

1977

Sept. 17

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OMEROS
NISSIOTIS

v.

REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

OMEROS NISSIOTIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 248/76).

Public Officers—Promotions—Post of Administrative Officer, 1st Grade—Interested party recommended for promotion by Head of Department—Such recommendations made the overall picture of the interested party more favourable than that of the applicant—And they could not be ignored by the Commission without special reasoning being given—No striking superiority established by applicant—Sub judice decision reasonably open to the Commission.

Public Officers—Confidential reports emanating from different reporting officers—Should not be treated as constituting recommendations for the filling of the particular vacancy, but must be regarded only as constituting part of the overall picture of the merits of each candidate which the Commission had to weigh as a whole.

Public Officers—Promotions—Seniority—One of the factors which has to be taken into consideration—But not the decisive one—It only prevails if all other things are equal.

Public Officers—Promotions—Head of Department—Recommendations—Are the most material factor.

Public Officers—Promotions—Head of Department—Knowledge of candidates by—Director of Department of Personnel—Head of the Interchangeable staff—Whether he knows candidates for promotion to post of Administrative Officers 1st Grade.

Public Officers—Promotions—Public Service Commission not referring to applicant by name—But referring to all candidates

...serving in post to which applicant was serving—Nothing to suggest that he was not considered for promotion.

1977
Sept. 17

5 *Public Officers—Promotions—Qualifications constituting an advantage under the scheme of service—Cogent reasons had to be given for preferring a candidate not possessing such qualifications.*

—
OMEROS
NISSIOTIS
v.
REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

10 The applicant, who is an Administrative Officer 2nd Grade, challenged the validity of the promotion of the interested party to the post of Administrative Officer 1st Grade. In making the promotion complained of the Commission referred specifically to the three interested parties and to those possessing university qualifications; and did not refer to the applicant by his name but it stated in its minutes* that it “considered the merits, qualifications, seniority, service and experience of
15 all the officers serving in the lower post of Administrative Officer, 2nd Grade”. It, also, took into consideration the views and recommendations of the Head of Department—the Director of the Department of Personnel—who stated before the Commission that the interested party (K. Stratis) and two other
20 candidates were the best and recommended them for promotion. The applicant and the interested party possessed all the qualifications required under the relevant scheme of service and applicant was senior to the interested party by five and a half months.

25 Counsel for the applicant contended:

- 30 (a) That in view of the applicant’s qualifications, merits and seniority the respondent Commission failed in its paramount duty to select the best candidate.
- (b) That the *sub judice* decision was not duly reasoned.
- (c) That the Director of the Department of Personnel did not know the applicant and the interested party.
- 35 (d) That the applicant was not considered for promotion as the respondent Commission restricted its consideration to the three persons recommended by the Head of the Department of Personnel and those candidates who had a university degree.

Held, (after making a comparison of the respective merits, qualifications, seniority and experience of the applicant and

* See pp. 392-395 *post*.

1977
Sept. 17

—
OMEROS
NISSIOTIS
v.
REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

the interested party, and perusing their confidential reports) that the confidential reports on applicant and the interested party emanate from different reporting officers who inevitably must have used different standards in their evaluation; that these reports should not be treated as constituting recommendations for the filling of the particular vacancy, but must be regarded only as constituting part of the overall picture of the merits of each candidate which the Commission had to weigh as a whole (see *Evangelou v. Republic* (1965) 3 C.L.R. 292); and that in considering the overall picture of a candidate, the recommendations of the Head of the Department made at the meeting of the respondent Commission when considering such promotions, are the most material factor and the fact that the Head of Department considered the interested party as one of the best and recommended him for promotion cannot be ignored.

(2) That though the applicant is senior to the interested party by five and a half months, seniority is one of the factors which has to be taken into consideration; that it is not a decisive factor that governs promotions; that it only prevails if all other things are equal; and that in this case the recommendations of the Department of Personnel have made the overall picture of the interested party more favourable than that of the applicant and his recommendations could not be ignored without special reasoning being given, which, apparently, the Commission could not find on the material before it.

(3) *On the question whether the Director of the Department of Personnel knew the applicant and the interested party:* That the Director of the Department of Personnel is the Head of the interchangeable staff in the Civil Service and from the reasons appearing to have been given by him in the minutes of the Commission he must be taken to have informed himself about the merits of the people he was recommending to the respondent Commission for promotion, particularly with regard to officers holding such senior posts in the hierarchy of the general administrative staff in respect of which he is considered as the Head of Department.

