

1987 November 7

[DEMETRIADES. J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARIOS GAVALAS,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

*(Case No. 251/83).*

*Public Officers — Promotion — The principles that should govern and bind the organs entrusted with the task of promotion.*

*Public Officers — Promotions — Judicial control — Principles applicable.*

By means of this recourse the applicant challenges the promotion of the interested parties to the post of Land Officer, 2nd Grade in the Department of Lands and Survey. 5

The ten interested parties were recommended by the Head of the Department, whilst the applicant was not. The applicant had better gradings than some of the interested parties but the difference was not such as to render him strikingly superior to them. The qualifications of all concerned were more or less the same. The interested parties were senior to the applicant. 10

Held, dismissing the recourse:(1) In a nutshell the principles emanating from the case law in respect of promotions in the public and other services of the Republic are:

A. The best candidate must be selected after considering 15

(i) the merit, qualifications and seniority of candidates,

(ii) their grading in the confidential reports, and

(iii) the recommendations of the Head of the Department.

B. Seniority prevails if all factors are more or less equal.

C. Recommendations of the Head of the Department cannot be disregarded without the respondent giving special reasons. 20

2 In this case the applicant failed to prove that he was strikingly superior to the interested parties

*Recourse dismissed*

*Costs against applicant*

5 **Recourse.**

Recourse against the decision of the respondent to promote the interested parties to the post of Land Officer, 2nd Grade in preference and instead of the applicant.

*E. Efstathiou*, for the applicant.

10 *Ch. Kyriakides, Counsel of the Republic.* for the respondent.

*Cur. adv. vult*

DEMETRIADES J. read the following judgment. By the present recourse the applicant challenges the decision of the respondent, published in the Official Gazette of the Republic, dated the 8th  
15 April, 1983, whereby the interested parties were promoted to the post of Land Officer, 2nd Grade, in the Department of Lands and Surveys, instead of and in preference to him.

The interested parties are: (1) Panayiotis Papaefthymiou, (2) Christodoulos Christodoulides, (3) Charalambos Savvides, (4)  
20 Charilaos Epaminondas, (5) Petros Vassiliou, (6) Andreas Christodoulou, (7) Georghios Hadjittofi and (8) Andreas Joannides. The applicant does not attack the promotion of Mr. A Pallikaros and Mr. Kikis Onoufriou.

I must mention here that although the name of interested party  
25 No. 2 appears in the application to be Christodoulou, it is obvious, both from the minutes of the meeting of the respondent and the Official Gazette of the Republic where the sub judice promotions are published, that this party's name is Christodoulides

30 At the material time of the sub judice decision, the applicant and the interested parties were holding the post of Assistant Land Officer in the Department of Lands and Surveys.

Persuant to a request made by the Director-General of the Ministry of Interior to the respondent for the filling of ten vacancies in the post of Land Officer, 2nd Grade (which is a promotion post),  
35 the respondent referred the matter to the Departmental Committee which was set up for the purpose in accordance with the provisions of section 36 of the Public Service Law, 1967 (33/67).

By its report, which was submitted to the respondent by a letter dated the 16th October, 1982, the Departmental Committee recommended 39 candidates for promotion to the post in question. Amongst them was the applicant and the interested parties.

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At its meeting of the 11th November, 1982, the respondent considered the report of the Departmental Committee and having found that one of the candidates recommended by it did not in fact possess one of the qualifications required by the scheme of service, postponed further consideration of the matter to a subsequent date.

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The final meeting of the respondent took place on the 26th November, 1982. The Head of the Department, who was invited to express his views, recommended, in order of merit, 10 of the candidates, amongst whom the interested parties. He also gave an outline of the nature of the duties performed by each one of them and expressed his views on their efficiency. The applicant was not included in his recommendations. The respondent then proceeded to select for promotion, as from the 15th December, 1982, the ten candidates recommended by the Head of the Department, making analytical reference to their assessment as each appeared in the respective confidential reports.

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The promotions were published in the issue of the Official Gazette of the Republic of the 8th April, 1983, as a result of which the applicant filed the present recourse.

Counsel for the applicant argued that the applicant is superior to the interested parties both in merit and qualifications and that the seniority of the interested parties ought not to bear so much weight in the minds of the respondent. He further contended that the respondent took into consideration only the two last confidential reports of the candidates and that the recommendations of the Head of the Department were not in conformity with the picture presented by the confidential reports and ought not to have been followed by the respondent.

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(a) The question to be decided is whether the sub judge decision (a) was properly taken by the respondent and (b) it was reasonably open to them to take it.

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The Supreme Court of this country, in its numerous decisions relating to promotions in the public and other services of the

Republic, has set down the principles that should govern and bind the organs entrusted with the task of promoting officials. In a nutshell these principles are-

- 5 A. The best candidates must be selected after considering
  - (i) the merit, qualifications and seniority of candidates,
  - (ii) their grading in the confidential reports, and
  - (iii) the recommendations of the Head of the Department.
- B. Seniority prevails if all factors are more or less equal.
- 10 C. Recommendations of the Head of the Department cannot be disregarded without the respondent giving special reasons.

15 The Supreme Court has further held that for an applicant to succeed in a recourse against the decision of such an organ must prove, the burden lying on him, that he is strikingly superior to the officer promoted.

I now come to the issue regarding the merits of the applicant and the interested parties.

20 On the issue of merit, the position as set out by the decided cases is that the merits of a candidate for promotion are reflected through his confidential reports.

25 Before me there is a statement prepared by the respondent which shows in detail the grading of the applicant and of each interested party and from which it appears that the applicant, as well as all interested parties, except Mr. Hadjittofi and Mr. Epaminondas, were assessed for each of the years 1980 and 1981 as «Excellent» whilst the main interested parties were assessed for the year 1980 as «Very Good» and for the year 1981 as «Excellent».

30 Although there is a small difference in the individual gradings of the parties, this difference is not such as to render the applicant strikingly superior to any of the interested parties, bearing, also, in mind the fact that the interested parties were recommended by the Head of the Department.

35 As to the qualifications of the applicant and the interested parties, these appear in Appendix A to the opposition, and having considered them carefully, I find that all parties were more or less equal in this respect.

Regarding now the factor of seniority, it is obvious from Appendix A that all interested parties are senior to the applicant. Although interested parties 1, 2, 3, 4, 5 and 6 were promoted to the post of Assistant Land Officer on the same date as the applicant, they were senior to the applicant in the previous post they held. In any event, the fact that the interested parties are senior to the applicant has not been contested. 5

Having regard to the above, I find that it was reasonably open to the respondent to promote the interested parties instead of the applicant. 10

Regarding the contention of counsel for the applicant that the respondent took into consideration only the last two confidential reports of the candidates, I find no merit in it. The files containing all the confidential reports of the candidates were, as stated at p. 4 of the sub judice decision, before the respondent and were considered by it. The fact that more weight was attached to the last two reports is perfectly legitimate. 15

I further find untenable the argument of the applicant that the recommendations of the Head of the Department were contrary to the contents of the confidential files of the parties. Such an argument cannot be substantiated from the material before me. 20

In the light of the above I find that the sub judice decision was reasonably open to the respondent to reach and that the applicant has failed to show cause why it should be disturbed.

In the result, this recourse fails and it is hereby dismissed with costs. 25

*Recourse dismissed  
with costs.*