

1976 August 2

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

XANTHOULA CHRISTODOULOU AND ANOTHER,

Applicants,

v.

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondent.

(Cases Nos. 236/70, 289/70).

5 *Public Officers—Promotions—Post of Telephone Supervisor—Applicant by one year senior to interested party and both of more or less equal merit—Both recommended for promotion by Selection Board—Applicant not found fit for promotion by respondent—*
Interview of candidates and assessment of their personality—As
duties of the post envisaged supervision of work and conduct of
subordinates, outcome of interviews could properly be taken into
account in reaching the conclusion that applicant was not fit for
promotion—Respondent has not exceeded outer limits of its
10 *discretionary powers in reaching this conclusion—Open to re-*
spondent to attribute to any one particular relevant factor more
weight than to another such factor.

15 *Administrative Law—Administrative decision—Due reasoning—Need not be contained only in the body of the decision, but may be derived from the relevant administrative records.*

20 *Administrative Law—Administrative decision—Material misconception of fact, or even the probability of its existence, justifies the annulment of an administrative act or decision—Composite administrative process—If any stage thereof is defective, then the whole process has to be annulled—Decision relating to promotions—A composite administrative process consisting of recommendations of a selection Board and of a final decision by respondent—Recommendation*

tions of Board affected by a material misconception—Whole process vitiated.

Administrative Law—Promotions—Two vacant posts—Interested party promoted to one such post—Such promotion in no way prevented promotion of Applicant—Whose non-promotion was due to a misconception of fact—Annulment of only that part of sub-judice decision which led to applicant's non-promotion and no annulment of the promotion of the interested party. 5

The applicants in these recourses challenge the validity of the decision of the respondent Authority to promote the interested party to the post of Telephone Supervisor. 10

The candidatures of the two applicants and the interested party had, prior to the final decision of the respondent, been considered by a Selection and Promotion Board, which decided unanimously to recommend for promotion the applicant in case 236/70 and the interested party who were found to be of more or less equal merit, though applicant was by one year senior. The Board, also decided, that it would have recommended the applicant in case 289/70 had the vacancies occurred at the Trunk Calls Exchange, where she was at the time working, and not at the overseas Exchange. In deciding not to recommend this applicant the Board was labouring under the misconception that the post of Telephone Supervisor was not a post accessible to all eligible candidates irrespective of whether the particular vacancy existed in the overseas Exchange or in the Trunk Calls Exchange but that it was, in effect, a post the nature of which depended on at what exchange the vacancies to be filled had occurred. This misconception led to the failure of the Board to recommend this applicant as being suitable for promotion, in which case, in accordance with a proviso to all schemes of service she would have had to be treated by the respondent as qualified for promotion notwithstanding her lacking the formal secondary education qualification required by such scheme of service. 15
20
25
30

In taking the *sub judice* decision the respondent Authority had before it all the material relating to the merits, seniority and qualifications of the candidates and it had also the opportunity of interviewing them. Applicant in Case 289/70 made an 35

5 excellent impression when interviewed and was found un-
animously fit for promotion; she was not in the end promoted
because she was regarded as not being qualified for promotion
under the relevant scheme of service, in that she was not a
graduate of a secondary education school. On the other hand
applicant in Case 236/70 was not promoted because she was not
found suitable for the purpose.

10 The duties of the post concerned as set out in the scheme of
service included, supervision of the work and conduct of not
more than 5 telephone operators.

*Held, (I) with regard to the recourse of applicant in case
236/70:*

15 (1) (a) The duties of the post concerned envisage supervision
of the work and conduct of subordinates. Therefore, even
though the applicant was found by the Selection Board to be
of equal merit with the interested party, the outcome of the
interviews, where the personality of the candidates was assessed,
could properly be taken into account in reaching a conclusion
that a particular candidate, such as the applicant in case 236/70
20 was not fit for promotion.

25 (b) It cannot be said that in reaching the aforesaid con-
clusion the respondent has exceeded the outer limits of its
relevant discretionary powers; it was open to the respondent
to attribute to any one particular factor, relevant to the suit-
ability of the candidates, more weight than to another such
factor, so long as this was proper in the circumstances, as it
was on the present occasion (see *Georghiou v. The Republic*
(1977) 9-10 J.S.C. 1476).

