

[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

MICHAEL LAZAROU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 39/67).

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Public Officers—Discipline—Disciplinary proceedings—Public Service Commission—Setting in motion a disciplinary process before the Commission by an organ of the Executive Branch of the Government—Preliminary investigation into the complaints against Applicant—Carried out by Applicant's Department—Nothing improper in that—Reference of the matter to the Commission by the Minister himself—Though unfortunate such a reference, in the circumstances of the present case it did not vitiate the disciplinary process—Joint hearing in disciplinary proceedings in respect of two officers—Nothing improper in such joint hearing—Public Service Commission—Hearing before it—Bearing on the outcome of Applicant's case of order of hearing of evidence adopted by the Commission—It is up to the Public Service Commission to regulate its proceedings in a manner compatible with the proper exercise of its competence and the well-established principles of Administrative Law—Article 125.1 of the Constitution.

Disciplinary proceedings—Setting in motion—Preliminary investigation into the disciplinary offence—Hearing—Procedure in such proceedings—See above.

Public Service Commission—Procedure—In the absence of any procedure laid down by a legislative provision, it is up to the Commission to regulate its own proceedings—In a manner compatible with the proper exercise of its competence—And the well-established principles of Administrative Law—See, also, above.

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Administrative Law—Well-established principles of—See above.

By this recourse the Applicant, who is a Mental Nursing Superintendent at the Mental Hospital, Athalassa, challenges the validity of a decision of the Respondent Public Service Commission whereby he was found guilty in disciplinary proceedings instituted against him and he was ordered to pay £24 by way of fine. During the proceedings before the Commission the Applicant was assisted by counsel, the same counsel who has appeared for him in this recourse.

The main complaints of the Applicant against the *sub judice* decision may be summarised as follows:

- (1) The validity of the whole disciplinary process has been vitiated by the fact that the preliminary investigation into the incident, which led to his punishment as aforesaid, was carried by Dr. Papanicolaou, an organ of the Executive Branch of the Government, and not, as it ought to, by the Commission itself.
- (2) The aforesaid incident was referred to the Commission, not by the Director of Medical Services or the Director-General of the Ministry of Health, but by the Minister of Health himself.
- (3) It was not proper for the Commission to hold a joint disciplinary hearing for both the Applicant and his subordinate Mr. Taliadoros, who was involved in the incident which gave rise to the disciplinary proceedings aforesaid; they ought to have been heard separately.

Paragraph 1 of Article 125 of the constitution reads as follows:

“1. Save where other express provision is made in this Constitution with respect to any matter set out in this paragraph and subject to the provisions of any law, it shall be the duty of the Public Service Commission to make the allocation of public offices between the two Communities and to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office, of public officers”.

In dismissing the recourse, the Court:-

Held, 1(a). I do not agree with counsel for the Applicant that Article 125 of the Constitution (*supra*), or any thing else in the Constitution, precludes the carrying out of a preliminary investigation into an incident by the Department concerned for the purpose of collecting the relevant material and placing it before the Commission; or ordains that such investigation should be carried out by the Commission itself.

(b) Actually, I do fail to see how a disciplinary process before the Commission can be set in motion at all unless the Commission receives first from the Department concerned sufficient material enabling it, and requiring it, to embark upon such process.

(c) I find, therefore, that Dr. Papanicolaou's action in the matter (*supra*) before the Commission took charge of it, in no way vitiates the *sub judice* decision.

(2)(a) In a recent case (*Frangides and the Republic* reported in this Vol. at p. 90 ante) this Court has had occasion to stress the need of keeping matters, within the competence of the Commission, at the public service level; but, in the particular circumstances of the present case, I can find nothing which could lead me to the conclusion that the mere fact that the Minister himself, instead of the Applicant's Head of Department, referred the matter in question to the Commission has, in any way, affected materially the relevant disciplinary proceedings, so as to entail their invalidity on such a ground.

(b) I am, moreover, quite satisfied that the Minister's intervention in the matter, unfortunate though it may have been, has in no way deprived the Applicant of a fair hearing before the Commission; its decision shows that the Commission went carefully into the merits of the matter before it, with an open mind.

(3) In the absence of any procedure laid down by legislative provision for the purpose, it was up to the Commission to regulate its own proceedings in a manner compatible with the proper exercise of its competence and the well-established principles of Administrative Law; and I think it was reasonably open to the Commission, in the circumstances, to examine the cases of the Applicant and Mr. Taliadoros together, especially as they arose out of

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one and the same incident and each one of them appeared to constitute the main witness against the other. A useful precedent for the course adopted in this matter may be found in the Decision of the Greek Council of State No. 690/1933 in 1933 III p. 90.

