

(1987)

1987 May 14
[A LOIZOU, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PETROS ANTONIOU,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent

(Case No 666/85).

Public Officers — Promotions — Merit — In dealing with the merit of an officer what would be considered is the general picture presented by him and not his individual gradings

By means of this recourse the applicant challenges the validity of the decision to promote the interested parties to the post of Senior Collector of Customs

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The applicant complains, inter alia, of biased confidential reports in that his gradings were purposely lowered by the Head of the Department in order to support the latter's recommendation that interested party Constantinou was better than the applicant and that the respondent Commission wrongly considered the qualification of interested party Lardis (L.C.C Higher) as «useful for the performance of the duties of the post»

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Held, *dismissing the recourse* (1) Interested party Constantinou appears almost throughout his career as excellent, a fact that makes him a strikingly better officer than the applicant. Even if applicant's gradings for 1984 had remained the same as those for 1983, it would still not have made any difference. In dealing with the merit of an officer what is considered is not his individual gradings, but the general and overall picture presented by him

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(2) The statement as to the qualification of interested party Lardis does not amount to a misconception of fact or law. It did not in any way affect the outcome of the decision

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*Recourse dismissed
No order as to costs*

Cases referred to:

Piendes v The Republic (1985) 3 C L R 1275

Recourse.

5 Recourse against the decision of the respondent to promote the interested parties to the post of Senior Collector of Customs in the Department of Customs and Excise in preference and instead of the applicant.

A. *Haviaras*, for the applicant.

P. *Hadjidemetriou*, for the respondent.

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Cur. adv. vult.

15 A. LOIZOU J. read the following judgment. By the present recourse the applicant claims a declaration of the Court that the decision of the respondent Commission dated 29th June 1985, to promote to the post of Senior Collector of Customs in the Department of Customs and Excise the interested parties Loizos Constantinou and Andreas Lardis, is null and void and of no legal effect whatsoever.

20 As the post of Senior Collector of Customs is a promotion post the respondent Commission sent to the Departmental Board a list of the candidates for promotion, their personal files and confidential reports and a copy of the relevant scheme of service.

The relevant report of the Departmental Board was sent to the respondent Commission on the 27th June, 1985, whereby eight candidates including the applicant were recommended.

25 The respondent Commission at its meeting of the 29th June, 1985, heard the views and recommendations of the Director of the Department of Customs and examined all the material factors from the personal file and confidential reports of the candidates, also considered the conclusions of the Departmental Board and the
30 recommendations of the Head of Department and concluded that George Angelides, Andreas Lardis and Loizos Constantinou, were superior to the other candidates on the basis of the established criteria (merit, qualifications, seniority) and decided to offer them promotion with effect from 15.7.85.

35 On the 1st July, 1985, the applicant retired from the Public Service.

It was argued on behalf of the applicant that the sub judge decision was reached in excess and/or in abuse of power and under a misconception of fact and law, the respondent Commission failed to select the best candidate and finally that the confidential reports of the candidates were biased to the effect that the gradings of the reports of the applicant were purposely lowered by the Head of Department in order to support his recommendations that interested party Constantinou was better than the applicant. Furthermore, it was argued that the recommendations of the Head of the Department as regards the interested party Lardis did not correspond with his confidential reports.

It was further alleged that the applicant was generally better than the interested parties, he had more experience and was also senior to Constantinou by nine years.

Finally it was argued that the respondent Commission acted under a misconception of fact and law as regards the qualifications of Lardis in that his qualification of L.C.C. Higher was wrongly considered as a qualification «useful for the performance of the duties to the post.»

I find such allegations untenable. In the first place even if it could be said that the applicant had more experience than the interested parties, from the material before me it does not transpire that either of them lacked the necessary experience for the post.

As regards the matter of the confidential reports, it appears that the applicant was graded for the year 1984 as «Very Good» (1-11-0), for 1983 as «Very Good» (5-7-0), for 1982 as «Very Good» (1-11-0) and for 1981 as «Very Good» (0-8-4).

As regards Lardis, I find from the material before me that there are no discrepancies between his confidential reports and the recommendations of the Head of Department.

As regards interested party Constantinou, he appears almost throughout his career as excellent, which makes him undoubtedly a strikingly better officer than the applicant; therefore I consider that even if the individual markings of the applicant for 1984 had remained the same as for 1983, it would still not have made any difference. What is considered when dealing with the merit of the officer is not his individual gradings but the general and overall picture presented by him. To lay stress to only individual aspects

of those making up merit would be wrong and inconsistent with the general principles of administrative law.

5 Finally as regards the statement of the Head of Department as regards the qualifications of Lardis, I find no misconception either of fact or law; it is no more no less a statement which I consider that it was neither a decisive factor nor in any way as affecting the outcome of the final selection of the candidates.

For all the above reasons I consider that the recourse must fail.

10 I have proceeded as above on the assumption that the applicant had the necessary legitimate interest to challenge the sub judice decision. It was in fact contended on behalf of the respondent Commission that the applicant by accepting the pension benefits given to him upon his retirement on the 1st July, 1985, calculated on the basis of the salary of the post he held of Collector of
15 Customs, deprives him of any legitimate interest to proceed against the sub-judice promotions. The case of *Doros Pierides v. Republic* (1985) 3 C.L.R. 1275 at 1284 was cited in support.

20 As the issue of the loss of legitimate interest through express or implied acceptance of an administrative decision normally depends on the several factual aspects of each case, including the conduct of the applicant, whether he had knowledge of the decision he is deemed to have accepted, whether such acceptance was free, voluntary and unreserved etc., and as the matter was never fully argued, and, moreover as details of the factual
25 background are not before me, I have proceeded to consider the case on its merits on the assumption that he did not waive such right and that he did possess such legitimate interest.

For the reasons stated above this recourse fails and is hereby dismissed with no order as to costs.

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*Recourse dismissed.
No order as to costs.*