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[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS
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and
THE REPUBLIC
OF CYPRUS,
THROUGH
THE PUBLIC
SERVICE
COMMISSION

COSTAS VAFEADIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 73/63)

*Administrative and Constitutional Law—Public Officers—Transfer—
The Public Service Commission—Omission as distinct from
negative decision—Administrative Act—Executory Act—Con-
firmatory Act—Article 146.1 of the Constitution—Discretion-
ary powers of administrative bodies—Judicial control thereof—
Scope and limits—The Public Service Commission—Article
125.1 of the Constitution—Duties of that commission there-
under.*

*Transfer of a public officer—Refusal of an application for transfer
is not an “omission” to transfer in the sense of paragraph 1
of Article 146 of the Constitution, but a “decision” within
that paragraph taken in the matter.*

*Executory act—Confirmatory act—Act merely confirmatory of
a previous one is not an “executory act” and cannot, there-
fore, be the subject of the recourse under Article 146 of the
Constitution—On the other hand, an act containing confir-
mation of an earlier one may be “executory” and can be the
subject of such recourse if it had been made after a new exa-
mination of the matter.*

*Transfer of a public officer—Refusal of an application to trans-
fer—Discretionary powers in the matter of the administrative
body concerned, viz. in this case the Public Service Com-
mission under Article 125.1 of the Constitution. Exercise
of such discretionary powers—Judicial control of—An ad-
ministrative Court will not interfere with the proper use of
such discretionary powers by the administrative organ (or
body) concerned—Nor it will substitute its own decision for
that of the administrative body—On the other hand, although
the exercise 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—And what applies to a decision to transfer, applies equally to a case where the decision is to refuse the transfer, as in the instant case.

Public Service Commission—Public Officers—Transfer—Duties owed by the said Commission to public officers under Article 125.1 of the Constitution—The objects of that paragraph include not only the safeguarding of the efficiency and proper functioning of the public service of the Republic, but also the protection of the legitimate interests of the individual holders of public offices—Proper balance between the said considerations—Health, family and other personal circumstances of a public officer are not the paramount considerations in cases of transfer or refusal to transfer—Though they are to be treated as related to the exigencies of the service, they have to be weighed in conjunction with the totality of such exigencies—Which was done in the present case.

Administrative Law—Administrative acts and administrative actions—Reasons therefor—Reasons for administrative action have to be specified and not vaguely alluded to.

In the present case, the applicant applies for a declaration that the decision of the Public Service Commission, communicated to him by letter dated 11th March, 1963, and refusing his application for a transfer from Kyrenia, is null and void. He further applies for a declaration that the omission to transfer him, as above, ought not to have been made.

The facts of this case which have led to the said letter of the 11th March, 1963, are as follows :

Applicant is an Inspector in the Customs Preventive Service, and he was posted, in 1961, at Kyrenia, having been previously at Paphos. He is married and he has two minor children, both daughters.

When applicant was still posted at Paphos one of his daughters, developed bronchial asthma. The condition continued and became aggravated after the family moved to Kyrenia.

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On the 1st October, 1962, the applicant applied to the Public Service Commission, through his Head of Department, the Director of Customs, seeking a transfer to an inland place, on the ground of the bronchial affliction of his said daughter being seriously aggravated by wet seaside climate.

The Director of Customs forwarded applicant's request with a covering letter, containing his views thereon, dated 13th October, 1962.

The Public Service Commission considered the application of applicant on the 5th November, 1962 ; it took into consideration the views of his Head of Department as contained in his letter dated 13th October, 1962, and turned down the application. Applicant did not make a recourse against such a decision.

On the 1st February, 1963, applicant renewed his application for a transfer requesting that it should be re-examined and stating that the health of his daughter had reached a dangerous phase ; he stressed that his own psychological condition was affected by the fact that the suffering of his daughter was due to the requirements of his service and posting at Kyrenia.

