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[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

ANDREAS KYRIACOU,

Applicant,

ANDREAS
KYRIACOU
and

and

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BROADCASTING
CORPORATION,
2. THE REPUBLIC
OF CYPRUS,
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1. THE CYPRUS BROADCASTING
CORPORATION,

2. THE REPUBLIC OF CYPRUS, THROUGH THE
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Respondents.

(Cases Nos. 265/62, 34/63)
(Consolidated)

Administrative Law—Cyprus Broadcasting Corporation—Re-organization and creation thereby in its establishment of the posts of Head of News Division (Greek) and of Assistant of News Division (Greek)—Such posts were not created by Respondent No. 1 in excess or abuse of powers—Applicant did not possess any legal right to be offered the newly created post of Head of News.

Public Service Commission—Discretion—Filling the post of Head of News Division (Supra)—Acceptance by, of the recommendation of Respondent No. 1 to advertise the said post and offer applicant only the post of Assistant Head of News Division and appointment of another to post of Head of News—Relevant discretion exercised in a manner free from misconceptions of basic facts, prejudice or other defect and there has been no abuse or excess of powers.

Constitutional Law—Article 29.1 of the Constitution creates an obligation to reply to “written requests or complaints” when they are made to “any competent public authority”—A non-competent public authority to which a request or complaint has been addressed with which it cannot deal, cannot be expected to give a duly reasoned reply in relation thereto as required under Article 29—Its duty is, to transmit such request or complaint to the competent authority, if any, or to inform the writer thereof which is the competent authority, if any.

Time, Article 146.3 of the Constitution—Recourse against the re-organization in the establishment of the posts in the Cyprus

Broadcasting Corporation, filed on 19.10.62, out of time and has to be dismissed as being contrary to Article 146.3.

These two cases, 265/62 and 34/63, were consolidated by order dated 24th May, 1963.

Recourse No. 265/62 was filed on the 19th October, 1962 and Applicant has complained, in effect, against:-

(1) The creation by respondent 1 in its establishment of the posts of Head of News Division (Greek) and of Assistant Head of News Division (Greek).

(2) The decision of Respondent 2 to offer Applicant the post of Assistant Head of News;

(3) The omission of Respondent 2 to offer Applicant the post of Head of News;

(4) The decision of Respondent 2 to advertise the post of Head of News;

(5) The omission of both Respondents to reply to the letter of Applicant of the 11th August, 1962, within thirty days.

An application was also made in such a Case for a Provisional Order preventing Respondent 2 from taking further action in dealing with applications for appointment to the advertised post of Head of News. On the 6th November, 1962, it was agreed between the parties that Applicant would be considered by Respondent 2 as a candidate for the post in question and the application for a Provisional Order was withdrawn. Likewise, he withdrew proceedings against Respondent 2 and the proceedings against Respondent 1 were stayed and were to be deemed as withdrawn if within 75 days from the date of an appointment to the post of Head of News no recourse were to be filed by Applicant against Respondent 2 in the matter.

Recourse, No. 34/63 (the second of these two consolidated Cases) was filed against Respondent 2 on the 15th March, 1963, within the above-defined period and, thus, Case 265/62 remains in force in so far as it relates to Respondent 1.

Applicant filed recourse 34/63 on the 15th March, 1963.

By the motion for relief in Case 34/63 he has complained against:

(1) The appointment by Respondent 2, to the post of

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Head of News Division (Greek), of the Interested Party
and

(2) The omission of Respondent 2 to offer Applicant
such post.

After the earlier withdrawal of Case 265/62, in so far as
it related to Respondent 2, there remain to be dealt with in
these proceedings claims (1) and (5) in Case 265/62 against
Respondent 1, and claims (1) and (2) in Case 34/63 against
Respondent 2;

*Held, I. As regards the omission of Respondent 1 to
reply to the letter of Applicant of the 11th August, 1962.*

(a) The competent public authority in the matter of
the complaint of Applicant was not Respondent 1 because
Applicant was complaining against the offer to him by the
Commission, Respondent 2, of the post of Assistant Head
of News. So, the competent authority in the matter was
the Commission to which Applicant actually did address
himself also by means of the same letter.

(b) It would be a paradox to hold that a competent
public authority to which a written request or complaint
has been addressed, on a matter outside its competence,
is bound to reply as laid down in Article 29. The purpose
of Article 29 is not to just promote correspondence between
the citizens and public authorities but to ensure that re-
quests or complaints by citizens are dealt with expeditiously
by the appropriate authorities and that such authorities
make known, giving also due reasons, to those concerned,
whatever, decisions they reach. It is obvious that a
non-competent public authority to which a request or
complaint has been addressed, and with which it cannot,
therefore, deal, cannot be expected to give a duly reasoned
reply in relation thereto as required under Article 29.
Its duty is, however, to transmit such request or complaint
to the competent authority, if any, or to inform the writer
thereof which is the competent authority, if any.

(c) In the present instance Respondent 1 has, by the
letter dated 21st August, 1962 transmitted Applicant's
complaint in question to Respondent 2, the competent
public authority in the matter. So Respondent 1 has dis-
charged whatever obligation was owed to Applicant in
this respect and this claim of Applicant against Respon-

dent 1 cannot, consequently, succeed.

(d) Also, such claim could not have resulted in a distinct and separate decision thereon of this Court because Applicant, having proceeded under Article 146 in respect of the substance of the matter for which the complaint had been made and having not established that he has suffered any material detriment by the failure *itself* to reply to Applicant's letter of the 11th August, 1962, could not be deemed as continuing to have any existing legitimate interest as provided for under Article 146(2), in the matter of such failure to reply.

Kyriakides and The Republic 1 R.S.C.C. at p. 77 followed.

II. *As regards the complaint about the creation of the posts of Head of News and Assistant Head of News in the Greek News Division.*

(a) An objection has been taken that such a claim is out of time because the relevant recourse, Case 265/62, was filed on the 19th October, 1962, whereas such re-organization came to the knowledge of Applicant in April, 1962, more than 75 days before the filing of the recourse (vide Article 146(3)).

(b) Though Applicant was informed only in August, 1962, that he had been offered the post of Assistant Head of News, he knew, and had also ample opportunity and cause to know and find out, since April, 1962—and at the latest before August, 1962—of the re-organization of his News Division decided upon by the Board of the Corporation, Respondent 1, and, therefore, his recourse against such re-organization filed on the 19th October, 1962, is clearly out of time and has to be dismissed as contrary to Article 146(3).

III. *As regards the claim that there has been an omission of Respondent 2 to offer to Applicant the post of Head of News.*

(a) Even if Applicant was a person whose rights were protected by Article 192—and he is not in view of paragraph 7 thereof—I would still hold that he was not a person automatically entitled to the new post of Head of News Division because as it was held in *Shener and the Republic* (3 R.S.C.C. p. 138) it is the post which is substantively

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held which is protected under Article 192(1). And there is no doubt in my mind, on the basis of the totality of the correct facts, that Applicant was never at the head of a News Division by virtue of substantive appointment as such.

(b) It was legally possible and reasonably warranted on the material before it for Respondent 2 to accept the recommendation of Respondent 1 to advertise the post of Head of News and offer Applicant only the post of Assistant Head of News, and, further, on the material before me, I am satisfied that the manner in which the relevant discretion was exercised is free from misconceptions of basic facts, prejudice or other defect and that there has been no abuse or excess of powers.

(c) This claim of Applicant against Respondent 2 fails and has to be dismissed.

IV. As regards the contention that the decision to appoint the Interested Party should be annulled.

(a) On the whole, and bearing fully in mind all the evidence given in the matter including the evidence in favour of Applicant's merits, I am not in a position to hold that there existed such striking superiority of Applicant over the Interested Party as to lead me to the conclusion that the Commission in preferring the Interested Party over Applicant acted in excess or abuse of powers: *Evangelou and The Republic* (reported in this Part at p. 292 ante) followed.

(b) There has not been such a failure on the part of the Commission to pay due regard to material considerations because of the fact that the personal file of Applicant before the 2nd August, 1962, was not before it so as to lead to the conclusion that the decision of the Commission, Respondent 2, ought to be annulled as having been taken through an improper exercise of the discretion of the Commission.

