after examining the other Customs & Excise Officers, 2nd grade, and considering qualifications and merit decided that Mr. Andreas Lardis and Mr. Spyros Stephou be promoted to the post of Customs & Excise Officer, 1st grade”.

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The decision taken, as above, on the 1st June, 1961, was amended, also, on the 4th July, 1961, regarding some of the Turkish candidates (see *exhibit 7*), but once the recourse against the Turkish Interested Parties has been abandoned we are not concerned with that aspect any longer.

As it appears from the above minutes—those of the 1st and 29th June, 1961—the amending decision of the 29th June, 1961, did not affect directly any one of the Applicants because none of them was promoted originally on the 1st June, 1961, and had his promotion cancelled subsequently on the 29th June, 1961.

In any case, I am in agreement with counsel for Respondent that as the promotions in question were not officially announced until much later—and in any case not before the 11th July, 1961, as it is clear from the letter *exhibit 3*—the decision of the Commission of the 1st June, 1961, constituted on the 29th June, 1961, an “internum” of the Commission which it was free to amend (see Kyriakopoulos on Greek Administrative Law, 4th ed., vol. 2 p. 399); I am not of the view that the amendment concerned was made without recording due reasons—assuming due reasons were required in the circumstances—because it is quite clear from the contents of the decision of the 29th June, 1961 (*exhibit 2*) that it was the outcome of further consideration of the merits of the candidates. Thus, I find no merit in submission (A), above, of the Applicants.

Regarding submission (B), above, it is quite correct that the Head of the Department affected, the Chief Customs Officer, was not present at the relevant meetings of the Commission nor does it appear that he had been asked to make specific recommendations for the filling of the vacancies in question.

The relevant legal position, as it appears to me on the basis of the relevant jurisprudence (see *Theodossiou* and *The Republic*, 2 R.S.C.C. p. 44 and subsequent case-law), is that once recommendations have been made by a Head of Department they should be given due weight and they should not be disregarded without inviting, first, the Head of the Department concerned to explain his views to the Commission, and without giving sufficient reasons for disregarding them—if they are still to be disregarded after hearing the Head of Department. But I do not think that it has ever been laid down that the views of the Head of the Department concerned *have to be invited ad hoc*, in writing or orally, when there exist already, emanating

from the Department in question, most recent Confidential Reports on the candidates—as it was the position in June, 1961 in the present Case; I do not think, therefore, that I can hold that the Commission has acted in any way improperly in this connection.

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I come now to submission (C), above:—

In this respect I must state, first, that I am of the view that the Confidential Reports on the candidates were, indeed, before the Commission—even though this fact is not expressly mentioned in the relevant minutes—otherwise it would have been impossible for it to evaluate at all the qualifications and merits of the candidates since no other relevant material existed—such as applications of candidates or interviews—on which such evaluation could have been based; in the absence of any proof to the contrary I must presume, in accordance with the “presumption of regularity”, that the Commission examined the Confidential Reports files of the candidates and did not resort to guesswork in order to ascertain their qualifications and merits.

Nor can I agree with the argument that as “seniority” is not mentioned specifically in the relevant minutes of the Commission, it, therefore, must have not been taken into account. Seniority was a matter which could clearly be seen on the face of the data set out in the Confidential Reports files and it could not have escaped the notice of the Commission. It is clear from the minutes of the 29th June, 1961, that right down to the very end the “qualifications and merit” of the candidates were being considered and the said terms are, indeed, generic and wide enough to cover “seniority” as well.

I pass on next to the matter affecting particular Applicants and Interested Parties:—

The only Applicant who attacks the promotions of more than one Interested Party is Applicant 3, who attacks the promotions of Interested Parties *Parlas*, *Lardis* and *Stephou*.

As the promotion of Interested Party *Stephou* is attacked by all other Applicants, too, I shall deal, first, separately, with the question of the promotions of Interested Parties *Parlas* and *Lardis* vis-avis Applicant 3 (*Vorgas*).

The said two Interested Parties and the Applicant in question had, all three, equal seniority in the post of Customs & Excise Officer, 2nd grade. The most recent Confidential Reports on them—the last one on each of them being dated in April

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1961—were not such as to place Applicant 3 strikingly ahead of Interested Parties Parlas and Lardis, so as to lead to the conclusion that the promotions of these Interested Parties were decided upon by the Commission in excess or abuse of powers; the Commission preferred the said Interested Parties to Applicant 3; as it was a matter of choice of the most suitable person, then, even if this Court were to disagree with the choice made by the Commission, it cannot substitute its own views for those of the Commission, so long as nothing has been established entitling it to intervene in the matter under Article 146 of the Constitution.

The promotion of Interested Party Stephou has been attacked by all Applicants who are still pressing this recourse:

Applicants 2 (Papadopoulos), 8 (HadjiStylianou), 9 (Victoras), 12 (Constantinou), 15 (Antoniades), 17 (Angelides), 20 (Efsthathiou) and 21 (Panayides) were about a year senior to this Interested Party in the post of Customs & Excise Officer, 2nd grade; and Applicant 3 (Vorgas) was about four years senior to him; on the other hand Applicant 18 (Chrysochou—and not Chrysanthou as erroneously described in Schedule A to the Application) was about two years junior to this Interested Party.

