

1979 April 25

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

1. CONSTANTINOS CHIMONAS,
2. PLOUTARCHOS GEORGHIOU,

Appellants.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(*Revisional Jurisdiction Appeals
Nos. 135 and 137*).

5 *Public Officers—Promotions—Appellant 1 recommended for promotion
by Head of Department—Having better confidential reports
than interested party and scoring more marks at a written examina-
tion held for the purpose of testing knowledge and ability of the
candidates—Interested party senior to both appellants—Appellant
2 and interested party more or less equally evaluated in the confi-
dential reports—Respondent Commission had to give reasons
for preferring the interested party, instead of appellant 1, in view
of the striking superiority of the latter—But reasonably open
10 to the Commission to prefer interested party instead of appellant
2 in view of the former's seniority.*

15 *Administrative Law—Administrative acts or decisions—Need for
due reasoning—Particularly when a decision is unfavourable
to the subject—Public Officers—Promotions—Striking superiority
of appellant over interested party—Due reasons should have been
given by respondent Commission for preferring the interested party.*

20 By means of these appeals the appellants challenged the judg-
ment* of a Judge of this Court whereby their recourses against
the validity of the promotion of the interested party to the post
of Forest ranger were dismissed. The interested party was
more senior than both the appellants but appellant 1 had better

* See *Hadji Vassiliou and Others v. Republic* (1974) 3 C.L.R. 130.

confidential reports than the interested party and he was recommended for promotion by the Head of the Department. Appellant 2 and interested party were more or less equally evaluated in the confidential reports but none of them was recommended for promotion by the Head of Department. In a written examination which was held for the purpose of testing their knowledge, having regard to the duties of the post of Forest Ranger in accordance with the relevant schemes of service, appellant 1 scored 85 marks, appellant 2 scored 79 marks and the interested party 60 marks.

Regarding the promotion of the interested party notwithstanding the recommendations of the Head of Department in favour of appellant 1, the minutes of the Public Service Commission stated that "the decision was taken by majority of 3 votes to 2, on the basis of his seniority and the Annual Confidential Reports".

Counsel for appellant 1 contended that once the results of the examinations were favourable to the appellant and were made with a view to testing the knowledge and the ability of the candidates, the Commission wrongly made no reference to them in favour of his client; and once there were the recommendations of the Head of Department in favour of appellant 1 and his striking superiority, which appeared in the confidential reports, due reasons should have been given for preferring the interested party and not simply state that the decision was based on seniority and on the confidential reports.

Held, (1) that the need for due reasoning of administrative acts or decisions must be more strictly observed in the case of a decision by Collective Organs, particularly when such decision is unfavourable to the subject; that having regard to the striking superiority of appellant 1 the respondent Commission was bound to give due reasons for preferring the interested party in a way justifying the principle for the need of giving reasons; that, therefore, in the light of the striking superiority of appellant 1 and in the absence of convincing reasons the appeal of this appellant will be allowed and the relevant decision of the respondent Commission will be annulled.

(2) That in view of the seniority of the interested party and the observations in his confidential reports that he was trying his

best this Court has reluctantly reached the conclusion that it was reasonably open to the Commission to prefer the interested party in the particular circumstances of this case; accordingly the appeal of appellant 2 must fail.

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Appeal of appellant 1 allowed.

Appeal of appellant 2 dismissed.

Cases referred to:

Bagdades v. Central Bank of Cyprus (1973) 3 C.L.R. 417 at pp. 428, 429.

10 Appeals.

Appeals against the judgment of a Judge of the Supreme Court (A. Loizou, J.) given on the 28th February, 1974 (Revisional Jurisdiction Cases No. 213/72 and 241/72) whereby appellants' recourses against the promotion of the interested party Costas Stavrou were dismissed.

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K. Talarides, for the appellant in Appeal No. 135.

L.N. Clerides, for the appellant in Appeal No. 137.

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

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Cur. adv. vult.

