

1983 December 21

[SAVVIDES, J ]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTONIOS L KOUFETTAS.

*Applicant.*

v

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION.

*Respondent*

(Case No. 499/80)

*Public Officers—Promotions—Head of Department—Recommendations—Annulment of promotion by Supreme Court—Reconsideration of the matter—Person holding post of Director of Department at time of reconsideration not Director at time when annulled promotion was made—He is the proper person to make recommendations as Head of Department under section 44(3) of the Public Service Law, 1967 (Law 33/67)—But his recommendations ought not to have been taken into account because they were inconsistent with the overall picture presented by the confidential reports*

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*Public Officers—Secondment—Does not create vested rights in favour of its holder—Previous secondment of interested party to post of Senior Surveyor the subject of a recourse—In promoting him to the permanent post such secondment should not have been taken into consideration*

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*Public Officers—Promotions—Annulment by the Supreme Court upon a recourse—Reconsideration of the matter—Public Service Commission can take into consideration factual situation existing at time of annulled decision*

*Public Officers—Promotions—Merit—Qualifications—Seniority—Applicant and interested party more or less on equal footing regarding merit and qualifications but applicant senior by 8 years—His seniority should have been taken into consideration.*

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Following the annulment of the promotion of the interested party to the post of Senior Surveyor by the Supreme Court on the 22nd May, 1980 the Public Service Commission met on the 26th September to reconsider the filling of the post. The Director of the Department of Lands and Surveys, (Mr. Sofocleous) who when the annulled promotion was made in 1978, was not the Director of the Department, recommended for promotion the interested party as the most suitable; and the respondent Commission after taking into consideration the views of the Head of Department, the qualifications and seniority of the candidates came to the conclusion that the interested party was superior on the basis of the totality of the established criteria (merit, qualifications, seniority) to the other prevailing candidate—the applicant—and decided to promote again the interested party. The Commission took, also, into consideration the fact that the interested party was considered by it on 10.9.1976 “as the most suitable for secondment as from 15.11.1976 to the same temporary post (Senior Surveyor) and that ever since his performance in this higher post has proved very satisfactory”.

Applicant and interested party possessed similar qualifications. but the overall picture on merit was in favour of the applicant. Also he had 8 years seniority over the interested party.

Upon a recourse by the applicant the following issues arose for consideration:

- (a) Whether Mr. Sofocleous was the competent person to make recommendations under section 44(3) of the Public Service Law, 1967 (Law 33/67).
- (b) Whether the recommendations of the Director were such as to be of material value to be taken into consideration by the respondent Commission.
- (b) Whether the respondent Commission could take into consideration in favour of the interested party the fact that on the 10th September 1976 he was considered as the most suitable for secondment in the temporary post of Senior Surveyor, given, also, that such secondment was the subject of another recourse which was pending before the Supreme Court and in which the decision was reserved.

- (d) Whether the conclusion reached by the respondent that as the material time the interested party was superior to the applicant on the basis of all the established criteria, merit, qualifications and seniority, was warranted by the material which was before the respondent Commission when the sub judge decision was taken. 5

*Held*, (1) that though when the promotion which was annulled took place, the Director of Lands and Surveys was Mr. Ieronymides, in the meantime Mr. Ieronymides had retired and when the sub judge decision was taken, Mr. Sofocleous was the Director of the Department of Lands and Surveys; that once at the material time Mr. Sofocleous was the Director of Lands and Surveys and the vacant post which had to be filled was that of Senior Surveyor in the same Department, he was the proper person to be invited at the meeting, as the Head of the Department, and make his recommendations (see section 44(3) of Law 33/67). 10 15

(2) That when the recommendations of the Head of a Department are inconsistent with the overall picture presented by the confidential reports, such recommendations should not be taken into account; that the picture appearing from a perusal of the confidential reports of the two candidates for the years 1976-1977 which was the material time to be taken into consideration, as the promotion had to be considered as things stood in May, 1978 does not support the recommendations of the Director of Lands and Surveys at the meeting when the sub judge decision was taken and it is clear that his recommendations are inconsistent with the picture appearing from the confidential reports; that in 1978 he was not the Director of Lands and Surveys and the views expressed before the respondent are probably views formed after 1978 which should not have been taken into consideration; and that, therefore, the respondent Commission by relying on such recommendations acted on a misconception of fact which is a ground for the annulment of the sub judge decision. 20 25 30 35

(3) That secondment does not create vested rights in favour of its holder; that taking into consideration the fact that such secondment was subject to a recourse before the Supreme Court in which judgment was reserved and also the fact that by the 40

decision of the Supreme Court the promotion of the interested party to the post of Senior Surveyor was set aside, the previous secondment to such post was a matter which should not have been taken into consideration; that, also, it is very likely that the Commission must have taken into consideration facts which followed the date on which the assessment had to be made and which was May 1978; accordingly the sub judice decision has to be annulled on this ground too.