(4) *On the question whether the applicant was considered for promotion:* That the respondent Commission explicitly stated in its minutes that it considered the merits, qualifications, seniority, service and experience of all the officers serving in the lower post of Administrative Officer 2nd Grade

and there is nothing to suggest that applicant was not considered for promotion; that what transpires from the relevant minute, is that the Commission considered by name the position with regard to the officers mentioned therein, both because of the recommendations made and the reasons given for that purpose by the Head of the Department, as well as because of the fact that some of them were in possession of a University Degree or Diploma which constitutes an advantage and cogent reasons had to be given for preferring the interested party who was not the holder of qualifications constituting an advantage, as compared with him (see *Tourpeki v. The Republic* (1973) 3 C.L.R. 592).

(5) That the decision of the respondent Commission was duly reasoned in a cogent, clear and unambiguous way and at great length at that.

(6) That there are not sufficient reasons for intervening with the exercise of the relevant discretion by the respondent Commission, inasmuch as no striking superiority has been established by the applicant and the *sub judice* decision was reasonably open to it.

Application dismissed.

Cases referred to:

Vonditsianos v. Republic (1969) 3 C.L.R. 83 at p. 91;

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

Tourpeki v. Republic (1973) 3 C.L.R. 592.

Recourse.

Recourse against the decision of the respondent Public Service Commission to promote the interested party to the post of Administrative Officer 1st Grade in preference and instead of the applicant.

K. Michaelides, for the applicant.

A. M. Angelides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

A. LOIZOU, J.: By the present recourse applicant challenges the validity of the promotion of Kyriacos Stratis.

(hereinafter referred to as the interested party) to the post of Administrative Officer, 1st Grade, General Administrative Staff as from 1.7.1976.

The said decision was taken at the meeting of the respondent Commission of the 20th March, 1976, and its minutes, in so far as relevant, read as follows: 5

“The post of Administrative Officer, 1st Grade, is a Promotion Post from the immediately lower post of Administrative Officer, 2nd Grade. Under the relevant scheme of service, the following requirements are, *inter alia*, stipulated: 10

- (i) a minimum of five-years’ administrative experience, two of which should be in the post of Administrative Officer, 2nd Grade;
- (ii) an excellent knowledge of Greek and a very good knowledge of English; 15
- (iii) the officers must have passed the exams. in Cyprus Statute Laws, or Certain Specified Laws, General Orders, Financial Instructions and Stores Regulations; and 20
- (iv) possession of a University Diploma or Degree will be considered as an advantage.

The Commission considered the merits, qualifications, seniority, service and experience of all the officers serving in the lower post of Administrative Officer, 2nd Grade, as reflected in their Personal Files and in their Annual Confidential Reports. 25

The Director of the Department of Personnel stated that, having regard to the merits of all the candidates, he considered Messrs. Loucas Chrysochos, Costas Matsoukaris and Kyriacos Stratis as the best, they were very good officers and recommended them for promotion. The Director of the Department of Personnel added that Messrs. L. Chrysochos and K. Stratis possess both District Administrative experience as well as administrative experience in a Ministry. 30 35

With regard to Mr. L. Isaias, who was senior to

5 the three officers referred to above, the Director of the Department of Personnel stated that, in view of his health condition, the officer in question is performing light duties and cannot be transferred elsewhere in order to undertake very responsible duties.

10 The Commission observed that Messrs. L. Chrysochos and C. Matsoukaris are more senior and have longer service and experience in the Administration or in the Government Service than the other officers, who possess a University Diploma or Degree. Mr. K. Stratis has the same seniority in his present post of Administrative Officer, 2nd Grade, with Mr. O. Georghiou as well as with the other officers holding a University Diploma or Degree.

15 The Commission observed that, in his Annual Confidential Reports, Mr. Chrysochos has been assessed as 'excellent' or mostly as 'excellent' during the years 1968, 1970, 1971, 1972, 1974 and 1975. In the Reports for the remaining years, the above officer has been assessed as 'Very good' and 'excellent' and, furthermore, Special Confidential Reports have been submitted in respect of this officer for the years 1970 and 1971. In some Reports, Mr. Chrysochos was recommended for promotion.

25 With regard to Mr. Matsoukaris, the Commission observed that, in his Annual Confidential Reports for the years 1969, 1972, 1973 and 1975, he has been assessed as 'excellent'. In the Reports for the remaining years, the above officer has been assessed as 'very good' or 'very good' and 'excellent' and, furthermore, Special Confidential Reports have been submitted in respect of this officer for the years 1973 and 1975. In some Reports, Mr. Matsoukaris was recommended for promotion.

