

1976
Febr. 28

[A. LOIZOU, J.]

—
MICHAEL
ANDREOU
AND ANOTHER
v.
CYPRUS
BROADCASTING
CORPORATION

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHAEL ANDREOU,

Applicant,

and

THE CYPRUS BROADCASTING CORPORATION,

Respondent.

and

GEORGHIOS GOGAKIS,

Applicant,

and

THE CYPRUS BROADCASTING CORPORATION
THROUGH THE COUNCIL OF IT,

Respondent.

(Cases Nos. 358/73 and 435/73).

*Public Officers—Promotions—Post of Technical Superintendent in the
Cyprus Broadcasting Corporation—Qualifications—No miscon-
ception of fact regarding applicants' qualifications—Seniority—
It ought to prevail if all other things are more or less equal—
Which were not equal in view of the different assessment made in
respect of the candidates' merits—Sub judice promotions reason-
ably open to the respondent on the totality of the material before
them and were reached in a proper exercise of administrative
discretion.*

5

The applicants in these recourses challenged the validity of the promotions of the interested parties to the post of Technical Superintendent.

10

Both applicants contended that their seniority, as against the interested party, has been disregarded. Applicant Andreou further contended that the appointing organ has acted under a misconception of fact regarding his qualifications; and applicant Gogakis contended that there has been a misconception of fact regarding the character of a practical course that he had taken abroad.

15

5 *Held*, (1) that as respondents when considering the qualifications of candidates they go by what exists in their personal files it was up to the applicant to submit (in accordance with a circular issued to that effect) all certificates regarding his qualifications for inclusion in his personal file; and that, accordingly, on the material in the file there could not be any misconception of fact.

10 (2) That as the significance of the course has been assessed by the Chief Engineer of the respondent Board, a man most suitably qualified to decide as to the character of a particular course, this Court is not prepared to disagree with his assessment; and that, accordingly, it cannot be accepted that on the material in the file there could be either any misconception of fact, or that there could arise the possibility of any doubt as to the facts (see
15 *Mallouros & Another v. The Electricity Authority* (1974) 3 C.L.R. 220 at p. 224).

20 (3) That seniority ought to prevail when all other things are more or less equal; that on the material before the Court and particularly in view of the different assessments made in respect of applicants' merit, all things were not equal.

25 (4) That on the totality of the material before the respondent Board it appears that there was a proper exercise of their administrative discretion in the matter, inasmuch as all relevant factors were taken into account; and that, accordingly, it was reasonably open to the respondent to arrive at the *sub judice* decision and no reason has been shown why this Court should interfere with same.

Applications dismissed.

Cases referred to:

30 *Partellides v. Republic* (1969) 3 C.L.R. 480;
Mallouros & Another v. The Electricity Authority (1974) 3 C.L.R.
220 at p. 224.

Recourses.

35 Recourses against the decision of the respondent to promote the interested parties to the post of Technical Superintendent in preference and instead of the applicants.

I. Nicolaou (Miss), for the applicant in Case No. 358/73.

P. Ioannides, for the applicant in Case No. 435/73.

K. Chrysostomides, for the respondent in both Cases.

40 *Cur. adv. vult.*

1976
Febr. 28

—
MICHAEL
ANDREOU
AND ANOTHER
v.
CYPRUS
BROADCASTING
CORPORATION

The following judgment was delivered by:—

A. LOIZOU, J.: The applicant in recourse No. 358/73, (hereinafter referred to as “applicant Andreou”), challenges, by the said recourse, the validity of the appointment and/or promotion of Andreas Patsios and Andreas Ktorides, to the post of Technical Superintendent, whereas applicant in recourse No. 435/73. (hereinafter referred to as “applicant Gogakis”), challenges the validity of the appointment and/or promotion of interested party Ktorides only.

5

The *sub judice* decision was taken on the 26th July, 1973, and the relevant minute (*exhibit 1‘A’*), reads as follows:

10

“The Board considered the minutes of the Advisory Selection Committees for the posts.... Technical Superintendent and adopted same. Then, having heard the Director-General, decided to make the following promotions:

15

.....
.....
(e) Andreas Patsios) to the post of
Andreas Ktorides) Technical Superintendent.”

There were two vacancies in the post of Technical Superintendent, one in the Sound Studio Maintenance and the other in the Tele Cine Suite and there were seven applicants for both posts, among whom the two applicants and the interested parties.

