

1982 April 10

[A. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

AGAMEMNON POLYDOROU AND ANOTHER,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case Nos. 169/80 and 199/80).

Public Officers—Promotions—Merit—Qualifications—Seniority—Interested parties having better confidential reports than applicants and recommended for promotion by Head of Department—Applicants senior to one of the interested parties—Seniority prevails when all other factors are equal but in the present case they were not in the light of the contents of the confidential reports and the recommendations of the Head of Department in favour of the interested parties—Respondent Commission exercised properly its discretion and in accordance with the principles of administrative Law—Sub judice decision reasonably open to it.

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The applicants and the interested parties were candidates for promotion to the vacant post of Health Inspector Ist Grade, a promotion post. All the candidates possessed the qualifications required by the relevant schemes of service, applicant Polydorou was by three years senior to interested party Anthousis and applicant Michaelides by five years senior. Both the interested parties had better confidential reports than the applicants and were recommended for promotion by the Head of Department, who stated before the Public Service Commission that they were superior to the remaining candidates and suitable for promotion. The Public Service Commission after examining and comparing the merit, qualifications and seniority of the

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5 candidates on the basis of their personal files and confidential reports and after taking into consideration the recommendations of the Head of Department decided that the two interested parties were superior on the whole to the remaining candidates and decided to promote them to the above post. Hence these
10 recourses challenging the decision of the Commission on the ground that it wrongly exercised its discretion because it did not take into consideration the superior merits, qualifications and seniority of the two applicants as compared with the interested parties.

15 *Held*, that on the totality of the circumstances as appearing from the relevant minutes, the personal files and the confidential reports of the applicants and the interested parties, the respondent Commission has exercised properly its discretion and in accordance with the general principles of Administrative Law; that it carried out a proper inquiry and paid due regard to all relevant considerations including the recommendations made in that respect by the Head of the Department in which the
20 vacancies existed and which recommendations were duly warranted by the contents of the confidential reports and without taking into account any irrelevant factors; that though applicant Polydorou is senior to interested party Anthousis and applicant Michaelides is also senior to Anthousis but of equal seniority with interested party Demetriades, as repeatedly stated seniority only prevails when all other factors are equal and in the present
25 case in the light of the contents of the confidential reports all factors are not equal for the seniority of the applicants to prevail; the subject decision which is a duly reasoned one in the circumstances, was reasonably open to the respondent Commission and there is no room for interference by this Court with the
30 exercise by the respondent Commission of its discretion proper and in accordance with the Law as it was; accordingly the recourses should be dismissed.

Applications dismissed.

35 **Recourses.**

Recourses against the decision of the respondent to promote the interested parties to the post of Health Inspector 1st Grade in preference and instead of the applicants.

A. *Pandelides*, for applicant in Case No. 169/80.

Ar. *Loizou*, for applicant in Case No. 199/80.

G. *Constantinou (Miss)*, Counsel of the Republic, for the respondent.

Cur. adv. vult. 5

A. LOIZOU J. read the following judgment. These two recourses have, by direction of the Court made with the consent of the parties, been heard together as the two applicants challenge thereby the promotion of Sophoklis Anthousi and Melanthios P. Demetriades to the post of Health Inspector first grade instead of themselves. 10

The post of Health Inspector first grade, is a promotion post and the respondent Commission at its meeting of the 25th September 1979 decided that in view of the Regulations governing the establishment of Departmental Boards in accordance with section 36 of the Public Service Law, (regulation 3) a list of candidates for promotion be prepared by the Secretary of the respondent Commission and be sent by him to the Chairman of the appropriate Departmental Board together with the confidential reports and the schemes of service. In furtherance of the said decision the Secretary of the respondent Commission wrote (Appendix 3) on the 30th October 1979, to the Director of the Department of Medical Services, as chairman of the Departmental Board, and attached thereto all necessary documents, asking him thereby to act accordingly regarding the filling of the two vacancies of Health Inspector first grade, in his department. 15 20 25

