

1972
June 21

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

ANDREAS
MATHEOU

v.

REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

ANDREAS MATHEOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 89/72).

Public Service and Public Officers—Transfer—Exigencies of the service—A factual issue within the discretion of the respondent Public Service Commission—Whether the Commission was under a duty to conduct an enquiry and hear the officer concerned before taking the decision to transfer him—Judicial control or review of transfers—Principles applicable—Respondent's decision to transfer the applicant by accepting proposal made by the Head of Department and acting accordingly in the exercise of its discretionary powers reasonably open to it—Sentonaris v. The Greek Communal Chamber, 1964 C.L.R. 300, Papantoniou v. The Republic (1969) 3 C.L.R. 460 and Vafeadis v. The Republic, 1964 C.L.R. 454, followed.

Transfer of public officers—Discretion—Judicial control of transfer—Principles applicable.

The facts sufficiently appear in the judgment of the learned Judge whereby he dismissed this recourse made by the applicant public officer against his transfer from Nicosia to Morphou.

Cases referred to :

Vafeadis v. The Republic, 1964 C.L.R. 454:

Papantoniou v. The Republic (1969) 3 C.L.R. 460, at p. 464;

Sentonaris v. The Greek Communal Chamber, 1964 C.L.R. 300.

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Recourse.

Recourse against the decision of the respondent Public Service Commission to transfer the applicant from Nicosia to Morphou.

C. Myriantis, for the applicant.

L. Loucaides, Senior Counsel of the Republic,
for the respondent.

Cur. adv. vult.

The following judgment was delivered by ·

MALACHTOS, J.: By this recourse, which is made under Article 146 of the Constitution, the applicant applies to the Court for a declaration that the decision of the respondents, dated 27th January, 1972, communicated to the applicant on the 5th February, 1972, to transfer the applicant, a Postal Officer, 1st Grade, from Nicosia to Morphou, with effect from the 17th April, 1972, is null and void and of no effect whatsoever.

The applicant entered the Government Service as a temporary postman in the Department of Posts on 22nd March, 1954, and on 1st August, 1956, was promoted to Postal Officer 3rd Grade. On 1st April, 1966, he was seconded to the post of Postal Officer, 2nd Grade, to which he was appointed substantively on 1st July, 1968. On 31st December, 1971, he was promoted to Postal Officer 1st Grade.

During the whole of his service in the Department of Posts the applicant was posted in Nicosia, except on two occasions and for a short period of time when he served at Kyrenia (13.8.1954 to 3.9.1954) and Famagusta (5.5.1959 to 4.7.1959) respectively.

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On the 14th January, 1972, the Director of the Department of Posts submitted to the Public Service Commission a proposal (*exhibit 1*), for the transfer of the applicant from Nicosia to Morphou as from 17th April, 1972. The reasons for such transfer appear in paragraph 6 of the said proposal, which reads as follows :

“In view of his recent promotion to the post of Postal Officer, 1st Grade, with effect from 31st December, 1971, he should undertake higher responsibilities by being placed in charge of the Post Office at Morphou.”

At its meeting of the 26th January, 1972, the Public Service Commission took the following decision, which appears in the extract from the relevant minutes, *exhibit 2*, and reads as follows :

“The transfer of Mr. Andreas Matheou has been proposed in view of his recent promotion to the post of Postal Officer, 1st Grade, and it is essential that he should undertake higher responsibilities by being placed at Morphou. As a replacement in Nicosia, the transfer of Mr. Georghios Koullouris has been proposed.

Bearing in mind that the transfer of the above officers has been proposed for the benefit and the exigencies of the service, the Commission decided that the officers in question be transferred as follows :

1. Andreas Matheou—from Nicosia to Morphou with effect from 17/4/1972;
2. Georghios Koullouris—from Morphou to Nicosia with effect from 18/4/1972.”

The said decision was communicated to the applicant on 5th February, 1972, by letter dated 27th January, 1972. By letter dated 20th March, 1972, *exhibit 4*, addressed to the Chairman of the Public Service Commission, the applicant applied for reconsideration of the said decision, which, according to his view, was unjust and unjustifiable, and gave various reasons including his personal and

family circumstances.

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By letter dated 31st March, 1972, *exhibit* 5, addressed to the Director of Posts, through the Director-General of the Ministry of Communications and Works, to which a copy of *exhibit* 4 was attached, the Public Service Commission was asking the Director of Posts to submit to them, the soonest possible, his views on the matter. However, the applicant before receiving any reply, filed on the 11th April, 1972, the present recourse.

I must, therefore, make it clear from the outset that in this judgment I shall only deal with the facts and circumstances of this case as they stood before the 20th March, 1972, the date on which *exhibit* 4 was written.

It has been argued on behalf of the applicant that :-

1. The decision complained of was arrived at without a chance being given to the applicant to make known his circumstances and make his submission thereon and without such circumstances becoming known to the respondents. And, in any event, without conducting a proper enquiry into and weighing of such circumstances;

2. The decision complained of is not reasoned adequately or at all; and

3. The transfer of the applicant to Morphou is not justified by the exigencies of the service in that, having regard to the needs of the Nicosia District Post Office for Postal Officers, 1st Grade, and to the experience of the applicant and qualifications, his services are mostly needed in Nicosia rather than at Morphou.

On the other hand, it has been argued on behalf of the respondents that the decision complained of was lawfully taken after all relevant facts and circumstances were taken into consideration.

Now, in view of the fact that the transfer of the applicant is neither a punitive one for disciplinary reasons nor an arbitrary one, the first submission on his behalf that the Public Service Commission had a duty to

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conduct an enquiry and hear the applicant before taking a decision to transfer him, cannot stand. See, *inter alia*, *Stavros Sentonaris v. The Greek Communal Chamber*, through *The Director of Greek Education*, 1964 C.L.R. 300 and *Demetra Papantoniou v. The Republic* (1969) 3 C.L.R. 460 at page 464.

Neither do I find any substance in the second submission, that the relevant decision was not duly reasoned. The formulation of the reasoning of the said decision, as it appears in *exhibit 2*, is clear and unambiguous.

The third and last submission on behalf of the applicant, as I have already said, is that his transfer to Morphou is not justified by the exigencies of the Service. No doubt the issue of the exigencies of the Service is a factual one, and it is a well established principle of administrative law that factual issues are in the discretion of the administrative bodies. In the case of *Costas Vafeadis v. The Republic of Cyprus*, through *The Public Service Commission*, 1964 C.L.R. 454, at page 465, Triantafyllides, J., as he then was, had this to say:

“The possibility of judicial interference with the exercise of discretion by administrative bodies in case of transfer has been dealt with in the case of *Stavros Sendonaris v. The Greek Communal Chamber*, 1964 C.L.R. 300. The effect of the principles adopted in that case is that the exercise of the discretion of the administration, in relation to the reasons dictating a transfer, is not subject to the control of an Administrative Court except if there exists an improper use of the discretionary power, or a misconception concerning the factual situation, or the non-taking into account of material factors.”

In the present case it appears that the Public Service Commission accepted the proposal made by the head of the department of the applicant and in the exercise of their discretionary powers acted accordingly. I do not, therefore, find any cause for interfering with the exercise of the discretion of the Public Service Commission in reaching their decision to transfer the applicant. It was reasonably open to them to decide in the way they did.

For all the above reasons this recourse fails.
In the circumstances of this case I have decided that
there will be no order as to costs.

Application dismissed.
No order as to costs.

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