

[TRIANTAFYLIDES, P.]  
IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

X. CHRISTODOULOU AND OTHERS,

*Applicants,*

*and*

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

*Respondent.*

(Cases Nos. 236/70, 284/70, 289/70).

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*Legitimate Interest—Moral legitimate interest—Article 146.2 of the Constitution—Public officer—Extent of interest required in order to vest in her a personal legitimate interest enabling her to make a recourse against promotions of colleagues of hers—Public officer not qualified for promotion—Vested with such interest if a colleague of hers who is also not so qualified is promoted so as to become her superior.*

The only issue for determination was whether the applicant in Case No. 289/70, not being qualified for promotion under the Scheme of Service, possessed a legitimate interest in the sense of Article 146.2 of the Constitution, entitling her to make a recourse against the promotion of the interested party to the post of Telephone Supervisor.

The facts so far as relevant are as follows:

The said applicant, who is an Assistant Telephone Supervisor in the Service of the respondent Authority submitted an application for the post of Telephone Supervisor at the Nicosia Overseas Telephone Exchange. Her application, together with those of the remaining candidates, were considered by a Selection and Promotion Board. The Board decided on June 18, 1970, to recommend unanimously for promotion to the said post the applicant in Case 236/70 and the interested party; the Board, also, recorded in its minutes that had the vacant posts been at the Trunk Calls Exchange then it would have recommended favourably, too, the applicant concerned.

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On July 1, 1970, the Board of the respondent decided to promote the interested party and left vacant the other post having found no suitable candidate for promotion thereto; as regards the applicant concerned it recorded in its minutes, that she had made an excellent impression, when interviewed, and was unanimously considered as fit for promotion, but that she could not be promoted because she lacked a qualification required under the relevant Scheme of Service. The qualification in question was that of graduation from a Secondary Education School; but it is important to note that in accordance with a proviso to all Schemes of Service, this applicant, being an employee "with continuous service with the respondent prior to 1st January, 1955" would have become "eligible for promotion" if the Selection and Promotion Board were "unanimously satisfied" that she was "capable of satisfactorily carrying out the duties of the post concerned".

Counsel for the applicant concerned submitted that the interest envisaged by Article 146.2 may be either of a financial nature or merely of a moral nature; and he referred, in this respect, to Stassinopoulos on the Law of Administrative Disputes («Δίκαιον Διοικητικῶν Διαφορῶν») 4th ed. (1964) pp. 200, 201, and to the decision in Case 357/1949 by the Council of State in Greece, which is cited by the learned author; in that case it was held that a senior public officer has a moral legitimate interest to ensure that higher posts are held lawfully by those appointed thereto.

In the case in hand the applicant concerned was senior to the interested party and she has contended that the latter lacked, too, the required educational qualification, but was found qualified for promotion because she was unanimously recommended by the Selection and Promotion Board; and she has further contended that if the respondent had not differentiated between Telephone Supervisors at the Trunk Calls Exchange and Telephone Supervisors at the Overseas Telephone Exchange the said applicant ought to have been treated as being qualified for promotion because the Selection Board had decided, without reservation, that it would have recommended her if the vacancies were to be filled in relation to posts at the Trunk Calls Exchange; and that she was not promoted only because she was treated as not being qualified.

In dealing with the issue under consideration the Court referred to Cyprus case-law on the matter (vide pp. 699—700 in the judgment post) and to case-law of the Council of State in Greece (vide pp. 700-701 in the judgment post).

*Held*, in view of the very special circumstances of the present matter, the applicant concerned should be treated as possessing a legitimate interest, entitling her to file her recourse, and, therefore, the relevant objection of the respondent cannot be upheld and the hearing of all these three cases can now proceed so as to be concluded.

*Order accordingly.*

Cases referred to :

- Neophytou v. The Republic*, 1964 C.L.R. 280 at p. 293;
- Constantinou and Another v. The Republic* (1966) 3 C.L.R. 174;
- Santos and Others v. The Republic* (1969) 3 C.L.R. 28;
- Miltiadou v. The Republic* (1969) 3 C.L.R. 210;
- Panayides v. The Republic* (1972) 3 C.L.R. 135;
- Papasavvas v. The Republic* (1967) 3 C.L.R. 111, at p. 123;
- Panayides v. Republic* (reported in this Part at p. 378 ante);
- Decisions of the Greek Council of State*: Nos. 357/1949, 570/1970, 2574/1967, 1464/1964, 2154/1964 and 2197/1965.

**Recourse.**

Recourse against the decision of the respondent to promote the interested party to the post of Telephone Supervisor and against a decision of the respondent not to fill a vacancy in the same post.

- L. Papaphilippou*, for the applicants in Cases Nos. 236/70 and 289/70.
- M. Christophides*, for the applicant in Case No. 284/70.
- A. Hadjiloannou with M. Vassiliou*, for the respondent.

*Cur. adv. vult.*

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The following decision was delivered by :-

TRIANTAFYLIDES, P. : These three cases are being heard together in view of their nature.

The three applicants complain against the decision of the respondent to promote Y. Tanta (the "interested party") to the post of Telephone Supervisor, and, also, about the decision of the respondent not to fill a second vacancy in the same post.

The two vacancies in question occurred in posts of Telephone Supervisors at the Nicosia Overseas Telephone Exchange.

