

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELPIS GEO. PETRIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

—
ELPIS GEO.
PETRIDES
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

(Cases Nos. 371/70 and 192/71).

*Public Officers—Confidential reports—Adverse confidential reports—
Failure to communicate contents thereof to officer concerned—
Constitutes a disciplinary offence against the person whose duty
it was to communicate the adverse part of the report to the officer
5 but it does not render void either the report itself or any decision
based thereon—Section 45 (4) of the Public Service Law, 1967
(Law 33 of 1967).*

*Confidential reports—Adverse confidential reports—Failure to com-
municate to officer concerned—Effect.*

10 The issue in these recourses, which were directed against the
validity of the decision of the respondent Commission to pro-
mote the interested parties to the post of Ward Supervisor, was
the effect of the failure to communicate to the applicant an adve-
rse comment in her confidential report. This failure, counsel
15 submitted, was contrary to the provisions of s. 45 (4) of the
Public Service Law, 1967 (Law 33/67) which runs as follows.

20 “ 45 (4). The person preparing a confidential report on a
particular officer in which the latter is criticised for negli-
gence, failures or improper behaviour in the performance of
his duties must on the submission thereof, communicate to
the officer concerned this part of the report.

.....”

Held, failure to communicate an adverse comment constitutes
a disciplinary offence against the person whose duty it was to

communicate the adverse part of the report to the officer concerned but it does not render void either the report itself or any decision based thereon. (See, *inter alia*, *Kyriakopoulou v. The Republic* (1973) 3 C.L.R. 1; *Korai and Another v. C.B.C.* (1973) 3 C.L.R. 546 and *Decisions of the Greek Council of State Nos.* 1438/67, 732/68 and 1213/69). 5

Applications dismissed.

Cases referred to:

Kyriakopoulou v. The Republic (1973) 3 C.L.R. 1;
Korai and Another v. C.B.C. (1973) 3 C.L.R. 546; 10
Decisions of the Greek Council of State Nos: 1438/67, 732/68
and 1213/69.

Recourses.

Recourses against the decision of the respondent to promote to the post of Ward Supervisor the interested parties in preference and instead of the applicant. 15

L. Clerides, for the applicant.

N. Charalambous, Counsel of the Republic, for the respondent.

Cur. adv. vult. 20

The facts sufficiently appear in the judgment of the Court delivered by:—

L. LOIZOU, J.: These two recourses were, with the consent of both parties, consolidated and heard together as they involve common questions of law and fact. 25

The applicant in both recourses is the same person. She is a Nursing Sister in the Department of Medical Services.

By recourse No. 371/70 she challenges the validity of the decision of the Public Service Commission to promote the three interested parties named therein i.e. Nouritsa Mavratsa, Myrofora Djiakouri and Anna Kouparidou to the post of Ward Supervisor instead of herself and prays for a declaration that the said decision is *null* and *void* and of no effect whatsoever. In recourse No. 192/71 she prays for the same relief with regard 30

to the promotion of the interested party named therein Eleni Efrem.

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The grounds of law upon which the first recourse is based are as follows:

5 “ Under Article 146 of the Constitution the Supreme Court has exclusive jurisdiction to declare any act and/or decision of any organ or authority of the Republic *null* and *void* if it is contrary to the Law or the Constitution or is taken in circumstances amounting to an excess or
10 abuse of power.

Under Article 125 of the Constitution the respondent has power, *inter alia*, to promote public officers. In doing so it has a paramount duty to select the best candidate.

15 It is contended, on the basis of the facts in this recourse, that the promotion of the interested party was taken in circumstances amounting to an abuse of power”.

The grounds of law on which the second recourse is based are:

20 “ In accordance with Article 146 of the Constitution the the Supreme Court is vested with exclusive jurisdiction to declare *null* and *void* and of no effect whatsoever any act or decision by any organ, body or person of the Republic exercising administrative or executive powers if such act
25 or decision is contrary to the Constitution or the Law or if it amounts to an abuse or excess of powers.

It is contended, upon the basis of the facts set out in the recourse that respondent’s said decision should be declared *null* and *void*, as being contrary to the Constitution, inasmuch as:-
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- (a) Respondent overlooked applicant’s much greater seniority without any cogent reason contrary to the judgment of the Supreme Court in the case of *Partelides v. The Republic* (1969) 3 C.L.R. 480.
- 35 (b) Respondent acted contrary to the provisions of s. 45 (4) of Law 33/67 because they based their decision to promote the said person in preference and instead of the applicant on a statement made to the respondent authority by a representative of applicant’s Head of

Department to the effect that the applicant has bad manners, she is rude to the patients and to the public and she is not in a position to co-operate with junior staff because in accordance with the provisions of the said section any such statements ought to have been brought to the knowledge of the officer concerned before being forwarded to the P. S. Commission. 5

(c) On the basis of paragraph (b) above it is likewise contended that respondent acted under a misconception of material facts and/or in abuse or excess of their powers. For the same reason it is contended that respondent exercised their discretion in a defective manner". 10

The relevant facts are briefly as follows:

