

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTODOULOS
TRIMIKLINIOTIS
v.
REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

CHRISTODOULOS TRIMIKLINIOTIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 130/68).

Public Officers—Promotions—To the post of Senior Customs Guard—Annulled in respect of one of the Interested Parties—Discretionary powers of the respondent Public Service Commission held to have been exercised in a defective manner—Because of the seniority and better education of the applicant vis-a-vis such Interested Party and the absence of any proper reasoning by the Commission why this Interested Party was preferred being also handicapped by poor education—Moreover the Ministry's recommendations, which were taken into consideration in reaching the subject decision, were not sufficiently and properly recorded.

Promotions—Collective organ—Public Service Commission—Meeting to decide on promotions—Oral recommendations of the Head of Department to be sufficiently and properly recorded.

Collective organ—Meeting—Minutes—To be properly kept.

Public Officers—Grades of officer—Question of salary not a determining factor whether a grade or office is higher or lower—Posts of Preventive Man and Customs Guard and Messenger held to be of the same grade or office in the Customs and Excise Department.

Grades of offices—Factors to be considered—See immediately hereabove.

Customs and Excise Department—Promotions—See supra.

Discretionary powers—Vested in the Public Service Commission—Principles on which this Court will interfere with the exercise of the Commission's discretion.

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The applicant, a Customs Guard in the Department of Customs and Excise, by this recourse under Article 146 of the Constitution seeks to challenge the validity of the decision of the respondent Public Service Commission to promote the three Interested Parties to the post of Senior Customs Guard instead of, and in preference to, him.

The Court annulled the promotion of only one of the Interested Parties, mainly on the ground that the respondent Commission exercised its discretionary powers in a defective manner, in that, *inter alia*, it failed to give cogent reasons why it disregarded the substantial seniority as well as the better education of the applicant as compared with the said Interested Party.

The facts sufficiently appear in the Judgment of the Court annulling the promotion of one of the Interested Parties.

Cases referred to :

Partellides v. The Republic (1969) 3 C.L.R. 480, at p. 484, (C.A.)

Recourse.

Recourse against the validity of a decision of the respondent Public Service Commission by virtue of which the Interested Parties were promoted to the post of Senior Customs Guard in preference and instead of the applicant.

M. Christofides, for the applicant.

S. Nicolaidis, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :—

HADJIANASTASSIOU, J. : The applicant, in these proceedings under Article 146 of the Constitution, seeks to challenge the validity of the decision of the Public Service Commission to promote the interested parties, Messrs. Anastasis G. Rebanas, Panayiotis Aristides and Onisiforos Christofi to the post of Senior Guard as from August 1, 1967.

The leading character on the one side is the applicant himself. He was appointed as a temporary tobacco officer on July 11, 1950, and is now the holder of the post of Customs Guard in the Department of Customs and Excise since

June 1, 1953. His qualifications are that after graduating the elementary school he attended Mitsis School of Lemithou from 1938, to 1941, and that he has passed the English Ordinary Examinations.

On the other side there are the three interested parties. They have joined the Public Service of the then Colony of Cyprus much later than the applicant.

I will deal first with Mr. Rebanas in the sequence which is followed in the comparative table before me, *exhibit 1*. He has joined the service on February 10, 1954, as a Customs Guard and from July 1, 1956, he became a preventive man, and on August 1, 1967, he was promoted to the rank of Senior Customs Guard.

Mr. Aristidou became a Customs Preventive Man on June 19, 1961, and on August 1, 1967, he was promoted to the post of Senior Customs Guard.

Regarding Mr. Christofi he became a Customs Preventive Man on September 1, 1956, and on August 1, 1967, he was also promoted to the rank of Senior Customs Guard.

In view of the re-organization in the structure of the Customs and Excise Department, a number of new posts have been created and other posts have been abolished by the enactment of Law 45 of 1967, which was published in the *Official Gazette* dated July 28, 1967. By the enactment of this law, the establishment of Senior Customs Guard has been increased from twelve to thirty, whereas a number of other posts (including fifty-eight posts of Customs and Excise Officer, third grade, seven of Inspector Preventive and ten posts of Assistant Inspector Preventive Service) have been abolished.

In accordance with the provisions of section 30 of the Public Service Law, 1967, (Law 33 of 1967), for the purpose of appointment or promotion the Council of Ministers fixes the category of each office in the respective scheme of service. The schemes of service, following the re-organization of Senior Customs Guard and Customs Guard, were approved by the Council of Ministers under Decision No. 7058 on September 28, 1967. The post of Senior Customs Guard is a promotion post and the approved salary scale is 15. The duties and responsibilities appear in *exhibit 2* and are as follows :—

“The duties of Customs Guard and any other duties which may be assigned to him.

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Qualifications required : Experience in all the duties of Customs Guard and to have consistently shown qualities of reliability, zeal and integrity in the performance of these duties."

And then a note appears which is in these terms :—

" *Note* : Experience in all the duties of Customs Guard shall include experience in the Customs Preventive Service in respect of officers serving with the department at the time of the approval of this scheme of service."

