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[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

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NICOS
PIERIDES
v.

NICOS PIERIDES,

Applicant,

REPUBLIC
(PUBLIC SERVICE
COMMISSION)

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 170/68).

Public Officer—Transfer—Article 125.1 of the Constitution—Duties of the Public Service Commission thereunder regarding transfers—Discretionary powers of the said Commission—Judicial review of transfers and judicial control of such discretion—Principles applicable—Transfer of the Applicant, a Land Officer in Famagusta to the Lands Office, Larnaca—Made for the benefit and the exigencies of the service—Applicant failed to discharge the onus cast on him that his transfer was not so made—He succeeded however, in discharging the onus that the sub judice decision to transfer him was taken under a material misconception of facts—Decision annulled as contrary to law and in excess and abuse of powers—See, also, herebelow.

Transfer of Public Officers—Onus on the Applicant to satisfy the Court that transfer was not made for the benefit and the exigencies of the service—See, also, hereabove; and herebelow.

Transfer of Public Officers—Discretionary powers of the administration in effecting transfer—With the exception of an “adverse transfer” (i.e. transfer made as a disciplinary measure), every other transfer amounts to a simple administrative act which is presumed to have been taken for the benefit and the exigencies of the service—Onus on Applicant to displace such presumption—Discretionary powers of the administration in effecting transfers—Judicial control thereof—The Court will not interfere with the exercise of such discretion and with the reasons dictating the transfer, unless there has been an improper use of the discretionary power or the decision was taken under a material misconception of facts—Onus on Applicant to establish such misconception, except

where such misconception appears on the file before the Court— It is sufficient for the Applicant to raise a reasonable probability that such misconception of the factual position occurred.

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Administrative Law—Administrative act or decision—Discretionary powers—Judicial control of—Principles applicable—Save where there has been an improper use of the discretionary power or the decision was taken by the organ concerned acting under a material misconception of facts, the Court will not interfere— Onus of proof—Approach of the Court—See, also, hereabove and herebelow.

Discretionary powers—Judicial control of—See above.

Misconception—Misconception of the factual position—Vitiates the decision taken under such misconception—Onus of proof—Onus on the Applicant—Such onus is discharged even if Applicant succeeds only to make appear reasonably probable that the decision was reached by the organ concerned acting under such misconception—See, also, hereabove.

Excess and abuse of powers—See above.

Abuse and excess of powers—See above.

Public Service Commission—Duties of, under Article 125.1 of the Constitution—See above.

Constitutional and Administrative Law—Article 125.1 of the Constitution—Duties of the Public Service Commission thereunder—See also hereabove.

In this recourse under Article 146 of the Constitution the Applicant, a Land Officer seeks to challenge the validity of the decision of the Respondent Public Service Commission to transfer him from the District Lands Office, Famagusta, to the District Lands Office, Larnaca.

The reasons put forward for the transfer of the Applicant were, in substance, that in the Lands Office of Famagusta there was a multitude of important cases of assessment of compensation for land development projects, and that Mr. Kouros, the Land Officer transferred to Famagusta to succeed Applicant, had large experience in valuation of land and that his services would be more useful to the department in Famagusta than those of the Applicant, who had no large experience in such valuation. In transferring the Applicant, the Respondent Com-

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mission had clearly acted on the recommendation of the head of the department.

It was argued on behalf of the Applicant that, *inter alia*, the transfer complained of was not made for the benefit and the exigencies of the service and that, in any case, the Respondent Commission acted under a material misconception regarding the factual position of the case.

Annuling the transfer subject-matter of this recourse, the Court:—

Held, (1). The object of paragraph 1 of Article 125 of the Constitution, includes not only the safeguarding of the efficiency and proper functioning of the public service, but also the protection of the legitimate interests of the public officers. In exercising its powers of transfer, the Commission should always take into consideration the recommendations of the head of department or other senior responsible officer, so that the functions of a public office should be performed in the general interest of the public, by the public officer best suited to perform such duties.