The post of Ward Supervisor is a promotion post and among the qualifications required under the relevant scheme of service (part of *exhibit 2*) is at least six years service in the post of Charge Nurse or Nursing Sister. 15

The applicant was first appointed in the service as a Probationer Nurse on the 24th January, 1949 and held the post of Nursing Sister since the 1st November, 1954. 20

Interested party Mavratsa was first appointed as a Probationer Nurse on the 6th February, 1951 and held the post of Nursing Sister as from the 8th July, 1957. Interested Party Djiakouri was first appointed as a Probationer Nurse on the 1st April, 1954 and as a Nursing Sister on the 14th September, 1959. Interested party Koumparidou was first appointed as a student nurse on the 19th September, 1955 and as a Nursing Sister on the 13th February, 1961. Lastly Eleni Efrem, the interested party in Case No. 192/71 was appointed as Nursing Sister with effect from the 12th August, 1963. 25 30

It will thus be seen from the above that applicant was by far the senior to all interested parties.

In so far as the qualifications of the applicant and the interested parties in both recourses are concerned they were all qualified for the post of Ward Supervisor; and the comparative tables produced which show the government service and qualifications of the parties (part of *exhibit 2*) show that the qualifications of all parties are more or less equal and certainly it cannot, in 35

my view, be said that the qualifications of anyone are so superior to those of the others as to be likely to affect the issue.

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5 What quite obviously did tip the scales against the applicant is an adverse observation in her confidential report regarding her manner and poor interpersonal relationship and the views expressed by the representative of the Department of Medical Services regarding the merit of the candidates.

10 The meeting of the Commission was held on the 9th October, 1970 and the Senior Matron was present at the request of the Commission and gave her views in connection with the filling of the vacancies in the post of Ward Supervisor. The Senior Matron informed the Commission as follows in connection with the four interested parties.

15 Mavratsa: Very good Nursing Sister and very reliable in her work.

Djiakouri: Exceptionally capable Nursing Sister.

Koumparidou: Very good in her work.

Efrem: Very good in her work
and recommended each one for promotion.

20 In the case of the applicant she had this to say: "She is good in her work but she has bad manners; she is rude to patients and the public; she cannot co-operate with junior staff".

The penultimate paragraph of the minutes of the meeting reads as follows:

25 " Bearing in mind the merits, qualifications, seniority and experience of all eligible officers holding the post of Charge Nurse or Nursing Sister, as reflected in their Annual Confidential Reports, together with the views expressed by the representative of the Department of Medical Services on
30 each one of them, the Commission decided that the following officers were on the whole the best and that they be promoted to the post of Ward Supervisor w.e.f. 16.11.70".

35 Learned counsel for the applicant wrote to the Commission the letter dated 26th February, 1971 in connection with applicant's claims for promotion. On the 13th March, 1971, the Chairman of the Public Service Commission replied to the above letter and, *inter alia*, informed her counsel that the reason his

client, the applicant, was not promoted when the vacant posts of Ward Supervisor had been filled was the statement of the representative of the department of Medical Services to the effect that she had bad manners, was rude to the patients and the public and could not co-operate with the junior staff. In continuation learned counsel was asked to inform his client accordingly so that she might try to improve her attitude as otherwise her claims for future promotion would be adversely affected. Both the above letters are part of *exhibit 3*.

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In the course of the hearing of the recourse learned counsel for the applicant confined his argument to one point only as in his submission this was sufficient to dispose of both recourses. The point was the failure to communicate to the applicant the adverse comment in her confidential report which, in his submission, was contrary to the provisions of s. 45 (4) of the Public Service Law No. 33/67 and that it rendered the decision complained of *null and void*.

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The said sub-section reads as follows:

“ 45 (4). The person preparing a confidential report on a particular officer in which the latter is criticized for negligence, failures or improper behaviour in the performance of his duties must, on the submission thereof, communicate to the officer concerned this part of the report.

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Within fifteen days of the communication to him, the officer is entitled to require in writing from the competent authority concerned to strike out or modify this part of the report and the competent authority shall consider the matter and decide thereon”.

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I do not propose to go into the matter of whether the comment in question amounts to criticism for improper behaviour in the performance of applicant's duties but I will assume, for the purposes of this judgment, that it does so amount as submitted by learned counsel appearing for her.

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On this point there is ample authority in support of the proposition that such failure constitutes a disciplinary offence against the person whose duty it was to communicate the adverse part of the report to the officer concerned but it does not render void either the report itself or any decision based thereon. See, *inter alia*, *Kyriakopoulou v. The Republic* (1973) 3 C.L.R. 1; *Korai and Another v. C.B.C.* (1973) 3 C.L.R. 546. Relevant

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on this issue are also the decisions of the Greek Council of State Nos. 1438/67, 732/68 and 1213/69.

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5 In the light of the above I am bound to reject learned counsel's submission on this point. And as the applicant could not by reason of her seniority only validly complain against the *sub-judice* decision of the Commission in view of the superior merit of the interested parties these recourses must fail. In all the circumstances I make no order as to costs.

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Application dismissed.
No order as to costs.

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