

1968
Jan. 24

[TRIANTAFYLLOIDES, J.]

ANDREAS TRYFON
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

ANDREAS TRYFON,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 257/66).

Public Officers—Promotions—Promotion to the post of Senior Statistics Assistant—Validity—Promotion complained of declared null and void—Decision reached under the influence of a material misconception of fact—Another reason for which the sub judice decision has to be annulled is that, contrary to the relevant Administrative Law principle governing promotions and in the absence of any legislative provision authorising such a course, the Respondent Commission promoted the Interested Party two grades at a time—Arkatitis (No. 2) and The Republic (1967) 3 C.L.R. 429, followed—See, also, herebelow.

Administrative Law—Decision annulled—As having been reached contrary to law (namely, the relevant principles of Administrative Law) and in excess and abuse of power, in that it is the product of the exercise of the relevant powers of the Respondent Commission in a defective manner, due to material misconception of fact, ignorance of material considerations and not sufficient knowledge of, or inquiry into, all relevant factors—See, also, hereabove.

Principles of Administrative Law—See above.

Decision or act contrary to law—Namely contrary to the relevant principles of Administrative Law—See above.

Abuse and excess of powers—See above.

Excess and abuse of powers—See above.

Misconception—Material misconception of fact—Effect on the validity of the relative decision—See above.

Defective exercise of powers—See above.

Promotions—Principles—Promotion two grades at a time—Not allowed as being contrary to the principles of Administrative Law—Otherwise where there is an express legislative provision authorising such a course—See also, above.

Scheme of Service—Up to the Public Service Commission to construe and apply a particular scheme of service—And so long as its decision in this respect is reasonably open to it, the Court will not interfere.

Administrative and Constitutional Law—Recourse under Article 146 of the Constitution—Legitimate interest required under paragraph 2 of Article 146—In the present case there is such legitimate interest entitling the Applicant to make this recourse.

Legitimate interest—Article 146.2 of the Constitution—See above.

By this recourse the Applicant challenges the validity of the decision of the Respondent to promote Interested Party P.M. to the post of Senior Statistics Assistant instead of, or in preference to, himself.

The post of Senior Statistics Assistant is a “first entry and promotion post”, the relevant scheme of service being *exhibit 1* in these proceedings. At the material time the Applicant was a Statistics Assistant, 1st Grade, and the Interested Party was a Statistics Assistant, 2nd grade. The qualifications required for the post of Senior Statistics Assistant are set out in the scheme of service (*exhibit 3*) which is set out in the judgment of the Court. Suffice to say now that among the qualifications required for promotion to that post there was one in the following terms under B(ii) of *Exhibit 1*:

“Intermediate examination of the Association of Incorporated Statisticians and a minimum of 8 years statistical experience”.

On the material date when the *sub judice* decision was taken the Applicant had not passed the aforesaid Intermediate Examination, but he was entitled, on the strength of his academic qualification, to exemption therefrom; he had not till then, however, taken the necessary formal steps in order to obtain, the relevant exemption certi-

1968
Jan. 24

ANDREAS TRYFON
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

1968
Jan. 24

—
ANDREAS TRYFON
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

ficatē. On the other hand the Interested Party on the material date had not passed the whole of the aforesaid Intermediate Examinations, but had only passed one part thereof and on the strength of his academic qualification he was entitled to exemption from the remaining part; he had not as yet, however, secured formally such exemption, but this was done subsequently.

Coming now to the *sub judice* decision of the Respondent Commission dated the 27th July 1966, it would appear from the minutes of its relevant proceedings that:

(1) The Respondent Commission declined to promote the Applicant, a Statistics Assistant, 1st Grade, to the post of Senior Statistics Assistant, because he lacked the aforesaid qualification B(ii), *supra*.

(2) On the contrary it decided to promote the Interested Party, a Statistics Assistant 2nd Grade, because, *inter alia*, "he has got the Intermediate Examination of the Association of Incorporated Statisticians"; in other words, as possessing promotion qualification B(ii) in *Exhibit 1 (supra)*, which was wrong because the Interested Party had only passed, as stated above, only a part thereof. Thus, the Respondent Commission proceeded to promote the Interested Party *two grades* at a time, over the head of Applicant.

