

1979 April 25

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU, MALACHTOS, JJ.]

TAKIS CHRISTOU,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(*Revisional Jurisdiction Appeal No. 185*).

Public Officers—Promotions—Principles applicable—And principles on which Administrative Court intervenes.

5 *Public Officers—Promotions—Seniority—Interested party recommended for promotion by Head of Department—Comparatively small seniority of appellant over interested party cannot lead to annulment of sub judice promotion.*

10 *Public Officers—Promotions—Confidential reports—Irregularity—Reporting Officer acting as such in contravention of a relevant circular from Director of the Department—In the circumstances not a material irregularity which can vitiate the administrative process leading up to the sub judice promotion.*

Administrative Law—Administrative acts or decisions—Irregularity—Only a material irregularity can be relied on as a ground for annulment of the relevant administrative action.

15 *Administrative Law—Bias—Impartiality—Lack of impartiality by a Public Officer towards another Public Officer—Must be established with sufficient certainty—Instances relied upon by appellant not revealing any bias or impartiality—Moreover various facts constituting alleged existence of bias were within the knowledge of*
20 *administrative organ concerned and its members must be presumed to have had them in mind when taking the sub judice decision.*

Public Officers—Promotions—Bias—Impartiality—Lack of impartiality by a public officer towards another public officer—Must

be established with sufficient certainty—Appellant's superiors taking adverse action against him in their official capacity—Whether biased against appellant so that their participation in the relevant administrative process, leading to the sub judice promotion, rendered it defective.

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This was an appeal against the judgment of a Judge of this Court dismissing the recourse of the appellant against the decision of the Public Service Commission to promote to the post of Chief Inspector in the Department of Customs and Excise J. Evripidou (“the interested party”).

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Though the appellant and the interested party were of equal seniority as regards the posts held by them at the material time, appellant was, by virtue of section 46(2) of the Public Service Law, 1967, by one and a half year senior to the interested party in view of the fact that he had been appointed to the previously held by him post of Collector of Customs one and a half year before the interested party.

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Counsel for the appellant contended:

- (a) That the seniority of one and a half year of the appellant over the interested party ought to have tipped the scales in favour of the appellant and that he should have been selected for promotion because the appellant and the interested party were more or less equal in other respects, especially as the annual confidential reports about them showed that they were more or less of equal merit. 20
- (b) That the trial Judge erred in rejecting the contention that the confidential reports concerning the appellant were irregularly prepared in respect of the years 1969–1970 by Stavros Makris, a Chief Inspector of Customs at the time when the appellant was holding the post of Deputy Chief Inspector in the same Department. 30
- (c) That the administrative process leading up to the promotion of the interested party was defective because of the participation in it of the Director of the Department of Customs and Excise and Chief Inspector Makris, who allegedly were biased against the appellant. 35

Contention (b) was based on the fact that the 1969 annual

5 confidential report, in relation to the appellant, was signed by Chief Inspector Makris, instead of by the Director of the Department, and that this was in contravention of a circular dated January 5, 1970 by means of which the Director was designated as both the reporting and countersigning officer for the post held by the appellant.

10 The allegation of bias was based on the fact that in 1967 the appellant was a candidate for the post of Chief Inspector to which Makris was promoted instead of him and that the appellant had filed then a recourse against the promotion to such post of Makris, which was later withdrawn in 1970; also, that he was instructed in 1966 to make enquiries regarding certain accusations concerning the official conduct of Makris; and because the Director of the Department and Makris had participated officially in certain disciplinary proceedings against the appellant.

20 *Held*, (1) (after stating the principles on which an appointing organ acts in cases of promotions and the principles on which the Administrative Court intervenes with such promotions—*vide pp. 444-45 post*) that the Director of the Department concerned had recommended for promotion, in writing, the interested party and reiterated such recommendations at the relevant meeting of the Commission at which he was present; that, therefore, there is no merit in the submission of counsel for the appellant that the comparatively small seniority of the appellant, in comparison to the interested party, should have led the trial Judge to hold that the respondent Commission acted contrary to law or in excess or abuse of powers and in a manner constituting an erroneous exercise of its relevant discretion when it selected for promotion to the post of Chief Inspector the interested party instead of the appellant; and that, accordingly, contention (a) must fail (*Partellides v. The Republic* (1969) 3 C.L.R. 480 distinguished).