30 (c) The contention that the *sub judice* decision is not duly
reasoned cannot stand. The reasoning of an administrative
decision need not be contained only in the body of the decision,
but may, also, be derived from the relevant administrative
records (see, *inter alia*, *Mouzouris v. The Republic* (1972) 3
C.L.R. 43 at p. 48). In the present case such reasoning can be
35 derived from administrative records to a reasonably sufficient
extent so as to render the decision of the respondent duly re-
asoned.

The recourse of applicant in case 236/70 will, therefore, be dismissed (pp. 67-68 *post*).

Held, (II) with regard to the recourse of applicant in case 289/70:

(1) (a) A material misconception of fact or even the probability of its existence, justifies the annulment of an administrative act or decision. And if any stage of a composite administrative process is defective, then the whole process has to be annulled. The composite administrative process in this case, consisting of the recommendations of the Selection Board and of the subsequent decision of the respondent is vitiated by the material misconception, (to the effect that the post of Telephone Supervisor was not accessible to all eligible candidates) which affected the recommendations of the Selection Board; consequently, the *sub judice* decision not to promote the applicant in case 289/70 has to be annulled.

(b) As the interested party was promoted to the one of the two existing vacant posts and that this did not, in any way, prevent the promotion of this applicant, the proper course is to set aside that part of the *sub judice* decision which resulted in her non-promotion, without annulling, also, that part thereof which relates to the promotion of the interested party.

Application 236/70 dismissed.

Application 289/70 succeeded.

No order as to costs.

Cases referred to:

Georghiou v. The Republic (1977) 9-10 J.S.C. 1476 (to be reported in (1976) 3 C.L.R.);

Mouzouris v. The Republic (1972) 3 C.L.R. 43, at p. 48;

HadjiSavva v. The Republic (1972) 3 C.L.R. 174, at p. 205; 30

Marabou Floating Restaurant Ltd. v. The Republic (1973) 3 C.L.R. 397, at pp. 407-408;

Papas v. The Cyprus Grain Commission (1974) 2 J.S.C. 245, at p. 254 (to be reported in (1974) 3 C.L.R.);

HadjiVassiliou and Others v. The Republic (1974) 2 J.S.C. 257, at p. 268 (to be reported in (1974) 3 C.L.R.);

Andreou v. The Cyprus Broadcasting Corporation (1975) 11 J.S.C. 1628, at pp. 1637, 1638 (to be reported in (1975) 3 C.L.R.);

5 *Pantelides and Others v. The Republic* (1975) 12 J.S.C. 2071, at p. 2072 (to be reported in (1974) 3 C.L.R.);

Ioannides v. The Republic (1972) 3 C.L.R. 318, at pp. 324, 325, 326;

10 *Hji Michael and Others v. The Republic* (1972) 3 C.L.R. 246, at p. 252.

Recourses.

Recourses against the decision of the respondent to promote the interested party Y. Tanta to the post of Telephone Supervisor in preference and instead of the applicants.

15 *L. Papaphilippou*, for the applicants.

A. HadjiIoannou with *M. Vassiliou*, for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment:

20 TRIANTAFYLLIDES P.: These two cases were heard together in view of their nature; another related case, 284/70, was withdrawn pending the hearing, and it was dismissed accordingly.

25 The two applicants, and the "interested party" in these proceedings, Y. Tanta, were, at the material time, Assistant Telephone Supervisors, in the employment of the respondent Authority; all three of them applied for promotion to the post of Telephone Supervisor.

30 The interested party was promoted to the said post by virtue of a decision of the respondent Authority which was taken at a meeting on July 1, 1970. At the same meeting the applicant in case 289/70; M. Drakopoullou, was found unanimously to be fit for promotion; she made (as it appears from the relevant minutes, *exhibit 4(b)*) an excellent impression when she was interviewed; but, in the end, she was not promoted to the

other one of the then existing two vacant posts of Telephone Supervisor because she was regarded as not being qualified for promotion under the relevant scheme of service, in that she was not a graduate of a secondary education school. The applicant in case 236/70, X. Christodoulou, was not promoted because she was not found to be suitable for the purpose. 5

In an interim decision, which I gave in the course of these proceedings (see (1973) 3 C.L.R. 695), I have held that, in the particular circumstances of the present case, the applicant in case 289/70 did possess a legitimate interest, in the sense of Article 146.2 of the Constitution, entitling her to make her present recourse; I need not repeat in this judgment the reasons on the basis of which I reached that view, as my said interim decision should be read together with the present judgment. 10