(4) That the seniority of the applicant should have been taken into consideration since all other factors were, at least more or less, equal; that the Commission erroneously found that the interested party was better than the applicant concerning all these factors, that is merit, qualifications and seniority and failed to give due weight to the seniority of the applicant once the interested party was not better in merit and qualifications; that in effecting promotions, merit, qualifications and seniority of the candidates must be duly taken into consideration in that order, but if all other factors are equal, seniority should prevail; accordingly the sub judice decision must be annulled on this ground as well.

*Sub judice decision annulled.*

Cases referred to:

*Koufettas v. Republic* (1980) 3 C.L.R. 226 at pp. 231, 232;

*Ioannou v. Republic* (1976) 3 C.L.R. 431;

*Ioannou v. Republic* (1977) 3 C.L.R. 61;

*Partellides v. Republic* (1969) 3 C.L.R. 291 at p. 296;

*Hadjioannou v. Republic* (1983) 3 C.L.R. 286;

*Ioannou v. Republic* (1983) 3 C.L.R. 449;

*Smyrniotis v. Republic* (1983) 3 C.L.R. 124;

*Karageorghis v. Republic* (1982) 3 C.L.R. 435;

*Michaélouides v. Educational Service Committee* (1982) 3 C.L.R. 963.

#### Recourse.

Recourse against the decision of the respondent to promote the interested party to the permanent post of Senior Surveyor in the Lands and Surveys Department in preference and instead of the applicant.

C. *Chr. Loizou*, for the applicant.

R. *Gavrielides*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

SAVVIDES J. read the following judgment. The applicant, by this recourse, challenges the promotion by the respondent of Alexandros Pantazis, who consequently is the interested party in the present proceedings, to the permanent post of Senior Surveyor in the Lands and Surveys Department with effect as from 1st January, 1978. 5

The applicant was first appointed in the public service in June 1956 and ever since he has been serving in the Lands and Surveys Department. On 1st October, 1966 he was promoted to the post of Surveyor 1st Grade, and as from the 15th May, 1979, to the post of the Senior Surveyor. 10

In 1978 certain vacancies existed in the post of Senior Surveyor in the Lands and Surveys Department and the applicant was a candidate for promotion to such post. On 6th May, 1978 the respondent promoted George Gavriel and the interested party to the post of Senior Surveyor. The applicant felt aggrieved by such decision and filed Recourse No. 353/78 challenging such promotion. At the commencement of the hearing he withdrew his recourse against the promotion of George Gavriel and proceeded only against the interested party. Pending the determination of such recourse the interested party was promoted as from the 15th May, 1979 to the higher post of Lands Officer and as a result of the consequential vacancy which was created by such promotion, applicant was promoted to the post of Senior Surveyor as from the 15th May, 1979. 15  
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By the decision of the Supreme Court in Recourse No. 353/78, which was delivered on the 22nd May, 1980, the promotion of the interested party was annulled as having been effected contrary to law since it was not possible to promote him merely by virtue of the conversion of the temporary post of Senior Surveyor which he was then holding into a permanent one. Triantafyllides, P., in annulling such promotion, had this to say: 30

“How a promotion is effected is laid down by sections 31(2) and 44(2) of the aforesaid Law and, therefore, there had to be taken into account the merit, qualifications and seniority of all public officers eligible for promotion to the post in question, that is of those already serving in the immediately lower grade of Surveyor, 1st Grade, including, of course, of interested party Pantazis, who had 35

been seconded to the abolished temporary post of Senior Surveyor, and of the applicant who was serving in the post of Surveyor, 1st Grade. As I have already stated, such course was not followed by the Commission; and my conclusion that such course was not followed is reinforced by the to that effect letter of the Director of the Department of Lands and Surveys, dated April 5, 1978 (exhibit 3), which is referred to in the relevant, above quoted, minutes of the Commission". (see *Koufettas v. Republic* (1980) 3 C.L.R. 226 at 231).

