

CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS REVISIONAL JURISDICTION AND IN
ITS REVISIONAL APPELLATE JURISDICTION

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION
ANDREAS D. GEORGHAKIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

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(Case No. 164/75).

*Public Officers—Promotions—Senior Postal Officer—Qualifications
—Not constituting an advantage under the schemes of service
—Do not give applicant a striking superiority over interested
party—Merit—All candidates of equal merit—Seniority—Ap-
5 applicant and one of the interested parties simultaneously ap-
pointed—But 26 years ago applicant appointed to post of
Mail Officer four years earlier than interested party—Such
earlier appointment cannot place applicant at an advantageous
position with regard to seniority as against this interested party
10 —Applicant has failed to discharge burden that he had strik-
ing superiority over interested parties—Mere superiority not
being enough—Sub judice decision reasonably open to the
Commission.*

Administrative acts and decisions—Presumption of regularity.

15 *Administrative Law—Discretionary powers—Court not entitled to
substitute its discretion for that of the Administration.*

Public Officers—Promotions—Qualifications—Courses attended by

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candidates abroad—Whether Head of Department may refer to such courses before the Public Service Commission, even before their completion.

The applicant in this recourse challenged the validity of the decision of the Public Service Commission to promote the two interested parties to the post of Senior Postal Officer.

In making the *sub judice* promotions the Commission heard the views of the Head of Department who stated that the applicant and one of the interested parties (Antoniou) were of equal merit but that the other interested party (Partellides) was better than both of them. The Head of Department, also, stated that interested party Antoniou had been attending a Postal Instructor Training Course for a period of 21 weeks at the British Postal Business Training Centre in London. Interested party Partellides was senior to the applicant and though applicant and interested party Antoniou were simultaneously promoted to the posts of Postal Officer 2nd and 1st Grade applicant was made a Mail Officer on September 1, 1950 and this interested party on June 1, 1954.

Counsel for the applicant contended:

- (a) That the respondent Commission acted contrary to section 44(2) of the Public Service Law, 1967 because it did not duly take into consideration the qualifications of the applicant, and in particular the special training which he had in Germany on Organization and Operation of Postal Services.

Counsel cited the case of *Tourpekki v. Republic* (1973) 3 C.L.R. 592 at pp. 602, 603 and argued that the said qualification was of particular importance to the post of Senior Postal Officer and specific reference should have been made to it in the decision of the Commission.

- (b) That the respondent Commission wrongly took into consideration the statement of the Head of Department that one of the interested parties had been attending a Postal Instructor Training course for a period of 21 weeks in London though the course had not been completed by then.
- (c) That the respondent Commission failed in their duty to select the best candidate contrary to the principle

enunciated in the case of *Theodossiou v. Republic*,
2 R.S.C.C. 44 at p. 47.

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5 Counsel argued in this connection that though the
confidential reports revealed that applicant and one
of the interested parties were of equal merit the
Commission did not have a complete picture with
regard to the other party because his file with his
confidential reports were at the Supreme Court as
an *exhibit* in another recourse.

10 In resolving this issue the Court heard evidence to the ef-
fect that the Commission had before it the personal files of all
the candidates.

15 *Held*, (1) that the reference to the examination of the ma-
terial in the personal files and confidential reports by the Com-
mission leaves no room for arguing successfully that appli-
cant's said qualification was not duly taken into consideration;
that the possession of this qualification by the applicant does
not give him striking superiority over the interested parties;
and that, accordingly, contention (a) above must fail (*Tour-
20 pekki v. Republic, supra, distinguished*).

25 (2) That the statement of the Head of Department, regard-
ing the course which was attended by the said interested party,
was an accurate statement of fact which he had a duty to dis-
close to the Commission in fairness to that candidate; and
that this Court has found no legal ground to decide that no
reference can be made to courses attended by candidates un-
less and until they are completed.

30 3(a) That on the evidence coupled with the fact that ex-
press reference is made in the minutes of the Commission that
it considered the merits, etc. of the candidates, as reflected in
their personal files and in their annual confidential reports,
which raises the presumption of regularity, this Court has no
difficulty in coming to the conclusion that the file of the said
35 interested party was before the Commission at the material
time.

40 3(b) That a perusal of the confidential reports shows that
applicant and interested parties were of equal merit; that what-
ever it may be said for the earlier appointment of applicant
to the post of Mail Officer 26 years ago it cannot place the
applicant at an advantageous position with regard to seniority

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as against interested party Antoniou; and that, accordingly, contention (c) must fail.

(4) That considering the case as a whole and that it is an instance of exercise of discretionary power by the administration and that in law this Court is not entitled to substitute its own discretion for that of the administration, this Court has come to the conclusion that the *sub judice* decision was reasonably open to the respondent Commission; that the applicant upon whom the burden lay to show that in the circumstances he had striking superiority over the interested parties or either of them, has failed to discharge same; that if anything, they are of equal merit—interested party Partellides of course being senior; that even if the applicant could argue that he was merely superior to either of them, that would not be enough for this Court to conclude that the respondent Commission has acted in abuse or excess of power, a ground upon which the *sub judice* decision could be annulled; and, that, accordingly the recourse must be dismissed.

