

1981 February 5

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTODOULOS TAPACOUDIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 447/79).

5 *Public Officers—Promotions—Secondments—Seniority—It only pre-
vails when all other factors are equal—Interested parties recom-
mended by Head of Department—Said recommendation consistent
with material in the file because interested parties had on the
whole better confidential reports—Moreover they had more
qualifications than applicant—Latter's seniority of about 2 years
not sufficient to tip scales in his favour because all factors were
not equal.*

10 *Public Officers—Promotions—Punishment for disciplinary offence
during the two years preceding promotion—Only punishments
for serious offences affect promotions—Section 44(1)(d) of the
Public Service Law, 1967 (Law 33/67).*

15 *This recourse was directed against the decision of the respon-
dent Public Service Commission to second N. Yiannakis and
Chr. Lambrou (“the interested parties”) to the permanent
ordinary post of Assistant Forest Officer in preference and instead
of the applicant.*

20 *Applicant was by about 2 years senior to the interested parties
but the latter have been recommended for secondment by
the Head of Department; and such recommendation was
consistent with the material in the file because on the whole
the interested parties had better confidential reports than the*

applicant. Moreover the interested parties had more qualifications than the applicant.

Prior to the *sub judice* secondment interested party Lambrou had committed a disciplinary offence; but such offence was considered by the appropriate authority concerned as committed in good faith and no criminal or disciplinary prosecution was considered necessary except the punishment of oral reprimand under section 81(1) of the Public Service Law, 1967 (Law 33/67). 5

Held, (1) that the disciplinary offence in question could not affect the position of interested party Lambrou under section 44(1)(d)* of Law 33/67 as it was a disciplinary offence clearly not of a serious nature. 10

(2) That seniority is a factor to tip the scales in favour of a candidate if all other factors are equal; that the interested parties were recommended for secondment by the Head of Department and such recommendation was consistent with the material in the file because the interested parties had on the whole better confidential reports than the applicant; that taking also into consideration the qualifications of the parties, one may safely arrive at the conclusion that not all factors were equal; and therefore the seniority of the applicant could not operate in his favour; accordingly the recourse must fail. 15 20

Application dismissed.

Recourse.

Recourse against the decision of the respondent to second to the permanent ordinary post of Assistant Forest Officer in the Department of Forests the interested parties in preference and instead of the applicant. 25

M. Vassiliou, for the applicant.

G. Constantinou (Miss), for the respondent. 30

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks the annulment of the secondment to the permanent ordinary post of Assistant Forest Officer

* Section 44(1)(d) provides as follows:

“44(1) No officer shall be promoted to another office, unless—
(d) he has not been punished during the preceding two years for any disciplinary offence of a serious nature”.

in the Department of Forests of Nikos Yiannakis and Christos Lambrou, (hereinafter to be referred to as "the interested parties").

5 This is a promotion post and the qualifications under the relevant schemes of service, (enclosure No. 3) are: Graduate of the Cyprus Forestry College or other equivalent School of Forestry; experience of forestry technical and administrative work; ability to deal tactfully with the general public; strong physique. A good knowledge of English. Specialised know-
10 ledge in some fields of forestry practice would be an advantage.

After dealing with the filling of a number of other posts the respondent Commission at its meeting of the 11th May 1979 proceeded with the filling of the aforesaid post and the minutes in so far as relevant, (enclosure 8) read as follows:

15 "The Director of the Department of Forests stated that, having regard to the merits and abilities of all the officers serving in the post of Forest Ranger, he considered Messrs. Nicos Yiannakis and Christos Lambrou as the best, their services had been very satisfactory and recommended
20 them for secondment to the permanent (Ord.) post of Assistant Forest Officer.

According to the relevant scheme of service, candidates for promotion to the post of Assistant Forest Officer must possess 'a good knowledge of English'. Having regard
25 to the long and satisfactory service in the Government of Messrs. Nicos Yiannakis and Christos Lambrou, the Commission was satisfied that the officers in question did possess 'a good knowledge of English'.