In granting the application and annulling the decision complained of the Court:-

Held, (1). In finding the Interested Party so qualified there can be no doubt that the Respondent Commission acted under the influence of a material misconception of fact, because the Interested Party had not passed the whole relevant Intermediate Examinations, but only part thereof.

(2)(a) It would be up to the Respondent Commission, and not up to me, to decide in the first instance whether, through their entitlement to exemption from the whole or part of the aforesaid Intermediate Examinations, the Applicant or the Interested Party might be deemed as qualified for promotion under qualification B(ii) in the scheme of service *Exhibit 1 (supra)*.

(b) It is up to the respondent Commission to construe and apply a particular scheme of service and, so long as

1968
Jan. 24

—
ANDREAS TRYFON
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

its decision is reasonably open to it in the circumstances the Court will not substitute its own views for those of the Commission (see *Papapetrou and the Republic*, 2 R.S.C.C. 61; *Josephides and the Republic*, 2 R.S.C.C. 72).

(c) But there is nothing to show that the Respondent Commission has examined the case in that light.

(3) In the circumstances I have no difficulty in deciding that the *sub judice* promotion of the Interested Party has to be declared null and void and of no effect whatsoever, as having been reached contrary to law (namely, the relevant principles of Administrative Law) and in excess and abuse of power, in that it is the product of the exercise of the relevant powers of the Commission in a defective manner, due to material misconception of fact, ignorance of material considerations and not sufficient knowledge of, or inquiry into, all relevant factors.

(4) Another reason for which the *sub judice* decision has to be annulled, in any case, is that, contrary to the relevant Administrative Law principle governing promotions, and in the absence of express legislative provision authorising such a course (see *Arkatitis (No. 2) and the Republic* (1967) 3 C.L.R. 429) the Respondent Public Service Commission promoted the Interested Party two grades at a time.

Held: As to whether the Applicant has the legitimate interest, entitling him to make this recourse, under paragraph 2 of Article 146 of the Constitution:

I am of the opinion that the Applicant was so entitled because he had applied for appointment or promotion to the post concerned (see *Papapetrou's case supra*) as well as because he was entitled to be, and was considered, for promotion (see *Philippou and the Republic*, 4 R.S.C.C. 139); at this stage, as the issue of whether Applicant is qualified for promotion (under B(ii) of the scheme of service, *supra*) will have to be decided, in the first instance, by the Commission, when it considers such issue on re-examining the filling of the vacancy in question, I cannot but take the view that the Applicant has a legitimate interest to be considered as a candidate for promotion, so that it may be decided, *inter alia*, whether or not he is, indeed, qualified for such promotion on the ground of his being

1968
Jan. 24

—
ANDREAS TRYFON
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

entitled to exemption from the relevant examinations (supra).

*Sub judice decision annulled.
No order as to costs.*

Cases referred to:

Papapetrou and the Republic, 2 R.S.C.C. 61;

Josephides and the Republic, 2 R.S.C.C. 72;

Arkatitis (No. 2) and the Republic (1967) 3 C.L.R. 429;

Philippou and the Republic, 4 R.S.C.C. 139.

Recourse.

Recourse against the validity of the decision of the Respondent Public Service Commission to promote the Interested Party Panayiotis Mallis to the post of Senior Statistics Assistant in preference and instead of the Applicant.

L. Clerides, for the Applicant.

K. Talarides, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLIDIS, J.: By this recourse the Applicant challenges the validity of the decision of the Respondent to promote Interested Party Panayiotis Mallis to the post of Senior Statistics Assistant; this decision was taken on the 27th July, 1966.

The history of relevant events is as follows:

The post of Senior Statistics Assistant is a "first entry and promotion" post, the relevant scheme of service being *exhibit 1* in these proceedings.