In consequence of such decision the respondent, acting on the advice of the Attorney-General of the Republic, decided at its meeting of 21.7.1980, to annul also the subsequent promotion of the interested party to the higher post of Lands Officer and restore him to the post he was holding prior to his promotion to the permanent post of Senior Surveyor. At the same meeting it decided to consider the filling of the post of the Senior Surveyor, at a later meeting, which in fact took place on the 26th September, 1980. At the meeting of the 26th September, 1980 when the sub judice decision was taken, the Director of Lands and Surveys, Mr. George Sofocleous, was invited to attend in order to express his opinion and make his recommendations about the candidates.

The material part of the minutes, copy of which is before me, as Annex 2 to the written address of counsel for respondent, reads as follows:

"The Chairman invited the Director to express his opinion and views about the filling of the said post, after taking into consideration as candidates all those who were possessing at the material time, that is the 6.5.1978, the immediately lower post of Surveyor 1st Grade, including Mr. Antonis Koufettas but not the following 6 officers who held the temporary post of Surveyor 1st Grade on secondment and who, according to the opinion of the Deputy Attorney-General contained in his letters under No. 34(c)/61/4 and dated 23.7.1980 and 17.9.1980, cannot be considered as candidates for the promotion to the post of Senior Surveyor".

Then the list of the candidates who were not eligible follows and the decision proceeds as follows:

“Thereafter, Mr. Sofocleous mentioned the following: Though at the material time when the filling of the vacant permanent (Development Fund) posts of Senior Surveyor was effected as from 1.1.1978, he was not the Director of the Department, nevertheless, due to his frequent professional contact with them by virtue of his previous post and the fact that at intervals he was Acting Director of the Department, and, also, from other material in their departmental personal files, etc., he came to the conclusion that at the material time Mr. Antonis Koufettas and Alexandros Pantazis were superior in merit, qualifications and seniority to all other candidates; he recommended, however, as the most suitable between the two, Mr. Alexandros Pantazis, who has better personality and had been more co-operative with the personnel and more speedy in the performance of his work. 5 10 15

Following that the Commission, after having considered all material before it, concerning all the candidates as on 6.5.1978, including the personal files and the confidential reports till the 31.12.1977, and after having taken into consideration the views and the recommendations of the Director of Lands and Surveys Department, came to the conclusion that Mr. Antonis Koufettas and Alexandros Pantazis who, it must be noted, were at the material time, the only candidates possessing the additional qualification provided by the schemes of service, were superior on the basis of the established criteria over all other candidates. 20 25

Finally, the Commission proceeded to compare the two aforementioned candidates and after having taken into consideration— 30

- (a) the confidential reports from which it emanates that Mr. Pantazis was till 1975 (included), excellent, in 1976 very good and in 1977 (assessed in connection with the higher duties of the temporary post of Senior Surveyor to which he was seconded as from 15.11.1976) also very good, whereas Mr. Koufettas was till 1973 very good (in 1974 and 1977 he was absent on scholarship abroad), in 1976 also very good and in 1977 again very good (with assessment during the said year 35

approaching excellent in accordance with the assessment of the countersigning officer),

- 5 (b) the fact that Mr. Pantazis was considered by the Public Service Commission on 10.9.1976 as the most suitable for secondment as from 15.11.1976 to the same temporary post (Senior Surveyor) and that ever since his performance in this higher post has proved very satisfactory,
- 10 (c) the findings and views of the Director of Lands and Surveys concerning the above two officers till the material date, and
- (d) the qualifications and seniority of the said officers in the service.

15 came to the conclusion that Mr. Pantazis at the material time was superior on the basis of the totality of the established criteria (merit, qualifications, seniority) to the other prevailing candidate Mr. Koufettas and decided to promote again Mr. Alexandros PANTAZIS in the permanent (Development Fund) post of Senior Surveyor as from 1.1. 20 1978, the effective date of the annulment by the Supreme Court of his previous promotion to the same post".

When the applicant came to know about such decision, as a result of its publication in the official Gazette of the Republic, he wrote a letter dated the 9th December, 1980 to the Chairman 25 of the Public Service Commission (red 60 in his personal file) in which after making reference to the decision of the Supreme Court in the previous recourse and to the sub judice decision, he went on as follows:

30 "As the last promotion of Mr. Pantazis to the post of Senior Surveyor takes effect retrospectively, without any justification, which affects my interests concerning the question of seniority, I request you to reconsider your decision so that the appointment of Mr. Pantazis to the post of Senior Surveyor, takes effect from the date when such 35 decision was taken by you and not retrospectively.