After considering the above and after taking into consi-
30 deration all the facts appertaining to each one of the officers serving in the post of Forest Ranger, and after giving proper weight to the merits, qualifications, seniority, service and experience of these officers, and having regard to the views expressed as well as to the recommendations made by the
35 Head of Department, the Commission came to the conclusion that the following officers were on the whole the best. The Commission accordingly decided that the officers

in question be seconded to the permanent (Ord.) post of Assistant Forest Officer w.e.f. 15.5.79:

Nicos Yiannakis.
Christos Lambrou”.

The applicant entered the service as a temporary employee in the Forest Department on the 7th January 1941, climbed up the ladder in the hierarchy of that department and became a Forester on the 1st August 1957, and a Forest Ranger on the 1st August 1966. The applicant is a graduate of the Paphos Gymnasium, of the Cyprus Forestry College and passed the Departmental Examinations for taking statements. 5 10

Interested party Nicos Yiannakis entered the government service as a Forest Labourer on the 8th October 1944, became a Forester on the 1st August 1959 and a Forest Ranger on the 1st August 1966. He is a graduate of the English High School, Kyrenia, he passed the English Lower of the Cyprus Certificate of Education and he is a graduate of the Cyprus Forestry College. 15

Interested party Christos Lambrou was also first engaged as a Forest Labourer on the 2nd September 1953, became a Forester on the 1st August 1961, and a Forest Ranger on the 1st March 1967. He is a graduate of Mitsis School, Lemithu, and of the Cyprus Forestry College, he passed the English Lower Geography and Mathematics “A” and “B” exams of the Cyprus Certificate of Education and the Book-keeping Elementary Examinations and the Departmental Examinations for taking statements. 20 25

It is the contention of the applicant that the respondent Commission failed to select the candidate most suitable for the job and misdirected itself with regard to the seniority of the applicant as against the other parties. 30

With regard to the applicant and interested party Yiannakis, who were made Foresters on the same day their seniority has to be determined under section 46(2) of the Public Service Law, 1967, according to their previous seniority and in that way the applicant is by two years senior to him. He is also senior to interested party Lambrou for about the same length of time. 35

As has been repeatedly stated by this Court seniority is a

factor to tip the scale in favour of a candidate if all other factors are equal. For that purpose therefore an examination of the confidential reports is relevant in order to see also whether the recommendation of the head of the department which was
5 in favour of the two interested parties was consistent with the material in the file. I do not intend really to set out verbatim the contents of the confidential reports and in particular those of the last of the three years immediately preceding the year the said decision was taken. Suffice it to say that on the whole
10 the two interested parties were better reported than the applicant. In addition to that, taking also into consideration the qualifications of the parties one may safely arrive at the conclusion that not all factors were equal and therefore the seniority of the applicant could not operate in his favour as against the two
15 interested parties in the light of all the material that was before the respondent Commission.

Before concluding I wish to refer to a point raised on behalf of the applicant to the effect that interested party Lambrou was reported for some disciplinary offence. As it appears
20 from the letter of the Director-General of the 20th September 1977 (blue 183, in *exhibit 3*), violations of this interested party and three others were considered as of secondary importance and made in good faith and no criminal or disciplinary prosecution was considered necessary, except the punishment of oral
25 reprimand under section 81(4) of the Public Service Law. That could not affect the position of this interested party under section 44(1)(d) of the said Law as it was a disciplinary offence, clearly not of a serious nature as it appears from what is stated above and the punishment imposed.

30 Looking at the totality of the circumstances I do not find any failure on the part of the respondent Commission in the exercise of its discretionary power to select the most suitable candidates for the post, as its duty was under the Law and the general principles of Administrative Law, nor there exists any
35 misconception of fact.

For all the above reasons this recourse is dismissed but in the circumstances I make no order as to costs.

Application dismissed. No order as to costs.