V. As regards costs.

There should be no order as to costs.

Observation: In dealing in this Judgment with the various grounds put forward against the validity of the

sub judice actions of Respondent 1 and Respondent 2 I have dealt only with such of those grounds which I have considered as *meriting specific reference*. But I must say, for the sake of completing the picture, that I have considered all grounds put forward and relevant to the validity of the sub judice actions of Respondents—even if any such grounds is not specifically referred to in this Judgment; I have found nothing to lead me to a decision favourable to Applicant.

Applications dismissed.

Cases referred to:

- Kyriakides and The Republic* 1 R.S.C.C. at p. 77;
Shener and The Republic 3 R.S.C.C. p. 138;
Grimaldi and The Republic (reported in this Part at p. 443 *ante*);
Petsas and The Republic 3 R.S.C.C. p. 60;
Neophytou and The Republic 1964 C.L.R. 280;
Theodossiou and The Republic 2 R.S.C.C. p. 44 at p. 48;
Markoullides and The Republic 3 R.S.C.C. p. 30 at p. 34;
Evangelou and The Republic (reported in this Part at p. 292 *ante*).

Recourses.

Recourses for a declaration *inter alia* that the decisions of Respondent 1 concerning the creation of the posts of Head of News Division (Greek) and of Assistant Head of News Division (Greek) and the appointment by respondent 2 of the Interested Party to the post of Head of News Division (Greek) are *null and void* and of no effect whatsoever.

- G. Cacoyiannis for the applicant
A. Triantafyllides for respondent No. 1
M. Spanos, Counsel of the Republic, for respondent No. 2
Ph. Clerides for the Interested Party.

Cur. adv. vult.

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The facts of the Cases sufficiently appear in the following Judgment delivered by:—

TRIANTAFYLLIDES, J.: By the motion for relief in Case 265/62—the first of the two consolidated Cases with which we are concerned here—the Applicant has complained, in effect, against—

- (1) the creation by Respondent 1 in its establishment of the posts of Head of News Division (Greek) (hereinafter to be referred to as “Head of News”) and of Assistant Head of News Division (Greek) (hereinafter to be referred to as “Assistant Head of News”);
- (2) the decision of Respondent 2 to offer Applicant the post of Assistant Head of News;
- (3) the omission of Respondent 2 to offer Applicant the post of Head of News;
- (4) the decision of Respondent 2 to advertise the post of Head of News;
- (5) the omission of both Respondents to reply to the letter of Applicant of the 11th August, 1962, within thirty days.

The history of the matter up to the filing of Case 265/62, on the 19th October, 1962, has been found by me, on the basis of evidence which I accept, to be as follows:—

In 1959, Respondent 1, the Cyprus Broadcasting Corporation (hereinafter to be referred to as the “Corporation”) advertised in the press for the filling of two posts of Sub-Editors in the Greek and Turkish Sections of its News Division—there being one such Division, at the time, comprising both the said Sections.

Applicant applied for the Greek post and he was selected for appointment after an examination which was held for the purpose.

At about the same time Mr. H. Suha was appointed to the Turkish equivalent post, having been seconded from the service of the Government into service under the Corporation.

The appointment of Applicant was with effect from the

1st May, 1959. His salary scale was £900X30—1020X36—1200.

At the time the News Division was headed by a News Editor and Assistant News Editor who were both British and who both left the service of the Corporation by the end of 1959.

On the 16th October, 1959, the Applicant and Mr. Suha had their descriptions changed into Greek Duty Editor and Turkish Duty Editor, respectively (see *exhibit* 4).

With the departure of the British senior staff the two sections of the News Division, the Greek and the Turkish, for which at the time the Applicant and Mr. Suha, as Duty Editors, were responsible, being the senior members of the staff, evolved into two separate News Divisions. This took place about the end of 1959.

The Applicant, thus, found himself in charge of the Greek News Division and he started acting in many ways as the Head of such Division, e.g. by participating at conferences of Heads of Divisions and dealing administratively with staff matters of his Division. He continued so acting until the appointment of the Interested Party in 1963 i.e. for about 3 years.

In August, 1960, a new Board of the Corporation took over. It decided on reorganizing the Corporation's establishment. Such reorganization was prepared by a Sub-Committee set up for the purpose and was adopted finally by the Board; it came into effect on the 1st January, 1962.

The new establishment of the Corporation is to be found set out in *exhibit* 1 and is attached also to *exhibit* 41. (The relevant schemes of service are *exhibit* 2). There are under it, two News Divisions, a Greek and a Turkish one. Each is headed by a Head of News and an Assistant Head of News. The post of Duty Editor exists no longer.

On the 23rd April, 1962, the Administrative Secretary of the Corporation wrote a letter (its original being *exhibit* 41) forwarding the schemes of service of the new establishment of the Corporation, as well as the establishment itself, to Respondent 2, the Public Service Commission (hereinafter to be referred to as the "Commission").

Together with the above enclosures, there were enclosed,

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in the said letter, offers of employment to all officers who had been seconded from the service of the Government into service under the Corporation; such offers had been prepared pursuant to section 14(1) of the Cyprus Broadcasting Corporation Law, Cap. 300A, and were being forwarded to the Commission for its approval.

One of such seconded officers was Mr. Suha himself, Duty Editor in charge, at the time, of the Turkish News Division. It was being proposed to offer to him the post of Head of his News Division. It was stated, however, in the said letter of the 23rd April, 1962, that the fact that Mr. Suha was so recommended, did not mean that the post of Head of News had been created in lieu of the post of Duty Editor. The Commission did offer appointment to Mr. Suha as Head of his Division, as from the 23rd April, 1962, and he accepted such offer.

On the 29th June, 1962, the Board of the Corporation having considered the question of appointments to vacant posts, decided that in the Greek News Division the post of Head of News had to be advertised. Also, it decided to recommend to the Commission the appointment of Applicant to the post of Assistant Head of News and that he should retain, as a personal scale, his current salary scale as Duty Editor of £900—£1200, because the salary scale of the new post for which he was recommended was £900—£1128 only (see *exhibits 26 and 27*).

Both posts, of Head of News and Assistant Head of News, are first entry and promotion posts and it is well settled in practice that a first entry and promotion post may be filled by promotion from the service if a suitable person exists in line for such promotion and if no such person exists then it should be advertised at large.

The request to advertise the post of Head of News was communicated to the Chairman of the Public Service Commission by letter dated the 5th July, 1962, (its original being *exhibit 33*) and he was informed, through an appendix to such letter, that Applicant was being recommended for appointment as Assistant Head of News.

On the 20th July, 1962, the Chairman and the Administrative Secretary of the Corporation met the Commission and gave certain further information in the matter, (see

minutes, *exhibit 45*).

On the 2nd August, 1962, Applicant was offered by the Commission the post of Assistant Head of News, with a personal scale up to £1200, (see *exhibit 11*).

On the 11th August, 1962, Applicant wrote identical letters to both Respondents complaining that he should have been offered the post of Head of his Division, especially in view of the treatment accorded earlier to Mr. Suha, and asking to find out the reasons for the Commission's decision to offer him the post of Assistant Head of News only (see *exhibit 12*).

On the 21st August, 1962, the Administrative Secretary of the Corporation wrote on the subject to the Commission explaining that the posts of Head of News in both the News Divisions, Greek and Turkish, had been created as new posts; he stressed that Applicant was still entitled to apply for the post of Head of his Division when advertised (see *exhibit 43*).

The Applicant, having not received himself any reply to his letter of the 11th August, wrote a reminder on the 17th September, 1962, (*exhibit 13*) and on the 10th October, 1962, his counsel wrote a further letter (*exhibit 14*) referring expressly to the duty to reply under Article 29 of the Constitution.

On the 11th October, 1962, the Commission considered the representations made by Applicant and decided to inform him that as the post of Head of his Division had just been advertised, on that date, he should apply accordingly for appointment, (see minutes *exhibit 42*). As a result, a letter dated the 15th October, 1962, was written to Applicant informing him of the view of the Commission in the matter (see *exhibit 15*).

