

1986 November 15

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PANAYIOTIS PARPAS AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 630/84, 5/85, 55/85).

Public Officers—Promotions—Omission to promote—The promotion of a certain officer to a particular post is not an omission to promote another officer, seeking the same post, to such post.

- 5 *Public Officers—Promotions —Merit—Seniority—Head of Department, recommendations of—Interview, performance at —Applicant, who was recommended by the Head of the Department whilst the interested party Kitromilides was not, had slightly better marks than Kitromilides and was his senior by 22 months—No special reasons given for disregarding such recommendations or such seniority—Undue weight given to performance at interview—Promotion of Kitromilides annulled.*

- 15 *Public Officers—Promotions—Seniority—One and half months' and eight months' seniority—Not sufficient to tip scales in favour of applicant or to require special reasons why it was disregarded— Seniority of 4 and 6 years respectively, other things been more or less equal—No special reasons given for disregarding it—Ground of annulment.*

- 20 *Public Officers —Promotions —Merit —Seniority —Interested parties had slightly better marks than applicant—Seniority of applicants by about one and a half months and twenty*

two months respectively—Not such as to establish a case of striking superiority.

Public Officers —Promotions —Head of Department —Recommendations of—Fact that interested party made the best impression of all candidates at the interview and fact that he had very good confidential reports given as special reasons why such recommendations were disregarded as regards candidates with “slightly higher confidential reports” —Requirement of special reasoning satisfied. 5

The applicants in the above recourses challenge the decision, whereby the interested parties were promoted to the post of Air Traffic Supervisor in the Department of Civil Aviation. Applicants in Cases 630/84 and 55/85 challenged, also, the “omission” of the respondents to promote them. 10

As the qualifications of the applicants and the interested parties were more or less equal, the outcome of these recourses depended on comparison of the merit and seniority of each applicant with the interested parties in each respective recourse. 15

It must be noted that as regards interested party Papatomas, who had not been recommended for promotion by the Head of the Department, the respondent Commission gave special reasons for disregarding such recommendations as regards other candidates who may have had “slightly higher confidential reports,” namely the fact that he made the best impression of all candidates at the interview and had very good confidential reports. 20 25

Held, (1) The promotion of a person to a certain post cannot be treated as an omission to promote another person seeking the same post. It follows that recourses 630/84 and 55/85 as regards the alleged omission fail. 30

(2) The applicant in recourse 630/84, who was recommended for promotion by the Head of the Department, was more or less equal in merit with interested parties Coudounaris and Papandreou, who were, also, recommended for promotion by the Head of the Department, and was not senior to any one of them. The applicant has slightly better marks than interested party Papatomas, 35

but none that would render him strikingly superior. Special reasons were given as regards Papatomas for disregarding the recommendations of the Head of the Department as regards other candidates who may have had "slightly higher confidential reports". Applicant's seniority of one and a half months to Papatomas is not such as to tip the scales in favour of applicant or to require special reasoning for having been disregarded. The same reasoning applies to applicant's seniority of one and a half months to interested party Georghiades, who was, also, recommended for promotion and was more or less equal in merit with the applicant. The applicant has slightly better marks than interested party Kitromilides, who was not recommended for promotion and was junior to the applicant by about twenty-two months. No special reasons were given for disregarding the recommendations of the Head of the Department or for disregarding applicant's said seniority. The Commission erred in promoting Kitromilides, having wrongly given undue weight to his performance at the interview. It follows that the recourse succeeds only in so far as Kitromilides is concerned.

(3) Applicant in recourse 5/85, who was recommended for promotion by the Head of the Department, was senior to interested party Coudounaris by about 8 months. Coudounaris was, also, recommended as aforesaid and had slightly better marks than the applicant. In any event such seniority is not such as to tip the scales in favour of the applicant or to require special reasons why it was disregarded. The applicant had about four years seniority to interested parties Papandreou, Georghiades and Papatomas and six years' seniority to Kitromilides and no special reasons were given for disregarding such seniority. It follows that the recourse succeeds as regards the last four of the aforementioned interested parties.

