[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IORDANIS IORDANOUS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

Respondent.

(*Case No.* 285/69).

Public Service Law, 1967 (*Law* 33/67) *Regulations* 1 *and* 2 *in Part I of the Second Schedule to the Law—Provisions of, about expedition—Not mandatory but only of a directive nature*—Georghiades *v.* The Republic (1969) 3 *C.L.R.* 396 followed.

Public Officers—Disciplinary offences—Investigation into—Report of the Investigating Officer and documents related thereto—Whether to be given to the applicant prior to the commencement of the hearing of the disciplinary proceedings.

Public Officers—Disciplinary conviction—And disciplinary punishment—Officer not heard in mitigation of punishment after he had been found guilty—Respondent's decision relating to punishment annulled both because it is contrary to the rules of natural justice and because the absence of said plea deprived the Commission of the possibility of knowing his attitude, as a member of the public service, after he had been informed that he had been found guilty of the disciplinary offences concerned.

Natural justice—Requirements of—Disciplinary conviction and punishment of public officer—Breach of rules of natural justice through failure to hear officer in mitigation of punishment after he had been found guilty—But no breach occurred through failure to give in advance to the applicant or his advocate copies of the report of the investigating officer and documents related thereto.

Disciplinary Offences—Investigation into—Disciplinary punishment—See, also, under "Public Officers".

The applicant was on the 19th June, 1969 found guilty of disciplinary offences, namely of being absent from duty without

leave on January 2, 1967, and of negligence in the performance of his duties on January 23, 1967 and, as a result, his annual increment was withheld for a period of two years.

Counsel for the applicant contended:

(a) That the investigation in relation to the disciplinary offences in question was not conducted in accordance with section 80 (b) and regulations 1 and 2 in Part I of the Second Schedule to the Public Service Law, 1967 (Law 33 of 1967) inasmuch as there has occurred delay which was incompatible with the promptness required by the aforementioned provisions.

(b) That the report of the investigating officer and the documents related thereto, were disclosed very late to the applicant, that is not until the commencement of the hearing of the case before the Commission.

(c) That after the applicant was found guilty he was not afforded, by the respondent Commission, an opportunity to be heard in mitigation of the punishment to be imposed on him.

With regard to contention (b) above it was a fact that neither the applicant, nor his counsel, though fully aware of the existence of the said documents, asked to be furnished with copies thereof before the commencement of the hearing before the Commission

Held, (*I*) *With regard to contention* (a):

Since regulation 2, where a specific time-limit is fixed, was treated as being only a provision of directive, and not mandatory, nature (see *Georghiades* v. *The Republic* (1969) 3 C.L.R. 396), a fortiori regulation 1 must be treated, also, as being of the same nature; therefore, I do not think that the delay, complained of by the applicant, should be regarded as a sufficient reason for the annulment of the *sub judice* decision of the respondent.

Held, (*II*): *With regard to contention* (*b*) *above:*

The failure to give in advance to the applicant, or his counsel, copies of the report of the investigating officer and the documents related thereto, cannot be treated, in the circumstances of the present case, as a breach of the rules of natural justice

leading to the annulment of the Commission's decision (see *Russell* v. *Duke of Norfolk and Others* [1949] 1 All E.R. 109 at p. 118; *Re Pergamon Press Ltd.* [1970] 3 All E.R. 535 and *The Republic* v. *Georghiades* (1972) 3 C.L.R. 594).

Held, (III) With regard to contention (c):

(1) There is no room for doubt that this complaint is a valid one (see, *inter alia*, *Markoullides* and *The Republic*, 3 R.S.C.C. 30 at p. 35, *Morsis* and *The Republic*, 4 R.S.C.C. 133, at p. 138, *Fisentzides* v. *The Republic* (1971) 3 C.L.R. 80 at p. 86 and *Kyprianou* v. *The Public Service Commission* (1973) 3 C.L.R. 206 at p. 224), both as a matter of natural justice and, also, because, the failure to afford the applicant an opportunity to make, if he wished, a plea in mitigation of punishment deprived the Commission of the possibility of knowing his attitude, as a member of the public service, after he had been informed that he had been found guilty of the disciplinary offences concerned. (See, also, section 83 of Law 33/67 and regulation 3 in Part III of the Second Schedule to the Law).

(2) The recourse succeeds in so far as it is aimed at the part of the *sub judice* decision by means of which disciplinary punishment was imposed on the applicant and, consequently, such punishment is annulled.

Sub judice decision partly annulled.

Cases referred to:

Georghiades v. *The Republic* (1969) 3 C.L.R. 396;

Russell v. *Duke of Norfolk and Others* [1949] 1 All E.R. 109 at p. 118;

Re Pergamon Press Ltd. [1970] 3 All E.R. 535;

The Republic v. *Georghiades* (1972) 3 C.L.R. 594;

Markoullides and *The Republic*, 3 R.S.C.C. 30 at p. 35;

Morsis and *The Republic*, 4 R.S.C.C. 133 at p. 138;

Fisentzides v. *The Republic* (1971) 3 C.L.R. 80, at p. 86;

Kyprianou v. *The Public Service Commission* (1973) 3 C.L.R. 206, at p. 224.