On the 17th June, 1966, the Respondent decided that the said post should be advertised (see the minutes *exhibit 6*). The advertisement was inserted in the official Gazette of the 23rd June, 1966; its text is *exhibit 5*. By virtue of such advertisement applications for appointment had to be submitted by the 9th July, 1966.

The Applicant applied for appointment on the 29th June,

1966; and at the same time he applied for appointment to the post of Statistics Officer, which was also advertised in the official Gazette on the 23rd June, 1966 (see his applications *exhibit 7*).

The Interested Party applied, too, on the 29th June, 1966 for appointment to the post of Statistics Officer (see his application *exhibit 8*), but he did not apply for appointment to the post involved in the present recourse.

At the time the Applicant was a Statistics Assistant, 1st grade, and the Interested Party was a Statistics Assistant, 2nd grade.

On the 15th July, 1966 the Respondent decided to call Applicant for an interview on the 27th July, 1966 (see its minutes *exhibit 9*).

The minutes of the meeting of the Commission on the 27th July, 1966 are *exhibit 10* in these proceedings and it is useful to quote them in full :

“1. *Filling of vacancies in the post of Statistics Officer* Dr. H. Menelaou, Director of the Dept. of Statistics & Research, present.

The Commission interviewed the following candidates:-

1. A. Th. Tryfon
2. P. Mallis
3. C. G. Paschalis

The Commission has considered the qualifications of each of the candidates interviewed in the light of the requirements of the scheme of service for this post and came to the conclusion that the only candidate who satisfied the requirements of the scheme of service was Mr. E. I. Demetriades who is at present in America for his M. Sc. (Econ.). He is qualified already under part (iii) of the qualifications in the scheme of service. The Commission decided unanimously that he be appointed to the post of Statistics Officer, w.e.f. 1st August, 1966.

With reference to the other three candidates, the Commission after considering their academic qualifications came to the conclusion that Mr. A. Th. Tryfon has a B.A. (Econ.) but as he has himself admitted he has

1968
Jan. 24

—
ANDREAS TRYFON
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

not statistics as a special subject. Mr. Mallis has the Degree of Bachelor of Business Administration of the University of Beirut but again he has not statistics as a special subject. Mr. C. G. Paschalis has the Degree of Bachelor of Business Administration of the University of Beirut but has not statistics as a special subject. All these three candidates had attended courses in Statistics as part of their Degree studies but from their own statements before the Commission these courses cannot amount to the statistics required by the scheme of service. For the above reasons, the Commission came to the conclusion that these three candidates are not qualified under the scheme of service for appointment to the post of Statistics Officer.

2. *Filling of vacancy in the post of Senior Statistics Assistant.*

Dr. H. Menelaou present.

The Commission, although the post is a First Entry and Promotion, decided unanimously to advertise it in its endeavour to find qualified and suitable candidates. From the Applicants the Commission selected for interview on the basis of the qualifications appearing on their applications, only Mr. A. Th. Tryfon. He has been interviewed for the post of Statistics Officer but the interview and the questions put to him covered both the post of Statistics Officer and this post. For the reasons stated in the previous paragraph as to his qualifications, the Commission decided unanimously that he was not qualified for this post either.

Then the Commission decided unanimously to proceed and examine the claims of Statistics Assistants, 1st Grade, who although they did not apply yet they could have claims for promotion by virtue of the fact that this post is also a promotion post. After considering the qualifications of the two Statistics Assistants, 1st Grade, namely Messrs. A. Tryfon and G. Vragas as appearing in their Confidential Reports, the Commission decided unanimously that none of them was qualified for promotion to the post of Senior Statistics Assistant.

Then the Commission considered the Statistics

Assistants, 2nd Grade. The only officer qualified is Mr. P. E. Mallis. He has got the Intermediate Examination of the Association of Incorporated Statisticians and the minimum of eight years' experience required. The Commission bearing in mind the recommendation of Dr. Menelaou as to Mr. Mallis' efficiency and suitability for this post, decided unanimously that he be promoted to the post of Senior Statistics Assistant as from the 1st August, 1966".