(2) The principle adopted and followed by this Court in reviewing the question of transfers is to be found in the well known text book of Professor Kyriakopoulos on the Greek Administrative Law, 4th ed. vol. 3 at p. 312:

“ Except for an adverse transfer, every other transfer amounts to a simple administrative measure, which is presumed to have been taken for the benefit and the exigencies of the Service”. See also the decisions of the Greek Council of State 315/1940 and 518/1941.

It would be observed that, according to the same author, the decision of the administration concerning the reasons dictating the transfer, is not subject to the control of the Court, unless there exists (a) an improper use of the discretionary power or (b) misconception of facts. (See also on this issue the decisions of the Greek Council of State quoted under note 11 at p. 312 *ubi supra*).

(3) As to the point (a) hereabove, on the material before me, I am satisfied that the Respondent Commission has properly exercised its discretionary power to transfer the Applicant. I would, therefore, dismiss the submission of counsel on this point.

(4) I shall now turn to deal with point under (b) hereabove and the main submission of counsel for the Applicant, viz. that the *sub judice* decision was taken under a material misconception of facts:-

(a) It is now an accepted principle that the onus of proof that the Public Service Commission has acted under a misconception of the real facts, remains on the Applicant in those cases where the Court cannot find such misconception of facts from the file before it.

(b) On the evidence adduced I have reached the conclusion that the Applicant has succeeded to discharge the onus cast on him that the decision of the Respondent Commission to transfer him from Famagusta to Larnaca was taken under a material misconception of the real facts.

(c) At the material time not only there was not a multitude of important cases of valuation pending in the Lands office, Famagusta, but on the contrary the volume of work was so diminished, as to warrant reduction of the valuation staff in Famagusta. Moreover, it is clearly admitted by the Director of the Department that the Commission was never told that, because of the two projects viz. the construction of the harbour and the industrial zone in Larnaca, the volume of valuation work at that time would have considerably increased in the Larnaca Lands office.

(5) Even if it had only appeared reasonably probable and not certain that the aforesaid decision was reached on a misconception of the true factual situation, still I would be prepared to annul the decision in order to enable the Commission to ascertain the facts without leaving room for doubt (see Stassinopoulos on the Law of Administrative Acts 1951, at p. 305).

(6) In the result the *sub judice* decision is hereby declared to be *null* and *void* and of no effect whatsoever in that it was taken by the Respondent Public Service Commission in excess and abuse of their powers.

*Sub judice decision annulled.
Order for £12 towards the
Applicant's costs.*

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Cases referred to:

Decisions of the Greek Council of State: 315/1940 and 518/1941;

See also the decisions of the Greek Council of State quoted in Professor's Kyriakopoulos Greek Administrative Law, 4th ed. vol. Γ p. 312 under foot note 11: 315/1940, 518/1941, 316/1940, 313/1946, 744/1946, 805/1946, 1242/1947, 1537/1948, 2095/1949, 584/1951, 445/1952, 319/1947, 849/1946, 861/1946, 97/1959 and 2087/1952.

Recourse.

{ Recourse against the decision to transfer Applicant from the District Lands Office Famagusta to the District Lands Office Larnaca as from 1st April 1968.

J. Kaniklides, for the Applicant.

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

Cur. adv. vult.

The following judgment was delivered by:—

HADJIANASTASSIOU, J.: In this case the Applicant, under Article 146 of the Constitution, seeks to challenge the validity of the decision of the Respondent Commission, communicated to him by letter dated March 13, 1968, to transfer him from Famagusta to Larnaca as from the 1st April, 1968.

The facts, as shortly as possible, are as follows:—

The Applicant joined the public service and was posted to Famagusta in the Lands District Office on November 1, 1943, where he remained until November 30, 1957. On December 1, 1957, he was transferred to Limassol, where he remained until April 10, 1960; and on April 11, 1960, he was transferred to Nicosia where he remained until August 31, 1960. On September 1, 1960, he was again transferred to Famagusta where he stayed until March 30, 1968. From June, 1967, till the 29th February, 1968, he was acting as a District Lands Officer.