(4) Applicant in Case 55/85 was not recommended for promotion. Papatomas and Kitromilides, who were, also, not recommended for promotion had slightly better marks than the applicant. In the circumstances applicants' seniority of one and a half months to Papatomas and twenty two months to Kitromilides does not establish a case of

striking superiority. Applicant also failed to establish such a case over the other interested parties. His recourse has to be dismissed.

Recourse 55/85 dismissed. Recourse 630/84 dismissed as against all interested parties, except Kitromilides, whose promotion is annulled. Recourse 5/85 dismissed as against interested party Koudounaris, but the promotions of all other interested parties are annulled.

Cases referred to:

Uludag v. The Republic, 3 R.S.C.C. 131.

Recourses.

Recourses against the decision of the respondent to promote the interested parties to the post of Air Traffic Supervisor in the Department of Civil Aviation in preference and instead of the applicants.

A. S. Angelides, for the applicant in Case No. 630/84. 20

L. Papaphilippou, for the applicant in Case No. 5/85.

M. Pelides, for the applicant in Case No. 55/85.

M. Tsiappa (Mrs.), for the respondent.

M. Christofides, for interested party A. Papathomas. 25

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourses which were heard together as they challenge the same administrative act, the applicants seek a declaration of the Court that the decision of the respondent Commission published in the official Gazette of the Republic of the 29th December 1984, under Notification No. 3126 to promote the interested parties instead of the applicants

to the post of Air Traffic Supervisor in the Department of Civil Aviation. is null and void and of no effect whatsoever.

5 The salient facts are these. The aforesaid posts are promotion posts. A Departmental Board was set up under the Chairmanship of the Acting Director of the Department of Civil Aviation and a list of all candidates was sent to its Chairman together with the Confidential Reports and the Scheme of Service of the post.

10 By letter dated the 9th May, 1984, (Appendix 4) the Acting Director of the Department of Civil Aviation, Chairman of the relevant Departmental Board, sent to the respondent Commission the Board's report, by which fourteen candidates including the applicants were recommended for the five vacant posts.

15 At its meeting of the 6th August 1984, (Appendix 5), the respondent Commission decided to examine the matter of promotions at a later date to be fixed and on which the Acting Director of the Department would be called to attend. At its meeting of the 4th October, 1984, (Appendix
20 6) the respondent Commission after listening to the views and recommendations of the said Acting Director and examining all material facts in the Filling of the Posts File, and in the candidates' Personal Files and Confidential Reports and taking into account the Board's findings, it
25 decided that, in view of the fact that many of the candidates had about the same qualifications and appeared from the confidential reports to be of about equal merit to call the candidates for an interview in order to select the best of them (Appendix 6.)

30 By letter dated the 12th October, 1984, (Appendix 7), the respondent Commission invited for an interview the fourteen candidates recommended by the Departmental Board. It interviewed separately at its meetings of the
35 25th October 1984, and 26th October 1984, (Appendices 8 and 9), these fourteen candidates including the interested parties and heard also the views of the Acting Director of the Department in connection with the candidates' performance at their interview with the respondent Commission.

At its meeting of the 29th October 1984, (Appendix 10), the respondent Commission after taking into account all relevant facts placed before it together with the candidates' performance at the above-mentioned interviews it considered that the interested parties to this recourse were better than the rest of the candidates and decided to promote them as from 15th November, 1984, to the permanent post of Air Traffic Inspector at the Department of Civil Aviation.

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I do not intend to refer to the minutes of the respondent Commission in full but reference may be made to the following paragraph to be found in Appendix 8:

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"Given that in accordance with the Scheme of Service a very good knowledge of the English language is required. Suitable questions were put to the candidates so that the Commission would be assisted in forming an opinion whether the candidates possess this qualification."

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A similar statement appears in Appendix 9 and in both minutes there appears a note that both the Director of the Department of Civil Aviation and the Chairman and members of the Public Service Commission put to the candidates questions on general subjects and mainly on subjects relating to the duties of the post which are mentioned in the scheme of service.

