

1986 December 27

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANASTASSIOS DEMETRIADES AND OTHERS,

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF COMMUNICATIONS
AND WORKS,
2. THE DEPARTMENT OF CIVIL AVIATION,
3. THE PUBLIC SERVICE COMMISSION,

Respondents.

(Cases Nos. 659/84, 660/84, & 17/85).

Public Officers—Promotions—Departmental Board (Section 36 of Public Service Law 33/67)—Recommendations of—Not binding on Commission, but the latter may accept them after proper review of the material before it.

5 *Public Officers—Promotions—Confidential reports—Taking into consideration recent confidential reports—Consistent with case Law of this Court.*

10 *Administrative Law —Irregularity —Promotions of Public Officers —Qualifications —Law degree considered as an additional qualification—Assuming that this was an irregularity, such irregularity was not in the circumstances a material one in view of the other factors in favour of interested party as compared to applicants.*

15 *Public Officers—Promotions—Head of Department—Recommendations of—Special reasons should be given for not following them.*

By means of these recourses the applicants challenge the promotion of the interested parties to the post of Opera-

tions Officer (Ordinary Budget) in the Department of Civil Aviation.

Though the applicants possessed the required qualifications for promotion to the sub judge post, they were not included among the candidates recommended to the respondent Commission by the Departmental Board on account of their inferiority in comparison to other candidates as regards the established criteria.

It must be noted that the respondent Commission decided to include as candidate at its final deliberations the applicant in recourse 17/85 as he was senior to all those recommended and had very good confidential reports during the last two years.

It is the case of the applicants in recourses 659/84 and 660/84 that the Departmental Board wrongly applied section 44 of Law 33/67 in that it relied only on the last two confidential reports, that the said Board wrongly considered the law degree of interested party Kakoullis as constituting an additional qualification and that the report of the Board affected the final decision, because the Commission confined itself to the officers recommended by the Board.

Held, dismissing the recourses: (A) As regards recourses 659/84 and 660/84: (1) Apart from the confidential reports the Departmental Board took into consideration the qualifications and seniority of the candidates. Moreover, the respondent Commission took into consideration "the picture of the evaluation of the candidates from their confidential reports which for the last 3 years (indicatively mentioned) are as follows". The taking into consideration of the more recent reports is consistent with the case law of this Court.

(2) The scheme of service does not envisage a law degree as an essential qualification, but as it requires "very good knowledge of the provisions and Regulations of the Republic of Cyprus and the International Organization of Civil Aviation with regard to a number of matters ...", it can be said that a legal training is conducive to the

5 easier application and acquisition of very good knowledge of such provisions and regulations. Even if this was an irregularity, such irregularity was not a material one in view of the other factors in favour of interested party Kakoullis as compared to the applicants.

10 (3) The minutes of the respondent Commission expressly state that it considered all candidates. The recommendations of a Departmental Board set up under s. 36 of Law 33/67 are not binding on the Commission, which, however, may accept them after proper review of the material before it. In this case the Commission did not abdicate its duties and, in accepting such recommendations as well as those of the Head of the Department, which were born out by the material in the record, did not exceed its authority.

(4) The applicants failed to establish a case of striking superiority over the interested parties.

20 (B) As regards Recourse 17/85: The applicant failed to establish a case of striking superiority over the interested party.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

- 25 *Thalassinos v. The Republic* (1973) 3 C.L.R. 386;
Christoudias v. The Republic (1984) 3 C.L.R. 657;
Theodossiou v. The Republic, 2 R.S.C.C. 44;
Duncan v. The Republic (1977) 3 C.L.R. 153;
HjiSavva v. The Republic (1982) 3 C.L.R. 76;
Elia v. The Republic (1985) 3 C.L.R. 38.

30 **Recourses.**

Recourses against the decision of the respondents to promote the interested parties to the permanent post of Operations Officer in the Department of Civil Aviation in preference and instead of the applicants.

