

1982 February 15

[PIKIS. J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS HADJISAVVA,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 331/80).

Public Officers—Promotions—Seniority—The least consequential of the three factors that define one’s right to promotion—First consideration is merit—Seniority prevails if all other factors are equal—Experience—Length of service is not the only guide to experience which is reflected from one’s merits as well—Promotions to post of Airport Assistant 2nd Grade—Applicant and interested parties with equal qualifications but the latter had better confidential reports and were recommended by Head of Department—Applicant more senior than interested parties—No valid ground for interfering with sub judice promotions. 5 10

Legitimate interest—Recourse against promotion—Dismissal—Applicant has no legitimate interest to complain about date of commencement of promotions.

The applicant in this recourse challenged the validity of the promotion of the two interested parties to the post of Airport Assistant 2nd Grade. The qualifications of applicant and the interested parties were equal but in the last two confidential reports they were rated as “very good” and applicant as “good”. The head of the Department, who was present at the relevant interview, stated that the interested parties were the candidates most suitable for promotion. 15 20

Counsel for the applicant invited the Court to annul the sub

judice promotions on the grounds of the seniority of the applicant and his greater overall experience in the field of civil aviation.

5 *Held*, that seniority is the least consequential, of the three factors, that define one's right to promotion; that the first consideration is merit (see section 44(2) of the Public Service Law, 1967); that seniority can have a decisive effect only where the merits and qualifications of the parties are evenly balanced; that there is nothing before this Court to suggest that the respondent failed in any way to accord due consideration to applicant's seniority; that the length of service is not the only guide to experience and experience is reflected not only from length of service but from one's merits as well; that, therefore, 10 the decision of the respondent cannot be faulted on any legitimate ground; accordingly the recourse should fail.

15 *Held*, further, that since applicant failed to make out a case for interfering with the sub judice decision he ceases to have any legitimate interest to complain about the date of appointment of the interested parties, in this case, retroactively made, for that does not affect his position in the service in any way.

20 *Application dismissed. No order as to costs.*

Cases referred to:

Partellides v. The Republic (1969) 3 C.L.R. 480;

Ioannides v. The Republic (1979) 3 C.L.R. 628.

25 **Recourse.**

Recourse against the decision of the respondents to promote the interested parties to the post of Airport Assistant 2nd Grade in preference and instead of the applicant.

P. Petrides, for the applicant.

30 *R. Gavrielides*, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

35 **PIKIS J.** read the following judgment. Georghios Hadji-Savva, an officer in the Civil Aviation Department, occupying the post of Airport Assistant 3rd Grade, contests his non promotion to Airport Assistant 2nd Grade, and challenges the appoint-

ment to that position of the two interested parties, namely, Vassos Theocharous and Charalambos Stylianou, as wrongly made.

Originally, as one may gather from the application, the gravamen of the complaint was that respondents ignored, abusing thereby their powers in law, applicant's striking superiority to the interested parties. This ground was abandoned at the trial in view of the service records of the contestants and the absence of any data lending support to the contention of the applicant.

"Striking Superiority":

As the expression "striking superiority" suggests, a party's superiority, to validate an allegation of this kind, must be self-evident and apparent from a perusal of the files of the candidates. Superiority must be of such a nature as to emerge on any view of the combined effect of the merits, qualifications and seniority of the parties competing for promotion; in other words, it must emerge as an unquestionable fact; so telling, as to strike one at first sight. Disregard of such superiority, where extant, constitutes in itself evidence of abuse of power by the appointing authority. A heavy burden lies on the party seeking to justify its disregard. The applicant singularly failed to establish a case of striking superiority; far from it, a reflection on the merits and qualifications of the parties, as disclosed in the confidential reports and the files of the candidates, suggests that the interested parties possessed superior merits, whereas their qualifications were, taking a view most favourable to the applicant, at least equal. The overall rating of each one of the interested parties during the two years preceding the appointments in question, is better in comparison to that of the applicant. The interested parties were rated as 'very good', whereas the applicant as 'good'. The head of the department who participated in the interview of the candidates with a view to assisting the Public Service Commission to select the most suitable candidates, expressed the view that the interested parties were the candidates most suitable for promotion, another weighty consideration in evaluating the merits of the parties for promotion.

The Remaining Complaints:

Notwithstanding the presence of the aforementioned weighty considerations that left the ground perfectly open for the respon-

dents to take the sub-judice decision, counsel for the applicant invited the Court to annul it on two grounds:-

- (a) The seniority of the applicant, and
- (b) his greater overall experience in the field of civil aviation.

The implication from this submission is that experience is a separate factor meriting consideration separately and distinctly from seniority. It is unnecessary to recall any of the numerous decisions of the Supreme Court on the importance of seniority to one's right to promotion. Seniority is, according to s. 44(2) of the Public Service Law, 33/67, one of three considerations to which the body vested with power to effect the promotions should have regard. It can have a decisive effect only where the merits and qualifications of the parties are evenly balanced. (See, inter alia, *Costas Partellides v. The Republic* (1969) 3 C.L.R. 480, and *Ioannides v. The Republic* (1979) 3 C.L.R. 628).

Experience:

Experience is the practical knowledge acquired from applying one's self to a particular type of work. Length of service is not the only guide to experience. The intensity with which one applies himself to a given field and the results of his work, are equal, if not more significant indicators of experience. It is for these reasons that experience is not listed as a separate consideration to which the appointing body should pay heed. Experience is reflected not only from length of service but from one's merits as well.

Seniority:

There is nothing before the Court to suggest that the respondents failed in any way to accord due consideration to applicant's seniority, a fact that was before the Public Service Commission. Seniority is, according to s. 44(2) of the Public Service Law, 33/67, the least consequential of the three factors that define one's right to promotion. The first consideration is merit, and rightly so, for it is the best guide wherefrom one may forecast who is likely to discharge best duties on a higher plane. In the long run, the reward of merit in the public service and elsewhere, is the best safeguard for an efficient public service.

The decision of the respondents cannot be faulted on any

legitimate ground, and in my judgment, there is no valid ground for interfering with it. Hence the recourse must be dismissed.

Having concluded that applicant failed to make out a case for interfering with the sub-judice decision, he ceases to have any legitimate interest to complain about the date of appointment of the interested parties, in this case retroactively made, for that does not affect his position in the service in any way. Consequently, I shall refrain from touching upon this issue. The recourse is dismissed. 5

It is with some reluctance that I shall not order the applicant to pay the costs of the proceedings. There will be no order as to costs. 10

Application dismissed. No order as to costs.