Regarding the post of Customs Guard, which is a first entry post, salary scale 16, the duties and responsibilities are :

" To patrol and guard quays, airports, warehouses, refineries, excise factories etc ; to search ships, aircrafts, premises, vehicles and persons ; to guard non-duty-paid goods in transit ; to prevent or detect smuggling or other evasions of duty payment ; to act as messenger when required and to perform any other duties which may be assigned to him.

Qualifications required : Ability to read and write Greek or Turkish and to read and understand simple printed or written instructions in English. Sound physique ; good character ; reliability."

On the same date, *viz.* September 28, the Council of Ministers has authorised the filling of—

(a) all the vacancies in the department of Customs and Excise with retrospective effect from August 1, 1967 ; and

(b) all the existing vacancies in the first entry posts as well as in consequential ones before January 1, 1968, from the existing staff of the department.

On December 5, 1967, the Public Service Commission met for the purpose of filling the existing twenty-one vacancies regarding the post of Senior Customs Guard and, an extract from the minutes of that meeting reads as follows :—

" The Representatives stated that having regard to the merits, qualifications and experience of members of the Preventive Service and Customs Guards and Messengers they recommended, proportionately, that 7 vacancies should be allocated to members of the Preventive Service and 14 to Customs Guards and Messengers."

Then the Commission, after considering the merits, qualifications and experience of members of the Preventive Service, as reflected in their annual confidential reports, and after hearing the representatives views on each one of them and bearing in mind the Ministry's recommendations, decided unanimously, *inter alia*, to promote to the post of Senior Customs Guard, with effect from August 1, 1967, the interested parties.

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The Commission, moreover, proceeded to fill the other fourteen vacancies allocated to Customs Guards and Messengers. At the same meeting, regarding the filling of the post of Customs Guard, the Commission, after hearing both the recommendations of the head of department, Mr. Philippides, with regard to experience of permanent preventive men and their length of service, and of the agreement of the Ministry concerned that the vacancies should be filled from their grade, decided to appoint to the post of Customs Guard a number of preventive men.

On February 16, 1968, the promotion of the interested parties was published in the *Gazette* and because the applicant was feeling aggrieved, filed the present recourse, which was based on two grounds of law :—

(1) that respondents disregarded the superior experience, seniority, qualifications and merit of the applicant, vis-a-vis the interested parties ;

(2) that the interested parties, who were members of the Preventive Service, could not be legally promoted to the post of Senior Guard, which is immediately above the post of Guard.

Counsel on behalf of the applicant has argued his case on two main heads :

(a) that the decision of the Public Service Commission in promoting the interested parties, was contrary to section 30 subsection 1 (c) of Law 33 of 1967 ; and

(b) that the Commission disregarded the superior experience, seniority and qualifications as well as the merit of the applicant.

Section 30 (1) (c) is in these terms :

“ 30 (1) For the purposes of appointment or promotion, offices shall be divided into the following categories :

- (a)
- (b)

(c) Promotion offices which shall be filled by the promotion of officers serving in the immediately lower grade or office of the particular section or sub-section of the public service, as the case may be."

I then turn to sub-section (3) which reads as follows :—

"For the purpose of this section, 'section or sub-section of the public service' means a section or sub-section of the public service composed of grades of the same office, or of different offices of a similar nature to which different salaries or salary scales are attached. In case of doubt as to the offices comprised in any particular section or sub-section of the public service, the Council of Ministers shall decide in the matter."

I find it convenient to deal first with the second head of counsel's argument. As I have said earlier, there is no doubt, that the applicant had a much bigger length of service than the interested parties. In accordance with section 44 (1) of Law 33 of 1967, no officer shall be promoted to another office, unless he possesses the qualifications laid down in the Schemes of Service for that office ; he has not been reported upon in the last two annual confidential reports as unsuitable for promotion ; he has not been punished during the preceding two years for any disciplinary offence of a serious nature, and under the provisions of sub-section 2 the claims of the officers to promotion shall be considered on the basis of merit, qualifications and seniority. Under sub-section (3), in making a promotion, the Commission shall have due regard to the annual confidential reports on the candidates and to the recommendations made in this respect by the Head of Department in which the vacancy exists.

I propose reading extracts from the confidential reports, and I start first with those of the applicant.

For the period under review April 1, 1964, to March 31, 1965, the reporting officer, Mr. Iacovides, had this to say on March 29, 1965 : "This officer has in my opinion performed his duties during the period under review in a satisfactory manner. I have no reason for submitting a special confidential report". On June 15, 1965, the counter-signing officer Mr. Philippides, the Director of the department of Customs and Excise, presented his own views as follows : "A guard of good education but with not so good past record as regards discipline and behaviour ; he has displayed, however, marked progress in recent years."

