IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTODOULOS FISENTZIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 402/69).

Public Officers—Disciplinary proceedings—Disciplinary punishment imposed on applicant by the Public Service Commission—Annulled because, in breach of section 82(1)(*c*) *of the Public Service Law,* 1967 (*Law No.* 33 *of* 1967), *the "evidential material" collected by the Investigating Officer was not sent to the respondent Commission—And because it was reached without due inquiry*—Georghiades *v.* The Republic (1970) 3 *C.L.R.* 380, followed.

Disciplinary proceedings—Punishment—Rights of Public Officers to be heard in mitigation of punishment after being found guilty by the Public Service Commission—Morsis and The Republic, 4 *R.S.C.C.* 133, followed.

Disciplinary proceedings—The Public Service Law, 1967, *sections* 80, 82(1)(*c*) *and* (3)—*Regulations set out in Part I of Schedule* 2 *to that Law referred to in section* 80(*b*) *thereof*: *Regulations* 1, 3, 4, 5 *and* 6—*Regulation* 3 *of the Regulations set out in Part* 3 *of the aforesaid Schedule referred to in section* 82(3) *of the said same Law.*

Administrative Law—Due inquiry—Insufficient inquiry into the facts—Valid reason for the annulment of the relevant decision—See supra.

In September and October, 1969, the applicant—a minister plenipotentiary in the public service, Ministry of Foreign Affairs—was tried by the respondent Public Service Commission, sitting as the appropriate Disciplinary Body under the Public Service Law, 1967, on sixteen charges of disciplinary offences. By its decision, dated December 9, of that year, the Commission found him guilty on thirteen of the charges

and dismissed him from the public service. This recourse is made for the annulment of that decision of the respondent Commission.

The Court annulled the said decision of the respondent because, in breach of the provisions of section 82(1)(c) of the Public Service Law, 1967 (Law No. 33 of 1967), the " evidential material " collected by the investigating officer was not sent to the respondent Commission ; and because the said decision was reached without due and adequate inquiry into the facts of the case (*Georghiades* v. *The Republic* (1970) 3 C.L.R. 380, *followed*).

What really is the position in this last respect is this:— The respondent Commission refused in July, 1969, to allow counsel appearing for the applicant to inspect the dossier of the case and/or to supply them with copies of the statements and other evidential material against their client on which the disciplinary prosecution was based. That being so, the Court, following *Georghiades* case, *supra*, and *Iordanou* v. *The Republic* (1967) 3 C.L.R. 245, held that in the circumstances the Commission's inquiry cannot be treated as having been a due one, because by not making available to the applicant all the material, which was before it, the Commission deprived itself of the opportunity of having before it as complete explanation as the applicant could have given, in trying to exculpate himself, if he had known of all such material.

It is to be noted here that the applicant was never given the opportunity of pleading in mitigation of punishment after he was found guilty as aforesaid. The Court, applying the principles laid down in *Morsis and The Republic*, 4 R.S.C.C. 133, at pp. 137–138, and *Pantelidou and The Republic*, 4 R.S.C.C. 100, at pp. 106–107, held on this issue that, had the applicant not succeeded on the other grounds, still the subject decision ought to have been annulled in part *viz.* as regards the actual punishment imposed.

Cases referred to :

Morsis and The Republic, 4 R.S.C.C. 133, at pp. 137H and 138A :

Pantelidou and The Republic, 4 R.S.C.C. 100, at pp. 106G and 107A ;

Georghiades v. *The Republic* (1970) 3 C.L.R. 380, at pp. 400, 401, 403, 407 and 408 :

Iordanou v. *The Republic* (1967) 3 C.L.R. 245.

The facts of this case sufficiently appear in the judgment of the Court annulling the subject decision of the Respondent Commission in these disciplinary proceedings.

Recourse.

Recourse against the decision of the Respondent Public Service Commission by virtue of which the Applicant was found guilty of committing disciplinary offences and was dismissed from the public service.

Chr. Demetriades, *A. Triantafyllides* and *M. Christofides*, for the applicant.

K. Talarides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :

STAVRINIDES, J. : The applicant entered the public service in 1937 as a temporary clerk. After successive promotions, on January 1, 1963, he became minister plenipotentiary, and on May 31, 1968, he was sent as ambassador of the Republic to the Federal German Republic. The post of ambassador is a duty post, and on February 6, 1969, at his request, he was relieved of it and returned to the island on the following March 15.

