

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PHILIPPOS COSTA MICHAELIDES,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

PHILIPPOS  
COSTA  
MICHAELIDES,  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

(Case No. 381/74).

*Public Officers—Promotions—Post of Customs and Excise Officer  
1st Grade—Qualifications of applicant and interested parties  
more or less the same—Interested parties recommended for pro-  
motion by Head of Department—Applicant at no time recom-  
mended—Said recommendations consistent with and are sup-  
plemented by material in the file and in particular by the confi-  
dential reports on all the candidates—Proper inquiry made and  
sub judice decision a duly reasoned one—Reasonably open to the  
Respondent Commission, on the material before it, to arrive at  
the sub judice decision.*

*Public Officers—Promotions—Head of Department—Recommendations of—Should weigh with the Public Service Commission and should not be lightly disregarded—Fact that Commission adopted his recommendations does not amount to his participation in the deliberations of the Commission or in the selection of the most suitable candidate—Section 44(3) of the Public Service Law, 1967 (Law 33 of 1967).*

*Public Service Commission—Decision of, concerning promotions—Court cannot interfere to set aside such a decision unless it is established that the person not selected did have striking superiority over the persons selected—Onus always lies on the applicant in a recourse to establish such striking superiority.*

The applicant was a candidate for promotion to the post of Customs and Excise Officer, 1st Grade. According to the relevant minutes of the respondent Commission, (see pp. 117–119 *post*) after it had considered the annual confidential reports of all the

1976  
May 29  
—  
PHILIPPOS  
COSTA  
MICHAELIDES  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

candidates and “having regard to the merits of all the candidates, the Director of the Department of Customs and Excise stated that he considered the interested parties as the best candidates and recommended them for promotion.” The Commission “after giving due consideration to the annual confidential reports of all the candidates as well as to the views and recommendations of the Director of the Department of Customs and Excise came to the conclusion that the interested parties were on the whole the best and decided to promote them to the above post”. 5 10

In addition to the above oral recommendation before the Commission the Head of Department recommended the interested parties for promotion in a letter which he had addressed earlier to the Commission but at no time he recommended the applicant. The recommendations of the Head of Department appeared consistent with and were supplemented by the material in the file and in particular by the confidential reports on all candidates. The qualifications of the applicant and the interested parties were more or less the same. 15

In a recourse challenging the validity of the promotion of the interested parties in preference and instead of the applicant the latter contended (a) that the selection was contrary to sections 5 and 44(3) of the Public Service Law, 1967 because it was not made by the respondent Commission but in essence by the Director of the Department and (b) that there was an incomplete picture before the Commission regarding his qualifications. 20 25

*Held*, (1) that the Head of Department has not participated in the deliberations of the Commission and has not taken part in the selection of the most suitable candidate for the post; and that what he did, was to make a recommendation and it was the Commission that made the selection. 30

(2) That the Commission had before them the complete record regarding each candidate and if any qualification was not explicitly placed before it that is the fault of the applicant who, in filling every year an annual confidential report is asked specifically to give details of any additional qualifications that he has obtained during the preceding 12 months. 35

(3) That there has been a proper inquiry in the circumstances and that the *sub judice* decision is duly reasoned; that considering the material that was before the respondent Commission, 40

5 particularly the confidential reports and the recommendations of the Head of Department, which should weigh with the Commission and should not be lightly disregarded (see s. 44(3) of Law 33/67 and *Theodossiou and Republic*, 2 R.S.C.C. 44 at p. 48) it was reasonably open to it to arrive at the *sub judice* decision and it has not been shown that it was taken in excess or abuse of power or in any way outside the extreme limit of its discretion.

10 (4) That being a selection for promotion on merit, qualifications and seniority, this Court cannot interfere to set aside such a decision, unless it is established that the person not selected did have striking superiority over the persons selected and the onus lies always on the applicant in a recourse (see *Evangelou v. Republic* (1965) 3 C.L.R. 292 at p. 300).

*Application dismissed.*

15 Cases referred to:

*Theodossiou and The Republic*, 2 R.S.C.C. 44 at p. 48;  
*Evangelou v. The Republic* (1965) 3 C.L.R. 292 at p. 300;  
*Georghiades & Another v. The Republic* (1970) 3 C.L.R. 257 at p. 266.