This second application was forwarded to the Public Service Commission, again through his Head of Department, who wrote a covering letter dated 15th February, 1963, in which he stated that he had " no further comments to offer " and referred the Commission to his previous covering letter of the 13th October, 1962.

The Commission met on the 5th March, 1963, and having " reconsidered " the application of applicant decided that " no reason existed to change its previous decision " because " no new facts " had been produced " to support his previous application ".

The above decision of the Public Service Commission was communicated to the applicant by a letter dated 11th March, 1963.

Hence the present recourse which was filed on the 2nd May, 1963.

Paragraph 1 of Article 125 of the Constitution reads as follows :

" 1. Save where other express provision is made in this Constitution with respect to any matter set out

in this paragraph and subject to the provisions of any law, it shall be the duty of the Public Service Commission to make the allocation of public offices between the two Communities and to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers."

Paragraph 1 of Article 146 of the Constitution provides :

" 1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person.

Held, (1) the application for a declaration that the omission to transfer the applicant ought not to have been made fails, on the ground that there is no omission of the Public Service Commission to transfer the applicant but a refusal to do so, which is a decision taken in the matter by the Commission.

(2) It is quite correct that an act merely confirmatory of a previous one cannot be the subject of a recourse under Article 146 of the Constitution, because it is not "executory" in that it does not determine itself the legal position in an individual case (see in this respect Stasinopoulos, on the Law of Administrative Acts (1951 pp. 109-126). On the other hand, an act which contains a confirmation of an earlier one may be "executory", and can be the subject of such recourse, if it has been made after a new examination of the matter (Stasinopoulos, *op. cit.* p. 126). In my opinion the decision of the Commission of the 5th March, 1963, is "executory". It is a new decision taken on the basis of a new application by the applicant, after a lapse of some months ; it is the result of a reconsideration of the matter by the Commission, which decided not to alter its previous decision of the 5th November, 1962. It may be challenged, therefore, by recourse on its own.

(3) (a) I am satisfied, in all the circumstances of this case, that the Public Service Commission has reached its de-

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cision in question by exercising in a legitimate manner its discretionary powers and, thus, I am not entitled to interfere with such decision. I cannot substitute my own decision for that of the Commission (*See: Christou and the Republic*, 4 R.S.C.C. 1; *Saruhan and the Republic*, 2 R.S.C.C. 133; *Uludag and the Republic*, 3 R.S.C.C. 131).

(b) The possibility of judicial interference with the exercise of discretion by administrative bodies in cases of transfer has been dealt with in the case *Sentonaris v. The Greek Communal Chamber*, Case No. 113/64, (reported in this volume p. 300 *ante*). The effect of the principles adopted in that case is that the exercise of the discretion of the Administration, in relation to the reasons dictating a transfer, is not subject to the control of an administrative Court except if there exists an improper use of the discretionary power, or a misconception concerning the factual situation, or the non-taking into account of material factors; what applies to a case of transfer, like the case of *Sentonaris (supra)*, applies equally well to a case where the decision is to refuse a transfer, as in the present case.

(c) In the light of the above principles I do not find any cause for interfering with the exercise of the discretion of the Public Service Commission in the *sub judice* matter. The decision reached was reasonably open to it and the Commission properly relied upon the recommendation of the Head of Department of applicant.

(4) The Commission was reasonably entitled to treat the aggravation of the affliction of the applicant's daughter and his consequent psychological suffering as being an accentuation of the existing factors and not as being "new facts".

(5) (a) Regarding the contention that the Public Service Commission had a duty under Article 125.1 to transfer the applicant, for the sake of protecting his legitimate interests, I am of the opinion that in the present case the Commission, through considering and reconsidering, later, his case, has duly discharged whatever duty it owed to the applicant.

(Dictum in *Nedjati and the Republic*, 2 R.S.C.C. 78 at p. 82, *explained*).

