

1984 February 22

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOLAOS ARSALIDES,

Applicant.

v.

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondents.

(Case No. 115/83).

Administrative Law—Administrative inquiry—Object of—Incompleteness of the inquiry is not in itself, independently of its effect upon the decision of the administrative body, a ground for annulment.

Cyprus Telecommunications Authority—Officers of—Promotions—Qualifications—Regulation 8 of the Personnel General Regulations of 1982—Application of, is made subject to the provisions of regulation 56(7)(c)—Tourpekki v. Republic (1973) 3 C.L.R. 592 distinguished.

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The applicant in this recourse challenged the validity of the promotions of the interested parties to the post of Head of B' Personnel Service.

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Counsel for the applicant mainly contended:

(a) That it was not competent for the respondent Authority to promote the interested parties in view of the existence of a candidate such as the applicant, possessing the qualifications envisaged by reg. 8 of the Personnel General Regulations of 1982; and that only in the face of special reasons, to be recorded in the decision itself, could a candidate possessing the qualifications laid down in reg. 8, be turned down for one possessing the lesser qualifications tolerated by reg. 56(7).

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(b) That the enquiry held was defective on account of the

fact that the respondents did not examine the personal files of the applicant.

5 Regarding contention (b) above the respondents had before them the record cards of the candidates that recorded some but not all the facts appearing in their files.

10 *Held.* (1) that reg. 8 does not contemplate possession of the qualifications provided therein as an additional advantage: that the application of reg. 8 with regard to qualifications is specifically made subject to the transitional provisions of reg. 56(7) exempting, by virtue of para. (c), candidates for promotion who joined the service prior to 1.1.1955 which was the case with the interested parties: accordingly contention (a) should fail. (*Tourpeki v. Republic* (1973) 3 C.L.R. 592 distinguished).

15 (2) That though the object of every administrative inquiry is to enable the administration to exercise its discretion in a manner lightened by the facts of the case, the incompleteness of the inquiry is not in itself, independently of its effect upon the decision of the administrative body, a ground for annulment: that if the facts are properly conceived and appreciated upon a correct factual perspective, the decision will be sustained notwithstanding absence of consideration of the sources wherefrom those facts emerge: that so long as the reasoning rests on sound factual premises, the decision is sustainable: that the main complaint of the applicant was that the respondents overlooked his qualifications and this allegation is unfounded because his qualifications were recorded on his record card which was before the respondents: that nothing in the files contradicts the evaluation made by the respondents that the interested parties were, on account of their successful performance at work and long service with the Authority, the most suitable candidates for promotion: accordingly the recourse must fail.

Application dismissed

Cases referred to:

- 35 *Protopapas v. Republic* (1981) 3 C.L.R. 456;
Tourpeki v. Republic (1973) 3 C.L.R. 592;
Decisions of the Greek Council of State Nos: 1688/61, 1056/62, 1845/63, 2148/66, 2809/69, 254/61, 2619/64, 1005/70, 1186/70 and 1571/70.

Recourse.

Recourse against the decision of the respondents to promote the interested parties to the post of Head of B' Personnel Service in preference and instead of the applicant.

A. Eftychiou, for the applicant.

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A. Hadjioannou, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. The general manager of the respondents in exercise of the powers vested in him by regulations 10 and 24 of the Personnel General Regulations of 1982, approved the promotion of the interested parties to the post of Head of B' Personnel Service (27.10.82). He confirmed the decision of the Personnel Committee of the Authority taken about a fortnight earlier, on 10.9.82. The interested parties, namely, Georghios Minas, Panikos Ioannou and Aris Pavlides, were holding, like the applicant, the post of Inspector of Telecommunications. The applicant objected to the decision of the General Manager and moved the Board of the respondents to reverse it. He complained that he was wrongly excluded from the list of promotees. The respondents dealt with his objection in their meeting of 12.1.83. They dismissed it, finding that the promotions of the interested parties were warranted and ought to be sustained. The recourse is directed against the dismissal of his objection, and questions the propriety of the decision to promote the interested parties, anyone of them, in preference to him.

The annulment of the decision is sought on grounds of form and substance. The decision was reached on an insufficient enquiry and was allegedly taken in excess or abuse of the power of the Authority. Their authority was abused, inter alia, because the superior merits of the applicant were disregarded. In his contention, applicant enjoyed superiority over the interested parties on all scores - merit, qualifications, as well as seniority. The complaints are detailed in the address of applicant, as well as the principles of law that were infringed in the process of appointment of the interested parties. Prominent among the complaints made, is the allegation that, contrary to what is minuted in the decision of the Board, the personal file of the applicant was not examined. In fact, it was not available

at all. Counsel for the respondents conceded that the enquiry did not extend to examination of the personal files of the parties; instead, they consulted their record cards that reproduced material facts from the files of the parties. The omission did not mislead the respondents as to the suitability of the candidates for promotion. The enquiry was, on the whole, sufficient and resulted in a valid decision warranted by the overall factual situation bearing on the suitability of the parties. In order to examine the substance of this complaint, the respondents produced, at the request of the Court, the files of the applicant, as well as those of the interested parties.

