

1986 June 21

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

DR. ANDREAS ZACHARIOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 639/85).

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Public Officer—Transfer—Principles governing judicial control  
of—Duties of Public Service Commission—Personal and  
family circumstances of an Officer—They must be taken  
into account, but they are not the paramount consideration  
5 —The paramount consideration is the adequacy and ef-  
ficiency of the service—Presumption that every transfer,  
other than one made for disciplinary reasons, has been  
made for the benefit of the service—Onus on applicant  
to displace the presumption—Promotion is an act distinct  
10 from the act of transfer—Transfer of successful candidate  
for promotion does not offend the principles of proper  
administration, if the exigencies of the service so re-  
quire.

15 Thirteen promotion posts of Senior Medical Officer were  
created, 9 of which were filled with effect 15.9.82, and  
the other 4 on 1.12.84. The applicant was promoted to  
the post of Senior Medical Officer on 1.12.84.

20 The Head of the Department made proposals for trans-  
fers, approved by the Director-General of the Ministry of  
Health, to the Public Service Commission. The applicant  
objected in writing to his proposed transfer and his repre-  
sentations were forwarded to the respondent Commission.

The relevant part of the minutes of the Commission reads as follows: "With regard to Andreas Zachariou the Commission having considered his representations and though it took into consideration his many transfers in the past, nevertheless, noting that his last transfer to Larnaca was four years ago, considered that the reasons he is raising against his transfer are not such as to prevail over the interest of the service".

As a result the Commission decided to transfer the applicant from Larnaca to Limassol. Hence the present recourse challenging the validity of the said transfer on the grounds that no due inquiry was carried out, that there is lack of due reasoning, that it served ulterior purpose as it was a disguised disciplinary action, that it violates the principle of equality, that there is a probability of misconception and, lastly, that it is contrary to law.

As in the proposal for transfer it is written that one or two of the post of Senior Medical Officers, that were recently filled, were intended for the Limassol Hospital, counsel for applicant argued that the scheme of service of the post did not contain such a provision. He further argued that as for the 7 Officers who were serving in Nicosia it was suggested that they should be transferred by rotation for one or two years outside Nicosia, applicant's transfer was made with the ulterior purpose to accomodate such officers.

*Held*, dismissing the recourse: (1) This Court will not interfere with the proper use of the discretionary powers by the administrative organ concerned nor it will substitute its own discretion with that of the administrative body. Although the discretion of the administration in relation to the reasons dictating a transfer of a public officer is not subject to the control of this Court, this Court, however, will interfere in cases of improper use of the discretionary power or a misconception of the factual situation or the nontaking into account of a material factor. With the exception of an "adverse transfer" i.e. transfer made for disciplinary reasons, every other transfer is presumed to have been made for the benefit of the service. The onus is on the applicant to displace such presumption.

(2) In each case the Commission has to exercise its powers after a due inquiry into all relevant facts, including the personal and family circumstances of an officer. Such circumstances, however, are not the paramount consideration. The paramount consideration is the adequacy and efficiency of the service.

(3) Promotion is an act distinct from the act of transfer. It is not correct that applicant's transfer was determined prior to or in conjunction with his promotion, though even if the exigencies of the service required the transfer of the successful candidates for promotion to another district, this would not offend the principles of proper administration. The scheme of service does not provide where an officer will be posted.

(4) The submission that by the proposal of the Head of the Department the respondent Commission was misled is unfounded.

(5) No shred of evidence and nothing was put forward to substantiate the allegation that the transfer was the result of an ulterior purpose or a disguised disciplinary act.

(6) In the light of the above and having regard to all the material before the Court the conclusion is that the discretion of the respondent Commission was not exercised in a defective manner.

*Recourse dismissed.*

*No Order as to costs.*

Cases referred to:

- Nedjati v. Republic*, 2 R.S.C.C. 78;  
 30 *Sentonaris v. Republic*, 1964 C.L.R. 300;  
*Vafeadis v. Republic*, 1964 C.L.R. 454;  
*Pilatsis v. Republic* (1968) 3 C.L.R. 707;  
*Pierides v. Republic* (1969) 3 C.L.R. 274;  
*Papantoniou v. Republic* (1969) 3 C.L.R. 460;

- Mouzouris v. Republic* (1972) 3 C.L.R. 43;
- Mattheou v. Republic* (1972) 3 C.L.R. 304;
- Lazarou v. Educational Service Committee* (1973) 3  
C.L.R. 82;
- Damianou v. The Republic* (1973) 3 C.L.R. 282; 5
- Karayiannis v. Republic* (1980) 3 C.L.R. 39;
- Sofocleous v. Republic* (1982) 3 C.L.R. 786;
- Isaias v. Republic* (1985) 3 C.L.R. 490.

### Recourse.

Recourse against the decision of the respondent to 10  
transfer applicant from Larnaca to Limassol.

*A. S. Angelides*, for the applicant.

*P. HjiDemetriou*, for the respondents.

