

1981 January 25

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS NICOLAOU AND ANOTHER,
Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,
Respondent.

(Case No. 151/75).

5 *Public Officers—Promotions—Head of Department—Recommendations—Section 44(3) of the Public Service Law, 1967 (Law 33/67)—Promotions to the post of Superintendent Postal Services—Public Service Commission relying on recommendations of Acting Director of the Department of Posts—Which were based on information received from the retired ex-Director—No compliance with above section 44(3) of the Law—Promotions annulled.*

10 Section 44(3) of the Public Service Law, 1967 (Law 33/67) provides that “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”.

15 In making promotions to the post of Superintendent of Postal Services the respondent Public Service Commission relied, *inter alia*, on the recommendations of the Director-General Ministry of Communications and Works (“the Director-General”) who was Acting, also, as Director of the Department of Posts.

20 The Director of the Department of Posts retired in March, 1975. The Assistant Director of the Department of Posts who was appointed as Acting Director was due to retire on the 1st July, 1975 and the Director-General was appointed to act as Director of the Department of Posts with effect from the

1st July, 1975. The *sub judice* promotions were made by the Commission on the 16th July, 1975; and neither the Director nor the Assistant Director were asked to make any recommendations before their retirement. In making his recommendations, the Director-General stated that he had consulted the ex-Director of the Department of Posts about the merits of all the candidates interviewed. 5

Held, (1) that the Commission had to take into account at least the views of the Assistant Director of the Department of Posts; that this would have been the best and only course, in the interest of the service, would have done justice to the work of all the candidates and could have made the work of the Commission much easier, once the Assistant Director was the second in command and was aware of the capabilities of all the candidates. 10 15

(2) That even assuming that the Commission was entitled to appoint the Director-General as an acting Director there are doubts whether the Ag. Director followed the proper course in seeking advice from a person who had left the service and he was no longer in a position to know what was going on; that once the Acting Director consulted the retired Director, this presupposes that he was not in a position to make the proper recommendation, as demanded by section 44(3) of Law 33/67, particularly so when there was no sufficient material before the Commission to know whether the Ag. Director-General was putting forward his personal views or those of the ex-Director; that, as the record of the minutes shows, the Commission has failed to make any inquiries from the Ag. Director-General as to whether he was expressing his own views or those of the retired Director-General, and the Commission relied mostly in promoting the interested parties, on the views of the Ag. Director of Posts who sought advice from a person who was no longer in the service; that, therefore, in the particular facts and circumstances of this case, the Commission has failed to comply with the express command of s. 44(3) of Law 33/67, viz., of having before it the recommendations made by the head of the department who follows the work of persons working under him; accordingly the *sub judice* promotions must be annulled. 20 25 30 35

Sub judice promotions annulled. 40

Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Superintendent of Postal Services in the Department of Posts in preference and instead
5 of the applicants.

E. Lemonaris, for the applicants.

G. Constantinou (Miss), for the respondents.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. In these
10 proceedings, under Article 146 of the Constitution, the two applicants, Andreas Nicolaou and Kypros Gregoriades, both of Nicosia, seek a declaration of the Court that the decision of the respondent Commission which has been published in the official Gazette dated 3rd October, 1975, under notification
15 No. 1526, in promoting to the post of Inspector of Postal Services Nicos K. Christofides, Emilios Gregoriades and Gregoris Kazantzi, the interested parties, is null and void and of no effect whatsoever.

The facts:

20 The Council of Ministers, by its decision No. 13.971 of 15th May, 1975, approved the filling of certain vacancies in the Department of Posts, as well as any consequential vacancies that may be created as a result of promotions to the post of Senior Postal Officer. The posts in question were (a) Director—
25 one vacancy (permanent), first entry and promotion post; (b) Assistant Director—one vacancy (permanent), promotion post; (c) Superintendent—two vacancies (permanent), promotion post; and (d) Senior Postal Officer—three consequential vacancies (permanent), promotion post.

