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[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU,
HADJIANASTASSIOU, MALACHTOS, JJ.]

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ODYSSEAS
GEORGHIOU

ODYSSEAS GEORGHIOU,

Appellant,

v.

v.

REPUBLIC
(PUBLIC SERVICE
COMMISSION)

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(*Revisional Jurisdiction Appeal No. 160.*)

- Public Officers—Promotions—Confidential reports—Importance of more recent confidential reports—Special confidential reports—Their significance not affected by the enactment of the Public Service Law, 1967 (Law 33 of 1967)—General Orders (Appendix A.II/2.5(5)(b)) kept in force by means of s. 86(1) of the Law—* 5
Evaluation of confidential reports—Not properly open to Public Service Commission to evaluate the contents of confidential reports by reference to the knowledge about the Reporting or Counter-signing Officers making them—Section 44(3) of the Public Service Law (supra). 10
- Public Officers—Promotions—Secondment to post of Administrative Officer 1st Grade—Reasons given by respondent Public Service Commission for selecting the interested party definitely contrary to the relevant Administrative records and incompatible with the other factors which were taken into account by it such as the qualifications of candidates and the annual confidential reports—* 15
Sub judice secondment annulled.
- Public Officers—Promotions—Head of Department—Not in a position to make specific recommendations—Public Service Commission could not have properly given the weight it did give to his opinion.* 20
- Administrative Law—Administrative decision—Reasoning of, contrary to the relevant administrative records and incompatible with the other factors taken into account in reaching it—Annulled—See, also, under “Public Officers”.*
- Public Officers—Appointments or promotions—Selection of a candidate on the basis of comparison with others—Principles on which appointing organ acts—And principles on which Administrative Court* 25

intervenes—Position after annulment of appointment or promotion by Court.

*Administrative Law—Public Officers—Appointments or promotions—
Selection of a candidate on the basis of comparison with others—
5 Principles on which appointing organ acts—And principles on
which Administrative Court intervenes—Position after annulment
of appointment or promotion by Court.*

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10 In deciding to second the interested party to the post of
Administrative Officer, 1st Grade, in preference and instead of
the appelland the respondent Public Service Commission stated
the following in its minutes:

15 “ 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.

20 After taking into consideration all the facts appertaining
to each one of the candidates and after giving proper weight
to the merits, qualifications, seniority, service and expe-
rience of all officers serving in the post of Administrative
Officer, 2nd Grade, as well as to their suitability for pro-
motion to the above post, as shown in their Personal Files
and in their Annual Confidential Reports, and after dis-
cussion with the Head of Department, the Commission
25 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 be promoted/seconded to the
permanent post of Administrative Officer, 1st Grade, w.e.f.
1.5.73, as shown below.”

30 The interested party has had a much longer overall service
as a public officer than the appelland, but he was only less than
a year senior to the appelland in the post of Administrative
Officer, 2nd Grade. The appelland had a Law degree from La
Salle Extension University but the interested party has not
35 gone beyond the secondary education level. From 1970 on-
wards there were submitted in relation to the appelland three
“special confidential reports”, recommending his early promo-
tion, but no such report was made about the interested party
at any time up to the date of the *sub judice* decision of the Com-
40 mission. The confidential reports from February 23, 1971

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onwards, concerning the interested party, were made by the District Officer, Nicosia, Mr. Kythreotis whereas the “special confidential reports” about the appellant were made by the District Officer, Larnaca, Mr. Vryonides.

The trial Judge found that, in the circumstances of this case, it was reasonably open to the respondent Public Service Commission to prefer the interested party instead of the appellant, and that, therefore, it could not be said that the Commission had acted in abuse or excess of powers..

Upon appeal counsel for the respondent Commission sought to adduce evidence in order to establish that whenever the reporting officers in respect of candidates before it were different persons the Commission approached their confidential reports bearing in mind that each one of them was using varying standards in the evaluation of the performance of the officers serving under him; and that, in particular, it was well known to the Commission that Mr. Kythreotis was, as a rule, very strict in his assessments, having never made a “special confidential report” about anyone of his subordinates whereas Mr. Vryonides was on the contrary, known to be very lenient.

