

1983 March 18

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS A. IOANNOU,

Applicant.

v.

THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 328/80).

5 *Public Officers—Promotions—Merit—Qualifications—Seniority—It only prevails if all other factors are equal—Which were not in view of the better qualifications and merit of the interested parties and the recommendations of the Head of Department—Applicant had to establish striking superiority over interested parties but he failed to do so.*

10 *Public Officers—Promotions—Head of Department—Recommendations—Public Service Commission not bound to act on such recommendations—But cogent reasons should be given for ignoring them.*

15 *Public Officers—Promotions—Interdiction of officer pending investigation into commission of disciplinary offence—No offence disclosed and no disciplinary proceedings instituted—Mere interdiction cannot be taken into consideration against the officer when question of his promotion is considered—Nor can his conviction for a criminal offence, in the absence of disciplinary proceedings and disciplinary punishment, be taken into consideration—Section 44(1)(d) of the Public Service Law, 1967 (Law 33/67).*

20 The applicant, a prison warder, was a candidate for promotion to the post of Senior Warder. The Public Service Commission after taking into consideration “all the material before it that is, the personal files and the confidential reports of the candidates, as well as the conclusions of the Departmental Committee and

the views and recommendations of the Senior Superintendent of Prisons", considered that the interested parties were superior, taking into consideration all the established criteria (merit, qualifications, seniority), compared with the remaining candidates and found them suitable and decided to promote them to the post of Senior Warder in the Department of Prisons as from 1.8.1980; and hence this recourse by the applicant. 5

The respondent Commission as it appears from the minutes, gave reasons why in respect of certain candidates it agreed with the recommendations of the Departmental Committee and the Senior Superintendent of Prisons and that in respect of interested party No. 1 the Commission elected him notwithstanding the fact that he was not recommended by the Head of the Department, because, as stated in the minutes, "he had the best performance of all candidates, as it emanates from the confidential reports about him, he has secondary education and the comments about him of the Departmental Committee are excellent". Reasons were also given why the respondent did not adopt the recommendation of the Head of the Department concerning some other candidates. 10 15 20

A perusal of the Personal files and confidential reports of interested parties 1, 2 and 5 showed that they were better than the applicant both in respect of merit and qualifications and they were recommended by the Head of Department. Interested parties 2 and 5 were senior to applicant and the latter was by 9 months senior to interested party 1. Interested party 4 was better in merit than applicant and applicant was slightly senior to interested party 3. Both were more or less equally qualified but this interested party was better in merit than applicant and was recommended by the head of Department for promotion whilst applicant was not so recommended. 25 30

Counsel for the applicant mainly contended:

- (a) That the respondent committee did not follow the recommendations of the Head of Department regarding interested party 4. 35
- (b) That the respondent acted contrary to the principle that in selecting candidates for promotion it has a duty to select the most suitable person.
- (c) That interested party No. 5 could not have been selected

for promotion in preference of the applicant because he had been interdicted for certain offences and was punished by reprimand and also was punished disciplinarily by the Head of Department.

- 5 (d) That interested party No. 3 has been convicted of a Criminal offence, that of gambling, and should not have been selected in preference to the applicant whose criminal record is clean.

10 Regarding contention (c) above interested party 5 was interdicted pending an investigation in respect of certain disciplinary offences allegedly committed by him but upon the completion of the investigation it was found that there was no material to frame any disciplinary offence.

15 *Held*, (1) that the respondent was not bound to act on the recommendation of the Head of the Department and follow such recommendation without exercising its own discretion; that a conclusion to the contrary would have amounted to deprivation of the respondent of the independent exercise of its own discretion and substitution of same by the discretion of
20 the Head of the Department whose recommendations would have been binding on the respondent; that from a perusal of the contents of the minutes of the meeting at which the decision was taken cogent reasons are given for ignoring the recommendation of the Head of the Department and in the light of such
25 reasons, this Court cannot interfere with the discretion of the respondent Commission which, in the circumstances was properly exercised; that, furthermore, applicant has not proved striking superiority over interested party No. 4 and, therefore, the recourse against such party fails.