From 1945 to 1952 he was carrying out the duties of land valuation officer for compensation purposes, as well as other

duties in his department. From 1952 to 1957 he was attached exclusively to the post of a valuer for valuations of land in connection with compulsory acquisitions and for taxation purposes. He has carried out a large number of cases involving thousands of pounds; particularly he has dealt with compulsory acquisition of lands acquired for the improvement and development of Famagusta port. He has also dealt with the cases of Karaolos Kantone, which has been compulsorily acquired by the military authorities of England. The amounts of compensation involved in this particular project, were over £300,000. He further carried out the general valuation of the properties of the biggest part of the Town of Famagusta.

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On March 1, 1968, he was promoted to the post of land officer from the post of land clerk, 1st grade. On the same day, Mr. Ieronimides, the acting director of the department of lands and surveys, submitted to the chairman of the Public Service Commission proposals for the transfer of four officers in his department, including the Applicant. The reasons given for the said transfers were due to the exigencies of the Service.

On March 12, 1968, the Public Service Commission at its meeting, dealt with the transfers of those four officers. An extract from the minutes of the meeting reads:—

“The Ag. Director of the Dept. of Lands and Surveys has proposed the following transfers:—

- (a) Kyriacos Onoufriou, Land Clerk 2nd Grade, from District Land Office, Larnaca, to the Headquarters, Nicosia;
- (b) Nicolaos Pierides, Land Officer, from District Land Office, Famagusta, to the District Land Office, Larnaca;
- (c) Ioannis Kouros, Land Officer, from Headquarters, Nicosia, to the District Land Office, Famagusta;
- (d) Kyriacos Papadopoulos, Land Clerk, 1st Grade, from District Land Office, Larnaca, to the Headquarters, Nicosia.

The Commission decided that the above transfers be made w.e.f. 1.4.68.”

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On March 13, 1968, the secretary of the Public Service Commission wrote to the Applicant informing him of his transfer to Larnaca. On March 15, 1968, the Applicant, before receiving the said letter, wrote a long letter, *exhibit 3*, to the Public Service Commission protesting about his proposed transfer because, as he alleged, it was unjust, hard and inhuman, and in effect it amounted to a punishment to himself and his family.

On March 19, 1968, the acting director, in forwarding the letter of the Applicant, wrote *exhibit 4* to the chairman of the Public Service Commission. It reads:—

« Ἡ μετάθεσις τοῦ αἰτητοῦ εἰς Λάρνακα ἔχει ἤδη ἐγκριθῆ ὑφ' ὑμῶν τιθεμένη ἐν ἰσχύϊ ἀπὸ 1ης Ἀπριλίου, 1968, (ἡ ὑμετέρα 9/60/A/III τῆς 31ης Μαρτίου, 1968, εἶναι σχετική). Οἱ λόγοι διὰ τὴν μετάθεσιν αὐτὴν καθὼς καὶ δι' ἐκείνην τοῦ κ. Ι. Κούρου, ἐπίσης Κτηματολογικοῦ Λειτουργοῦ, ἐδόθησαν κατὰ τὴν ὑποβολὴν τῶν σχετικῶν προτάσεων διὰ μεταθέσεις. Δὲν συμφωνῶ ὅτι ἡ μετάθεσις τοῦ αἰτητοῦ ἔχει τιμωρητικὴν ἰδιότητα ὡς οὗτος ἰσχυρίζεται εἰς τὴν αἴτησίν του. Οὐδεὶς ἄλλος λόγος συντρέχει διὰ τὴν μετάθεσιν του πλὴν ἐκείνου τῶν ἀναγκῶν τῆς Δημοσίας Ὑπηρεσίας. Αἱ προηγούμεναι μεταθέσεις του εἰς Λεμεσόν καὶ Λευκωσίαν εἶναι τελείως ἄσχετοι πρὸς τὴν προκειμένην περίπτωσιν. Οὗτος κατεῖχε τότε τὴν θέσιν τοῦ Κτηματολογικοῦ Γραφέως, 1ης τάξεως, καί, ἀσφαλῶς, αἱ ἀνάγκαι τῆς ὑπηρεσίας ὑπέβαλον καὶ τὰς μεταθέσεις ἐκείνας. Εἶναι ἀληθὲς ὅτι ἡ μετάθεσις του εἰς Λεμεσόν κατὰ τὸ 1957 εἶχεν ὠρισμένας θλιβεράς ἐπιπτώσεις ἐπὶ τῆς οἰκογενειακῆς του ζωῆς ἀλλὰ τὸ γεγονός τοῦτο δὲν ἔχει οὔτε πρέπει νὰ ἔχη οἰανδήποτε σχέσιν μὲ τὴν ἐν προκειμένῳ μετάθεσιν του ὡς Κτηματολογικοῦ Λειτουργοῦ.»