(b) The Public Service Commission in a case such as the present one had to take into account both the exigencies of the service and the personal circumstances of the applicant and to reach a decision, as it appears to have done, on the matter as a whole.

(c) With regard to the correlation, made by counsel for the applicant, between the personal circumstances of applicant and the exigencies of the service, I do agree that this is indeed so, as held by the Greek Council of State in Case No. 5/1931. But, the health, family or other personal circumstances of an officer are not the paramount considerations. Though they are to be treated as related to the exigencies of the service they have to be weighed in conjunction with the totality of such exigencies. This was done by the Public Service Commission in this case.

(7) This recourse fails and has to be dismissed.

*Recourse dismissed**

Per curiam : (1) It is not very satisfactory of a Head of Department, who objects to an application for a transfer, to write to the responsible organ, the Public Service Commission, stating that he objects to such application for a given reason "and other reasons" ; such a course, though not amounting to a defect of such an extent as to nullify the relevant administrative action, once the Commission has found as sufficient the reason already given, is certainly not helpful either for the Commission or for the court in discharging their respective functions. Reasons for administrative action have to be specified and not vaguely alluded to.

(2) I would like to observe that this Judgment should not be considered as preventing the Public Service Commission, for ever in future, from considering afresh the question of the transfer of applicant, should he apply again to it. Had this recourse been successful, then the refusal to transfer applicant would have been set aside and the matter would have had to be reconsidered by the Public Service Commission ; the court, of course could not have ordered the transfer of applicant. On the other hand, the dismissal of the recourse, though confirming the refusal of the transfer already decided upon, cannot in any way be treated as a bar to the matter being further considered, and if need be dealt with differently by the Commission in future.

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Cases referred to :

- Ozturk and The Republic*, 2 R.S.C.C. 35, at p 41 ;
Christou and The Republic, 4 R.S.C.C. 1 ;
Saruhan and The Republic, 2 R.S.C.C. 133 ;
Uludag and The Republic, 3 R.S.C.C. 131 ;
Sentonaris v. Greek Communal Chamber (Reported in this
volume p. 300 ante);
Nedjati and The Republic, 2 R.S.C.C. 78 at p. 82 ;
Decision 5 of 1931 of the Greek Council of State. (Decision
Council of State 1931, p. 16).

Recourse.

Recourse for a declaration that the decision of the Public Service Commission, communicated to applicant by letter dated 11th March, 1963, refusing his application for a transfer from Kyrenia to Nicosia is null and void and for a declaration that the omission to transfer him as above ought not to have been made.

L. N. Clerides, for the applicant.

M. Spanos, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :

TRIANTAFYLLIDES, J.: In this case the applicant applies for a declaration that the decision of the Public Service Commission, communicated to him by letter dated 11th March, 1963, and refusing his application for a transfer from Kyrenia, is null and void. He further applies for a declaration that the omission to transfer him, as above, ought not to have been made.

It may be stated at the outset that no question of an omission can arise, because it is common ground that there exists in this case an express refusal to transfer applicant ; when the Administration reaches a negative decision on an application made to it, this decision may be challenged, as such, by appropriate proceedings but it is not possible to complain, at the same time, that such a course amounts also to an omission of the Administration, because an omission, as envisaged under Article 146 (1), presupposes that no action has been taken in the matter (see *Ozturk and The Republic*, 2 R.S.C.C., p. 35, at p. 41).

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The second claim for relief of applicant fails, therefore, on the ground that there is no omission of the Public Service Commission to transfer applicant but a refusal to do so, which is a decision taken in the matter by the Commission.

The facts of this case, which have led to the aforesaid letter of the 11th March, 1963, are as follows :—

Applicant is an Inspector in the Customs Preventive Service, and he was posted, in 1961, at Kyrenia, having been previously at Paphos. He is married and he has two minor children, both daughters.

When applicant was still posted at Paphos one of his daughters, Niki, developed bronchial asthma. The condition continued and became aggravated after the family moved to Kyrenia.

