

1985 January 12

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

DR. CHRISTODOULOS METTAS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondents.*

(Case No. 494/83).

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*Public Officers—Promotions—Confidential reports—Respondent Commission had no obligation to reproduce in the minutes of its decision the confidential reports on the candidates or any part thereof—Its duty was to make a proper inquiry into their content and make a correct evaluation of their effect.* 5

*Public Officers—Promotions—Head of Department—Recommendations—Section 44(3) of the Public Service Law, 1967 (Law 33/67)—Head of Department may seek information about the candidates from his subordinates—Head of Department of the Department of Medical Services, the Director of Medical Services—No misuse or abuse of his powers on account of lack of personal knowledge because he confined his views to the performance of the candidates at the interview.* 10  
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*Public Officers—Promotions—Schemes of service—Interpretation—Judicial control—Principles applicable—Scheme of service for post of Registrar Otorinolaryngological Section of the Department of Medical Services—D.L.O. title—Reasonably open to the Commission to conclude that it was a postgraduate qualification within the meaning of the scheme of service—“Experience in the speciality of the candidates” in the said scheme—Is practice in the* 20

*field of otorinolaryngology not necessarily as a specialist*

*Public Officers—Promotions—Seniority—And superior performance of the interested party at the interview—Revealed him as the candidate most suitable for promotion.*

5 Applicant and the interested party were candidates for promotion to the post of Registrar in the Otorinolaryngological Section (E.N.T.) of the Department of Medical Services, a first entry and promotion post. The Public Service Commission promoted the interested party to the  
10 above post and hence this recourse. The scheme of service envisaged in the alternative by way of postgraduate qualifications, either a postgraduate diploma or title and, also, required seven years, experience in the speciality of the candidates, otorinolaryngology in this case. The interested party and applicant joined the medical service on 15th  
15 November, 1971 and 1st April, 1972, respectively. In 1974 they were promoted to Medical Officers 1st Grade, the interested party on 1st January, 1974, and the applicant on 1st May, 1974. As from 1972 the applicant and  
20 1973 the interested party, were assigned duties at the E.N.T. section of the Nicosia General Hospital and served in that branch of the service ever since. The qualifications of the interested party were, the diploma awarded to him by the Royal College of Physicians of London and the  
25 Royal College of Surgeons of England in 1980, namely, the title of D.L.O. after a successful examination following training at a specified medical institution. The two candidates were interviewed in the presence of the Director of Medical Services in his capacity as Head of Department whose opinion was confined to their performance at the  
30 interview. The respondents made an independent assessment of the performance of the candidates at the interview largely coinciding with that of the Head of Department; and in the opinion of both the performance of the interested party at the interview was marginally better. Both  
35 candidates were equal in terms of ability and devotion to duty but the interested party was senior to the applicant.

Counsel for the applicants mainly contended:

40 (a) That respondents did not properly heed and attach the weight due to a specific recommendation for promotion

made by the reporting officer of the applicant noted in his confidential report for the year 1982.

- (b) That the Director of Medical Services was incompetent to attend and make recommendations because the officer competent to advise the Commission was the Medical Officer in charge of the E.N.T. Section of the Nicosia Hospital 5
- (c) That the interested party lacked the postgraduate qualification envisaged by the scheme of service because the title of D.L.O. did not rate as a postgraduate qualification for the purposes of the scheme of service 10

*Held*, (1) that the respondents had no obligation to reproduce in the minutes of their decision the confidential reports on the candidates or any part of them; that their duty was to make a proper inquiry into their content and make a correct evaluation of their effect; that this duty they discharged without failure; accordingly contention (a) must fail. 15

*Held, further*, that given the equality of the parties in terms of ability and devotion to duty, as discernible from their confidential reports, the seniority of the interested party over the applicant acquired added prominence as a determining factor in the selection process; that the seniority of the interested party, judged in conjunction with his superior performance at the interview, revealed him as the candidate most suitable for promotion. 20 25

(2) That the Public Service Law, 1967 itself defines the Head of Department, in its section 2, competent to make recommendations under section 44(3) of the Law; that the Head of Department of Medical Services in this case was the Director of Medical Services; that in rendering advice to the P.S.C. on the suitability of candidates for promotion, the Head of Department may, if he deems it necessary, seek information about the candidates from his subordinates in order to apprise himself of their capabilities in the absence of personal knowledge; that no question of misuse or abuse of the powers of the Director of the Department of Medical Services on account of lack of personal knowledge of the candidates arises for he 30 35

confined his views, as earlier indicated, to the performance of the candidates at the interview.

(3) That the interpretation of a scheme of service is primarily a matter for the administrative authority concerned to apply it and the Court will not interfere with such interpretation so long as it is one reasonably open to the administrative authority; that the plain wording of the pertinent provisions of the scheme of service envisaged in the alternative by way of postgraduate qualifications, either a postgraduate diploma or title acquired in the circumstances specified therein or membership of a professional body; that application of the scheme to the facts of the case certainly rendered it wide open, if not inevitable to the P.S.C., to conclude that the D.L.O. was a postgraduate qualification within the meaning of the scheme of service.

