

1985 June 28

[LORIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

SPYROS PLOUSSIOU,

Applicant,

v.

THE CENTRAL BANK OF CYPRUS.

Respondent.

(Case No. 562/83).

Central Bank of Cyprus—Officers—Appointments of—Governor of the Bank acts according to the “advice” (αγνωμοδότησις) of the Personnel Committee—Which is a “compulsory” one and binding on him—A separate decision of the Governor not necessary—And signing of the instrument of appointment by him quite sufficient—Section 15(3)(a) of the Central Bank of Cyprus Law, 1963 (Law 48/63)—The Governor could, in view of the provisions of the said section 15(3)(a), make the appointment and, also, act as Chairman of the Personnel Committee.

Administrative Law—Administrative acts or decisions—Administrative process requiring action on the part of two distinct organs—Organ responsible for the final decision should be different and should not participate in the functioning of a collective organ expressing an opinion, unless a Law otherwise provides—In the instant case deviation from the above principle was permitted by section 15(3)(a) of the Central Bank of Cyprus Law, 1963 (Law 48/63).

Public Officers—Promotions—Judicial control—Principles applicable.

Words and Phrases—Advice—«Γνωμοδότησις».

Administrative Law—Administrative acts or decisions—Rule

against retrospectivity—Exceptions to the rule—One such exception the annulment of an administrative act by the Court for formal reasons—Annulment of promotion on the single ground that it was founded on non existing Regulations—Falls within the above exception—And new promotion could be made with retrospective effect. 5

By virtue of the unanimous recommendation of the Personnel Committee of the Central Bank of Cyprus dated 6.8.81, and the decision of the Governor of the Bank, in the exercise of his powers under s. 15 of the Central Bank of Cyprus Law, 1963 (Law 48/63 as amended by Law 10/79) the interested party was promoted to the post of Assistant Manager of the Central Bank of Cyprus. The applicant in the present case attacked the aforesaid promotion by means of a recourse; and by virtue of the decision of the Court in the said recourse, delivered on 15.4.83, the promotion as aforesaid was annulled on the single ground that it "was founded on non existing Regulations" i.e. as founded on the "Central Bank of Cyprus Employees (Conditions of Service) Regulations 1964" which were neither approved by the Minister, as provided by the empowering section (vide s. 13(2)(b) of Law 48/63 as amended by s. 2 of Law 10/79), nor published in the Official Gazette. Following the decision of 15.4.83 the Board of the respondent Bank made on the recommendation of the Governor thereof and the approval of the Minister of Finance, new Regulations, "The Central Bank of Cyprus Employees (Conditions of Service) Regulations 1983" published in the Official Gazette on 5.8.83 (vide Supplement No. 3 of Gazette 1879 dated 5.8.83 Not. 189).

After the publication of the new Regulations the Personnel Committee i.e. the "Committee" envisaged by subsection 3(a) of Law 10/79 (substituting the relevant subsection (3) of section 15 of Law 48/63) was convened on 19.10.83 and "after considering the claims for promotions of the candidates serving in the post of Senior Officer at the time of the promotion annulled by the Court" including the applicant and the interested party, decided to recommend the interested party for promotion to the post of Assistant Manager of the Bank as from 6.8.1981. The Governor of the respondent Bank, who was also the

Chairman of the Personnel Committee as envisaged by the provisions of s. 15(3)(a) of Law 48/63, as amended by s. 3 of Law 10/79, decided to act in accordance with the unanimous advice of the Personnel Committee and addressed an offer to that effect to the interested party who accepted the offer as aforesaid and was appointed by the Governor to the post of Assistant Manager as from 6.8.81.

Hence this recourse.

Counsel for the applicant mainly contended:

(1) That the actual decision of the Governor to promote the interested party was not produced and that the production of the instrument for promotion was not sufficient.

(2) That the promotion of the interested party was "ab initio" void as:

(a) The Personnel Committee had no right or power under regulation 8 to treat the post of Assistant Manager—a first entry and promotion post—as a promotion post only as (i) it excluded outsiders from competing for the post.

(ii) It purported to amend the Regulations of the Bank and in particular reg. 7(1) and (2) without the consent of the Council of Ministers.