From the material before me it appears that the history of events in the present cases is as follows :-

The said vacancies having been advertised, there were submitted nine applications, including those of the applicants in these recourses and of the interested party; all four of them were at the time Assistant Telephone Supervisors. The applications were considered by a Selection and Promotion Board, comprising representatives of the staff and of the management of the respondent Authority, and eventually, the Board decided on June 18, 1970 (see *exhibit 5*) to recommend unanimously for promotion to the post of Telephone Supervisor Mrs. X. Christodoulou (the applicant in 236/70) and Mrs. Y. Tanta (the interested party); the Board, also, recorded in its minutes that had the vacant posts been at the Trunk Calls Exchange then it would have recommended favourably, too, without any reservation, Mrs. M. Drakopoullou (the applicant in 289/70) and another candidate, who is not involved in the present proceedings.

On July 1, 1970, the Board of the respondent decided to promote the interested party and left vacant the other post having found no suitable candidate for promotion thereto; as regards the applicant in 289/70 it recorded in its minutes (*exhibit 4(b)*), that she had made an excellent impression, when interviewed, and was unanimously considered as fit for promotion, but that she could not be promoted because she lacked a qualification required under the relevant scheme of service (*exhibit 6*). The qualification in question was that of graduation from a Secondary Education School; but, it is important

to note that in accordance with a proviso to all schemes of service (see *exhibit 9*), this applicant, being an employee "with continuous service with the respondent prior to 1st January, 1955", would have become "eligible for promotion" if the Selection and Promotion Board were "unanimously satisfied" that she was "capable of satisfactorily carrying out the duties of the post concerned".

During the hearing of these cases the issue was raised by counsel for the respondent that the applicant in 289/70, not being qualified for promotion under the scheme of service, did not possess a legitimate interest, in the sense of Article 146.2 of the Constitution, entitling her to make a recourse against the promotion of the interested party.

After hearing what her counsel had to say on this point the hearing was interrupted so that the said issue could be determined.

In *Neophytou v. The Republic*, 1964 C.L.R. 280, 293, it was stated :-

"That a person is entitled to challenge the promotion of another, if he himself was entitled to be considered for promotion, is well settled in Cyprus (vide *Uludag and The Republic*, 3 R.S.C.C. p. 131 at p. 133 and *Philippou and The Republic*, 4 R.S.C.C. p. 139 at pp. 140 - 141). In my opinion the converse is also true *viz.* that if he is not entitled to be considered for promotion then he would not be entitled to challenge the promotion to the post in question of another. It cannot be held that a person, who is not entitled to be promoted, not being qualified under the scheme of service, has a legitimate interest himself in the outcome of the administrative action concerning the promotion in question. Had his promotion been made without his being qualified, such promotion would have been illegal, (vide *Papapetrou and The Republic*, 2 R.S.C.C. p. 61). Therefore, he could not have a legitimate interest to be promoted through a contravention of the law applicable to the matter. His said interest would not be legitimate."

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In the above connection further reference may be made to, *inter alia*, *Constantinou and Another v. The Republic* (1966) 3 C.L.R. 174, *Santos and Others v. The Republic* (1969) 3 C.L.R. 28, *Miltiadou v. The Republic* (1969) 3 C.L.R. 210, *Panayides v. The Republic* (1972) 3 C.L.R. 135.

Counsel for the applicant concerned submitted that the interest envisaged by Article 146.2 may be either of a financial nature or merely of a moral nature; and reference was made, in this respect, to Stasinopoulos on the Law of Administrative Disputes («Δίκαιον Διοικητικῶν Διαφορῶν») 4th ed. (1964), pp. 200, 201, and to the decision in Case 357/1949 by the Council of State in Greece, which is cited by the learned author; it was held in that case that a senior public officer has a moral legitimate interest to ensure that higher posts are held lawfully by those appointed thereto; this decision has been considered, and followed to a certain extent, in *Papasavvas v. The Republic* (1967) 3 C.L.R. 111, 123.

It is useful to refer, a little further, to the relevant case-law of the Council of State in Greece, and in particular to some decisions after the publication of the above textbook by Stasinopoulos :

In Case 570/1970 it was held by the Council that a public officer is not entitled to make a recourse if his interest is only of a general nature, aiming at securing compliance with provisions applicable to the branch of the public service to which he belongs, and if the administrative act challenged by the recourse does not affect his seniority or does not otherwise have an adverse affect on his status in the service; and this decision was referred to recently by our Supreme Court in *Panayides v. The Republic* (R.A. 107, not reported \* yet). Another decision of the Council in which the above approach was adopted is that in Case 2574/1967.

In Case 1464/1964 it was held that a public officer who is not qualified for promotion to a particular post has, nevertheless, a moral legitimate interest to challenge

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\* Now reported in this Part at p. 378 *ante*.

by recourse the inclusion, in the list of those eligible for promotion to such post, of colleagues of his who are junior to him in the service and who are not, either, qualified for promotion, because by being promoted they will become his superiors, even though they are not qualified for promotion; and exactly the same principle was applied in Cases 2154/1964 and 2197/1965.

In the present instance the applicant in 289/70 was senior to the interested party in the post of Assistant Telephone Supervisor, and she has contended that the interested party lacked, too, the required educational qualification but was found qualified for promotion because she was unanimously recommended by the Selection and Promotion Board; also, that if the respondent had not differentiated between Telephone Supervisors at the Trunk Calls Exchange and Telephone Supervisors at the Overseas Telephone Exchange the applicant in question ought to have been treated as being qualified for promotion because, as already stated, the Selection and Promotion Board decided, without reservation, that it would have recommended her if the vacancies were to be filled in relation to posts at the Trunk Calls Exchange; and that she was not promoted only because she was treated as not being qualified.

I am of the opinion, in view of the above very special circumstances of the present matter, that the applicant concerned should be treated as possessing a legitimate interest, entitling her to file her recourse, and, therefore, the relevant objection of the respondent cannot be upheld; and the hearing of all these three cases can now proceed so as to be concluded.

*Order accordingly.*

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