The Court of Appeal (see pp. 81–82 *post*) refused to allow the above evidence to be adduced because they were not prepared to accept, as a matter of principle, that it was properly open to the Commission to evaluate the contents of confidential reports by reference to the Reporting or Countersigning Officers making such reports, as in such case there would have to be embarked upon inquiries as to how each one of them assesses the performance of his subordinates.

Held, (I) on the contention that the “special confidential reports” have lost their significance after the coming into operation of Law 33/67:

That this argument cannot be accepted as correct. As it appears from the General orders (Appendix A.II/2.5(5)(b)) the “special confidential reports” are indications of particularly meritorious services and the relevant provision in the General Orders has been kept in force, as established practice, by means of section 86(1) of Law 33/67.

Held, (II) on the merits of the appeal after stating the principles on which the appointing organ acts in cases of promotions and the

principles on which the Administrative Court intervenes with promotions—vide pp. 82–83 post).

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5 (1) That the secondment of the interested party has to be annulled because the reasons given by the respondent Commission, in its minutes, for selecting him, appear to be definitely contrary to the relevant administrative records and incompatible with the other factors which were taken into account by it, such as, in particular, the qualifications of the candidates concerned and the annual confidential reports about them (see,
10 *inter alia*, the conclusions from the Case—Law of the Council of State in Greece, 1929–1959 and *Lardis v. The Republic* (1967) 3 C.L.R. 64 at p. 78).

15 (2) That though the Head of Department stated before the respondent Commission that he was not in a position to make any specific recommendations as the candidates were scattered all over Cyprus, the Commission recorded as one of the reasons for selecting the interested party instead of the appellant, the fact that “after discussion” with the Head of Department it reached the conclusion, and the Head of Department “agreed”
20 that, on the whole the interested party was the best; that the Commission could not have properly given the weight that it appears it did give to the opinion of the Head of Department since he was not in a position to make specific recommendations; and that, accordingly, the *sub judice* decision of the Commission has to be annulled for this reason too.
25

Appeal allowed.

Cases referred to:

Kousoulides and Others v. The Republic (1967) 3 C.L.R. 438 at p. 449;
30 *Georghiades and Another v. The Republic* (1970) 3 C.L.R. 257 at pp. 267, 269;
Aristocleous and Another v. The Republic (1974) 3 C.L.R. 321 at pp. 325–326;
Evangelou v. The Republic (1965) 3 C.L.R. 292 at pp. 299, 300;
35 *Georghiades and Another v. The Republic* (1975) 3 C.L.R. 143, at p. 150;
Jacovides v. The Republic (1966) 3 C.L.R. 212 at p. 221;
Lardis v. The Republic (1967) 3 C.L.R. 64 at p. 78;
40 *Decisions of the Greek Council of State Nos. 635/1950, 601/1956 778/1956, 277/1964, 254/1957 and 1839/1958.*

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Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 29th April, 1975 (Case No. 347/73) whereby applicant's recourse against the decision of the respondent to promote the interested party to the post of Administrative Officer 1st Grade in preference and instead of the applicant was dismissed.

M. Christofides, for the appellant.

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

Cur. adv. vult.

The judgment of the Court was delivered by:—

TRIANTAFYLIDIS, P.: This is an appeal against the dismissal, by a Judge of this Court, of recourse No. 347/73*, which was made by the appellant under Article 146 of the Constitution. By such recourse the appellant has challenged the validity of the secondment of Evangelos Antoniou (to be referred to hereinafter as "the interested party") to the post of Administrative Officer, 1st Grade.

The learned trial Judge has found that, in the circumstances of this case, it was reasonably open to the respondent Public Service Commission to prefer the interested party instead of the appellant, and that, therefore, it could not be said that the Commission had acted in abuse or excess of powers.