30 On the 6th June, 1975, the Director-General of the Ministry of Communications and Works, by a letter No. 162/67/E/3 requested the Commission that the above vacancies might be filled as early as possible. In the light of that request, the Commission decided that the post of Director be advertised,
35 and two weeks allowed for the submission of applications. According to the minutes regarding the post of Assistant Director, this has been said by the Commission:—

“The post of Assistant Director is a very high post in

the department, and the officer to be selected will carry out very responsible duties. In view of this, and having regard to the fact that the post of Director of the Department is now vacant and, therefore, there will not be any recommendations in this respect, as provided by s.44(3) of Law 33/67, the Commission decided to interview all the candidates for the post of Assistant Director before proceeding to the selection". 5

The Commission accordingly decided that the following candidates be invited for interview on 16th July, 1975 at 9.00 a.m.: (1) Miltiades Elias; (2) Epaminontas Ioannis Ch.; (3) Doumanis Christodoulos, K; and (4) Argyrides Theodotos, A. 10

There was a further direction that the Director-General of the Ministry of Communications and Works should be present. Then the Commission dealt with the post of Superintendent and this statement was made:- 15

"The officers to be selected for this post will carry out the duties of a very responsible position in the Department. In view of this, and, having regard to the fact that the post of Director of the Department is now vacant, and, therefore, there will not be any recommendations in this respect as provided in Section 44(3) of Law No. 33/67, the Commission decided to interview all the candidates for the post of Superintendent, Post Office, before proceeding to the Selection. 20 25

The Commission accordingly decided that the following candidates be invited for interview on 16.7.75 at 10.00 a.m.: 1. Nicolaou Andreas, Christophides Nicos, Gregoriades Kypros, Georghallides Emilios, Kazantzis Gregoris N. and Vlodomas Savvas A". 30

Once again, there was a direction that the Director-General of the Ministry of Communications and Works to be present.

On the 16th July, 1975, the Commission met with regard to the filling of vacancies in the post of Superintendent—Post Office, and in the presence of Mr. P.M. Kazamias, the Director-General of the Ministry of Communications and Works (and acting Director of the Department of Posts), the Commission interviewed the following candidates: Nicolaou Andreas, 35

Christophides Nicos, Gregoriades Kypros, Georghallides Emilios, Kazantzis Gregoris N. and Vlodomas Savvas A.

5 The Commission, as well as the Director-General put several questions to all the candidates on matters of general knowledge and on matters connected with the duties of the post as shown in the relevant scheme of service. Then—as the minutes show—
 10 “the Commission considered the merits, qualifications, seniority, service and experience of the candidates interviewed as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them etc.). The personal files and annual confidential reports of all the candidates were also taken into consideration”.

15 According to the record, the Director-General stated that he has consulted the ex-Director of the Department of Posts about the merits of all the candidates interviewed. With that in mind, the Director-General added the following:-

20 “(i) Andreas Nicolaou: He is industrious, he has a clear mind, but he is not up to the standard of the other candidates.

25 (ii) Nicos Christophides: He has been in charge of the Limassol Post Office since May, 1974, and his services have been very good; he is a conscientious, reliable and obedient officer and recommended him for promotion to the post of Superintendent, Post Office.

(iii) Kypros Gregoriades: He thinks too much of himself; he does not possess sufficient experience in the management of personnel and his work is not so good as that of other candidates.

30 (iv) Emilios Georghallides and Gregoris N. Kazantzis: Although they are younger in the service than the 3 officers referred to previously, yet they are very good in their work, very promising, in fact they are the best of all the candidates and recommended them for promotion to the post of Superintendent, Post Office.

35 (v) Savvas A. Vlodomas: His experience is practical and has not gone deeply into the various matters concerning the Post Office”.

Finally, and with the recommendations of the Director-General in mind, the minutes of the Commission read:-

“After considering all the above and 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 these candidates, as shown in their Personal Files and in their Annual Confidential Reports, and, having regard to the recommendations made by the Director-General, Ministry of Communications and Works, (who is also Acting Director of the Department of Posts), the Commission decided that the following candidates were on the whole the best and that they be promoted to the permanent post of Superintendent, Post Office, w.e.f. 15.9.75: Nicos Christophides, Emilios Georghallides, Gregoris N. Kazantzis”.

As I said earlier, the two applicants, feeling aggrieved, filed the present recourse and put forward the following legal points for the annulment of the promotions in question.

(i) That the decision attacked was taken under a wrong procedure because (a) the provisions of Law 44(3) of Law 33/67 have not been adhered to; (b) that candidates have been invited by the Commission to an interview in violation of the well established practice that in cases of promotion posts the Commission does not call them for an interview; (c) that during the interviews the Director-General of the Ministry of Communications and Works was present and took part in the procedure of choosing the best candidates.

(2) The decision attacked was taken without a proper or full investigation to find out which were the demands for promotion of the candidates having regard to experience and suitability;

(3) that the said decision was taken in contradiction of the rule in choosing the best, having regard to the criteria of s.44(2) of the said law, viz., that the claims of officers to promotion shall be considered on the basis of merit, qualifications and seniority.