TRIANAFYLLIDES P.: The Judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

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HADJIANASTASSIOU J.: In these two consolidated cases, the two appellants, Constantinos Chimonas and Ploutarchos Georghiou appeal against the Judgment of a single judge of this Court on the ground that he erroneously reached the conclusion—having regard to the totality of the material before the Commission—to promote the interested party Costas Stavrou in preference and instead of the appellants, and because there was no sufficient or any material justifying the Commission to disregard the recommendation of the head of the department, and the striking seniority, merit and qualifications of the appellants.

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THE FACTS:

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The post of Forest Ranger is a promotion post from the post of Forester, and there were 140 foresters as candidates for the vacant post. On the 8th December, 1971, the Commission

met in the presence of Mr. G. Seraphim, the Director of the Department of Forests, and having considered the merits, qualifications, experience and seniority of all foresters holding, on secondment, the permanent post of Forest Ranger, as well as all those holding on secondment the temporary Dev. post of Forest Ranger, as reflected in their personal files and in their annual confidential reports, proceeded and considered at the same time the merits, qualifications, experience and seniority of a number of officers holding the post of forester as reflected in their personal files and in their annual confidential reports. Then, the meeting was adjourned till the 5th January, 1972, and on that date, once again in the presence of Mr. G. Seraphim, the Commission proceeded and considered the merit, qualifications, experience, and seniority of the remaining officers holding the post of forester, as reflected in their personal files and in their annual confidential reports.

There is no doubt that the Commission, in view of the great number of candidates, was not in a position to select one officer for that post of Forest Ranger, and the Director of the Department of Forests was authorized to hold a written and/or oral examination with a view to testing the candidates' knowledge having regard to the duties and responsibilities of the post of Forest Ranger in accordance with the relevant scheme of service. The Commission finally decided that the Foresters who were found on the whole to be suitable for the post of Forest Ranger should be asked to take the examination. According to the minutes of the Commission, there were 13 candidates, and among those there were the two appellants, Constantinos Chimonas and Ploutarchos Georghiou, as well as Costas Stavrou, the interested party.

The examinations were held on 26th January, 1972, at the Production Centre, and the subjects given by the Director of the Centre were two: the first was "What are the duties and responsibilities of the post of a Forest Ranger"; and the second subject was "Any suggestions for improving the methods of carrying out the duties and responsibilities of Forest Ranger. In spite of the fact that no disclosure was made as to who set out the subjects, and no indication who corrected the papers, the 13 candidates were given these pass marks:-

Constantinos Chimonas	85	40
Ploutarchos Georghiou	79	
Costas Stavrou	60.	

THE SCHEME OF SERVICE:

The Forest Ranger is a promotion post, and the duties and responsibilities are the following:-

5 "In charge of a forest range, which is a sub-division of a Forest Circle, or in charge of a sub-section of a Specialist Branch; responsible for the supervision of Foresters in his Range and for the co-ordination of their work; for liaison in all technical and personnel matters between them and his immediate superior; payment of labourers and collection of revenue; direct supervision of forestry operations; maintenance of costings, statistics and other records. May be required to take charge of a Circle or Section in the absence of an A.F.O. Any other duties which may be assigned to him".

15 The qualifications required are these:-

20 "Graduate of the Cyprus Forestry College or other equivalent school of Forestry; considerable experience of technical forestry operations; ability to control and supervise staff and labour, good leader. Knowledge of English would be an advantage".

PARTICULARS OF SERVICE OF BOTH APPLICANTS:

According to a table showing the particulars of the Government service, the first applicant, Constantinos Chimonas, was appointed on 1st August, 1954 to the post of Forest Foreman; on 1st January, 1956 he became a Forest Guard; on 1st September, 1960 he became Forester (1st Gr.); and on 1st January, 1971, the post of Forester was restyled.

30 The second applicant, Ploutarchos Georghiou, was appointed on 1st February, 1950 as a Forest Foreman; on 1st February, 1955 he became a Forest Guard; on 1st September, 1960 he became Forester, 1st Grade, and on 1st January, 1971, the post of Forester was re-styled.

