

1980 December 30

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTOPHIS SPYROU,

Applicant,

v.

THE PUBLIC SERVICE COMMISSION AND
ANOTHER,

Respondent.

(Case No. 148/79).

Public Officers—Promotions—Transport Controller, 2nd Grade—Seniority—Performance of candidates at the interview—Recommendations of Head of Department in favour of the interested parties—One of the interested parties better qualified than applicant and another having better confidential reports—Longer Service of applicant on daily wages could not outweigh the other elements, relevant to the interested parties, which were not equal so that applicant’s seniority should prevail—Sub judice promotions reasonably open to the respondent Commission.

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The applicant, a Transport Controller 3rd Grade in the Department of Inland Transport, challenged the validity of the promotion of the three interested parties to the post of Transport Controller, 2nd Grade, a first entry and promotion post. In making the promotions to the above post the Public Service Commission took into consideration* all the facts appertaining to each one of the candidates and gave proper weight to their merits, qualifications, abilities and experience, as well as to their suitability for appointment to the above post as shown at the interview. It, also, took into consideration the recommendations of the Head of Department, who was present at the interview, and stated that the officers who were eventually selected for promotion by the respondent Commission,

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* See the relevant minutes at pp. 642-43 *post*.

had all been serving in his Department, had very satisfactory service and that he considered them very suitable for the post in question. Such recommendations were not in any way inconsistent with the material in the respective files. Applicant
 5 had a longer service in the Department concerned on daily wages as compared with that of two of the interested parties but one of the interested parties had passed the General Orders examinations and another had better confidential reports than the applicant.

10 *Held*, that the longer service that the applicant had in the Department concerned as compared with that of two of the interested parties could not outweigh the other elements relevant to the successful candidates, which were in fact not equal, so that such seniority or longer service should prevail; that
 15 looking at the material before the respondent Commission as a whole, including all relevant factors that under the Public Service Law, 1967, had to be taken into consideration, this Court has come to the Conclusion that the *sub judice* decision was reasonably open to the Commission; that there has been
 20 neither wrong exercise of discretion nor abuse of power, nor any misconception of fact in any respect; accordingly the recourse must fail.

Application dismissed.

Recourse.

25 Recourse against the decision of the respondent to promote the interested parties to the Temporary (Ordinary) post of Transport Controller, 2nd Grade, in the Department of Inland Transport, in preference and instead of the applicant.

M. Vassiliou, for the applicant.

30 *G. Constantinou*, for the respondent.

Cur. adv. vult.

A. Loizou J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the act and/or decision of the respondent Commission by which the interested parties Andreas N. Aniftos,
 35 Charalambos N. Theodorou and Vasilios L. Nicolaou, were promoted to the Temporary (Ordinary) Post of Transport Controller, 2nd Grade, in the Department of Inland Transport, is null and void and of no effect whatsoever.

40 According to the relevant Scheme of Service (Enclosure

No. 3), the aforesaid post is a First Entry and Promotion one and an advertisement for the filling of a number of vacancies was published in the official Gazette upon a decision of the respondent Commission to that effect. Of the 31 applicants, the respondent Commission invited 18 candidates, including the applicant, for an interview and at its request the Director of the Department of Inland Transport was present. 5

The minutes of the respondent Commission in so far as relevant read as follows:

“The Commission as well as the Director of the Department of Inland Transport put several questions to all the candidates on matters of general knowledge and on matters connected with the duties of the post as shown in the relevant scheme of service. 10

The Commission considered the merits, qualifications and experience of the candidates interviewed as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them, etc.). 15

The Personal Files and the Annual Confidential Reports of the candidates already in the service were also taken into consideration. 20

The Commission observed that, during the interview, Messrs. Christodoulos Ioannou, Haralambos N. Theodorou, Andreas Nicolaou Aniftos and Vasilios Larkou Nicolaou gave very satisfactory replies to questions put to them and generally they proved to be the best candidates for appointment or promotion to the above post. 25

The Director of the Department of Inland Transport stated that all the officers referred to in the preceding paragraph were serving in his Department on daily wages or in the post of Transport Controller, 3rd Grade, their services had been very satisfactory and that he considered them very suitable for the post of Transport Controller, 2nd Grade. 30 35

According to the relevant scheme of service, candidates for appointment or promotion to the post of Transport Controller, 2nd Grade, must possess ‘a very good know-

ledge of Greek and of good knowledge of English'. The Commission observed that Messrs. Christodoulos Ioannou, Haralambos N. Theodorou, Andreas Nicolaou Aniftos and Vasilios Larkou Nicolaou had graduated from a Six-year Secondary School in which both the Greek and English languages were two of the subjects taught. In view of the above and having regard to their long and satisfactory service in the Government, the Commission was satisfied that the candidates in question did possess 'a very good knowledge of Greek and a good knowledge of English'.