On the contrary, counsel for the respondent Commission put forward in opposition that the decision complained of was properly and lawfully taken by the respondent after taking

into consideration all relevant facts and circumstances, and in support of this stand he said:

5 “The post of Director of the Department was then vacant due to the retirement of its holder, and that the Assistant Director who was acting as Director would retire very shortly, i.e. on 1.7.75, and, therefore, there would be no recommendations in this respect as provided in s.44(3) of Law No. 33/67, decided to interview all the candidates for the post of Superintendent—Post Office, before proceeding to the selection. The Commission believes that 10 the interviewing of candidates in cases such as this one for the purpose of selecting the most suitable candidate, is within its discretionary powers”.

15 In addition, it was stated that the Director-General, when filling the vacancies in the above post, after having been duly appointed by the Commission to act as from 1st July, 1975 as Director of the Department of Posts, in addition to his own duties, and as such he made his recommendations. It is, therefore, maintained that the provisions of s.44(3) of Law No. 20 33/67 have been duly complied with.

The scheme of service of Superintendent:

On the 25th April, 1968, the Council of Ministers approved by its decision No. 7671 the said promotion post, and the duties and responsibilities are these:—

25 “Responsible to the Director for the administration or re-organization and inspection of District Post Offices or reports submitted by District Postmasters in respect of inspection of postal agencies: responsible for the keeping of statistical records: to perform any other duties 30 which may be assigned to him.

Qualifications required:

35 “A good general education not below the standard of a six-year secondary school. A very good knowledge of English. A wide experience of Postal work. Ability to control subordinate staff; a very good knowledge of the post office rules and regulations, as well as the Regulations and Agreements of the Universal Postal Convention and ability to implement them. Must have passed the examinations in General Orders and Financial Instructions.

Knowledge of French and/or any other European language would be an advantage.

Note: Public servants

(a) who joined the public service before the 1st December 1961, either in a permanent or in a temporary capacity and/or 5

(b) were in the public service on a monthly basis on the 1st February, 1968, who hold a Leaving Certificate of a five-year secondary school or any other equivalent qualification, or who, though not holding such a certificate or qualification, have a general education of a standard regarded as equivalent to that of five-year secondary school will be considered eligible for appointment or promotion to this post if they are otherwise suitable. 10

(Approved by Council of Ministers—Decision No. 7671 of the 24.4.68)”. 15

Particulars of service of both applicants:

According to the list prepared by counsel for the Republic (exhibit 11), the first applicant, Nicolaou Andreas was appointed on 10th June, 1946 to the post of Temporary Mail Officer and on 1st June, 1947 to Mail Officer. On 1st July, 1958 he became Postal Officer, 2nd grade, and finally on 1st January, 1971, he became a Senior Postal Officer. 20

The second applicant, Kypros Gregoriades was appointed to the post of Mail Officer on 20th June, 1949; on 1st July, 1956 he became a Postal Officer 2nd Grade, and on 1st June, 1974 he was promoted to the post of Senior Postal Officer. 25

Particulars of service of interested parties:

Nicos Christofides was appointed on 1st September 1947 to the post of Mail Officer. On 1st January 1956 he became Postal Officer 2nd Grade, and on 15th December, 1972, he became a Senior Postal Officer. 30

Emilios Georghallides was appointed on 26th June, 1952 to the post of Temporary Mail Officer. On 1st May, 1954 he became a Postal Clerk 3rd Grade; on 1st October, 1956 he became a Postal Officer 2nd Grade, and on 1st June, 1974 he was promoted to the post of Senior Postal Officer. 35

Gregoris Kazantzis was appointed on 25th December, 1952, as a Temporary Mail Officer; on 1st May, 1954, he became a Postal Clerk, 3rd Grade; on 1st April, 1959 he was made Postal Officer 2nd Grade, and on 1st June, 1974 he was promoted to
5 the post of Senior Postal Officer.

Qualifications of applicants:

Andreas Nicolaou:

10 Greek Gymnasium Limassol 1934-38,
Limassol Commercial Lyceum 1938-40,
English Ordinary, English Higher, Turkish Lower,
Financial Instructions, General Orders,
Certificates of attendance the 1st and 2nd forms in
French Language (Institute of Foreign Languages).

Kypros Gregoriades:

15 Mitsis School 1939-44.
English Ordinary, English Distinction, Turkish Preliminary,
Financial Instructions, General Orders.

