

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ODYSSEAS GEORGHIOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

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ODYSSEAS
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v.
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(PUBLIC SERVICE
COMMISSION)

(Case No. 347/73).

Public Officers—Promotions—Post of Administrative Officers, 1st
Grade—Merit—Matters to be considered in determining the merits
of public officers—Confidential reports—Emanating from different
reporting officers—Weight to be attached thereto—They can only
5 be regarded as constituting part of the overall picture of the merits
of each candidate which the respondent Commission has to weigh
as a whole—Seniority of interested party and length of service
with the experience that goes with it are factors to be taken into
consideration—No striking superiority established—Mere superior-
10 ity not enough.

Confidential Reports—Emanating from different reporting officers—
Weight.

Merit—Public officers—Promotions—Matters to be considered in
determining the merits of each officer.

15 The applicant in this recourse challenges the validity of the
decision of the respondent Commission to second the interested
party to the permanent post of Administrative Officer 1st Grade.

Both the applicant and the interested party had more or less
the same qualifications and satisfied the requirements of the
20 scheme of service. The applicant, however, had a Law degree,
which under the relevant scheme of service constituted an
advantage. Applicant, also, had better confidential reports than
the interested party, but these reports emanated from different
reporting officers. On the other hand the interested party was
25 senior to the applicant. When the *sub judice* decision was

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taken the Head of Department—the Director of the Department of Personnel—was not in a position to make any specific recommendations in view of the fact that all candidates were by necessity scattered all over Cyprus.

Counsel for the applicant contended mainly that the respondent Commission failed to perform their paramount duty of selecting the best candidate for the post and that they wrongly exercised their discretion and they acted in abuse or excess of power, inasmuch as the applicant has striking superiority over interested party on account of the favourable confidential reports and the fact that the applicant possessed academic qualifications that constituted an advantage under the relevant scheme of service. He further argued in this respect that in the absence of any specific recommendations made by the Head of the Department regarding the candidates, for the reasons to be found in the relevant minute, there was no other source of information regarding their respective merits, but the confidential reports.

Held. (1) The confidential reports in question could only be regarded as constituting part of the overall picture of the merits of each candidate which the Commission had to weigh as a whole. (See *Evangelou v. The Republic* (1965) 3 C.L.R. 292 at p. 297; *Aristocleous and Another v. The Republic* (1974) 3 C.L.R. 321, at pp. 325–326).

(2) In determining the merits of civil servants, the whole career of a candidate has to be examined and all the factors referring to his quality, ability and merits, as a civil servant and not those of a certain period or of a certain category, have to be taken into consideration. (See *Iosif Georghiades and Another v. The Republic*, reported in this Part at p. 143 *ante*).

(3) The seniority of the interested party and length of service with the experience that goes with it, were factors to be taken into consideration, and on the totality of the material before the respondent Commission, it was, in my view, reasonably open to it to arrive at the *sub judice* decision. It cannot be said that it acted in abuse or excess of power or in any way outside the extreme limits of its discretion.

(4) No striking superiority has been established regarding the applicant over the interested party, in which case this Court would have interfered, mere superiority, if it exists at all, not being enough for such purpose.

Application dismissed.

Cases referred to:

Evangelou v. The Republic (1965) 3 C.L.R. 292 at p. 297;

Aristocleous and Another v. The Republic (1974) 3 C.L.R. 321,
at pp. 325-326;

5 *Iosif Georghiades and Another v. The Republic* (reported in this
Part at p. 143 *ante*).

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Recourse.

10 Recourse against the decision of the respondent Public Service
Commission to second the interested party to the permanent
post of Administrative Officer, 1st Grade, in preference and
instead of the applicant.

M. Christophides, for the applicant.

N. Charalambous, Counsel of the Republic, for the re-
spondent.

15 *Cur. adv. vult.*

The facts sufficiently appear in the judgment* delivered by:

20 A. LOIZOU, J.: By the present recourse the applicant, an
Administrative Officer 2nd Grade, in the General Administra-
tive Staff, attacks the validity of the decision of the respondent
Commission by which Evangelos Antoniou, hereinafter referred
to as the interested party, was seconded to the permanent post
of Administrative Officer 1st Grade, with effect from the 1st
May, 1973, a promotion post from the immediately lower one
of Administrative Officer 2nd Grade.

