

[HADJIANASTASSIOU, J.]
IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

KYRIACOS G. BAGDADES,

Applicant,

and

THE CENTRAL BANK OF CYPRUS.

Respondents.

(Case No. 386/71).

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Promotions—Principles applicable—Duty to select the most suitable candidate for the post on the totality of the circumstances—Length of service—Seniority—One of the factors to be taken into account, but not the vital one—Substantial seniority however cannot be disregarded unless cogent reasons given (Partellides' case, infra, followed)—No such reasons given in the present case—See further infra.

Promotions—Promotion to the post of Officer Grade I, Central Bank—Applicant and interested party equal in merit, but applicant with wider experience and having almost six years' seniority over the interested party—Both possessing the academic qualifications required by the relevant scheme of service, but interested party possessing higher such qualifications—No clear reasons given why the interested party was preferred—And no cogent reasons given in the minutes what was actually the result of the relevant interviews of candidates—And what were the other relevant factors which the respondents said they took into consideration—And no reasons given why the applicant's said substantial seniority was disregarded—Consequently, the sub judice decision is not duly reasoned—And it is the product of a defective exercise of the discretionary powers—And it was not reasonably open to the respondents to reach such decision, which must be annulled—See further infra.

Academic qualifications required for appointment or promotion—Weight and effect of higher qualifications than

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those so required—Once the candidates concerned possess the required academic qualifications, higher qualifications possessed by one of them do not weigh heavily—And the appropriate authority should decide in selecting the most suitable candidate on the totality of the circumstances before them—Cf. further supra.

Public Officers—Promotions—See supra, passim.

Administrative decisions—Due reasoning required—Meaning of—Clear and adequate reasons should be given in order to enable the person concerned as well as the Court, on review, to ascertain whether or not the decision is well founded in fact and in law—Especially, regarding decisions taken by collective organs—And particularly decisions unfavourable to the subject.

Reasoning of administrative decisions—See supra, passim.

Collective organs—Decisions of collective organs—Need particularly to be duly reasoned.

Discretionary powers—Defective exercise of—See supra.

This is a recourse under Article 146 of the Constitution whereby the applicant, an officer in the employment of the respondent Central Bank of Cyprus, is challenging the validity of the respondents' decision to promote the interested party Mr. Char. to the post of officer grade 1 instead of and in preference to himself. The recourse is based on the main ground of law that "having regard to the totality of the circumstances in general and especially the superior seniority and experience of the applicant, the respondents acted in excess and/or abuse of powers" by promoting the said interested party instead of the applicant.

It is common ground that both the applicant and the interested party possessed all qualifications required by the relevant schemes of service and that the applicant had six years' seniority over the interested party. It would seem that no cogent or even intelligible reasons were given why the respondents preferred the latter.

Annulling the *sub judice* decision, the learned Judge of the Supreme Court :-

Held, (1). The annual confidential reports concerning the parties are equally good although no doubt the

applicant has gained, in my view, a wider knowledge of the affairs of the Bank in view of his long service and experience in its various branches. On the other hand, it is well settled that, though seniority is not the vital criterion, cogent reasons, however, for disregarding substantially greater seniority of a candidate should be given by the appropriate authority (see *Partellides v. The Republic* (1969) 3 C.L.R. 480, at p. 484). No such reasons or reasons at all were given in the instant case by the respondents.

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- (2)(a) It has been suggested by counsel for the respondents that apparently the interested party was preferred because of his higher academic qualifications. But in the absence of a definite statement to that effect which ought to appear in the minutes, I cannot really surmise whether that was the only decisive factor which weighed in the mind of the respondents.
- (b) True, every diploma or degree signifies an educational accomplishment, but on the other hand, if the course of study as a result of which it was obtained goes beyond what is required for the efficient discharge of the duties of a particular post, in my view, once all candidates possess the academic qualifications required for that post, that reason alone (higher qualifications) should not weigh so greatly in the mind of the appointing authorities, but they should decide in selecting the most suitable candidate on the totality of the circumstances before them. Had it been otherwise, there would be no reason in inviting other candidates for that particular post once they knew in advance that amongst the candidates there was a person with higher qualifications.
- (3)(a) It has been said in a number of cases that the paramount duty of the appropriate administrative authorities, effecting appointments or promotions, is to select the most suitable candidate having regard to the totality of the circumstances, including, of course, length of service.