35 (2) That though the 1969 annual confidential report in relation to the appellant was signed by Chief Inspector Makris, instead of by the Director of the Department, as reporting Officer, in contravention of the said circular and this amounts undoubtedly to an irregularity, in the circumstances it cannot be treated as a material irregularity the occurrence of which can be regarded as vitiating the relevant administrative process leading up to the

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promotion of the interested party because it is well established that a complained of irregularity has to be of a material nature in relation to the particular matter concerned before it can be relied on as a ground for annulment of the relevant administrative action; and that, accordingly, contention (b) must fail. 5

(3) That it is a basic principle of administrative law that the organs participating in a particular administrative process must appear to act with impartiality; that the lack of impartiality by a public officer against another public officer must be established with sufficient certainty; that, on the totality of the material before the Court, it has not been established that either the Director of the Department of Customs and Excise or Chief Inspector Makris were biased against the appellant or that they should have been treated as not appearing to be impartial with the result that their participation in the relevant administrative process which led to the promotion of the interested party should have been regarded as a factor vitiating such promotion; that whatever action both of them have taken at all material times in relation to the appellant as a public officer was action taken in their official capacity and in the proper exercise of their relevant powers; that the fact that to a certain extent that action was adverse for the appellant, not because of any subjective enmity of theirs but because of the objective nature of each specific situation, is not sufficient to lead to the conclusion that they were biased against the appellant in taking such action; and that, accordingly, contention (c) must, also, fail (pp. 450-52 *post*). 10 15 20 25

Held, further, that the various facts on the strength of which it has been alleged by the appellant that there existed bias towards him on the part of the Director of the Department of Customs and Excise and of Chief Inspector Makris were matters which were within the knowledge of the respondent Public Service Commission and, therefore, its members must be presumed to have had them in mind and to have assessed the opinions expressed about the appellant by his said two superiors not in ignorance of such facts, but in the light of them; and that, consequently, if the Commission had felt that these facts could have led to personal bias on the part of the two superiors of the appellant against him it would have been on its guard and it cannot be regarded as having been misled by them in any way. 30 35 40

Appeal dismissed.

Cases referred to:

- Georghiou v. Republic* (1976) 3 C.L.R. 74;
Partellides v. Republic (1969) 3 C.L.R. 480 at p. 484;
Antoniou v. Republic (1975) 3 C.L.R. 510 at p. 515;
 5 *HadjiLouca v. The Republic* (1969) 3 C.L.R. 570 at p. 576;
 and on Appeal (1971) 3 C.L.R. 96 at p. 103;
Savoulla and Others v. Republic (1973) 3 C.L.R. 706 at p. 713;
Solea v. Republic (1974) 3 C.L.R. 498;
Christou v. Republic (1972) 3 C.L.R. 32;
 10 *Christou v. Republic* (1978) 3 C.L.R. 42;
HadjiGeorghiou v. Republic (1977) 3 C.L.R. 35;
Decisions of the Greek Council of State in Case Nos. 3350/1970,
 2905/1965, 1014/1969 and 975/1970.

Appeal.

- 15 Appeal against the judgment of a Judge of the Supreme Court
 of Cyprus (A. Loizou, J.) given on the 12th February, 1977
 (Revisional Jurisdiction Case No. 133/73) whereby appellant's
 recourse, against the decision of the respondent to promote the
 interested party to the post of Chief Inspector in the Depart-
 20 ment of Customs and Excise in preference and instead of the
 appellant, was dismissed.