The report of this Committee was sent to the respondent Commission containing the names of eight candidates in alphabetical order, which the board found as superior to the remaining ten. 30

The respondent Commission at its meeting of the 9th February, 1980, after examining and comparing the merit, qualifications and seniority of the candidates on the basis of their personal files and confidential reports and after taking into consideration the conclusions of the Departmental Board and the recommendations made in that respect by the Director 35

of the Department of Medical Services, and the Principal Health Inspector, who were present at its meeting, decided that the two interested parties were superior on the whole to the remaining candidates, and found them suitable for the filling
5 of the posts and decided to promote them to the post of Health Inspector first grade as from the 1st March, 1980.

As against this decision these two recourses have been filed. The grounds upon which they challenge same are that the respondent Commission wrongly exercised its discretion inasmuch
10 as it did not take into consideration the superior merits, qualifications and seniority of the two applicants as compared with the respective interested parties, and that in any event they failed to take into consideration material facts that ought to have been taken and in particular the contents of the confidential
15 reports and in the case of applicant in recourse No. 199/80 the contents of the confidential report on him for the year 1979. Also that the sub judice decision is not duly reasoned and or no cogent reasons have been given for ignoring the seniority of the applicants. In fact, the general complaint
20 that the respondent Commission failed in its paramount duty to select the most suitable candidate for the post.

Relevant to the issues raised in these recourses are the contents of the personal files and the confidential reports as depicting the overall picture of the candidates and in particular of the
25 applicants and the interested parties.

' Applicant in recourse No. 169/80 Agamemnon Polydorou is a graduate of the High School Pedhoulas, and he is the holder of a certificate of the Royal Sanitary Institute and of a certificate in the Hygiene of Food Retailing and Catering, which
30 he obtained after a year's scholarship, granted by the World Health Organization in 1975-1976.

He entered the Government service on the 1st March 1965 as a Health Inspector third grade, (unestablished), his appointment was made permanent on the 1st January 1969 and he was
35 promoted to the post of Health Inspector second grade on the 1st August 1973.

Applicant in recourse No. 199/80, Modestos K. Michaelides, is a graduate of the Commercial School Polemi, he passed the

Cyprus Certificate Examinations in English Lower, Mathematics "A" and he is the holder of a certificate of the Royal Sanitary Institute. He also obtained a certificate in the Hygiene of Food Retailing and Catering and a diploma for Inspectors of Meat and Other Foods from the Royal Society of Health, after a ten months scholarship, granted by the World Health Organization to him in the years 1977-1978. 5

He entered the Government service on the 1st April 1963 as a Health Inspector, third grade, permanent and was promoted to the post of Health Inspector second grade on the 1st June 1971. 10

Interested party Sophoklis Anthousis, whose promotion is challenged by both recourses, is a graduate of the Lanition Gymnasium and the holder of a diploma for Public Health Inspectors, Cyprus, of the Royal Society of Health. He has passed the Pitmans Examinations Institute for English Language for Overseas Candidates, Intermediate I, and also Advanced I, and he is the holder of a diploma in Law of the Aristotelion University of Salonica, obtained in November 1974. He is a registered advocate and has passed the examinations on the General Orders on the 29th December 1975. He first entered the Government service on the 1st July 1968 as a Health Inspector third grade, (unestablished), became permanent on the 1st March 1969, and he was promoted to the post of Health Inspector second grade on the 1st December 1976. 15
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Interested party Melanthios Demetriades, whose promotion is challenged only by recourse No. 199/80, is a graduate of the Paphos College, is the holder of a diploma for Health Inspectors, Cyprus, of the Royal Society of Health (1958), he passed the English Lower Examinations and is the holder of a diploma for Inspectors of Meat and Other Foods as well as of a certificate in the Hygiene of Food Retailing and Catering of the Royal Society of Health, and a certificate in Food Technology and Inspection which he obtained after a year's scholarship, granted by the World Health Organization in 1972-1973. 30
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He first entered the Government service on the 1st April 1963 as Health Inspector third grade (permanent) and he was promoted to the post of Health Inspector, second grade, on the 1st June 1971.