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The minute of the respondent Commission of the 29th October, 1986, (Appendix 10) which I shall quote in full is very useful in view of one of the grounds of Law raised in this recourse, it reads:

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"The Commission continuing the examination of the subject evaluated also itself the performance of the candidates at the interviews in the light also of the relevant evaluations of the Director of the Department of Civil Aviation.

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The assessment of the Commission is:

- (1) Askotis Andreas: 'Good'
- (2) Georghiades Milton: 'Very Good'

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- (3) Georghiou Zaharias: 'Almost Good'
- (4) Theodotou Tassos: 'Almost Very Good'
- (5) Theofanous Savvas: 'Good'
- (6) Kallias Andreas: 'Almost Very Good'
- 5 (7) Kitromelides Ioannis: The three present members described him as 'Very Good' and the Chairman as 'Almost Very Good'
- (8) Coudounaris Nikos: 'Almost Very Good'
- (9) Louca Ioannis: 'Good'
- 10 (10) Orfanos Costas: 'Almost Very Good'
- (11) Papatomas Andreas: 'More Than Very Good'. He was different from the others from the point of view of personality, judgment, going deep into the subjects and their analysis, as well as for the ease
- 15 of expression. He studies and he also has views and ideas for the correct functioning of the department.
- (12) Papandreou Andreas: 'Very Good'
- (13) Pappas Panayiotis: 'Almost Very Good'
- (14) Frangoudis Andreas: 'Good'."
- 20 Subsequently the Commission was seized with the general assessment and comparison of the candidates.

The Commission examined the material facts from the filling the Post File as well as from the personal files and the confidential reports of the candidates and took also

25 into consideration the conclusions of the Departmental Board and the performance of the candidates at the interviews with the Public Service Commission in the light also of the relevant views and considerations of the Director of the Department of Civil Aviation.

30 The Commission noted that at the interviews, Papatomas clearly made the best impression from all the candidates about his study of the problems, the open mindedness with which he faces the various subjects, the correct-

ness of his answers, his alertness of mind and the ease of expression. The Commission noted also that this candidate has very good confidential reports for the last years. May be some others who were recommended have slightly higher confidential reports but the Public Service Commission taking into account also the duties of this post which is to be filled and giving due weight to the impression it had from the interview of this candidate, without difficulty selects him for promotion in spite of the fact that he was not recommended by the Director who apparently attributed greater importance to the small difference that the confidential reports of others which he recommended, present. The Commission noted the fact that the Director assessed at the interviews Papatomas as "Very Good" together with three other candidates Georghiades, Coudounaris, and Papandreou.

Papandreou Andreas although in 1981, he was assessed as "Simply Good", had very good confidential reports for 1982 and 1983 and according to the Director he presents sufficient improvement for 1984. The impression that this candidate made at the interview was very good both to the Commission and the Director. The Commission having taken into consideration the aforesaid as well as his seniority adopted the recommendation of the Director for this candidate.

Georghiades Milton was considered at the interview as "Very Good" both by the Commission and by the Director. His confidential reports were Very Good all the years and in 1984 he presents slight improvement. He has also the recommendation of the Director, so the Commission selected him also for promotion.

Coudounaris Nicos was assessed at the interview as "Almost Very Good" by the Commission and as "Very Good" by the Director. He is the second in seniority, his confidential reports are among the best and he has also the recommendation of the Director. He is also selected for promotion.

For the fifth post the Commission selected by majority Kitromelides although he was not recommended by the Di-

rector. The three present members selected him because at the interview they considered him as "Very Good" and after taking into consideration that he has very good confidential reports for the last years. The Chairman disagreed with the decision of the majority and agreed with the assessment of the Director that at the interview he was almost very good. Instead of Kitromelides the Chairman supported the promotion of Parpa who is among those recommended by the Director. He was found by the Committee as being "Almost Very Good" at the interview. He has slightly better confidential reports for the last two years and he is ahead in seniority by two years from Kitromelides.