E. Lemonaris, for the appellant.

N. Charalambous with *S. Papasavvas*, Counsel of the
 Republic, for the respondent.

- 25 *Cur. adv. vult.*

- 30 TRIANTAFYLLIDES P. read the following judgment of the
 Court. This is an appeal against the first instance judgment of a
 Judge of this Court (see *Christou v. The Republic*, (1977) 3 C.L.R.
 11) by means of which there was dismissed, on February 12, 1977,
 the recourse, under Article 146 of the Constitution, of the appel-
 lant against the decision of the respondent Public Service Com-
 mission to promote to the post of Chief Inspector in the De-
 partment of Customs and Excise J. Evripidou, who is referred
 to in these proceedings as the "interested party".

- 35 The said decision was reached at a meeting of the Commission
 of March 21, 1973, and the relevant part of the minutes of the
 Commission reads as follows:

“1. *Filling of vacancies in the Department of Customs & Excise.*

Mr. T.G. Tatianos, Director of the Department of Customs & Excise, present.

(a) *Chief Inspector:*

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One vacancy (permanent).

The post of Chief Inspector is a Promotion Post. Under the relevant scheme of service, candidates must have service in senior posts not below the rank of Assistant Collector for a period of at least 7 years.

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The Commission observed that according to the duties and responsibilities of the relevant scheme of service for the lower post of Deputy Chief Inspector, which is on salary scale 23 (£1674–2196), an officer serving in this post must either—

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- (i) assist the Chief Inspector in the performance of his duties and in the discharge of his responsibilities and to deputise for him when necessary; or
- (ii) perform the duties of Senior Collector of Customs & Excise.

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The Commission observed also that according to the duties and responsibilities of the scheme of service for the post of Senior Collector of Customs, which is also on salary scale 23 (£1674–2196), must either—

- (1) perform in Famagusta Collection all the duties and responsibilities of a Collector of Customs and Excise; or
- (2) perform the duties of Deputy Chief Inspector.

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In view of the above and, having regard to Section 30(3) of the Public Service Law No. 33/67, the Commission decided that the officers serving in the posts of Deputy Chief Inspector and Senior Collector of Customs and Excise must be taken into consideration in filling the vacant post of Chief Inspector.

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The Commission then considered the merits, qualifications, seniority, service and experience of the officer serving in the post of Deputy Chief Inspector, as well as those of

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the officer serving in the post of Senior Collector of Customs, as reflected in their Personal Files and in their Annual Confidential Reports.

5 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 Senior Collector of Customs, for promotion to the post of Chief Inspector. The Director of the Department re-iterated the above recommendation at this meeting.

10 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
15 promoted to the permanent post of Chief Inspector w.e.f. 1.4.73.”

At the material time the appellant was a Deputy Chief Inspector in the Department of Customs and Excise, having been appointed as such on August 1, 1967, and the interested
20 party was a Senior Collector of Customs in the same Department, having been appointed as such on August 1, 1967, too. Previously to his appointment as Deputy Chief Inspector, the appellant had been appointed as Collector of Customs, as from
25 January 1, 1964, and the interested party had been appointed to that post as from July 1, 1965. Thus, in accordance with the provisions of section 46(2) of the Public Service Law, 1967 (Law 33/67), though the appellant and the interested party had been appointed on the same date to the respective posts of
30 Deputy Chief Inspector and Senior Collector of Customs, the appellant was senior by one and a half year to the interested party, in view of the fact that he had been appointed to the post of Collector of Customs one and a half year before the interested party.

35 Prior to his appointment as Collector of Customs on January 1, 1964, the appellant had been holding the post of Chief Inspector, Preventive Service, in the same Department, as from April 1, 1956; and when that post was abolished he was appointed, as from January 1, 1964, to the post of Collector of Customs.

40 As it appears from the material before us the post of Chief

Inspector, Preventive Service, was lower than the post of Assistant Collector of Customs to which the interested party was appointed as from October 1, 1963, and, consequently, it cannot be said that the appellant possessed much greater seniority than the interested party, merely because he was appointed to the post of Chief Inspector, Preventive Service, as far back as 1956, whereas the interested party was appointed to the post of Assistant Collector of Customs only in 1963.