(b) That, in the alternative to paragraph (a) above, regulation 8 required a separate decision by the Personnel Committee "prior to the special meeting at which the recommendation for promotion actually took place" something which was omitted in the present case.

(c) The power of the Governor to make the appointment was incongruous with his participation as Chairman of the Personnel Committee, as offending natural justice; "because no person can be part of the organ which recommends a promotion and actually take the decision to promote".

(3) That the respondents in promoting the interested

party failed in their paramount duty to select the best candidate for the post in that they did not take into account applicant's alleged striking seniority, merit, experience and qualifications.

- (4) That the interested party was promoted with retrospective effect as from the 6th August, 1981. 5

Held, (1) that in effecting an appointment the Governor acts according to the advice (γνωμοδότησιν) of the Personnel Committee (see s. 15(3)(a) of Law 48/63); that the advice (γνωμοδότησις) required under s. 15(3)(a) is a "compulsory" one, binding on the Governor entrusted with the final administrative act or decision i.e. the promotion of the interested party although in this particular instance the nature of the advice (γνωμοδότησις) would not have a bearing on the outcome of the case in view of the fact that the decision of the Personnel Committee, to which the Manager of the Bank was participating as a Chairman according to the Law, was unanimous; and that, therefore, the instrument of appointment signed by the Governor of the Bank is quite sufficient and a separate decision by the Governor which would in effect be repeating the contents of the unanimous decision of the Personnel Committee would not be expected; accordingly contention (1) must fail. 10
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(2) That though where the administrative process concerned requires action on the part of two distinct organs, the organ responsible with the final decision should be different and should not participate in the functioning of a collective organ expressing an opinion, unless a Law otherwise provides, in the present case s.15(3)(a) of the Law provides that the Governor "... shall act in accordance with the advice of a Committee established for the purposeconsisting of himself as Chairman...."; and that, accordingly, contention 2(c) must fail. 25
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(3) That the personnel Committee did not purport to amend the Central Bank of Cyprus Employees (Conditions of Service) Regulations, 1983, by promoting the interested party to the post of Assistant Manager—a first entry and promotion post; they simply complied with the provisions of regulation 8, since the interested party was 35
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5 a member of the existing personnel possessing “the fixed by the Conditions and Schemes of Service qualifications and experience....” as further envisaged by the same regulation; and that as regards the submission that “outsiders were excluded from competing for the post”, the applicant was considered as a candidate for promotion and his legitimate interest cannot be extended to the protection of purported rights of outsiders; accordingly contention 2(a) and (b) must fail.

10 (4) That an Administrative Court will not interfere with a promotion unless it is established that the persons not selected had “striking superiority” over those selected; that in the present case not only the applicant failed to establish striking superiority over the interested party but
15 on the contrary it was established that the interested party had striking superiority over the applicant; accordingly contention (c) must fail.

20 (5) That though it is true that as a rule administrative acts cannot validly be given retrospective effect there are certain exceptions to the above established principle; that one of the exceptions to the rule against retrospectivity is on the annulment of an administrative act by the Court for formal reasons; that since by virtue of the decision of the Court in this case the promotion was annulled on the
25 single ground “that it was founded on non existing regulations and the trial Judge in that case considered it unnecessary to dwell on any of the remaining grounds put forward in support of the application the case under consideration falls within the exception referred to above; and, therefore, the promotion was validly made with retrospective
30 effect; accordingly contention (4) must, also, fail.

Application dismissed.

Cases referred to:

Ploussiou v. Central Bank of Cyprus (1983) 3 C.L.R. 398;

35 *Bagdades v. Ploussiou and the Central Bank* (1984) 3 C.L.R. 1556;

Decision 2517/1967 of the Greek Council of State;

Savoulla and Others v. Republic (1973) 3 C.L.R. 706 at pp. 712, 713;

Mytidou v. C.Y.T.A. (1982) 3 C.L.R. 555;

Evrripides v. E.A.C. (1982) 3 C.L.R. 850;

Michanicos v. Republic (1976) 3 C.L.R. 237;

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Michaelides v. Republic (1976) 3 C.L.R. 115;

Christou v. Republic (1977) 3 C.L.R. 1;

Duncan v. Republic (1977) 3 C.L.R. 153;

HjiSavva v. Republic (1982) 3 C.L.R. 76;

Morsis v. Republic (1965) 3 C.L.R. 1;

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Georghiades v. Republic (1966) 3 C.L.R. 153;

HjiGeorghiou v. Republic (1968) 3 C.L.R. 326;

Afxentiou v. P.S.C. (1973) 3 C.L.R. 309;

Panayides v. Republic (1973) 3 C.L.R. 378.