The *sub judice* decision of the Commission was taken on April 12, 1973, and it is useful to quote the following part of the relevant minutes of the Commission:—

"The post of Administrative Officer, 1st Grade, is a Promotion Post and under the relevant scheme of service, the following requirements are, *inter alia*, stipulated:—

- (i) a minimum of 5 years' administrative experience, two of which should be in the post of Administrative Officer, 2nd Grade.
- (ii) the officers must have passed the exams in Cyprus Statute Laws, or certain specified Laws, General Orders and Financial Instructions and Stores Regulations: and

* Reported in (1975) 3 C.L.R. 153.

(iii) possession of a University diploma or degree will be an advantage.

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The Commission gave due consideration to the University Diploma or Degree held by certain candidates.

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5 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.

10 After taking into consideration all the facts appertaining to each one of the candidates 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
15 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
20 decided that the officers in question be promoted/seconded to the permanent post of Administrative Officer, 1st Grade; w.e.f. 1.5.73, as shown below:

George Economides	— to be promoted
Evangelos Antoniou	— to be seconded.”

25 A comparison of the careers in the public service of the two candidates involved in the present proceedings shows that the interested party entered the public service on February 1, 1946, as a Temporary Clerk, 4th Grade, whereas the appellant entered the public service on August 12, 1963, as a Temporary Assistant
30 District Inspector. The interested party was appointed to the post of Administrative Officer, 2nd Grade—*i.e.* in the grade immediately below that of Administrative Officer, 1st Grade—on December 1, 1967, and the appellant was seconded to such post on March 1, 1968, and was appointed thereto on October
35 1, 1968. It is clear, therefore, that the interested party has had a much longer overall service as a public officer than the appellant, but that he was only less than a year senior to the appellant in the post of Administrative Officer, 2nd Grade.

40 As regards educational qualifications, it appears from a comparative table, which was produced during the trial, that the

appellant has a Law degree, that of L.L.B. of La Salle Extension University, which he obtained in 1971. On the other hand, the interested party has not gone beyond the secondary education level.

The annual confidential reports from February 1965 to January 1968 were prepared in respect of both candidates by the same Reporting Officer, the District Officer of Nicosia, Mr. Chr. Kythreotis. A comparison of these reports shows that on three occasions the appellant was commented on rather more favourably than the interested party, and that on the remaining occasions they were treated as being both of, more or less, equal merit.

Later on, the confidential reports in respect of them were prepared by different Reporting and Countersigning Officers, respectively; from 1970 onwards there were submitted in relation to the appellant three "special confidential reports", recommending his early promotion, whereas no such report was made about the interested party at any time up to the date of the *sub judice* decision of the Commission.

The confidential reports from February 23, 1971, onwards, concerning the interested party, were again made by Mr. Kythreotis, whereas the "special confidential reports" about the appellant were made by the, at the time, District Officer of Larnaca, Mr. Z. Vryonides.

It was sought, by the respondent's side, to adduce, during the hearing before us, evidence by a Member of the Commission in order to place before us material on the basis of which the Commission had reached the conclusion that the confidential reports for the appellant were not really better than those for the interested party. As it appears from an affidavit filed in support of the application for leave to adduce such evidence, it was intended to establish by it that whenever the Reporting Officers in respect of candidates before it were different persons the Commission approached their confidential reports bearing in mind that each one of them was using varying standards in the evaluation of the performance of the officers serving under him; and that, in particular, it was well known to the Commission that Mr. Kythreotis was, as a rule, very strict in his assessments, having never made a "special confidential report" about anyone of his subordinates, whereas Mr. Vryonides was, on the contrary, known to be very lenient.

We refused to allow the above evidence to be adduced because we were not prepared to accept, as a matter of principle, that it is properly open to the Commission to evaluate the contents of confidential reports by reference to the Reporting or Countersigning Officers making such reports, as in such a case there would have to be embarked upon inquiries as to how each one of them assesses the performance of his subordinates. In our opinion a public officer who has been appointed to a post among the duties of which is the making of confidential reports about subordinate officers has to be regarded as having been found, by the appointing authority, to be responsible, experienced and reliable enough to make, more or less, accurate assessments of such subordinates; consequently, we cannot accept that it would be legitimately open to the Commission to say that because it knew that Mr. Kythreotis did not ever make a "special confidential report" it was, therefore, entitled to disregard the "special confidential reports" made by Mr. Vryonides in favour of the appellant.