Recourse.

Recourse against the decision of the respondent Public Service Commission whereby the applicant was found guilty of disciplinary offences and as a result his annual increment was withheld for two years.

M. Christophides, for the applicant.

M. Kyprianou, Senior Counsel of the Republic with *A. Evangelou*, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:–

TRIANTAFYLLIDES, P.: By this recourse the applicant challenges the decision of the respondent Public Service Commission, communicated to him by letter dated June 26, 1969, by means of which he was found guilty of disciplinary offences and, as a result, his annual increment was withheld for a period of two years. The applicant was at the time an Assistant Agricultural Officer in the Department of Agriculture.

About the middle of October, 1968, the applicant was called before an investigating officer in connection with disciplinary offences alleged to have been committed by him between July, 1966, and January, 1967.

Subsequently, the Minister of Agriculture and Natural Resources sent the report of the investigating officer to the Public Service Commission, for appropriate action in accordance with the provisions of section 82 of the Public Service Law, 1967 (Law 33/67).

The Commission reached its decision on June 19, 1969; it found the applicant guilty of being absent from duty without leave on January 2, 1967, and of negligence in the performance of his duties on January 23, 1967.

Counsel for the applicant has contended that the investigation in relation to the disciplinary offences in question was not conducted in accordance with section 80 (b) and regulations 1 and 2 in Part I of the Second Schedule to Law 33/67 inasmuch as there has occurred delay which was incompatible with the promptness required by the aforementioned provisions. Paragraph (b) of section 80 reads as follows:–

" 80. If it is reported to the appropriate authority concerned that a public officer may have committed a disciplinary offence the appropriate authority shall forthwith –

(a) .....

(b) in any other case, cause an investigation to be made in the prescribed manner and then proceed as provided in section 82:

Provided that until Regulations are made prescribing the manner of investigation, the Regulations set out in Part I of the Second Schedule apply."

Regulations 1 and 2 of Part I of the Second Schedule read as follows:–

" 1. The appropriate authority concerned shall, as expeditiously as possible, nominate one or more officers of its Ministry or Office (in this Part referred to as 'the investigating officer') to conduct the investigation. The investigating officer shall be a senior officer who shall be of a higher rank than the officer concerned:

Provided that if in any case the appropriate authority considers that it would not be possible, practicable or advisable to nominate an investigating officer from its Ministry or Office, it shall refer the matter to the Council of Ministers which shall nominate a suitable officer to conduct the investigation.

2. The investigation shall be carried out as expeditiously as possible and shall in any case be completed not later than thirty days from the date of the direction for investigation."

Counsel for the respondent submitted that the provisions in regulations 1 and 2 in Part I of the Second Schedule about expedition are not of mandatory, but only of directive, nature. He cited in support of this proposition *Georghiades* v. *The Republic* (1969) 3 C.L.R. 396, where it was held that regulation 2, above, amounts only to a directive.

Since regulation 2, whereby a specific time-limit is fixed, was treated as being only a provision of directive, and not mandatory, nature, a fortiori regulation 1 must be treated, also, as being of the same nature; therefore, I do not think that the

delay, complained of, as above, by the applicant, should be regarded as a sufficient reason for the annulment of the *sub judice* decision of the respondent Commission.

Moreover, even assuming that, in an extreme case, long delay could lead, in view of the overriding need for proper administration, to the annulment of the relevant disciplinary process, I do not think that the present instance is one in which such a course would be justified; in this respect, it is useful to bear in mind the following relevant developments:

On February 24, 1967, the Director of the Department of Agriculture wrote to the respondent in relation to the conduct of the applicant.

Shortly afterwards, however, there was enacted Law 33/67, and, as a result, the respondent referred the matter back to the Department of Agriculture, on July 17, 1967, for appropriate action under the said Law.

Eventually, on January 16, 1968, Mr. C. Hoplaros was appointed as an investigating officer.

Then, the applicant was involved in a traffic accident, but on May 22, 1968, while he was still on leave, for purposes of convalescence, he informed the Minister of Agriculture and Natural Resources that he was available, in case his presence was needed, in relation to the investigation of the case.

On September 28, 1968, Mr. Hoplaros, who had not managed, in the circumstances, to complete his task within the period of time prescribed by regulation 2 in Part I of the Second Schedule to Law 33/67, was reappointed as an investigating officer. He submitted his report on October 26, 1968.

On February 21, 1969, the applicant was called to appear on March 4, 1969, before the respondent Commission, in relation to the disciplinary charges framed against him, and, after a rather protracted hearing, the Commission reached its *sub judice* decision on June 19, 1969.

From the above it is obvious that the disciplinary process lasted for quite a long time, and that some delay did occur at various stages, but I do not think that on the whole such delay was so inordinate as to amount in itself to a ground for annulment of the Commission's decision.

