

1986 February 6

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

COSTAS ONISIFOROU.

Applicant,

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent.

(Case No. 70/83).

5 *Electricity Authority of Cyprus—Promotions or Regradings to
combined establishments—Combination of all factors, i.e.
performance, conduct, qualifications and experience, should
be taken into consideration—Conduct—Adverse comments
in respect of—In assessing applicant's conduct there is no
requirement that such comments ought to have been made
the subject-matter of disciplinary proceedings in order to
be taken into account.*

10 The applicant, who was serving in the post of Clerk
General Duties II became eligible for regrading or promo-
tion to the post of Clerk I, scale A7 (Combined Establish-
ment). The applicant was not amongst the seventeen em-
ployees recommended for such promotion by the Joint Ad-
visory Selection Committee. In the relevant minutes of
15 this Committee it is stated as regards the applicant that
“his relationship with his colleagues and superiors and
his conduct generally are not of the required standard and
this affect his performance at work...”.

20 By letter dated 2.2.83 the Area Manager of the Li-
massol-Paphos District of the respondent Authority in-
formed the applicant that the reasons why he was not
regraded were his unbecoming conduct towards his collea-
gues as well as towards his superiors and generally his

behaviour which was not of the required standard, and which on several occasion affected the smooth functioning of the office and applicant's performance.

Counsel for the applicant argued, inter alia, that the allegations as to applicant's conduct are unfounded as he has never been subjected to disciplinary proceedings in connection therewith and that, in any event, such allegations could not be taken into account as the applicant was never informed or warned about them or given the right to be heard in connection with them. 5 10

Held, dismissing the recourse: (1) There is no dispute as to applicant's qualifications and experience. However, in cases of promotions to combined establishment what is taken into consideration is the overall combination of all factors, i.e. apart from qualifications and experience, the performance and conduct of the employee. 15

(2) There is in the present case ample evidence that applicant's conduct, which has a direct bearing on his performance, has been undesirable both towards his fellow employees as well as his superiors. 20

(3) In assessing the general conduct of an applicant there is no requirement that any complaints or adverse comments should have been the subject-matter of disciplinary proceedings in order to be taken into account.

(4) It is also in evidence that the applicant was warned about his conduct at work on several occasions. 25

Recourse dismissed.

No order as to costs.

Recourse.

Recourse against the refusal of the respondent to regrade and/or promote the applicant from Clerk General Duties II to Clerk I. 30

G. Kaizer, for the applicant.

A. Stylianidou (Miss), with *S. Pouyouros*, for the respondent. 35

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant in this recourse seeks a declaration of the Court that the act and/or decision of the respondent Authority communicated to him by letter dated 2.2.83, and/or verbally on 6.12.82, not to regrade and/or promote him from the post of Clerk General Duties II to the post of Clerk I, is null and void and of no legal effect whatsoever.

The applicant was first appointed in the service of the respondent on 10.5.69, after passing the L.C.C. Lower and Intermediate in Accountancy; he was promoted to the post of Clerk of General Duties II, and was transferred from the Nicosia District Office to the Central Offices in Nicosia. On 11.6.79 on his own application was transferred to the District Office of Limassol.

On or after 1.8.82 having served in this post for one year and having reached the top of his salary scale he became eligible to be considered for regrading or promotion from the post of Clerk II to the post of Clerk I, scale A7 (Combined Establishment).

The case of the applicant, as well as of all eligible employees, was considered by the Joint Advisory Selection Committee for Promotions and Regradings on 10.11.82, which recommended for promotion seventeen out of the twenty employees considered. The applicant was among those not recommended.

In the minutes of the said meeting, it is stated as regards the applicant that:-

“Though he has capabilities, nevertheless, his relationship with his colleagues and superiors and his conduct generally are not of the required standard and this affects his performance at work. Therefore, he was unanimously considered as not regradable”.

According to the applicant, he was informed verbally on 6.12.82 that he was not considered as suitable for promotion, having been informed by the District Director that he had not served in all Departments and that he lacks the ability to cope with the duties of a higher post. This, as he claims, he requested to be given to him in writing. On

2.2.83 he was informed by letter of the Area Manager of the Limassol-Paphos District, inter alia, as follows:

“The reasons for which you were not regarded are your unbecoming conduct towards your colleagues as well as towards your superiors and generally your behaviour is not of the required standard and this has on several occasions affected the smooth functioning of the office and your performance. 5

I urge you to be more careful in the future and to improve your behaviour so that the Authority will not be put in the unpleasant position not to regrade you again”. 10

As a result of this letter the applicant filed the present recourse, which is based on the following grounds of law:

1. The sub judice decision was taken under a misconception of fact. 15

2. The respondent Authority exercised its discretion wrongly and acted in excess and/or abuse of power.

3. The sub judice decision lacks due reasoning.

4. It was taken contrary to the Constitution, the laws and regulations and the principles of good and proper administration. 20

5. The applicant has been subjected to unequal treatment.

Counsel for the applicant argued that the respondent Authority in reaching the sub judice decision took into consideration factors other than those which properly ought to be taken into consideration in matters of promotion, that is, experience, merit, ability, years of service, qualifications, conduct, age and performance. 25 30

It was further contended that his experience, qualifications and his performance at work, especially in comparison to the other candidates, were such that did not justify

his non promotion; furthermore, as regards the allegations concerning his conduct, it was argued that such are unfounded as he has never been subjected to disciplinary proceedings in connection with such conduct, nor could they be taken into account in any event, as he was never warned or informed about them or given the right to be heard in connection with such complaints.

There is no dispute as regards his experience and qualifications. However, they are not the only factors of importance because in cases of promotions to combined establishments what is taken into consideration as well is the overall combination of all factors, that is apart from qualifications and experience, the performance and conduct of an employee are important ingredients which make up the overall picture presented by an employee to be considered.

In the present case, there is ample evidence, both documentary and oral, establishing that the conduct of the applicant, which has a direct bearing on his performance at work. has been undesirable both towards his fellow employees as well as his superiors, that would justify his not being recommended for promotion. It could validly be taken into consideration despite the fact that there have been no disciplinary proceedings against him. As it is stated in Conclusions from Case Law of the Greek Council of State 1929 - 1959 at p. 355, in assessing the general conduct of an applicant there is no requirement that any complaints or adverse comments should have been the subject matter of disciplinary proceedings against him in order to be taken into account. It is not necessary for such conduct in order to be taken into account, to constitute a disciplinary offence. It is also in evidence that he was warned about his conduct at work on several occasions.

In conclusion, I find that in the circumstances the respondents exercised their discretion properly and that the sub judge decision was validly and properly taken. It cannot, therefore, be said that the respondent Authority exer-

cised its discretion wrongly or contrary to the Constitution or that the sub judice decision lacks due reasoning.

The recourse must therefore fail and is hereby dismissed with no order as to costs.

Recourse dismissed with 5
no order as to costs.