1968
Jan. 24
—
ANDREAS TRYFON
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Thus, the Interested Party was promoted over the head of the Applicant to the post of Senior Statistics Assistant.

On the 7th September, 1966, the Applicant wrote to the Commission asking for a reconsideration of the matter; he stated that he believed that being the only qualified candidate holding the post of Statistics Assistant, 1st grade, he ought to be promoted to the post of Senior Statistics Assistant (see *exhibit 17 (a)*). He received a reply dated the 20th September, 1966, which informed him that the Commission had decided that he did not possess "all the qualifications laid down in the scheme of service" for the particular post (see *exhibit 17(b)*).

The qualifications laid down for such post are set out in the relevant scheme of service (*exhibit 1*) and they are as follows:

"Qualifications Required:

A. *For First Entry:*

- (a) One of the following qualifications:-
- (i) A University diploma or degree in Statistics;
 - (ii) A University diploma or degree in Mathematics with a postgraduate qualification in Statistics;
 - (iii) A University diploma or degree in Economics, or Business Administration or Mathematics with Statistics as a special subject in each case; and
- (b) A minimum of two years' statistical experience in a responsible position.

B. *For Promotion :*

1968
Jan. 24

—
ANDREAS TRYFON
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

One of the following qualifications:-

- (i) Registered Statistical Assistant of the Association of Incorporated Statisticians, and a minimum of 10 years' statistical experience;
- (ii) Intermediate examination of the Association of Incorporated Statisticians and a minimum of 8 years' statistical experience;
- (iii) Final examination of the Association of Incorporated Statisticians and a minimum of 6 years' statistical experience.

For both A & B:

A very good knowledge of Greek or Turkish and a good knowledge of English and administrative and organizing ability".

One of the main problems which arose in the course of the present proceedings has been to ascertain exactly the relevant qualifications of the Applicant and the Interested Party. On the material before the Court they appear to be as follows:-

The Applicant has obtained a Degree of Bachelor of Arts in Economic Studies from the University of Sheffield, in England, on the 1st July, 1950 (see *exhibit 3*).

As stated in a certificate granted to the Applicant on the 14th August, 1958, by the Registrar of the University of Sheffield (see *exhibit 4*), Statistics was part of the subject of Economics which the Applicant took in relation to the Final examinations for his Degree.

Moreover, a much later certificate dated the 5th April, 1967 (see *exhibit 11*) — which was obtained by Applicant from the Administrative Assistant (Student Records) of the University of Sheffield — shows that one of the subjects taken by the Applicant in the second year of his studies for his said Degree was a "Special subject in Statistics". This certificate is accompanied by a covering letter (see again *exhibit 11*) in which it is mentioned that a letter from the Applicant, dated the 25th March, 1967, had been received "requesting a certificate stating that" Applicant had been successful in his "special subject in Statistics". It is quite clear from the relevant dates that the second certificate was

sought, and obtained, by the Applicant for the purposes of, and pending, the present proceedings.

The Applicant, in 1962, had applied for election as an Associate Member of the Institute of Statisticians — (which was previously known as the Association of Incorporated Statisticians) — and he received a reply dated the 9th January, 1962 (see *exhibit 2*) by which he was informed that he would be required to sit for the Final examinations, but he could be granted an exemption from the Intermediate examination, of such Institute; he was requested, if he wished to obtain such exemption to comply with the necessary formalities; but it appears that the Applicant did not do anything about it at the time.

Then in 1964 he applied for election as a Fellow of the same Institute and he received a reply dated the 8th May, 1964 (see *exhibit 16*) informing him that he would be required to take Parts III and IV of its examinations, but he could be granted an exemption from Parts I and II of the examinations: he was asked to comply with certain formalities for the purpose, but he again did nothing about it.