PARTICULARS OF SERVICE OF INTERESTED PARTY:

35 Interested Party Costas Stavrou was appointed on 1st October, 1949, as a Forest Foreman; on 31st December, 1951 he became a Forest Guard; on 1st August, 1955 he became a Forester (1st

Grade). On 1st January, 1971 this post was restyled; and finally on 1st July, 1972, he was promoted to Forest Ranger (secondment to the Temp. Dev. post).

QUALIFICATIONS OF APPLICANTS:

Constantinos Chimonas:	5
Pancyprian Gymnasium 1947-49	
Graduate of the Practical School of Pedhoulas 1949-53	
Graduate of the Forestry College 1958-60	
English Lower 1953	
College Qualifying examination 1955	10
Passed Law for taking statements 1959.	
Ploutarchos Georghiou:	
Practical School Pedhoulas 1940-45	
Forestry College Exam. 1958-60	
College Qualifying Exams 1953	15
Pass Law for taking statements 1955.	

QUALIFICATIONS OF INTERESTED PARTY:

Costas Stavrou:	
English School and Professional Institute Nicosia 1931-32	
High Commercial Lyceum N'sia 1932-35	20
Forestry College 1953-55	
Forest Guards Qual. Exam. 1950	
Passed Law for taking statements.	

CONFIDENTIAL REPORTS OF APPLICANTS:

Constantinos Chimonas:	25
1970- 2 "excellent", 8 "very good".	
Observations:	
"He is a promising young fellow. He is very good in Accounting work as well as in clerical work generally. During the course of his service in this division he has worked very hard and he might be recommended for <i>accelerated promotion</i> ".	30
Views of countersigning officer:	
"He should be promoted to the post of Forest Ranger as recommended above. As a clerk in my division he	35

does not bother for overtime work, he is a sound and hard worker, apart from having his own ideas. Very good in accounting work. He has got family obligations, two sisters unmarried whom he supports”.

5 1971- 5 “excellent”, 5 “very good”.

Observations:

“Very good official, he discharged his duties as clerk of this division very efficiently and in an exemplary manner. Very accurate in his accounts. Recommended for accelerated promotion”.

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Views of Countersigning Officer:

“It is high time he should be promoted to the post of Forest Ranger. I hope with the new vacancies this year he will be amongst the lucky ones, a post which he very much deserves”.

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1972- BLUE REPORT

6 “excellent”, 4 “very good”.

Observations:

“Strongly recommended for accelerated promotion. He is handling the office work in an excellent manner particularly accounting work.

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Views of Countersigning Officer:

“Strongly recommended for accelerated promotion”.

Ploutarchos Georghiou:

25 1970- 10 “very good”.

Observations:

“Employed during the years on several forestry courses and showed himself very good in the execution of his duty, graduate of the Forestry College”.

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Views of Countersigning Officer:

“This forester worked under me for 2 years in Troodos circle and 2 years in Adelphi circle. While in Troodos he had troubles with his F.R. Now in Adelphi he is completely changed. I consider him suitable for promotion”.

1971- 3 "excellent", 7 "very good".

Observations:

"He is an honest and hard working official, he carries out his duties in the most satisfactory way in all types of Forestry works. Especially he showed great zeal in trees falling operations. He is an energetic forest officer and suitable for promotion to the post of Forest Ranger". 5

Views of countersigning officer:

"He did his work very good, he has to be considered for promotion". 10

1972- 4 "excellent", 6 "very good".

Observations:

"He is an honest, hard working official; he carries out his duties in the most satisfactory way in all types of Forestry works. He is an energetic Forest official and suitable for promotion to the post of Forest Ranger". 15

Views of countersigning Officer:

"He is doing his work very good and consideration to be given to him for promotion".

CONFIDENTIAL REPORTS OF INTERESTED PARTY: 20

Costas Stavrou:

1969- 3 "excellent", 7 "very good".

Observations:

None.

Views of countersigning officer: 25

"He is trying his best. He had only 3 days leave of absence and 6 days sick leave".

1970- 1 "excellent", 9 "very good".

No observations and no remarks by countersigning officer.

1971- 3 "excellent", 5 "very good", 2 "good". 30

Again, no observations and no remarks by the countersigning officer.