As stated, the post of Head of News Division (Greek) was advertised, on the 11th October, 1962, in the official Gazette. Prospective candidates were given until the 27th October, 1962, to apply for appointment to the Commission; officers of the Corporation were to apply through their Director-General.

On the 19th October, 1962, Applicant filed Case 265/62; the claims for relief in this recourse have already been stated at the beginning of this Judgment.

An application was also made in Case 265/62 for a Provi-

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sional Order preventing Respondent 2 from taking further action in dealing with applications for appointment to the advertised post of Head of News. During the hearing thereof, on the 6th November, 1962, it was agreed between the parties that Applicant would be considered by Respondent 2 as a candidate for the post in question and the application for a Provisional Order was withdrawn. Applicant agreed to such a course without prejudice to any of his rights in the matter. He, likewise, withdrew proceedings against Respondent 2 and the proceedings against Respondent 1 were stayed and were to be deemed as withdrawn if within 75 days from the date of an appointment to the post of Head of News no recourse were to be filed by Applicant against Respondent 2 in the matter.

Such recourse, Case 34/63 (the second of these two consolidated Cases) was duly filed against Respondent 2 on the 15th March, 1963, within the above-defined period and, thus, Case 265/62 remains in force in so far as it relates to Respondent 1.

The salient events leading up to the filing of Case 34/63 are, on the basis of evidence which I accept, as follows:—

After the period for applying for the post in question ended, on the 27th October, 1962, the Commission decided on the 15th November, 1962, to call for interview six out of the candidates before it; one of these six was Applicant himself (see minutes, *exhibit* 34). Such action of the Commission was, in my view, an instance of shortlisting a few out of many candidates and as it has been stated by Mr. Protestos, a Commission-member, Applicant was chosen for the purpose because of his special position in the matter and the other five because of their academic qualifications viz. a university education.

On the 30th November, 1962, the interviews of the six candidates duly took place before the Commission in the presence of the Chairman of the Board and the Director-General of the Corporation (see minutes, *exhibit* 35).

On the 2nd January, 1963, the Commission after considering the six candidates interviewed decided by a majority of 6 in favour, 2 against and 2 abstentions, that they were not suitable for the post in question and decided to interview three more persons, one of them being Mr. Loizos Kytheotis,

the Interested Party (see minutes *exhibit 36*).

They were duly interviewed on the 11th January, 1963, in the presence of the same representatives of the Corporation (see minutes, *exhibit 37*).

On the 31st January, 1963, the Commission decided to appoint the Interested Party, (see minutes *exhibit 38*).

The Applicant was informed by letter dated the 4th February, 1963, that he had not been selected for appointment (*exhibit 16*).

Applicant filed recourse 34/63 on the 15th March, 1963.

By the motion for relief in Case 34/63 he has complained against:—

- (1) the appointment by Respondent 2, to the post of Head of News Division (Greek), of the Interested Party; and
- (2) the omission of Respondent 2 to offer Applicant such post.

The latter complaint of Applicant is the same as paragraph (3) of the motion for relief in Case 265/62.

These two Cases, 265/62 and 34/63, were consolidated by order dated the 24th May, 1963. After the earlier withdrawal of Case 265/62, in so far as it related to Respondent 2, there remain to be dealt with in these proceedings claims (1) and (5) in Case 265/62 against Respondent 1, and claims (1) and (2) in Case 34/63 against Respondent 2; of course, parts of the motion for relief in Case 265/62, against Respondent 2, which have been withdrawn and have not been duplicated by the motion for relief in Case 34/63, are still matters which are before the Court as issues raised during argument in relation to the validity of the sub judice actions of Respondents.

The course of proceedings in these Cases has been rather protracted, both due to the complexity of the matter and due to procedural adversities.

Proceedings for Presentation of these Cases were commenced in the normal course but eventually were never concluded due to supervening procedural changes.

Later, at the Directions stage, on the 28th August, 1964,

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it was ordered by consent of all parties that all exhibits filed during the Presentation proceedings were to be deemed to be exhibits in future proceedings before this Court (*exhibits 1-21*) and that evidence given at the Presentation stage was to be deemed to be evidence for the purposes of the forthcoming hearing before this Court. Such evidence is that of the Applicant and of Mr. H. Suha. As it will be seen the credibility of these persons is not in issue in relation to any decisive aspect of these Cases; had it been so then the said witnesses would have been recalled so that their demeanour could be followed.

It is convenient to start first with the case against Respondent 1, the Cyprus Broadcasting Corporation.

As already indicated there are two claims against such Respondent; a claim seeking the annulment of the creation of the posts of Head of News and Assistant Head of News in the Greek News Division and a complaint against the omission of Respondent 1 to reply to the letter of Applicant of the 11th August, 1962; the similar complaint against Respondent 2 was withdrawn in Case 265/62 and not renewed in Case 34/63.

The complaint for non-replying may be disposed of first. It is clear that it is based on Article 29 of the Constitution and it is also common ground that Respondent 1 did not reply to the letter of Applicant of the 11th August, 1962 (*exhibit 12*).

Paragraph 1 of Article 29 of the Constitution creates an obligation to reply to “written requests or complaints”—and *exhibit 12* qualifies for the purpose—when they are made to “any competent public authority”.

In my opinion the competent public authority in the matter of the complaint of Applicant contained in *exhibit 12*, was not Respondent 1 because Applicant was complaining against the offer to him by the Commission, Respondent 2, of the post of Assistant Head of News. So, the competent authority in the matter was the Commission to which Applicant actually did address himself also by means of the same letter, (*exhibit 12*).

It would be a paradox to hold that a competent public authority to which a written request or complaint has been addressed, on a matter outside its competence, is bound to

reply as laid down in Article 29. The purpose of Article 29 is not to just promote correspondence between the citizens and public authorities but to ensure that requests or complaints by citizens are dealt with expeditiously by the appropriate authorities and that such authorities make known, giving also due reasons, to those concerned, whatever decisions they reach. It is obvious that a non-competent public authority to which a request or complaint has been addressed, and with which it cannot, therefore, deal, cannot be expected to give a duly reasoned reply in relation thereto as required under Article 29. Its duty is, however, to transmit such request or complaint to the competent authority, if any, or to inform the writer thereof which is the competent authority, if any. (See Svolos and Vlachos on the Greek Constitution Volume II (1955) p.173).

In the present instance Respondent 1 has, by the letter dated 21st August, 1962 (*exhibit* 43) transmitted Applicant's complaint in question to Respondent 2, the competent public authority in the matter. So Respondent 1 has discharged whatever obligation was owed to Applicant in this respect and this claim of Applicant against Respondent 1 cannot, consequently, succeed.

Also, such claim could not have resulted in a distinct and separate decision thereon of this Court because Applicant, having proceeded under Article 146 in respect of the substance of the matter for which the complaint contained in *exhibit* 12 had been made and having not established that he has suffered any material detriment by the failure *itself* to reply to *exhibit* 12, could not be deemed as continuing to have any existing legitimate interest, as provided for under Article 146(2), in the matter of such failure to reply (see *Kyriakides and The Republic* 1 R.S.C.C. at p.77).

Coming now to the first of the two claims of Applicant, as above, against Respondent 1, we are faced with a matter needing more lengthy consideration.

It is necessary to compare first the relevant features of the establishment of the Corporation in force in 1959, when Applicant was appointed as Sub-Editor and later Duty-Editor, and of the new establishment of the Corporation which came into force on the 1st January, 1962.

In 1959 there was, as already stated, only one comprehen-

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sive News Division. There were no separate News Divisions for Greek and Turkish bulletins but there were Greek and Turkish Sections in the one and only News Division.

The Head of the News Division was the News Editor. He was receiving a salary of £1800 plus an allowance of £200. His duties and responsibilities were: "General administration of News Division, the editing of radio news bulletins, selection of material from copy provided by Agency tapes, local correspondents and other sources. General supervision of news policy" (see p.17 of *exhibit 17*).

Then under him there was an Assistant News Editor whose salary was £1500. His duties were: "Acting as Assistant to the News Editor. Selection of material for radio news bulletins, testing and writing of news bulletins in English. Will be required to be in charge of the desk and to (sic) shift work".