On the 1st October, 1962, the applicant applied to the Public Service Commission, through his Head of Department, the Director of Customs, seeking a transfer to an inland place, on the ground of the bronchial affliction of his said daughter being seriously aggravated by wet seaside climate. It is stated in the said application of applicant that he attached in support thereof medical certificates from four doctors, including the District Medical Officer of Kyrenia ; at the hearing, copies of medical certificates from the same four doctors were produced and though all of them appear to have been issued afresh after the 1st October, 1962, it was not disputed that they are to the same effect as those originally attached to the application for a transfer of the 1st October, 1962 ; they were received in evidence by consent.

The Director of Customs forwarded applicant's request with a covering letter, dated 13th October, 1962, in which it is mentioned :— “ The only inland station, which applicant presumably has in mind, is Nicosia ”. It is then stated :— “ In my opinion however Nicosia District is one of the most important districts from a Preventive point of view as it includes the Nicosia Airport and the Port of Karavostassi. Applicant is of a very low standard of education and would be unable to cope efficiently with the duties and responsibilities in that district. For this and other reasons I do not recommend his transfer to Nicosia ”. The letter of the Director concludes as follows :— “ As his only excuse however for asking for a transfer is the ill-health of his daughter, who is affected by wet climate, I would have no objection for his transfer to Paphos, where the post of Inspector is vacant, and which is renowned for its dry and healthy climate.”

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By way of parenthesis I would observe here two things :—

First, that it is not very satisfactory of a Head of Department, who objects to an application for a transfer, to write to the responsible organ, the Public Service Commission, stating that he objects to such application for a given reason “and other reasons” ; such a course, though not amounting to a defect of such an extent as to nullify the relevant administrative action, once the Commission has found as sufficient the reason already given, is certainly not helpful either for the Commission or for the court in discharging their respective functions. Reasons for administrative action have to be specified and not vaguely alluded to.

Secondly, that, as the Director of Customs really appears to have accepted the affliction of the daughter of applicant as an existing fact, I am of the opinion that he has used the word “excuse” in connection therewith, not in a rather derogatory sense, but as denoting “ground” and, therefore, the criticism made in this respect, by counsel for applicant, is not merited.

The Public Service Commission considered the application of applicant on the 5th November, 1962 ; it took into consideration the views of his Head of Department as contained in his letter dated 13th October, 1962, and decided to turn down the application. Applicant did not make a recourse against such a decision, which was communicated to him by letter dated the 6th November, 1962.

On the 1st February, 1963, applicant renewed his application for a transfer requesting that it should be re-examined and stating that the health of his daughter had reached a dangerous phase ; he stressed that his own psychological condition was affected by the fact that the suffering of his daughter was due to the requirements of his service and posting at Kyrenia.

This second application was forwarded to the Public Service Commission again through his Head of Department, who wrote a covering letter dated 15th February, 1963, in which he stated that he had “no further comments to offer” and referred the Commission to his previous covering letter of the 13th October, 1962.

The Commission met on the 5th March, 1963, and having “reconsidered”—as stated in the minutes—the application of applicant decided that “no reason existed to change its previous decision” because “no new facts” had been produced “to support his previous application”.

As a result of the above decision of the Public Service Commission, the letter already mentioned, dated 11th March, 1963, was written to applicant. It is stated therein that it was "regretted that it had not been found possible to alter the previous decision" of the Commission.

After the said refusal of the Commission to transfer him to an inland station, applicant had, in November, 1963, to send his family to live at Strovolos in view of the deteriorating condition of the health of his daughter ; as a result of such move the child has improved but due to present-day communication inconveniences, in so far as Kyrenia is concerned, and due to his being on call, even at night, applicant cannot visit his family except at weekends. He is also burdened with the extra expense of having to live by himself away from his own family.