In arguing this appeal before us counsel for the appellant has contended that the seniority of the appellant over the interested party, even as regards their respective dates of appointment to the post of Collector of Customs, namely a seniority of one and a half year, ought to have tipped the scales in favour of the appellant and that he should have been selected for promotion by the respondent Commission instead of the interested party, because the appellant and the interested party were more or less equal in other respects, especially as the annual confidential reports about them showed that they were more or less of equal merit.

In *Georghiou v. The Republic*, (1976) 3 C.L.R. 74, it has been held (at pp. 83-84):

“As it appears from the case-law in Greece, which is set out in “Επιθεώρησις Δημοσίου Δικαίου καὶ Διοικητικοῦ Δικαίου” (Review of Public and Administrative Law) 1965, vol. 9, p. 369, when an organ, such as the Public Service Commission, selects a candidate on the basis of comparison with others, it is not necessary to show, in order to justify his selection, that he was strikingly superior to the others. On the other hand, an administrative Court cannot intervene in order to set aside the decision regarding such selection unless it is satisfied, by an applicant in a recourse before it, that he was an eligible candidate who was strikingly superior to the one who was selected, because only in such a case the organ which has made the selection for the purpose of an appointment or promotion is deemed to have exceeded the outer limits of its discretion and, therefore, to have acted in excess or abuse of its powers; also, in such a situation the complained of decision of the organ concerned is to be regarded as either lacking due reasoning or as based on unlawful or erroneous or otherwise invalid reasoning.

Useful reference, in this respect, may be made to the Conclusions from the Case-Law of the Council of State in Greece, 1929-1959, p. 268, and to the decisions of such Council in cases 601/1956, 778/1956 and 277/1964.

5 This Court has followed the same approach in a number of cases, such as the *Evangeou* case, *supra* (at p. 300); and, of course, the onus of establishing his striking superiority lies always on the applicant in a recourse (see *Georghiades and another v. The Republic* (1970) 3 C.L.R. 257, 269)."

10 Moreover, in the judgment in the same case the following are stated (at p. 82):

15 "Furthermore, we do accept as quite correct the proposition that it is open to the Commission, in trying to select the most suitable candidate, to weigh together all relevant considerations and to attribute more significance to one factor than to another, in the course of doing so, provided, however, that it exercises properly its relevant discretion (see the decision of the Greek Council of State in case 635/1950); and this Court will not interfere with a decision of the Commission when it appears that it was reasonably open to it to select a particular officer, instead of another, for promotion (see, *inter alia*, *Evangelou v. The Republic*, (1965) 3 C.L.R. 292, 299).

25 Counsel for the appellant has relied, in particular, on *Partellides v. The Republic*, (1969) 3 C.L.R. 480, where it was held (at p. 484) that it was not reasonably open to the Public Service Commission to promote the interested party instead of the appellant in that case because, all other things being more or less equal, the appellant's seniority ought to have prevailed and, therefore, the relevant discretionary powers of the Commission had been exercised in an erroneous manner.

30 The *Partellides* case, like all cases, was decided in the way in which it was decided in view of its particular circumstances; and this appears clearly from the following passage from *Antoniou v. The Republic*, (1975) 3 C.L.R. 510 (at p. 515):

"But, on the other hand, it appears that the Commission has exercised its relevant discretionary powers within the proper for the purpose limits, because it was reasonably

open to it to find, on the basis of the reasons for which the Head of Department recommended the interested parties as being more suitable, that the candidates before it were not otherwise more or less equal, and therefore, this was not a case where seniority ought to have been treated as a decisive factor. So, in this respect, the present case is distinguishable from that of *Partellides v. The Republic*, (1969) 3 C.L.R. 480, where there had not been recorded in the Commission's minutes any specific views of the Head of Department concerned which could be treated as justifying the course of overlooking the seniority of the appellant in that case; and, in any event, we should stress, while dealing with this point, that the outcome in each case of this nature must depend on its own particular circumstances and it cannot be inevitably governed by the outcome in any other case, however comparable that case may, at first sight, appear to be." 5 10 15