In any case, I reserve my rights to contest in time the seniority of Mr. Pantazis over me, taking into consideration



the fact that my appointment to the post of Senior Surveyor was effected as from 15.5.1979".

Following that, the applicant filed the present recourse on 30.12.1980. In reply to his letter, the respondent sent to the applicant the following letter dated 31st December, 1980. 5

"I have instructions to refer to your letter dated the 9th December, 1980, in connection with the promotion of Mr. Alexandros Pantazis to the post of Senior Surveyor and to inform you as follows:

After the annulment of the decision of the Public Service Commission by the Supreme Court in your recourse No. 353/78, the Commission reconsidered the question of the filling of one vacant permanent (Development Fund) post of Senior Surveyor in the Lands and Surveys Department. 10

During the re-examination of the subject, the Committee having taken into consideration all material before it, which concerned each one of the candidates at the time when the decision of the Commission, which was annulled by the Supreme Court, was taken, including the Confidential Reports and Personal Files and also after having heard the views and recommendations of the Director of the Department of Lands and Surveys, decided, on the basis of merit, qualifications and seniority of all the candidates, amongst whom you were included, that Mr. Pantazis was entitled to be promoted to the post of Senior Surveyor. 15  
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The promotion of Mr. Pantazis was given retrospective effect as from 1.1.1978 which was the date on which his previous promotion, which was cancelled, took effect".

The grounds of law which were advanced by learned counsel for the applicant and were expounded by him in his written address in support of his contention that the sub judice decision should be annulled, are briefly the following: 30

(a) The respondent wrongly took into consideration in favour of the interested party the recommendations of the Director of Lands and Surveys, Mr. Sofocleous, at its meeting of the 26th September, 1980. 35

(b) The respondent wrongly took into consideration in

favour of the interested party the fact that he was considered by the respondent Commission on the 10th September, 1976 as the most suitable for secondment as from the 15th November, 1976 to the post of Senior Surveyor.

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(c) The respondent wrongly came to the conclusion that interested party was superior to the applicant on the totality, as the applicant is strikingly superior in merit, qualifications and seniority compared with the interested party.

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(d) That even if it is found that the applicant is not strikingly superior to the interested party in merit and qualifications, his superiority over the interested party concerning seniority, should have been taken into consideration as a decisive factor for the promotion, and lastly,

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(e) that the respondent wrongly promoted the interested party retrospectively as from the 1st January, 1978.

It is the contention of counsel for applicant in support of his first ground of law, that Mr. Sofocleous was not the competent person to make recommendations under section 44(3) of the Public Service Law 33/67 in that he was not the Head of the Department in which the vacancy existed. Furthermore, counsel contended that, even in case it is found that Mr. Sofocleous was the competent person to make the recommendations, his recommendations should not have been taken into consideration because they are vague and based on wrong criteria. Mr. Sofocleous, counsel added, had no personal contact with the candidates, as he admitted, so as to enable him to make the recommendations. Therefore, the respondents acted under a misconception of fact and/or law in taking into consideration such recommendation.

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I find that the first part of the contention of counsel is entirely unfounded. From what appears from the material before me, the position is that though in 1978, when the promotion which was annulled took place, the Director of Lands and Surveys was Mr. Ieronymides, in the meantime Mr. Ieronymides had retired and when the sub judice decision was taken, Mr. Sofocleous was the Director of the Department of Lands and Surveys.

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Section 44(3) of Law 33/67, provides as follows:

“Κατὰ τὴν προαγωγήν ἡ Ἐπιτροπὴ λαμβάνει δεόντως ὑπ’ ὄψιν τὰς περὶ τῶν ὑποψηφίων ἐτησίαις ἐμπιστευτικὰς ἐκθέσεις καὶ τὰς ἐπὶ τούτῳ συστάσεις τοῦ Προϊσταμένου τοῦ Τμήματος ἐν τῷ ὁποίῳ ἡ κενὴ θέσις”.

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The English translation of which is as follows:

(“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 the Department in which the vacancy exists”).

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Once at the material time Mr. Sofocleous was the Director of Lands and Surveys and the vacant post which had to be filled was that of Senior Surveyor in the same Department, he was the proper person to be invited at the meeting, as the Head of the Department, and make his recommendations.

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I come next to deal with the second part of the contention whether the recommendations made by Mr. Sofocleous were such as to be of material value to be taken into consideration by the respondent Commission. It is well established that when the recommendations of the Head of a Department are inconsistent with the overall picture presented by the confidential reports, such recommendations should not be taken into account. (see *Niki Ioannou v. Republic* (1976) 3 C.L.R. 43) and *Ioannou Republic* (1977) 3 C.L.R. 61).