*Cur adv. vult.*

STYLIANIDES J. read the following judgment. By means 15  
of this recourse the applicant seeks the annulment of his  
transfer from Larnaca to Limassol.

The applicant joined the civil service as a Medical Of-  
ficer in 1964. From 1964-1976 he was posted at various 20  
places, including the Nicosia General Hospital for the pe-  
riod 1966-1968. On 16.4.76 he was transferred to the  
Nicosia General Hospital where he served until 7.6.81 when  
he was transferred to Larnaca.

Thirteen promotion posts of Senior Medical Officer were 25  
created, 9 of which were filled with effect 15.9.82 and  
the other 4 on 1.12.84. The applicant was promoted to  
the post of Senior Medical Officer on 1.12.84.

The Head of the Department—the Director of Medical 30  
Services and Public Health—evaluated the needs of the  
service and made proposals for transfers, approved by the  
Director-General of the Ministry of Health, to the Public

Service Commission. The original suggestion was to transfer the applicant from Larnaca to Polis Chrysochous.

5 The applicant was informed about the intention of his transfer from Larnaca and he was afforded the opportunity to state his views on the matter which he did by letter dated 16.4.85 (appendix 2).

10 The proposal of 1.6.85 for his transfer from Larnaca to Limassol submitted by the Head of the Department, approved and recommended by the Director-General of the Ministry, together with the written representations of the applicant as well as all other proposals of transfer of other Senior Medical Officers and the relevant files were before the Commission. The respondent Commission dealt with the matter on 25.6.85—(See Appendix 3). The relevant  
15 part of the minutes and the sub judice decision read as follows:-

20 “(b) Proposal No. P. 3342/2 dated 1.6.85 for the transfer of Andreas Zachariou, Senior Medical Officer, from Larnaca to Limassol as from 1.7.85.

The Officer objects to his such transfer for the reasons set out in his letter dated 16.4.85.

The original proposal submitted was for his transfer to Polis Chrysochous....

25 The Commission dealt with each of the aforesaid cases as follows:-

30 (a) With regard to Andreas Zachariou the Commission having considered his representations and though it took into consideration his many transfers in the past, nevertheless, noting that his last transfer to Larnaca was four years ago, considered that the reasons he is raising against his transfer are not such as to prevail over the interest of the service. The original proposal was  
35 for his transfer to Polis Chrysochous whereas now the proposal is for his transfer to Limassol....

The Commission, having taken into consideration

all the material before it, decided in the interests of the service -

(a)

(b) to transfer Andreas Zachariou, Senior Medical Officer, from Larnaca to Limassol with effect 15.7.85". 5

The decision for his transfer was communicated to him by letter dated 27.6.85 which, however, reached him on 9.7.85.

On 10.7.85 his advocate informed the Commission of this delay and requested the suspension of the operation of the transfer until the determination of an application for provisional order in a recourse he was filing, which he actually filed on the following day, 11th July, 1985. In view of this the Commission on 12.7.85 postponed the effective date of the transfer to 29.7.85. 10 15

The applicant challenges the validity of this decision on the following grounds:-

That no due inquiry was carried out; there is lack of due reasoning; that it served ulterior purpose as it was a disguised disciplinary action; it violates the rules of proper administration; he did not receive equal treatment with the others; there is a probability of misconception by the respondent Commission; and, lastly, it is contrary to law. 20

His counsel stressed the fact that the applicant in the past—obviously before 1976—was transferred a number of times to various places; that he owns a house in Nicosia where his wife and their 19-year old daughter are residing. As in the proposal for transfer it is written that one or two posts of Senior Medical Officer, that were recently filled, were intended for the Limassol Hospital, his counsel argued vehemently that the scheme of service of the post did not contain such a provision; that the Public Service Commission was misled. 25 30

In the proposals for the transfer of newly promoted Senior Medical Officers, who were posted at Nicosia, it was 35

noted that 7 of them were posted at Nicosia and, as no one wished to be transferred, it was suggested that they should be transferred by rotation for one or two years to other places outside Nicosia. The Public Service Commission transferred those who were posted at Nicosia to other places as the paramount consideration was the need of the service. Counsel for the applicant argued that in those submissions his client was not included as one of the persons whose origin was Nicosia. He contended that his transfer was made with the ulterior purpose to accommodate those who would be transferred from Nicosia and that as he served more than one or two years outside Nicosia, the principles of proper administration demanded his "repatriation" to Nicosia; that the respondents failed to give due weight to the personal and financial problems of the applicant.