I do not intend to reproduce here verbatim the contents of the confidential reports on the applicants and the interested parties. It may be pointed out, however, that applicant Polydrou is rated in the report for 1975 as excellent on eight rateable items and on the remaining two as outstanding. The reporting officer also made the observation that he was a good and hard-working officer and deserved promotion. The countersigning officer, the Director of the Department of Medical Services expressed the view that such report by the District Medical Officer was overestimated and that he was an average officer. For the year 1976 he is rated as "excellent" on seven rateable items and as "outstanding" on three. The same observation is also made, but this time the reporting officer is different. For the year 1977 he is rated as "excellent" on eight rateable items and as "outstanding" on two. The observation of the reporting officer, being that he is a hardworking officer and no reference is made that he deserves promotion. For the year 1978 the same observation is made by the same reporting officer and he is rated as "excellent" on eight rateable items "outstanding" on one and "very good" on another. The confidential report for the year 1979, though prepared by the 3rd January 1980 appears to have reached the respondent Commission on the 12th June 1980. He is rated as "excellent" on the whole but he has been given "excellent" on eight rateable items and "very good" on four.

Applicant Michaelides is rated for the year 1975 as "very satisfactory" on nine rateable items and satisfactory on one. For the year 1976 he is rated "very good" on seven items and "excellent" on three. For the year 1977 he is rated as "excellent" on four items and "very good" on six. For the year 1979 he is given a special confidential report. He is rated as "excellent" on eight rateable items and as "very reliable" on one, "highly satisfactory" on nine rateable items and "very good" on three other items and in view of the said assessment the reporting officer recommended him for promotion to a higher post. For the year 1979 he is rated as "excellent" on the whole with nine rateable items as "excellent" and three rateable items as "very good". This confidential report reached the respondent Commission on the 26th March 1980.

Interested party Anthousis, for the year 1975 is rated as "excellent" on five rateable items and as "outstanding" on

the other five. The reporting officer makes the observations that he is a hardworking and promising officer and the countersigning officer expresses the view that "he is really an outstanding and promising officer. He is a reliable one and always willing to take responsibilities". For the year 1976 he is given a special confidential report rated as "excellent" and "outstanding". He is described as an experienced and hardworking Health Inspector and that he possesses a very good knowledge in all aspects of public health and of excellent administrative and organizing ability. He is recommended for accelerated promotion and the countersigning officer, the Acting Director of the Department of Medical Services agrees fully with the said assessments and states that "he is an officer of outstanding ability performing his duties with the utmost zeal and efficiency. He possesses a pleasant personality and enjoys the confidence of his superiors". For the year 1977 he is once more given a special confidential report and rated as "excellent" and "outstanding" described as rendering invaluable assistance to the countersigning officer, that he has shown ability and that he is an obedient, hardworking, honest officer, and he is recommended for accelerated promotion. The countersigning officer, the Director of the Department of Medical Services once more describes him as a brilliant officer completely devoted to his duties and that he is attached to Medical Headquarters where due to his legal training special duties are allotted to him. For the year 1978 a special confidential report is also given to him, rated as "outstanding" on all rateable items and in addition to that assessment he is described once more as an "outstanding" officer who renders invaluable assistance to the office of the Chief Health Inspector. He is recommended for accelerated promotion to the post of Health Inspector first grade. The countersigning officer expresses the views that he is an officer of outstanding ability, highly educated, whose extreme efficiency, zeal and integrity warrant the submission of a special report, and strongly recommends him for accelerated promotion. The report for 1979 rates him once more as "excellent" but reached the respondent Commission on the 12th June 1980.