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As it appears from the minutes of the meeting at which the sub judice decision was taken, reference to which has already been made, Mr. Sofocleous stated that though he was not the Director of the Department at the material time, that is May, 1978, nevertheless, from his professional contact with them by virtue of his previous post and the fact that at intervals he was Acting Director of the Department, he came to the conclusion that Mr. Pantazis had better personality and was more co-operative with the personnel and more speedy in the performance of his work. Once, however, as he admitted, he was not at the material time the Head of the Department, so as to have daily contact with the two candidates, one has to examine their confidential reports in order to ascertain whether

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the recommendation of the Head of the Department is consistent with the picture in the confidential reports.

5 The picture as appearing from the two last confidential reports prior to May, 1978, the date on which the post had to be filled, is as follows:

10 For the year 1976 applicant is graded on one topic as excellent, on seven topics as very good and on two topics as good, whereas the interested party is graded with ten very good on ten topics. One the topic of ability to co-operate with colleagues, they  
15 are both graded very good. Also, on the topic concerning competence in present work. Regarding courtesy in dealing with the public, applicant is graded excellent, whereas the interested party is graded very good. The following observations, however, were made in respect of each one of the two candidates  
by the reporting officer:

In the case of the applicant, the following appears in his confidential report for that year:

20 "Although he is of higher education, yet, he is slow at work and hardly grasps the nature of treatment of survey works to be done. In all other respects he is very good".  
and there are no remarks by the countersigning officer.

In the case of the interested party, the following appear in his confidential report for 1976:

25 "Besides the academic qualification he possesses, otherwise he has shown less interest than expected to on the practical exercise of field works that the profession requires, especially in Cyprus where surveys vary from place to place and need special care, study and idiomatic program of execution. His grievance was probably due to desire of promotion.  
30 Now that he has been promoted, I expect him to refrain and cover up what he missed in the past".

The countersigning officer, had this to add:

"Much more was expected from him. His present attitude towards work in the Branch is not far from negative. He

is obstinate and argumentative. Unless he improves, there is little chance of him going higher".

For the year 1977 the applicant was graded on two topics as excellent and on eight topics as very good. The interested party was graded on one topic as excellent, on seven topics very good and on two topics as good. Both were graded as very good concerning competence in present work. Applicant was graded as excellent concerning courtesy in dealing with the public, whereas interested party was graded as very good on the same topic. Applicant was graded as very good concerning co-operation with his colleagues, whereas interested party was graded as excellent. The observations of the reporting officer as recorded in the confidential report of the applicant, read as follows:

"His academic qualification in this profession recommend him to be considered amongst those for promotion".

To that, the countersigning officer had this to add:

"He is commended for passing the (Finals) Direct Membership Examination of the R.I.C.S. His initiative, competence in present work and devotion to duty may be graded to excellent. He deserves high consideration amongst those for promotion".

In the case of the interested party, the observations of the reporting officer were as follows:

"His academic education recommend him to be considered in future for promotion because he still lacks the practical experience in the field survey work".

And to that, the countersigning officer made no comments, thus agreeing with the assessment made.

The picture appearing from a perusal of the confidential reports of the two candidates for the years 1976-1977 which was the material time to be taken into consideration, as the promotion had to be considered as things stood in May, 1978, does not support the recommendations of the Director of Lands and Surveys at the meeting when the sub judge decision was taken and it is clear that his recommendations are inconsistent

with the picture appearing from the confidential reports. In 1978 he was not the Director of Lands and Surveys and the views expressed before the respondent are probably views formed after 1978 which should not have been taken into consideration.

5 Therefore, the respondent Commission by relying on such recommendations acted on a misconception of fact which is a ground for the annulment of the sub judice decision.

I come next to consider the second ground of law advanced by counsel for applicant. In support of such ground, counsel  
10 contended that the respondent Commission wrongly took into consideration in favour of the interested party the fact that on the 10th September, 1976 he was considered as the most suitable for secondment in the temporary post of Senior Surveyor. Such secondment, counsel contended, was the subject of another  
15 recourse under No. 81/77 which was pending before the Supreme Court and in which the decision was reserved. Therefore, such secondment should not be taken into consideration.