20

The Advisory Selection Committee, in the minutes of which (*exhibit 1‘E’*), one may see clearly the career of the applicants and the interested parties with the respondent Corporation, as well as their qualifications and their previous selection for promotion, after examination of the applications in conjunction with the schemes of service, found that all the applicants possessed the required qualifications for both posts and decided to invite them to an oral interview. At the request of the representatives of the staff, reference was mentioned also in the minutes with regard to those candidates that were found, in the past, suitable for promotion, to the post of Technical Superintendent. After the meeting of the Advisory Selection Committee of the 5th June, 1973, namely, on the 14th June, 1973, on the request of the Deputy Director-General, the Chief Engineer and the Assistant Chief Engineer submitted a report to the Director-General on the candidates who had applied for the

25

30

35

two vacant posts of Technical Superintendent. (*Exhibit 1'D*).
The following extract is to be found on page 1 thereof:

5 " A. Patsios, G. Gogakis and A. Ktorides also possess the
Final Certificate which means that they have passed the
4th year examinations at one sitting and thus can proceed
to the Full Technological Certificate. Mr. M. Andreou
does not have the Final Certificate and cannot proceed to
the Full Technological Certificate".

10 According to the relevant records, Michael Andreou, Andreas
Patsios and George Gogakis were all appointed to the post of
Technical Assistant on the 1st December, 1968, applicant Andreou
is senior to the interested parties, and interested party Ktorides
was appointed to the same post on the 1st November,
15 1969. The seniority of the first three has to be determined by
reference to their previous service which is as follows: Applicant
Andreou, was appointed to the post of Technician, on
1. 12. 64, applicant Gogakis on 16. 10. 67, interested party
Patsios on 1. 9. 67.

20 The Chief Engineer and his Assistant recommended for pro-
motion four candidates, among whom were the interested parties
Patsios and Ktorides, but excluded therefrom the two applicants.
This was the material that went to the Board of the respondent
Corporation which accepted this recommendation which se-
lected out of the four candidates the two interested parties,
25 though they were third and fourth, in order of preference, in the
recommendations of the Chief Engineer and Assistant Chief
Engineer, this shows that the Board of the respondent Cor-
poration exercised its own competence on the matter and made its
own selection.

30 As stated in evidence by Mr. Astreos, the Chief Engineer of
the C.B.C. the qualifications of each member of the Technical
staff which comes under him, are mainly found in their personal
files, because, as soon as each one of them obtains a particular
qualification, he submits the relevant certificate, in accordance
35 with a circular issued to that effect, and being also in his interest
to do so; it is then photocopied and filed in the respective per-
sonal files.

40 In the course of the hearing of this case, the Final Certificate
of the City and Guilds for applicant Andreou was produced
(*exhibit 14*), as well as a letter dated the 16th December, 1974

1976
Febr. 28
—
MICHAEL
ANDREOU
AND ANOTHER
v.
CYPRUS
BROADCASTING
CORPORATION

(*exhibit 15*), signifying the approval of the Institute for applicant Andreou to enter for its examinations, as an external candidate, in Part III, which, I understand, is the Full Technological Certificate. These facts were claimed to substantiate the ground of misconception of fact relied upon in respect of applicant Andreou regarding his qualifications, in the sense that in the report prepared by Mr. Astreos (*exhibit 1 'D'*), he was shown as not possessing the Final Certificate, as compared with applicant Gogakis and interested parties Patsios and Ktorides. 5

It was further argued that on the strength of the passes of the 12 subjects passed by applicant Andreou, as shown in *exhibit 1 'E'*, he was entitled to be treated as possessing the Final Certificate. It has not been claimed that the applicant did at any time submit this certificate (*exhibit 14*) to the respondent Authority. In his application for the *sub judice* post (Red 85, *exhibit 2*), he refers to the certificates submitted, which, as mentioned therein, were attached to his previous application of the 26th April, 1973, where, again, this certificate is not attached. 10 15

Mr. Astreos stated that when considering the qualifications of candidates, they go by what exists in their files, and applicant Andreou, at the time, had Telecommunication Principles C, passed in May—June 1969, (Red 62 A in *exhibit 2*) and Telecommunication Radio C, passed in May—June, 1970 (Red 69 A in *exhibit 2*). As these two examinations were not passed at one sitting, according to the relevant City & Guilds Regulations, (*exhibit 17*), applicant Andreou could not benefit from any exception to this Regulation at the time and in view of the material that the applicant Andreou had chosen to put in the file at the time, the conclusions of the Chief Engineer were correct. The explanations given by him in respect of the certificate (*exhibit 14*) were that either applicant Andreou was in possession of passes in individual subjects which he did not present to them and they were not aware of them or that he was not in possession of these passes at the time, but as the City & Guilds Regulations regarding the award of certificates are modified from time to time, he probably took advantage of a later relaxation and applied and was awarded the certificate. In the circumstances, therefore, if anything, applicant Andreou had to blame himself for this situation. He could only be treated as entitled to the Final Certificate, according to the City & Guilds Regulations (*exhibit 17*, p. 51 6(c)) if he had forwarded for inclusion in his file a certificate that he had failed “one only of the T 2 papers 20 25 30 35 40

and obtained a grade 7 on that paper and that he had attempted it again by itself within a period of not greater than 14 months” which, information was lacking from his file. In any event, these qualifications were not among the minimum required for the *sub judice* post, but as a prerequisite for proceeding to the Full Technological Certificate, a necessary qualification for the next higher post, that of engineer.