The qualifications required for the said posts were quite similar, though not identical (see p.17 of *exhibit 17*).

Then came the Sub-Editors (such as Applicant) whose salary was £900x30—1200. The duties of a Sub-Editor were as follows: "will act as Assistant to the News Editor and Assistant News Editor and will prepare news bulletins for broadcast. He will be required to carry out shift work and outside assignments as required". (See p. 18 of *exhibit 17*).

It will be seen thus that a Sub-Editor was in the third rung of seniority in the News Division as existing in 1959.

Under the new 1962 establishment the Greek and Turkish News Divisions were separately set up as follows: There is in charge of each Division a Head whose salary scale is: £1092X36—1236X42—£1278. His duties are as follows: "Administration of the Division. The editing and supervision of news bulletins in Greek or Turkish as the case may be; to carry out such duties as may be necessary for the proper functioning of his Division. If assigned, to provide and control News Readers. Any other duties that may be assigned to him. In the performance of his duties he will be responsible to the Director-General". (See p. 15 of *exhibit 2*).

Under him there is an Assistant Head whose salary is £900X30—1020X36—£1128. His duties are: "To assist the

Head of News Division in the performance of his duties and to carry out such other duties as may be assigned to him. Shift duties are involved”.

The qualifications required for the post of Head of News and Assistant Head of News are practically identical (see p. 15 of *exhibit 2*).

The post of Duty Editor, occupied by Applicant has ceased to exist and the post next in line after the Assistant Head of News is that of the Editor with a salary of £780X30—£1020. In the new establishment there is provision for Sub-Editors but such posts are much lower than, and not comparable at all with, the post of Sub-Editor in the 1959 establishment. It is a mere coincidence of nomenclature.

It will be seen that, in spite of differences in salary, the posts of Head and Assistant Head in the new establishment correspond hierarchically to the posts of News Editor and Assistant News Editor in the old establishment and that the post of Assistant Head of News is the second rung of seniority in the present day News Division; it corresponds to what the Assistant News Editor was in the old News Division.

Concerning the exact document embodying the 1962 establishment there has been some dispute in this Case.

At first *exhibit 1* was produced. At the page dealing with the Greek News Division (p.10) there is a column headed “present salary” and there is therein the entry “£900—£1200” against the post of Head of the Division. There is also another column headed “remarks” and there is therein the entry “as Greek Editor” against the post of Head of News. I do not think it can be disputed that the said two entries refer to Applicant, who was at the time the Greek Duty Editor and was receiving a salary of £900—£1200. There is no entry in the column “present salary” against the post of Assistant Head of News but in the “remarks” column there is the entry “new post”.

In the establishment of the Turkish News Division, to be also found in *exhibit 1* (p. 11) exactly the same entries, as above, appear with the exception that in the “remarks” column instead of “as Greek Editor” opposite the post of Head of News Division there is the entry “Turkish Duty Editor”. There is no doubt that it referred to Mr. Suha who

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eventually became the Head of the Division.

At a later stage of the proceedings there was put in, as *exhibit 41* a letter addressed to the Commission by the Administrative Secretary of the Corporation dated the 23rd April 1962 by which *inter alia*, the establishment of the Corporation was being forwarded to the Commission.

In such establishment, *exhibit 41(a)* (at p. 12) there is to be found the part relating to the Greek News Division. There is no “present salary” column; the “remarks” column contains a note against the post of Head of News Division which reads as follows: “Mr. A. Kyriacou”—the Applicant—“now holds the post of Duty Editor which is being abolished” There is moreover a column headed “holder” and there is to be found therein the entry “vacant” against both the posts of Head and Assistant Head.

Exactly the same entries are to be found against the same posts in the part relating to the Turkish News Division (p. 13), except that there the name of Mr. Suha is mentioned.

I am of the view that the official version of the new establishment of the Corporation and the material one, too, for the purposes of this Case is the one attached to *exhibit 41* (*exhibit 41 (a)*) because this is the one which the Public Service Commission had before it for the purpose of dealing with the relevant matters. It was the one which was officially forwarded to it for the purpose.

In this respect I also accept the evidence of Mr. HadjiIosef, the Administrative Secretary of the Corporation, who has stated, in answer to counsel for Applicant, that the finalized establishment is the one transmitted to the Commission, attached to *exhibit 24*—and *exhibit 24* is a copy of the letter of the 23rd April, 1962, which was put in evidence before the original of such letter was put in evidence later as *exhibit 41* with the establishment attached thereto, as *exhibit 41(a)*.

Both *exhibits 1 and 41(a)* correspond regarding the basic establishment of the Greek News Division with which we are concerned (and they are both, also in accordance with the relevant decision of the Board of the Corporation dated the 2nd November, 1961, see *exhibit 23*).

In the said decision, *exhibit 23*, the establishment of the Greek News Division—as well as of the Turkish News Division—is laid down with the same organic posts as they are

to be found in the column headed "post" at the corresponding afore-referred to parts of both *exhibits 1 and 41(a)*. The only discrepancy between *exhibits 1 and 41(a)* is that the lowest post in the Greek News Division is described in *exhibit 1* (p.10) as "Assistant Editor" while in *exhibit 41(a)* it is described as "Sub-Editor". This discrepancy, of no significance in any other way, is most indicative of the fact that *exhibit 41(a)* and not *exhibit 1*, contains the official version of the establishment of the Corporation because the term "Sub-Editor" used in *exhibit 41(a)* is to be found used in the relevant scheme of service (in *exhibit 2*) which was duly adopted by the Board of the Corporation.

All information contained in the relevant pages of *exhibits 1 and 41 (a)*, in the columns headed "present salary", "remarks" or "holder", as the case may be, cannot in my opinion be deemed to be part of the establishment proper of the Corporation. It is obvious on the face of things that the purpose of such information was to guide those dealing with matters related to the establishment of the Corporation.

I am quite satisfied that mentioning the Applicant or his salary in the "present salary" or "remarks" columns of *exhibit 1* should not be taken as amounting to anything more than an indication that at the time he was in fact the person in charge of the Greek News Division. The same applies to "remarks" in *exhibit 41(a)*.

It has been testified by Mr. Hadjilosef, and I do accept it, that the remarks appearing in *exhibit 1* are unofficial and have been made by him for internal use in the office. Presumably the same would apply to the corresponding remarks in *exhibit 41(a)*. But even if such remarks had been made by the Board itself—which is not the case—they could not be treated as establishing that Applicant was entitled to the post of Head of his Division, because it was not within the competence of the Board of the Corporation, in approving its establishment, to assign any posts, therein created, to anyone; it was only within the competence of the Commission to make the relevant appointments. And no matter what may have been remarked unofficially in *exhibits 1 and 41(a)* it is clear from the schemes of service (*exhibit 2*) that the posts of Head of News and Assistant Head of News were first entry and promotion posts. It is, further, expressly stated in the letter of the 23rd April, 1962, *exhibit 41*, that the post

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of Head of News was not created in the place of the post of Duty Editor.

Having examined the relative features of the 1959 and 1962 establishments of the Corporation, Respondent 1, and having also dealt with the contents of the documentary exhibits setting out the latter establishment, we may now deal directly with the claim of Applicant against Respondent 1 viz. that the decision of Respondent 1 to create two new posts in the service of such Respondent, the post of Head of News Division (Greek) and the post of Assistant Head of News Division (Greek) "in the place of the old post of Greek Duty Editor which was in effect the post of Head of News Division (Greek) is *null* and *void* and of no effect whatsoever as being unconstitutional and/or as having been made in excess and/or in abuse of powers" (vide paragraph 1 of the motion for relief in Case 265/62).

By the above claim Applicant attacks, in effect, the validity of the re-organization decided upon by the Board of Respondent 1 and put into effect as from the beginning of 1962.

An objection has been taken that such a claim is out of time because the relevant recourse, Case 265/62, was filed on the 19th October, 1962, whereas such re-organization came to the knowledge of Applicant in April, 1962, more than 75 days before the filing of the recourse (vide Article 146(3)).

