

1966
May 3, 6

[TRIANTAFYLIDIS, J.]

NICOS ARTEMIOU
(No. 1)

and
THE REPUBLIC
THROUGH THE
PUBLIC SERVICE
COMMISSION

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

NICOS ARTEMIOU (No. 1),

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 67/66).

Public Officers—Transfers—Applicant's recourse against his transfer from Nicosia to Paphos—Propriety of three communications to Applicant of the decision of the Public Service Commission—First and second communications not constituting proper communication—Communication of the Commission's decision was in fact made to the Applicant, by the third communication, through his Department, by means of a document emanating from the Commission—Through its contents Applicant came to know officially that the Commission had decided to transfer him—Iordanou and The Republic, (No. 1), (reported in this Part at p. 308 ante) distinguished in this respect.

Administrative Law—Administrative decisions—Communication—Proper communication of a decision of the Public Service Commission to transfer Applicant—Principle adopted in Iordanou and The Republic, (supra), applied.

Public Service Commission—Communication of a decision to transfer Applicant—Decision not signed by the Chairman of the Commission but only on his behalf—The making and issuing of an act should not be confused with its communication—Only in the former instance the question of the necessity of the signature of the Chairman himself could arise.

The applicant in this recourse complains against the decision of the Respondent Public Service Commission taken on the 12th November, 1965, to transfer him from Nicosia to Paphos with effect from 15.11.65. At this stage of the proceedings the only point for consideration and decision was which of the letters written to applicant in the matter

of his transfer constituted a proper communication to him of the decision of the Public Service Commission to transfer him.

Applicant first came to know about his transfer by a letter of his Head of Department dated 12th November, 1965, (exh. 2) whereby he was informed that approval has been given for his transfer at Government expense from Nicosia to Paphos as from 18th November, 1965. The Commission decided on the 17.11.1965 to postpone the taking effect of applicant's transfer until 1.4.66, and applicant was informed of this decision by a letter from his Head of Department dated 6.12.1965 (exh. 3).

Applicant's Head of Department wrote to him again a letter dated 9.3.66, in which he referred to his aforementioned two letters (exhs. 2 and 3) and stated that he was directed by the Minister of Agriculture and Natural Resources to bring to his notice a letter of the Public Service Commission dated 18.11.65, copy of which was attached to the aforesaid letter of 9.3.1966. In the said letter of the Commission it was stated inter alia that applicant's transfer to Paphos "should be postponed until the 1st April, 1966".

Counsel for Applicant contended that none of the above 3 letters constituted proper communication to applicant of the Commission's decision to transfer him whereas Counsel for Respondent has submitted that each one of exhibits 3 and 4 do constitute such communication.

Held, (1) applying the principle adopted in the case *Jordanou and The Republic* (reported in this volume at p. 308) I have no difficulty in holding that counsel for Respondent was right in conceding that exh. 2 does not constitute proper communication of the decision to transfer applicant from Nicosia to Paphos. There is no reference therein to the fact that the transfer was decided upon by the Public Service Commission; and as already pointed out the date of effect of the transfer is different than the one which had been fixed, for the taking effect thereof, by the Commission.

(2) Coming now to *exhibit 3*, it must be observed that this was written with reference to *exhibit 2*. It is not stated therein that the original transfer was decided upon

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by the Commission, but it is stated that the Commission decided to postpone the effect of such transfer to the 1st April, 1966. Even though it might be argued that by *exhibit 3* Applicant had been clearly informed that the matter of his transfer was being dealt with by the Commission, I need not go into the implications of such argument, because *exhibit 3* is clearly linked up with *exhibit 2*, which is both an insufficient and incorrect—in a material particular—communication of the decision to transfer Applicant, and, thus, in all the circumstances of this matter, I am not prepared, in any case, to hold that there was proper communication to Applicant of the Commission's decision to transfer him, by means of *exhibit 3*.

(3) Coming now to *exhibit 4*, I have reached the conclusion that it resulted in proper communication to Applicant of the decision to transfer him; I say this in view of the copy of the letter of the Commission attached thereto. Though such letter was not addressed by the Commission to Applicant, I am of the opinion that in the particular circumstances of this Case such letter must be regarded as intended by the Commission to be communicated to Applicant through his Department as, indeed, the Commission could properly assume that any postponement of Applicant's transfer, notified to his Head of Department, would be brought to the notice of Applicant.