The principles governing judicial control of transfers of public officers have been expounded by this Court in a number of cases for the last 25 years—(*Nedjati v. Republic*, 2 R.S.C.C. 78; *Sentonaris v. Republic*, 1964 C.L.R. 300; *Vafeadis v. Republic*, 1964 C.L.R. 454; *Pilatsis v. Republic*, (1968) 3 C.L.R. 707; *Pierides v. Republic*, (1969) 3 C.L.R. 274; *Papantoniou v. Republic*, (1969) 3 C.L.R. 460; *Mouzouris v. Republic*, (1972) 3 C.L.R. 43; *Andreas Mattheou v. Republic*, (1972) 3 C.L.R. 304; *Lazarou v. Educational Service Committee*, (1973) 3 C.L.R. 82; *Damianou v. Republic*, (1973) 3 C.L.R. 282; *Karayiannis v. Republic*, (1980) 3 C.L.R. 39; *Sofocleous v. Republic*, (1982) 3 C.L.R. 786; *Isaias v. Republic*, (1985) 3 C.L.R. 490).

The object of vesting the power of transfers into an independent organ, such as the Public Service Commission, is twofold: First and paramount the safeguarding of the efficiency and proper functioning of the public service of the Republic and, secondly, the protection of the legitimate interests of the individual holders of public offices— (*Nedjati v. The Republic*, (supra), at p. 82).

This Court will not interfere with the proper use of the discretionary powers by the administrative organ concerned nor it will substitute its own discretion for that of the administrative body. On the other hand, although the exer-

cise of the discretion by the Administration, in relation to the reasons dictating a transfer of a public officer, is not subject to the control of an administrative Court, such Court, however, will interfere in cases where there exists improper use of the discretionary power, or a misconception of the factual situation or the non-taking into account of material factors—*Vafeadis v. The Republic*. (supra)).

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With the exception of an “adverse transfer” (i.e. transfer made as a disciplinary measure), every other transfer amounts to a simple administrative act which is presumed to have been taken for the benefit and the exigencies of the service and the onus is on the applicant to displace such presumption—(*Pierides v. The Republic*, (supra)).

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The evaluation of the needs of the service and the various departments of it, the means to satisfy such needs, including the transfer of officers are within the exclusive competence of the administrative organs. The exigency of the service is a factual situation within the discretion of the Commission. Transfers of public officers are presumed to be made in the interests of the service. This Court has neither the power nor the means of reviewing in every case the needs and the means of satisfying same in every department. In each case, however, the Commission has to exercise its power after due inquiry into all relevant facts, including the personal and family circumstances of an officer. But the family or other circumstances of an officer are not the paramount consideration. They have to be weighed in conjunction with the totality of the exigencies of the service bearing in mind that the paramount consideration is the adequacy and efficiency of the service in the interests of the citizens of the country.

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Promotion is a distinct act from transfer. It is not correct to say that the transfer of the applicant was determined prior to or in conjunction with his promotion though even if the exigency of the service required the transfer of the successful candidates for promotion to other districts for the carrying into effect of the objects and purposes of the medical services of the Republic in the interests of the people, this would not offend the principles of administrative law and proper administration. The scheme of service

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does not provide where an officer will be posted. It is a condition of service of every public officer that does not require to be strongly stressed that he is liable to transfer for the interests of the service in the context of the evaluation of the wider needs of a branch where he is serving.

The submission that by the proposal of the Head of the Department the Public Service Commission was misled is unfounded. The proposals for the transfer of all those who were promoted were considered together by the Public Service Commission in the context of the needs of the service as evaluated by the most appropriate organ—the Head of the Department and the Director-General of the Ministry. It was reasonably necessary for the Head of the Department to state that so many of the successful candidates were posted in Nicosia and that the needs of the service required their transfer elsewhere. This was neither improper nor unfavourable to the applicant whose file and representations were before the Commission. The applicant and the other promotees, as it emerges from the material before the Court, wanted to serve at Nicosia, putting forward various grounds connected with their persons or families.

Though due weight must be given to the wishes and personal and family circumstances of public officers in considering a transfer, the overriding consideration is the health of the people of the country who, to the "misfortune" of these Senior Medical Officers, including the applicant, have not yet decided to abandon all the towns of the country and concentrate in Nicosia.

Having looked into appendix 10 and the decision of the Public Service Commission for the transfer, I am satisfied that, with the exception of Dioghenous, all the others were transferred, as the needs of the service required. The Commission gave its reasons for not transferring Dioghenous. No shred of evidence and nothing was put forward to substantiate the allegation that the transfer was the result of an ulterior purpose or a disguised disciplinary act.

To sum up, guided by the aforesaid principles and having regard to all the material before me, I am satisfied that the sub judice transfer was made by the respondent Commission after a due inquiry and it is duly reasoned. It was not made to serve an ulterior purpose. It did not violate the rule of equal treatment. It was not in any way a disguised disciplinary act. The procedure followed was the proper one and consonant to the law. All relevant factors were taken into consideration and nothing irrelevant was taken. The applicant having served four years in Nicosia, and four years in Larnaca, was transferred after promotion to Limassol, the second big town of the island, as the exigencies of the service so required. The discretion of the respondent Commission was not exercised in a defective manner.

This recourse is totally unfounded and fails.

The question of costs gave me some concern but not without reluctance I decided not to make any order as to costs.

*Recourse dismissed.*  
*No order as to costs.*