From the material before me it appears that the candidatures of all the three ladies involved in these proceedings (*i.e.* of the two applicants and of the interested party) were, prior to the final decision of the respondent, considered by a Selection and Promotion Board consisting of representatives of both the management and the staff of the respondent. 15 20

This Selection Board decided on June 18, 1970 (see *exhibit 5*) to recommend unanimously for promotion the applicant in case 236/70 and the interested party, and it, also, put on record that it would have favourably recommended, too, without any hesitation, the applicant in case 289/70, had the vacancies in question occurred at the Trunk Calls Exchange and not at the Overseas Exchange of the respondent; at the time the applicant in case 289/70 was working at the Nicosia Trunk Calls Exchange. 25

From the material before me, including a comparative appraisal of the candidates and tables setting out relevant data concerning them (see *exhibits 5 (a)* and *7*), as well as from the confidential reports concerning the candidates, which were produced by counsel for the respondent at the request of counsel for the applicants, it appears that the applicant in case 236/70 and the interested party were candidates of more or less equal merit, but that this applicant was by a year senior to the interested party in the post of Assistant Telephone Supervisor; also, that both of them were slightly better as regards merit 30 35

than the applicant in case 289/70, but that the latter was senior to both of them, by four and five years respectively, in the post of Assistant Telephone Supervisor.

5 All these three candidates were interviewed by the respondent Authority and it is stated in its minutes dated July 1, 1970 (see *exhibit 4 (b)*) that the interested party was promoted, that the applicant in case 289/70 was found to be fit for promotion but not qualified for the purpose under the relevant scheme of service, and that no other candidate was found suitable for
10 promotion to the other one of the two existing vacancies in the post concerned.

The Authority had before it at that time all the material relating to the merits, seniority and qualifications of the candidates and it had, also, the opportunity of interviewing them;
15 and the factor of personality is something which does count quite a lot for a post such as that of a Telephone Supervisor, which involves the supervision of subordinate staff.

In my opinion the decision of the respondent Authority, as regards fitness for promotion of the candidates, was, on the
20 whole, reasonably open to it on the material before it; and I am, indeed, not prepared to say that such decision is, in any way, inconsistent with such material, merely because the applicant in case 236/70, who was not found to be suitable for promotion, was found by the Selection Board to be of equal merit
25 with the interested party, of whom she was senior by a year; as I have pointed out already the *sub judice* decision of the respondent was reached after the respondent Authority had interviewed the candidates and the outcome of the interviews was something that could be properly taken duly into account,
30 with the result that it apparently tilted the scales against the applicant in 236/70.

The duties of the post concerned, as they are set out in the relevant scheme of service (see *exhibit 6*), are: "1. To supervise the work and conduct of telephone operators not exceeding
35 five placed under his/her supervision. 2. Any other duties assigned by the Superior Officers"; therefore, the question of the assessment by the respondent of the personality of the candidates at the interviews was something which could pro-

perly play an important role in reaching the conclusion that a particular candidate, such as the applicant in case 236/70, was not fit for promotion. So, it cannot be said that in reaching that conclusion the respondent has exceeded the outer limits of its relevant discretionary powers; it was open to the respondent to attribute to any one particular factor, relevant to the suitability of the candidates, more weight than to another such factor, so long as this was proper in the circumstances, as it was on the present occasion (see, *inter alia*, *Georghiou v. The Republic*, (1977) 9–10 J.S.C. 1476*). 5 10

I really see no justification for any interference with the decision of the respondent Authority concerning the suitability of the candidates before it, and for substituting my own views, in this respect, in the place of those of the Authority.