Application dismissed.

No order as to costs.

Cases referred to:

Frangides and the Republic (reported in this Vol. at p. 90 *ante*);

Decision of the Greek Council of State No. 690/1933, in 'Αποφάσεις Συμβουλίου Ἐπικρατείας 1933 III p. 90.

Recourse.

Recourse against the decision of the Respondent Public Service Commission whereby Applicant was found guilty in disciplinary proceedings instituted against him and he was ordered to pay £24 by way of fine.

L. Papaphilippou, for the Applicant.

M. Spanos, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLIDIS, J.: By this recourse the Applicant complains against a decision of the Respondent Public Service Commission by means of which he was found guilty in disciplinary proceedings instituted against him and he was ordered to pay £24.- by way of fine; this decision was communicated to the Applicant by letter dated the 16th January, 1967, (see *exhibit 8*).

The history of events in this Case is, shortly, as follows:-

The Applicant is a Mental Nursing Superintendent at the Mental Hospital, Athalassa.

On the 8th October, 1966, a quarrel took place, in the office of the Applicant, between the Applicant and a certain G. Taliadoros, a Hospital Porter at the Mental Hospital.

Dr. P. Papanicolaou, a Mental Specialist at the Hospital,

investigated the incident and referred it, on the 17th October, 1966, to the Director of Medical Services (see *exhibit 1A*); in the course of such investigation statements were obtained from the Applicant, from Mr. Taliadoros and from Miss Eleni Christofi, a Nurse at the Hospital, who was the only person who witnessed the incident (see *exhibits 1B, 1C, 1D*); these statements were forwarded, too, to the Director of Medical Services.

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The said Director, in his turn, referred the case to the Director-General of the Ministry of Health, who placed it before the Minister of Health; eventually, by letter dated the 23rd October, 1966, the Minister reported the incident to the Commission (see *exhibit 2*).

On the 26th October, 1966, the Commission considered the matter and decided to proceed disciplinarily against both the Applicant and Mr. Taliadoros (see *exhibit 10*).

On the 4th November, 1966, the Applicant was informed, in writing, by the Commission that there were being considered charges, against him, for improper behaviour, arising out of his quarrel with Mr. Taliadoros, and that he was invited to place before the Commission before the 21st November, 1966, whatever he wished to put forward in refutation of such charges, (see *exhibit 5*).

On the 14th November, 1966, the Applicant requested to be furnished with particulars of the charges made against him (see *exhibit 6*).

On the 25th November, 1966, the Commission informed the Applicant of the expressions which he was alleged to have used in the course of his quarrel with Mr. Taliadoros on the 8th October, 1966, and, also, that he was reported to have thrown, at the time, a telephone receiver against Mr. Taliadoros (see *exhibit 7*).

On the 2nd December, 1966, the Applicant replied denying the charges and alleging that all the improper conduct during the incident in question emanated from the side of Mr. Taliadoros (see *exhibit 9*).

On the 21st December, 1966, the Commission considered the matter and decided to ask the Applicant and Mr. Taliadoros to appear before it on the 11th January, 1967, in connection with the investigation of the charges preferred against

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them, and to ask, also, Dr. Panos, the Director of Medical Services, and Dr. Papanicolaou to be present; the latter to produce any evidence which might assist in the investigation (see *exhibit 11*).

The hearing of the case before the Commission took place on the 11th and 12th January, 1967 (see *exhibits 3A and 3B*) and the decision of the Commission was reached on the 13th January, 1967 (see *exhibit 4*).

During the proceedings before the Commission the Applicant was represented by counsel; the same counsel who has appeared for him in this recourse.

By its decision the Commission found that the Applicant and Mr. Taliadoros had quarrelled, insulted and threatened each other, on the occasion in question; it ruled that their behaviour was unacceptable in a Hospital, especially a Mental one, "where noises might affect adversely the inmates". Though the Commission clearly appears to have put most of the blame on Mr. Taliadoros, it reached the conclusion that the whole incident would have been avoided had the Applicant kept calm. It decided, in the circumstances, to fine the Applicant £24 and to ask the Director of Medical Services to transfer Mr. Taliadoros to another Institution immediately.