I have approached the issue bearing in mind that any doubt on the point should be resolved in favour of Applicant (*Neophytou and The Republic* 1964 C.L.R. 280). Yet, no doubt exists in my mind that Applicant knew of the re-organization affecting his News Division by April, 1962, at the latest. Such conclusion has been based primarily on the evidence of Applicant himself, though there is also other evidence leading to the same result.

Applicant, at first in his evidence, has said that the post of Assistant Head of News came officially to his knowledge when he received *exhibit* 11, i.e. the offer of appointment made to him on the 2nd August, 1962; he has testified later on in his evidence that as a member of C.B.C. Employees' Union he was informed through his Union in April, 1962, of the decision for re-organization. He has also agreed that he was informed officially of this decision, as Head of his Division, by the Director-General and was asked to submit his

views for such re-organization which he did; and from the evidence of Mr. Suha, who was called as a witness by Applicant, it appears that this was sometime in April, 1962.

At the very conclusion of his evidence Applicant testified in unmistakable terms that the existence of the two posts viz. of the Head and Assistant Head of the Greek News Division came to his knowledge sometime prior to the 2nd of August, 1962 i.e. more than 75 days before he filed Case 265/62.

Counsel for Applicant himself, at the hearing of the 16th November, 1964, did agree that Applicant knew of the re-organization, as set out in *exhibit* 1, since April, 1962, but he argued that Applicant did not know then of the proposed advertisement of the post in question. In my opinion this could not prevent time running as regards the right of Applicant to challenge the re-organization itself, as such. The question of attacking the decision to advertise the post of Head of News is another matter altogether.

I have come, thus, to the conclusion that though Applicant was informed only in August, 1962, that he had been offered the post of Assistant Head of News, he knew, and had also ample opportunity and cause to know and find out, since April, 1962—and at the latest before August, 1962—of the re-organization of his News Division decided upon by the Board of the Corporation, Respondent 1, and, therefore, his recourse against such re-organization filed on the 19th October, 1962, is clearly out of time and has to be dismissed as contrary to Article 146(3).

Even if, however, the recourse of Applicant against the decision for the re-organization, as such, had been in time it could not, again, have succeeded for the reasons hereinafter set out in this Judgment.

I should state on this point, that had the re-organization in question not involved the abolition of the post of Duty Editor held till then by Applicant I would be inclined to treat it as an organic, non-executory decision, not affecting directly any existing legitimate interest of Applicant and, therefore, outside the scope of the jurisdiction under Article 146 of the Constitution.

But the fact that the said post of Applicant was abolished has led me to the conclusion that consequently the re-organi-

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zation of the particular News Division, involving such abolition, is a matter which comes within the ambit of a recourse under Article 146.

In complaining against the abolition of his post and the creation of the posts of Head and Assistant Head the Applicant appears to assume that they were created in lieu of his own post. In my opinion such a view is not well-founded at all. It is clear from the comparison of the 1959 and 1962 establishments of the Corporation that the Duty Editor was never hierarchically the substantive Head of a News Division and that above him there existed in the 1959 two senior posts, of News Editor and Assistant News Editor. Such posts, under different nomenclature, have been reproduced in the re-organized News Divisions in 1962, in the form of the posts of Head and Assistant Head of News. Such posts were not, therefore, created in lieu of the substantive post of Applicant but in lieu of higher posts which were vacant then.

In any case I am not satisfied that the two new posts were created by Respondent 1 in excess or abuse of powers. In this respect it has been alleged that the creation of such posts was an unnecessary luxury. But even if that was so I could not hold that this was proof of abuse or excess of powers. The advisability of the extent of the structure of a service is not a matter which could be controlled by an administrative Court. It has been, further, alleged that the said two new posts were created for the purpose of preventing Applicant from being at the head of the Greek News Division. But it is to be noted that there were similar posts in the News Division in 1959; and in 1962 the same course was followed, providing for a Head and an Assistant Head, in the case of the Turkish News Division and of most other Divisions in the new establishment of the Corporation. (See *exhibits 1, 2 and 41(a)*); so this contention of Applicant also fails, in my opinion. Moreover, the re-organization itself could not have prevented Applicant from being at the head of his Division. The Commission could have decided to appoint him thereto. It is for this reason that I hold the view that even if it were to be found that the Applicant suffered any disadvantage by ending in the post of Assistant Head of News, instead of Head of News,—and I am dealing with this aspect later—again this could not be attributed to the re-organization itself but to the eventual decision of the Commission to offer him the post of Assistant Head and not to appoint him, later, to the

post of Head. So, such considerations cannot establish, in my opinion, any abuse or excess of powers by the Corporation in effecting the re-organization

Lastly, I do not find any unconstitutionality involved in the re-organization in question. Applicant was not a person protected by Article 192 because he was not covered by the definition of "public service" in Article 192(7)(a). So no question of unconstitutional violation of vested rights of his—if any—could arise contrary to Article 192.

It has been also alleged that Applicant was the only person who was in fact at the head of a Division at the time of the re-organization and who was not appointed to the new post of Head of such Division which was created through the re-organization. This contention appears to involve an allegation of discriminatory treatment. But again, it was not the re-organization as such which deprived Applicant of the new post of Head of his Division but the subsequent decision of the Commission. So the re-organization cannot be held to be discriminatory, and therefore contrary to the relevant provisions of the Constitution, on such a ground.

For all the foregoing reasons I find that the claim of Applicant against the re-organization effected by Respondent 1 has to be dismissed. Thus, both claims of Applicant against Respondent 1 have failed. This part of the Judgment disposes, therefore, also of recourse 265/62 where what remained to be determined, after the withdrawal of the proceedings against Respondent 2, were the two claims against Respondent 1, which have already been dealt with

We come now to the claims of Applicant against the Public Service Commission, Respondent 2.

Such claims are in fact two:— That the appointment of the Interested Party as Head of News should be annulled and that the Commission wrongfully omitted to offer such post to Applicant.

Before, however, these claims are dealt with, as such, it would be useful to dwell upon a pertinent general consideration which is relevant to the validity of the sub judice administrative acts. It is the role played in the developments which led to these proceedings of the Director-General of the Corporation, Mr. Vias Markides.

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There is no doubt that he was one of the architects of the re-organization including that of the News Divisions. It cannot be doubted, also, that his views were largely responsible, for the recommendation of the Board of the Corporation, to the Commission, that the post of Assistant Head of News should be offered to Applicant and that the post of Head of News should be advertised. His views, at the interviews, concerning the various candidates must have been taken into account by the Commission in reaching its decisions.

Were it, therefore, to be found that either his views were basically erroneous, from the objective point of view, or that he was animated by any improper motives of prejudice towards Applicant or of favour for the Interested Party, it would follow that the relevant decisions of both Respondents, which were based on, or influenced by, his views would be liable to be declared *null* and *void* as having been based on, or influenced by, misconceptions or prejudice.

In this respect it is to be recalled that Mr. Markides did not know the Applicant well enough, so as to be able to judge his abilities, before he himself joined the Corporation in 1960. He had, however, the opportunity of following closely the work of the Greek News Division from that time until the appointment of the Interested Party. From his evidence it appears that he had taken a particular interest in following specifically this Division, in an effort to improve it and, though he has formed a high opinion of the zeal and conscientiousness of Applicant, he seems to have formed an unfavourable opinion of Applicant's standard of education, of his judgment in choosing and marshalling news items and of his command of the Greek language and his capacity to supervise others in this respect; and Mr. Markides has clearly appeared to me as laying great stress on the need to employ correct expressions and style in Greek news bulletins.

On the other hand, Mr. Markides knew well, in the past, the Interested Party, having worked with him as a journalist and he had formed of him a much higher opinion than that which he later formed for Applicant.

It is useful to bear in mind the following passage in his evidence, in answer to counsel for the Interested Party, which sums up the position regarding the merits of Applicant and the Interested Party very clearly: "I was in a position to

judge the abilities of both Applicant and Mr. Kythreotis. The answer to the question as to what is my view concerning the abilities of either is that I recommended Mr. Kythreotis for appointment without hesitation”.

Applicant was known to Mr. Markides to be of leftist political views whereas Mr. Markides is a right-winger, like the Interested Party.