(4) By means of the aforesaid copy of the letter of the Commission, which was attached to *exhibit 4*, communication of the Commission's decision was *in fact* made to the Applicant, through his Department, by means of a document emanating from the Commission; and, through its contents, Applicant came to know officially that the Commission had decided to transfer him to Paphos, first with effect from the 15th November, 1965, and then as from 1st April, 1966; and it is in this respect that this Case differs basically, regarding its salient relevant facts, from the aforesaid case of *Iordanou and The Republic*.

(5) It is, indeed, the purpose of the requirement for proper communication to ensure that the person affected by a decision be informed that a competent organ has decided a certain matter which concerns him, and that such person be informed, also, officially of the exact nature of such decision, so that he may challenge it, if he so chooses.

(See also Tsatsos on the Recourse for Annulment, 2nd edition, p. 64).

(6) I am, for the above reasons, satisfied that the communication to Applicant of his transfer, as made by means of *exhibit 4*, constitutes proper communication to him thereof.

Order in terms.

Cases referred to:

Jordanou and The Republic (No. 1) (reported in this Part, *ante*, at p. 308).

Recourse.

Recourse against the decision of the Respondent to transfer applicant from Nicosia to Paphos.

L. Clerides, for the Applicant.

M. Spanos, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Decision was delivered by:—

TRIANTAFYLIDES, J.: The Public Service Commission has decided on the 12th November, 1965, to transfer Applicant from Nicosia to Paphos and this recourse is aimed at such transfer; originally the transfer was fixed to take effect on the 15th November, 1965, but later the Commission decided, on the 17th November, 1965, to postpone its taking effect until the 1st April, 1966, on the ground of personal family reasons of Applicant. (*Vide* paragraphs 2 and 3 of the facts relied upon in the Opposition).

By letter of the Director of the Department of Veterinary Services, dated 12th November, 1965, (*exhibit 2*), Applicant was informed about his said transfer by being merely told that: "Approval has been given for your transfer at Government expense from Nicosia to Paphos as from 18th November, 1965".

Though, as already stated, the transfer was to take effect, according to the decision of the Commission, as from the 15th November, 1965, by *exhibit 2*, above, Applicant was informed that it was to take effect as from the 18th November,

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1965; there is nothing at present before the Court to show how and why a different date of the effect of the transfer, than the one decided by the Commission, was communicated to Applicant by his Head of Department.

After the Commission decided to postpone, as above, the taking effect of the transfer of Applicant, the Head of Department of Applicant wrote to him on the 6th December, 1965, (*exhibit 3*), referring to his previous letter, *exhibit 2*, and informing him that: "the Public Service Commission, after considering your family circumstances, which were put by the Minister of Agriculture and Natural Resources, decided to postpone your transfer until the 1st April, 1966".

Then on the 9th March, 1966, the Head of Department of Applicant wrote him another letter, (*exhibit 4*), referring to the two previous letters, *exhibits 2 and 3*, and stating that he was directed by the Minister of Agriculture and Natural Resources to bring to the Applicant's notice a letter of the Public Service Commission dated 18th November, 1965, copy of which was attached to the said letter of the 9th March, 1966; this letter of the Commission was addressed to the Head of Department of Applicant and it reads as follows:-

"I am directed to refer to the Commission's decision to transfer Mr. N. Artemiou from Nicosia to Paphos as from the 15th November, 1965, and to inform you that the Commission, after considering the family circumstances of Mr. Artemiou which were put forward by your Minister, has now decided that Mr. Artemiou's transfer to Paphos should be postponed until the 1st April, 1966".

It is common ground in this Case that if either *exhibit 2* or *exhibit 3* constitutes a proper communication to Applicant of the decision of the Public Service Commission to transfer him from Nicosia to Paphos, then this recourse, which was filed only on the 5th April, 1966, is out of time. If, however, the only proper communication of such decision is *exhibit 4* then this recourse is plainly within time.

Counsel for Applicant contends that none of the three communications, *exhibits 2-4*, constitutes proper communication to Applicant of the Commission's decision to transfer him, as above, whereas counsel for Respondent does not insist that *exhibit 2* constitutes proper communication of the

said decision, but has submitted that *exhibits 3 and 4* do constitute, each one of them, such communication.

