1985 September 6

[LORIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ARISTOS NICOLAIDES,

Applicant,

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent.

(Case No. 187/82).

The Electricity Authority of Cyprus—Promotions—The Court will not interfere unless it is established that the applicant had "striking superiority" over the person selected—Experience should not be listed as a separate consideration—Seniority of 1 year and 5 months is not of a striking nature—And cannot tip the scales in view of the interested party's superiority in merit—Recourse dismissed.

Collective administrative organs—Minutes—The non keeping of minutes does not vitiate a decision—Except when it tends to deprive it of due reasoning.

When vacancies in connection with scientific personnel occurred in the Central Offices as well as in the Area Offices, the respondents set up a Management Committee for the specific purpose of making recommendations for the filling of such vacancies for which there was no standard procedure in connection with promotions of engineers. The Committee did not keep minutes. Its recommendations were submitted to the Sub-Committee on Staff Matters, which during its meeting decided to recommend to the respondents the interested party for promotion to the post of Area Executive Engineer, South East Area. It is apparent that neither the first nor the second committee considered the applicant as a suitable candidate for the post.

On 10.2.82 the respondents promoted the interested party. Hence the present recourse.

The gravamen of applicant's complaints is that the respondents ignored his superiority in all respects over the interested party. He further contended that the decision is not duly reasoned. In this respect his counsel particularly referred to the absence of minutes of the first of the above two committees.

Held, dismissing the recourse (A) (1) An administrative Court will not interfere with a promotion unless it is established that the person not selected had "striking superiority" over the person selected. In this case the rating of the interested party in merit is superior to that of the applicant and this superiority is enhanced in view of the recommendations of the Head of the Department in favour of the interested party. (2) The qualifications of the applicant and the interested party are more or less the same. If somebody has slight superiority that should be the interested party who achieved a 3rd Class Honours degree, whereas the applicant reached a pass degree. In this respect what is important is not the length of experience but the quality of experience and the potential of a candidate for promotion. The academic attainment of a first degree is of considerable importance. (3) Experience should not be listed as a separate consideration *(HjiSavva* v. *The Republic* (1982) 3 C.L.R. 76 at 79 followed). (4) Seniority of 1 year and 5 months is not of a striking nature. It is a mere superiority which cannot tip the scales in view of the striking superiority of the interested party in merit. Seniority prevails only if the other factors are equal. (5) In the light of the above the sub judice decision was reasonably open to the respondents. (B) The non-keeping of minutes by a collective organ does not by itself vitiate a particular decision, except if such absence tends to deprive the decision of due reasoning. In the present case the decision is duly reasoned, its reasoning being supplemented from the material in the file. Even if the absence of minutes of the Management Committee constitutes an irregularity, in the circumstances of this case such irregularity was not of a material nature.

Recourse dismissed.
No order as to costs.

Cases referred to:

Michanicos and another v. *The Republic* (1976) 3 C.L.R. 237;

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

Christou v. *The Republic* (1977) 3 C.L.R. 11;

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

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

Evangelou v. *The Republic* (1965) 3 C.L.R. 292;

Partellides v. *The Republic* (1969) 3 C.L.R. 480;

HjiLouka v. *The Republic* (1969) 3 C.L.R. 570;

Decisions of the Greek Council of State Nos.: 166/29 and 107/36.

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Area Executive Engineer in preference and instead of the applicant.

G. Triantafyllides, for the applicant.

G. Cacoyiannis, for the respondent.

Cur. adv. vult.

LORIS J. read the following judgment. The applicant by means of the present recourse impugns the decision of the respondent to promote the interested party, namely Andreas Anthimou, to the post of Area Executive Engineer, South East Area as from 1.2.82 instead of the applicant.

The facts of this case are very briefly as follows: Applicant was first employed by the respondent on 1.8.67 as Assistant Engineer; he was promoted to Engineer III on 1.3.72. On 1.12.78 he was promoted to scale 07 where he has been serving until the material time of this recourse.

The interested party was first employed by the respondents on 1.1.69 as Assistant Engineer and he was promoted

to Engineer III on 1.12.72. On 1.12.78 he was emplaced in scale 07 where he has been serving until 1.2.82 the day he was promoted to the post, the subject matter of the present recourse.

