

1981 May 30

[A. LOIZOU, J.]

ANTONIS KONTEMENIOTIS,

Applicant,

v.

THE CYPRUS BROADCASTING CORPORATION,

Respondent.

(Case No. 102/80).

5 *Administrative Law—Public Officers—Appointments—Non-confirmation at expiration of probationary period because of performance and conduct of officer—Every material fact regarding his conduct brought to his knowledge—No breach of the principles of administrative law.*

10 *Public Officers—Officers of the Cyprus Broadcasting Corporation—Appointments—Non-confirmation at expiration of probationary period because of performance and conduct of officer—Every material fact regarding his conduct brought to his knowledge—No breach of the principles of administrative law.*

Public officers—Confidential reports—Adverse confidential reports—Non-communication to officer concerned—Effect.

15 The applicant in this recourse challenged the validity of the decision of the respondent Corporation not to confirm his appointment to the post of Sub-titles and Captions Operator. The non-confirmation of the applicant was made under regulation 8(2) of the Broadcasting Corporation (Terms of Service) Regulations, 1966 which provides that the appointment of an
20 employee to a permanent post is confirmed after the expiration of the two year probationary period, provided that his conduct and the performance of his duties were in all respects satisfactory. In taking the *sub judice* decision the respondent relied on a report* of the Director of Television Programmes dated 15.2.1980 to the effect that applicant's output was not increased as expected

* The report is quoted in full at p. 198 *post*.

and that during 1979 he committed serious disciplinary offences and addressed to the Head of Department letters of an improper and provocative style.

Counsel for the applicant mainly contended:

That the report of the Director of Television Programmes dated 15.2.1980 ought not to have been taken into consideration by the respondent Board because its contents being adverse in character had to be communicated to the applicant as required by the Broadcasting Corporation (Terms of Service), Regulations, 1966, the general principles of Administrative Law and term 8 of the Collective Agreement between the respondent Corporation and the Employees' Trade Unions. 5 10

Held, that from the facts, correspondence and other records, to be found in the personal file of the applicant, it is abundantly clear that every material fact was in substance brought to the knowledge of the applicant (p. 200 *post*); and that, therefore, the complaint that there has been a breach of the general principles of Administrative Law, the Regulations of the respondent Board and term 8 of the Collective Agreement is not a valid one. 15 20

Held, further, that in any event the non-communication of a confidential report which because of its contents had by law to be communicated to the person concerned, is not a reason to annul a decision subsequently taken (see *Kyriakopoullou v. The Republic* (1973) 3 C.L.R. 1). 25

Application dismissed.

Cases referred to:

Kyriakopoullou v. Republic (1973) 3 C.L.R. 1;

Korai v. Cyprus Broadcasting Corporation (1973) 3 C.L.R. 546 at p. 572; 30

Decisions of the Greek Council of State in Case Nos. 2345/1962, 1438/1967, 732/1968, 1213/1969.

Recourse.

Recourse against the decision of the respondent not to confirm applicant's appointment to the post of Sub-titles and Captions Operator. 35

C. Clerides, for the applicant.

C. Bamballis for G. Polyviou, for the respondent.

Cur. adv. vult.

5 A. LOIZOU J. read the following judgment. By the present
recourse the applicant seeks a declaration that the act and/or
decision of the respondent Corporation, not to confirm his
appointment to the post of Sub-titles and Captions Operator,
is null and void and of no effect whatsoever.

10 The applicant was appointed as projectionist on the 1st
October 1969 on a very temporary basis. On the 1st July
1970 he was appointed to the post of Sub-titles and Captions
Operator, which is also referred to in short as "Titler". This
post was abolished and the post of Titler/Translator was created
15 and the applicant was appointed to such post on the 1st March
1978 on probation for two years. The salary scale of the first
post is as follows: £1327x38-1441x46-1487x65-1812x68-1948.
The salary scale of the second post is as follows £2059x95-
-2437x98-2927.