I have followed closely Mr. Markides while testifying; having considered his evidence as a whole, I am satisfied that he was not animated by any improper motives, political or other, either against Applicant or in favour of the Interested Party and that his views were based on an honest evaluation of their respective abilities; I am furthermore satisfied that such evaluation was not basically erroneous from the objective point of view. It is true that Mr. Markides was an outsider to broadcasting when he joined the Corporation as Director-General in 1960 and that he knew the Interested Party as a journalist and had never followed his work in relation to broadcasting—the Interested Party not having, actually, done such work in the past. But the abilities involved in the matter in question were largely of a journalistic nature and Mr. Markides—who is a journalist of very considerable experience—was, in my opinion, in a position to evaluate the relevant comparative abilities of both Applicant and of the Interested Party; moreover by the time when he was called upon to compare the two he had acquired himself sufficient practical knowledge of broadcasting so as to ensure that he did make an evaluation of the journalistic abilities of Applicant and of the Interested Party in the light of the needs of the work of the Greek News Division, and not in the abstract.

Of course, Mr. Markides judged both Applicant and the Interested Party by his own standards of propriety concerning the requirements of the work of the Greek News Division. One might or might not disagree with such standards to a certain extent. One might have thought that he appears to rather overemphasize the need to avoid grammatical and cognate errors in the handling of the Greek language. I am satisfied, however, that the views expressed by Mr. Markides are views which were reasonably open to him and that the standards which he adopted were reasonably relevant when one bears in mind the needs of the Greek

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News Division. Any difference with his views on this score would be just a difference of opinion and would fall far short of amounting to a proper ground for holding that his views were basically erroneous from the objective point of view.

My impression of the attitude and views of Mr. Markides is that, having followed actually in daily practice the work of Applicant for quite sometime, he had reached the conclusion that Applicant was not really the person who was required to fill the post of Head of News—though he was, in view of his experience and other qualifications, quite suitable for the post of Assistant Head of News—and, therefore, the post of Head of News had to be advertised in an effort possibly to find somebody better than Applicant as Head of the Division. When one of the candidates turned out to be the Interested Party Mr. Markides took the view that he was the most suitable, more suitable than the Applicant also, and so recommended his appointment.

Having dealt with the foregoing general consideration I come now to deal specifically with the claims of Applicant as such.

I shall deal first with his claim that there has been an omission of Respondent 2 to offer him the post of Head of News.

The Board of Respondent 1 had come to the conclusion that Applicant should be offered only the post of Assistant Head of News and that the post of Head should be advertised. These recommendations were forwarded to the Commission which apparently adopted them and acted accordingly (see *exhibits 26, 27, 33 and 11*).

What is, thus, being challenged by the under consideration claim of Applicant is the validity of the action taken in the matter by Respondent 2, the Commission. Such action consists of definite steps taken and cannot, therefore, amount, under any view to an omission. In fairness to Applicant I am going to examine, nevertheless, the validity of such action, even though it was raised by way of a complaint for an omission.

As I have already stated earlier on in my Judgment the Applicant's post as Duty Editor was substantively third in line of hierarchy in the News Division, before the re-organization, and it cannot, therefore, be deemed as hierarchically

equivalent to the posts of either the Head of News or of the Assistant Head of News; thus, it is quite unfounded to argue that in the place of the post of Duty Editor there was created instead the post of Head of News and that, therefore, Applicant was entitled as of right to such post and it should not had been advertised at all. It must not be lost sight of that Applicant was heading the Greek News Section which eventually became the Greek News Division not because he occupied substantively the highest post in its hierarchical structure but because he happened to be the most senior officer while two posts, higher than his in hierarchy, were vacant i.e. that of News Editor and Assistant News Editor. In the old unified Division such officers were in charge of the whole of it, including the Greek News Section.

Even if Applicant was a person whose rights were protected by Article 192—and he is not in view of paragraph 7 thereof—I would still hold that he was not a person automatically entitled to the new post of Head of News Division because as it was held in *Shener and the Republic* (3 R.S.C.C. p. 138) it is the post which is substantively held which is protected under Article 192(1). And there is no doubt in my mind, on the basis of the totality of the correct facts, that Applicant was never at the head of a News Division by virtue of substantive appointment as such.

As indicated earlier in this Judgment things which were stated by way of remarks in *exhibits 1 and 41(a)* cannot be held as properly establishing a claim of Applicant for automatic appointment to the post of Head of News; in this respect the arguments addressed by counsel for Applicant have been based on the fact that in the “remarks” column of the relevant page of *exhibit 1* Mr. HadjiJosef, the Administrative Officer of Respondent 1, thought it fit to insert against the post of Head of News the name of Applicant, and the same was repeated in *exhibit 41(a)* and that, on the contrary, in *exhibit 1*, against the post of Assistant Head of News, he inserted the words “new post”. But whatever was inserted in the said exhibits by way of remarks cannot alter the true position in law and in fact; and in my opinion such true position is that Applicant at the time was heading the Greek News Division (which evolved out of the Greek News Section) because he had happened to be the senior member of its staff, without having been given any substantive appointment to that effect and it was this *de facto* position, and only this,

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which gave rise to the relevant remarks in the said *exhibits 1 and 41(a)*. Such *de facto* position could not and did not create any rights *de jure*; it was temporary and existed only pending the re-organization and the filling of the posts created thereby

In addition, therefore, to the fact that whatever rights, Applicant might have possessed, were not protected under Article 192, it is proper on the basis of the foregoing to draw the conclusion that he did not possess any legal right to be offered the newly created post of Head of News in a plate

As the decision to advertise the post of Head of News—and not to offer it to Applicant—is intrinsically connected with the decision to offer Applicant the post of Assistant Head of News of his Division it is useful to deal now also with this aspect of the matter

The post of Assistant Head of News was quite properly offered directly to Applicant, and not advertised, because it was a first entry and promotion post and it was felt that a person already in the service, viz. Applicant, was in line and suitable for promotion to such post. It has been argued that if Applicant was suitable for this post why was he not suitable for the post of Head of News in view of the fact that both posts require practically the same qualifications. Though, however, the qualifications may be the same on paper there is no doubt that the degree of possessing such qualifications may vary from person to person and it was reasonably open to decide that though Applicant possessed such qualifications to a sufficient degree to entitle him to be offered the post of Assistant Head of News he did not possess such qualifications to such an extent so as to render it unnecessary to advertise the post of Head of News for the purpose of finding the most suitable candidate

In this connection it is relevant to stress that Applicant was in fact promoted through being offered the post of Assistant Head of News and he was not demoted as argued by his counsel. It must be remembered that when Applicant was a Sub-Editor, and later Greek Duty Editor, under the 1959 establishment he was third in line of hierarchy. The fact that the then existing two senior posts of News Editor and Assistant News Editor fell vacant and remained vacant did not entail any substantive upgrading of Applicant, he still remained third in line of hierarchy. But by his appoint-

ment as Assistant Head of News the Applicant became the second in command of his Division, second in line of hierarchy, a position which he never had held substantively in the past; therefore, from the substantive point of view Applicant has been promoted and he has been put one step away from the top of the Division whereas before he was two steps away. As regards salary he has suffered no detriment because the small difference between his old salary and the new salary attached to his new post has been made good by having granted to him his salary scale at the time as a personal salary scale (see *exhibit 11*).

The fact that the new post of Assistant Head of News has a salary scale somewhat lower than the old post of Duty Editor does not mean that it is inferior to it; the lower salary scale is due to the fact that the salary scales of the two highest posts in the new News Divisions (of the Head and of the Assistant Head) are much lower than the salary scales of the two highest posts in the old News Division (of the News Editor and Assistant News Editor) because of a revision of salaries, which was made during the re-organization of the Corporation's establishment.

There remains of course the fact that for three years 1960, 1961 and 1962, Applicant had been acting as the Head of his Division, enjoying all the privileges and responsibilities that went with this *de facto* situation and then he has found himself under somebody else, viz. the Interested Party, and has ceased to be in charge of his Division. But it has never been accepted in public law that acting in a certain capacity, without also holding the relevant substantive appointment, gives rise to any rights of the officer concerned (vide also *Shener and the Republic supra*). There can really be made no proper comparison between on the one hand the acting temporary status of Applicant during the three years, pending the re-organization and the filling of the new posts created thereby, and, on the other hand, the substantive appointment offered to Applicant to the post of Assistant Head of News after the re-organization. Such substantive appointment can be compared only to the substantive appointment which he had as Duty Editor under the old establishment. I cannot, thus, agree with the views of his Union contained in *exhibit 18*.