E. Efsthaliou, for applicants in Cases Nos. 659/84 and 660/84.

M. Christofides, for applicant in Case No. 17/85

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

Cur. adv. vult. 5

A. LOIZOU J. read the following judgment. By the present recourses which have been heard together by direction of the Court as they present common questions of law and fact, the applicants seek a declaration of the Court that the decision of the respondents by which (1) Andreas G. Kāfoullis and (2) Michael Kassianides—hereinafter referred to as the interested parties—were promoted to the permanent post of Operations Officer (ordinary budget) in the Department of Civil Aviation as from the 15th September, 1984 instead of the applicants, is null and void and/or contrary to law and/or with no legal effect. 10 15

The post of Operations Officer is a promotion post from the immediately lower post of Assistant Operations Officer, 1st Grade. A departmental board under the chairmanship of the Department of Civil Aviation was set up in accordance with the regulatory orders which govern the establishment, competence and method of action of such boards in accordance with s. 36 of the Public Service Laws 1967-1983. The report of the board was communicated to the respondent Commission by letter dated 24th April, 1984 (appendix 4) in which it recommended for promotion 8 out of the 25 candidates. The applicants were not included among the candidates recommended for promotion, on the ground that though they possess the required qualifications, they were considered that on the basis of the established criteria in their totality (merit, qualifications, seniority) they are inferior in comparison with those recommended. 20 25 30

The respondent Commission at its meeting of the 17th May, 1984, (appendix 5) decided to adjourn further the examination of the matter for the purpose of asking the said Board to give its reply to an allegation made by one of the candidates to the effect that the reason of his non-recommendation by them was his having filed in the past 35 40

an accusation against the Senior Operations Officer. The reply of the Board is contained in the letter of its Chairman dated 24th July, 1984 (appendix 7). It was stressed therein that the decision of the board was unanimous and based
5 exclusively on the material before it and on the basis of the objective criteria and in no way took into consideration the said letter/report which Mr. Christou had submitted in the past against the Senior Operations Officer Mr. G. Chrysanthou.

10 Though we are not concerned with this incident directly in this case, yet I mention it as indicative of the thorough way by which the respondent Commission conducts its inquiries. The respondent Commission further decided,
15 after taking into consideration all relevant facts placed before it, to include as a candidate applicant in recourse No. 17/85 Andreas Papadopoulos and to examine the matter of promotions at a later date on which the Director of the Department would be called to attend.

20 The respondent Commission at its meeting of 3rd September, 1984, heard the Director of the Department of Civil Aviation who is recorded in its relevant minutes (appendix 9) to have said the following:

25 "Kakoullis Andreas, Kassianides Michael and Kountouris Christakis are of equal merit. In qualifications Kakoullis is superior, as he has a law degree and so he is the first to be recommended. Kassianides is recommended second, as he showed relative improvement in 1983 and who, in 1984 is still better. From
30 the point of view of qualifications Kountouris and Kassianides are the same. that is they are both Wireless Operators.

The performance of the candidates as from 1st January, 1984 until today is as follows:
35 Papadopoulos Andreas: About the same as last year.
Kountouris Christakis: About the same as last year.
Nicos Andreou: About the same as last year.

Kassianides Michael: He showed some improvement.
Panayiotakis Pavlos: He showed small improvement.
Voniatis Stavros: About the same as last year.

Kakoullis Andreas: Showed small improvement.

Zittis Theodoros: About the same as last year."

The respondent Commission then proceeded with the evaluation and comparison of the candidates and for that purpose examined all relevant material before it, including the recommendations of the Departmental Board and the views and recommendations of the Director. In its relevant minute then, it proceeds to make a comparison of the aforesaid 8 candidates as regards the picture from their ratings in their confidential reports, and then went on and said the following:

"From the point of view of seniority the Commission noted that all the candidates were promoted to the post of Assistant Operations Officer second grade. (previously called Operations Officer second grade) as from 1st January, 1970. Kountouris, Nicou, Kassianides, Panayiotakis, Voniatis and Kakoullis held the post as from 1st February, 1972 and their placing in the order of seniority was made on the basis of their age. Last from the point of view of seniority is Zittis who held the post of Assistant Operations Officer, 2nd grade, as from 15th June, 1972.

