

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

KYPROS AVRAAMIDES AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 315/66).

1968
Nov. 4

KYPROS
AVRAAMIDES
AND OTHERS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Public Officers—Promotions—Interested party (appointee) junior to Applicants but superior in merit—Seniority and experience relevant but not necessarily decisive in effecting promotions—Paramount consideration the selection of the best candidate—Ample material before the Public Service Commission justifying exercise of their discretion in favour of appointee (Interested Party)—See further herebelow.

Public Officers—Promotions—Confidential reports as source of information for purposes of promotion—Their absence for any period of time of no consequence in the present case since the superior officer (in fact the chief of the candidates) was in possession of up-to-date information on them which he duly imparted to the body responsible for promotions.

Promotions—Principles applicable—Seniority—Experience—Superior merit is the paramount consideration—Confidential reports—Absence—Effect of—See hereabove.

Electricity Authority of Cyprus—Promotions—Promotion by the Public Service Commission to the post of Draughtsman 2nd Grade in the service of the Electricity Authority of Cyprus—Principles applicable—See hereabove

Public Service Commission—Promotions—Promotions in the service of the Electricity Authority of Cyprus—See hereabove.

Seniority and longer experience—As factors in deciding on promotions—See hereabove.

Confidential reports—See above.

The Applicants in this recourse seek to annul a decision

1968
Nov. 4

—
KYPROS
AVRAAMIDES
AND OTHERS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

of the Public Service Commission dated November 21, 1966, whereby K.L. (the appointee) was promoted to the post of Draughtsman 2nd Grade in the service of the Electricity Authority of Cyprus. The latest confidential report on the first Applicant is dated December 11, 1963, and that on the second and third Applicants and the appointee respectively June 26, 1965, December 11, 1963, and December 20, 1963. It was argued by counsel for the Applicants that the absence of later reports was fatal to the subject decision. It was further argued on their behalf that the promotion in question should be annulled in view, also, of the seniority of the Applicants as well as their "overwhelming superiority and experience".

Dismissing the recourse, the Court.

Held, (1). It is trite law by now that in the matter of promotions, seniority, however great, although relevant, is not necessarily decisive, the paramount consideration being the selection of the best candidate. Nor, for the same reason, is longer experience necessarily decisive.

(2) There is no magic in the confidential reports; and in so far as they are intended, or may be used, as source of information for purposes of promotion, the absence of any such report in respect of any period of time is of no consequence in a case like the present one where a superior of the persons concerned, and in fact their chief, took the pains to obtain up-to-date information regarding the performance and merits of each of them and imparted that information to the body responsible for deciding on promotions.

(3) The Public Service Commission had before it ample material on which properly to exercise its discretion in favour of the appointee.

Recourse dismissed.

Recourse.

Recourse against the decision of the Respondent to promote the Interested Party Kyriakos Lambaskis to the post of Draughtsman 2nd Grade in the service of the Electricity Authority of Cyprus in preference and instead of the Applicants.

A. Triantafyllides, for the Applicants.

A. Frangos, Senior Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:—

STAVRINIDES, J.: By this application three persons in the employ of the Electricity Authority of Cyprus (hereafter “the Authority”) as Drawing-Office Assistants seek to annul a decision of the Public Service Commission (hereafter “the Commission”) dated November 21, 1966, whereby a Mr. K. Lambaskis (hereafter “the appointee”) was promoted to the post of Draughtsman 2nd Grade, (hereafter “the subject post”).

The appointee was served with notice of the proceedings but did not appear.

Counsel for the Applicant produced no witness, while for the Respondent one witness was called, Mr. S. Anastassiades, the Chief Engineer and General Manager of the Authority. For the rest there have been produced the following documents: a copy of an extract from the minutes of a meeting of the Commission (*exh. 2*) at which the decision sought to be annulled (hereafter “the subject decision”) was taken (*exh. 2*); a letter from the Secretary of the Authority to the Commission with a paper attached thereto (together making up *exhibit 2A*) which are referred to in *exhibit 2*; the personal files of the Applicants and the appointee, including “record of service” cards relating to each (*exhs. 3-6*); all the official confidential reports on each of the Applicants and the appointee that had been prepared at different times during his service with the Authority (*exhs. 8A-E, 9A-F, 10A-E and 11A-D* respectively); a copy of a certificate (*exh. 1*) issued to the Applicant Avraamides by a British College known as “the Bennett College”, which gives tuition by correspondence; and a copy of a diploma (*exh. 7*) issued to the appointee by the Greek Ministry of National Education and Religions.

The extract from the Commission’s minutes, *exhibit 2*, so far as material reads:

“1. *Filling of vacancies in the Electricity Authority of Cyprus.*

Ref. letter No. S.3/S.88 of October 7, 1966 (*exh. 2A*).

Mr. S. Anastassiades, Chief Engineer and General Manager of the Electricity Authority, present.

The vacancies under consideration were advertised

1968
Nov. 4
—
KYPROS
AVRAAMIDES
AND OTHERS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

by the Authority among its employees in Staff Vacancy Note No. 2/66 of June 6, 1966. In response to the advertisement a number of applications were received for each of the vacancies and such applications were considered by the Authority. The recommendations of the Authority with regard to each of the vacancies are contained in the enclosure in the Authority's letter referred to above (*i.e.* the paper that together with the letter from the Secretary of the Authority to the Commission make up *exh.* 2A).