Application dismissed.

Cases referred to:

Tourpekki v. Republic (1973) 3 C.L.R. 592 at pp. 602, 603;
Theodossiou and The Republic, 2 R.S.C.C. 44 at p. 47.

Recourse.

Recourse against the decision of the respondent Public Service Commission to promote the interested parties to the post of Senior Postal Officer in preference and instead of the applicant.

I. Typographos, for the applicant.

Gl. Michaelides, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

A. LOIZOU, J.: The applicant by the present recourse seeks the annulment of the decision of the respondent Commission by which interested parties Costas Partellides and Georghios Antoniou were promoted to the permanent post of Senior Postal Officer with effect from 15.9.1975.

According to the scheme of service, this post is a pro-

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5 motion post from the immediately lower post of Postal Officer, 1st Grade, and candidates must have a general good education not below the standard of six-year secondary education and must have passed the examinations in General Orders, Financial Instructions and Store Regulations before promotion.

10 The respondent Commission at its meeting of the 30th July 1975 considered the filling of three vacancies in this post and on their invitation the Director-General of the Ministry of Communications and Works who was also acting as Director of the Department of Posts, was present. He is recorded in the relevant minute (*encl. 5 of exh. 1*) to have stated that he had consulted the superintendents, as well as the ex-Director of the Department, and came to the conclusion that Messrs. Costas Partellides, Mikis Nissiotis, Andreas Georghakis and George Antoniou were the best. He added that of course two officers, Messrs. Costas Partellides and Mikis Nissiotis were better than Messrs. Andreas Georghakis and George Antoniou who were of equal merit.

25 It was observed by the respondent Commission that with the exception of Nissiotis the other three candidates did not possess a leaving certificate of a six-years' secondary school. Under a note, however, appended to the scheme of service, public officers appointed before the 1st December, 1961 who did not possess a leaving certificate of a five-year secondary school or other equivalent qualification, or who though not possessing such certificate or qualification had general education of a standard found to be equivalent to that of a five-year secondary school, would be considered as suitable for appointment or promotion if they had the remaining qualifications. In view of this, the Commission inquired into the general education of the said three candidates and came to the conclusion having regard to their personal files and their long and satisfactory government service, that they did possess this equivalent qualification and consequently they were eligible.

40 The respondent Commission considered also, as stated in their minute, the merits, qualifications, seniority, service and experience of all the officers serving in the post of Postal Officer, 1st Grade—from which post the candi-

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dates had to be selected—as reflected in their personal files and in their annual confidential reports and they concluded the minutes of the meeting at which the *sub judice* decision was taken, as follows:-

“In considering Messrs. Andreas Georghakis and George Antoniou, the Commission observed that although the standard of the general education of Mr. Andreas Georghakis was regarded as equivalent to that of a Five-years’ Secondary School and therefore, he was eligible for promotion, yet the officer in question attended the English School, Nicosia, which was a Six-Years’ Secondary School, for only four years (1937-1941), whereas Mr. George Antoniou, who had the same Seniority in the post of Postal Officer, 1st Grade as that of Mr. Georghakis, attended the Pancyprian Gymnasium, Nicosia, for six years (1945-1951). The Director-General, Ministry of Communications and Works, added that Mr. George Antoniou had been attending a Postal Instructor Training Course for a period of 21 weeks at the British Postal Business Training Centre in London.

After considering all the above and after taking into consideration all the facts appertaining to each one of the officers serving in the post of Postal Officer, 1st Grade, and after giving proper weight to the merits, qualifications, seniority, service and experience of these candidates, as shown in their Personal Files and in their Annual Confidential Reports, and, having regard to the views and recommendations made by the Director-General, Ministry of Communications and Works (who was also Acting as Director of the Department of Posts), the Commission decided that the following officers were on the whole the best and that they be promoted to the permanent post of Senior Postal Officer w.e.f. 15.9.1975:

1. Costas Partellides
2. Mikis Nissiotis
3. George Antoniou”.

The first ground of law argued on behalf of the applicant is that the Commission acted contrary to section 44

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5 (2) of the Public Service Law, 1967 (Law 33/67) inas-
much as it did not duly take into consideration, as it had
a duty to do, the qualifications of the applicant, and in
particular, the special training which he had in Germany
on Organization and Operation of Postal Services. It was
urged that this qualification was of particular importance
to the post of Senior Postal Officer and specific reference
should be made to it in their decision as from the relevant
record, it appears that their attention, when enumerating
10 the educational background of each candidate, was centered
only at their respective secondary education. In support
of this ground I was referred to the case of *Vasso
Tourpekki v. The Republic* (1973) 3 C.L.R. 592 at pp.
602 and 603, where it was held that the Commission had
15 not conducted the sufficiently necessary inquiry into a
most material factor such as an additional qualification
and, therefore, it exercised its discretion in a defective
manner. I may say here and now that what was said in
Tourpekki's case related to a qualification which was a
20 material fact as the possession or not of that qualification
possibly constituted an additional advantage under the
scheme, which is not the case. The explicit reference to it
in the minutes of the respondent Commission and the re-
ference to the examination of the material in the personal
25 files and confidential reports leaves no room for arguing
successfully that this qualification of the applicant was
not duly taken into consideration. The possession of this
qualification by the applicant does not give him striking
superiority over the interested parties.