On the 28th February, 1974, the learned Judge, delivering his judgment, had this to say at p. 33:-

5 “As regards the candidates serving in the post of Forester, and who had taken a written exam. in accordance with item 1 of the minutes of 5.1.1972, the Ag. Director of the Department stated that he had obtained the views of the senior officers of the Department and the majority of them, having in mind their work, experience and the Annual Confidential Reports, preferred Messrs. Chr. Economides, Chr. Stylianides and C. Chimonas for secondment to the temporary (Dev.) post.

10 Bearing in mind all the above, the Commission decided that—

(iii) the following Foresters be seconded to the temporary (Dev.) post of Forest Ranger w.e.f. 1.7.1972:
 15 Chr. Economides
 Chr. Stylianides
 Costas Stavrou.

The decision regarding all the officers referred to above was taken unanimously (with the exception of— Costas Stavrou).

20 In the case of Mr. Costas Stavrou the decision was taken by majority of 3 votes to 2, on the basis of his seniority and the Annual Confidential Reports. (The Chairman and Mr. Y. Louca dissented). The Chairman preferred Mr. M. G. Michaelides and Mr. Y. Louca preferred
 25 Mr. C. Chimonas to Mr. Stavrou”.

Counsel appearing for Chimonas filed 7 grounds of appeal, but finally he relied only on grounds (3), (6) and (7), which read as follows:—

30 “(3) The said Commission having decided to ask the said Director to hold examinations should have abided by the results or at least given reasons for not doing so in the case of the appellant.

(6) The said Commission having decided to hear and in fact act upon the views of the majority of the senior officers of the department in the case of 2 interested parties should have acted upon them in the case of the appellant, or at least given due reasons for not doing so; and
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(7) that the selection by the said Commission of Costas Stavrou was not duly reasoned in view of the results of the examinations and the contents of the confidential reports of the appellant and the said Stavrou”.

The learned trial Judge in dealing with the complaint of counsel that the decision of the Commission was not duly reasoned in preferring the interested party Costas Stavrou had this to say at pp. 37, 38 and 39:—

“I have found no reason in the relevant minute of the Respondent Commission and the material in the file to persuade me to agree with this proposition. I need not repeat here the principles regarding due reasoning which are well settled and are to be found in a number of decisions. (see, inter alia, *The Republic v. Lefcos Georghiades* (1972) 3 C.L.R. 594 at p. 690, *Costas Hadji Constantinou and The Republic* (1973) 3 C.L.R. 65 at p. 70, *Evdokia Stavrinou and The Republic* (1973) 3 C.L.R. 584 at p. 591). Suffice it to say that it has to be clear and that the concrete factor upon which the administration based its decisions for the occasion under consideration, be specifically mentioned, the nature of the reasoning being always a question of degree depending upon the nature of the decision concerned, and I am satisfied that the sub judice decisions are duly reasoned and their reasoning is fully supplemented from the material in the relevant file...

As regards Costas Stavrou, the Commission did not follow the recommendations and preferred him instead of the applicant Chimonas who was recommended. This being so, they had, in accordance with the established principle (vide *Theodossiou v. The Republic*, 2 R.S.C.C. at p. 48) to give cogent reasons for disregarding same. The reasons given by them in the concluding paragraph of the minutes hereinabove set out, were that they relied on his seniority and the annual confidential reports. In this respect, we have that Costas Stavrou was first appointed as Forest Foreman on the 1st October, 1949 and became a Forester 1st Grade on the 1st August, 1955 until the 31st December, 1970 when the post was restyled as ‘Forester’ as from the 1st January, 1971_____

I do not think that it will serve any useful purpose if

I produce here the contents of the confidential reports of applicants and interested parties and proceed with a detailed comparison of same, but as far as Costas Stavrou is concerned, who was promoted inspite of the fact that he was not recommended by the Head of the Department, we have his confidential reports for 1971 rated him between good and excellent on the various items of appreciation. Applicant Chimonas has equally favourable reports, and in addition he was recommended for accelerated promotion by his reporting officers. With this recommendation the countersigning officer is in agreement and remarks with an element of cynicism that he hoped with the new vacancies he would be amongst the lucky ones to be promoted to the post of Forest Ranger which he very much deserves.