From the relevant Regulations (see *exhibit 20* and *exhibit 21*) it appears that the level of Parts I and II of the present examinations of the Institute in question corresponds to the level of what were previously known as the Intermediate examinations. It may, also, be pointed out in this respect that, as stated in evidence by Mr. H. Menelaou, the Director of the Department of Statistics and Research, the examinations “known as Part II or Part B of Intermediate are one and the same thing”; it follows, therefore, that one part of the old examinations corresponds to what is now Part II of the present examinations; but it is clear that Part B was, along with Part A, only *one* part of the, at the time, Intermediate examinations (see the old Regulations, *exhibit 20*) and not the whole of such examinations.

During the course of the present proceedings the Applicant decided to take advantage of the offer for exemption made to him, as aforesaid, by the letter of the 8th May, 1964 (see *exhibit 16*); so he wrote on the 17th May, 1967 (see *exhibit 15 (a)*) to the Institute of Statisticians requesting that he should be granted an exemption certificate dated, at the latest, the 27th July, 1966 — that being, most significantly the date of the *sub judice* decision of the Commission.

1968
Jan. 24

—
ANDREAS TRYFON
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

1968
Jan. 24

—
ANDREAS TRYFON
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

He received a reply dated the 24th May, 1967 (see *exhibit 15 (b)*) informing him that the relevant exemption certificate for Parts I and II of the examinations of the Institute would be forwarded to him on payment of the exemption fees, and that if it were essential that the certificate should be dated before the 27th July, 1966, then it would be necessary for him to register as a student for the cycle 1966/67. The Applicant replied on the 31st May, 1967, enclosing the necessary fees and asking that the relevant exemption certificate should reach him before the 12th June, 1967 (see *exhibit 15 (c)*); it is again significant to note that the 12th June, 1967 was a date fixed for the hearing of this Case.

Eventually an exemption certificate, dated "20th July, 1966", was sent to Applicant, stating that he had been granted exemption from Parts I and II of the Institute's examinations on the ground of his B.A. (Econ.) Degree from the University of Sheffield; it is mentioned in such certificate that Parts I and II of the examinations are equivalent to, and replace, *inter alia*, the old Intermediate examinations (see *exhibit 15 (d)*).

From all the above it is clear that the Applicant, on the material date when the *sub judice* decision was taken, had not passed the Intermediate examinations of the Association of Incorporated Statisticians (later re-named as the Institute of Statisticians), but he was entitled, on the strength of the academic qualification, to exemption therefrom; he had not till then, however, taken the necessary formal steps in order to obtain the relevant exemption certificate.

Regarding the contention of the Applicant that Statistics was a special subject of his University Degree, I am not satisfied that the Commission was not entitled, on a reasonably open to it application of the relevant scheme of service, to decide that this was not so and that, thus, Applicant did not possess qualification (A)(a)(iii) in such scheme of service, which would render him eligible for a first entry appointment to the post concerned. Applicant himself has admitted as much to the Commission on the 27th July, 1966 (see the minutes *exhibit 10*) and his subsequent version — while giving evidence before me — explaining away such admission, cannot, in my opinion, be relied upon.

I come next to the qualifications of the Interested Party:

I must start by saying that I attribute no value at all to his oral evidence on this point; I have found him to be most unreliable, even more than the Applicant.

In his application to the Respondent, for appointment to the post of Statistics Officer, the Interested Party has stated (see *exhibit 8*) that he had passed the Intermediate examinations of the Institute of Statisticians. This statement was not a correct one, because it is abundantly clear, on the material before the Court, that he had passed only Part B, and not the whole of such examinations; this is so entered, too, in the personal data particulars in the Confidential Reports' file concerning the Interested Party (see *exhibit 19*).

The academic qualification of the Interested Party is a Degree of Bachelor of Business Administration (with Distinction) of the American University in Beirut.

While these proceedings were pending, the said Mr. Menelaou, the Head of the Department concerned, tried to assist the Interested Party in clearing up the matter of his qualifications, and he wrote himself a letter, on the 22nd March, 1967 (see *exhibit 12*) to the Institute of Statisticians, in which he stated that the Interested Party had completed his Intermediate, Part B, examinations, and that it was requested to have the views of the Institute about exempting the said Party from Parts I and II — "i.e. Intermediate, according to the Old Regulations" — on the strength of his Degree in Business Administration of the University of Beirut.