The question of proper communication of a decision of the Public Service Commission—and, as a matter of fact, again in a case of transfer of a public officer—has been very recently dealt with by this Court in a Decision given in *Iordanou and The Republic*, Case 82/66 (which has not yet been reported).* It was held in that Decision, *inter alia*, that:—

“Proper communication of an administrative decision is an essential step for its taking effect; such communication must be made to the person affected thereby and must be made by the organ competent to take the decision concerned—unless there exists provision by law otherwise. Of course, communication does not go to the validity of the decision in question, but it is only necessary for the taking effect thereof; this is, also, why the time, within which a recourse may be made against a decision, runs from its proper communication”.

It was indicated, further, in that Decision that communication of a decision could be made either directly to an officer or through his Head of Department.

Applying the principle adopted in the aforesaid Decision, I have no difficulty in holding that counsel for Respondent was right in conceding that *exhibit 2* does not constitute proper communication of the decision to transfer Applicant from Nicosia to P.phos. There is no reference therein to the fact that the transfer was decided upon by the Public Service Commission; and as already pointed out the date of effect of the transfer is different than the one which had been fixed, for the taking effect thereof, by the Commission.

Coming now to *exhibit 3*, it must be observed that this was written with reference to *exhibit 2*. It is not stated therein that the original transfer was decided upon by the Commission, but it is stated that the Commission decided to postpone the effect of such transfer to the 1st April, 1966. Even though it might be argued that by *exhibit 3* Applicant had been clearly informed that the matter of his transfer was being dealt with by the Commission, I need not go into the implications of such argument, because *exhibit 3* is clearly

*Now reported in this part at p. 308 *ante*.

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linked up with *exhibit 2*, which is both an insufficient and incorrect—in a material particular—communication of the decision to transfer Applicant, and, thus, in all the circumstances of this matter, I am not prepared, in any case, to hold that there was proper communication to Applicant of the Commission's decision to transfer him, by means of *exhibit 3*.

In the above connection I should make it clear that in my view the decision to transfer Applicant is only *one viz.* that taken on the 12th November, 1965, by the Commission, and any subsequent decision to postpone its effect is not a new decision to transfer Applicant but only a decision modifying in part the existing decision to transfer Applicant; thus, if by *exhibit 2* the original decision was insufficiently and incorrectly communicated to him, any communication (by means of *exhibit 3*) of a subsequent decision varying the original one, would not constitute proper communication of the decision to transfer Applicant.

Coming now to *exhibit 4*, I have reached the conclusion that it resulted in proper communication to Applicant of the decision to transfer him; I say this in view of the copy of the letter of the Commission attached thereto. Though such letter was not addressed by the Commission to Applicant, I am of the opinion that in the particular circumstances of this Case such letter must be regarded as intended by the Commission to be communicated to Applicant through his Department as, indeed, the Commission could properly assume that any postponement of Applicant's transfer, notified to his Head of Department, would be brought to the notice of Applicant.

By means of the aforesaid copy of the letter of the Commission, which was attached to *exhibit 4*, communication of the Commission's decision was *in fact* made to the Applicant, through his Department, by means of a document emanating from the Commission; and, through its contents, Applicant came to know officially that the Commission had decided to transfer him to Paphos, first with effect from the 15th November, 1965, and then as from 1st April, 1966; and it is in this respect that this Case differs basically, regarding its salient relevant facts, from the aforesaid case of *Iordanou and The Republic*.

It is, indeed, the purpose of the requirement for proper communication to ensure that the person affected by a deci-

sion be informed that a competent organ has decided a certain matter which concerns him, and that such person be informed, also, officially of the exact nature of such decision, so that he may challenge it, if he so chooses. (See also Tsatsos on the Recourse for Annulment, 2nd edition, p. 64).

I am, for the above reasons, satisfied that the communication to Applicant of his transfer, as made by means of *exhibit 4*, constitutes proper communication to him thereof.

Regarding the collateral argument of counsel that such communication ought to have been under the signature of the Chairman of the Public Service Commission—and indeed the letter of the Commission of the 18th November, 1965, copy of which was given to Applicant by means of *exhibit 4*, is not signed by the Chairman but only on his behalf—I am inclined to agree with counsel for Respondent that the making or issuing of an act should not be confused with its communication, and it is only in the former instance that the question of the necessity of the signature of the Chairman himself could arise.

Having found that the decision to transfer Applicant, which is *sub judice* in this Case, was communicated to him properly only in March, 1966, it is not necessary to go further into the question of this recourse being out of time, because it is clearly within time, having been filed on the 5th April, 1966, and the hearing should now proceed on the merits of the recourse.

Order in terms.

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