35 As regards Mr. Stratis, the Commission observed that, in his Annual Confidential Report for the year 1975, the officer in question has been assessed mostly as 'excellent', he has been described as 'an excellent officer, hardworking and devoted to his duties, efficient and well-mannered' and has been strongly recommended for promotion. In the remaining Re-

1977

Sept. 17

—
OMEROS
NISSIOTIS

v.

REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

ports, the officer in question was generally assessed as 'very good'.

The Commission gave due consideration to the University Diploma or Degree held by certain candidates—*i.e.* Messrs. O. Georghiou and G. Anastasiades. The possession of such a Diploma or Degree will be considered as an advantage, under the relevant scheme of service.

The Commission believes that, in order that a holder of a University Diploma or Degree may be able to tip the balance in favour of him when making a promotion, the factors of the said officer referring to his quality, ability, seniority, service and experience must be equal to those of other candidates. In this particular case, Messrs. Chrysochos, Matsoukaris and Stratis were considered to be superior to Messrs. Georghiou and Anastasiades, having regard to the factors referred to above as well as to the recommendations made by the Director of the Department of Personnel and, therefore, no weight was given to the qualifications of the officers referred to above.

According to the relevant scheme of service, candidates for promotion to the post of Administrative Officer, 1st Grade, must possess an 'excellent knowledge of Greek and a very good knowledge of English'. Having regard to the long and satisfactory service in the Government of Messrs. L. Chrysochos, C. Matsoukaris and K. Stratis, as well as to their educational qualifications, the Commission was satisfied that the officers in question did possess an 'excellent knowledge of Greek and a very good knowledge of English'.

After considering all the above and after taking into consideration all the facts appertaining to each one of the candidates and after giving proper weight to the merits, qualifications, seniority, service and experience of these candidates, as well as to the views and recommendations made by the Director of the Department of Personnel, the Commission came to the conclusion that the following officers were on the whole the best. The Commission accordingly de-

cided that the officers in question be promoted to the permanent post of Administrative Officer, 1st Grade w.e.f. 1.7.76:

Loucas Chrysochos
Costas Matsoukaris
Kyriacos Stratis”.

1977
Sept. 17
—
OMEROS
NISSIOTIS
v.
REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

5
10
The grounds upon which the *sub judice* decision is challenged are two: (A) that in view of the applicant's qualifications, merits, and seniority, the respondent Commission failed in its paramount duty to select the best candidates, and (b) the respondent's decision is not duly reasoned.

15
A comparison, therefore, of the respective merits, qualifications, seniority and experience of the applicant and the interested party, as well as a perusal of the confidential reports on each one of them, will be very useful.

20
The applicant first worked as a clerk-accountant of the Pancyprian Gymnasium and became an Administrative Assistant 3rd Grade in 1962. He was promoted to an Administrative Officer 2nd Grade on the 1st December, 1967 on secondment and made permanent on the 15th April, 1968.

25
The interested party was first appointed as an Assistant District Inspector in 1962 and became an Administrative Officer 2nd Grade on secondment on the 1st March, 1968 and permanent as from 1st October, 1968.

30
They are both graduates of a Greek Gymnasium and they have passed the examinations that satisfy the requirements of the relevant scheme of service for the post in question.

35
The applicant has passed the book-keeping Intermediate examinations of the London Chamber of Commerce, English Lower and the Statute Laws Examinations and attended also a course in Political Science at the School of Careers in 1968, but none of these qualifications constitute, under the relevant scheme, an additional advantage, nor could they have tipped the scale in favour of the applicant. (See *Vonditsianos v. The Republic* (1969) 3 C.L.R., 83 at p. 91).

1977
Sept. 17
—
OMEROS
NISSIOTIS
v.
REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

The recent confidential reports on the applicant, with the exception of the last one, present him as an excellent officer, devoted to his work, reliable, performing his duties in a most satisfactory manner and showing great interest in his work. In the last confidential report which was prepared by the new Acting Director of the Ministry of Agriculture and Natural Resources, he is rated as good on eight ratable items, very good in matters of courtesy in dealing with the public and of average general intelligence. The observations of the reporting officer are the following: "He has carried out his duties satisfactorily. At times, however, I felt that his devotion to duty could have been better. He has shown a tendency to get things done as quickly as possible without looking at details, which has affected adversely his work". It has been complained, and the applicant gave evidence to that effect, that the last reporting officer, the new Director-General of the Ministry of Agriculture and Natural Resources, had only been recently appointed to that post and did not know him well. It should be, however, mentioned that he was before that, the Director of the Department of Agriculture since 1968 and during that time it was part of the duties of the applicant to work on agricultural subjects and have professional contacts with him.