As already stated, the decision of the Commission was communicated to the Applicant by letter of the 16th January, 1967 (see *exhibit 8*).

This recourse was filed on the 24th February, 1967.

The first contention of the Applicant in the present proceedings has been that the validity of the whole disciplinary process against him has been vitiated by the fact that the preliminary investigation into the incident was carried out by Dr. Papanicolaou, and not by the Commission itself; it has been submitted that, in view of the constitutional structure of the Republic and, particularly, of the powers of the Commission under Article 125 of the Constitution, such preliminary investigation could only have been carried out by the Commission, and that the Executive Branch of Government, an organ of which was Dr. Papanicolaou, could not lawfully interfere in the matter, at all.

The Commission, as it appears from its relevant minutes

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(*exhibits* 10, 11, 3A, 3B, 4) has duly considered the matter; first, at the preliminary stage of deciding whether charges should be preferred; then at the intermediate stage of deciding, in the light, *inter alia*, of the written explanations of the Applicant, whether the charges should be proceeded with; and when it decided the matter on its merits. In my opinion it exercised in full all its relevant constitutional powers. I do not agree that Article 125, or anything else in the Constitution, precludes the carrying out of a preliminary investigation, into an incident, by the Department concerned — for the purpose of collecting the relevant material and placing it before the Commission — or ordains that such investigation should be carried out by the Commission itself. Actually, I do fail to see how a disciplinary process before the Commission can be set in motion at all unless the Commission receives first from the Department concerned sufficient material enabling it, and requiring it, to embark upon such process. I find, therefore, that Dr. Papanicolaou's action in the matter, before the Commission took charge of it, in no way vitiates the *sub judice* decision.

Applicant has, next, complained that the incident was referred to the Commission, not by the Director of Medical Services or the Director-General of the Ministry of Health, but by the Minister of Health; and, further, that in his relevant letter, the Minister has expressed himself in terms highly prejudicial for the Applicant.

In a recent case (*Frangides and The Republic*, 141/67, not reported yet)* this Court has had occasion to stress the need of keeping matters, within the competence of the Commission, at the public service level; but, in the particular circumstances of the present case, I can find nothing which could lead me to the conclusion that the mere fact that the Minister himself, instead of the Applicant's Head of Department, referred the matter in question to the Commission has, in any way, affected materially the relevant disciplinary process, so as to entail its invalidity on such a ground.

Nor can I hold that the contents of the letter of the Minister of Health to the Commission (*exhibit* 2) — though they do appear to make other accusations against the Applicant, in addition to reporting to the Commission the incident with

**Note*: Now reported ante, at p. 90.

Mr. Taliadoros — have materially affected the outcome of the disciplinary proceedings against the Applicant: It is clear from the decision of the Commission that the Applicant was not, in any way, found guilty of anything — unconnected with the incident of the 8th October, 1966 — about which the Minister spoke in his said letter; and the contents of such letter were not treated, at all, by the Commission, as material on which to base the disciplinary conviction of the Applicant.

I am, moreover, quite satisfied that the Minister's intervention in the matter, unfortunate though it may have been, has in no way deprived the Applicant of a fair hearing before the Commission; its decision shows that the Commission went carefully into the merits of the matter before it, with an open mind.

It has, also, been complained of by the Applicant that the accusations made against him by the Minister of Health, in his letter in question, were not brought to the knowledge of the Applicant, so that he could have an opportunity of answering them; but since such accusations were not relied upon, in any way, by the Commission — as it is abundantly clear from its *sub judice* decision (*exhibit 4*) — I do fail to see how this point can be at all relevant to the outcome of this recourse.

Counsel for Applicant has, next, submitted that it was not proper to have a joint disciplinary hearing for both the Applicant and Mr. Taliadoros, who was his subordinate; they ought to have been heard separately.

In the absence of any procedure laid down by legislative provision for the purpose, it was up to the Commission to regulate its own proceedings in a manner compatible with the proper exercise of its competence and the well-established principles of Administrative Law; and I think that it was reasonably open to the Commission, in the circumstances, to examine the cases of the Applicant and Mr. Taliadoros together, especially as they arose out of one and the same incident and each one of them appeared to constitute the main witness against the other. A useful precedent for the course adopted in this matter may be found in the Decision of the Greek Council of State 690/1933 (1933 III p. 90).

One of the main complaints of the Applicant in this case is

that the order of hearing of the evidence adopted by the Commission was an erroneous one; also, that the Commission appears, from its minutes, to have been labouring under misconceptions as to which side had called certain witnesses.