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(b) In the light of the material before me, I find myself unable to understand the reason why the interested party was preferred. However, in the absence of any cogent reason why the respondents disregarded the substantially greater seniority of the applicant, as well as in the absence of clear reasons regarding all other relevant factors which they say they took into consideration, I have reached the conclusion that the respondents have exercised their discretionary powers in a defective manner and that it was not reasonably open to them to take the decision complained of.

(4) It is one of the concepts of administrative law that administrative decisions must be duly reasoned, which means that clear and adequate reasons must be given, especially in the cases of decisions taken by collective organs; and particularly when such decision is unfavourable to the subject (see *HadjiSavva v. The Republic* (1972) 3 C.L.R. 174). Now, in the absence of such reasons I am unable to ascertain whether the decision complained of is well founded in fact and in accordance with the law; and in the light of this finding viz. that the said decision is not duly reasoned, I would declare that it is null and void and of no effect whatsoever.

Sub judice decision annulled.
No order as to costs.

Cases referred to :

Partellides v. The Republic (1969) 3 C.L.R. 480, at p. 484;

Georghiadis v. The Republic (1967) 3 C.L.R. 653;

Papazachariou v. The Republic (1972) 3 C.L.R. 486;

HadjiSavva v. The Republic (1972) 3 C.L.R. 174.

Recourse.

Recourse against the decision of the respondent Central Bank of Cyprus to promote the interested party, Georghios

Charalambous, to the post of Officer Grade I in preference and instead of the applicant.

P. Frakalas, for the applicant.

R. Gavrielides, for the respondents.

Cur. adv. vult.

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The following judgment was delivered by :-

HADJIANASTASSIOU, J.: On June 27, 1963, in accordance with the provisions of Law 48 of 1963, a bank called the Central Bank of Cyprus was established, and the management of the bank, as laid down in s. 7 of the said law, "shall be a Board of Directors consisting of the Governor, the Deputy Governor and five directors appointed in accordance with this law".

The meetings of the Board for the transaction of the business of the bank are regulated by s. 12 of the Central Bank of Cyprus Law, 1963, and under subsection 7 the minutes of each meeting of the Board shall be kept in such form as the Board may determine, but formal decisions of the Board shall be recorded verbatim.

Regarding the functions of the Board, s. 13(2)(b) is in these terms :-

"(2) Without prejudice to the generality of subsection 1, the Board shall have power to

(a)

(b) subject to the provisions of any Law in force for the time being, make, on the recommendation of the Governor, regulations providing for the internal organisation of the Bank, defining, with the approval of the Council of Ministers, the schemes of service of all officers and employees of the Bank, and regulating their powers and duties and the exercise of the disciplinary control over such officers and employees."

Then I turn to the functions of the Governor, and s. 15, subsection 2 reads as follows :-

"Without prejudice to the generality of subsection (1) the Governor shall, subject to any Law in force for the time being and in accordance with

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regulations relating to the officers and employees of the Bank made under this Law, appoint, suspend or dismiss any officer or employee of the Bank other than officers or employees in respect of whom other provision is made in this Law.”

And in accordance with subsection 3

“The Governor in carrying out any of his functions under subsection 2 shall act in accordance with the advice of a Committee established for the purpose and consisting of himself as Chairman, the Deputy Governor,

The Governor of the Bank exercising his powers under s. 13(b) defined the schemes of service of all officers and employees of the Bank, and the schemes of service *exhibit 2* under the heading “Special Conditions” (applicable only to persons established by 1.12.67 in existing posts) reads in paragraph (ii) :-

“An officer who on the 1st of December, 1967 was established in an existing post will not be required to possess a university degree to be considered for the posts of Manager and Officer Grade 1, provided such officer is an Associate of the Institute of Bankers or has passed Part I of the finals of the B.Sc. (Econ.) degree of the University of London. Provided further that either of these qualifications were obtained not later than 31st December, 1971.”