To show that Applicant has not in fact been demoted but

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on the contrary has been promoted it is useful to suppose for a moment that there has been no re-organization and that there have been new appointments made to the post of News Editor and Assistant News Editor in the News Division, as they existed before the re-organization, and, thus, Applicant, a Duty Editor, has ceased to be in charge of the Division. He could not then have complained of having been demoted or adversely affected, even though he had been in charge of the Division in the meantime for three years in the absence of any holders of the two senior posts. Had he been on the contrary appointed to the post of Assistant News Editor, he would clearly have considered himself as having been promoted; and this is what did happen in the light of the true situation, when he was appointed as Assistant Head of News, which is hierarchically equivalent to the old post of Assistant News Editor.

Nor do I find any merit in the argument that Applicant was entitled to the same treatment as Mr. Suha, the Turkish Duty Editor, who was offered directly appointment to the post of Head of News in the Turkish Division (see *exhibits 41 and 43*). There could only be a question of equal treatment, in equal circumstances, and the circumstances pertaining to Applicant and Mr. Suha were not equal. Apart from the fact that the latter was an officer seconded from the Government service it is clear, from the relevant evidence of Mr. Hadjilosef, that he was found to possess the abilities for the post of Head of News, whereas Applicant was not so found (as it has been explained at length by the Director-General, Mr. Markides).

For all the above reasons, and bearing in mind the view taken at the time of Applicant's abilities, I am of the opinion that it was legally possible and reasonably warranted on the material before it for Respondent 2 to accept the recommendation of Respondent 1 to advertise the post of Head of News and offer Applicant only the post of Assistant Head of News, and, further, on the material before me, I am satisfied that the manner in which the relevant discretion was exercised is free from misconceptions of basic facts, prejudice or other defect and that there has been no abuse or excess of powers.

It follows that this claim of Applicant against Respondent 2 fails and has to be dismissed.

We come now to the other claim of Applicant against

Respondent 2 viz. the contention that the decision to appoint the Interested Party should be annulled.

It is, first of all, useful to refer to the candidatures before the Commission. In answer to the advertisement of the 11th October, 1962, there applied, within the period prescribed for the purpose, in all 14 candidates including the Interested Party. All of them were outsiders to the service of the Corporation except Mr. G. Iacovides and Mr. K. Chakkos who were already in the News Division as Editors junior to Applicant.

Applicant did not apply within the prescribed period. He had filed in the meantime, on the 19th October, 1962, recourse No. 265/62 and had applied also for a Provisional Order restraining Respondent 2 from dealing further with applications for appointment made in response to the advertisement of the post of Head of News. As already stated, his application for the Provisional Order was eventually withdrawn on the 6th November, 1962, when it was agreed that Applicant would be treated as a candidate for the said post.

In my opinion, as Applicant by the motion for relief in recourse 265/62 (which had been filed and served on the Public Service Commission within the time prescribed, by the relevant advertisement—i.e. up to the 27th October, 1962—for applying for appointment) had claimed expressly that he was entitled to be appointed to the post concerned, to the exclusion of anyone else, it was open to the Commission to agree to treat his said recourse as a candidature properly before it for such post.

Concerning the candidature of the Interested Party some confusion arose before the Court for a time because when the relevant applications were produced, all together, by Mr. Protestos, of the Public Service Commission, as *exhibit* 44, the application of the Interested Party was found to be dated the 28th December, 1960, and to relate to an altogether different post. This was noted on perusal of the relevant documents during the preparation of this Judgment and it became necessary to reopen the proceedings in order to clear up this matter. It turned out that such application was produced by error and that the proper application of the Interested Party for the post in question was in the possession of Respondent 1, to which it was forwarded after his

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appointment; it was duly produced before the Court eventually as *exhibit* 46.

Counsel for the parties were given full opportunity to be heard in the matter of *exhibits* 44 and 46 at the reopened hearing on the 21st September, 1965. Only counsel for Applicant availed himself of such opportunity and I have to say that what he put forward has not led me to the conclusion that there is anything in relation to *exhibit* 46 which should lead to the annulment of the appointment of the Interested Party.

The next relevant matter to be examined is how Respondent 2 has dealt with the candidates before it.

As stated already the Commission first interviewed six candidates, including Applicant. The other five were outsiders to the service of the Corporation and were selected on the basis of the criteria mentioned in the relevant evidence of Mr. Protestos, viz. their education. Such selection did not involve a failure to consider all candidates before making an appointment (as in *Grimaldi and the Republic*, (reported in this Part at p. 443 *ante*)); on the contrary it presupposed prior consideration of all candidates. In the present instance, bearing in mind the evidence given by Mr. Protestos concerning the criteria for the selection, I find that when on the 15th November, 1962, the Commission decided (see minutes *exhibit* 34) to call for interview six candidates including Applicant, it has done so after considering all candidates who had applied to it within the prescribed period i.e. until the 27th October, 1962, as well as Applicant himself, who was selected for interview in view of his special position in the matter.

After the said interviews three more candidates were duly selected for interview, in view of the decision, by majority, to reject those who had been already interviewed (see *exhibit* 36). One of the second batch of candidates to be interviewed was the Interested Party himself. This fact, and this fact alone, goes, in my opinion, a long way towards disproving the suggestion—which in any case has not been proved otherwise to my satisfaction—that the Interested Party was earmarked all along for the post in question and that this is why the post was advertised. Had it been so I fail to see why he was not called for interview among the first batch of candidates unless, of course, it is conceded that the Com-

mission was not a privy to such earmarking; on this point it is proper to recall that I have already held that the Director-General of the Corporation, who must have influenced the course adopted by the Commission to a certain extent through his views, was not animated by any motives of favour for the Interested Party.

It has been submitted that the interviews of candidates were so short and so conducted as to be inadequate for the purpose of evaluating the candidates. Even non-interviewing the candidates at all has not been held, by itself, as involving a wrong exercise of the Commission's discretion (see *Petsas and The Republic* 3 R.S.C.C. p. 60); interviews are not the only, and indispensable, means for the purpose of evaluating candidates. There are before the Commission—as there were on this occasion—the applications of candidates containing data required for the purpose of evaluating candidates; or, if a post has not been advertised, because it is only a promotion post, then there are the relevant confidential reports on officers in the service due for promotion (see also *Neophytou and The Republic, supra*).

Though I would have felt much happier if candidates for a post such as this had been tested on the basis of a proper examination, I am bound to hold, in the absence of any provision rendering such examination mandatory, that it was open to the Commission to evaluate the candidates on the basis of their applications, using the process of interview to the extent felt necessary, in the case of each candidate, for the purpose of supplementing or testing the picture created about him by means of his application. On the basis of all the material before me I think that this is what was done by the Commission while interviewing candidates, and that it was so done in the course of exercising properly its powers to regulate its own proceedings, and that, therefore, no sufficient ground has arisen in relation to the interviews of candidates so as to lead me to the conclusion that the sub judice appointment of the Interested Party ought to be annulled.

A lot of argument and evidence has been devoted to the comparative merits of Applicant and of the Interested Party. It has been stressed that Applicant possessed the actual experience for the post in question whereas the Interested Party was an outsider without previous broadcasting experience.

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It has to be observed that broadcasting experience, as a required qualification under the scheme of service (see p.15 of *exhibit 2*) is put at par with experience in journalism, which was possessed by the Interested Party; on the other hand, it is true, that the actual experience, already possessed by the Applicant, of the News Division's work was an advantage in his favour.