The confidential reports on the interested party emanating from different reporting officers, are very good. Whilst serving in the District Office of Nicosia, he was reported upon as very good on all ratable items and that he was doing a very exact job for the enforcement of the Water (Specific Measures) Law in Western Messaoria for which he was responsible. He was then transferred to the Planning Bureau and he was again reported as very good and good and as from the first year of his transfer there the Chief Planning Officer at the time Mr. Aristidou who later became the Director-General, Planning Bureau and continued reporting on the interested party, observed that "this officer has proved to be conscientious, hard-working and competent during his relatively short time he has been with us", and the following year he observed, "a very amicable, polite and conscientious officer, works hard, efficiently and reliably. Despite his relatively short stay with us this officer has successfully accommodated himself and adjusted to the requirements of the Bu-

reau". For the next year he is rated again as very good on all ratable items and good on two and the comments on him are that "he is very conscientious, hard-working and competent but he needed to improve further his analytical and critical approach". In the last confidential report he is rated as excellent on seven ratable items and very good on three and there appears the observation by the Director-General that he is an excellent officer, hard-working and devoted to his duties, efficient and well mannered and that he is very strongly recommended for promotion on first opportunity.

Needless to stress that the confidential reports on the applicant and the interested party emanate from different reporting officers and inevitably they must have used different standards in their evaluation. These reports, as it has been stated time and again, should not be treated as constituting recommendations for the filling of the particular vacancy, but must be regarded only as constituting part of the overall picture of the merits of each candidate which the Commission had to weigh as a whole. (See *Evangelou v. The Republic*, (1965) 3 C.L.R. 292). In considering the overall picture of a candidate, the recommendations of the Head of the Department made at the meeting of the respondent Commission when considering such promotions, are the most material factor and we cannot ignore the fact that the interested party was considered by him as one of the best and recommended him for promotion.

Admittedly the applicant is senior to the interested party by five and a half months, and seniority is one of the factors which has to be taken consideration, not being, however, a decisive one that governs promotions but one that should only prevail if all other things were equal.

In the instant case, obviously the recommendations of the Director of the Department of Personnel have made the overall picture of the interested party more favourable than that of the applicant, and the recommendations of a Head of a Department could not be ignored without special reasoning being given, which, apparently, the respondent Commission could not find on the material before them.

The argument that the Director of the Department of Personnel did not know the applicant and the interested party could not stand, as he is the Head of the interchangeable staff in the Civil Service and from the reasons appearing to have been given by him in the minute of the respondent Commission, he must be taken to have informed himself about the merits of the people he was recommending to the respondent Commission for promotion, particularly with regard to officers holding such senior posts in the hierarchy of the general administrative staff in respect of which he is considered as the Head of Department.

The further argument of learned counsel for the applicant that his client was not considered for promotion and that the respondent Commission restricted its consideration to the three persons recommended by the Head of the Department of Personnel and those candidates who had a University Degree, cannot stand. The respondent Commission explicitly states that it considered the merits, qualifications, seniority, service and experience of all the officers serving in the lower post of Administrative Officer 2nd Grade, as reflected in their personal files and in their annual confidential reports and there is nothing to suggest that this has not been done. What transpires from the relevant minute, is that the Commission considered by name the position with regard to the officers mentioned therein, both because of the recommendations made and the reasons given for that purpose by the Head of the Department, as well as because of the fact that some of them were in possession of a University Degree or Diploma which constitutes an advantage and cogent reasons had to be given for preferring the interested party who was not the holder of qualifications constituting an advantage, as compared with him. This was in line with what was stated in the case of *Tourpeki v. The Republic* (1973) 3 C.L.R. 592. No doubt, the decision of the respondent Commission is duly reasoned in a cogent, clear and unambiguous way and at great length at that.

Having considered the case on its totality, I have come to the conclusion that this recourse must fail, as I have not been persuaded that there are sufficient reasons for intervening with the exercise of the relevant discretion by

the respondent Commission, inasmuch as no striking superiority has been established by the applicant and the *sub judice* decision was reasonably open to it.

5 In the result, the recourse is dismissed, but in the circumstances I make no order as to costs.

Application dismissed.
No order as to costs.

1977
Sept. 17
—
OMEROS
NISSIOTIS
v.
REPUBLIC
(PUBLIC
SERVICE
COMMISSION)