The next complaint of counsel for the applicant with which I have to deal is that the report of the investigating officer (*exhibit* 5), and the documents related thereto, were disclosed very late to the applicant, that is not until the commencement of the hearing of the case before the Commission.

It is a fact, however, that neither the applicant, nor his counsel, though fully aware of the existence of the report of the investigating officer and of the aforesaid documents, asked to be furnished with copies of the report and the documents in question before the commencement of the hearing before the Commission.

The failure to give in advance to the applicant, or his advocate, such copies cannot, in my opinion, be treated, in the circumstances of the present case, as a breach of the rules of natural justice leading to the annulment of the Commission's decision:

In *Russell* v. *Duke of Norfolk and Others* [1949] 1 All E.R. 109, Tucker LJ said (at p. 118):-

" There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth".

The above dictum has been referred to with approval on many occasions in more recent English case-law (see, *inter alia*, *Re Pergamon Press Ltd* [1970] 3 All E.R. 535) and in our own case of *The Republic* v. *Georghiades* (1972) 3 C.L.R. 594.

From the whole conduct of the applicant, and, in particular, from his statements to the investigating officer, it is obvious that he was fully aware of all the facts which were, in any way, relevant to the disciplinary charges against him, and, therefore, the omission to furnish him, prior to the hearing before the Commission, with copies of the report of the investigating officer and of the documents associated therewith, has not, in any material respect, operated to his prejudice.

For all the foregoing reasons this recourse fails in so far as it challenges the part of the decision of the respondent Commission by means of which the applicant was found guilty of disciplinary offences; and I might add that, in the light of

the material which was placed before the Commission, I am of the view that it was reasonably open to it to reach the conclusions which it has reached regarding the guilt of the applicant.

Counsel for the applicant has complained that after his client was found guilty, as aforesaid, he was not afforded, by the respondent Commission, an opportunity to be heard in mitigation of the punishment to be imposed on him.

A series of cases, such as *Markoullides* and *The Republic*, 1 R.S.C.C. 30, 35, *Morsis* and *The Republic*, 4 R.S.C.C. 133, 338, *Fisentzides* v. *The Republic* (1971) 3 C.L.R. 80 at p. 86 and *Kyprianou* v. *The Public Service Commission* (1973) 3 C.L.R. 206, at p. 224, leave no room for doubt that this complaint of counsel for the applicant is a valid one, both as a matter of natural justice and, also, because, the failure to afford the applicant an opportunity to make, if he wished, a plea in mitigation of punishment deprived the Commission of the possibility of knowing his attitude, as a member of the public service, after he had been informed that he had been found guilty of the disciplinary offences concerned; such attitude was a material fact, to be weighed with all other relevant considerations; had it been known it might have made the Commission take a different decision as regards the punishment to be imposed on the applicant; and, in this respect, it is worth bearing in mind that Mr. Lapas, a member of the Commission, was of the opinion that the withholding of one of applicant's annual increments only was sufficient punishment.

My above view is strengthened because of the provisions of section 83 of Law 33/67, the relevant parts of which read as follows:-

> " 83.-(1) Where a public officer has been convicted of an offence involving dishonesty or moral turpitude and the conviction has either been upheld on appeal or no appeal has been made, the Commission shall as expeditiously as possible obtain a copy of the notes of the proceedings of the Court which tried the case and of the Court, if any, to which an appeal was made.
>
> (2) The Commission shall, within such period as may be prescribed, and until such period is prescribed within two weeks of the receipt of the copy of the notes of the

proceedings as in sub-section (1), seek the views of the Attorney-General of the Republic on whether the offence is one involving dishonesty or moral turpitude. The Attorney-General of the Republic shall advise thereon as expeditiously as possible and, in the event of an advice in the affirmative, the Commission, without any further investigation and after giving the officer concerned an opportunity of putting forward any representations he wishes to make, shall impose such disciplinary punishment as may be justified in the circumstances.

(3) ..... ".

I can see no valid reason for making a distinction, as regards the procedure for assessing disciplinary punishment, between a case in which a public officer has been convicted by a Court of an offence envisaged in section 83, above, and a case in which he is found guilty of disciplinary offences by the respondent Commission.

Moreover regulation 3 in Part III of the Second Schedule to Law 33/67 provides as follows regarding the procedure to be followed in disciplinary matters by the Commission:-

" 3. The hearing of the case shall proceed, as nearly as may be, in the same manner as the hearing of a criminal case in a summary trial."

It can be judicially noticed that it is the invariable practice to allow an accused, who has been found guilty by a court in a criminal case after a summary trial, to be heard in mitigation of sentence; and, in my view, the same applies *mutatis mutandis* to the corresponding situation in proceedings before the Commission.

For all the foregoing reasons this recourse succeeds in so far as it is aimed at the part of the *sub judice* decision of the respondent by means of which disciplinary punishment was imposed on the applicant and, consequently, such punishment is annulled; it is now up to the Commission to reconsider the question of such punishment afresh, in accordance with the appropriate procedure.

In the light of all relevant considerations I have decided to make no order as to the costs of these proceedings.

Sub judice decision partly annulled; no order as to costs.