It appears that in the last two annual confidential reports, the applicant not only has not been reported as being unsuitable for promotion, but, on the contrary, " he has shown " —to quote the words of the Head of Department— " marked progress ". Moreover, I would like to point out, that although at the beginning there were complaints regarding his discipline, nevertheless, it has not been brought to my notice that this officer was punished for any disciplinary offence either of a minor or of a serious nature.

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Regarding Mr. Rebanas' report for the period under review April 1, 1964, to March 31, 1965, it appears that the reporting officer, Mr. Atteshlis, thought fit not to record any observations on April 2, 1965, but Mr. Christou, the counter-signing officer, who held the post of Collector of Customs, and who knew this officer for a period of ten years, on June 11, 1965, recorded his own views as follows :

" Disciplined and active officer but handicapped by poor education ".

With regard to the position of Mr. Aristidou, as regards his last two annual reports, I find them to be excellent, and I would like to quote only from his last report of July 12, 1967, the views of Mr. Philippides : " This person possesses outstanding qualities and has a brilliant record in the field of persecution and prevention of smuggling."

Finally, regarding Mr. Christofi, I propose reading only the observations made by Mr. Philippides on July 12, 1967 : " This person is trying hard to improve his standard of knowledge and succeeded to achieve great progress in this direction."

In the comparative table, under the heading " qualifications " it appears that the interested parties have finished their elementary schooling only. However, both Messrs. Aristidou and Christofi appear to have the first private tuition from 1949 to 1953, and the second has succeeded to pass the examinations as regards the General Orders. Of course, I must point out that the qualifications required under the scheme of service are that each officer has shown qualities of reliability, zeal and integrity in the performance of those duties. The question posed is whether all the parties possessed such qualifications at the time of promotion. In the absence of any recorded views by the Head of the Department Mr. Philippides, I feel, in fairness to all concerned, that I am bound to answer this question on the material before me in the affirmative.

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In the light of the confidential reports and other material before me, I propose examining whether the Commission rightly and properly exercised its discretionary power in promoting the interested parties, after paying due regard to all relevant considerations, in preference and instead of the applicant.

I must confess, however, that whilst I was writing this judgment, I felt that in view of the second submission of counsel for the applicant, this case was not free from any difficulties, and I have decided to re-open the case exercising my powers under Rule 19 of the Supreme Constitutional Court Rules, 1962, in order to hear evidence whether the post of preventive man—being a first entry and promotion post—in comparison to the post of Customs Guard and Messenger, was a lower post, even though the post of a preventive man before the abolition by law, carried at the top of the scale a higher salary.

Having done so, I am indebted to counsel for their labours, because it has transpired that in isolated cases customs guards became preventive men, and recently under the re-organization, members of the preventive service were appointed to the amalgamated post of customs guard. No case came to my knowledge, however, that in fact the post of preventive man was a promotion post from the ranks of Customs Guard and Messenger. As at present advised, I have reached the view, as I have indicated during the hearing of this case, that both posts were of the same grade or office of the Customs & Excise Department and, therefore, counsel for the applicant, in my opinion, was justified in abandoning the second ground of law. Needless to add that in accordance with Decision No. 202 and 308/1950, of the Greek Council of State reported in Kyriakopoulos on the Greek Administrative Law, 4th edn. Vol. 'Γ' at p. 315 under note 32, the question of salary is not a determining factor whether a grade or office is higher or lower, and I would, therefore, dismiss this ground of law.

Reverting now to the rejection of the applicant by the Commission, I would like to state that this Court will not interfere with the exercise of its discretion unless it can be shown to my satisfaction that such exercise of discretion has been made in disregard of any provisions of the Constitution or of any law, or it has been made in excess or abuse of power vested in the Commission.

After giving the matter my best consideration, I have reached the view from a comparison of the confidential

reports of the applicant and those of the interested parties Messrs. Aristidou and Christofi—and notwithstanding the seniority of the applicant—that it was reasonably open to the Commission on merit to prefer the latter.

Regarding the interested party Mr. Rebanas, it appears that the applicant is more senior to him and is better educated, and in the absence of any proper reasoning by the Commission as to why this interested party was preferred, being also handicapped by poor education, I have reached the view that the respondent has exercised its discretionary powers in a defective manner. Moreover, I would like to add that from the minutes, it is clear that the decision as to the promotions was reached bearing in mind also the representatives' views and the Ministry's recommendations, but without these recommendations being sufficiently and properly recorded in the said minutes, so as to enable this Court, in reviewing the decision of the Commission, to examine how and why it was reasonably open to it to act upon such recommendations in the circumstances of the case of the interested party Mr. Rebanas. Such a general statement in the minutes cannot have the effect of rendering the promotion of this interested party one which can be treated as having been properly decided upon in the exercise of the particular powers of the respondent. See also *Partellides v. The Republic* (1969) 3 C.L.R. 480 at p. 484.

For the reasons I have endeavoured to explain, I have reached the view that the promotion of the interested party Mr. Rebanas should be declared null and void and of no effect whatsoever. Under the circumstances, I make no order as to costs.

*Promotion of Interested
Party Rebanas annulled.
Otherwise recourse dis-
missed. No order as to
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