Recourse.

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Recourse against the decision of the respondent to promote the interested party to the post of Assistant Manager of the Central Bank of Cyprus in preference and instead of the applicant.

L. N. Clerides, for the applicant.

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

Cur. adv. vult.

LORIS J. read the following judgment. The applicant impugns, by means of the present recourse the promotion of the interested party to the post of Assistant Manager of the Central Bank of Cyprus, effected by the Governor of the Bank in the exercise of his functions, on 24.10.83. (Vide "A" attached to the opposition of the interested party), acting in accordance with the unanimous decision of the

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Personnel Committee dated 19.10.83 (attached to the opposition of the respondent).

The short history of the present proceedings is as follows:

5 1. By virtue of the unanimous recommendation of the
Personnel Committee of the Central Bank of Cyprus dated
6.8.81, and the decision of the Governor of the Bank, in
the exercise of his powers under s. 15 of the Central Bank
of Cyprus Law 1963 (Law 48/63 as amended by Law
10 10/79) the interested party in the present case namely Ky-
riacos Bagdades was promoted to the post of Assistant
Manager of the Central Bank of Cyprus.

2. The applicant in the present case attacked the afore-
said promotion by means of application No. 425/81.

15 3. By virtue of the decision of the Court in the said
application, delivered on 15.4.83, the promotion as afore-
said was annulled on the single ground that it "was founded
on non existing Regulations" i.e. as founded on "Central
Bank of Cyprus Employees (Conditions of Service) Regula-
20 tions 1964" which were neither approved by the Minister,
as provided by the empowering section (vide s. 13(2)(b) of
Law 48/63 as amended by s. 2 of Law 10/79), nor pub-
lished in the Official Gazette. (Vide *Ploussiou v. The
Central Bank of Cyprus* (1983) 3 C.L.R. 398).

25 In order to complete the picture, it may as well be added
here, that the interested party filed an appeal against the
decision of 15.4.83 (R.A. No. 315), which was adjourned
sine die pending the final outcome of the present case,
after a ruling of the Full Bench to the effect that the
30 interested party could file the appeal in question (vide
Bagdades v. Ploussiou and the Central Bank (1984) 3
C.L.R. 1556).

4. Following the decision of 15.4.83 in case No. 425/
81, as above, the Board of the respondent Bank made on
35 the recommendation of the Governor thereof and the
approval of the Minister of Finance, new Regulations, "The
Central Bank of Cyprus Employees (Conditions of Service)
Regulations 1983" published in the Official Gazette on

5.8.83. (Vide Supplement No. 3 of Gazette 1879 dated 5.8.83 Not. 189).

5. After the publication of the new Regulations the Personnel Committee i.e. the "Committee" envisaged by subsection 3(a) of Law 10/79 (substituting the relevant subsection (3) of section 15 of Law 48/63) was convened on 19.10.83 and "after considering the claims for promotion of the... candidates serving in the post of Senior Officer at the time of the promotion annulled by the Court" including the applicant and the interested party, decided to recommend the interested party for promotion to the post of Assistant Manager of the Bank as from 6.8.1981. (Vide minutes of the meeting of the Personnel Committee held on 19.10.83 attached to the opposition of the respondent).

6. The Governor of the respondent Bank, who is also the Chairman of the Personnel Committee as envisaged by the provisions of s. 15(3) (a) of Law 48/63, as amended by s. 3 of Law 10/79, decided obviously to act in accordance with the unanimous advice of the Personnel Committee and addressed an offer to that effect to the interested party (vide "B" attached to the opposition of the interested party).

7. The interested party having accepted the offer as aforesaid, was appointed by the Governor to the post of Assistant Manager as from 6.8.1981 (vide instrument of appointment dated 24.10.83 marked "A" attached to the opposition filed by the interested party.)

The applicant who was informed of the aforesaid promotion on 27.10.1983 filed the present recourse praying for a declaration to the effect that the promotion in question be declared void and of no effect whatever.