In the present case it is expressly recorded in the aforementioned minutes of the respondent Commission that the Director of the Department concerned had recommended for promotion, in writing, the interested party and reiterated such recommendation at the relevant meeting of the Commission at which he was present; consequently, the present case is also distinguishable, like the *Antonίου* case, *supra*, from the *Partellides* case, *supra*. 20

We, therefore, find no merit in the submission of counsel for the appellant that the comparatively small seniority of the appellant, in comparison to the interested party, in the post of Collector of Customs from which he was promoted to the post of Deputy Chief Inspector, on the same date when the interested party was promoted to Senior Collector of Customs, should have led the trial Judge to hold that the respondent Commission acted contrary to law or in excess or abuse of powers and in a manner constituting an erroneous exercise of its relevant discretion when it selected for promotion to the post of Chief Inspector the interested party instead of the appellant. 25 30 35

In relation to the annual confidential reports concerning the appellant his counsel has submitted that the trial Judge erred in rejecting the contention that such reports were irregularly prepared in respect of the years 1969-1970 by Stavros Makris, a Chief Inspector of Customs at the time when the appellant 40

was holding the post of Deputy Chief Inspector in the same Department.

In this connection reference has been made to General orders II/2. 8-9, which have been continued in force by virtue of
5 section 86(1) of Law 33/67, and which read as follows:

“8. Heads of minor departments will prepare all confidential reports themselves. Heads of medium and major departments will delegate reporting authority to senior officers who are well acquainted with the duties,
10 performance and conduct of the staff.

9. Confidential reports not prepared by the head of department will be countersigned by him if he knows the officer concerned well enough to have formed an opinion of his capabilities and conduct. If not—and particularly
15 in larger departments which are dispersed over the island—the head of department will delegate countersigning authority to a responsible senior officer who knows the officer concerned well enough to perform this function usefully and with competence. If a head of department is the
20 reporting officer there is no need for a countersigning officer’s report (see Appendix A.II/2.9).”

Counsel for the appellant has, also, relied on a circular of the then Director of the Department of Customs and Excise dated
25 January 5, 1970, in relation to the annual confidential reports for the period of January 1, 1969, to December 31, 1969, by means of which for the post of Duputy Chief Inspector there was designated as both the Reporting Officer and the Counter-
30 signing Officer the Director of the Department of Customs and Excise himself, and, also, to a later circular dated December 14, 1970, in relation to the annual confidential reports for the period of January 1, 1970, to December 31, 1970, by means of which for the post of Deputy Chief Inspector there was desi-
gnated as the Reporting Officer a Chief Inspector and as the
35 Countersigning Officer the Director of the Department of Customs and Excise.

The annual confidential report in relation to the appellant in respect of 1970 was signed by Chief Inspector Makris as Reporting Officer and countersigned by the Director of the

Department of Customs and Excise; therefore, no irregularity, at all, has occurred in relation to such report.

The annual confidential report concerning the appellant in relation to 1969 was again signed by Chief Inspector Makris as Reporting Officer and counter-signed by the Director of the Department of Customs and Excise, who was the same person both in 1969 and in 1970.

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In the report in relation to 1969 Chief Inspector Makris recorded the following observations about the appellant:

“This Officer possesses 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 organising ability but needs improvement in staff management and emotional stability. Takes offence easily and harbours ill-feelings unduly long.”

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The Director of the Department recorded the following views:-

“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.”

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It will be seen, at once, from a comparison of what has been stated in such report by the Reporting Officer, Chief Inspector Makris, and by the Countersigning Officer, the Director of the Department in question, that there is no significant discrepancy between their opinions about the appellant.

