

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION
TAKIS CHRISTOU,

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TAKIS
CHRISTOU

v.

REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 133/73).

5 *Public Officers—Confidential reports—Reporting and countersigning authority—Within the discretion of the Head of Department—General Orders, Appendix A.II/2.9 paragraph 4—Reporting officer acting as such without written authorization from Head of Department—Adoption by Head of Department of views of reporting officer and expression of his own views as well—Even if there was any violation of law such violation is of no substantial form because of said adoption.*

10 *Public Officers—Promotions—Chief Inspector Department of Customs and Excise—Interested party with better confidential reports on the whole—And recommended by Head of Department—Sub judice decision a duly reasoned one—Its reasoning appearing in the relevant minute of the respondent Public Service Commission, duly supplemented, also, by the material in*
15 *the file—Sub judice promotion could reasonably be taken by the Commission—Applicant upon whom the burden lay to show that he had striking superiority over the interested party has failed to discharge such burden—Moreover said promotion being one concerning a high office the Appointing Authority is vested with quite wide discretionary powers—Frangos v. The Republic (1970) 3 C.L.R. 312 at p. 343.*

20 *Administrative Law—Bias—Rule against bias—Those participating in the taking of an administrative decision must be impartial and unbiassed—Instance relied upon by applicant not revealing any bias.*

25 *Administrative Law—Discretionary powers—Administrative deci-*

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*sion taken as a result of the exercise of discretionary powers—
Court not entitled to substitute its own discretion for that of
the administration.*

The applicant in this recourse challenged the validity of the decision of the respondent Commission to appoint the interested party to the post of Chief Inspector in the Department of Customs and Excise.

The interested party had better confidential reports and he was recommended for promotion by the Head of Department; there was no marked difference as far as their qualifications were concerned and they both possessed the qualifications required by the relevant scheme of service.

Counsel for the applicant contended:

- (a) That the confidential reports concerning the applicant for the years 1969 and 1970 were prepared by an officer (Chief Inspector Makrys) who had no authority to do so under General Order II/2. 8-9 and Appendix AII/2.9.
- (b) That in view of the fact that the Head of Department had been the investigating officer and a witness in previous disciplinary proceedings against the applicant the respondent Commission should not have relied on his recommendation regarding the filling of the post in question.
- (c) That in view of the participation of the said Chief Inspector (Makrys) in the said disciplinary proceedings the Commission should not have had before it the confidential reports prepared by him on the applicant.
- (d) That the respondent Commission failed to give effect to the judgment of the Supreme Court by means of which the disciplinary punishment that was imposed in the above disciplinary proceedings was annulled. Counsel argued in this connection that the Commission had to be informed of the reasons of the annulment before proceeding to fill the vacancy in question.
- (e) That the respondent Commission failed to exercise its discretion in the matter; that it failed in its par-

amount duty to select the most suitable candidate for the post as the applicant had on account of his merit, qualifications, experience and seniority, striking superiority as compared with the interested party; and that there was a lack of proper inquiry and the *sub judice* decision was not duly reasoned.

Regarding contention (a) above Mr. Makrys acted as reporting officer in the report for 1969 on oral instructions from the Head of Department and with regard to the report for 1970 he did so on the strength of a circular dated December 14, 1970. In both these reports the Head of the Department acted as countersigning officer.

Held, dismissing the recourse (1) that there has not been any irregularity regarding the confidential reports for the years 1969-1970; that the arrangement as to who would have reporting and countersigning authority in big Departments, particularly those which are physically dispersed and housed in various parts of the Island, is left by para. 4 of the said Appendix AII/2 to the discretion of the Head of the Department concerned; that, if anything, the fact that the Director of the Department signed as countersigning officer and in addition to agreeing and adopting what was stated by Mr. Makrys, expressed his own views as well, shows that he approved of Makrys reporting on both officers and by his conduct ratified the diversion, if any, from his circular which he had, shortly before, sent out; that even if it was considered to be a violation of law, it is not a violation of substantial form, for the reasons hereinabove given, namely, the adoption of the assessment of Makrys for the applicant, and the interested party, as if they were his own, which, adoption makes them in fact, his own views; and that, accordingly, contention (a) must fail.