Following information received by the Minister for Foreign Affairs about disciplinary offences alleged to have been committed by the applicant while he was ambassador as above stated—offences not summarily triable by " the appropriate authority concerned " under s. 81 (1) of the Public Service Law, 1967— on June 15, 1969—an investigating officer was appointed under reg. 1 of the regulations set out in Part 1 of Schedule 2 to the Law prescribing the procedure to be followed in " the investigation of offences ". On the following July 4, the investigating officer, having completed his investigation, sent his report to the Minister for Foreign Affairs, " the appropriate authority " (as defined by s. 2 of the Law) concerned in the matter. On July 31, 1969, after applicant had been summoned to appear before the Public Service Commission (hereafter " the Commission "), advocates Messrs. C. Demetriades and M. Christophides wrote to it on his behalf asking it " to appoint as soon as possible a day and hour when they could inspect the dossier of the case and/or be supplied with copies of the statements and other evidential material against their

client on which such prosecution was based", but the Commission replied two days later that it was unable "to allow them to inspect the dossier of the abovementioned case and/or to supply them with copies of the statements and other evidential material against their client on which such prosecution was based, because under s. 12 of the Public Service Law the said documents were privileged". (The letters form part of a bundle of documents appended to the opposition).

In September and October, 1969, the applicant was tried by the Commission on sixteen charges of disciplinary offences (*exhibit* 3). By its decision, dated December 9 of that year (*exhibit* 2) the Commission found him guilty on thirteen of the charges and dismissed him from the public service; and this application is for annulment of that decision (hereafter "the subject decision").

Section 80 of the 1967 Law, so far as material, reads:

"If it is reported to the appropriate authority concerned that a public officer may have committed a disciplinary offence, then—

(*a*) If the offence is one of those set out in Part 1 of Schedule 1, the appropriate authority forthwith takes steps with a view to ensuring that a departmental investigation is carried out in such manner as the appropriate authority may order

(*b*) In every other case the appropriate authority forthwith takes steps with a view to ensuring that an investigation is carried out in the prescribed manner and acts as provided in s. 82:

Provided that until regulations prescribing the manner of the investigation are made, the regulations set out in Part 1 of Schedule 2 shall apply."

"Appropriate authority" is defined in s. 2 of the Law, and it is common ground that in this case "the appropriate authority concerned" was the Minister for Foreign Affairs acting through the Director-General of his Ministry. So far as material, s. 82 reads:

"(1) When an investigation carried out under para. (*b*) of s. 80 has been concluded and the commission of a disciplinary offence has been disclosed, the appropriate authority forthwith refers the matter to the Public Service Commission and forwards to it—

(*a*) the report of the investigation;

(*b*) the charge to be preferred, signed by the appropriate authority ; and

(*c*) the evidential material in support of it.

. . . .

(3) The hearing of the case before the Commission is conducted and completed in the prescribed manner :

Provided that until regulations are made in that behalf the regulations set out in Part 3 of Schedule 2 shall apply."

So far as material, the regulations referred to in s. 80 (*b*) read :

" 1. As soon as possible the appropriate authority concerned appoints one or more officers of its Ministry (in this Part referred to as ' the investigating officer ') to carry out an investigation .

Provided that if in any case the appropriate authority considers that it would not be possible, convenient or practicable to appoint an investigating officer from the staff of its Ministry it refers the matter to the Council of Ministers, which appoints a suitable officer to carry out the inquiry.

.. .

3. In carrying out the investigation the investigating officer shall have power to hear any witnesses or take written statements from any person who may be acquainted with the facts of the case, and every such person shall give all information that came to his knowledge and sign every statement so given after it has been read to him.

4 The officer is entitled to know the case against him and the opportunity is given to him to be heard.

5 After completion of the investigation the investigating officer forthwith reports his findings to the appropriate authority, with full reasons, submitting together all relevant documents

6 On receipt of the investigating office 's report, the appropriate authority forthwith refers it, with all documents submitted, to the Attorney-General of the Republic for an opinion, together with its findings on the report "

Only one of the regulations referred to in s 82 (3) is relevant, *viz* regulation 3, which reads :

" The hearing of the case shall be conducted, as far as possible, in the same manner as the hearing of a criminal case tried summarily "

Counsel for the applicant urged before me ten grounds of annulment. One was that, in breach of s. 82 (1) (*c*) of the 1967 Law, " the evidential material " collected by the investigating officer was not sent to the Commission but was in the possession of the Director-General of the Ministry for Foreign Affairs right up to the first day of the hearing of the case against the applicant ; and another point was that the Commission did not, after finding the appellant guilty, give him the opportunity of pleading in mitigation.

Let me deal with the latter point first. That the applicant was never given the opportunity of pleading in mitigation of punishment after he was found guilty was not disputed by counsel for the respondent. The question then is what, if any, was the effect of that fact. Counsel for the applicant cited *Morsis and The Republic*, 4 R.S.C.C. 133, as an authority for the proposition that the applicant must be given such an opportunity after verdict. There a public officer having been convicted by a criminal Court of a criminal offence, which also constituted a disciplinary offence, the Commission dismissed him from the public service without giving him the opportunity of being heard at all—whether as to guilt or in mitigation ; and Mr. Talarides for the respondent urged that that case was distinguishable from the present one because there the Commission did not hear the officer concerned even on the question of guilt. But the *ratio decidendi* in that case was not that the officer had not been heard by the Commission on the question of guilt but that he had not been heard on the question of disciplinary punishment. This is clear from a passage at pp. 137, 138 (H and A respectively) of the report, which reads :

> " The Court is of the opinion that the Commission was entitled, though not also bound, to accept as correct the relevant facts as established to the satisfaction of the criminal Court concerned and so long as the applicant has been given an opportunity to be heard in relation to such facts before the said Court he need not have been afforded a similar opportunity before the Commission.
>
> On the other hand, the Court cannot accept as correct the submission of counsel for respondent that no opportunity ought to have been afforded to the applicant, by the Commission, to be heard in the matter of the disciplinary punishment to be imposed upon him."