As a result of the representations of the Applicant, the Public Service Commission met on April 12, 1968, and after considering his case, decided to turn down his application. An extract from the minutes of the meeting—*exhibit 4a*—reads as follows:—

“ Mr Pierides has now protested against this transfer which will have most unfavourable consequences and which he considers as unjust, hard and inhuman and equivalent to a punishment. Mr. Pierides refers with praise to his services with the Government, the Police Force and the Civil Defence and wonders why he should

be transferred more often than any other officer of his department. As a consequence to his transfer to Limassol in 1957, his family was dissolved. He is now married to another woman, each having a child from their previous marriage staying with them. Mr. Pierides fears that if his transfer takes effect his family will meet with another disaster. He does not see why the officer that will be transferred to Famagusta—Mr. I. Kouros—could not be transferred to Larnaca instead.

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In forwarding Mr. Pierides' above-mentioned letter the Director, Dept. of Lands & Surveys, states that no other reason exists for this officer's transfer to Larnaca except the exigencies of the service. The Director accepts that Mr. Pierides' transfer to Limassol had sorrowful consequences on his family but his previous transfers have nothing to do with his present transfer as a Land Officer."

On April 24, 1968, the Commission wrote to the Applicant informing him that after considering his representations decided to turn down his application.

On May 24, 1968, the Applicant, feeling aggrieved, made this recourse to the Supreme Court, and his application was based on the following grounds of law:-

- (a) that the decision of the Respondent complained of, was taken in excess or abuse of powers and/or contrary to law, namely the relevant principles of the administrative law.
- (b) that Respondent failed to exercise the relevant discretion on a proper basis and in a proper manner as they have failed to take into account, *inter alia*, material considerations respecting Applicant.
- (c) that the Respondent made an improper use of their discretionary power and/or acted under a misconception concerning the factual situation in general.

The opposition was filed on June 21, 1968, and is to the effect that the decision complained of was properly taken after all relevant facts and circumstances were taken into consideration.

The main contention of counsel for the Applicant was that the Public Service Commission, in the exercise of its dis-

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cretionary power to effect the transfers, has acted under a misconception of the real facts, viz., that the Applicant had no large experience in the valuation of land; and that there was a multitude of important cases for assessing compensation of land for development projects.

Counsel for the Respondent, on the contrary, has contended that the onus remains on the Applicant to show that the Public Service Commission has acted under a misconception of the real facts, and that those facts were material to their decision. Furthermore, counsel argued that the Applicant has failed to satisfy the Court that his transfer was not made for the benefit and the exigencies of the Public Service.

I would like to state that the object of para. 1 of Article 125, includes not only the safeguarding of the efficiency and proper functioning of the Public Service, but also the protection of the legitimate interest of public officers. In exercising its powers of transfer, the Commission should always take seriously into consideration the recommendations of the head of the department or other senior responsible officer, so that the functions of a public office should be performed in the general interest of the public, by the public officer best suited to perform such duties.