(2) That it is a general principle of administrative law that those participating in the taking of an administrative decision must be impartial and unbiassed; that in the present case neither the instances relied upon on behalf of the applicant nor the contents of the confidential reports or the recommendation of the Head of the Department reveal any bias or any other ground for which they should be ignored, or as claimed, excluded from the material that was placed before the Commission at its deliberation, or that the *sub judice* decision should be annulled on the ground that it was influenced by bias or enmity; and that, accordingly, contentions (b) and (c) above must fail.

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(3) That from the material in the file and the relevant record it is clear that the respondent Commission was duly informed of the annulment by the Court of their decision in the disciplinary proceedings; that for the purposes of their deliberations for the *sub judice* decision they did not have to obtain the reasons for that judgment, which, in fact, had not been recorded; and that, accordingly, contention (d) must fail.

(4) That considering the case as a whole and that the taking of the *sub judice* decision was the result of the exercise of discretionary power by the administration and that in law this Court is not entitled to substitute its own discretion for that of the appropriate organ, this Court has come to the conclusion that the *sub judice* decision could reasonably be taken by the respondent Commission; that the applicant upon whom the burden lay to show that in the circumstances he had striking superiority over the interested party has failed to discharge same (see *Evangelou v. The Republic* (1965) 3 C.L.R. p. 292 at p. 300); that the interested party had better confidential reports on the whole and in addition there was the recommendation of the Head of the Department which was supported by and was consistent with the material in the file, and the *sub judice* decision is duly reasoned, its reasoning appearing in the relevant minute of the respondent Commission, duly supplemented also by the material in the file; that, moreover, it should be borne in mind that as stated in *Frangos v. The Republic* (1970) 3 C.L.R. p. 312 at p. 343, "in selecting the most suitable candidate for appointment to high office in the administrative structure, the appointing authority is vested with quite wide discretionary powers"; and that, accordingly, the recourse must be dismissed.

Application dismissed.

Cases referred to:

Evangelou v. Republic (1965) 3 C.L.R. 292 at p. 300;

Frangos v. Republic (1970) 3 C.L.R. 312 at p. 343.

Recourse.

Recourse against the decision of the Public Service Commission to promote the interested party to the post of Chief Inspector in the Department of Customs and Excise, in preference and instead of the applicant.

K. Talarides, for the applicant.

N. Charalambous, Counsel of the Republic, for the respondent.

Cur. adv. vult.

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The following judgment* was delivered by:-

5 A. LOIZOU, J.: The applicant by the present recourse seeks the annulment of the decision of the respondent Commission by which the interested party Ioannis Evripidou was promoted to the permanent post of Chief Inspector, Department of Customs and Excise.

10 This is a promotion post and under the relevant scheme of service, candidates should have served in senior posts not below the rank of Assistant Collector, for a period of at least seven years. When the filling of this vacancy was considered on the 21st March 1973, the respondent Commission first compared the post of Deputy Chief Inspector to that of Senior Collector of Customs and Excise, both of which are on salary scale 23. Under the relevant scheme of service of Deputy Chief Inspector, an officer serving in that post must either assist the Chief Inspector in the performance of his duties and in the discharge of his responsibilities and to deputize for him, when necessary or perform the duties of Senior Collector of Customs and Excise. On the other hand, according to the duties and responsibilities of the scheme of service for the post of Senior Collector of Customs and Excise an officer serving in this post must either perform in Famagusta Collection all the duties and responsibilities of a Collector of Customs and Excise or perform the duties of Deputy Chief Inspector. In view of the above and having regard to section 30(3) of the Public Service Law, 1967, a definition section as to what are the categories of offices for purposes of appointment or promotion, the respondent Commission decided that the officers serving in the posts of Deputy Chief Inspector and Senior Collector of Customs and Excise, should be taken into consideration in filling the vacant post of Chief Inspector.