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It is not disputed that the 1969 annual confidential report, in relation to the appellant was signed by Chief Inspector Makris, instead of by the Director of the Department, as Reporting officer, in contravention of the aforementioned circular dated January 5, 1970, and this amounts undoubtedly to an irregularity. But, in the circumstances, it cannot be treated as a material irregularity the occurrence of which can be regarded as vitiating the relevant administrative process leading up to the promotion of the interested party; and it is, indeed, well established that a complained of irregularity has to be of a material nature in relation to the particular matter concerned before it can be relied on as a ground for annulment of the relevant administra-

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tive action (see, *inter alia*, in this respect, *HadjiLouca v. The Republic*, (1969) 3 C.L.R. 570, 576, and, on Appeal (1971) 3 C.L.R. 96, 103, and *Savoulla and others v. The Republic*, (1973) 3 C.L.R. 706, 713).

- 5 We have to deal, next, with the issue of bias, which has been raised both before the learned trial Judge and before us during the hearing of the present appeal:

10 It has been contended, in this respect, that the administrative process leading up to the promotion of the interested party is defective because of the participation in it of Chief Inspector Makris, who allegedly was biased against the appellant.

15 It has, also, been alleged, further, both at the trial and before us, that the Director of the Department of Customs and Excise, too, was biased against the appellant and that his participation in the relevant administrative process rendered it defective. But, in so far as the present appeal is concerned it seems that the appellant does not really press the matter of bias on the part of the Head of his Department as being something of actually significant importance, because this matter is not even mentioned
20 in the grounds contained in his notice of appeal.

It is a basic principle of administrative law that the organs participating in a particular administrative process must appear to act with impartiality and this cannot be so when there exist any special ties or relationship which admittedly relate to the persons involved in the said process or to its outcome (see, *inter alia*, the Decision of the Council of State in Greece in case 3350/1970).
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The lack of impartiality by public officer A against public officer B must be established, with sufficient certainty, either
30 by facts emerging from relevant administrative records or by safe inferences to be drawn from the existence of such facts; (It is not, for example, sufficient, by itself, in order to prove lack of impartiality of A towards B, the fact that A has made, in the past, in the course of the proper exercise of his official duties, adverse confidential reports in respect of B, or that A has otherwise expressed officially an adverse view regarding B with the result that B has instituted legal proceedings in this connection
35 against A, or that B has given in the past evidence either in a criminal trial or disciplinary proceedings against A (see, *inter*

alia, the Decisions of the Greek Council of State in Cases 2905/1965, 1014/1969 and 975/1970, as well as *Solea v. The Republic*, (1974) 3 C.L.R. 498.

In raising, in writing, the issue of bias before the trial Judge the appellant referred to disciplinary proceedings which culminated in an adverse for him decision of the respondent Public Service Commission; that decision was annulled by another Judge of this Court, for lack of due reasoning, as a result of a recourse made under Article 146 of the Constitution (see *Christou v. The Republic*, (1972) 3 C.L.R. 32).

In relation to the said disciplinary proceedings counsel for the appellant has contended that, in view of the fact that the Director of the Department of Customs and Excise, who had acted, at the time, as an Investigating Officer, was a witness against the appellant in such proceedings, and, also, assisted counsel who appeared for the Republic in the conduct of these proceedings, and, furthermore, in view, also, of the fact that Chief Inspector Makris had participated, too, in the aforementioned proceedings against the appellant, the respondent Commission ought not to have regarded as being unbiased either the recommendation made by the Director of the Department of Customs and Excise, in favour of the promotion of the interested party to the post of Chief Inspector of Customs and Excise in the said Department, or the views expressed by Chief Inspector Makris in confidential reports prepared by him about the appellant.

By means of an affidavit sworn and filed during the trial by the appellant further allegations of bias on the part of Chief Inspector Makris were made.

These allegations were expounded more in argument before the trial Judge and they were based, *inter alia*, on the fact that in 1967 the appellant was a candidate for the post of Chief Inspector to which Makris was promoted instead of him and that the appellant had filed then a recourse against the promotion to such post of Makris, which was later withdrawn in 1970; also, that he was instructed in 1966 to make enquiries regarding certain accusations concerning the official conduct of Makris; and reference was made, too, to the already mentioned disciplinary proceedings against the appellant in which Makris participated officially.