After considering all the above and after taking into consideration all the facts appertaining to each one of the candidates and after giving proper weight to the merits, qualifications, abilities and experience of these candidates, as well as to their suitability for appointment to the above post as shown at the interview, the Commission came to the conclusion that the following candidates were on the whole the best. The Commission accordingly decided that the candidates in question be appointed or promoted to the temporary (Ord.) post of Transport Controller, 2nd Grade, w.e.f. 1.12.78, as shown opposite their names: Andreas N. Aniftos, Charalambos N. Theodorou and Vasilios L. Nicolaou".

The applicant entered the service as a Transport Controller on daily wages in July 1969 and became a Transport Controller, 3rd Grade, on the 1st December, 1975. He is a graduate of the Kykkos Pancyprian Gymnasium and passed the departmental examinations on the Laws and Regulations relating to the functions of the said Department in October 1976.

Interested party Aniftos entered the service on daily wages on the 17.11.1971 and he was appointed as a Transport Controller, 3rd Grade, on 1.12.1975. He is a graduate of the Limassol Greek Gymnasium, passed the departmental examinations on the Laws and Regulations relating to the functions of this Department in October 1976 as well as the examinations on the General Orders.

Interested party Theodorou entered the Fisheries Department on daily wages in November, 1968, and he became a Transport Controller on daily wages on 16.5.1969 until the

1st December, 1975, when he became a 3rd Grade Officer in that post. He is a graduate of the Greek College Paphos and of the Dramatic School Stanislavski. He passed the Departmental examinations on the Laws and Regulations relating to the functions of the Department in April 1977. 5

Interested party Vasilios Nicolaou entered the Department in May 1970 as Transport Controller on daily wages and on the 1st December, 1975, he became a Transport Controller, 3rd Grade. He is a graduate of Famagusta Greek Gymnasium and passed the departmental examinations on Laws and Regulations relating to the functions of this Department. 10

The passing of the examinations on the Financial Instructions and Store Regulations and on the General Orders was made a condition to all parties doing so within two years from their appointment to the post of Transport Controller, 3rd Grade. 15
With the exception of interested party Aniftos who passed the examinations on the General Orders on 29.6.1977, none of the others passed them before the *sub judice* decision was taken and so on the 6th February 1978, the respondent Commission extended the time within which they had to pass these examinations up to the 30th November, 1978. It may be noted that the applicant passed the examinations on the General Orders and Financial Instructions and Store Regulations on 20.7.1979, that is, after the *sub judice* decision was taken. 20

The application is based on the following grounds of Law: 25
(a) that the respondent Commission acted contrary to Law and/or in abuse and/or excess of power and/or ignored the superiority, qualifications, merit and seniority of the applicant;
(b) the respondent Commission failed to select the best candidate as it was their duty to do so; (c) the respondent Commission 30
did not take into consideration the substantial seniority of the applicant, and (d) the respondent Commission acted under a misconception of facts.

Relevant also to the issues raised are the contents of the confidential reports which cover the years 1976 and 1977 which 35
are the only ones that existed before the *sub judice* decision was taken.

All parties were reported upon by the same reporting officer, and the Director of the Department of Inland Revenue was

the countersigning officer in respect of them all. I do not intend to set out verbatim the contents of these reports. Suffice it to say that the countersigning officer expressed on occasions disagreement with ratings, or some of them, made by the reporting officer. For example in the 1977 confidential report on the applicant, the rating of the reporting officer for devotion to duty was changed from "Very Good"—as were the rest—to "Excellent".

The general assessment of interested party Aniftos was changed into "Very Good" by the countersigning officer with respect to six ratable items for which he was rated "Good" by the reporting officer.

A change also to the better was made in respect of three ratable items for the year 1977 as well. Likewise a change to the assessment to "Very Good" to three ratable items was also made for the year 1977 in respect of interested party Theodorou.

With regard to interested party Nicolaou who was rated as "Very Good" for the year 1976 the rating of "Good" in respect of general intelligence was changed to "Very Good" and for reliability, adaptability, courtesy in dealing with the public and ability to cooperate with colleagues, the assessment by the countersigning officer was that it should be "Excellent". In order to complete the picture, note must be taken, of the performance of the candidates at the interview, reference to which is made in the minutes of the respondent Commission hereinabove set out, as well as of the recommendation of the head of the department, who was also present at the interviews and stated that these officers—eventually selected for promotion by the respondent Commission—had all been serving in his department, had very satisfactory service and that he considered them very suitable for the post in question. Needless to say that such recommendation was not in any way inconsistent with the material in their respective files.

Looking at the material before the respondent Commission as a whole, including all relevant factors that under the Public Service Law, 1967, had to be taken into consideration, I have come to the conclusion that the *sub judice* decision was reasonably open to it and that there has been neither wrong exercise

of its- discretion nor abuse of power, nor any misconception of fact in any respect.

The longer service that the applicant had in this department on daily wages as compared with that of two of the interested parties could not outweigh the other elements relevant to the successful candidates, which were in fact not equal, so that such seniority or longer service should prevail. 5

Interested party Aniftos, had at the material time passed the examinations on the general orders, and interested party Nicolaou had by far better confidential reports than the applicant. 10

For all the above reasons this recourse is dismissed but in the circumstances I make no order as to costs.

Application dismissed.

No order as to costs. 15