Moreover, such a course would, in our view, be inconsistent with section 44(3) of the Public Service Law, 1967 (Law 33/67), under which the Commission is required to pay due regard to the annual confidential reports concerning the candidates before it, because it could make it possible for the Commission to disregard practically completely a confidential report, or even a "special confidential report", if it happened to have a poor opinion about the particular Reporting or Countersigning officer; this would amount to introducing into the application of section 44(3) a subjective element which might divert such application down a very slippery path indeed.

We do agree that it is open to the Commission—as well as to an administrative Court trying a recourse—to give due weight to the fact that different Reporting Officers cannot be treated as having made their assessments by using identical standards and that, therefore, some allowance may have to be made for possible differences in the evaluation of various candidates when they have not been reported on by the same Reporting or Countersigning Officer (see, *inter alia*, *Kousoulides and Others v. The Republic*, (1967) 3 C.L.R. 438, 449 *Georghiades and Another v. The Republic*, (1970) 3 C.L.R. 257, 267, *Aristocleous and Another v. The Republic*, (1974) 3 C.L.R. 321 at pp. 325–326); but such an approach falls far short of the far more radical one that the respondent's side has attempted to introduce in the present case.

Furthermore, we do accept as quite correct the proposition that it is open to the Commission, in trying to select the most suitable candidate, to weigh together all relevant considerations and to attribute more significance to one factor than to another, in the course of doing so, provided, however, that it exercises properly its relevant discretion (see the decision of the Greek Council of State in case 635/1950); and this Court will not interfere with a decision of the Commission when it appears that it was reasonably open to it to select a particular officer, instead of another, for promotion (see, *inter alia*, *Evangelou v. The Republic*, (1965) 3 C.L.R. 292, 299). 5 10

It has been argued during the hearing of this appeal that since the coming into operation of Law 33/67 the “special confidential reports” have lost most of, if not all, their significance, as no express provision exists in Law 33/67 about such reports. We cannot accept this argument as being correct. As it appears from the General Orders (Appendix A.II/2.5(5)(b)) the “special confidential reports” are indicative of particularly meritorious services and the relevant provision in the General Orders has been kept in force, as established practice, by means of section 86(1) of Law 33/67. 15 20

We are in agreement with the learned trial Judge that the whole career of the candidates concerned had to be taken into account; this view has been propounded in, *inter alia*, *Georghiadis and Another v. The Republic*, (1975) 3 C.L.R. 143, 150; but, in the judgment in that case it is stated (at p. 151) that it is not wrong to give due weight to the more recent confidential reports; and the importance of the more recent of such reports has been, also, recognized in *Jacovides v. The Republic*, (1966) 3 C.L.R. 212, 221, and may be derived, too, from the provisions of paragraphs (c) and (d) of subsection (1) of section 44 of Law 33/67. 25 30

The relevant provisions of Law 33/67 regarding promotions are subsections (2) and (3) of section 44, which read as follows:—

“

(2) The claims of officers to promotion shall be considered on the basis of merit, qualifications and seniority. 35

(3) In making a promotion, the Commission shall have due regard to the annual confidential reports on the candidates and to the recommendations made in this respect by the Head of Department in which the vacancy exists.” 40

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It is clear from its above subsections that Law 33/67 provides for promotion by selection after comparison of the eligible candidates, and not on the basis of seniority only.

As it appears from the case-law in Greece, which is set out in 5 “Επιθεώρησις Δημοσίου Δικαίου και Διοικητικού Δικαίου” (Review of Public and Administrative Law) 1965, vol. 9, p. 369, when an organ, such as the Public Service Commission, selects a candidate on the basis of comparison with others, it is not necessary to show, in order to justify his selection, that he was strikingly superior to the others. On the other hand, an administrative 10 Court cannot intervene in order to set aside the decision regarding such selection unless it is satisfied, by an applicant in a recourse before it, that he was an eligible candidate who was strikingly superior to the one who was selected, because only 15 in such a case the organ which has made the selection for the purpose of an appointment or promotion is deemed to have exceeded the outer limits of its discretion and, therefore, to have acted in excess or abuse of its powers; also, in such a situation the complained of decision of the organ concerned is 20 to be regarded as either lacking due reasoning or as based on unlawful or erroneous or otherwise invalid reasoning.