The minute of the meeting of the respondent Commission held on the 21.3.1973 when the *sub judice* decision was taken, is concluded as follows:

40 "The Commission then considered the merits, qualifications, seniority, service and experience of the of-

* An appeal has been lodged against this judgment.

ficers serving in the post of Deputy Chief Inspector, as well as those of the officers serving in the post of Senior Collector of Customs, as reflected in their Personal Files and in their Annual Confidential Reports.

The Director of the Department of Customs and Excise in his letter No. 2 of 16.3.73 recommended Mr. J. Evripidou, who was serving in the post of Chief Inspector. The Director of the Department reiterated the above recommendation at this meeting.

The Commission after giving due consideration to the Annual Confidential Reports of all the candidates as well as to the relevant recommendations of the Director of the Department of Customs and Excise, decided that Mr. J. Evripidou was on the whole the best and that he be promoted to the permanent post of Chief Inspector w.e.f. 1.4.73".

The applicant started as a student pharmacist in 1937, but as he was receiving no remuneration for this training, he stopped and became a Customs and Excise Officer, 6th Grade, in 1940, a Chief Inspector, Preventive Service on the 1st April, 1956, Collector of Customs on the 1st January, 1964 and Deputy Chief Inspector on the 1st August, 1967.

Interested party Evripidou joined the service as a temporary clerk, 4th Grade in 1944, becoming a Customs and Excise Officer, 2nd Grade in 1948, Customs and Excise Officer, 1st Grade in 1961, Assistant Collector of Customs on the 1st July, 1965 and Senior Collector of Customs on the 1st August, 1967.

As far as their qualifications are concerned, there is no marked difference. They are both graduates of secondary schools and passed the usual Government Examinations. A ground of law that the interested party did not possess the required qualifications under the scheme of service, was not pursued to the end. With regard to their confidential reports, it is necessary to make extensive reference than what is usually done in similar cases on account of the grounds of law which, in due course, will be considered, and also in order to see the views of different reporting officers at different periods.

The applicant for the year 1968 is reported upon by Mr. Philippides who also signed same as countersigning officer, in his capacity as the Director of the Department. He is described therein as an officer possessing very good
5 knowledge of all Customs and Excise matters and very well experienced on prosecution procedures, as well as a sharpminded and persevering officer, ambitious and enthusiastic in his dealings. Of the ten ratable items he is rated as very good in six of them, excellent in another two,
10 reliable in one and as to general intelligence he is rated as above average.

For the year 1969 he is reported upon by Mr. Makrys the Chief Inspector of the Department of Customs and Excise who expresses the view that "This officer possesses
15 a wide knowledge of law and wide experience in Customs matters, especially in preventive work, but very little experience in excise matters. He possesses sound judgment, administrative and organizing ability, but needs improvement in staff management and emotional stability. Takes
20 offence easily and harbours ill-feelings unduly long".

In five out of the ten ratable items he is rated as very good, good in four and his general intelligence is described as excellent. The countersigning officer agrees with the
25 assessment and expresses the view that the applicant is "a sharp-minded officer who could have done a lot better if his abilities were harnessed to his work. Normally erratic in his behaviour and inconsistent in his efforts".

For the year 1970 Mr. Makrys reiterates "good all-round knowledge of Customs and Excise work and legisla-
30 tion but his zeal in the performance of his duties is not of the degree expected of an officer holding such a high post. In reporting on problems arising in the Department, he tends to go to much detail but he sometimes misses the essence". His rating is the same as in the previous year.
35 The Director of the Department of Customs and Excise, Mr. Tatianos, as a countersigning officer, agrees with the said assessment and adds that he would expect more of an officer of his status.

For the year 1971 Mr. Tatianos as both reporting and
40 countersigning officer, observes that the applicant is "an officer with keen perception and conception, limited in his

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contribution by verbosity and lack of perseverance". The rating is more or less the same as with all preceding years.