In the present case the Commission, in transferring the Applicant from Famagusta to Larnaca, has clearly acted on the recommendation of Mr. Ieronimides, and this Court would not interfere with the discretion of the Commission, if it was reasonably and properly exercised, unless it can be shown that such discretion has been exercised in disregard of the true factual situation or of any law, or in excess or abuse of power.

The question, therefore, which is posed before me is:— Are there any grounds justifying the annulment of the transfer of the Applicant?

The principle adopted and followed by this Court in reviewing the question of transfers is to be found in the well-known textbook of Kyriakopoulos on the Greek Administrative Law, 4th edn. Vol. Γ at p. 312. It reads in English:—

“Except for an adverse transfer, every other transfer amounts to a simple administrative measure, which is presumed to have been taken for the benefit and the exigencies of the Service.”

See also the decisions of the Greek Council of State in the cases 315/1940 and 518/1941.

It would be observed that, according to the same author, the decision of the administration concerning the reasons dictating the transfer, is not subject to the control of the annulling Court, unless there exists an improper use of the discretionary power or a misconception of facts. See also on this issue the decisions of the Greek Council of State appearing under note 11 at p. 312 in the same textbook.

As I have said earlier, the Commission, in reaching its decision, had before it all the submissions made by the then acting director of the department. I, therefore, propose quoting extracts from the two submissions only. *Exhibit 2* is in these terms in Greek:—

« Εἰς τὸ Κτηματολόγιον Ἀμμοχώστου ὑπάρχει καὶ πληθώρα σοβαρῶν ὑποθέσεων ἐκτιμήσεως ἀποζημιώσεων ἐν σχέσει πρὸς ἔργα ἀναπτύξεως. Ὁ κ. Κοῦρος ἔχει μεγάλην πείραν εἰς ἐκτιμήσεις καὶ συνεπῶς αἱ ὑπηρεσίαι του θὰ εἶναι περισσό- τερον χρήσιμοι εἰς τὸ Κτηματολόγιον Ἀμμοχώστου παρὰ ἐκείνων τοῦ κ. Πιερίδη ὅστις δὲν ἔχει μεγάλην πείραν εἰς ἐκτιμήσεις. Ὁ κ. Κοῦρος εἶναι Κτηματολογικὸς Λειτουργὸς ἀπὸ τῆς 1.5.63.

Οἰκογενειακὴ κατάστασις τοῦ ὑπαλλήλου (σύνθεσις οἰκο- γενείας, ἀριθμὸς τέκνων, καὶ ἡλικία αὐτῶν) καὶ οἰαιδῆποτε ἄλλα σχετικὰ πληροφορία:

Ἕγανδρος μὲ δύο τέκνα 4 καὶ 2 ἐτῶν. Ἡ σύζυγός του κατάγεται ἐξ Ἀμμοχώστου.»

The submission with regard to the Applicant reads as follows:

« Λόγοι προτεινομένης μεταθέσεως:

Διὰ νὰ διευθύνῃ τὸ Ἐπαρχιακὸν Κτηματολόγιον Λάρνακος εἰς ἀντικατάστασιν τοῦ νῦν ἐκεῖ ὑπευθύνου, ὅστις θὰ μετα- τεθῆ εἰς Λευκωσίαν δι' ὑπηρεσίαν ὡς Λειτουργὸς Ἐγγραφῆς εἰς τὰ Κεντρικὰ Γραφεῖα τοῦ Τμήματος.

Ὁ κ. Πιερίδης προήχθη εἰς Κτηματολογικὸν Λειτουργὸν κατὰ τὴν 1.3.68, θὰ ἀντικατασταθῆ δὲ εἰς Ἀμμοχώστον ὑπὸ τοῦ κ. Ι. Κούρου Κτηματολογικοῦ Λειτουργοῦ, διὰ τὴν μετάθεσιν τοῦ ὁποίου ὑποβάλλεται ταυτοχρόνως πρότασις.

