

1988 January 22

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRAKIS STAVRIDES,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 136/83).

Natural Justice—Bias—How it should be established.

Public Officers—Promotions—Confidential reports—Preparation of—New reporting officer consulting with countersigning officer, who knew the officer concerned and had acted before as countersigning officer.

5 *Public Officers—Promotions—Qualifications—Additional academic qualification, not envisaged as an advantage in the scheme of service—Weight.*

Public Officers—Promotions—Seniority—Prevails, if other factors more or less equal.

10 *Reasoning of an administrative act—It may be found either in the decision itself or in the records of the administration.*

The applicant impugns by means of the present recourse the decision whereby the five interested parties were promoted to the post of Senior Clerical Officer in the General Clerical Staff.

The applicant complained that the reporting officer for 1981 who hard-

ly knew him (having worked with him only for a period of 3 months) failed to consult his predecessor in respect of the preceding period of 9 months, that his confidential report for the year 1982 was tainted with bias, that the Commission disregarded his superiority over the interested parties and that the sub judice decision is not duly reasoned. 5

The merit of the applicant emerging from the confidential reports for the years 1979, 1980, 1981 is below the merit of all 5 interested parties. The qualifications of the applicant and the interested parties are more or less the same with the exception of the examinations in French language passed by applicant, although same are not envisaged by the Scheme of Service as an advantage. 10

The applicant has a seniority of one year over interested parties 1 and 2 and a seniority of 2 years over the remaining.

Held, *dismissing the recourse*: (1) The confidential report of 1981 was prepared after exchange of views between the reporting officer and the countersigning officer, who, significantly, was again the countersigning officer of the confidential report of the applicant for 1980 when the applicant was rated "excellent". 15

(2) Lack of impartiality 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. The applicant failed to establish bias as regards the report of 1982, which, in any event, had not been placed before the Commission. 20

(3) Applicant failed to establish a case of striking superiority. Seniority prevails, if other factors are more or less equal. Additional academic qualifications carry little weight, if not envisaged as an advantage in the scheme of service. 25

(4) The reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto.

Recourse dismissed. 30
No order as to costs.

Cases referred to:

Georgiades v. The Republic (1982) 3 C.L.R. 16;

Agrotis v. E.A.C. (1981) 3 C.L.R. 503;

3 C.L.R. **Stavrides v. Republic**

Christou v. The Republic (1980) 3 C.L.R. 437;

Soteriadou v. The Republic (1985) 3 C.L.R. 300;

HjiIoannou v. Republic (1983) 3 C.L.R. 1041;

Partellides v. The Republic (1969) 3 C.L.R. 480;

5 *HjiSavva v. The Republic* (1972) 3 C.L.R. 174.

Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Senior Clerical Officer in the General Clerical Staff in preference and instead of the applicant.

10 *M. Christofides*, for the applicant.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

LORIS J. read the following judgment. The applicant impugns
15 by means of the present recourse the decision of the respondent P.S.C., whereby the five interested parties were promoted to the post of Senior Clerical Officer in the General Clerical Staff, in preference to and instead of the applicant.

20 The complaints of the applicant may be grouped under two broad Heads as follows:

(A) Complaints connected with the preparation of his confidential reports for the year 1981 and 1982.

(B) Complaints in respect of the sub-judice decision.

25 In proceeding to examine all these complaints of the applicant I wish to make it clear at this early stage, that I shall be referring to the five interested parties by the respective number with which

they have been numbered by the applicant in the body of this recourse.

Bearing in mind that the "confidential reports are intermediate acts and the ascertainment of their invalidity brings the invalidity of all subsequent acts for the issue of which the act found to be illegal, constitutes a legal prerequisite". (*Georghiades v. The Republic* (1982) 3 C.L.R. 16 at p.28 - *Agrotis v. E.A.C.* (1981) 3 C.L.R. 503 at p. 513). I shall proceed to examine first the complaints in respect of the confidential reports of the applicant for the years 1981 and 1982.

First his confidential report for the year 1981: In this connection it is the allegation of the applicant that the reporting officer who hardly knew him (having worked with him only for a period of 3 months) failed to consult his predecessor in respect of the preceding period of 9 months during which "he had no knowledge about applicant's service. "As a result, applicant maintains, the reporting officer rated him (the applicant) as "good".

In the first place the reporting officer for 1981 (Mr. Mavroustakis) did not rate the applicant as "good" but as "very good" (0-9-3) for 1981: (vide confidential Reports file of the applicant marked "A"). The aforesaid reporting officer states clearly (vide Red 137 in the Personal File of the applicant-marked A1) that the confidential report of the applicant for 1981 was compiled by him after exchange of views on the matter with the then Acting Director - General of the Ministry of Defence namely My. Kontozis who was in a position to know the applicant very well, and who countersigned the aforesaid confidential report of the applicant for the year 1981. In this connection we must not lose sight of the fact that Mr. Kontozis was again the countersigning officer of the confidential report for the applicant for 1980 when the applicant was rated "excellent" (8-4-0).

As regards a vague allegation of bias in the written address of the applicant against the reporting officer in the 1981 confidential report, it can be positively said that none was established.