20 **Recourse.**

Recourse against the decision of the respondent Public Service Commission to promote the interested parties to the post of Customs and Excise Officer, 1st Grade in preference and instead of the applicant.

25 *K. Talarides*, for the applicant.

*R. Gavrielides*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

The following judgment was delivered by:—

30 A. LOIZOU, J.: By the present recourse the applicant challenges the validity of the promotions of Iacovos Mattheou, Christos Shiakides and Kyriacos Savva, to the permanent post of Customs and Excise Officers, 1st Grade, which is a promotion post from the immediately lower post of Customs and Excise Officer, 2nd Grade. The recourse against two other officers of  
35 the seven promoted at the same time, namely, Costas Hj. Yianni and Flourentzos Nicolaou, was discontinued.

The relevant minutes of the respondent Commission, read as follows:

“ The Director of the Department of Customs and Excise

in his letter Non. Conf. 2 of 23. 5. 74 enumerated 16 officers and stated that he considered them as the best candidates for promotion.

The Director of the Department of Customs and Excise, who was present at the meeting, reiterated the above, and added that the services of all the officers referred to in his aforesaid letter had been very satisfactory. With regard to Mr. A. Charalambous, one of the candidates, the Director of the Department of Customs and Excise stated that the officer in question is a quarrelsome person and has no exceptional abilities.

After the Annual Confidential Reports of all the candidates had been considered by the Commission, and, having regard to the merits of all the candidates, the Director of the Department of Customs and Excise stated that he considered Messrs. Flourentzos Nicolaou, Costas Hadji Yiannis, Ozay Akif, Christodoulos Cleanthous, Christakis Shiakides and Kyriacos Savva as the best candidates and recommended them for promotion. With regard to the seventh vacancy, the Director of the Department stated that selection should be made from Messrs. Iacovos Mattheou, Andreas Demetriou, Kyriacos Stavrou, Antonios Hadji Georghiou and Nicolas Efthymiou.

Bearing in mind all the above and, after giving due consideration to the Annual Confidential Reports of all the candidates, as well as to the views and recommendations of the Director of the Department of Customs and Excise, the Commission came to the conclusion that the following candidates were on the whole the best. The Commission accordingly decided that the candidates in question be promoted to the permanent post of Customs and Excise Officer, 1st Grade, w.e.f. 1. 6. 74:

1. Ozay Akif
2. Christodoulos Cleanthous
3. Christakis Shiakides
4. Kyriacos Savva
5. Flourentzos Nicolaou
6. Costas Hadji Yiannis
7. Iacovos Mattheou.

The decision regarding the first six officers referred to above was taken unanimously, whereas in the case of Mr.

Iacovos Mattheou the decision was taken by majority of 4 votes to 1 (Mr. M. Economopoulos dissenting). Mr. Economopoulos preferred Mr. Philippos Michaelides to Mr. I. Mattheou”.

1976  
May 29  
—  
PHILIPPOS  
COSTA  
MICHAELIDES  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

5 The applicant first entered the Government Service as a Temporary Coast Watcher and Aircraft Observer in 1942 to be engaged later as a temporary Guard in the Preventive Service where he reached the rank of Assistant Inspector.

10 Interested party Iacovos Mattheou entered the Government Service as a Customs and Excise Officer, 3rd Grade on 1. 12. 1956.

Interested party Shiakides entered the Government Service as a temporary clerk in 1954 and became a Customs and Excise Officer 3rd Grade on 1. 4. 1956.

15 Interested party Kyriacos Savva entered the Government Service as a temporary clerk in 1956 and became a Customs and Excise Officer, 3rd Grade on 1. 12. 1956.

20 In 1967, as a result of the re-organization of the Department of Customs and Excise which involved also the abolition of the Preventive Service, the applicant was one of 10 Assistant Inspectors appointed to the post of Customs and Excise Officer 2nd Grade with effect from the 1st August, 1967. By the same decision, and this is apparent from the minute of the respondent Commission to be found in the respective personal files of the parties (see *inter alia*, exhibit 5, reds 6-5) the interested parties were among 51 Customs and Excise Officers 3rd Grade promoted to the 2nd Grade with effect, again, from the same date.