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Οικογενειακή κατάσταση του υπαλλήλου (σύνθεσις οικογενείας, ἀριθμός τέκνων, καὶ ἡλικίαι αὐτῶν) καὶ οἰαιδήποτε ἄλλαι σχετικαὶ πληροφορίες:

“Υπαυδρος με̄ ἐν τέκνον, ἡλικίας 13 ἐτῶν.»

Pausing there for a moment, it would be observed that in substance, the reasons put forward for the transfer of the Applicant were that in the Lands Office of Famagusta there was a multitude of important cases of assessment of compensation for development projects, and that Mr. Kouros had large experience in valuation of land and that his services would be more useful to the department in Famagusta than those of the Applicant, who had no large experience in valuation.

I would like further to state that it was made very clear to the Court that the transfer of the Applicant was not a case of an adverse nature, but simply a transfer made for the benefit and the exigencies of the Public Service. In fairness, therefore, to the director of the department, Mr. Ieronimides, who had recommended the Applicant for promotion to the post of land officer, the Applicant cannot now complain that his director has been unfair to him and that he treated him differently in recommending his transfer to Larnaca.

As I have said earlier, the onus to prove that the transfer was not made for the benefit and the exigencies of the service, is on the Applicant, and in the light of all the material before me, including the evidence of Dr. Andreas Georgiades, I have reached the conclusion that he has failed to prove to my satisfaction that the decision of the Commission to transfer him to Larnaca was not made for the benefit and the exigencies of the service.

Although the Applicant has my sympathy, it is clear from the contents of *exhibit 4A*, that the Public Service Commission had before them the true personal circumstances of the Applicant in reconsidering his representations, and particularly with regard to the question of his older daughter, viz-a-viz her serious psychological upset as a result of the transfer of her father to Larnaca. Nevertheless, once the Commission has considered and has taken into account the personal circumstances of the Applicant, and although I repeat that those circumstances may be deemed to promote the efficiency and output of a public officer—admittedly in the general interest of the public—quite rightly, however, as it has been

decided in a number of cases, the personal circumstances of an officer cannot become the paramount consideration. Once all these circumstances, along with the other exigencies of the service, have been properly weighed, in my view, it was reasonably open to the Commission, in the light of all the material before them, to reach the decision to transfer the Applicant to Larnaca.

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In reviewing, therefore, the decision of the Commission on this issue, I am satisfied that they have properly exercised their discretionary power to transfer the Applicant. In the light of this finding, I would, therefore, dismiss the submission of counsel on this point.

I shall now turn to deal with the main contention of counsel for the Applicant, viz., that the decision of the Public Service Commission was taken under a misconception of the real facts.

It is now an accepted administrative principle that the onus of proof that the Public Service Commission has acted under a misconception of the real facts, remains on the Applicant in those cases in which the Court cannot find such misconception of facts from the file before it.

Counsel for the Applicant, quite properly in my view, has called his client to give evidence in order to show to the Court that the reasons for his transfer to Larnaca were based on a misconception of the real facts, viz., that there was, at the material time, a multitude of important cases of assessment of compensation in Famagusta; and that Mr. Kouros possessed a vast experience in valuation. I propose, therefore, reading extracts from the evidence of the Applicant which shows that the work for the assessment of compensation is virtually carried out not by the District Land Officer, but by the valuation clerk and by the valuation section leader. Furthermore, the evidence will show that the volume of work of the valuer during his time was so diminished, that it made it possible to reduce the number of the staff working on valuations.

I quote:-

“ When I was working as a valuation Clerk the procedure I used to follow in making the calculations was in accordance with the instructions from the Head Office and this was so since August, 1955. The instructions were con-

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tained in a circular DLS 239/53 dated 13th August, 1955; and there was also another circular with supplementary instructions DLS 1404/3/2 dated 13th October, 1956.