In conclusion the Commission taking into consideration all the material factors before it and on the basis of the established criteria in their totality (merit, qualifications, seniority), decided that the following are superior to the other candidates and decided to promote them as the most suitable to the permanent (Ordinary Budget) post of Air Traffic Supervisor in the Department of Civil Aviation as from the 15th November 1984.

- (1) Georghiades Milton
- (2) Kitromelides Ioannis
- (3) Coudounaris Nicos
- (4) Papatomas Andreas
- (5) Papandreou Andreas.

The decision for the officers under numbers 1, 3, 4, and 5 was unanimous whereas for the officer under No 2 was taken by majority, three votes to one against

As against this decision to promote the interested parties the present recourses were filed. It is pertinent to point out at this stage that recourses Nos 630/84 and 55/85 were also filed as against the omission of the respondents to promote the applicants to the post in question, but as repeatedly held by this Court, the promotion of a person to a certain post cannot be treated as an omission to ap-

point/promote another person who seeks promotion to such post. See *Uludag v. Republic*, 3 R.S.C.C. 131 at p. 134.

The main arguments put forward by all three applicants as against the decision to promote the interested parties can be summarised as follows:

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That the applicants were strikingly superior to the interested parties in view of their being better in merit and more senior, however it was argued, undue weight was given to the performance of the candidates at the interviews in view of which the promotions were decided, no special reasoning was given for ignoring the seniority of the applicants or for disregarding the recommendations of the Head of Department.

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In view of the fact that I consider that the outcome of each recourse would entirely depend on the comparison of each applicant vis a vis each interested party, I propose to deal with each recourse separately in this judgment, except for the matter of qualifications which I shall dispose of now, as from the perusal of the personal files of the parties which are before me, it transpires that all parties were more or less the same as regards qualifications, and any qualifications which were neither required by the scheme of service nor were they expressly stated therein to be an advantage, cannot be taken into account as constituting an advantage over the other parties. What therefore remains to be considered are their merit and seniority.

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The applicant in recourse No. 630/84 Panayiotis Parpas was promoted to the post of Approach and Aerodrome Control Officer on 15th March, 1967 (the post was renamed to Air Traffic Control Officer on 1st January 1970). As regards merit he was rated for 1983 as "Very Good", for 1982 as "Very Good", for 1981 as "Very Good" and for 1980 as "Very Good". He was also recommended by his Head of Department for promotion.

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Interested party Coudounaris had a recommendation, was more or less equal in merit and was senior to the applicant having been seconded to the temporary post of Approach and Aerodrome Control Officer on 1st January

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1964 and promoted to the permanent such post on the 1st January 1966.

Interested party Papandreou was of more or less equal merit, had a recommendation and was appointed to the
5 post of Approach and Aerodrome Control Officer on the 15th March, 1967, the same date as the applicant.

Interested party Papatomas who was not recommended was also rated as "Very Good" in all the years. Applicant had slightly better marks but none that would render him
10 strikingly superior. However, special reasoning does appear in the minute of the sub judge decision for disregarding the recommendations of the head of Department as regards other candidates who may have had slightly higher confidential reports. Finally as regards seniority he was
15 promoted to the post of Approach and Aerodrome Control Officer on 1st May, 1967, giving thus the applicant a seniority of about one and half month which is neither such that would tip the scales in his favour nor such that would require special reasoning to be given for being dis-
20 regarded.

Interested party Georghiades was of more or less equal merit, had a recommendation but was junior to the applicant by about one and half month, having been appointed
25 to the post of Approach and Aerodrome Control Officer on 1st May, 1967. Such seniority, however, of the applicant, I consider to be of no particular weight and such that would not establish any striking superiority of the applicant over this interested party.

Interested party Kitromelides who was not recommended
30 for promotion was also rated as "Very Good" in all the years in question but the applicant had slightly better marks in his confidential reports; and, having been promoted to the post of Approach and Aerodrome Control Officer on 1st February 1969, was junior to the applicant by about
35 twenty-two months.

No special reasoning was given as regards this interested party why the recommendations of the Head of Department were disregarded, nor for ignoring the seniority of the applicant. As stated in the relevant minutes of the respondent

Commission, he was selected, inter alia, "because at the interview they considered him as 'Very Good' and after taking into consideration that he has very good confidential reports for the last years".