The Institute replied to Mr. Menelaou on the 30th March, 1967 (see again *exhibit 12*) informing him that the Interested Party would be entitled, by virtue of his Degree, only to exemption from Part I of the examinations, but, as he had "already completed Part II (Intermediate) in 1958", he could proceed to take Parts III and IV of the examinations, if he so wished.

Encouraged, apparently, by this development, the Interested Party wrote himself on the 19th May, 1967 to the Institute of Statisticians (see *exhibit 22*), referring to the reply given, as aforesaid, to Mr. Menelaou and stating that he was "in an urgent need" — no doubt for the purposes of these proceedings — of a certificate, the text of which he specified in his letter as follows: "This is to certify that Mr. P. E. Mallis passed the Intermediate examinations of the

1968
Jan. 24

—
ANDREAS TRYFON
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Institute of Statisticians (formerly known as the Association of Incorporated Statisticians) in 1958”.

The Institute issued to him a certificate dated the 23rd May, 1967 (see *exhibit 14*), in the terms requested by him. When, however, one reads this certificate together with the past correspondence, and especially the letter of the Institute to Mr. Menelaou dated the 30th March, 1967 (*exhibit 12*), there can be no doubt that such certificate cannot be treated as correctly verifying that the Interested Party passed the *whole* of the Intermediate examinations in 1958 — as it might appear to do if taken in isolation from the correspondence through which it was secured.

It follows, clearly, from the foregoing that on the material date, the 27th July, 1966, when the *sub judice* decision was taken, the Interested Party had not passed the whole of the Intermediate examinations of the Association of Incorporated Statisticians, but had passed only one part thereof and on the strength of his academic qualification from the Beirut University he was entitled to exemption from the remaining part; he had not as yet, however, secured formally such exemption, as it was done subsequently.

It would be up to the Respondent Public Service Commission, and not up to me, to decide in the first instance whether, through their entitlement to exemption from the whole or part of the Intermediate examinations of the Association of Incorporated Statisticians (later re-named the Institute of Statisticians), the Applicant or the Interested Party might be deemed as qualified for promotion under qualification B (ii) in the scheme of service. It is up to the Commission to construe and apply a particular scheme of service and, so long as its decision is reasonably open to it in the circumstances, the Court will not substitute its own views in the place of those of the Commission (see *Papapetrou and The Republic*, 2 R.S.C.C., p. 61; *Josephides and The Republic*, 2 R.S.C.C., p. 72).

In the present Case, as it appears from its minutes (*exhibit 10*) the Commission took the view that the Applicant was not qualified, under the relevant scheme of service, either for first entry appointment or for promotion to the post of Senior Statistics Assistant, and it proceeded then to treat the Interested Party as qualified for promotion to the post in question on the ground that he had “. . . the Intermediate Examination

of the Association of Incorporated Statisticians and the minimum of eight years' experience required"; in other words, as possessing promotion qualification B(ii) in the scheme of service.

In finding the Interested Party so qualified there can be no doubt that the Commission acted under the influence of a material misconception of fact, because, as stated earlier on in this judgment, the Interested Party had not passed the *whole* relevant Intermediate examinations, but only part thereof in 1958. The Commission must have been misled by the statement of the Interested Party, in his application for appointment (*exhibit 8*), to the effect that he had passed the "Intermediate-Institute of Statisticians, London".

Neither in the relevant minutes of the Commission, nor in the evidence adduced regarding what took place before it at its meeting of the 27th July, 1966, is there anything at all to show that the Commission examined whether the University Degree of the Interested Party entitled him to exemption from part of the Intermediate examinations specified as qualification B(ii) in the scheme of service; in fact it could never have occurred to the Commission so to do, once it had been misled by the statement of the Interested Party, in his application (*exhibit 8*), that he had passed the Intermediate examinations concerned.