The grounds of Law on which the applicant relies are set out in his application as follows:

"1. The promotion of the interested party in preference and instead of the applicant was made by respondents in circumstances amounting to an abuse of power in that, in promoting the interested party the respondents failed in their paramount duty to select the best candidate for the post taking into account

the applicant's striking seniority, merit, experience and qualifications, and have been influenced by a previous decision taken by them on the 6.8.1981 which has been annulled by the Supreme Court.

- 5 2. Respondent had no right to promote the interested party retrospectively."

The respondent Bank as well as the interested party filed separate oppositions supporting the promotion in question.

- 10 Subsequently applicant, respondent, as well as the interested party submitted written addresses pursuant to relevant directions of this Court.

- 15 Learned counsel for the applicant raised in his written address several "preliminary objections", as he puts it, which are grouped under two heads as follows:

1. The actual decision of the Governor to promote the interested party was not produced; the production of the instrument for promotion was not sufficient—it was submitted.

- 20 2. The promotion of the interested party is "ab initio" void as:

(a) The Personnel Committee had no right or power under Regulation 8 to treat the post of Assistant Manager—a first entry and promotion Post—as a promotion post only, as

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(i) it excluded outsiders from competing for the post.

(ii) it purported to amend the Regulations of the Bank and in particular Reg. 7(1) and (2) without the consent of the Council of Ministers.

- 30 (b) In the alternative to paragraph (a) above, Regulation 8—it was submitted—requires a separate decision by the Personnel Committee "prior to the special meeting at which the recommendation for promotion actually took place" something which was omitted in
- 35 the present case.

(c) The power of the Governor to make the appointment

was incongruous with his participation as Chairman of the Personnel Committee, as offending natural justice; "because no person can be part of the organ which recommends a promotion and actually take the decision to promote"—it was maintained. 5

In order to examine the legal issues set out above, it is necessary to consider the relevant functions of the Governor of the Bank as well as those of the Personnel Committee, as they emerge from the relevant legislation (Law 48/63 as amended by Law 10/79) and the Regulations made thereunder; Sub-section (2) of s. 15 of Law 48/63 and sub-section (3) of the same section—as set out in s. 3 of Law 10/79 read as follows: 10

«15. (2) Ἄνευ ἐπηρεασμοῦ τῆς γενικότητος τοῦ ἐδραφίου (1), ὁ Διοικητὴς διορίζει θέτει εἰς διαθεσιμότητα, ἢ ἀπολύει ἅπαντας τοὺς ἀξιωματούχους ἢ ὑπαλλήλους τῆς Τραπεζῆς πλὴν ἐκείνων δι' οὓς γίνεται εἰδικὴ πρόνοια ἐν τῷ παρόντι Νόμῳ, τηρουμένων τῶν ἐκάστοτε ἐν ἰσχύϊ νόμων καὶ συμφώνως πρὸς Κανονισμοὺς γενομένους δυνάμει τοῦ παρόντος Νόμου ἀναφορικῶς πρὸς τοὺς ἀξιωματούχους καὶ ὑπαλλήλους τῆς Τραπεζῆς. 20

(3) (α) Ὁ Διοικητὴς ἐν τῇ ἐνασκήσει οἰασθήποτε τῶν ἀρμοδιοτήτων αὐτοῦ δυνάμει τοῦ ἐδραφίου (2) ἐνεργεῖ συμφώνως πρὸς γνωμοδότησιν Ἐπιτροπῆς ἐπὶ τούτῳ συνιστωμένης (ἐν τοῖς ἐφεξῆς ἐν τῷ παρόντι ἐδραφίῳ ἀναφερομένης ὡς ἡ Ἐπιτροπή) καὶ συγκειμένης ἐκ τοῦ ἰδίου ὡς Προέδρου, τοῦ ὑποδιοικητοῦ, τοῦ Ὑπουργικοῦ Ἐπιτρόπου καὶ δύο ἐτέρων προσώπων ἐπὶ τούτῳ διοριζομένων, ὑπὸ τοῦ Συμβουλίου διὰ θητεῖαν δύο ἐτῶν, ἐκτὸς ἐὰν παυθῶσι προηγουμένως ὑπὸ τοῦ Διοικητοῦ. 30

(β)

(γ) ”

English translation:

“15. (2) Without prejudice to the generality of sub-section (1) the Governor shall, subject to any Law in force for the time being and in accordance with re-

gulations relating to the officers and employees of the Bank made under this Law, appoint, suspend or dismiss any officer or employee of the Bank other than officers or employees in respect of whom other provision is made in this Law.