It was further complained on behalf of this applicant, that on account of his seniority he should have been preferred as against the interested parties. As stated in the case of *Partellides v. The Republic* (1969) 3 C.L.R. p. 480, “all other things being more or less equal, seniority ought to prevail”.

On the material before me and particularly so in view of the assessment of this applicant made by the Chief and Assistant Chief Engineers, (*exhibit 1 ‘D’*), all things were not equal, though seniority appears to have been duly taken into account.

On the totality of the material before the Board of the respondent Corporation it appears that there was a proper exercise of their administrative discretion in the matter, inasmuch as all relevant factors were taken into account and it was reasonably open to them to arrive at the *sub judice* decision, after taking into account the suggestions and proposals of the Advisory Selection Committee, as well as the report prepared by the Chief Engineer and his Assistant, the views of the Director-General and no reason has been shown why this Court should interfere with same. Therefore, the recourse of applicant Andreou fails.

I turn now to the applicant Gogakis who, in addition to his other qualifications, he had taken a course on Television Studio work in Germany and in respect of which the following is to be found in the report of the Chief Engineer and his Assistant, *exhibit 1 ‘D’*: “He has taken a practical course on Television Studio work in Germany from which he has profited on the purely practical side. However, the importance of this course should not be over-estimated by people who are not familiar with the work of the technical staff, particularly since a great deal of his time abroad was spent in learning the German language in preparation for the course”. The significance of this course was examined on a previous occasion and, in fact, the Chief Engineer asked both applicant Gogakis, as well as the German Authorities to supply information regarding the exa-

1976
Febr. 28

MICHAEL
ANDREOU
AND ANOTHER
v.
CYPRUS
BROADCASTING
CORPORATION

mination questions, but did not receive them. In the circumstances, a proper inquiry was carried out.

Going through the relevant material in the file, I am not prepared to disagree with Mr. Astreos, a man most suitably qualified to decide as to the character of a particular course relating to his profession. If anything, Mr. Astreos is a man who impresses with his thoroughness. Therefore, I do not accept that on the material in the file there could be either any misconception of fact, or that there appears to have arisen the possibility of any doubt as to the facts. (See *Mallouros & Another v. The Electricity Authority* (1974) 3 C.L.R. 220 at p. 224).

It was also complained that there has been a misconception of material fact arising from the statement found in *exhibit 1 'D'* that Patsios, Gogakis and Ktorides possessed the Final Certificate and they were treated as having passed the 4th year examination at one sitting, which is not the case. Gogakis passed both examinations in December, 1972, which means that he obtained the qualification under the rule and not under the exception as Ktorides. Mr Astreos explained that when examining the qualifications of candidates with regard to promotions, they attribute importance only to the fact of possessing a particular certificate and not to the grades. In any event, this does not appear to have been material, in the circumstances, because, in the assessment of the Chief Engineer regarding applicant Gogakis and interested party Ktorides, we have the following observations:

“ Mr. G. Gogakis, when given the chance to speak before the Board, spoke as if he was the central figure of the Television Studio Section, describing his achievements in a manner which produced smiles to his superiors, who knew something about the facts His performance before the Board followed exactly the descriptions and impressions we had of him before, as a big talker but without any solid foundation for his assertions”.

Whereas Ktorides was described as having left the Board with very good impressions and as being:-

“ Serious, hard-working and with a lot to show for his relatively short stay in the Technical section of the Division. It is a pity that his experience has been mostly in the audio equipment and has little Television equipment knowledge.

This however is through no fault of his own, since he has never been given an opportunity to be acquainted with TV equipment."

5 It is apparent, therefore that in performing their duty to select
the most suitable candidate for the post in question and bearing
in mind all this relevant material, including the seniority of
applicant Gogakis as against Ktorides, a seniority which, as
already stated should prevail if all other factors were equal,
10 which do not appear to be in this case in view of the different
assessments made in respect of their merit, the *sub judice* deci-
sion was reasonably open and was reached in a proper exercise
of administrative discretion and nothing has been shown en-
titled me to interfere with it. Therefore, this recourse fails too.

15 In the result the *sub judice* decisions are confirmed and both
recourses are dismissed, but there will be no order as to costs.

Applications dismissed. No order as to costs.

1976
Febr. 28

—
MICHAEL
ANDREOU
AND ANOTHER
v.
CYPRUS
BROADCASTING
CORPORATION