By means of an affidavit in reply Chief Inspector Makris denied any bias on his part against the appellant, notwithstanding the fact that the appellant and himself had been involved, respectively, in the examination of disciplinary accusations made by others against them.

There were, also, referred to at the trial certain other matters of definitely minor significance which were relied on by the appellant as showing the existence of bias against him on the part of the Director of the Department of Customs and Excise and of Chief Inspector Makris.

The appellant has complained that the trial Judge did not grant permission to his counsel to cross-examine Chief Inspector Makris upon his aforesaid affidavit, which, as stated, he swore in reply to the allegation that he was biased against the appellant. In the record, however, of the trial there is nothing to show that counsel for the appellant raised, and pressed, in a formal manner a request to cross-examine Chief Inspector Makris or that the trial Judge disallowed any application of his in this respect. Actually, counsel for the appellant did not appear to recollect precisely whether he had made a formal application to the trial Judge in this connection, or whether he had only raised the matter informally and, later on, had abandoned it; and in view of this we refused an application of counsel for the appellant for leave to file an affidavit for the purpose of supplementing the record of the trial on this point (see *Christou v. The Republic*, (1978) 3 C.L.R. 42).

On the totality of the material before us we are in agreement with the trial Judge that it has not been established that either the Director of the Department of Customs and Excise or Chief Inspector Makris were biased against the appellant or that they should have been treated as not appearing to be impartial with the result that their participation in the relevant administrative process which led to the promotion of the interested party should have been regarded as a factor vitiating such promotion.

Whatever action both of them have taken at all material times in relation to the appellant as a public officer was action taken in their official capacity and, in our view, in the proper exercise of their relevant powers; the fact that to a certain extent that action was adverse for the appellant, not because of any

subjective enmity of theirs but because of the objective nature of each specific situation, is not sufficient to lead to the conclusion that they were biased against the appellant in taking such action.

In relation, particularly, to the Director of the Department of Customs and Excise neither the fact that he was involved in disciplinary proceedings against the appellant, nor the fact—which was mentioned before the trial Judge—that the appellant was a candidate for a post in the past to which the said Director was promoted instead of the appellant, can be regarded, in the least, as establishing bias on the part of the Director towards the appellant. As regards the divers matters in relation to Chief Inspector Makris which were alleged by the appellant and the more important of which have already been referred to in this judgment we are, again, of the view that they do not suffice to establish the existence of bias towards the appellant; and we feel that we should point out that the involvement of Chief Inspector Makris in the administrative action which is the subject matter of these proceedings was through his comments in annual confidential reports about the appellant in respect of the years 1969 and 1970, which were to a certain extent favourable for the appellant and to a certain extent critical of his performance, but which, definitely, cannot be regarded as being imbued with bias; and it is most significant that the Director of the Department of Customs and Excise appears to be in agreement with the assessments of the appellant's work and abilities made by Chief Inspector Makris in the said two reports.

Before concluding, we would like to point out that the various facts on the strength of which it has been alleged by the appellant that there existed bias towards him on the part of the Director of the Department of Customs and Excise and of Chief Inspector Makris were matters which were within the knowledge of the respondent Public Service Commission and, therefore, its members must be presumed to have had them in mind and to have assessed the opinions expressed about the appellant by his said two superiors not in ignorance of such facts, but in the light of them; consequently, if the Commission had felt that these facts could have led to personal bias on the part of the two superiors of the appellant against him it would have been on its guard and it cannot be regarded as having been misled by them in any way (see, *inter alia*, in this respect, *HadjiGeorghiou v. The Republic*, (1977) 3 C.L.R. 35, 45, where an

analogous, if not identical, situation had arisen between the applicant and his superior).

5 For all the foregoing reasons we have decided that this appeal cannot succeed on anyone of the grounds put forward and it has to be dismissed accordingly, but in line with the course adopted by the trial Judge we are making no order as to its costs.

Appeal dismissed.

No order as to costs.