I would consider that as regards this interested party, vis a vis this applicant, the respondent Commission erred in promoting him, having wrongly given undue weight at his performance at the interviews which appears from the relevant minute to be the main reason for promoting him.

In conclusion, I find that as regards recourse No. 630/84, it was reasonably open to promote interested parties Coudounaris, Papandreou, Papatomas, Georghiades, the applicant Parpas having failed to establish striking superiority over them, but for the reasons stated above the promotion of interested party Kitromelides should be annulled.

The applicant in recourse No. 5/85 Andreas Askotis who was recommended for promotion was rated as "Very Good" in all the years in question. He was promoted to the post of Approach and Aerodrome Control Officer on the 1st April 1963.

Interested party Coudounaris was recommended for promotion, was also rated as "Very Good" but had slightly better marks to the applicant in his confidential reports for the same years. Having been promoted on the 1st January 1964 was junior to the applicant by about eight months. Even if they were to be regarded in respect of merit, as more or less equal the applicant's seniority of eight months is not such as to tip the scales in his favour, nor such that would require special reasoning to be given for being disregarded. The applicant has in my view failed to establish any striking superiority over this interested party in order to justify a disturbance of his promotion.

Interested parties Papandreou and Georghiades were recommended for promotion, as regards merit they were rated as more or less the same even though for 1983, Papandreou had slightly better marks. However, applicant is by about four years senior to both of them, they having been promoted. Papandreou on 15th March, 1967 and

Georghiades on 1st May, 1967, but no special reasoning appears in the minutes of the sub judge decision for disregarding such seniority.

5 Interested party Papathomas was not recommended for promotion but special reasoning was given for disregarding the recommendations of the Head of Department as regards other candidates who may have had "slightly higher confidential reports". But as regards the seniority of the applicant by about four years, no special reasoning was
10 given for disregarding it.

Finally as regards interested party Kitromelides who as stated above was not recommended for promotion and over whom applicant was senior by about six years, I would consider that his promotion should be annulled for
15 the same reasons as explained in case No. 630/84 above.

Consequently I find that as regards interested party Coudouraris that it was reasonably open to promote him instead of the applicant and the recourse should fail in respect of this applicant but for the reasons stated above the
20 recourse should succeed as against all other four interested parties.

Applicant in case No. 55/85 Tassos Theodorou as regards merit was rated more or less the same as the interested parties but was not recommended for promotion.
25 He was promoted to the post of Approach and Aerodrome Control Officer on 15th March, 1967.

Interested party Coudouraris was recommended for promotion and was also more senior to the applicant. Papandreou was recommended but was of equal seniority. Georghiades was by one and half month junior to the applicant, but having been recommended, applicant's seniority
30 over him could not prevail, all things not being equal.

Interested parties Papathomas and Kitromelides had no recommendation but though more or less equal in merit
35 they both had slightly better marks to the applicant. However, I would consider that applicant's seniority by one and a half month to Papathomas and by twenty-two months to Kitromelides, is in the circumstances not so great in

order to establish any striking superiority of the applicant over them and sufficient to justify annulment of their promotion. Recourse No. 55/85 must in the light of the above fail.

In concluding I must state that I have dealt with the case as above as I consider that the arguments put forward by the three applicants do not generally apply to the interested parties of all cases to the same extent and in the same manner, but their applicability depends in each case to the particular circumstances of each applicant vis a vis each interested party. 5 10

In the result recourse No. 630/84, succeeds only as against interested party Kitromelides whose promotion is hereby annulled. As against all remaining interested parties it fails and is hereby dismissed. 15

Recourse No. 5/85 fails as against interested party Coudounaris but succeeds as against all other interested parties whose promotion is hereby annulled.

Recourse No. 55/85 fails and is hereby dismissed.

There will be, however, no order as to costs in respect of all recourses. 20

Recourse No. 630/84 succeeds in part. Recourse No. 5/85 succeeds in part. Recourse No. 55/85 fails. No order as to costs. 25