It was submitted on behalf of the applicants that the *sub judice* decision of the respondent is not duly reasoned. 15

It is well established that the reasoning of an administrative decision need not be contained only in the body of the decision, but may, also, be derived from the relevant administrative records (see, *inter alia*, *Mouzouris v. The Republic*, (1972) 3 C.L.R. 43, 48, *HadjiSavva v. The Republic*, (1972) 3 C.L.R. 174, 205, *Marabou Floating Restaurant Ltd., v. The Republic*, (1973) 3 C.L.R. 397, 407–408, *Papas v. The Cyprus Grain Commission*, (1974) 2 J.S.C. 245, 254**, *HadjiVassiliou and Others v. The Republic*, (1974) 2 J.S.C. 257, 268**, *Andreou v. The Cyprus Broadcasting Corporation*, (1975) 11 J.S.C. 1628, 1637, 1638*** and *Pantelides and Others v. The Republic*, (1975) 12 J.S.C. 2071, 2072**). I do find that in the present case such reasoning can be derived from administrative records to a reasonably sufficient extent so as to render the decision of the respondent duly reasoned. 20 25 30

In the light of all the foregoing there has to be dismissed the recourse of the applicant in case 236/70, without, however, any order as to costs against her.

* To be reported in (1976) 3 C.L.R. 35

** To be reported in (1974) 3 C.L.R.

*** To be reported in (1975) 3 C.L.R.

Regarding the recourse of the applicant in case 289/70, who was found by the respondent fit for promotion, as she had made an excellent impression when interviewed, but was, nevertheless, not promoted because, as already stated, the respondent was of the view that she did not possess a qualification required under the scheme of service, I am of the opinion that the relevant administrative process is vitiated by a material misconception; and that a material misconception of fact, or even the probability of its existence, justifies the annulment of an administrative act or decision is a well-settled principle of administrative law (see, *inter alia*, *Ioannides v. The Republic*, (1972) 3 C.L.R. 318, 324, 325, 326 and *Hji Michael and Others v. The Republic*, (1972) 3 C.L.R. 246, 252). Also, if any stage of a composite administrative process, such as that which led to the *sub judice* decision concerning the applicant in case 289/70, is defective, then the whole process has to be annulled (see, *inter alia*, *Conclusions from the Case-Law of the Council of State in Greece, 1929-1959*, p. 244).

The misconception involved in this case has led to the failure of the Selection Board to recommend without any hesitation, and therefore unanimously, the applicant in case 289/70 as being suitable for promotion, in which case, in accordance with a proviso to all schemes of service (*exhibit 9*) she would have had to be treated by the respondent as qualified for appointment under the relevant scheme of service, notwithstanding her lacking the formal secondary education qualification required by such scheme of service; apparently the Board was labouring under the misconception that the post of Telephone Supervisor was not a post accessible to all eligible candidates irrespective of whether the particular vacancy existed in the Overseas Exchange or in the Trunk Calls Exchange, but that it was, in effect, a post the nature of which changed depending on at what Exchange the vacancies to be filled had occurred; and as the applicant in case 289/70 was at the time employed at a Trunk Calls Exchange, and not at the Overseas Exchange, where the vacancies existed, she was not recommended by the Board. This could have been the right course in case there could be derived from the nature of the duties described in the relevant scheme of service that there was required specialization of an Assistant Telephone Supervisor at a particular kind of Exchange; but this is definitely not so, as the duties of the

post of a Telephone Supervisor appear to be of a general nature, namely to supervise the work of not more than five telephone operators.

It follows that the composite administrative process, consisting of the recommendations of the Selection Board and of the subsequent decision of the respondent, is vitiated by the aforementioned material misconception which affected the recommendations of the Selection Board; consequently, the *sub judice* decision not to promote the applicant in case 289/70 has to be annulled.

The next matter that I have to consider is whether I have to annul, also, the promotion of the interested party:

It is clear from the relevant minutes of the respondent that the interested party was promoted to the one of the two existing vacant posts of Telephone Supervisor and that this did not, in any way, prevent the promotion of the applicant to the other one of the said two vacant posts; the reason for her non-promotion being that she lacked a formal educational qualification; therefore, I think that the proper course is to set aside that part of the *sub judice* decision of the respondent which resulted in her non-promotion, without annulling, also, that part thereof which relates to the promotion of the interested party.

It is up to the respondent Authority to reconsider the position in the light of this judgment, which should not, however, be taken as an edict that the applicant in case 289/70 should be promoted. The proper course, in my view, is to refer the matter back to the Selection Board for reconsideration of its recommendations concerning this applicant and then the Authority should, also, reconsider the matter.

For all the above reasons the recourse of applicant in case 289/70 succeeds, but, in the circumstances, I do not think that there should be any order of costs against the respondent.

Application 236/70 dismissed.
Application 289/70 succeeded.
No order as to costs.