30 The qualifications of the applicant and the interested parties are more or less the same. They are all graduates of secondary schools, they have all passed a number of General Certificate of Education subjects and the departmental examinations for promotion to the post of Customs and Excise Officer, 1st Grade in 1969. The interested parties, furthermore, passed the General Orders Examinations and interested party Shiakides also the Examinations in Financial Instructions.

35 The applicant has got also a correspondence course on Psychology in Industry and Commerce, Personnel Management. His main complaint, however, is that there did not appear anywhere and there was an incomplete picture before the Com-

1976  
May 29  
—  
PHILIPPOS  
COSTA  
MICHAELIDES  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

mission regarding his qualifications because there was no record that he was selected by the Ministry of Finance to attend a course of training on Customs and Excise at the Customs and Excise Officers Training Establishment in England and that upon return to Cyprus the applicant was one of the lecturers at a series of lectures for customs personnel organized at the time of the re-organization of the Department. A reference to the aforesaid course and lectures is to be found in the confidential report for the year 1970, and also the letter of the 23rd April, 1973, addressed to the Public Service Commission (*exhibit 2*, red 53), whereby he complains for his non-selection for promotion that apparently was decided upon by the Commission then, and there is also a reference to his selection and nomination for a scholarship in the United Kingdom and lecturing to other customs officers on return to Cyprus.

It is useful to make a comparison of how the applicant and the interested parties were reported upon in their annual confidential reports and for the sake of brevity I shall refer to those covering the four years preceding the *sub judice* decision.

For the year 1973 the applicant is reported upon as being very good. For the year 1972 he is again rated as very good on all ratable items, but for courtesy in dealing with the public, he is rated as excellent; the views of the Head of the Department as countersigning officer, are, that the applicant is “an officer of limited ability, who, however, tries hard to give satisfaction”. These two reports are by the same reporting officer. For the year 1971 he is reported upon by another reporting officer; he is rated as very good on seven of the ten ratable items and on the remaining three, i.e. courtesy, devotion to duty and ability to co-operate with colleagues, he is rated as excellent. The reporting officer makes the following observation: “He is willing, very polite and has acquired a sound knowledge of preventive duties”. The Head of the Department as countersigning officer expresses the view that he is an officer of average ability who tries hard but with limited results. For the year 1970, again by the same reporting officer as for the previous year, he is rated as very good on eight ratable items and as excellent with regard to courtesy in dealing with the public and ability to co-operate with colleagues. This reporting officer observes that the applicant has a wide knowledge of all laws relating to preventive duties and that he is very willing and obedient.

With regard to interested party Iacovos Mattheou, for the

1976  
May 29

—  
PHILIPPOS  
COSTA  
MICHAELIDES  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

year 1973 the general assessment on him is that he is excellent on all ten ratable items. For the year 1972, when he is reported upon by Mr. Evripidou, the same reporting officer who prepared the report for the applicant for the year 1971, he is reported upon  
5 as excellent on six ratable items and very good on the remaining four. The reporting officer observes that he is a bright officer and has performed his duties in a most satisfactory manner, he is self-relying and is gifted with sense of duty, enthusiasm and courage. The Head of the Department as a countersigning  
10 officer expresses the view that he is a highly competent officer. For the year 1971 he is rated as very good on eight ratable items and as excellent on the remaining two and the reporting officer observes that he works with zeal and devotion to duty. For the year 1970 he is rated as very good on all items, except for  
15 "competence in present work" where he is rated as excellent.

For interested party Shiakides, the confidential report for the year 1973 prepared by Mr. Angelides who is the same reporting officer for the year 1973 for the applicant as well, he is rated as  
20 excellent on all ten ratable items and this reporting officer observes that he is a hard-working, trustworthy and diligent officer. He has always shown willingness and zeal towards his job and has invariably proved his whole-hearted devotion to his duties. He is again rated as excellent for the year 1972. The  
25 reporting officer observes that he is an efficient, trustworthy, studious and hardworking officer. Always eager to acquire more knowledge, and the Head of the Department expresses the view that "he is a highly competent and promising officer. Still, he is slightly over-rated". For the years 1971-1970, he is rated  
30 as very good, he is described by the reporting officer as a highly intelligent and capable officer, possessing commendable zeal in his work and as a disciplined officer showing particular zeal and interest in his job and should do well in the service. The view of the Head of the Department as countersigning officer for the  
35 year 1970, is that he is a zealous, duty-minded, highly efficient officer.