(3) (a) The Governor in carrying out any of his functions under subsection (2) shall act in accordance with the advice of a Committee established for the purpose (hereinafter in the present subsection referred to as "the Committee") and consisting of himself as Chairman, the Deputy Governor, the Minister's Representative and two other persons nominated for the purpose by the Board, to hold office for two years, unless earlier removed by the Governor.

(b)

(c) "

Regulation 8 of "The Central Bank of Cyprus Employees (Conditions of Service) Regulations 1983" published in the Official Gazette on 5.8.1983, reads as follows:

«8. Ἀπασαὶ αἱ κεναὶ θέσεις πληροῦνται καθ' ὃν τρόπον ἤθελεν αποφασίσει ὁ Διοικητής, ενεργῶν συμφῶνως πρὸς γνωμοδότησιν τῆς Επιτροπῆς Προσωπικοῦ. Κατὰ τὴν πλήρωσιν κενῶν θέσεων προτεραιότης δίδεται εἰς μέλος τοῦ υφισταμένου προσωπικοῦ, εφ' ὅσον τοιοῦτο μέλος κέκτηται τὰ ὑπὸ τῶν Ὁρῶν καὶ Σχεδίων Ὑπηρεσίας καθοριζόμενα προσόντα καὶ πείραν, ἐκτὸς εἰς τὴν διάρθρωσιν τῆς υπηρεσίας ἄλλως απαιτῆ πρὸς τὸ συμφέρον τῆς Τραπεζῆς».

English translation:

"8. All vacant posts are being filled in the manner to be decided by the Governor, acting in accordance with the advice of the Personnel Committee. During the filling of vacant posts priority shall be given to a member of the existing personnel, provided that such a member possesses the fixed by the Conditions and Schemes of Service qualifications and experience,

unless the articulation of the service otherwise requires for the benefit of the Bank.”

So the Governor of the Bank who is the “Chief executive officer of the Bank” (s. 15 (1) of Law 48/63) shall appoint any... officer or employee of the Bank... (s. 15(2) of Law 48/63) acting in accordance with the advice of the Personnel Committee consisting of himself and the other members set out in subsection 3(a) of s. 15 as set out in s. 3 of Law 10/79. 5

From the wording of the Law it is unequivocal that the Governor of the Bank is the highest administrative organ entrusted with the appointment of any officer or employee of the Bank (other than officers or employees in respect of whom other provision is made in the Law— which is not the present case). 10 15

In effecting such an appointment the Governor acts «συμφώνως πρὸς γνωμοδότησιν (της) Επιτροπής (Προσωπικού)» according to the Greek text of subsection 3(a) of s. 15 of the Law as set out in s. 3 of Law 10/79. The nature of «γνωμοδότησις» will regulate the nature of the organ termed “the Committee” i.e. the Personnel Committee. According to Stassinopoulos “The Law of Administrative Acts 1951 ed. pp. 123 and 223-224) «γνωμοδοτήσεις» may be grouped under three heads as follows: 20

1. «Ἀπλή γνωμοδότησις»: a mere opinion or advice which need not be followed by the Administrative Organ entrusted with the task of issuing the executory administrative act; but in case such opinion or advice is not followed by the Administrative Organ concerned, the organ in question has to give his reasons for not following it. 25 30

2. «Σύμφωνος γνωμοδότησις»: this opinion or advice has to be followed by the Administrative organ entrusted with the implementation of the administrative act in question, unless the organ decides to abstain from taking any act or decision. 35

3. «Υποχρεωτική γνωμοδότησις»: if the Law provides for such a compulsory advice then substantially the opinion of the collective organ binds the administra-

tive organ entrusted with the final act or decision. In such a case we have the "composite administrative act."

5 «Ἡ ἀπόφασις συλλογικοῦ ὀργάνου εἶναι πράξις ὑποχρεοῦσα τὸν ὑπουργὸν εἰς ἐνέργειαν ἢτοι ἐκτελεστική. Ἡ ὅλη ὄθεν διαδικασία ἀποτελεῖ σύνθετον διοικητικὴν πράξιν». (ἴδε Σ.Ε. 1934/56).