When vacancies in connection with Scientific Personnel occurred in the Central Offices as well as in the Area Offices, the respondents decided to set up a Management Committee (vide para. 6 of Appendix A attached to the opposition) which, as explained at the clarification stage was a sub-committee for the specific purpose of making recommendations for the filling of such vacancies as there was no standard procedure in connection with promotion of Engineers.

At a later stage the recommendations of the said committee were submitted to the Director-General of the respondent; copy of these recommendations is attached to the opposition and is marked exh. "A".

The said recommendations of the Committee of Management were also submitted to the Sub Committee on Staff Matters and this Committee during its meeting on 29.1.82 decided to recommend to the respondents the interested party. (Vide minutes of sub committee in Appendix "Γ" attached to the opposition.)

As it is apparent from exhs. "A" and "Γ" above, the Management Committee as well as the Sub-committee on Staff Matters did not consider the applicant as suitable candidate for the post under consideration.

The respondent authority at its meeting on 10.2.82 after taking into consideration all the criteria in connection with the scheme of service in force (vide exh. B attached to the opposition) and after comparing merit, qualifications, seniority of the candidates and after taking into consideration the recommendations of the Committee of Management as well as the Sub-committee on Staff Matters decided to promote the interested party namely Andreas Anthimou (vide exh. "Δ" attached to the opposition).

The applicant obviously feeling aggrieved filed the present recourse praying for the annulment of the sub judice

decision relying on several grounds of law, which appear in his application and I do not intend repeating them in the present judgment verbatim.

The gravamen of the complaints of the applicant is that the respondents ignored, acting thereby in abuse or excess of their powers in law, applicant's superiority in all respects over the interested party. It is further the contention of the applicant that the respondent failed to reason its decision duly.

Before proceeding in submiting to judicial scrutiny the various heads of the criteria, I consider it pertinent at this stage to mention that an Administrative Court will not interfere with a promotion unless it is established that the person not selected had "striking superiority" over the person or persons selected *(Michanicos & Another* v. *The Republic* (1976) 3 C.L.R. 237, *Michaelides* v. *The Republic* (1976) 3 C.L.R. 115, *Christou* v. *The Republic* (1977) 3 C.L.R. 11, *Duncan* v. *The Republic* (1977) 3 C.L.R. 153, *HjiSavva* v. *The Republic* (1982) 3 C.L.R. 76). Mere superiority not of a striking nature is not enough. *(Evangelou* v. *The Republic* (1965) 3 C.L.R. 292).

Merit - The rating of the interested party in merit is superior to that of the applicant.

In the confidential reports of the last two years prior to promotion, which are exhibits before me the applicant is rated for 1980 (ex. 3) and for 1981 (ex. 3A) with 3 Bs and 14 Cs whilst the interested party is rated for 1980 (ex. 4) with 14 Bs and 3Cs and for 1981 (ex. 4A) with 7Bs and 10 Cs.

It is also noteworthy that in the confidential report for 1980 (ex. 3) under the heading "Degree of fitness for promotion" the applicant is described as "not yet qualified" and he is only described as "qualified" in the report of 1981 (ex. 3A) whilst the interested party is described under the same head as "qualified" in both Confidential Reports 1980 and 1981 (exs. 4 and 4A).

Inspite of the deteriorating picture presented by the interested party in his confidential report of 1981 he is still strikingly superior to the applicant for the last 2 years.

Furthermore the merit of the interested party vis-a-vis the applicant is being enhanced in view of the recommendations of the Head of the Department in favour of the interested party. As stated in the case of *Theodossiou* v. *The Republic*, 2 R.S.C.C. 44 at p. 48 "In the opinion of the Court the recommendation of a Head of Department or other senior responsible officer, and especially so in cases where specialized knowledge and ability are required for the performance of certain duties. is a most vital consideration which should weigh with the Public Service Commission in coming to a decision in a particular case and such recommendation should not be lightly disregarded".

Qualifications: The qualifications of the applicant and the interested party appear in the comparison table which is ex. B attached to the opposition.

