

1983 January 11

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ARISTIDES IOANNOU.

Applicant.

1.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 51/82).

Public Officers—Promotions—Confidential reports—Not prepared by officer's immediate superior—Reports from immediate superior called for and submitted in the course of the Commission's deliberations.

- 5 *Public Officers—Promotions—Merit—Qualifications—Seniority—Applicant better qualified and slightly senior but interested party superior in merit—No striking superiority established—Sub judice promotion reasonably open to the respondent Commission.*

10 The applicant in this recourse challenged the validity of the promotion of the interested party to the post of Agricultural Research Technician, 1st Grade in the Agricultural Research Institute. In the course of its deliberations the respondent Commission found out that the confidential reports on the applicant for the second half of 1979 and for 1980 had not been prepared by his immediate superior; and asked for such reports from his immediate superior which were submitted. Applicant had 3 1/2 months' seniority over the interested party and possessed more qualifications, but the confidential reports of the interested party were on the whole better.

20 *Held, (1) that by deciding to secure the submission of confidential reports by the appropriate officers, the respondent Commission was acting properly and in full compliance with the law inasmuch as it did not content itself merely to exclude*

matters that ought not to have been taken into account, but it also saw that the proper ones were placed before it for due consideration.

(2) That the slight seniority of the applicant could not tip the scales in favour of the applicant as in any event not all other factors were equal; that, also, the qualifications of the applicant in no way established a striking superiority of the applicant as against the interested party; that considering the material before the Commission as a whole, including all relevant factors that under section 44 of the Public Service Law had to be taken into consideration, the sub judice decision, which is duly reasoned and arrived at after due and meticulous inquiry, was reasonably open to it and there has been no wrong exercise of discretion or abuse or excess of power nor any misconception of fact in any respect; accordingly the recourse should fail.

Application dismissed.

Recourse.

Recourse against the decision of the respondent to promote the interested party to the permanent (Dev.) post of Agricultural Research Technician, 1st Grade in the Agricultural Research Institute in preference and instead of the applicant.

A. Agrotis, for the applicant.

E. Papadopoulou (Mrs.), for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the decision of the respondent Commission to promote the interested party to the permanent (Dev.) post of Agricultural Research Technician, 1st Grade in the Agricultural Research Institute as from the 15th September 1981 is null and void and of no effect whatsoever.

This post is a promotion post and the respondent Commission at its meeting of the 8th September 1980 decided, in view of the regulations governing the establishment of Departmental Boards, under section 36 of the Public Service Law of 1967 (Law No. 33 of 1967, hereinafter to be referred to as the Law) to establish such a Board under the chairmanship of the Director of the Agricultural Research Institute submitted to it (Appendix

3, attached to the opposition), a list of candidates together with their personal files, confidential reports and the Scheme of Service. The said Board met on the 24th February 1981 and after studying the files of the nine candidates excluded two of them on the ground that they had not completed a five year service in the post of Agricultural Research Technician 2nd Grade, as required by the relevant Scheme of Service. After taking into consideration their respective merit, qualifications and seniority, it recommended by its report (Appendix 4) four officers, among whom there were the applicant and the interested party.

The respondent Commission at its meeting of the 22nd May 1981, heard the Director of the Agricultural Research Institute who expressed the following views and recommendations:

“Mr. Sofoklis Olymbios is recommended for the reason that his performance, both qualitative and quantitative, as well as his devotion to duty, his consistency and his keenness in work are superior to those of the other candidates.

Mr. Aristides Ioannou has slightly higher qualifications but on the basis of the totality of the established criteria Mr. Olymbios is recommended for promotion. Mr. Ioannou, went in September 1974 to Limassol, stayed and worked there. As during the first six months of 1979 he worked at the Institute, his confidential report for the year 1979 was prepared by the Director of the Institute. The confidential report for 1980 also was prepared by the Director of the Institute. For the preparation of the said report he relied on his personal knowledge which he had for the said officer during the previous years, taking also into consideration the view of Avraam Louca, the Director of the department of Agriculture”.

The Director of the Agricultural Research Institute then withdrew and the respondent Commission after observing that the applicant had been seconded for special duties by it as from the 20th June 1979 to the Agricultural District Office in Limassol, pointed out that in accordance with the General Orders, the confidential reports for the years 1979 and 1980

should have been prepared by the immediate superior officer and not by the Director of the Agricultural Research Institute. As, however, for the year 1979 there ought to have been taken into consideration and the views of the said Director and as a confidential report had already been submitted by him for the period up to 20th June 1979, the Commission decided that in the circumstances there could be submitted another report for the second half of 1979 as well as a report for the year 1980 by the immediate superior of the applicant at the Limassol District Office.

After the said reports asked by the Commission were submitted, it met on the 8th September 1981 and its minutes read as follows:

“..... the Commission having considered the material elements from the personal files of the candidates and the confidential reports on them and having taken into consideration the conclusions of the departmental Board, the assessments and the recommendation of the Director of the Agricultural Research Institute, considered that Mr. Sofoklis Olymbios is superior to all candidates on the basis of the totality of the established criteria (merit, qualifications, seniority), found him suitable and decided to promote him to the permanent (Dev.) post of Agricultural Research Technician 1st Grade as from 15th September 1981”.

By deciding to secure the submission of confidential reports by the appropriate officers, the respondent Commission was acting properly and in full compliance with the law inasmuch as it did not contend itself merely to exclude matters that ought not to have been taken into account, but it also saw that the proper ones were placed before it for due consideration. Relevant to the issues raised by this recourse, are the contents of the confidential reports of the candidates as indicative of their respective merit; also relevant are their qualifications and seniority, as these are under section 44(2) of the Public Service Law the factors on the basis of which the claims of officers to promotion are considered, in addition to the Commission having due regard to the recommendations made in respect of promotion by the Head of the Department in which the vacancy exists (section 4(3)).

I do not intend to reproduce here the contents of the confidential reports of the two candidates. A perusal of them, however, and a comparison—particularly those of the last two years—shows that on the whole those of the interested party are better than those of the applicant and they bear out the recommendation made by the Head of the Department, who had also personal knowledge of the candidates, to the respondent Commission when invited to attend their meeting at which the subject promotion was considered and decided upon by them.

It is correct to say that the applicant has 3 1/2 months seniority over the interested party as the first was seconded to the post of Agricultural Research Technician on the 15th June, 1965, whereas the second was so seconded on the 1st October, 1965, although both were made Agricultural Research Technicians, 2nd Grade, on the 1st January, 1968. This slight seniority could not tip the scales in favour of the applicant as in any event not all other factors are equal.

As far as their qualifications, both satisfy the schemes of service, though the applicant has attended courses abroad and appears to possess more qualifications than the interested party. This, however, in no way establishes a striking superiority of the applicant as against the interested party.

Considering the material before the Commission as a whole, including all relevant factors that under section 44 of the Law had to be taken into consideration, I have come to the conclusion that the sub judice decision, which is duly reasoned and arrived at after due and meticulous inquiry, was reasonably open to it and there has been no wrong exercise of discretion or abuse or excess of power nor any misconception of fact in any respect.

For all the above reasons the recourse is dismissed but in the circumstances I make no order as to costs.

Application dismissed. No order as to costs.