

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

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ANDREAS
MICHAEL
v.
REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

ANDREAS MICHAEL,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 32/71).

Public Officers—Promotions—Promotions to the post of Customs and Excise Officer 2nd Grade—Recourse against such promotions—Sub judice decision reasonably open to the respondent Public Service Commission on the material before it, i.e. the recommendations of the Head of Department etc.

Promotions—Seniority—It is always one of the factors to be considered in effecting promotions—But it is not proper to treat such factor exclusively as the vital criterion always entitling to promotion the one candidate, among many qualified ones, who possesses such longer service.

Seniority—One of the factors to be considered in effecting promotions—Not the vital one—See also supra.

Head of Department—Recommendations by Head of Department—Recommendations wherein a comparison was made between the respective merits of the applicant public officer and the appointees (interested parties)—The Public Service Commission would normally have been expected to follow such recommendation or give reasons for not doing so.

The facts sufficiently appear in the judgment of the Court, dismissing this recourse whereby the applicant public officer was challenging the validity of the appointment (or promotion) of Messrs. A. Ch. and S.P. to the post of Customs and Excise Officer 2nd Grade, in preference to, and instead of, himself.

Cases referred to :

Theodossiou and The Republic, 2 R.S.C.C. 44, at p. 48 ;
Georghios Evangelou v. The Republic (1965) 3 C.L.R. 292,
at p. 297.

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Recourse.

Recourse against the decision of the respondent to promote the Interested Parties to the post of Customs and Excise Officer, 2nd Grade, in preference and instead of the applicant.

Fr. Saveriades, for the applicant.

A. Evangelcu, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:—

A. LOIZOU, J. : The applicant by the present application attacks the validity of the appointment of A. Christodoulou and S. PapaOnisiforou to the post of Customs and Excise Officers 2nd Grade, in preference and instead of himself as being null and void and of no effect.

The ground of law upon which the application was based was that the decision of the respondent Commission was null and void as being contrary to Article 146 of the Constitution. The right, however, was reserved for further grounds to be furnished in due time. In view of this, the case has proceeded and it was argued on the basis that the respondent Commission in reaching the *sub judice* decision has wrongly exercised its discretion and acted in abuse and excess of power, by ignoring the seniority in service of the applicant and also, whereas reasons were given for some applicants individually, as appearing in blues 22-23 the same was not done for applicant.

The applicant was first appointed in the Government service as a Coast Watcher of the Department of Customs and Excise on the 1st November, 1943. From 1944 to 1953, he was a temporary Clerical Assistant and from 1953-1957, he was promoted to the post of Customs and Excise Officer 3rd Grade, but was degraded to the post of Customs Preventive Man on 28th February, 1957, because of his failure to pass the examinations required for the post of Customs and Excise Officer 3rd Grade. (See bl. 28 of *Exhibit 2*). As from the 1st August, 1967, he has been serving as a Senior Customs Guard in the department of Customs and Excise.

The interested parties Christodoulou and PapaOnisiforou entered the Customs and Excise service as officers 3rd Grade in 1964 and 1965, respectively, a post which is immediately lower to the post of 2nd Grade. Although the

post of 3rd Grade was abolished in 1967, the interested parties were performing the duties of a Customs and Excise Officer. The duties performed by the applicant were altogether different to the duties performed by the two interested parties. This is also borne out by the contents of the confidential report of the 3rd July, 1970, (bl. 15-16).

The academic qualifications of the interested parties, as appearing at bl. 28, as compared with those of the applicant are of a higher standard.

Before the respondent Commission there were in all 70 applications, 41 of which were submitted by employees of the Department of Customs and Excise, as it appears from the letter of the Acting Director of this department dated 27th June, 1970, bl. 13 and 14.

The various candidates were interviewed in the morning and the afternoon of the 27th July, 1970.

The respondent Commission, as it appears from its minutes, considered the merits, qualifications and experience of the candidates, as well as their performance during the interview (*i.e.* personality, alertness of mind, general intelligence and the correctness of answers to questions put to them etc.) the recommendations made by the Acting Director of the Department of Customs and Excise, bl. 15-16, and his views expressed at the interview on each one of the candidates, and decided that the six officers mentioned therein, including the two interested parties, were on the whole the best and appointed them as Customs and Excise Officers 2nd Grade as from 1st September, 1970. The decision regarding the first five candidates was taken unanimously, whereas the decision regarding interested party Christodoulou was taken by three votes to one. The reasons given for the four individual cases in the same *exhibit* refer to the eligibility or not of those four candidates for appointment and that had nothing to do with the applicant.

In the recommendation of the head of department of the 3rd July, 1970, bl. 15-16, all candidates are divided into four groups under paragraphs 2, 3, 4 and 5. The interested parties are, with five others, in the first group—para. 2 of recommendation—and are described as having “extensive experience in Customs and Excise matters. Their service record is highly satisfactory and they are strongly recommended for appointment”. They are placed therein in order of merit, interested party PapaOnisiforou placed 4th and A. Christodoulou placed 7th. Then another 11 candidates—para. 3 of recommendation—from the Clerical Staff are in the second group and are described as having

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acquired some experience in Customs and Excise and they are also recommended. The next 11 candidates are in the third group, among them the applicant—para. 4 of recommendation—and are described as “having become acquainted with Customs and Excise matters”. Finally, 12 more employees of the class of redundant daily paid staff are included in the recommendation as having “acquired some experience in Customs and Excise matters”. In the concluding paragraph of that recommendation it is stated :

“ I submit that there is a sufficient number of suitable officers in the list of names stated in paragraphs 2 and 3 above, and that the merit of no one of the staff listed in paragraphs 4 and 5 is so high as to compel detailed consideration of their suitability for appointment.”

With regard to the question of seniority on the ground of longer service, raised by counsel on behalf of applicant, it is useful to refer to what was stated by the then Supreme Constitutional Court in the case of *Theodosiou* and *The Republic*, 2 R.S.C.C. p. 44 at p. 48 :

“ It is true that length of service is always one of the factors to be considered but it is not proper to treat such factor exclusively as the vital criterion always entitling to promotion the one candidate among many qualified ones, who possesses such longer service.”

The respondent Commission in this case had before it a recommendation by the head of Department wherein a comparison was made between the respective merits of the applicant and the interested parties. This being so, as stated in *Georghios Evangelou v. The Republic* (1965) 3 C.L.R. 292, at p. 297, by Triantafyllides, J. as he then was, “the Commission would normally have been expected to either follow it or give reasons for not doing so”. The respondent did follow it.

It was, therefore, reasonably open to the respondent Commission, on the material before it and the law as hereinabove briefly set out, to arrive at the decision to which they did. I am satisfied that the respondent Commission properly exercised its discretion, having weighed, as stated in the reasons for their decision, all relevant considerations.

For all the above reasons I find that this application cannot succeed and is dismissed. But in the circumstances I make no order as to costs.

Application dismissed.
No order as to costs.