(p) *Draughtsmen, Grade II.*

(i) One vacancy in Nicosia for which five applications were submitted. K. Lambaskis, the most junior Drawing-Office Assistant, was recommended on the ground of overwhelming abilities, efficiency and qualifications. In fact he was the best qualified and most suitable candidate.

(ii) One vacancy in Limassol for which three applications were submitted. E. Christodoulides was recommended on the ground of qualifications, efficiency and merit.

The Commission, after considering all Applicants for each post, decided that the following be appointed to the post of Draughtsman, Grade II, with effect from October 1, 1966, as indicated opposite their names:

K. Lambaskis — Nicosia

E. Christodoulides — Limassol.”

All three Applicants entered the service of the Authority in 1955 as unestablished Drawing-Office Assistants. The first and third Applicants were established in that post in 1956 and the second in 1957. The appointee was first engaged by the Authority in October, 1962, as a casual Linesman. As counsel for the Applicant put it, “a Linesman has to fix poles and install lines”. He became a casual Drawing-Office Assistant in December, 1962, and was established in that post on June 1, 1963, by which time the Applicants had reached the top of their salary scales as established Drawing-Office Assistants. In 1962, before the appointee was engaged by the Authority, the Applicants, at the suggestion of Mr. A. Constantinou, a District Engineer of the Authority,

"attended a six-months' course in Engineering Drawing with a view to promotion". In 1964 Mr. Anastassiades "advised the Applicants what they should do if they were to get on in the service of the Authority". The second and third Applicants attended a one-year course in Engineering Drawing at the Technical School, Nicosia. The first enrolled as a student of the Bennett College, and the certificate *exhibit* 1, dated December 23, 1966, states that "Mr. K. Avraamides... is studying by correspondence... our course on Electrical Draughtsmanship"; that "he is making steady progress in these studies and in the subject of Electrical Engineering, which is included in this course" (and "deals with the General Principles of Electrical Engineering covering Electrification, Magnetism, Currents, the Dynamo, Magneto Generator, Alternators, Transformers, Ignition in Internal Combustion Engines, and Train Lighting"), "he had submitted some very good work to the College and been awarded a pass mark of 95% for the final examination". On the other hand the Appointee's diploma, *exhibit* 7, which is dated July 4, 1960, is one in Electrical Craftsmanship.

The case for annulment is based on what, in the space reserved for a statement of "the grounds of law on which the application is based," is described as "the overwhelming superiority and experience of the Applicants". It is trite law by now that, in the matter of promotion, seniority, however great, although relevant, is not necessarily decisive, the paramount consideration being the selection of the best candidate. Nor, for the same reason, is longer experience necessarily decisive.

Now the meeting of the Commission at which the subject decision was taken was attended by Mr. Anastassiades. "He was asked to make recommendations and he did", basing himself on "reports in the personal files of the persons concerned and on exchanges of views with the District Engineer, Mr. Themistoclis Ergadoudhis". "Both from Mr. Ergadoudhis's reports and his (the witness's) observation he had formed the view that (the Appointee's) performance was very good". This view accords with the confidential reports on the Appointee (*exh.* 11A-D) in all of which, under the heading "Efficiency in present grade", the estimate "Very good" is given. By contrast the assessments under the same heading in the other confidential reports are as follows: In the penultimate report on the first Applicant, "Very good"

1968
Nov. 4
—
KYPROS
AVRAAMIDES
AND OTHERS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

and in all the other reports on him "Satisfactory", in the first report on the second and third Applicants respectively, "Indifferent" and in all the other reports on these two Applicants "Satisfactory". The latest report on the first Applicant is dated December 11, 1963, and that on the second and third Applicants and the Appointee respectively June 26, 1965, December 11, 1963, and December 20, 1963; and Mr. Triantafyllides for the Applicants argued that the absence of later reports was fatal to the subject decision. As Mr. Anastassiades's evidence showed, the confidential reports put in were the only ones ever prepared on the Applicants and the appointee, the reason being that "each of the persons concerned had reached the top of his salary scale more than a year before the preparation of the last report concerning him" and "the practice of the Authority was to prepare reports only for the purposes of increments". However, there is no magic about "confidential reports"; and in so far as they are intended, or may be used, as sources of information for purposes of promotion, the absence of any such report in respect of any period of time is of no consequence in a case such as this, where a superior of the persons concerned, and in fact their chief, took pains to obtain up-to-date information regarding the performance and merits of each of them and imparted that information to the body responsible for deciding on promotion. It is true that from Mr. Anastassiades's evidence it appeared that he did not know of the second and third Applicants' Technical School courses. But a course, or even a certificate or diploma, cannot outweigh actual performance; therefore that ignorance did not affect the value of Mr. Anastassiades's assistance to the Commission.

Altogether the Commission had before it ample material on which properly to exercise its discretion in favour of the appointee and therefore I see no reason for interfering with it.

Application dismissed, but since the Respondent is not represented today, without costs.

Application dismissed without costs.