The facts are these :- The applicant joined the service of the British Military Forces of Cyprus in March, 1952, and remained serving until October, 1963. He then entered into the service of the Central Bank of Cyprus in November, 1963 and continued working until March, 1964 in the secretariat department as clerk ‘A’. In March, 1964 he was transferred to the banking operations department and, in January 1965 he was appointed as acting assistant credit officer till April, 1966. In November, 1966, he was appointed to the post of assistant bank examiner and in April, 1969 he was transferred to the banking operations department.

On the other hand the interested party entered into the service of the Central Bank in August, 1969, and

was serving on probation as an officer grade 2, and continued holding that post until July 14, 1971.

In the meantime, in January, 1968, certain posts in the Central Bank were regraded and both the posts of assistant credit officer and assistant bank examiner were placed under the general grade of officer, grade 2, a post which the applicant is holding until today.

On May 28, 1971, the post of officer grade 1 was published in the official Gazette and a number of candidates made applications to the board of the bank, but only ten were interviewed by the Committee established under subsection 3 of s. 15 of the said law. On July 13, 1971, the Committee of the bank met for the purpose of filling a vacancy in the post of officer grade 1, and the minutes kept read as follows :-

“After reviewing the results of the interviews and confidential reports available on candidates already serving in the Bank and after taking into account other relevant factors the Committee decided that the most suitable candidate for appointment to the post of Officer Grade I was Mr. George Charalambous.”

On July 14, 1971, the Secretary of the Governor informed Mr. Charalambous (the interested party) that the Governor has been pleased to offer him appointment to the post of officer grade I in the Central Bank as from July 14. On the same date, apparently because the interested party accepted the appointment made to him, the Governor in accordance with s. 15 of the Central Bank Law, appointed him on the terms and conditions set out in his offer.

Regarding the duties and responsibilities of officer, grade I, it appears that the holder “is responsible for the proper functioning of a section of a department, and/or assist in the supervision of a department. To undertake studies, research work, examination of banks and similar tasks, analyse economic and other data and to submit reports and recommendations for the formulation of policies. To perform any other duties which may be assigned to him.”

And the qualifications are :-

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- “(a) to hold an appropriate university degree, preferably in economics;
- (b) to have a good knowledge, and experience in appropriate fields of central banking or in fields related to central banking;
- (c) to have sound judgment, tact and administrative ability and be capable of assuming responsibilities;
- (d) to have ability to draft reports on economic and related subjects;
- (e) to have a very good knowledge of Greek and English or Turkish and English.”

On September 28, 1971, the applicant, feeling aggrieved because he was informed that he was not selected for the post in question, filed the present recourse claiming a declaration that the decision of the respondents to promote Mr. Charalambous to the post of officer grade 1, in preference and instead of the applicant, was null and void and of no effect whatsoever. The application was based on two grounds of law, *i.e.* (1) that s. 15(2)(b) enabling the Governor to appoint an officer or employee of the bank is unconstitutional as violating Articles 122 and 125 of the Constitution, because in accordance with the aforesaid Articles the Public Service Commission is the only appropriate organ to effect appointments and promotions in public corporate bodies such as the Central Bank of Cyprus; and (2) that having regard to the totality of all the circumstances in general and especially the superior seniority and experience of the applicant, the respondents acted in excess and/or abuse of power by appointing the interested party to the post in question in preference and instead of the applicant.

On October 30, the opposition was filed on behalf of the Central Bank claiming that the decision attacked was taken lawfully in accordance with the provisions of the Central Bank Law, after taking into consideration all relevant points. Furthermore, it was alleged in opposition that the operation of Articles 122 and 125 of the Constitution was suspended under the Doctrine of Necessity in the light of the prevailing circumstances in Cyprus.