For interested party Kyriacos Savva reported upon by the same officer for the years 1973 and 1972, he is rated as excellent on all ratable items for 1973, and strongly recommended for  
40 promotion for the post of Customs and Excise Officer, 1st Grade, and as excellent on four ratable items and as very good on the remaining six for the year 1972. For the year 1971 he is rated as very good on eight of the ten ratable items and excellent

1976  
May 29  
—  
PHILIPPOS  
COSTA  
MICHAELIDES  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

on the other two and described as duty-minded, hard-working and conscientious and for the year 1970 reported upon by the same reporting officer and for the previous year he is rated as very good on six ratable items and excellent on the remaining four and described as duty-minded, hard-working conscientious and very efficient officer”.

This is the picture regarding the applicant and the interested parties that comes from the confidential reports. There was, further, before the respondent Commission, the letter of the 23rd May, 1974 (*exhibit 1*, enclosure 5) where the Director of the Department gives his recommendations regarding the filling of vacancies in several posts in the Department of Customs and Excise. With regard to the post of Customs and Excise Officer, 1st Grade, he names, in order of seniority, 16 Customs and Excise Officers, 2nd Grade, as suitable for promotion, with a particular emphasis on the two interested parties against whom the present recourse was discontinued.

At the meeting of the respondent Commission of the 27th May, 1974, he reiterated the above and added that the service of all the officers referred to in his aforesaid letter had been very satisfactory. It was then that he made a more specific recommendation with regard to the six candidates finally selected for the *sub judice* post and this after, as it is stated in the relevant minute, the annual confidential reports on all the candidates had been considered by the Commission and having regard to the merits of all the candidates. With regard to the 7th vacancy, the Director of the Department stated that selection should be made from among the five officers included in his original list of 16, among whom was interested party Iacovos Mattheou. The applicant was at no time recommended by the Head of the Department. The recommendations of the Head of the Department appear consistent with and are supplemented by the material in the file and in particular by the confidential reports on all candidates. The grounds of law relied upon on behalf of the applicant in this recourse, are, that the selection was not made by the respondent Commission but in essence by the Director of the Department, contrary to section 44(3) and section 5 of the Public Service Law, 1967, Law No. 33/67.

With respect to counsel, I do not accept the view that he participated in the deliberations of the Commission or that he took part in the selection of the most suitable candidate for the post. What he did, was to make a recommendation and it was the



1976  
May 29.

—  
PHILIPPOS,  
COSTA  
MICHAELIDES  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

Commission that made the selection for the reasons that they give in their decision, as appearing in the relevant minute already set out in this judgment. They had before them the complete record regarding each candidate and if any qualification was not explicitly placed before the Commission, which I do not agree, that is the fault of the officer concerned who, in filling every year an annual confidential report is asked specifically to state whether he attends any classes or takes any correspondence course in his spare time and give details thereon and whether he has obtained any additional qualifications, certificates, diplomas etc. or passed any Government Examinations during the period under review, as well as state the duties which he performed during the preceding 12 months. Furthermore, I have not been persuaded that there has been no proper inquiry, in the circumstances and that the *sub judice* decision is not duly reasoned. The seniority of the candidates and their length of service and the experience that goes with it, were expressly mentioned as having been taken into consideration, and considering the material that was before the respondent Commission, it was reasonably open to it to arrive at the *sub judice* decision, nor has there been shown that it was taken in excess or abuse of power or in any way outside the extreme limits of its discretion. More so, if one bears in mind the confidential reports on the candidates and the recommendations made in this respect by the Head of the Department, factors to which the respondent Commission must have due regard, under section 44(3) of the Public Service Law, 1967, particularly so, in view of the recommendation of the Head of the Department which should weigh with the Public Service Commission and should not be lightly disregarded. (Vide *Theodossiou and The Republic*, 2 R.S.C.C. p. 44 at p. 48). Finally, being a selection for promotion on merit, qualifications and seniority, this Court, as it has already been stated, cannot interfere to set aside such a decision, unless it is established that the person not selected did have striking superiority over the persons selected and the onus lies always on the applicant in a recourse. (See *Evangelou v. The Republic*, (1965) 3 C.L.R., 292 at p. 300 and *Georghiades and Another v. The Republic* (1970) 3 C.L.R., 257 at p. 266).

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

*Application dismissed.*  
*No order as to costs.*