For the year 1972 the applicant is reported upon by Mr. Tatianos once more, who observes that "the officer displays flashes of genius but often fails to achieve results by sustained effort. He penetrates problems quickly but does not always produce solutions".

The confidential report for the interested party for the year 1968 was also prepared by Mr. Philippides, both as a reporting officer and countersigning one, in his capacity as Director of the Department of Customs and Excise. He expresses the observation therein that "one of the distinguished virtues of this officer is the objective way he looks into all matters coming within his competence". He is rated as reliable, excellent in matters of courtesy in dealing with the public and ability to co-operate with colleagues, well devoted to duty with high initiative, accurate and very good on the remaining ratable items. He further expresses the view that the interested party is a well-balanced and sound minded officer and endowed with management abilities.

For the year 1960 the reporting officer is Mr. Makrys, the same as in the case of the applicant, who expresses the view that "this officer possesses sound judgment and wide knowledge of law and practice relating to all customs matters, including excise. Emotionally mature, self-confident and of high ethical standards, he has a marked ability to administer, organise and manage staff by gaining their confidence. Ability to diagnose, analyse and solve problems". He is rated as excellent in eight out of the ten ratable items and very good in the remaining two. The countersigning officer expresses the view that he is an honest and reliable officer who tries hard to give satisfaction, well-balanced and persevering in his efforts, he achieves results and commands the respect of subordinate staff. May be not brilliant, but certainly above average.

For the year 1970 the reporting officer is again Mr. Makrys who observes the following: "He has a very good all-round knowledge of Customs and Excise work and legislation and possesses a marked ability to penetrate problems. Of very good character and dependability. He is

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5 remarkably able to lead and inspire staff and to gain the confidence of others. Emotionally mature, he is highly effective in solving problems and obtaining results". He is rated as excellent in six out of ten ratable items, very good in the three and his general intelligence is described as above average. The countersigning officer Mr. Tatianos expresses the view that he is "an upright, quietly efficient officer with a marked ability to command staff and situations".

10 For the year 1972 he is again reported by Mr. Tatianos who observes that his reports are brief and to the point. "He controls staff with a firm hand and commands respect both from the staff and from the public. Displays marked willingness to assume responsibility, penetrate problems and produce answers". He is rated the same as in the previous years.

20 The first point relevant to the confidential reports raised by learned counsel for the applicant as an additional ground arising from the material in the file, is that two confidential reports, one for the year 1969 and the other for the year 1970, were prepared by Mr. Makrys who was the Chief Inspector at the time and who had no authority to do so. This is based on General Order II/2.8-9 of the General Orders, 1955, and Appendix AII/2.9 which
25 orders deal with the preparation of confidential reports and the responsibility of Heads of Departments for delegating explicitly to certain officers, authority for the preparation and countersigning of confidential reports. Under the Appendix, it is recognised that in most cases the
30 head of department would wish to be the countersigning officer, but details for such arrangements are left to the discretion of the Heads of Departments concerned.

35 Reliance was placed also on a Circular of the Director of the Department of Customs and Excise, dated the 5th January, 1970 (copy of which has been produced as *exhibit* 12), where in accordance with the aforesaid General Orders, reporting and countersigning authority was delegated to a number of officers enumerated therein for the purpose of annual confidential reports. Under the said
40 Circular, for the posts held by the applicant and the interested party at the time, the reporting and countersigning officer was to be the Director of the Department himself.

By a later Circular dated the 14th December, 1970 (*exh. 13*) there was a new delegation of authority, whereby, for the post of the Deputy Chief Inspector and Senior Collector of Customs reporting officer was to be the Chief Inspector with the Director as countersigning officer. Therefore, there could be no complaint that Mr. Makrys who is the reporting officer for the year 1970 for both the applicant and the interested party was not properly authorized at the time to prepare same.

With regard to the confidential reports for the year 1969 to which the second Circular (*exhibit 13*) did not apply, it was stated by learned counsel for the respondents that after issuing the first Circular (*exhibit 12*), the Head of the Department considered it fair for officers of the rank of the applicant and the interested party to have the Chief Inspector as the reporting officer instead of himself, who would remain the countersigning officer and that on account of oral instructions the reporting officer for both of them for the year 1969 was Mr. Makrys, the Chief Inspector and the Director of the Department signed as a countersigning officer. Hence the situation was changed, when the subsequent Circular (*exh. 13*) was issued.

