

[STAVRINIDES, J.]

1967  
July 12

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION  
COSTAS D. PARTELLIDES,

—  
COSTAS D.  
PARTELLIDES  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 91/66).

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*Public Officers—Promotions—Promotion to the temporary post of Postal Officer, 1st Grade—Seniority of Applicant only ground of recourse against the decision to promote the interested parties in preference to him—Annual Confidential reports on parties more favourable to the interested parties so promoted than to the Applicant—Seniority is only a factor to be taken into account in deciding promotions between rival claims therefor—Paramount duty of the Public Service Commission of selecting the most suitable candidate—Discretion of the Commission in this respect—The Court will not interfere with such discretion unless it has been exercised under a misconception of fact or law—Or, in disregard of principle—The onus of proving such wrongful exercise is on the Applicant—See, also, herebelow.*

*Administrative Law—Promotions of public officers—Paramount duty of the Public Service Commission to select the most suitable candidate—Seniority is only a factor, not the decisive one—Discretion of the Commission in selecting the most suitable candidate—The Court will not interfere with the exercise of such discretion by substituting therefor its own—The Court will only interfere where the Commission exercised its discretion under a misconception of fact, or law, or in disregard of principle—See, also, above.*

*Discretion—Discretionary powers of the administration—Principles upon which the Court will interfere with the exercise of such discretion—See above under Public Officer; Administrative Law.*

*Promotions—Promotions of public officers—Paramount duty of the Public Service Commission of selecting the most suitable candidate—Discretion—Interference therewith when allowed—Seniority—*

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*Onus to establish wrongful exercise of such discretion on the Applicant—See above under Public Officers; Administrative Law.*

*Seniority—Promotions of public officers—Seniority is only a factor to be taken into account in deciding between rival claims for promotion—See above under Public Officers; Administrative Law.*

By this recourse under Article 146 of the Constitution the Applicant, a Postal Officer 2nd Grade, seeks to annul a decision of the Public Service Commission dated the 30th March, 1966, whereby two vacancies in the temporary post of Postal Officer, 1st Grade, were filled by the secondment thereto of two other Postal Officers, 2nd Grade, the interested parties. At the material time the Applicant was senior to both of them.

In dismissing the recourse the Court:—

*Held*, (1). It has been held over and over again that (a) seniority does not of itself give a right to promotion but is only a factor to be taken into account in determining rival claims for promotion, (b) that the Commission has the paramount duty of selecting the most suitable candidate, (c) that in discharging that duty the Commission has a discretion with which the Court cannot interfere unless it has been exercised under a misconception of fact or law or in disregard of principle, for otherwise it would, in effect, be substituting its own discretion for that of the Commission, which is outside the province of the Court; (d) that the onus of proving such wrongful exercise is on the Applicant.

(2) While it is perfectly clear that the Applicant is a deserving officer, noted for zeal and integrity, and, considering everything, including his seniority, he might well have been promoted in preference to one of the interested parties, I fail to see that he has made out a case for annulment within the accepted rules of administrative review.

(3) Accordingly I am constrained to uphold the *sub judice* decision.

*Application dismissed.*

*No order as to costs.*

### **Recourse.**

Recourse against the decision of the Respondent concerning appointments to the post of Postal Officer, 1st Grade.

*A. Pouyouros*, for the Applicant.

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

*Cur. adv. vult.*

The following Judgment was delivered by:—

STAVRINIDES, J.: The Applicant, a Postal Officer, 2nd Grade, seeks to annul a decision of the Public Service Commission dated March 30, 1966, whereby two vacancies in the temporary post of Postal Officer, 1st Grade, were filled by the secondment thereto of two other Postal Officers, 2nd Grade, viz. Mr. Theodoros Argyrides and Mr. Andreas Nicolaou (hereafter referred to jointly as “the interested parties” and severally as “the third party” and “the fourth party” respectively). Both the Applicant and the interested parties were first appointed as Mail Officers—the Applicant on October 11, 1941, the third party on or about August 12, 1947, and the fourth party on or about June 1, 1946. They became Postal Officers, 2nd Grade, on January 1, 1956, July 1, 1956, and July 1, 1958, respectively. Thus the Applicant has been considerably longer in the public service than either of the interested parties and further, at the material time, viz. that of the subject decision, was senior to both of them—by six months as regards Mr. Argyrides and by two and a half years as regards Mr. Nicolaou.

The Commission interviewed eight Postal Officers, 2nd Grade, including the Applicant and both interested parties; and the subject decision reads as follows:

“The Commission after considering the qualifications, experience, service and merits of the candidates interviewed and having regard to the recommendations made orally before the Commission by Mr. Hadjioannou, decided unanimously that on the totality of the above factors, Messrs. Th. Argyrides and A. Nicolaou were the most suitable for promotion and accordingly decided that they be seconded to the temporary post of Postal Officer, 1st Grade, with effect from 1.4.66”.

One ground of annulment is put forward in the application, which is signed by the Applicant himself, viz. his seniority, and nothing else. At the hearing he had the advantage of the services of Mr. Pouyouros, whose argument was to the effect that his client had been passed over “as lacking in administrative ability in the sense of handling staff and the public”. Presumably this explanation of the decision is based on the annual confidential reports on the Applicant (*exhibit 3*) for yearly periods prior to May, 1959. There is no trace of such view of him in any of the later reports. Further, evidence was given by the Applicant and Mr. Hadjioannou, the latter having been

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called by counsel for the Respondent; and neither witness's evidence contains anything to support that explanation. On the other hand the annual confidential reports on both interested parties (*exhibits 4 & 5*) for all periods prior to the subject decision taken as a whole and every one of the reports for periods after April, 1960, are distinctly more favourable to them than those on Applicant are to him. Moreover, it appears from the evidence of Mr. Hadjoannou that at the meeting of the Commission referred to in the subject decision he supported the view that the interested parties were more suitable for promotion than the Applicant.

It has been held over and over again that seniority does not of itself give a right to promotion but is only a factor to be taken into account in determining rival claims for promotion; that the Commission has the paramount duty of selecting the most suitable candidate; that in discharging that duty the Commission has a discretion with which the Court cannot interfere unless it has been exercised under a misconception of fact or law or in disregard of principle, for otherwise it would, in effect, be substituting its own discretion for that of the Commission, which is outside the province of the Court; and that the onus of proving such wrongful exercise is on the Applicant.

While it is perfectly clear that the Applicant is a deserving officer, noted for zeal and integrity, and, considering everything, including his seniority, he might well have been promoted in preference to one of the interested parties, I fail to see that he has made out a case for annulment within the accepted rules of administrative review. Accordingly I am constrained to uphold the decision.

In the circumstances the application is dismissed without costs.

*Application dismissed without costs.*