After I have carried out the valuations which I have described earlier on, I had submitted them to the Valuation Section Leader, who has been styled later on as Valuation Section Leader, who in his turn after scrutinizing the valuation of the Valuation Clerk, submitted the papers through the D.L.O. to the Valuation Officer in Nicosia. The practice followed by the D.L.O. when the valuations were submitted to him was to write 'I am submitting the valuations for the approval of the appropriate authorities in Nicosia'. I followed this practice myself when I was both acting and when I was also appointed as a District Lands Officer. I repeat that it was the practice followed by my predecessors in Famagusta and in Larnaca where I am now working. It has never been pointed out to me or as far as I am aware to the others, that I ought to have followed a different procedure i.e. that I ought to have checked personally the valuations carried out by the Valuer Clerk and by the Valuation Section Leader. The reason why the District Lands Officer did not check the work of the other two officers is because here was a separate department dealing exclusively with the valuations of lands both for compensation purposes and for taxation. From my personal knowledge, I am in a position to state that when I was transferred from Famagusta to Larnaca I found in Larnaca that the volume of work with regard to valuations for compensation purposes was greater than in Famagusta.

I would like to mention that the reason for this is the acquisition of lands for constructing the port in Larnaca and also for the industrial area, which is now being zoned outside Larnaca. Although I have not had time to consider and finish the work of how much these compensation cases will cost, I may not be wrong in giving the round figure of £300,000. Reverting to Famagusta, as I said earlier on, most of the work had been completed, and as a matter of fact, even the Head Office had reduced the staff working in the Valuation Section."

In answer to counsel for the Respondent, he said that he agreed that it is a part of a land officer's duty to supervise

and watch over the work of the employees in that department including, of course, the work of the valuation section staff. The lands officer must also be ready and competent to advise all the staff on matters arising and connected with the exercise of their duty.

Later on he said:-

“ I would like to finish by saying that if the Director will issue a circular assigning to us the duties of supervising completely and going over the valuations carried out by the two officers in the department, of course we shall carry this out.”

Counsel for the Respondent called the present director of the department, Mr. Ieronimides, and in his evidence he had this to say:-

“ I do agree with the evidence of the Applicant that the valuation of lands, in the first instance, is carried out by the section leader in the office of the district, but the overall responsibility remains always with the District Officer himself. I would further state that it is his responsibility to solve and decide on the spot all problems which arise or enquiries which are connected with the work of the section leader. Moreover, he must have an active participation in negotiations for settlement of compensations. That, of course, implies that he has to follow the work of the section leader.”

Later on he says:-

“ I quite agree that owing to some special circumstances, vis-a-vis when an acquisition of land for a project will take effect in the district of Larnaca, it might create more work for the D.L.O. to carry out in Larnaca, but as I said earlier, the district of Famagusta is a much larger district and has a lot of valuation work. Larnaca being a smaller town, it is only to be understood that the volume of work has always been much less than Famagusta District.”

In answer to counsel for the Applicant he said:-

“ It is true that I anticipate in Larnaca that if the acquisition for the harbour and for the industrial zone will take effect, I anticipate a bigger volume of work than in

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Famagusta. I cannot, without actually carrying out some calculations, tell the value of the acquisition of the lands in Larnaca for the two projects I have mentioned earlier. I cannot say offhand whether at the time I was making the recommendation for the transfer from Nicosia to Famagusta of a more experienced man in Famagusta, whether I had this fact in mind that Larnaca District would have an increase in the volume of work for valuation, because of the two acquisitions.”

Later on he says:-

“ I agree that for the time being we have reduced the number of valuers from four to two. I agree that this shows that there has been a reduction of work.”

Questioned further he said:-

“ I honestly say that one cannot remember how many cases there are in Famagusta, Larnaca or Nicosia district, because as an Acting Director I was dealing with the whole of Cyprus. I do say, however, that at the time I was writing there were no pending cases in Larnaca district. When I was writing my letter I must have had in mind the valuation of Kennedy Avenue, as well as the lands known as ‘Golden Sands’ in Famagusta, which the Government intends to take over from the British Military Authorities.”