Counsel for applicant has submitted that :

- (a) the Public Service Commission misdirected itself in taking the view that no new facts were contained in the second application of applicant for a transfer, dated the 1st February, 1963. He alleged that the said new facts were the deterioration of the condition of the child and the personal agony suffered by applicant as a result thereof ;
- (b) the Public Service Commission had a duty under Article 125 (1) to protect the legitimate interests of the applicant, through transferring him ;
- (c) personal reasons put forward by applicant were matters to be considered in relation to the exigencies of the service ;
- (d) the recommendation of the Head of Department, which was relied upon by the Public Service Commission, was not properly made because applicant was in fact an efficient officer and, moreover, the Customs Inspector posted at Nicosia at the time, when applicant's transfer to Nicosia was not recommended on the ground of insufficient ability, had been in, or just come out of, hospital, where he was treated for mental illness, having, also, previously faced disciplinary accusations.

Counsel for respondent has submitted, *inter alia*, that the decision on the first application was not being challenged in this recourse ; the decision on the second appli-

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cation for a transfer is not an independent decision, but a confirmation of the said earlier decision on the first application, and, as such, it cannot be challenged by a recourse.

He submitted, further, that the Public Service Commission has acted properly in the matter, taking duly into account the recommendation of the Head of Department, as well as the medical facts concerning the health of applicant's daughter, which are not in dispute.

He further stated—and it is common ground—that there is only one post of Inspector of the Preventive Service in each District.

I shall deal first with the objection raised concerning the challenging by recourse of the second decision of the Public Service Commission in this matter.

The first decision of the Commission is not challenged, nor could it be challenged, because this recourse would have been out of time in relation thereto. That decision was taken on the 5th November, 1962, was communicated to applicant on the 6th November, 1962, and the recourse was filed on the 2nd May, 1963—much beyond the time-limit of seventy-five days, under Article 146 (3).

I do not, however, agree with counsel for respondent that the second decision of the Commission, taken on the 5th March, 1963, and communicated by letter of the 11th March, 1963, cannot be challenged on its own by a recourse.

It is quite correct that an act merely confirmatory of a previous one cannot be the subject of recourse, because it is not "executory", in that it does not determine itself the legal position in an individual case (see in this respect Stasinopoulos on the Law of Administrative Acts (1951) p.p. 109-126). On the other hand, an act which contains a confirmation of an earlier one may be "executory", and can be the subject of a recourse, if it has been made after a new examination of the matter (see, above, p. 126).

In my opinion the decision of the Commission of the 5th March, 1963, is "executory". It is a new decision taken on the basis of a new application by applicant, after a lapse of some months; it is the result of a reconsideration of the matter by the Commission, which decided not to alter its previous decision. It may be challenged, therefore, by recourse on its own.

Coming to the merits of this case, I have to say, at the outset—though I do fully sympathize with applicant in his plight—that I am satisfied, in all the circumstances of this case, that the Public Service Commission has reached its decision in question by exercising in a legitimate manner its discretionary powers and, thus, I am not entitled to interfere with such decision. I cannot substitute my own decision for that of the Commission. (See *Christou and The Republic*, 4 R.S.C.C. p. 1, *Saruhan and The Republic*, 2 R.S.C.C. p. 133, *Uludag and The Republic*, 3 R.S.C.C. p. 131).

The possibility of judicial interference with the exercise of discretion by administrative bodies in cases of transfer has been dealt with in Case 113/64, *Sentonaris v. Greek Communal Chamber* (reported in this vol. at p. 300 ante). The effect of the principles adopted in that case is that the exercise of the discretion of the Administration, in relation to the reasons dictating a transfer, is not subject to the control of an administrative court except if there exists an improper use of the discretionary power, or a misconception concerning the factual situation, or the non-taking into account of material factors; what applies to a case of transfer, like the case of *Sentonaris*, applies equally well to a case where the decision is to refuse a transfer, as in the present case.

In the light of the above principles I do not find any cause for interfering with the exercise of the discretion of the Public Service Commission in the *sub judice* matter. The decision reached was reasonably open to it and the Commission properly relied upon the recommendation of the Head of Department of applicant.