It has been held by this Court time and again that secondment does not create vested rights in favour of its holder (see  
20 *Koufettas v. The Republic* (1980) 3 C.L.R. 226 at pp. 231 and 232, *Partellides v. The Republic* (1969) 3 C.L.R. 291). In *Partellides v. The Republic* (supra) at p. 296, the Court had this to observe:

25 "I consider it appropriate time to repeat what has been stated by this Court in a number of cases, that the secondment to a post does not create a vested right to the holder concerned. No doubt, the Public Service Commission quite rightly must take into consideration the secondment  
30 for purposes of considering the experience of a public officer; but, in their search to select the best candidate for the post, the Public Service Commission should carefully consider the merits and the qualifications of each candidate and should not give undue weight to the fact that one of the candidates was acting on secondment to  
35 that particular post".

In the present case, taking into consideration the fact that such secondment was subject to a recourse before the Supreme

Court in which judgment was reserved and also the fact that by the decision of the Supreme Court in Recourse 353/78, the promotion of the interested party to the post of Senior Surveyor was set aside, the previous secondment to such post was a matter which should not have been taken into consideration. 5

Assuming that for considering the experience of the interested party such secondment could have been taken into consideration. I shall proceed to examine whether the reasons given for taking such secondment into consideration are supported by the material in the files which were before the respondent Commission at the time when the sub judice decision was taken. It is stated in the sub judice decision that respondent took into consideration "the fact that Mr. Pantazis was considered by the Public Service Commission on 10.9.1976 as the most suitable for secondment as from the 15th November, 1976 to the same temporary post of Senior Surveyor and that ever since his performance in this higher post has proved very satisfactory". 10 15

The overall picture appearing from the confidential reports of 1976 and 1977 about the interested party and in particular the remarks of the reporting and countersigning officer, tend to prove the contrary than what was found by the respondent and recorded in the sub judice decision. It is very likely that when reaching such conclusion they must have had in mind facts which followed the date on which the assessment had to be made and which was May, 1978. Besides the fact that any performance of the parties after May, 1978, is irrelevant to the present case and should not have been taken into consideration, it cannot escape one's attention the fact that during the year 1980 when the interested party was holding the post of the Senior Surveyor and whose promotion to it was challenged by the applicant, he was the reporting officer of the applicant and in such capacity he assessed his opponent as "good" to which the countersigning officer had to remark "I would assess this person as very good and not good. He has scientific background, he is courteous and positive". 20 25 30 35

Therefore, on this ground the sub judice decision has to be annulled as well.

I come next to consider whether the conclusion reached by

the respondent that at the material time the interested party was superior to the applicant on the basis of all the established criteria, merit, qualifications and seniority, is warranted by the material which was before the respondent Commission when the sub judge decision was taken. On the question of merit, leaving aside the recommendations of the Head of the Department, which, as I have already found, are inconsistent with the picture appearing in the confidential reports and should not have been taken into consideration, a perusal of the assessment of the candidates and of the remarks about each one of them by the reporting and countersigning officer does not place the applicant in an inferior position than the interested party, but one may say that the overall picture on merit is in favour of the applicant in comparison with the interested party.

On the question of qualifications, as it appears from their personal files, they both possess similar qualifications and the one is not superior to the other concerning qualifications.

As to seniority in the previous post which was the post of Surveyor 1st Grade, applicant was appointed to such post on the 1st October, 1966, whereas the interested party was appointed on the 1st March, 1974. There is, therefore, a seniority of about 8 years in favour of the applicant. Such seniority should have been taken into consideration by the respondent Commission since all other factors were, at least more or less, equal. The respondent Commission erroneously found that the interested party was better than the applicant concerning all these factors, that is, merit, qualifications and seniority and failed to give due weight to the seniority of the applicant once the interested party was not better in merit and qualifications.

It has been held by this Court time and again that in effecting promotions, merit, qualifications and seniority of the candidates must be duly taken into consideration in that order, but if all other factors are equal, seniority should prevail. (See, inter alia, *HadjiIoannou v. Republic* (1983) 3 C.L.R. 286, *Ioannou v. Republic* (1983) 3 C.L.R. 449, *Smyrnios v. Republic* (1983) 3 C.L.R. 124, *Karageorghis v. Republic* (1982) 3 C.L.R. 435, *Michaeloudis v. Educational Service Committee* (1982) 3 C.L.R. 963).

Having already reached the conclusion that the sub judge



decision has to be annulled on a number of grounds, I find it unnecessary to deal with the other legal grounds which have been argued by counsel for applicant.

In the result, the sub judice decision is annulled but in the circumstances of the case I make no order for costs.

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*Sub judice decision annulled with  
no order as to costs.*