The position appears to be as follows:-

First, the only eye-witness to the incident, Miss Eleni Christofi gave evidence. Then the Applicant gave evidence in his own defence. Then Dr. Panos and Dr. Papanicolaou gave evidence; and as it appears from the relevant minutes (*exhibit 3A*) they were called as witnesses by the Applicant.

Counsel for the Applicant has contended, at the hearing before me, that Dr. Panos and Dr. Papanicolaou were *not* called as witnesses before the Commission by the Applicant — and counsel, on this point, made a statement to the Court out of his own knowledge, because he has appeared for his client at the proceedings before the Commission, too. In this respect the contention of counsel for the Applicant has been borne out by evidence given before the Court by the Applicant himself. Mr. D. Protestos, a member of the Commission, who has given evidence, did not say that the two doctors were, in fact, called as witnesses for the applicant; he said that they were heard as persons present on behalf of the Department concerned.

Thus, it seems that Applicant was called upon to make his defence before all witnesses in the case, other than he and Mr. Taliadoros, had been called, and that two witnesses, who were not his own, were, mistakenly, so described in the minutes of the Commission.

From the decision of the Commission (*exhibit 4*) it is, however, quite clear that the responsibility of the Applicant and of Mr. Taliadoros was judged *solely* “from their statements and the impression they gave to the Commission as to who and in what part of their respective evidence” they were telling the truth; no other evidence was relied upon as useful for determining the case before the Commission.

I am of the opinion, therefore, that calling upon the two doctors to give evidence before the Commission *after* the Applicant had done so, and regarding them as witnesses for the Applicant, could not, in any way, have materially affected the decision of the Commission on the matter and, conse-

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quently, such decision cannot be annulled on such grounds.

After the two doctors had given their evidence Mr. Taliadoros gave evidence in his own defence, and then three witnesses were called, according to the relevant minutes (*exhibit 3B*), by Mr. Taliadoros, as witnesses in support of his case. Counsel for the Applicant has stated that, in fact, the first two out of these witnesses were called by him, as witnesses for the Applicant, and that they were *not* called by Mr. Taliadoros; counsel stated that he had summoned, himself, these two witnesses. On the other hand, Mr. Proestos stated in evidence that the said witnesses were called before the Commission by Mr. Taliadoros, as the Applicant did not choose, eventually, to call them himself; and support for the evidence of Mr. Proestos is to be found in the fact that in the minutes of the Commission, after the evidence of each such witness, there appears the entry "No questions by Mr. Papaphilippou" (i.e. by counsel appearing for the Applicant). It may well be that counsel for the Applicant did summon the two witnesses concerned to give evidence before the Commission, but, as he did not call them, Mr. Taliadoros called them as his own witnesses, instead; and that counsel for the Applicant, in stating to the Court that this was not so, was labouring under a *bona fide* error of memory.

Be that as it may, I fail to see how this aspect, regarding these two witnesses, could have the least bearing on the outcome of this recourse, because they said nothing of any significance, and they were not relied upon, at all, by the Commission in reaching its *sub judice* decision; as already stated, the Commission relied solely on the statements of the Applicant and Mr. Taliadoros, and not on any other independent evidence, there being none such evidence which was of any real value.

The next point, taken in favour of the Applicant in the present proceedings, is that the Commission did not find him guilty of actually uttering the specific expressions mentioned in the particulars of the charges (see *exhibit 7*), nor of throwing the telephone at Mr. Taliadoros; and that, in any case, the Applicant ought, in the circumstances, to have been given the benefit of the doubt by the Commission.

In a case of this nature one has to look, in my view, at the essence of things, which is that though the Commission did not find the Applicant guilty to the full extent, as charged,

it nevertheless found him, on the whole, guilty of improper conduct; in my opinion such finding was reasonably open to the Commission in the circumstances, and I cannot interfere therewith. The punishment imposed, as a result, on the Applicant was not an excessive one; and, anyhow, it is not up to this Court to assess itself the quantum of disciplinary punishment.

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For all the foregoing reasons I find that this recourse cannot succeed and has to be dismissed.

As regards costs, I have decided to make no order as to costs in view of the fact that there were points raised on behalf of the Applicant, which, though not found to be decisive for the outcome of this Case, were such as reasonably to entitle the Applicant to bring this case before the Court.

Application dismissed.
No order as to costs.