*Held, further,* that "experience" in the scheme of service is practice in the field of otorinolaryngology. not necessarily as a specialist.

*Application dismissed.*

20 **Cases referred to:**

*Republic v. Pericleous* (1984) 3 C.L.R. 577;

*Republic v. Aivaliotis* (1971) 3 C.L.R. 71;

*Der Parthogh v. C.B.C* (1984) 3 C.L.R. 635;

*Neophytou v. Republic* (1984) 3 C.L.R. 1466

25 **Recourse.**

Recourse against the decision of the respondent to promote the interested party to the post of Registrar in the Otorinolaryngological Section (E.N.T.) of the Department of Medical Services in preference and instead of the applicant.

*K. Talarides*, for the applicant.

*A. Vladimirov*, for the respondents.

*A. S. Angelides*, for the interested party.

*Cur. adv. vult.*

PIKIS J. read the following judgment. Applicant and the interested party were the only two candidates considered eligible and recommended for promotion to the post of Registrar in the Otorinolaryngological Section (E.N.T.) of the Department of Medical Services, a first entry and promotion post. 5

A Departmental Committee convened to investigate and advise on the qualifications and suitability of candidates for promotion to the above and other posts in the Medical Department of the civil service, found both parties qualified for promotion and suitable for appointment and advised accordingly. 10

Interested party and applicant joined the medical service long before on 15th November, 1971 and 1st April, 1972, respectively. In 1974 they were promoted to Medical Officers 1st Grade, the interested party on 1st January, 1974, and the applicant on 1st May, 1974. As from 1972 the applicant and 1973 the interested party, were assigned duties at the E.N.T. section of the Nicosia General Hospital and served in that branch of the service ever since. Their service in the above capacity, coupled with training received abroad, was found to satisfy the experience qualification envisaged by the scheme of service. Also both were considered to be holders of the postgraduate qualification required by the scheme of service. The relevant qualifications were, the diploma awarded to the interested party by the Royal College of Physicians of London and the Royal College of Surgeons of England in 1980, namely the title of D.L.O. after a successful examination following training at a specified medical institution and the degree or diploma of a specialist in Otorinolaryngology awarded by Greek authorities to the applicant in 1982. A similar qualification obtained by the interested party on 20th July, 1983, could not count because it was acquired after the material date for satisfying the scheme of service qualification requirements.<sup>1</sup> 15  
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The Public Service Commission interviewed the candidates for this and other posts between 22nd July, 1983 and 2nd August, 1983. At their invitation the interviews were

<sup>1</sup> Republic v Pericleous and Others (1984) 3 C.L.R. 577.

attended by Mr. Markides, Director of Medical Services, in the capacity of Head of that Department.<sup>1</sup> The opinion imparted by Mr. Markides was confined to the performance of the candidates at the interview leaving, as one may suppose, evaluation of the worth of their services to be made by the P.S.C. on consideration of their confidential reports. The respondents made an independent assessment of the performance of the parties at the interview largely coinciding with that of Mr. Markides. In the opinion of both the performance of the interested party at the interview was marginally better. At the end, on appraisal of the confidential reports of the parties as prime indicators of their ability and devotion to duty and after noting the length of their service as a determinant of their seniority and their performance at the interview, they concluded that interested party was best suited for appointment and promoted him accordingly.

Applicant challenges the soundness and validity of the decision on numerous grounds. First, he questions the assessment made of the confidential reports of the parties. The particular complaint is that respondents did not properly heed and attach the weight due to a specific recommendation for promotion made by the reporting officer of the applicant noted in his confidential report for the year 1982. A similar recommendation is missing from the report on the interested party, though otherwise it is just as good. Objective evaluation of the overall effect of the confidential reports confirms, to my mind, the assessment of the P.S.C. that the two candidates had an excellent rating and scored on that count equally. The respondents had no obligation to reproduce in the minutes of their decision the confidential reports on the candidates or any part of them. Their duty was to make a proper inquiry into their content and make a correct evaluation of their effect. This duty they discharged without failure.

Given the equality of the parties in terms of ability and devotion to duty, as discernible from their confidential reports, the seniority of the interested party over the applicant acquired added prominence as a determining factor in the

<sup>1</sup> Section 44(3), Public Service Law 33/87

selection process. The seniority of the interested party, judged in conjunction with his superior performance at the interview, revealed him as the candidate most suitable for promotion.