20 At its meeting of the 21st March 1980, the Board of the
respondent Corporation examined the question of the confirma-
tion of appointments of the applicant and another employee
who had completed by then two years of service at the post
of Titler/Translator. The relevant minute (*exhibit 1*, red
121) in so far as relevant reads as follows:

25 " In his report the Director-General referred to the
great shortcomings and the serious disciplinary offences
which were committed by Antonis Kontemeniotis. After
details for the subject of Kontemeniotis were given by
the legal adviser and the Director-General, it was decided
-30 that Mr. Kontemeniotis be not confirmed to the post
of Titler/Translator and the Director General was asked
to handle the matter within the framework of the
existing regulations".

This is the decision challenged by this recourse.

35 The Board of the respondent Corporation at its meeting
of the 9th April 1980, and in view of the decision not to confirm
the applicant decided (*exhibit 1*, red 122) on the suggestion of
the Director-General, to create again the abolished post of
"Titler" and reappoint the applicant to that post.

The nonconfirmation of the applicant to the post in question was made under regulation 8(2) of the Broadcasting Corporation (Terms of Service), Regulations 1966, which provides that the appointment of an employee to a permanent post is confirmed after the expiration of the two year probationary period, provided that his conduct and the performance of his duties were in all respects satisfactory. 5

In view of the impending meeting of the Board of the respondent Corporation, the Director of Television Programmes was asked to submit a report with regard to the performance of his duties, the conscientiousness, the devotion, conduct and generally the sense of duty of the applicant (*exhibit 1 red 113*). 10

By letter dated the 15th February 1980 (*exhibit 1, red 114*) addressed to the Director-General, the Director of Television Programmes replied and said *inter alia* "..... I am sorry to observe that their translation work (obviously he was referring also to the other employee, whose confirmation was to be examined simultaneously with that of the applicant), was not increased as expected, but on the contrary it was reduced after their posting to the new post on the 1st March 1978. I submitted to you the relevant report on the 26th November 1979, with detailed elements for their output. Recently, and in order to be more specific in my letters, dated 15th January 1980, and 5th February 1980, I drew their attention to the need that their output should be increased and I asked that for that purpose they utilize the time of their regular afternoon and night shift during which they are not engaged with the test or projection of subtitles. With regard, specifically, to Mr. Kontemeniotis, I must mention that during 1979 he committed serious disciplinary offences and addressed to the head of department letters in an improper and provocative style. Copies of these letters have been sent to you. 15
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For all the above reasons I cannot suggest the confirmation of.....A. Kontemeniotis to the post of Titler/Translator". 35

On the 15th January 1980 (*exhibit 1, red 110*), the attention of the applicant was drawn by the Director of Television Programmes to his output as a Translator to the effect that same was not satisfactory and further said: "I draw your attention to the need that your output be increased and I expect that 40

the period of your shift during which you are not engaged with the preparation of subtitles and captions of films be beneficially utilized for translations. I expect also that you usefully utilize your free time when programmes are broadcasted which are not accompanied by subtitles".

It is the case for the applicant that (a) the report of the Director of Television Programmes, dated 15th February 1980, (*exhibit 1* red 114), in which reference is made also to a report which this officer submitted on the 26th November 1979; (b) the facts relevant to the conduct of the applicant; and (c) the facts relevant to his output, ought not to have been taken into consideration by the Board of the respondent Corporation when arriving at the subjudice decision, as being adverse in character they had not been communicated to him as required by the Regulations earlier mentioned in this judgment, Term 8 of the Collective Agreement (*exhibit 3*) in force at the time between the respondent Corporation and the Employees' Trade Union and the general principles of Administrative Law.

The report of the 26th November 1979 (*exhibit 1*, red 107 (A)), contains the hours of translation work done by the applicant and the other officer whose confirmation was also examined simultaneously with that of the applicant from 1975 to October 1979. It refers to the interruption of their work translation on account of a pending demand for a restructuring of their post and to the work they performed after their appointment in March 1978 to the post of Titler/Translator. It is also noted therein that after their said appointment they have been helping systematically in the checking of the subtitles work, which in the past was done by another official.

In my view this report contains statements of facts and figures which could have been the subject of a complaint had they been inaccurate, and as such misled the Board of the respondent Corporation in arriving at the subject decision, but this is not the case and no such complaint has been made on behalf of the applicant.