The Commission, having taken into consideration the aforesaid, adopted on the basis of the totality of the established criteria the recommendation of the Director and selected for promotion Kassianides, who, in accordance with the Director, presented also during 1984 improvement in his performance, and Kakoullis, who, in accordance with the Director, showed during 1984 small improvement and who possesses a degree in law.

In conclusion, the Commission, taking into consideration all the material before it, considered on the basis of the established criteria in their totality (merit, qualifications, seniority) that the following are superior to all other candidates and decided to promote them as the most suitable to the permanent (ordinary budget) post of Operations Officer in the Department of Civil Aviation, as from 15th September, 1984:

1. Kassianides Michael,
2. Kakoullis Andreas.”

It is the case for applicants Demetriades and Demetriou in recourses 659/84 and 660/84 that the sub judge decision was based on the recommendations of the departmental board which excluded them from candidates for promotion before the respondent Commission. This act of the Board is a preliminary act and if it is null then the sub judge decision must be annulled. The Departmental Board wrongly applied the provisions of s. 44 of the Public Service Law and relied only on the confidential reports of the last two years whereas the reference of the law to the last two annual confidential reports is in relation to the exclusion of public officers for promotion. It was urged that in accordance with the constant case law of this Court at the consideration of the promotions of public officers, the whole of their career is taken into consideration.

It is correct that the Departmental Board examined the merit of all the candidates on the basis of the confidential reports of the last two years, namely 1982 and 1983, but that was not the only element taken into consideration by the Departmental Board in making its recommendations. They examined also the qualifications and the seniority of the 17 candidates who were found to possess the required qualifications under the relevant scheme of service out of the 25 initial candidates. Moreover, the respondent Commission took into consideration “the picture of the evaluation of the candidates” as it states in its minutes appendix 9, “from their confidential reports which, for the last 3 years (indicatively mentioned) are as follows:....” Furthermore, it has to be noted that all the confidential reports were before both the Departmental Board and the respondent Commission, the taking, however, into consideration of the more recent reports is consistent with the case law of this Court. This ground, therefore, cannot succeed.

The second ground argued on behalf of these two applicants is that the Departmental Board wrongly and in abuse of power took into consideration elements which it ought

not to have taken. It considered, it is claimed, the law degree of interested party Kakoullis as "an additional qualification which tipped the scales in his favour, whereas neither the scheme of service considers it as such nor is it relevant or connected with the post and/or the duties and its responsibilities for it." 5

On a perusal of the relevant scheme, though the law degree is not considered as an essential qualification, yet under paragraph 4 thereof a very good knowledge of the provisions and regulations of the Republic of Cyprus and the International Organization of Civil Aviation with regard to a number of matters including bilateral agreements between control centres regarding the regulation of air traffic is required. This means that a legal training is conducive of the easier appreciation and the acquisition of very good knowledge of provisions of laws, regulations and international agreements. 10 15

Even if this was an irregularity, I would still hold that it was not a material one in view of the higher merit, the seniority and the recommendations of the head of the department of this interested party as compared with these two applicants. 20

The next ground is that the report of the Departmental Board which is null and void affected materially the determination and the decision of the respondent Commission which did not examine at all the case of promotion of the applicant as it confined itself to the officers recommended by the Board. Consequently, the respondent Commission was prevented from exercising its discretionary power and probably its decision would have been different had it examined a list of candidates in which the applicants would have been included. On the same basis the recommendations of the Director were confined between those officers recommended by the Board and consequently such recommendations are also null and void for the same reason. 25 30 35

I am afraid I cannot subscribe to this as all the candidates and the relevant material on each one of them was before both the Departmental Board and the respondent Commission which considered the case of each one of

them, and it says so in its minutes, appendix 9: "Then the Commission dealt with the evaluation and comparison of the candidates. The Commission examined the material elements from the file for the filling of the post as well as
5 from the personal files and the confidential reports of the candidates and took also into consideration the conclusions of the Departmental Board and the views and recommendations of the Director of the Department of Civil Aviation.