In the light of the above I do not consider that there has been any irregularity under the circumstances. The arrangement as to who would have reporting and countersigning authority in big Departments, particularly those which are physically dispersed and housed in various parts of the Island being left by para. 4 of the aforesaid Appendix, to the discretion of the Head of the Department concerned. If anything, the fact that the Director of the Department signed as countersigning officer and in addition to agreeing and adopting what was stated by Mr. Makrys, expressed his own views as well, shows that he approved of Makrys reporting on both officers and by his conduct ratified the diversion, if any, from his Circular (*exh. 12*) which had, shortly before, sent out. Even if it was considered to be a violation of law, it is not a violation of substantial form, for the reasons hereinabove given, namely, the adoption of the assessment of Makrys for the applicant, and the interested party, as if they were his own, which, adoption, makes them in fact, his own views.

The second point which has relevance to the confiden-

5 tial reports and the recommendation of the Head of the Department, is the one appearing in grounds (b) and (c) of the additional grounds of law filed in the course of the hearing on behalf of the applicant, which are the following:

10 “(b) In view of the fact that the Director of the Department had been the investigating officer and a witness and as he also assisted counsel for the Republic in the conduct of the disciplinary proceedings against the applicant, the Public Service Commission should not have relied on his recommendation regarding the filling of the subject post, and

15 (c) in view of the participation of Stavros Makrys in the said disciplinary proceedings against the applicant, the Public Service Commission should not have had before it the confidential reports prepared by him on the applicant”.

20 In arguing these grounds, learned counsel for the applicant further referred to the fact that in 1967 his client was a candidate for the post of Chief Inspector for which post, Mr. Makrys was preferred. From the minute of the Commission (*exhibit 11*), there appears to have been recommended for the said post, by the Director of the Ministry of Finance and the Director of the Department, Mr. Philippides, Mr. Makrys. Mr. Philippides further stated to the Commission that there was an enormous difference between the two, Makrys being apparently more efficient on customs tariffs.

30 As against that decision applicant filed in this Court Recourse No. 118/68 which was later withdrawn. It was also pointed out by his counsel that he was the only other candidate when the filling of the post of the Director was considered and at which the present Director was preferred. Also, that soon after this appointment, there was an inquiry for alleged disciplinary offences against the applicant and Mr. Tatianos was appointed as one of the investigating officers under rule I of the second Schedule of the Public Service Law, and that he and Makrys were witnesses at the disciplinary proceedings that followed.

35 Further, that Makrys had taken statements from witnesses at the initial stages of the investigation and that two of

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these statements were withheld from the Commission, though they were contradictory to the evidence of a certain HadjiCostas who was called and testified against the applicant.

The Commission on the 30th January, 1970, acquitted the applicant on two counts and found him guilty by three votes to two on the third count on the charge, namely, that he showed forbearance to the cashing of cheques issued by insolvent persons. The disciplinary punishment imposed on him was the deferment of annual increments for three years.

Against that decision, the applicant filed Recourse No. 71/70* and on the 8th January, 1972 same was annulled by a Judge of this Court.

The allegation that the two other statements were withheld by Makrys is refuted by his affidavit filed in answer to the affidavit filed by the applicant. In the same affidavit he agreed that applicant was detailed to inquire into certain accusations made against him but the outcome of these inquiries by the applicant were that the said accusations were unfounded and no sanction was imposed on him.

It is a general principle of administrative law that those participating in the taking of an administrative decision must be impartial and unbiassed. In the present case neither the instances relied upon on behalf of the applicant nor the contents of the confidential reports or the recommendation of the Head of the Department reveal any bias or any other ground for which they should be ignored, or as claimed, excluded from the material that was placed before the Commission at its deliberation, or that the *sub judice* decision should be annulled on the ground that it was influenced by bias or enmity.