Coming now to the confidential report of the applicant for the year 1982; although I could dispose of this issue straight away by saying that the confidential report of the applicant, as well as those of the interested parties for the year 1982, were not before the respondent P.S.C. when the sub-judice decision was reached (the sub-judice decision was reached on 10.1.83 whilst the confidential report of the applicant was compiled and signed as late as the 5.2.83), yet I have carefully examined the complaint of the applicant in connection with the confidential report for 1982 as well. I have noted the complaint of the applicant and in particular his sworn affidavit filed on 24.2.1986 imputing lack of impartiality and bias against the Reporting Officer who signed same at the same time as countersigning officer. Independently of the fact that the confidential report of 1982 was not before the P.S.C. I am not satisfied that a case of bias or lack of impartiality has been established with sufficient certainty, and it is well settled that "the lack of impartiality..... 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....." (*Christou v. Republic* (1980) 3 C.L.R. 437 at p. 449 - vide also in this connection *Soteriadou v. Republic* (1985) 3 C.L.R. 300). And in the instant case the vague facts alleged in para. 6 of the affidavit of the applicant which allegedly took place very long time ago, when the countersigning officer was still Assistant District Officer, cannot support bias or impartiality.

For the reasons stated above the complaints grouped under Head (A) above, fail.

I shall now proceed to examine the complaints grouped under Head (B) above; these complaints as I was able to apprehend them may be sub-divided under two sub-Heads;

1. Alleged superiority of the applicant over all the five interested parties as regards merit, qualifications and seniority.
2. Lack of due reasoning of the sub-judice decision.

Let us now see the true picture of the applicant and the five interested parties as regards merit, as it transpires from the respective confidential reports of the last 3 years i.e. 1979, 1980 and 1981 (As already stated the confidential reports for the year 1982 were not before the respondent P.S.C.)

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| | Applicant | I.P.1 | I.P.2 | I.P.3 | I.P.4 | I.P.5 |
|--------|-----------|-------|---------|-------|--------|--------|
| 1979 = | 0-0-12 | 8-4-0 | 8-4 - 0 | 3-9-0 | 10-2-0 | 9-3-0 |
| 1980 = | 8-4 -0 | 8-3-1 | 8-4 - 0 | 9-3-0 | 11-1-0 | 8-4-0 |
| 1981 = | 0-9- 3 | 8-4-0 | 2-10- 0 | 4-8-0 | 8-4- 0 | 12-0-0 |

It is clear from the above table that the merit of the applicant emerging from the confidential reports for the years 1979 and 1981 is far below the merit of all 5 interested parties; the best report of the applicant is that of 1980 and even then, his rating is below Interested Parties 3 & 4, exactly the same with I.P. No. 2 and No. 5, and slightly over I.P. No. 1 (Applicant 8-4-0 - I.P. No. 1, 8-3-1).

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The overwhelming merit of the interested parties over the applicant as it emerges from the confidential reports of the last 3 years is still being enhanced if we take into consideration the recommendation of the Head of the Department which was extended to interested parties 1, 2, 4 and 5.

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As regards qualifications it is obvious, from the relevant personal files of the applicant and the interested parties and the relevant appendix attached to the opposition, that the qualifications of the applicant and the interested parties are more or less the same with the exception of the examinations in French language passed by applicant, although same are not envisaged by the Scheme of Service as an advantage.

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It is a settled principle of administrative law that an administrative Court cannot intervene in order to set aside the decision regarding a selection for promotion unless it is satisfied, by an ap-

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plicant in a recourse before it that he was an eligible candidate who was strikingly superior to those who were selected. In the instant case it is obvious that the applicant has failed to establish striking superiority over the interested parties, as far as merit and qualifications are concerned. As regards merit on the contrary the interested parties are better rated; I would even say strikingly superior to the applicant. As regards the qualifications of the applicant and the interested parties, they are more or less the same with an additional qualification in favour of the applicant, notably examinations in French. But as it was held by the Full Bench of this Court in *HjiIoannou v. Republic* (1983) 3 C.L.R. 1041 at pp. 1046-1047:

"Possession of academic qualifications additional to those required by the scheme of service, which are not specified in the scheme of service as an advantage, should not weigh greatly in the mind of the Commission who should decide in selecting the best candidate on the totality of the circumstances before them. Additional academic qualifications to those provided by the scheme of service do not indicate by themselves a striking superiority. (See *Elli Chr. Korai and Another v. The Cyprus Broadcasting Corporation* (1973) 3 C.L.R. 546; *Andreas D. Georghakis v. The Republic*, (1977) 3 C.L.R. 35; *Cleanthis Cleanthous v. The Republic* (1978) 3 C.L.R. 320).

In order to complete the picture I shall deal very briefly with seniority although it is well settled that seniority ought to prevail if all criteria are more or less equal, (vide *Partellides v. The Republic* (1969) 3 C.L.R. 480), which is not the present case.

The applicants as well as the five interested parties were holding the post of Clerical Officer prior to the sub-judice decision to which they were all promoted on 1.11.1981. The preceding post is the post of Clerk 1st Grade to which the applicant was promoted on 1.5.70 whilst Interested Parties 1 and 2 were so promoted on 1.6.71 and the remaining three on 1.5.72; thus the applicant has a seniority of one year over Interested parties 1 and 2 and a seniority of 2 years over the remaining.

Concluding on this I hold the view that the sub-judice decision was reasonably open to the respondent Commission.

As regards the last complaint, notably reasoning, it is well settled that " reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto" (*HjiSavva v. The Republic* (1972) 3 C.L.R. 174 at p. 205). In the instant case I hold the view that the decision itself provides the necessary reasoning of an administrative decision and at the same time the material in the administrative files supports the reasoning afforded by the respondent Commission enabling unhindered judicial scrutiny. 5 10

For all the above reasons present recourse fails and is accordingly dismissed. Let there be no order as to costs.

Recourse dismissed.

No order as to costs. 15