10 Here we have an explicit statement by the Commission that it considered all the candidates, not only those recommended by the Departmental Board.

15 If anything need be said about the role of Departmental Boards in cases of appointments or promotions, established under s. 36 of the Public Service Laws and the regulatory orders made thereunder, reference may be made to the cases of *Thalassinos v. The Republic*, (1973) 3 C.L.R. p. 386, where it was held that neither the establishment of an advisory board nor solicitation of its views on the suitability of the candidates entails abdication of the substantive
20 competence vested in the appointing body or divestiture of its powers.

Reference also may be made to the case of *Christoudias v. The Republic*, (1984) 3 C.L.R. 657 where it was stated at p. 663 that "under s. 36 the recommendations of the
25 Departmental Committee are not binding on the Public Service Commission and that in the particular case there was nothing in the decision of the Public Service Commission to suggest that they treated the recommendations as binding. On the other hand, they could accept them after proper
30 review of the material before them".

This appears to be the situation in the case in hand and with this I conclude the examination of these two recourses.

35 For all the above reasons, both should be dismissed as it was reasonably open to the Departmental Board to recommend the interested parties along with others in preference to the two applicants, and that the Public Service Commission neither abdicated its duties nor exceeded its

authority in accepting those recommendations as well as the recommendations of the Head of the Department all being borne out from the material in the file.

It was consistent with our case law, vide *Theodossiou v. The Republic*, 2 R.S.C.C. 44, for the respondent Commission to accept the recommendations of the head of the department. Had it decided not to do so, it ought to have given reasons for disregarding them. Needless to say that the applicants failed, and the burden was upon them, to establish striking superiority over the parties selected for promotion. (See *Duncan v. The Republic*, (1977) 3 C.L.R. 153; *Hjisavva v. The Republic*, (1982) 3 C.L.R. 76; *Elia v. The Republic*, (1985) 3 C.L.R. 38. 5 10

I turn now to the case of applicant Andreas Papadopoulos in Recourse No. 17/85. As regards seniority, this applicant is senior to the interested parties, being second in order of seniority from all candidates. In respect of him, the respondent Commission in its minutes of the 13th August, 1984, (appendix 8) had this to say:- 15

“The Commission decided also, after examination of all the material before it, to include as candidate at its final deliberation, also Papadopoulos Andreas, who is ahead from the point of view of seniority of all the candidates who were recommended by the Departmental Board and who had very good confidential reports over the last two years.” 20 25

He was so included in the list of those recommended as already seen when reference was made to the minutes of the 3rd September, 1984, (appendix 9).

Learned counsel advanced a number of arguments in support of this applicant's case. They turn on the contention of lack of due inquiry, failure to compare him with the other candidates, and that the Departmental Board failed unjustifiably to include the applicant as candidate for consideration. It was further argued that as regards merit, he had the same confidential reports as the interested parties. 30 35

On an examination of the totality of the circumstances before me, including the views and recommendations of the

Head of the Department, I have come to the conclusion that it was reasonably open to the respondent Commission to promote the interested parties instead of this applicant as well, who has failed to establish striking superiority over
5 them. The decision of the respondent Commission was duly reasoned and taken after due inquiry and it is neither contrary to law nor taken in excess or abuse of power.

10 For all the above reasons, these recourses fail, the sub judice decisions are confirmed, but in the circumstances, there will be no order as to costs.

Recourses dismissed.

No order as to costs.