25 The filling of this vacancy was considered and decided upon
by the respondent Commission at its meeting of the 12th April,
1973, and the relevant minutes (*exhibit* 1, enclosure 5) read as
follows:-

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30 The Commission observed that all candidates were by
necessity scattered all over Cyprus and, in view of this,
the Director of the Department of Personnel was not in a
position to make any specific recommendations.

* For final judgment on appeal see (1977) 9-10 J.S.C. 1476 to be reported in
due course in (1976) 3 C.L.R.

After taking into consideration all the facts appertaining to each one of the candidate and after giving proper weight to the merits, qualifications, seniority, service and experience of all officers serving in the post of Administrative Officer, 2nd Grade, as well as to their suitability for promotion to the above post, as shown in their Personal Files and in their Annual Confidential Reports, and after discussion with the Head of Department, the Commission came to the conclusion, and the Director of the Department of Personnel agreed, that the following candidates were on the whole the best. The Commission accordingly decided that the officers in question promoted/seconded to the permanent post of Administrative Officer, 1st Grade w.e.f. 1.5.73, as shown below:

Georghios Economides - to be promoted.

Evangelos Antoniou - to be seconded".

The applicant entered the Government Service in 1963 as an Assistant District Inspector and he was seconded to the Temporary (Development) Administrative Officer, 2nd Grade post on the 1st March, 1968 and permanently appointed to same in the 1st October, 1968.

The interested party, a much older man, entered the Government Service after some years of service in the Cyprus Volunteer Force in 1946, as a Temporary Clerk, 4th Grade. He climbed up the ladder and became Administrative Officer 2nd Grade, on the 1st December, 1967.

Under the relevant scheme of service (*exhibit 1*, enclosure 2), a University Degree or Diploma in appropriate subjects, *i.e.* Public Administration, Law (including Barrister-at-Law), Economics, Political Science, Literature, etc., will be considered an advantage.

Both the applicant and the interested party have more or less the same qualifications and satisfy the requirements of the scheme of service. The applicant, however, obtained in 1971 the Degree of Bachelor of Law, as well as a Diploma in American Law and Procedure from the La Salle Extension University of Chicago, a Correspondence Institution.

The respondent Commission, as it is stated in its relevant minute (enclosure 5), gave due consideration to the University Diploma or Degree held by certain candidates, which, obviously, refers to applicant as well.

The factual aspect of this case cannot be complete without a reference to the confidential reports of the applicant and the interested party, inasmuch as great reliance is placed on them.

5 The applicant was reported by Mr. Chr. Kythreotis, District Officer, Nicosia-Kyrenia. He is, on the whole, rated as very good and the observations to be found in the confidential reports for this period commence with a forecast that he will make a good officer in the district administration, followed by remarks, such as, shaping very well, doing very well and described as reliable, trustworthy young officer in the last report prepared by Mr. Kythreotis which was for the year 1967.

10 As from the 1st March, 1968, the applicant was transferred to Larnaca and reported upon by the District Officer Zenon Vrionides who is recorded to have known him for ten months. The applicant is rated as very good on six items and excellent on the remaining four.

15 In the 1969 report he is rated likewise, with the observation that he is steady and of sound judgment. His initiative being of high order, shouldering responsibility, hard working, honest and reliable, prompt and punctual.

20 There followed three special confidential reports. The reasons given for submitting the special confidential report for 1970, are--(a) Mr. Georghiou is a very competent officer with sound knowledge of administration in spite of his limited service in the administration. (b) His work of high quality and standard. The action recommended to be taken is to be promoted to the post of Administrative Officer, 1st Grade. The rating is changed to the better with an increase in the number of items for which he is considered excellent. The special confidential reports with the same evaluation of the officer's work continue for the years 1971-1972. In fact, there is one for 1973 as well, but that was not before the respondent Commission when the *sub judice* decision was taken. Again recommended in all, for early promotion.

30 In the annual confidential reports on the interested party prepared by Mr. Kythreotis, the interested party is rated, on the whole, as very good, and the observations made are to the effect that he was doing very good work during the years under review.

40 Then there are the reports for the years 1968 and 1969, when he was posted at the Medical Department. The Director of

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Medical Services Dr. Panos, agreeing with the reporting officer who rated this officer as very good and excellent and considered him as carrying out his duties with zeal and efficiency, expressed his own views that the zeal and enthusiasm of this officer were above the average and that he had devoted his time to re-organize the Registry and the Personnel Section of the Department.