It is clear from ex. "B" that the applicant as well as the interested party possess the qualifications required by the scheme of service for the post in question (which is ex. 1 before me).

The applicant and the interested party are both graduates of London University in Electrical Engineering; the interested party achieved a 3rd Class Honours degree whereas the applicant reached a Pass Degree standard.

On the other hand as regards professional qualifications the applicant is a Member of the Institute of Electrical Engineers whereas the interested party is an Associate Member of the same Institute.

Having given the matter my best consideration in the light of ex. 2 and the relevant addresses of both sides I hold the view that the overall picture of qualifications (Academic and professional) concerning applicant and the interested party can be safely held to be more or less equal; if somebody has slight superiority that should be the interested party—and in this respect I agree with the submission of learned counsel for the respondent that—"what is important.... is not the length of experience but the quality of experience and the potential of a candidate for promotion and in this respect the academic attainment of a first degree is of considerable importance."

Experience: In this respect I hold the view that experience should not be listed as a separate consideration to which the promoting body should pay heed, and I am in full agreement with the reasons for such a proposition given by my brother Judge Pikis in the case of *HjiSavva* v. *The Republic* (1982) 3 C.L.R. 76 at p. 79 of the report:

> "Experience is the practical knowledge acquired from applying one's self to a particular type of work. Length of service is not the only guide to experience. The intensity with which one applies himself to a given field and the results of his work, are equal, if not more significant indicators of experience. It is for these reasons that experience is not listed as a separate consideration to which the appointing body should pay heed. Experience is reflected not only from length of service but from one's merits as well.

Seniority: There is nothing on record which suggests that the respondent Authority failed to attach due weight to the seniority of the applicant. On the contrary it is admitted in the written address of the respondent "that the applicant's service is longer than that of the interested party's by 1 year and 5 months." But this slight seniority of the applicant over the interested party which in my view is not of a striking nature but simply a mere superiority cannot tip the scale in favour of the applicant in view of the striking superiority of the interested party over the applicant in merit; and it is well established that seniority prevails if the other factors are equal *(Partellides* v. *The Republic* (1969) 3 C.L.R. 480).

In the present case the interested party is strikingly superior to the applicant in merit, more or less equal with him (if not slightly superior) in qualifications and slightly inferior in seniority.

Now all these factors were before the respondent and according to the presumption of regularity they were duly considered by them. In the circumstances the sub judice decision was reasonably open to the respondent.

Before concluding though, I have to examine another

ground on which the applicant relies notably absence of due reasoning of the sub judice decision with particular reference to the failure of the respondents to produce the minutes of the Management Committee which prepared the list of "suitable candidates" for promotion.

It is obvious from the written address of the respondents and it was made abundantly clear to me that "no such minutes were kept nor were they necessary in the circumstances of this case." It is obvious that the respondent has decided to set up a Management Committee for the purpose of making recommendations for the filling of such vacancies as there was no standard procedure regarding promotion of engineers, as explained at the clarification stage, by the respondent. It must be further observed that the setting up of such Committee is not provided by any law or regulations.

> "It is well settled in Administrative Law that, in the absence of any legislative provision regulating such a matter, the non-keeping of minutes by a collective organ does not, in itself, vitiate a particular administrative decision, except if the absence of such minutes tends to deprive the decision of due reasoning (see Kyriakopoulos on Greek Administrative Law, 4th edition, vol. 2 p. 26; Stassinopoulos on the Law of Administrative Acts (1951) p. 223; as well as the decisions of the Greek Council of States in cases 166/29 and 107/36"). Vide *Georghios HjiLouca* v. *Republic* (1969) 3 C.L.R. 570 at p. 574).

In the present case I am satisfied that the sub judice decision is duly reasoned, the reasoning of the respondent being supplemented by the material in the file.

As far as the non-keeping of minutes is concerned it may be added that even if the non keeping of minutes is considered as an irregularity "I would unhesitatingly say that in the circumstances of the present case it could not be treated as being of a material nature so as to lead to the annulment of the sub judice decision". (Vide *Georghios HjiLouca* v. *Republic* supra at p. 576).

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

Recourse dismissed with no order as to costs.