It cannot be said, however, that the previous experience of Applicant rendered his appointment the only reasonable conclusion open to the Commission. There were many other relevant factors to be considered in relation to each candidate and it is on the totality of the merits of each candidate that the selection of the most suitable should be made (*Theodossiou and The Republic 2 R.S.C.C. p. 44 at p. 48*). We must also bear in mind that it is after having followed the actual services of Applicant that the Director-General of the Corporation, Mr. Markides, had come to the conclusion that he should have been offered only the post of Assistant Head of News (see the relevant evidence on the matter) and, consequently, on the strength of his recommendations such post was offered to Applicant by the Commission and the post of Head of News was advertised. It is further not disputed that the Director-General expressed his views to the Commission about Applicant, *inter alia*, (see the relevant evidence of Mr. Proestos) and it can be assumed that he must have told it of the, according to him, shortcomings of Applicant, which have been mentioned earlier in this Judgment.

It was not only open to the Commission, but also most proper for it, to give due weight to the views, of the Director-General (see *Markoullides and The Republic 3 R.S.C.C. p.30 at p. 34*). So the fact that Applicant was already, at the time, working in the News Division may well have proved, not in any improper way, a source for the view that he was not very suitable for the post of Head of News, rather than being an overwhelming consideration in his favour.

On the whole, and bearing fully in mind all the evidence given in the matter including the evidence in favour of Applicant's merits, I am not in a position to hold that there existed such striking superiority of Applicant over the Interested Party as to lead me to the conclusion that the Commission in preferring the Interested Party over Applicant acted in

excess or abuse of powers (see *Evangelou and The Republic* (reported in this Part at p. 292 ante)).

Before concluding my reasoning on the *sub judice* claim of Applicant I have to say a few words about the allegation that he has been the victim of political discrimination because of his leftist views. The burden to prove such an allegation has been on Applicant and I am not satisfied that he has discharged it to the extent necessary for the purpose of annulling the relevant decision of Respondent 2. He has testified that from a conversation he had with Mr. HadjiIosef he understood, though he was not told this in so many words, that he was not wanted in the post of Head of News because of his political beliefs. Mr. HadjiIosef does not seem to have any clear recollection of the matter. Be that as it may, even if Applicant was correct in understanding Mr. HadjiIosef to allude to his political beliefs, I have reached the conclusion that no matter what the view of Mr. HadjiIosef may have been of the attitude of any other person or persons, concerned in this matter, towards Applicant's political beliefs, I cannot annul the appointment of the Interested Party unless I am satisfied that such attitude has led actually to the relevant decision being taken; I have found that Mr. Markides, the Director-General, in making his recommendations, was not prejudiced against Applicant for any improper motives and nothing has been adduced to show that Respondent 2 was motivated by political considerations in selecting the Interested Party for appointment—or, in offering Applicant only the post of Assistant Head of News. On this issue of political discrimination I have examined also the possibility of possible inferences to be drawn from other facts already before me but I cannot hold that I am, even then, satisfied that such discrimination has actually taken place.

For all the above reasons I have reached the conclusion that the claim of Applicant against the appointment of the Interested Party fails.

During the evidence of Mr. Protestos, a member of the Commission, there transpired a matter which, though in the end, as stated hereinafter, has not been deemed sufficient by me to entitle Applicant to succeed it has, nevertheless, necessitated somewhat lengthy consideration. Mr. Protestos has testified that the Commission did not have before it the personal file of Applicant dating back to before the

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2nd August, 1962, when the post of Assistant Head of News was offered to Applicant; such personal file, which no doubt existed—and it must have contained, *inter alia*, exhibit 5, a letter of commendation of Applicant's services, by Mr. Proud, the then Director-General—was kept by the Corporation, Respondent 1, and was not placed before the Commission, Respondent 2, at any material time. I have had to weigh in my mind whether what took place led the Commission to take its *sub judice* decisions without paying due regard to material and relevant considerations, such as the contents of the said personal file of Applicant, including exhibit 5.

In doing so I had kept in mind that the Commission had had the benefit of the views of the Director-General concerning the nature of the abilities of Applicant. He had formed his relevant views having supervised Applicant in his work for more than two years, and he had himself access to the personal file of Applicant in relation to the services of Applicant before his, the Director-General's, own appointment in 1960.

Moreover, Applicant himself by his letter of the 11th August, 1962, exhibit 12, had drawn in no uncertain terms the attention of the Commission to the question of the quality of his past services; so it cannot be said that this aspect of the matter was not within the contemplation of the Commission at the material time.

In the light of all the material before me and in the particular circumstances of these Cases, bearing fully in mind that I should have given to the Applicant the benefit of any doubt as to whether or not the Commission has acted, in appointing the Interested Party or otherwise in dealing with Applicant, under a misconception of fact, I have reached the conclusion that there has not been such a failure on the part of the Commission to pay due regard to material considerations (because of the fact that the personal file of Applicant before the 2nd August, 1962, was not before it) so as to lead to the conclusion that the decision of the Commission, Respondent 2, ought to be annulled as having been taken through an improper exercise of the discretion of the Commission.

After all, though the Commission did not have before it the personal file of Applicant for the period prior to the 2nd August, 1962, it had before it the views of the Director-

General (see the relevant evidence of Mr. Proestos) concerning Applicant's services from 1960 onwards when the Director-General was appointed. It was the views about the services of Applicant during the recent past, as expressed by Mr. Markides, which were the material consideration for the Commission and not any views about the services of Applicant in the more distant past.

Furthermore, it is pertinent to observe that a commendation such as *exhibit 5*, given at a time when Applicant was being supervised by the British Director-General, Mr. Proud, whose mother-tongue was not Greek and who, therefore, could not really judge the sufficiency of Applicant's command of the Greek language, could not reasonably have been expected to have weighed much against the views of a Greek Director-General, Mr. Markides, who on the basis of the inadequacy of Applicant's command of the Greek language, *inter alia*, had not recommended Applicant for appointment to the post of the Head of News.

For all the foregoing reasons I have not, therefore, found it possible or necessary to interfere with the sub judice action of the Commission on the ground of the absence from its hands, at the material time, of the personal file of Applicant kept by the Corporation.

In conclusion I would like to add that in dealing in this Judgment with the various grounds put forward against the validity of the *sub judice* actions of Respondent 1 and Respondent 2 I have dealt only with such of those grounds which I have considered as meriting specific reference. But I must say, for the sake of completing the picture, that I have considered all grounds put forward and relevant to the validity of the *sub judice* actions of Respondents—even if any such ground is not specifically referred to in this Judgment; I have found nothing to lead me to a decision favourable to Applicant.

The dismissal of Applicant's claim in these Cases should not by any means be deemed to amount to a judicial determination of the respective abilities of Applicant and the Interested Party, should a comparison of their abilities have to be resorted to in future in respect of any other appointment. As I could not substitute my own views on the matter, in the place of those of Respondents, I have not proceeded to determine this issue of the comparative suitability, accord-

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ing to my own opinion, of the Applicant and the Interested Party for the post of Head of News. It was sufficient to hold, as I have held already, that there was no such striking superiority of Applicant over the Interested Party as to lead to the conclusion that the latter's appointment was decided upon in abuse or excess of powers. Had I had to decide this issue, as such, I do not think that I would have found, on the totality of the material before me, that there exists, either, a striking superiority of the Interested Party over Applicant; but such striking superiority was not necessary in order to enable the Commission to prefer the Interested Party to Applicant. It was sufficient for it to find that the Interested Party was the most suitable candidate—as it did find—in a manner with which there can be no interference on any proper ground.

On the question of costs I am of the view that there should be no order as to costs. It is correct that Applicant has lost these Cases; but I cannot hold also that his recourses were frivolous and should never have been made. He came here with grievances which were sincere and genuine, from his point of view, and the fact that eventually they were not held to be so well-founded as to entitle him to succeed should not lead to his being burdened with costs; after all, he is a citizen who was entitled to come to this Court against the State in an effort to vindicate his rights which he thought had been infringed.

Lastly, I would like to express in a few words my thanks to all counsel for assisting the Court most valuably in these proceedings. Before any Court, and not least before an administrative Court, counsel have a great responsibility in assisting the Court to seek the truth and to do justice. And this responsibility lies heavier with counsel for Applicant because he represents the citizen who alleges that the State has used its might to trample upon his rights. I am glad to say that in these complicated Cases counsel for Applicant has risen fully to the occasion leaving no argument unsaid which could have any possible relevancy to his client's claims.

Applications dismissed.
No order as to costs.