10 ("The decision of a collective organ is an act compelling the Minister to act i.e. executory. Therefore the whole procedure constitutes a composite administrative act").

15 Having given my best consideration to the provisions of section 15(3)(a) as re-enacted by s. 3 of Law 10/79, I am inclined to classify the «γνωμοδότησις» required under the aforesaid section as a "compulsory" one, binding on the Governor entrusted with the final administrative act or decision i.e. the promotion of the interested party, although in this particular instance the nature of «γνωμοδότησις» would not have a bearing on the outcome of the case in
20 view of the fact that the decision of the Personnel Committee, to which the Manager of the Bank was participating as a Chairman according to the Law, was unanimous.

25 In view of the above, I hold the view that the instrument of appointment dated 24.10.1983 signed by the Governor of the Bank (marked "A" attached to the opposition filed by the interested party) is quite sufficient and I would not expect a separate decision by the Governor which would in effect be repeating the contents of the unanimous decision of the Personnel Committee (attached to the
30 opposition of the respondent).

For the above reasons submission under No. 1 above cannot be sustained.

35 In connection with the powers of the Governor of the Bank it was also submitted by learned Counsel for applicant (vide No.2(c) above that the power of the Governor to make the appointment was incongruous with his participation as Chairman of the Personnel Committee.

It is correct that on principle, where the administrative

process concerned requires action on the part of two distinct organs, the organ responsible with the final decision should be different and should not participate in the functioning of a collective organ expressing an opinion, unless a Law otherwise provides (vide decision 2517/1967 of the Greek Council of State—*Savoulla and others v. The Republic* (1973) 3 C.L.R. 706 at pages 712, 713—*Antigoni Mytidou v. C.Y.T.A.* (1982) 3 C.L.R. 555—*Stavros Evripides v. E.A.C.* (1982) 3 C.L.R. 850). In the present case s. 15(3)(a) of the Law provides that the Governor “...shall act in accordance with the advice of a Committee established for the purpose... consisting of himself as Chairman....”

The submission, therefore, of the applicant under 2(c) above cannot be sustained either.

Concluding with “preliminary objections” I shall deal with the remaining points under 2(a) and (b) together:

The personnel Committee did not purport to amend the Central Bank of Cyprus Employees (Conditions of Service) Regulations 1983, by promoting the interested party to the post of Assistant Manager—a first entry and promotion post; they simply complied with the provisions of regulation 8, set out verbatim earlier on in the present judgment, which provides expressly that “During the filling of vacant posts priority shall be given to a member of the existing personnel....” and it is abundantly clear from the documents before me that the interested party was a member of the existing personnel possessing “the fixed by the Conditions and Schemes of Service qualifications and experience....”, as further envisaged by the same regulation.

As regards the submission that “outsiders were excluded from competing for the post” suffice it to say that the applicant was considered as a candidate for promotion and his legitimate interest cannot be extended to the protection of purported rights of outsiders.

Having dealt with the preliminary issues raised by learned counsel for applicant in his written address I shall now proceed to examine the substance of the recourse.

The complaints of the applicant in the present recourse were based on two grounds of Law:

The first ground is set out under the broad heading of abuse of power.

The second ground refers to the retrospectivity of the promotion.

5 *Ground 1*— It is maintained by the applicant that the respondents in promoting the interested party failed in their paramount duty to select the best candidate for the post in that they did not take into account applicant's alleged striking seniority, merit, experience and qualifications.
10 It is further alleged that the respondents have been influenced by a previous decision taken by them on 6.8.1981 which was annulled by the Court.

I have gone carefully through the minutes of the meeting of the Personnel Committee in which Governor was participating as Chairman, held on 19.10.1983. It must be
15 stated at the outset that I could not trace anywhere a scintilla of evidence to the effect that the Committee was influenced by the previous decision of the 6.8.1981; the only thing that is mentioned in the minutes about the old
20 decision is simple reference, in the preamble thereof, to case No. 425/81, as the reason for the creation of the vacant post of Assistant Manager of the Bank.