The witness went on to say:-

“ As far as I can remember, the Applicant has been dealing with all the cases connected with what we call ‘Karaolos Acquisitions’ in Famagusta, as well as the project of the Port, again in Famagusta, and a big number of other cases which I cannot recollect offhand. The amounts involved in this case run into hundreds of thousands of pounds.

It becomes evident that a man who has completed such a large number of cases must have acquired at that time experience and knowledge with regard to land valuation. I agree that I have mentioned nothing about the experience of the Applicant, although I have made observations with regard to the experience of the interested party.”

Later on he said:-

“ I want to make this clear, when I said that the Applicant ‘lacks’ experience vis-a-vis the experience of the interested party, I wanted to make it clear that he did not possess experience on that particular period. I did not convey that he did not have any experience. I mean it is obvious that, because the Applicant was promoted that he had the experience required as a D.L.O.”.

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Pausing there for a moment, it would be observed that Mr. Ieronimides, quite fairly, admits in his evidence that he has mentioned nothing to the Public Service Commission about the experience of the Applicant in carrying out valuations for cases of compulsory acquisition. Furthermore, he has admitted that he did not intend to convey to the Commission that the Applicant did not possess any experience, because, as he put it, he has the experience required as a District Lands Officer.

In the light of all the material before me, and in the absence of a duly reasoned decision by the Public Service Commission, either on March 13, 1968 or on April 12, 1968, and in view of the fact that there is no evidence that the annual confidential reports of the parties were before them, I have reached the conclusion that the Applicant has succeeded to discharge the onus cast upon him, that the decision of the Public Service Commission was taken under a misconception of the real facts, and that those facts were material to the aforesaid decision.

In my view, at the material time, not only there was not a multitude of important cases pending, but on the contrary, the volume of the work was so diminished, as to warrant reduction of the valuation staff in Famagusta. Moreover, it is clearly admitted by the director of the department, that the Public Service Commission was never told that, because of the two projects viz., the construction of the harbour and the industrial zone in Larnaca, the volume of work for valuation purposes at that time would have increased more in Larnaca. For these reasons, I have reached the conclusion to uphold counsel's submission on this issue.

However, I would like to make it clear; that even if my finding on the issue of misconception is wrong, that I would go further and state, having in mind all the circumstances of this case, that I would be prepared, even if it had only appeared

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reasonably probable and not certain that the aforesaid decision was reached on a misconception of the true factual situation, to annul the decision in order to enable the Commission to ascertain the real facts without leaving room for doubt. Indeed, I take the view that it will afford the Commission a full opportunity of reaching a new decision, after establishing with certainty all the relevant facts in the light of this judgment.

In reaching this conclusion, to annul the decision of the Public Service Commission, I have adopted and followed a passage from the well-known textbook on the Law of Administrative Acts by Stassinopoulos, 1951 edn. at p. 305. The effect of this passage is that the presumption in favour of the correctness of the finding of fact by the administration, is weakened, once the litigant succeeds in rendering the misconception possible, that is, simply to create doubts in the mind of the Judge about the correctness of the findings of fact by the administration. In such cases, the Judge, finding himself in doubt, is not inclined to follow the aforesaid presumption, but he resorts to the one of the two courses; that is, he either (a) directs production of evidence, or (b) he annuls the act so that the administration may ascertain the actual circumstances in a way not leaving doubts.

As I said earlier, the Applicant has further succeeded in the light of all the material before me, to create doubts in my mind about the correctness of the findings of fact by the Public Service Commission, and therefore, I would declare the act to be taken in abuse of their powers and to be *null and void* and of no effect whatsoever.

With regard to costs, I have decided, under the circumstances of this case, and in view of the fact that counsel for the Respondent has indicated during the early stages of the hearing of this case that the Commission would have been prepared to re-examine this case, to award the Applicant an amount of £12.—only towards his costs.

*Sub judice decision annulled;
order for costs as aforesaid.*