In reaching the above conclusion I have examined all the contentions of counsel for applicant, with which I shall now deal specifically.

First, I have not been able to agree that the Public Service Commission has misdirected itself concerning the existence of "new facts". It is true that in its minutes of the 5th March, 1963, it is said that "no new facts have been produced" but I think that when this expression is read in its proper context, and together with the contents of the letter subsequently addressed to applicant on the 11th March, 1963, by way of communication

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of the decision of the Commission, it becomes clear that what the Commission meant was that whatever had been put forward by applicant, in his new application for a transfer, did not amount to anything new which would make it change its previous decision; in other words no new complexion had been placed on the case. The Commission, in my opinion, was reasonably entitled to treat the aggravation of the affliction of the applicant's daughter and his consequent psychological suffering as being an accentuation of the existing factors and not as being "new facts".

Secondly, regarding the contention that the Public Service Commission had a duty under Article 125 (1) to transfer applicant, for the sake of protecting his legitimate interests, I am of the opinion that in the present case the Commission, through considering and reconsidering, later, his case, has duly discharged whatever duty it owed to applicant. The said contention is based on the following dictum in the Judgment in *Nedjati v. The Republic* (2 R.S.C.C. p. 78 at p. 82):— "It will be seen, therefore, that the objects of paragraph 1 of Article 125 include, not only the safeguarding of the efficiency and proper functioning of the public service of the Republic, but also the protection of the legitimate interests of the individual holders of public offices". While the protection of "legitimate interests" of applicant required, on the part of the Commission, a consideration of his applications, and this was done in fact, it cannot, also, be held that it indispensably required a transfer of applicant, as applied for, even if such a decision would have been—on the basis of the recommendation of the Director of Customs—to the prejudice of the "efficiency and proper functioning of the public service", which the Commission had a duty to safeguard too. The Public Service Commission in a case such as the present had to take into account both the personal circumstances of applicant and the exigencies of the service and to reach a decision, as it appears to have done, on the matter as a whole.

Thirdly, with regard to the correlation, made by counsel for applicant, between the personal circumstances of applicant and the exigencies of the service, I do agree that this is indeed so. As held also by the Greek Council of State in Decision 5/1931, cited by counsel for applicant. «Ἡ θεραπεία ἐν τούτοις λόγων ὑγείας καὶ οἰκογενειακῶν ἐν γένει ἢ ἀτομικῶν περιστάσεων, αἰτινες δυσχεραίνουσι τυχόν

την παρομονήν και παρακωλύουσιν την άρτίαν εκπλήρωσιν τών καθηκόντων του λειτουργού εν ώρισμένω τόπω, δύναται εν μέτρω να θεωρηθή έξυπηρετούσα και τό συμφέρον της ύπη- ρεσίας.» ("The remedying of health reasons or in general family or personal circumstances, which made difficult the residence and hinder the efficient discharge of the duties of an officer at a given place, may, to a proper extent, be deemed to promote the exigencies of the ser- vice").

But, the health, family or other personal circumstances of an officer are not the paramount considerations. Though they are to be treated as related to the exi- gencies of the service they have to be weighed in conjunction with the totality of such exigencies. This was done by the Public Service Commission in this case and in the light of such consideration it reached the de- cision that it was not possible to transfer applicant ; it is clear from the minutes of the Commission, and the letter written to applicant by it, that it considered both his application for a transfer, setting out his per- sonal circumstances, and the recommendation of his Head of Department on the exigencies of the service.

Lastly, concerning the complaint against the eva- luation made, by the Director of Customs, of appli- cant's suitability for the Nicosia duties and respon- sibilities and the reference made by counsel for applicant to the circumstances pertaining to the cus- toms Inspector holding, at the material time, the Ni- cosia post, I am of the opinion that these considerations are not such as to lead to the annulment of the decision of the Commission, which is the subject of this recourse.