It is the case for the applicant that it was not competent for the Authority to promote the interested parties, in view of the existence of a candidate such as the applicant, possessing the qualifications envisaged by reg. 8. If such a right existed, it ought to be exercised with great circumspection. Only in the face of special reasons, to be recorded in the decision itself, could a candidate possessing the qualifications laid down in reg. 8, be turned down for one possessing the lesser qualifications tolerated by reg. 56(7). In support of this proposition, he cited the decision of A. Loizou, J., in *Protopapas v. The Republic* ((1981) 3 C.L.R. 456, where the principles explaining the need for special reasoning on the part of the appointing Authority, in the event of departure from the recommendations of a departmental head, were reviewed. The recourse also touched upon the principle espoused in *Vasso Tourpeki v. The Republic* (1973) 3 C.L.R. 592, that convincing reasons must be furnished by the appointing body for not choosing a candidate who possesses an academic qualification postulated by the schemes of service as an advantage. Unlike *Tourpeki*, reg. 8 does not contemplate possession of the qualifications, provided therein, as an additional advantage. The application of reg. 8 with regard to qualifications, is specifically made subject to the transitional provisions of reg. 56(7) exempting, by virtue of para. (c), candidates for promotion who joined the service prior to 1.1.55, which was the case with the interested parties. In their case, all that was required was that they should be, in the opinion of the Authority, in a position to perform satisfactorily the duties of the new post. Manifestly, the Authority took this view as it emerges from the decision under question and those of the General Manager and Personnel Committee that prece-

ded it. Hence the interested parties, like the applicant, had the qualifications necessary for promotion. The duty of the Authority was to promote the candidates best suitable for appointment to the vacant posts. Regulation 10(9) incorporates the principles of administrative law that the Authority should choose the candidate best qualified for appointment to the new post. As specifically laid down, performance in the service is a principal guide to a candidate's suitability for appointment. As in every case of appointment by a body operating in the domain of public law, merit is the most significant factor. Academic qualifications are also relevant but by no means decisive. Seniority, on the other hand, particularly judged in combination with performance at work, is a pointer to one's devotion to duty. On a consideration of the decision in hand, it clearly emerges that the performance of interested parties was highly rated and proven over a long period of time. Each one of them had substantial seniority over the applicant contrary to what is alleged in the statement of facts accompanying the application.

The contention that the decision is not duly reasoned, is unfounded. The reasoning of the decision, as well as the reasons given by the General Manager and the Personnel Committee for selecting the interested parties, clearly indicate the factors that led them to choose the interested parties. They had a long and successful career with the Authority that justified their promotion in preference to other candidates. One of the interested parties, namely, Georghios Minas, has retired in the meantime. In my judgment, the sub judice decision does not lack in reasoning.

There remains to consider whether the enquiry held was defective on account of the absence of the personal files of the candidates. As earlier indicated, they had before them their record cards that recorded some but not all the facts appearing in their files. Regulation 10(9) enjoins the Authority to have regard to the personal files of the candidates in making an appraisal of their claims for promotion.

The object of every administrative enquiry is to ascertain the factual background of a case as a pre-condition for the exercise of the powers vested in the body by law. The object is to enable the Administration to exercise its discretion in a manner lighte-

ned by the facts of the case. A proper conception of the facts is essential for a sound decision. A material misconception of the facts, it has often been held, vitiates the decision. The premises upon which it is based are unsound. It cannot stand
5 the test of scrutiny. In those circumstances, it rests on unfounded premises. On the other hand, the incompleteness of the enquiry is not in itself, independently of its effect upon the decision of the administrative body, a ground for annulment. If the facts are properly conceived and appreciated upon a
10 correct factual perspective, the decision will be sustained notwithstanding absence of consideration of the sources wherefrom those facts emerge. (See, inter alia, the following Decisions of the Greek Council of State: 1688/61, 1056/62, 1845/63, 2148/66, 2809/69). The Greek Council of State has subscribed to
15 the proposition that, so long as the reasoning of the decision rests on sound factual premises, the decision is sustainable (see, Decisions of the Greek Council of State - 254/61, 2619/64, 1005/70, 1186/70, 1571/70). The main complaint of applicant here, is that respondents overlooked his qualifications. This
20 allegation is unfounded for, such qualifications were recorded on his record card, before the respondents.

I have gone through the files of applicant and interested parties in order to determine whether the evaluation made by the respondents of the suitability of the candidates for promotion, rested on unsound premises. The answer is in the negative. Nothing in the files contradicts the evaluation made by the respondents that interested parties were, on account of their successful performance at work and long service with the Authority, the most suitable candidates for promotion.

30 In my judgment, the recourse fails. It is dismissed. Let there be no order as to costs.

Recourse dismissed with no order as to costs.