30 Together with this ground, it was claimed that the
respondent Commission wrongly took into consideration
the statement of the Director-General that interested
party Antoniou had been attending a Postal Instructor
Training course for a period of 21 weeks at the English
35 Postal Business Training Centre in London, though the
course had not been completed by then.

In my view, that was an accurate statement of fact
which the Director-General had a duty to disclose to the
Commission in fairness to that candidate and I have found
40 no legal ground to decide that no reference can be made
to courses attended by candidates unless and until they
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The second ground is that the respondent Commission failed in their duty to select the best candidate, contrary to the principle enunciated in the case of *Theodossiou and The Republic*, 2 R.S.C.C. p. 44 at p. 47. Relevant to this issue are the contents of the confidential reports for which counsel for the applicant has stated that those for the last years preceding the promotion, reveal that the applicant and interested party Antoniou were of equal merit, whereas for interested party Partellides, the Commission did not have a complete picture, inasmuch as they had before them only the one for the year 1974 (*exhibit 3'A*). The other file containing the other confidential reports was an exhibit (*exh. 6*) in Recourse No. 345/74 pending at the time before another Judge of this Court.

With regard to this last issue, evidence was given by Mr. Nicos Theocharides, Registrar in charge of the Registry for the Revisional Jurisdiction of the Supreme Court who stated that the said file was given to the respondent Commission, with the leave of the trial Judge, on the 9th July, 1975 and returned some time later. This could be anything between two to ten days or when the purpose for which the respondent Commission had been served. There was, however, no record of the date of its return. Evidence was also given by Mr. D. Protostos, a member of the respondent Commission, to the effect that it was unheard of for them to deliberate on promotions and decide upon them without having before them the personal files and the confidential reports of all the candidates, and the file for interested party Partellides must have been before them at the material time.

On this evidence, coupled with the fact that express reference is made in the minutes of the Commission that it considered the merits, etc. of the candidates, as reflected in their personal files and in their annual confidential reports which raises the presumption of regularity, I have no difficulty in coming to the conclusion that the file in question was before the Commission at the material time.

But before considering the question of merit, as appearing from the confidential reports on the candidates, it is opportune now to look at their respective seniority a matter also necessary under section 44(2) of the Law, whereby the claims of officers to promotion must be considered on the basis of merit, qualifications and seniority.

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Interested party Partellides was appointed to the post of Postal Officer 1st Grade on the 5.6.1970, whereas the applicant on the 1.1.1971, on which date, also interested party Antoniou was promoted. If we resort to section 46 (2) of the Public Service Law for ascertaining their seniority because of their simultaneous promotion to that of Postal Officer, 1st Grade, we see that they were also seconded to the same post on the same date, namely, on the 15.6.1970 and promoted to the post of Postal Officer 2nd Grade on the 1.6.1961. It is only if we go back 26 years that we find that the interested party Antoniou was made a Mail Officer permanent on the 1.6.1954 as against 1.9.1950 for the applicant. Whatever it may be said for this earlier appointment of the applicant 26 years ago, it cannot place the applicant at an advantageous position with regard to seniority as against this interested party.

A perusal of the confidential reports of the applicant and the interested parties shows that they are of more or less the same merit. This is also reflected in the recommendation of the Head of the Department.

The complaint that the *sub judice* decision is not duly and specially reasoned, particularly so in view of the qualification of the applicant, hereinabove mentioned, cannot stand, as the decision is duly and cogently reasoned as disclosed by their minute of the 30th July, (*exh. 1 encl. V*) and as supplemented from the material in the file.

Considering the case as a whole and that it is an instance of exercise of discretionary power by the administration and that in law this Court is not entitled to substitute its own discretion for that of the administration, I have come to the conclusion that the *sub judice* decision was reasonably open to the respondent Commission. The applicant upon whom the burden lay to show that in the circumstances he had striking superiority over the interested parties or either of them, has failed to discharge same. If anything, they are of equal merit—interested party Partellides of course being senior; but even if the applicant could argue that he was merely superior to either of them, that would not be enough for this Court to conclude that the respondent Commission has acted in abuse or excess of power, a ground upon which the *sub judice* decision could be annulled.

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For all the above reasons, the present recourse fails and is hereby dismissed with no order as to costs.

Application dismissed.
No order as to costs.