I have already referred to the contents of the letter of the Director of T.V. Programmes of the 15th January 1980 (*exhibit 1*, red 110). In the letter of the 5th February 1980 (*exhibit 1*, red 112) also referred to in the report (*exhibit 1*, red 114),

the applicant and the other officer were, in response to a letter addressed by them to the same Director, reminded that, their voluntary contribution in translations which started in March 1975, was given due recognition after the intervention of their trade union in 1978 when their duties were reviewed and they were promoted to the post of Titler/Translator; and that since their appointment to the new post there was observed a quantitative reduction of their translation work and that by his letter dated 15th January, they had been asked to increase their translation by utilizing the regular afternoon and evening hours of work during which they were not engaged with the checking or projection of subtitles. Further more it was pointed out to them the need that during their morning work they would give more assistance to Mr. N. Demetriou when he was engaged with the checking of subtitles.

With regard to the conduct of the applicant all relevant material was in his personal file and everything had been duly brought to his knowledge. In fact by letter dated the 19th January 1980, (*exhibit 1*, red 108), the applicant through his advocate expressed his regret and repentance for the offence for which he had been disciplinarily punished by the Director-General and promised that he would work with zeal and devotion in the performance of his duties and that he would obey the Regulations of the respondent Corporation and the orders of his superiors. Receipt of this letter was acknowledged by the Director-General by his letter dated 24th January 1980, (*exhibit 1*, red 111), whereby the Director-General informed him that in view of his promises and repentance he decided to lift the disciplinary punishment imposed upon him.

From the facts as above related with reference to the correspondence and other records, to be found in the personal file of the applicant, it is abundantly clear that every material fact was in substance brought to the knowledge of the applicant and therefore the complaint that there has been a breach of the general principles of Administrative Law, the Regulations of the respondent Board and Term 8 of the collective agreement (*exhibit 3*), is not a valid one.

In any event, in the case of *Kyriakopoullou v. The Republic* (1973) 3 C.L.R. p. 1, I held by reference to the *Decisions Nos. 2345/1962, 1438/1967, 732/1968 and 1213/1969, of the Greek*

Council of State, that the non-communication of a confidential report which because of its contents had by Law to be communicated to the person concerned, is not a reason to annul a decision subsequently taken. See also the case of *Ellie Korai* 5 v. *The Cyprus Broadcasting Corporation* (1973) 3 C.L.R. p. 546 at p. 572. This principle in my view applies with equal force to the case in hand.

The last complaint of the applicant is that his conduct in 1979, which was found to have constituted serious disciplinary 10 offences, did not in Law amount to an offence as it was legitimate and not in breach of any regulation and therefore should not have been taken into consideration when the Board of the respondent Corporation arrived at the sub-judice decision.

As it appears from the letters of the Director-General, dated 15 26th July 1979 (exhibit 1, red 99), and 11th October 1979, (exhibit 1, red 106), whereby he was seriously reprimanded and his increments were stopped for six months, and the letter of January 1980, (exhibit 1, red 108), written on his behalf by the advocate and to which the Director-General replied by his 20 letter of the 24th January 1980, to the contents of which reference has already been made, it is evident that the appellant was found to have committed disciplinary offences and if he wanted to challenge their legality he should have done so by a recourse to this Court under Article 146 of the Constitution, as in fact 25 he did by recourse No. 392/79, and which was pending at the time the subject decision was taken, it stood therefore in all respects as a valid administrative decision and could be legitimately taken into consideration at the time. It was after the subject decision and actually on the 29th August 1980 that 30 a settlement was reached whereby that administrative act complained of therein was revoked and the recourse was withdrawn on the assurance that the "act complained of and the proceedings that followed will never be taken into account against the applicant in future". Consequently no material 35 whatsoever was taken into consideration that could not have been taken when the sub-judice decision was arrived at by the Board of the respondent Corporation. Nor there has been established that the views of the Director-General were influenced by any personal motives or that that pending recourse 40 affected the subject decision.

In the light of all the above I find nothing to suggest that the respondent Corporation in the exercise of its discretion acted in any way in abuse or excess of power or contrary to Law.

This recourse therefore is dismissed, but in the circumstances I make no order as to costs.

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Application dismissed. No order as to costs.