Qualifications of interested parties:

Nicos Christofides:

20 Limassol Gymnasium 1933-36, Limassol Modern School
1936-37 English Ordinary, English Distinction, Turkish
Lower, General Orders, Financial Instructions, Certificate
of attendance the 1st and 2nd forms in French Language
(Institute of Foreign Languages).

25 Emilios Georghallides:

Morphou Gymnasium 1945-51
English Lower, English Higher, Greek Higher, Turkish
Lower, Mathematics A, History, Geography, Financial
Instructions, General Orders, Certificate of 4 years French
30 and German, Min. of Education.

Gregoris Kazantzis:

Pancyprian Gymnasium 1947-48
Samuel Commercial School 1948-52
English Lower, English Higher, Turkish Lower, Mathe-
35 matics A, Geography, Financial Instructions, General
Orders, Five-months course in "Posts and Financial

Services"; France, Thirty hours course in "Office Supervisory Training (T.W.I.)", Cyprus Prod. Centre; Certificate of attendance a Postal Seminar in Prague in "Aims and general organiz. of Postal Control"; Certificate of attendance a course in W. Berlin in "Training and Advanced Training of Leading Officials in Modern Management Methods"; Private lessons in French. 5

Turning now to the confidential reports of the applicants and the interested parties, I think it is fair to add that going through the reports, I do not think it is necessary to quote them in this judgment, once I find that the confidential reports of the parties concerned are more or less equal. 10

There is no doubt that with regard to the promotions, the Public Service Law, 1967, (No. 33/67), says in section 44(2) that "the claims of officers to promotion shall be considered on the basis of merit, qualifications and seniority; and in (3) it says "in making a promotion, the Commission shall have due regard to the annual confidential reports of the candidates, and to the recommendations made in this respect by the head of department in which the vacancy exists". 15 20

With these criteria in mind, I think it is necessary to add that in the present case, the Director of Posts, Mr. Hjiouannou, had retired from the service in March, 1975, and he had not as yet been replaced. On 6th June, 1975, when the Director-General asked the Commission to fill the post of Inspector, there was no available head of department; and it is equally true to say that Mr. Hjiouannou had not been asked before his retirement to make any recommendations. Indeed, the assistant Director of the department, Mr. Christodoulou, who became the acting Director, was due to retire from service on 1st July, 1975. Regretfully, he was not asked to make any recommendations either, when the Commission took a decision on the 16th July, 1975. 25 30

With that in mind, and fully aware that the Director-General in the meantime was appointed also as an acting Director of the department of posts, I think counsel for the applicants was right in lodging criticism against the Commission for failing to take into account at least the views of Mr. Christodoulou 35

who was still in the service. Further, I would add that this would have been the best and only course, in the interest of the service, and also to do justice to the work of all the candidates. Indeed, he could make the work of the Commission
5 much easier, once he was the second in command, and was aware of the capabilities and failures of all the candidates.

I must confess that in going through the minutes and the statement of the Director-General who became an acting Director of Posts, I entertained some doubts—even assuming
10 that the Commission was entitled to appoint him as an acting Director in the particular circumstances—whether the Ag. Director followed the proper course in seeking advice from a person who had left the service and was no longer in a position to know what was going on. With respect, once the Ag. Director
15 consulted the retired Director of Posts, it pre-supposes that he was not in a position to make the proper recommendation as demanded by our section 44(3) of Law 33/67, particularly so when there was no sufficient material before the Commission to know whether the Ag. Director-General was putting forward
20 his personal views or those of the ex-Director. Indeed, as the record of the Minutes shows, the Commission has failed to make any inquiries from the Ag. Director-General as to whether he was expressing his own views or those of the retired Director-General, and the Commission relied mostly in promoting the
25 interested parties, on the views of the Ag. Director of Posts who, as I said earlier, sought advice from a person who was no longer in service.

For the reasons I have given, I have reached the conclusion that in the particular facts and circumstances of this case, the
30 Commission has failed to comply with the express command of s.44(3) of Law 33/67, viz., of having before it the recommendations made by the head of the department who follows the work of persons working under him.

Both counsel have very ably argued a number of other points
35 before me, but I think it is better not to deal with them, once I have decided to annul the promotions of the interested parties on the most important point of law, viz., the non-compliance with s.44(3) of Law 33/67.

Recourse succeeds, but in view of the facts of this case, the proper course is not to make an order for costs.

Sub judice decision annulled.

No order as to costs.