What happened is that the Commission, having found neither the Applicant nor anyone else as qualified for first entry appointment, and while treating thereafter the post concerned as a promotion post only, took the view that the Applicant was not qualified for the purpose—(not having had occasion to decide at all on the issue of his entitlement to exemption from the examinations specified in B(ii) of the scheme of service)—and proceeded to promote the Interested Party two grades at a time, and over the head of the Applicant, having been made wrongly to believe that he had passed the said examinations, and not knowing that he was only entitled to exemption therefrom; had it known that it was faced in his case too with entitlement to exemption from such examinations, it would have examined *in that light* the issue of the Applicant being qualified for promotion, and either it would have found *him* to be so qualified and would not have proceeded to consider Statistics Assistants, 2nd grade, such as the Interested Party, or it would have found

1968
Jan. 24
—
ANDREAS TRYFON
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

1968
Jan. 24

ANDREAS TRYFON
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

the Interested Party not to be qualified, also.

In the circumstances I have no difficulty in deciding that the *sub judice* promotion of the Interested Party has to be declared to be *null* and *void* and of no effect whatsoever, as having been reached contrary to law (namely, the relevant principles of Administrative Law) and in excess and abuse of powers, in that it is the product of the exercise of the relevant powers of the Commission in a defective manner, due to material misconception of fact, ignorance of material considerations and not sufficient knowledge of, or inquiry into, all relevant factors.

Another reason for which the *sub judice* decision of the Commission has to be annulled, in any case, is that, contrary to the relevant Administrative Law principle governing promotions, and in the absence of express legislative provision authorizing such a course (see *Arkatitis (No. 2) and The Republic* (1967) 3 C.L.R. 429 the Commission promoted the Interested Party two grades at a time.

The proper course for the Commission, when it took the view on the 27th July, 1966 that it could not find a qualified candidate among the Statistics Assistants, 1st grade, was to re-advertise the post of Senior Statistics Assistant in the hope of finding a suitable candidate.

The Interested Party, having not applied for the post concerned when it was advertised, could not be appointed on the 27th July, 1966, as a first entrant, but, of course, there was nothing to prevent him from so applying were the post to be advertised again.

Before concluding this judgment I would like to deal shortly with the aspect of the Applicant being entitled to make this recourse under Article 146.2 of the Constitution:-

I am of the opinion that the Applicant was so entitled because he had applied for appointment to the post concerned (see *Papapetrou and The Republic* 2 R.S.C.C. p. 61) as well as because he was entitled to be, and was considered, for promotion (see *Philippou and The Republic*, 4 R.S.C.C. p. 139); at this stage, as the issue of whether Applicant is qualified for promotion (under para. B (ii) of the scheme of service) will have to be decided, in the first instance, by the Commission, when it considers such issue on re-examining the filling of the vacancy in question, I cannot but take the

view that Applicant has a legitimate interest to be considered as a candidate for promotion, so that it may be decided, *inter alia*, whether or not he is, indeed, qualified for such promotion on the ground of his entitlement to exemption from the relevant examinations.

1968
Jan. 24
—
ANDREAS TRYFON
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Finally, I must, with regret, express my disapproval of the methods resorted to by the Applicant and the Interested Party, in trying to present a picture during the proceedings, regarding their qualifications, which did not disclose the whole of the true position in relation thereto; Applicant obtained an antedated certificate of exemption (see *exhibit 15(d)*); and the Interested Party contrived to obtain a certificate which, on the face of it, created a misleading impression (see *exhibit 14*); moreover, he handed it to his Head of Department, Mr. Menelaou, who produced it to Court, while giving evidence in support of the appointment of the Interested Party, and it was not until later in the proceedings that the letter (*exhibit 22*) leading up to such certificate was produced, and the Court was enabled to avoid being misled on the point.

For all the reasons in this judgment the promotion of the Interested Party is annulled; in the circumstances of this Case I am making no Order as to costs.

*Sub judice decision annulled.
No order as to costs.*