I have come to the conclusion that the reasons given by the Respondent Commission in disregarding the recommendation of the Head of the Department in respect of the promotion of Interested Party Costas Stavrou are adequate, in the circumstances, and supported by the material in the file”.

Counsel for the appellant in arguing together the three grounds of his appeal submitted that once the result of the examinations were favourable to the appellant and were made with a view of testing the knowledge and the ability of the thirteen candidates, the Commission wrongly made no reference to them in favour of his client, and indeed once there was the recommendation also of the Head of the Department, and his striking superiority which appears through the lines of his confidential reports, reasons should have been given for preferring the interested party. With that in mind counsel further argued—in view of the fact that the interested party Costas Stavrou had very poor reports—that this was the case where the Commission ought to have given due reasons and not simply say in their minutes that they base their decision on seniority and on the material in the files.

Having considered very carefully the arguments of both counsel we find ourselves in agreement with counsel for the appellant that having regard to the striking superiority of his client the Commission was bound to give due reasoning justifying

the principle for the need of giving reasons. If authority is needed the case of *Kyriacos G. Bagdades v. The Central Bank of Cyprus* (1973) 3 C.L.R. 417, makes it very clear that reasons are necessary. In delivering that judgment, I had this to say at pp. 428, 429:-

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“.....I think I ought to reiterate what I said in *Papazachariou v. The Republic*, (1972) 3 C.L.R. 486, that due reasoning must be more strictly observed in the case of a decision having been taken by a collective organ, and particularly when such decision is unfavourable to the subject. The whole object, of course, of such rule is to enable the person concerned as well as the Court, on review, to ascertain in each particular case whether the decision is well-founded in fact and in accordance with the law. *HadjiSavva v. The Republic* (1972) 3 C.L.R. 174.

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Having considered the arguments of both counsel and in view of the fact that one of the concepts of administrative law is that administrative decisions must be duly reasoned, that must be clearly read as meaning that proper adequate reasons must be given. The reasons that are set out in the decision of the Committee whether they are right or wrong, ought to have been reasons which not only would be intelligible, but also can reasonably be said to deal with the substantive points raised, i.e. why the interested party was preferred and what were the other relevant facts which weighed so much in the mind of the Committee in preferring the interested party instead of the applicant, who, as I said earlier, had a longer service with the bank. In the absence of those reasons, in reviewing the said decision, I am unable to ascertain whether the decision is well-founded in fact and in accordance with the law, and in the light of this finding that the said decision is not duly reasoned, exercising my powers under Article 146, I would declare that such decision or act is null and void and of no effect whatsoever”.

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For the reasons we have given at length, we would add that the Courts are here to administer justice. The concept of justice is not confined to the interests of the particular litigants; it embraces and extends to the protection of the public weal. The issues involved in this litigation have an importance of

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direct concern to the whole of the public service, and we repeat, that reasons, convincing reasons, should be given.

In the light of the striking superiority of the appellant, Constantinos Chimonas, and in the absence of convincing
5 reasons, we would annul the decision of the Commission and allow the appeal.

Turning now to the appeal of Ploutarchos Georghiou, counsel for the appellant argued that his client had received 77 marks as compared to the interested party Costas Stavrou, who had
10 received only 60 marks, and in addition his client was recommended for promotion, and that the interested party was senior but not recommended for promotion.

We have considered very carefully what was said by counsel but because of the seniority of the interested party and the
15 observations made that he was trying his best, we have reached the conclusion—reluctantly—that it was reasonably open to the Commission to prefer the interested party in the particular circumstances of this case.

For these reasons, we would dismiss the appeal as we are
20 in agreement with the learned Judge that the appellant has failed to satisfy us that the discretion in promoting Costas Stavrou has been improperly or wrongly exercised.

Appeal dismissed, but in the circumstances we are not making an order for costs.

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Appeal of appellant 1 allowed.
Appeal of appellant 2 dismissed.
No order as to costs.