The Committee after directing its mind to the relevant Regulation in connection with promotions (which is regulation 11) proceeded to examine the merit, qualifications
25 and experience of the candidates. In spite of the fact that regulation 11 does not speak about "seniority" the Committee directed their minds to seniority as well. The following are stated verbatim in para. 1.9 of the minutes:

30 "1.9 In reaching their decision the Committee had decided that the claims on both merit and qualifications of the candidate recommended for promotion were so strong that they could not be outweighed by any
35 claims that candidates 1 and 2 (applicant) might have on grounds of seniority in their previous grades/posts in the service of the Bank."

Careful examination of the decision of the Committee as well as of all other documents in this file indicates that

the decision of the respondent was reasonably open to them.

And it must not be forgotten that an Administrative Court will not interfere with a promotion unless it is established that the persons not selected had "striking superiority" over those selected (*Michanicos and Another v. Republic* (1976) 3 C.L.R. 237 *Michaelides v. The Republic* (1976) 3 C.L.R. 115, *Christou v. Republic* (1977) 3 C.L.R. 11, *Duncan v. Republic* (1977) 3 C.L.R. 153, *HjiSavva v. Republic* (1982) 3 C.L.R. 76). 5 10

In the present case not only the applicant failed to establish striking superiority over the interested party but on the contrary it was established that the interested party had striking superiority over the applicant. In this connection the decision of the Committee (paragraph 1.6) reads as follows: 15

"The Committee examined the candidates' merit as portrayed in their annual confidential reports and unanimously agreed that candidate No. 3 (the interested party) was by far better than the other two candidates: candidate No. 3 was generally graded as 'exceptionally effective' in the most recent years reviewed. On the other hand the annual confidential reports of the other two candidates not only gave them a lower overall rating on their performance but also revealed that they lacked in some of the qualities and abilities required for the post in question." 20 25

Ground 2 — The interested party in the present case was promoted with retrospective effect; as from the 6th August, 1981. 30

Learned Counsel for applicant attacks the retrospectivity of the promotion as follows in paragraph 4 of his written address:

"The Committee's recommendation for the promotion of the interested party retrospectively i.e. as from 6.8.1981, is against all accepted principles of administrative Law." 35

It is true that as a rule administrative acts cannot validly

be given retrospective effect; but it is also correct to mention that there are certain exceptions to the above established principle. (Vide Stassinopoulos on the Law of Administrative Acts 1951 p. 370 Kyriakopoulos on Greek Administrative Law, 4th edition, Vol. 2 p. 400—Conclusions from the Jurisprudence of the Greek Council of State 1929-1959 at p. 197—vide also *Morsis v. The Republic* (1965) 3 C.L.R. 1, *Georghiades v. Republic* (1966) 3 C.L.R. 153, *HjGregoriou v. The Republic* (1968) 3 C.L.R. 326, *Afxentiou v. P.S.C.* (1973) 3 C.L.R. 309, *Panayides v. Republic* (1973) 3 C.L.R. 378 (F.B.)).

One of the exceptions to the Rule against retrospectivity, appearing in the Conclusions from the Jurisprudence of the Greek Council of State 1929-1959 at p. 197 under paragraph (γ) reads as follows:

“On the annulment of an administrative act by the Council of State for formal reasons, for example for lack or insufficiency of reasoning or for defective constitution of a collective organ, the results of the new act since it relates to the same subject-matter as the annulled one and once it is decided within reasonable time from the original one and on the basis of the same facts and Law, it can relate back to the time of the original act (vide decisions 551, 1691/1952, 543, 1016/54)...”

As already stated at the beginning this judgment the interested party was promoted to the post of Assistant Manager of the Central Bank of Cyprus on 6.8.1981; the aforesaid decision was impugned by the applicant in the present case by virtue of case No. 425/81; and by virtue of the decision of the Court in that case the promotion was annulled on the single ground “that it was founded on non existing regulations”; the learned trial Judge in that case went on to say “I consider it unnecessary to dwell on any of the remaining grounds put forward in support of the application, in view of the decision reached” (vide *Ploussiou v. The Central Bank of Cyprus* (1983) 3 C.L.R. 398 at p. 409).

I hold the view that the case under consideration falls within the exception referred to above, therefore the promotion was validly made with retrospective effect.

In the result the present recourse fails and is accordingly dismissed; in the circumstances I have decided to make no order as to costs.

Recourse dismissed.

No order as to costs.

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