The basic objections of the applicant to the promotion of the interested party concerned the propriety of the selection process and the eligibility of the interested party, allegedly ineligible because of lack of the academic qualifications and experience required by the scheme of service. The selection process was, in the contention of applicant, faulty because of the attendance of Mr. Markides and solicitation of his views as Head of the Department of Medical Services, whereas the officer competent to advise was Mr. Kourris, the Medical Officer in charge of the E.N.T. section of the Nicosia Hospital. In other words, the submission is that Mr. Markides was incompetent to attend and make recommendations: his participation vitiated the selection process. This objection is perhaps the weakest in the cause of the applicant, for the law itself defines the Head of a Department, in section 2 of the law, competent to make recommendations under section 44(3) of the Public Service Law—33/67. Here we are concerned with the Head of the Department of Medical Services, a fact about which there can be no doubt. The Head of the Department of Medical Services was Mr. Markides, the Director of Medical Services. Presumably the legislature entrusted this advisory role to the Head of the Department because of the amenity he has to take a global view of the needs of the Department. In rendering advice to the P.S.C. on the suitability of candidates for promotion, he may, if he deems it necessary, seek information about the candidates from his subordinates in order to apprise himself of their capabilities in the absence of personal knowledge (1). No question of misuse or abuse of the powers of Mr. Markides on account of lack of personal knowledge of the candidates arises for he confined his views, as earlier indicated, to the performance of the candidates at the interview. His assessment was mostly shared by the respondents who made an independent eva-

<sup>1</sup> Demetrios Hadji Vassiliou & Others v. The Republic (1974) 3 C.L.R. 130.

luation of the performance of the candidates at the interview.

5 Respecting the qualifications of the interested party, the contention is that he lacked the postgraduate qualification envisaged by the scheme of service. Counsel for the applicant submitted that the title of D.L.O. did not rate as a postgraduate qualification for the purposes of the scheme of service. The scheme of service provided in terms explicit that candidates should be the holders of a postgraduate diploma or title in their speciality awarded after postgraduate training and success in examinations or in the alternative, 10 be members of established medical bodies of the United Kingdom named therein, or members of comparable professional bodies of other countries.

15 It has been argued and this is the gravamen of the submission made on behalf of the applicant in this connection, that no qualification issued by the specified professional bodies, namely, by the Royal College of Physicians of London and the Royal College of Surgeons of England, 20 that did not entitle the holders to membership could rank as a postgraduate qualification for the purposes of the scheme of service. Therefore, considering that the D.L.O. was awarded by the aforementioned two bodies and did not qualify holders for membership, it did not satisfy the requirements of the scheme. 25

Resolution of the issue turns on the wording of the scheme of service and its interpretation, subject to the principles of administrative law that the interpretation of a scheme of service is primarily a matter for the administrative authority 30 concerned to apply it and the rule that a Court of law will not interfere with such interpretation so long as it is one reasonably open to the administrative authority<sup>1</sup>. The plain wording of the pertinent provisions of the scheme of service envisaged in the alternative by way of postgraduate qualifications, either a postgraduate diploma or title acquired in 35 the circumstances specified therein or membership of a professional body. Application of the scheme to the facts

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<sup>1</sup> See, *inter alia*, *Republic v. Alexandros Aivaliotis* (1971) 3 C.L.R. 71; *Der Parthogh v. The C.B.C.* (1984) 3 C.L.R. 635; *Neophytou v. The Republic*, (1984) 3 C.L.R. 1466.



of the case certainly rendered it wide open, if not inevitable to the P.S.C., to conclude that the D.L.O. was a postgraduate qualification within the meaning of the scheme of service. Its award was conditional on (a) postgraduate training, and (b) success at an examination. The construction of the scheme in the manner suggested by counsel for the applicant is, in my view, wholly unjustified. It ignores the use of the disjunctive "or" and implies rewriting of the relevant provisions of the scheme in a manner excluding from the range of postgraduate qualifications, qualifications awarded by the specified professional bodies other than membership thereof. At the least, it was reasonably open to the respondents to construe the scheme in the manner they did and consider from the view point of qualifications the interested party eligible for promotion. Consequently, I find objections directed to academic qualifications of interested party as unsustainable.

By way of experience the scheme of service required for promotion seven-year experience in the speciality of the candidates, otorinolaryngology in the case of the parties before us, including such time as may have been spent for the acquisition of the postgraduate qualification or membership of the recognized body, provided at least three years of experience were gained in the Government Medical Service in the capacity of Medical Officer First and Second Grade. The test of experience is practice in the field of otorinolaryngology, not necessarily as a specialist. This is evident from the requirement that at least three-year experience should be gained in the service as a Medical Officer first or second grade, neither of which is a specialized position.

There was ample evidence before the Commission to conclude that interested party did have the necessary seven years experience in the practice of otorinolaryngology, especially if one adds up the period of his training. Equally open to the Commission was to conclude that the applicant had the necessary experience to qualify him as a candidate for promotion; this disposes of the objections of the

interested party to the legitimacy of the interest of the applicant to pursue the present proceedings.

In the result the recourse is dismissed. Let there be no order as to costs.

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*Recourse dismissed.  
No order as to costs.*