

1985 June 22

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTONIS KOUFETTAS,

Applicant,

v;

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 489/82).

Natural Justice — Bias — Public Officers — Promotions — Confidential reports — Allegation that reporting officer was biased — Principles applicable — Filing of recourses by applicant against past promotions of reporting officer does not automatically establish bias.

Public Officers — Promotions — Qualifications — Applicant had higher qualifications than the interested party, but the latter had better confidential reports and was senior to the applicant and was recommended for promotion by the Head of the Department — In the circumstances sub judice decision was reasonably open to the respondent. 5

The applicant challenges the promotion of the interested party to the post of Lands Officer, 1st Grade (Survey Branch) in the Department of Lands and Surveys on the following grounds, namely: 10

(a) The preparation of confidential reports about him by A. Pantazis, as reporting officer, and by A. Christofis, the Director of the Department as countersigning officer, was tainted by bias against him. 15

(b) Filing by the applicant of recourse against past promotions of Pantazis automatically makes the latter a biased reporting officer.

(c) The Commission rejected the complaints about bias without having heard the applicant and without having given sufficient reasons for its decision to reject his complaints. 20

(d) Pantazis, who signed applicant's confidential report for 1980, was not applicant's superior, because his promotion to the post of Senior Surveyor was annulled on 22.5.80.

(e) Applicant's qualifications were superior to those of the interested party

5 Held, *dismissing the recourse* (1) In the light of the material before the Court and of the dicta in *Chnstou v The Republic* (1980) 3 C L R 437 this Court cannot interfere with the Commission's conclusion relating to the complaints of bias. The mere filing by the applicant of recourses against past promotions of Pantazis does not automatically make him a biased reporting officer.

10 (2) The Commission was not bound to hear the applicant, because it had before it applicant's letters expounding on his complaints. The rejection of such complaints was duly reasoned.

15 (3) When Pantazis signed the report for 1980 (8 1 81) he was once again holding the post of Senior Surveyor, because, following the annulment of 22 5 80, the matter was reconsidered by the Commission and by a decision taken before the end of 1980 he was once again promoted to the said post as from 1 1 78.

(4) The higher qualifications of the applicant did not tilt the scales in his favour because of the interested party's seniority, his better confidential reports and the recommendations of the Head of the Department. The sub-judice act was reasonably open to the Commission.

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

Cases referred to

Chnstou v Republic (1980) 3 C L R 437

Recourse.

25 Recourse against the decision of the respondent to promote the interested party to the post of Lands Officer, 1st Grade (Survey Branch) in the Department of Lands and Surveys, in preference and instead of the applicant

C. Loizou, for the applicant.

30 *N. Charalambous*, Senior Counsel of the Republic, for the respondent.

Cur adv vult

35 TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicant challenges the decision of the respondent Public Service Commission to promote, instead of him, M. Kyprianou (to be referred to hereinafter as the interested

party») to the post of Lands Officer, 1st Grade (Survey Branch), in the Department of Lands and Surveys, as from the 1st August 1982.

The sub judge decision of the respondent Commission was reached on the 16th July 1982.

In the process of reaching such decision the Commission considered a written complaint of the applicant that the preparation of confidential reports about him by A. Pantazis as reporting officer, and by A. Christofis, the Director of the Department, as countersigning officer, were tainted by bias against him. The Commission, however, having examined the material which was placed before it, reached the conclusion that the said complaints had not been substantiated.

In *Christou v. The Republic*, (1980) 3 C.L.R. 437, the following were stated (at pp. 449, 450):

«It is a basic principle of administrative law that the organs participating in a particular administrative process must appear to act with impartiality and this cannot be so when there exist any special ties or relationship which admittedly relate to the persons involved in the said process or to its outcome (see, inter alia, the Decision of the Council of State in Greece in case 3350/1970).

The lack of impartiality by public officer A against public officer B must be established, with sufficient certainty, either by facts emerging from relevant administrative records or by safe inferences to be drawn from the existence of such facts, it is not, for example, sufficient, by itself, in order to prove lack of impartiality of A towards B, the fact A has made, in the past, in the course of the proper exercise of his official duties, adverse confidential reports in respect of B, or that A has otherwise expressed officially an adverse view regarding B with the result that B has instituted legal proceedings in this connection against A, or that B has given in the past evidence either in a criminal trial or disciplinary proceedings against A (see, inter alia, the Decisions of the Greek Council of State in Cases 2905/1965, 1014/1969 and 975/1970, as well as *Solea v. The Republic*, (1974) 3 C.L.R. 498».

In the light of the above dicta and of all the material before me I am of the opinion that I should not interfere with the aforesaid conclusion of the Commission. In particular, I cannot accept, in

the absence of any facts actually substantiating the allegation of bias on the part of Pantazis, that the mere filing by the applicant of recourses against past promotions of Pantazis automatically made him a biased reporting officer in so far as the applicant was
5 concerned.

Counsel for the applicant has argued that the Commission rejected the applicant's complaints about bias on the part of his superiors without having heard the applicant and without having given sufficient reasons for its decision to reject his complaints.

10 In view of the fact that the Commission had before it letters of the applicant in which he had expounded fully his said complaints I do not think that the Commission was bound to hear the applicant, too. Furthermore, I am of the view that from the contents of the relevant minutes of the Commission, as
15 supplemented by relevant administrative records, there can be derived adequately the reasons of the Commission for rejecting the applicant's complaints.

Anotner argument which was put forward by counsel for the applicant is that the confidential report about the applicant for
20 1980 could not be lawfully signed by Pantazis, as a superior of the applicant, since his own promotion to the post of Senior Surveyor, from the post of Surveyor, 1st Grade, which was the post at which the applicant was at the material time, was annulled on the 22nd May 1980 as a result of a recourse filed by the applicant (see
25 *Koufettas v. The Republic* (1980) 3 C.L.R. 226).

From the material before me it appears that the Commission reconsidered the matter of the annulment of the promotion of Pantazis and decided, before the end of 1980, to promote him again, retrospectively, as from the 1st January 1978, to the post of
30 Senior Surveyor. So, when Pantazis signed as a reporting officer, on the 8th January 1981, the confidential report about the applicant for the year 1980 he was holding once again the post of Senior Surveyor and could lawfully act as a reporting officer in relation to the applicant.

35 Counsel for the applicant has submitted that, in view of the higher qualifications of the applicant, the respondent Commission by promoting the interested party failed to select for promotion the best candidate.

The qualifications of the candidates are among the criteria to be taken into account, in accordance with section 44(2) of the Public Service Law, 1967 (Law 33/67), in effecting promotions and, as it appears from the relevant minutes of the respondent Commission particular reference was, indeed, made to the qualifications of the applicant; but, apparently, due to the seniority of the interested party (as from the 1st June 1968) over the applicant (as from the 15th May 1979) in the post of Senior Surveyor, from which both of them were promoted together to the post of Lands Officer, 2nd Grade (as from the 15th January, 1982), due to the better confidential reports of the interested party and due to the fact that he was recommended for promotion by the Director of the Department, the higher qualifications of the applicant did not tilt the scales in his favour. I am quite satisfied, in the circumstances, that the sub judice decision to promote the interested party was reasonably open to the respondent Commission and that the applicant has not discharged the burden of satisfying this Court that the Commission has failed in its paramount duty to select the most suitable candidate.

The present recourse, therefore, fails and has to be dismissed; but with no order as to its costs.

*Recourse dismissed.
No order as to costs.*