Although the hearing of this case started on April 3, 1972, for various reasons which appear on record, including the change of advocates, the case was adjourned to March 16, 1973. On that date, having heard argument on behalf of the applicant, the case was adjourned again on the application of counsel appearing for the applicant to enable him to add further grounds of law. Although I have heard argument on the new grounds of law also I do not propose referring to the said new grounds of law, because on July 2 and July 11, 1973, counsel for the applicant withdrew ground 1 and the additional grounds of law 1 and 3 of the application and the case proceeded on the original ground 2 and on ground 2 of the additional grounds of law, viz., that the said decision was null and void as being not duly reasoned.

I have no doubt that counsel was, in my view, properly advised to withdraw the said grounds, for reasons which under the circumstances were to the benefit of his client.

It has been conceded by both counsel that the policy of the draftsman of the schemes of service relating to the post in question, was that all officers appointed after December 1, 1967, would require to possess superior qualifications, i.e. an appropriate university degree and preferably in economics. Nevertheless, however, in order to safeguard the interest of the service itself, it provided that anyone from the serving officers who were established by December 1, 1967 in an existing post would satisfy the provisions of that scheme of service if he was an associate member of the Institute of Bankers or had passed part 1 of the finals of the B.Sc. (Econ.) degree of the University of London. It has been fairly conceded by counsel for the respondents that the applicant possessed both qualifications and that he brought himself within the provisions of the special conditions of the scheme in question, and that those qualifications were obtained by him earlier, than December 31, 1971. It appears from the comparative table before me that both the applicant and the interested party had these qualifications :-

Applicant—Elementary school, Karavas 1941 - 1947, Gymnasium, Lapithos 1947 - 1948, English High School Kyrenia 1948 - 1951, Nicosia Institute

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1951 - 1952, C.C.E. Exams :- English Ordinary, English Higher, Turkish Lower, Maths. A, Maths. B, Geography, *L.C.C. Exams* :- Elementary Book-keeping, Intermediate Book-keeping, Accounting Higher. *Institute of Bankers Diploma* (April. 1967). *B. Sc. Econ. Exams Part I only* (1970).

Interested party—Elementary school, Kaimakli 1949 - 1955, Pancyprian Gymnasium 1955 - 1961, Athens Graduate School of Economics & Business Studies 1961 - 1966, Lecturer in Economics (Asst. of Professor at the Athens Graduate School of Econ.) 1966 - 1967, London School of Economics & Political Science (M. Sc. Econ.) 1967 - 1968, Five months course on Financial Analysis & Policy by International Monetary Fund, U.S.A. 1970.

It has been said judicially in a number of cases that the paramount duty of a collective organ in effecting appointments and promotions is to be the selection of the most suitable candidate for the particular post having regard to the totality of circumstances pertaining to each one of the qualified candidates, according to the needs of the scheme of service; (*Georgiades v. The Republic* (1967) 3 C.L.R. 653), including length of service which though always a factor to be considered, is not always the exclusive vital criterion for such appointment or promotion. In their search to select the best candidate for a post a collective organ should carefully consider the merits and qualifications of each candidate, and length of service is one of the factors to be taken into account. At the same time it has been stressed that though it is not always the exclusive vital criterion, cogent reasons for disregarding substantially greater seniority of a candidate should be given by that body. In *Partellides v. The Republic* (1969) 3 C.L.R. 480, the Supreme Court had this to say at p. 484 :-

“In the circumstances, we are of the opinion that it was not reasonably open to the respondent commission to promote interested party Gregoriades instead of the appellant. All other things being more or less equal the appellant’s seniority ought to prevail. It follows that the relevant discretionary powers of the respondent were exercised in an erroneous manner.”