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There followed confidential reports again by Mr. Kythreotis who considers the interested party as a very nice fellow, mild-mannered and always ready to help and oblige and doing very good work, hard working, trustworthy, loyal and obedient.

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The main ground of law argued on behalf of the applicant is that the respondent Commission failed to perform their paramount duty of selecting the best candidate for the post and that they wrongly exercised their discretion and they acted in abuse and excess of power, inasmuch as the applicant has striking superiority over the interested party on account of the favourable confidential reports and the fact that the applicant possessed academic qualifications that constituted, under the relevant scheme of service, an advantage.

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It has been further argued that in the absence of any specific recommendations made by the Head of the Department regarding the candidates, for the reasons to be found in the relevant minute, there was no other source of information regarding their respective merits, but the confidential reports.

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The approach of this Court to the question of confidential reports and recommendations by the Head of the Department, which I fully adopt, is to be found in the case of *Evangelou v. The Republic* (1965) 3 C.L.R. 292 at 297, where Triantafyllides, J. as he then was, had this to say:—

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“ Had there been made a recommendation by the Head of the Department concerned in relation to the filling in 1963 of the vacancies in question and had in such report a comparison been made between the applicant and interested parties and had applicant been described therein as more fit for promotion the Commission would normally have been expected to either follow it or give reasons for not doing so (see *Theodossiou and The Republic* 2 R.S.C.C. p. 48). But as the confidential reports on the candidates were prepared in the usual course of things and they were not prepared with a view to comparing the

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5 respective merits of the candidates for particular vacancies,
I think that they should not be treated as constituting
recommendations for the filling of the particular vacancies
and they must be regarded only as constituting part of the
overall picture of the merits of each candidate which the
Commission had to weigh as a whole.

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10 Such confidential reports cannot, thus, be considered by
themselves; so the fact that applicant may have a better
confidential report than interested party cannot be
taken in isolation, in considering the validity of the pro-
motions made by the Commission; they are matters to be
examined in conjunction with all other matters relating to
the candidates, including their relative seniority.

15 Likewise, seniority by itself is not, necessarily, the deter-
mining factor (see *Theodossiou* and *The Republic, supra*).
It is part of the overall picture of each candidate”.

20 As I observed in the case of *Aristocleous and Another v. The*
Republic (1974) 3 C.L.R. 321, at pp. 325-326, “Different re-
porting officers inevitably use different standards in their
evaluation of the performance of the various officers serving
under them”. This is clearly borne out by a study of the
confidential reports in the present case and in particular if a
comparison is made between the confidential reports prepared
by the same reporting officer in respect of both the applicant
and the interested party and those prepared by different reporting
officers in respect of either of them. For that reason, I can
only say that the confidential reports in question, could only
be regarded as constituting part of the overall picture of the
merits of each candidate which the Commission had to weigh
as a whole. In determining the merits of civil servants, the
whole career of a candidate has to be examined and all the
factors referring to his quality, ability and merits, as civil servant
and not those for a certain period or of a certain category,
have to be taken into consideration (see *Iosif Georghiades and*
Another v. The Republic (reported in this part at p. 143, *ante*)).

40 In that respect, the seniority of the interested party and
length of service with the experience that goes with it, were
factors to be taken into consideration, and on the totality of
the material before the respondent Commission, it was, in
my view, reasonably open to it to arrive at the *sub judice* decision.

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It cannot be said that it acted in abuse or excess of power or in any way outside the extreme limits of its discretion.

Furthermore, no striking superiority has been established regarding the applicant over the interested party, in which case this Court would have interfered, mere superiority, if at all exists, not being enough for such purpose.

It remains now to consider whether the *sub judice* decision is duly reasoned and contains all facts and circumstances which led to it.

What has given rise to this complaint, is that in the minutes (*exhibit* 1, enclosure 5) the respondent Commission says that after discussion with the Head of the Department, it “came to the conclusion and the Director of the Department of Personnel agreed, that the following candidates were on the whole the best”.

In my view, this passage should be read in conjunction with the rest of the minute and in particular with the preceding passage and not isolated from it, in which case this Court is enabled to examine how and why it was reasonably open to the respondent Commission to act as it did.

For all the above reasons, the present recourse is dismissed, but in the circumstances there will be no order as to costs.

Application dismissed.
No order as to costs.