In support of the above contention applicant has put in evidence a circular of the Comptroller of Customs, of 1955, praising applicant for having made a considerable amount of seizures in the course of duty ; it has been sought to show thereby that the evaluation made of applicant's suitability for the Nicosia post, as con- tained in the letter addressed to the Public Service Commission by his Head of Department, was incorrect and misleading. The Director has not, however, presented applicant as a non-zealous officer. He only stated that applicant is "of a very low standard of edu- cation". This is not really a subjective evaluation but an objective statement which could be easily checked from the personal file of applicant. Applicant may very well be a zealous and hardworking officer and yet still

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possess a low standard of education—the two things being different—and nothing has been alleged or adduced to show that in this latter respect the Public Service Commission has been misled by the Director of Customs.

The issue concerning the misfortunes of the holder of the Nicosia post, at a time when applicant was seeking to be transferred to it, is not properly relevant to the outcome of the recourse. Even assuming, without being necessary to decide it, that the Director of Customs has acted improperly in keeping at the Nicosia post the then holder of such post in spite of all his adverse personal circumstances, it does not mean that, had the Director acted properly, he ought to have recommended applicant's application for a transfer to Nicosia. No matter whether or not the current holder of the Nicosia post was suitable for it, it is clear that the Head of Department considered, in any case, applicant unsuitable for such post; so long, therefore, as he held this opinion, and even if the aforesaid holder of the Nicosia post were to have been moved, somebody else, other than the applicant, one of the other Inspectors of Customs, who could, in the opinion of the Director of Customs, suitably fill such post, would have been recommended for transfer to Nicosia.

In the light of all the relevant circumstances and for all the above reasons, I have reached the conclusion that this recourse fails and has to be dismissed.

I would like to observe, however, that this Judgment should not be considered as preventing the Public Service Commission, for ever in future, from considering afresh the question of the transfer of applicant, should he apply again to it. Had this recourse been successful, then the refusal to transfer applicant would have been set aside and the matter would have had to be reconsidered by the Public Service Commission; the court, of course, could not have ordered the transfer of applicant. On the other hand, the dismissal of the recourse, though confirming the refusal of the transfer already decided upon, cannot in any way be treated as a bar to the matter, being further considered and if need be dealt with differently by the Commission in future. I thought fit to state this explicitly in order to avoid the impression that this Judgment is in any way a *res judicata*, as far as the future is concerned. On the contrary, the Commission would be bound to give new consideration to an application for transfer by applicant, if he were to show that circumstances have changed so as to warrant a new decision by it in the matter. Such change

of circumstances might be either with regard to the exigencies of the service in general or with regard to the particular personal circumstances of applicant, which, as it has been found earlier in this Judgment, might properly be considered to be part of the overall picture of the exigencies of the service.

It might well be that the fact that the applicant has been forced—in November, 1963, long before the hearing of this recourse—to move his family inland to Strovolos, in view of the deteriorating health of his daughter and has to live away from them by himself in Kyrenia, suffering consequential family separation and financial detriment, is a matter which may properly influence any future decision of the Commission. I should not, however, prejudge the issue in any way. It would be a matter for the Commission to consider it in the first instance should the occasion arise. All I wish to stress is that this case does not necessarily seal the fate of applicant in the matter. He is expected, of course, not to indulge in unjustifiable applications which will take up, without sufficient reason, valuable time of the Public Service Commission, but on the other hand I trust that, should the occasion arise, the Director of Customs and the Commission will not hesitate to do their best to try and reconcile, if possible, the wider interests of the service with the specific exigencies related to applicant and the demands of humanity.

In the circumstances of this case, I decided not to award any costs against applicant.

Recourse fails and is dismissed accordingly. Order for costs as aforesaid.

1964
Sept. 9,
Dec. 30

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and

THE REPUBLIC
OF CYPRUS,
THROUGH
THE PUBLIC
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