Nor could it be argued by the respondent that the offences of which the applicant had been found guilty being as in truth they were, very serious, the failure to give him the opportunity of pleading in mitigation made no difference as regards punishment, because he would have been dismissed whatever was said in his favour. As the Supreme Court said in *Pantelidou and The Republic*, 4 R.S.C.C. 100, at p. 106, G and A, p. 107, A :

> " ... strict adherence to the principle concerned is most essential, in spite of the fact that such a course may occasionally result in causing some delay and that the reasons for dismissing a public officer may sometimes be *prima facie*, so overwhelming as to render it improbable that anything will be forthcoming from him which would render his dismissal unnecessary, and the more so because in Cyprus disciplinary control is vested, not in the appropriate Ministers or other Heads of Departments who are expected to have considerable direct and personal knowledge of their subordinates, but in an extra-departmental organ like the Commission, which usually acts upon papers placed before it and contained in the personal file of the officer concerned."

From what I have said so far it follows that if the applicant does not succeed on any other ground the subject decision must be annulled in part, *viz.* as regards the actual punishment imposed.

I now go on to consider the complaint that the evidential material was not sent to the Commission. That it was not, and in fact that it was in the possession of the Director-General of the Ministry for Foreign Affairs right up to the first day of the hearing of the case against the applicant before the Commission, was not disputed ; and it is clear that that was contrary to s. 82 (1) (*c*) of the Law. The hearing of this case was concluded before the decision in *Georghiades* v. *The Republic* (1970) 3 C.L.R. 380, and counsel for the applicant's argument was based mainly on the fact of non-compliance with the prescribed procedure as such. But counsel did also argue that " one reason for the provisions " of s. 82 (1) (*c*) is that the confidential material " should be available to the officer concerned as well as to his accuser ". In the case just cited, Triantafyllides, J. set aside the decision complained of, which also was a conviction in disciplinary proceedings before the Commission, on the ground that—

> " copies of the reports of the two investigating officers .... and of the documents attached thereto, including

statements obtained from various persons by the said investigating officers "

had not been supplied to the applicant (p. 400) which, he held, was contrary to natural justice. He said at pp. 400–401 :

" One of the rules of natural justice which is applicable to disciplinary proceedings is the *audi alteram partem* rule, *viz.* that the person charged should have the opportunity of being heard in his own defence in a manner in which such right shall be a real right worth what it is meant to be."

Then, at p. 403 :

" In the present instance the applicant when he made his defence before the respondent Commission did not know of the written statements on the basis of which the reports of the two investigating officers had been prepared ; and without knowledge of this material, which had been forwarded under the aforementioned provisions of (the 1967 Law), to the Commission, his right to be heard in his own defence was not really worth much..... "

One other reason for which the conviction in that case was set aside is also applicable here, *viz.* that " it was reached without due inquiry ". The learned Judge said at pp. 407–408 :

" That a due inquiry is essential for the validity of any administrative decision is a fundamental rule, the importance of which has been repeatedly stressed .... and such inquiry is no doubt necessary in relation, also, to disciplinary matters ...

Counsel for the respondent has conceded that the Commission ought to have studied, for the purposes of the disciplinary process against the applicant, the reports of the two investigating officers and the documents attached thereto ; but he has argued that its failure to do so has not, in this case, materially affected the said process.

I do not think that I can accept his argument on this point, as a valid one, because, *inter alia*, nobody can tell for certain whether the study of the said reports and documents would or would not have led the Commission to decide that there was need to inquire further into any material aspect of the case before it.

Moreover, the Commission's inquiry cannot, in any case, be treated as having been a due one, because by not making available to the applicant all the material, which was before it, the Commission deprived itself of the opportunity of having before it as complete explanations as the applicant could have given, in trying to exculpate himself, if he had known of all such material (see *inter alia*, *Iordanou* v. *Republic* (1967) 3 C.L.R. 245."

Adopting, as I do, the principles enunciated in the above passages, I hold that the ground under discussion is a valid one.

For the above reasons the application must succeed and the subject decision is hereby annulled. In the circumstances it is not necessary to consider any of the other grounds relied upon by the applicant.

The respondent to pay the applicant £30 costs.

Sub judice decision annulled. Order for costs as above.