The next ground is that the respondent Commission failed to give effect to the judgment of the Court in Recourse No. 71/70 when reaching its *sub judice* decision, inasmuch as it did not have before it the said judgment of the Court and in particular its reasoning, particularly so, as one of the grounds of law in Recourse No. 71/70 was the alleged lack of impartiality in the investigation of the disciplinary charges against the applicant exhibited by the

* Vide (1972) 3 C.L.R. 32.

involvement of Makrys and the fact that the Director was the investigating officer of these charges.

5 On the 22nd January, 1973, the applicant wrote to the respondent Commission, asking them that his name was reinstated as a public officer and that anything against him by way of notes, observations possibly contained in his annual confidential reports or in any other report or document addressed to them by the Director or the Chief Inspector of Customs and Excise be erased and removed from the file. This was asked because the Director was one of the officers appointed in the carrying out of the investigations which led to his disciplinary prosecution and the Chief Inspector, as it appeared at the hearing of the recourse against him, participated actively at the first stages of the said investigation, received statements from several persons, including Mr. Demetrakis HadjiCosta who was charged before the Commission and testified as a witness against him.

20 There was no reply at the time. There was a further letter by the applicant dated the 1st March, 1973 by which the applicant was asking for readjustment of his salary scale and the addition of three increments, as well as the payment of the arrears deducted on account of his interdiction (*exh.* 14, blue 243), a matter which was eventually decided upon by the Commission long after the *sub judice* decision was reached. (*exh.* 1, File 2428/III, reds 111 and 114).

30 Counsel for the applicant further stated that according to his client the ground upon which the learned trial Judge annulled the disciplinary decision was the improper conduct of the investigations. Lack of impartiality, however, was rejected. But, he argued, whatever the ground upon which the decision was annulled the respondent Commission still had to be informed of the reasons for the annulment before it proceeded to consider the filling of the vacancy in question. From the material in the file and the relevant record, it is clear that the respondent Commission was duly informed of the annulment by the Court of their decision in the disciplinary proceedings and for the purposes of their deliberations for the *sub judice* decision, they did not have to obtain the reasons for that judgment, which, in fact, had not been recorded.

As it appears from their record, they proceeded to de-

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termine the promotion in question after a proper evaluation of the material before them. The allegations of the applicant that the Director and Makrys were biased, reached the Commission by his letter of the 22nd January, 1973, hereinabove referred to and nothing suggests that they failed to give effect to that judgment.

The *sub judice* decision is further challenged, on the grounds that the respondent Commission did not really exercise their discretion, they failed in their paramount duty to select the most suitable candidate for the post, as the applicant had on account of his merit, qualifications, experience and seniority, striking superiority, as compared with the interested party, and that there was a lack of proper inquiry and the *sub judice* decision was not duly reasoned.

Considering the case as a whole and that the taking of the *sub judice* decision was the result of the exercise of discretionary power by the administration and that in law this Court is not entitled to substitute its own discretion for that of the appropriate organ, I have come to the conclusion that the *sub judice* decision could reasonably be taken by the respondent Commission. The applicant upon whom the burden lay to show that in the circumstances he had striking superiority over the interested party, has failed to discharge same. (See *Evangelou v. The Republic* (1965) 3 C.L.R. p. 292 at p. 300). The interested party had better confidential reports on the whole and in addition there was the recommendation of the Head of the Department which was supported by and was consistent with the material in the file, and the *sub judice* decision is duly reasoned, its reasoning appearing in the relevant minute of the respondent Commission, duly supplemented also by the material in the file. Furthermore, it should be borne in mind that as stated in *Frangos v. The Republic* (1970) 3 C.L.R. p. 312 at p. 343, "in selecting the most suitable candidate for appointment to high office in the administrative structure, the appointing authority is vested with quite wide discretionary powers".

For all the above reasons the present recourse fails and is dismissed accordingly, but in the circumstances I make no order as to costs.

*Application dismissed.
No order as to costs.*