Melanthios Demetriades is rated as "very good" in the confidential report for the year 1975, as "excellent" on four rateable items, "very good" on five and "intelligent" on one rateable item for the year 1976. For the year 1977 he is rated as "excel-

lent" on nine rateable items and as "intelligent" on the tenth. For the year 1978 he is given a special confidential report. He is described as an example of hardworking officer. He is rated as "outstanding" on all items and he is described as specialized
5 in food hygiene and that his work is carried out highly satisfactory from the time the reporting officer knew him. In the confidential report for the year 1979 he is rated as excellent on all rateable items but again this report reached the respondent Commission on the 2nd April 1980.

10 Whilst on this point of the confidential reports I may briefly deal with the complaint of applicant Michaelides that his confidential report for the year 1979 was not taken into consideration by the respondent Commission. As already pointed out in
15 examining the confidential reports none of the confidential reports for the year 1979 reached the respondent Commission before the sub judice decision was taken. Therefore this point does not carry the case of this applicant any further.

In concluding my examination of the material that was before the Departmental Board and the respondent Commission as
20 regards the applicants and the interested parties in these recourses, reference must be made also to the qualifications required under the schemes of service for the post of Health Inspector. They are these:

25 "Royal sanitary Institute Certificate or a Certificate from a recognised School of Hygiene or other equivalent Institution. A good knowledge of English. A minimum of five years' service as a Health Inspector, 2nd and/or 3rd Grade. Organising and administrative ability".

30 The minutes of the meeting of the respondent Commission of the 9th February 1980 on which the sub judice decision was reached, in so far as relevant to this case read as follows:

35 "At to-day's meeting the Director of the Department of Medical Services Mr. Andreas Markides and Mr. N. Karamichalis, Principal Health Inspector, were present, called by the Chairman to express his view and recommendations, the Director of the Department recommended the following persons as superior to the remaining candidates and as suitable for promotion to the vacant post.

1. Sophoklis Anthousis, 2. Melanthis Demetriades.

His views on each one of the aforesaid candidates are as follows:

(a) *Anthousis Sophoklis:*

He has been tried for work in the District and he proved to be an excellent and progressive officer. He obtained a diploma in Law. He was posted at the Headquarters and proved his abilities both on health and on administrative matters. The assistance which he offered at the Headquarters was substantial and he can be described as the best Health Officer. In his confidential reports he is described as excellent. He is of good character.

(b) *Demetriades Melanthios:*

He has obtained after a postgraduate course a diploma of Inspector in Meat and Other Foods. On the basis of the confidential reports and compared with the remaining candidates he is superior."

Reference then is made in the minutes to the candidate Periklis Panayiotides with whom we are not concerned and then the concluding paragraph of the said minute sums up the reasoning of their decision to the contents of which reference has been made earlier in this judgment.

On the totality of the circumstances as appearing from the relevant minutes which have been quoted in this judgment, the personal files and the confidential reports of the applicants and the interested parties, I have come to the conclusion that the respondent Commission has exercised properly its discretion and in accordance with the general principles of Administrative Law. It carried out a proper inquiry and paid due regard to all relevant considerations including the recommendations made in that respect by the Head of the Department in which the vacancies existed and which recommendations were duly warranted by the contents of the confidential reports and without taking into account any irrelevant factors.

Admittedly it is true that applicant Polydorou is senior to interested party Anthousis, whose promotion he challenges

by his recourse and applicant Michaelides is also senior to Anthousis but of equal seniority with that of interested party Demetriades, but as repeatedly stated seniority only prevails when all other factors are equal and in the present case in the
5 light of the contents of the confidential reports all factors are not equal for the seniority of the applicants to prevail.

It is clear from the above that the subject decision which is a duly reasoned one in the circumstances, was reasonably open to the respondent Commission and there is no room for inter-
10 ference by this Court with the exercise by the respondent Commission of its discretion, proper and in accordance with the Law as it was.

These recourses must fail and are hereby dismissed but in the circumstances I make no order as to costs.

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Applications dismissed. No order as to costs.