Useful reference, in this respect, may be made to the Conclusions from the Case-Law of the Council of State in Greece, 25 1929-1959, p. 268, and to the decisions of such Council in cases 601/1956, 778/1956 and 277/1964.

This Court has followed the same approach in a number of cases, such as the *Evangelou* case, *supra* (at p. 300); and, of course, the onus of establishing his striking superiority lies always on the applicant in a recourse (see *Georghiades and 30 Another v. The Republic* (1970) 3 C.L.R. 257, 269).

It may be pointed out, at this stage, that the fact that an administrative Court has annulled an appointment or promotion on the ground of the striking superiority of an applicant in no way entails that the organ concerned is then bound to 35 appoint or promote eventually such candidate; this is clearly to be derived from the contents of the decision of the Council of State in Greece in the already referred to case 277/1964, where it was stated, after an annulment of a promotion on the afore-said ground, that the administration had to proceed to make 40 afresh a new, and duly reasoned, comparison of the candidates concerned.

It might be said in the present case that, in the light of the material before us as a whole, and having weighed duly together both the longer service of the interested party in the public service and the experience that naturally goes with it, as well as his seniority in the post of Administrative Officer, 2nd Grade, and the "special confidential reports" in recent years concerning the appellant, as well as his university degree which, under the relevant scheme of service, had to be treated as an advantage, we could reach the conclusion that he was, as a candidate, not only merely superior, but strikingly superior, to the interested party.

We do not think, however, that we should go so far as to annul the promotion of the interested party on the ground of striking superiority of the appellant, since we are all of the view that the secondment of the interested party has, in any case, to be annulled because the reasons given by the respondent Commission, in its minutes, for selecting him, appear to be definitely contrary to the relevant administrative records and incompatible with the other factors which were taken into account by it, such as, in particular, the qualifications of the candidates concerned and the annual confidential reports about them (and, in relation to the annulment of an administrative decision on grounds such as the above, see, *inter alia*, the Conclusions from the Case-Law of the Council of State in Greece, 1929-1959, p. 188, *Jacovides, supra*, and *Lardis v. The Republic*, (1967) 3 C.L.R. 64, 78, as well as the decisions of the Greek Council of State in cases 254/1957 and 1839/1958).

There exists, in our opinion, yet another reason for annulling the *sub judice* decision of the Commission: As it appears from the already quoted extract from its minutes the Commission observed that the Head of Department of the candidates, namely the Director of the Department of Personnel, was not in a position to make any specific recommendations as the candidates were scattered all over Cyprus. It seems that the Director of Personnel felt that, in the circumstances, he could not know sufficiently well the quality of the work of all candidates, as they were not all of them working directly under his supervision. The Commission, however, recorded, as one of the reasons for selecting the interested party instead of the appellant, the fact that "after discussion" with the Director of Personnel it reached the conclusion, and the Director "agreed", that, on the whole, the interested party was the best.

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We think that the Commission could not have properly given the weight that it appears that it did give to the opinion of the Director of Personnel, since, as already stated, he was not in a position to make specific recommendations; and, in this respect, it must not be lost sight of that this was, certainly, not an occasion when the Commission had interviewed the eligible candidates in the presence of the Head of Department and it might be said that he expressed an opinion on the basis of his assessment of the candidates in the light of their performance at the interviews.

For all the foregoing reasons this appeal is allowed, with the result that the recourse of the appellant against the secondment of the interested party to the post of Administrative Officer, 1st Grade, succeeds and the relevant decision of the respondent Commission is declared to be *null and void* and of no effect whatsoever.

As the trial Judge, in dismissing his recourse, did not burden the appellant with costs, we do not think that we should make an order of costs against the respondent, either in respect of the trial or of the appeal.

Appeal allowed. No order as to costs.