In the cases of this Interested Party and Applicant 3 the latest Confidential Reports on both—dated 28th April, 1961—are signed by the same Reporting and Countersigning Officers and, therefore, one can say that they are quite reliable in reflecting a comparative picture of the suitability of these two candidates. Such Reports show the two candidates to be of more or less equal merit; and the immediately previous Confidential Reports on them, in 1960, do not add much either way.

The latest Confidential Report on Applicant 9 is signed by a different Reporting Officer than the latest Report on the Interested Party; but both are signed by the same Countersigning Officer; and they are both dated the 28th April, 1961. The Report on this Applicant appears to be slightly better than that on the Interested Party. The immediately previous Reports on them, in 1960, show more or less equal merit.

The latest Confidential Reports on Applicants 2 and 12 are signed by different Reporting and Countersigning Officers than the latest such Report on this Interested Party; they are all dated in April 1961. On the basis of such Reports Applicant 12 appears rather better than the Interested Party; and this holds good in respect of the previous Reports of 1960. which

are better in respect of both these two Applicants than in respect of the Interested Party. But the fact, in relation to all these Reports of 1960 and 1961, that the Reporting and Countersigning Officers are not the same, does affect adversely their reliability as yardsticks of the comparative suitability of the candidates concerned.

The latest Confidential Reports on Applicants 8, 15, 17, 18, 20 and 21 are dated in April or May 1961 and are all signed by various Reporting Officers who are not the same as the Reporting Officer in the case of the latest Report on the Interested Party; all the latest Reports on these Applicants are countersigned by the *same* Countersigning Officer—Mr. Philippides—who in relation to some of these Reports had acted, at the same time, as the Reporting Officer, too.

Mr. Philippides seems clearly inclined to praise and stress quite generously the good points of all those on whom he had to report, either as Reporting Officer or Countersigning Officer. But bearing this in mind—as well as the fact that the Reporting and Countersigning Officers are not the same in relation to these Applicants and in relation to the Interested Party—there cannot be any doubt that the latest Reports on these Applicants are, generally, better—and in some instances clearly so—than the corresponding one on the Interested Party; and also, the same holds, more or less, good in relation to the immediately previous Confidential Reports in 1960.

On the other hand, looking at the qualifications' side of the picture, we find that Interested Party Stephou was superior to all the Applicants who attacked his promotion, because apart from the usual qualifications possessed by him and all such Applicants, he possessed two qualifications in book-keeping; and none of the said Applicants possessed such additional qualification, or any other additional qualification of any kind, except Applicant 12 who possessed a rather irrelevant additional qualification in shorthand and Applicant 18 who possessed one—the lower one—of the book-keeping qualifications of the Interested Party.

There can be no doubt that book-keeping is an additional qualification which is of definite value to public officers such as Customs Officials, who have in the course of their work to deal with related thereto documents and transactions.

The only Applicant who had a qualification in book-keeping was, as aforesaid, Applicant 18; but he was two years junior

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to Interested Party Stephou in the post of Customs & Excise Officer, 2nd grade, and, on the Confidential Reports aspect he did not appear to be much better than the Applicant.

With regard to all the other Applicants we are faced with the position that the Respondent Commission has preferred a candidate—this Interested Party Stephou—instead of them, some of whom appeared on paper, at least, to be better than him, and who were senior to him in the relevant post, but none of whom had additional qualifications such as he possessed—and in its relevant decision, of the 29th June, 1961 (see *exhibit 2*), when it decided on the promotion of this Interested Party, the Commission has expressly recorded that it had considered both ‘qualifications and merit’.

Bearing in mind that the latest Confidential Report on Interested Party Stephou was a good one, even though not as good as those on some of the Applicants, bearing in mind that most of the Confidential Reports on the Applicants and this Interested Party were not made by the same Reporting and Countersigning Officers, so as to form a definitely reliable yardstick of the merits of the candidates, bearing in mind that the Interested Party was the only one among all candidates—not junior to him—who possessed additional qualifications in book-keeping, and bearing, lastly, in mind that it was up to the Applicants to discharge the burden of satisfying me that the Commission in promoting the Interested Party acted in excess or abuse of powers (see *Koukoullis* and *The Republic* 3 R.S.C.C p 134), I have reached the conclusion that though possibly my own choice of the candidate to be promoted—had I been acting in place of the Commission—might have been different, I have not been satisfied that the Commission has exceeded the margins of its discretion in selecting for promotion, in the circumstances of this Case, Interested Party Stephou instead of any one of the Applicants; there has not been established to my satisfaction a case of striking superiority of any one of the Applicants over this Interested Party—when, also, his qualifications are borne in mind—so as to lead me to the conclusion that the Commission has acted in excess or abuse of powers (see *Evangelou* and *The Republic* (1965) 3 C.L.R 292)

For all the foregoing reasons I have reached the conclusion that this recourse should be dismissed, but without any order as to costs.

Application dismissed
No order as to costs