Later on the Court had this to say :-

“While on this point let it be stated that we have, indeed, noted a general statement, in the relevant minutes of the respondent, that the decisions as to the promotions concerned—including the *sub judice* one—were reached bearing in mind, *inter alia*, the ‘recommendations’ of Mr. Hadjioannou (which were made orally at the particular meeting of the respondent on the 3rd July, 1968); but, in the opinion of the Court, without these recommendations being adequately recorded in the said minutes, so as to enable this Court to examine how and why it was reasonably open to the respondent to act upon them, notwithstanding the greater seniority of the appellant and the equally good confidential reports, such a general statement in the minutes of the respondent, as aforesaid, cannot have the effect of rendering the promotion of interested party Gregoriades one which can be treated as having been properly decided upon in the exercise of the particular powers of the respondent.”

C/f. Partellides v. The Republic (1969) 3 C.L.R. 291 at p. 296.

Having gone through the confidential reports of the parties, I find myself in agreement with counsel that their confidential reports are equally good although no doubt the applicant has gained in my view, a wider knowledge of affairs of the bank in view of his long service and experience in its various branches. I have been invited by counsel for the respondents to take the view that apparently the interested party was preferred because of his higher academic qualifications, but with respect to counsel’s view in the absence of a definite statement to that effect which ought to appear in the minutes, I cannot really surmise whether that was the only decisive factor which weighed so greatly in the mind of the Committee in preferring the interested party. There is no doubt, of course, that every diploma or degree signifies an educational accomplishment, but on the other hand, if the course of study as a result of which it was obtained goes beyond what is required for regarding the efficient discharge of the duties of a particular post, in

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my view, once all the candidates possess the academic qualifications required for that post, that reason alone (higher qualifications) should not weigh so greatly in the mind of the Committee, but they should decide in selecting the best candidate on the totality of all the circumstances before them. Had it been otherwise, I would be inclined to the view that there would be no reason in inviting other candidates for that particular post once they knew in advance that amongst the candidates there was a person with higher qualifications.

In the light of all the material before me, and in the circumstances of this case, and in view of the fact that the applicant has served efficiently and most satisfactorily the bank for a number of years, I find myself unable to follow or understand the reason why the interested party was preferred. However, in the absence of any cogent reasons given in the minutes regarding what were actually the results of the interviews (whether a record was kept and the system of marking was adopted) as well as what were the other relevant factors which the Committee said they took into consideration, and the reason why they disregarded the greater seniority of the applicant, I have reached the view that the respondent had exercised their discretionary powers in a defective manner because it was not reasonably open to them to reach such a conclusion.

The next question which is posed is whether the decision of the Governor to appoint the interested party is duly reasoned. Regarding this point, I think I ought to reiterate what I said in *Papazachariou v. The Republic*, (1972) 3 C.L.R. 486, that due reasoning must be more strictly observed in the case of a decision having been taken by a collective organ, and particularly when such decision is unfavourable to the subject. The whole object, of course, of such rule is to enable the person concerned as well as the Court, on review, to ascertain in each particular case whether the decision is well-founded in fact and in accordance with the law. *HadjiSavva v. The Republic* (1972) 3 C.L.R. 174.

Having considered the arguments of both counsel and in view of the fact that one of the concepts of administrative law is that administrative decisions must be duly

reasoned, that must be clearly read as meaning that proper adequate reasons must be given. The reasons that are set out in the decision of the Committee whether they are right or wrong, ought to have been reasons which not only would be intelligible, but also can reasonably be said to deal with the substantive points raised, *i.e.* why the interested party was preferred and what were the other relevant factors which weighed so much in the mind of the Committee in preferring the interested party instead of the applicant who, as I said earlier, had a longer service with the bank. In the absence of those reasons, in reviewing the said decision, I am unable to ascertain whether the decision is well-founded in fact and in accordance with the law, and in the light of this finding that the said decision is not duly reasoned, exercising my powers under Article 146, I would declare that such decision or act is null and void and of no effect whatsoever. Regarding the question of costs, in view of the fact that some of the adjournments were made on the request of the applicant, I have decided to make no order as to costs in favour of the applicant.

Sub judice decision annulled.

No order as to costs.

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