30 (2) That though applicant was senior by nine months compared to interested party No. 1 such seniority cannot be treated as a matter which can override the better merits and qualifications of interested party No. 1 because seniority is a decisive factor when all other factors are equal; that what has to be established
35 is striking superiority and in this case the applicant failed to prove any striking superiority over interested parties 1, 2, 3 and 5; accordingly his recourse against these interested parties must also fail.

(3) That once the result of the investigation against interested

party 5 was that no disciplinary offence was committed by the interested party, his mere interdiction pending the investigation cannot be treated as amounting to disciplinary punishment or be taken into consideration against him when the question of his promotion is considered; accordingly contention (c) must fail. 5

(4) That there was nothing in the personal file of interested party 3 substantiating the allegation of his conviction of a criminal offence; that only cases where punishment has been imposed on a public officer during the preceding two years for any disciplinary offence of a serious nature can be taken into consideration (see section 44(1)(d) of Law 33/67); that such offences can only be taken into consideration if disciplinary proceedings have been taken in respect of them and a disciplinary punishment imposed upon the person concerned; that therefore even if there was a criminal conviction for gambling appearing in the records before the respondent, same should not have been taken into account by it, in effecting the promotions; accordingly contention (d) must also fail. 10 15

Application dismissed. 20

Cases referred to:

Georghiou v. Republic (1983) 3 C.L.R. 17;
Ioannides and Another v. Republic (1979) 3 C.L.R. 628 at p. 638;
Constantinou v. Republic (1980) 3 C.L.R. 551 at pp. 558, 561;
Michaeloudis v. Republic (1982) 3 C.L.R. 963 at pp. 974, 975; 25
Tapacoudis v. Republic (1981) 3 C.L.R. 9 at p. 13;
Gavriel v. Republic (1971) 3 C.L.R. 185 at pp. 200-203;
Antoniou v. Republic (1975) 3 C.L.R. 510 at p. 516;
Skarparis v. Republic (1978) 3 C.L.R. 106.

Recourse. 30

Recourse against the decision of the respondent to promote the interested parties to the post of Senior Warder in the Department of Prisons in preference and instead of the applicant.

Ph. Sphikas with D. Ioulianou (Mrs.), for the applicant.

Cl. Antoniadis, Senior Counsel of the Republic, for the respondent. 35

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant in this case is a Prison Warder appointed as temporary in 1964, and

on permanent basis in 1968. From 1968 to 1978 he was performing duties at the censorship office of Prisons and since 1978 he serves in the Prisons' Reliefs.

5 On 1.6.1979 the Director-General of the Ministry of Justice wrote a letter to the Public Service Commission asking for the filling of the vacant posts in the Department of Prisons, including, inter alia, five posts of Senior Warders. On 6.7.1979 the Public Service Commission decided to entrust the duty of the preparation of the list of candidates for promotion to its
10 secretary and authorised him to send it together with the files and confidential reports of all candidates and the schemes of service to the Chairman of the Departmental Committee.

On 1.8.1979 the Secretary of the Public Service Commission sent the list prepared by him to the Chairman of the Departmental Committee together with the files and schemes of service. The list contained the names, particulars of service and qualifications of 106 officers holding the post of warder which is the immediately lower post to that of Senior Warder in respect of which the vacancies existed. Paragraph 2 of this covering letter
20 reads as follows:

“In accordance with regulation 3 of the Regulations concerning the constitution, competency and the procedure of the Departmental Committee, as provided by section 36 of the Public Service Law, No. 33/67, I send
25 you the following and I expect you to act in accordance with the relevant provisions.”

In the said list, the words “Not passed” referring to the Departmental examinations are underlined wherever they appear opposite the names of the candidates concerned, as such examinations were deemed necessary under the schemes of service.
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On 14.11.1979, the Chairman of the Departmental Committee sent to the Chairman of the Public Service Commission, a list of 15 candidates recommended for promotion together with the comments of the Committee for each one of them. On 24.11.
35 1979, the Public Service Commission wrote a letter to the Departmental Committee drawing their attention to the fact that the list prepared by them was not in accordance with the provisions of the Law and the Regulations, in that it did not contain

the names and views about all the candidates, but only for those recommended, and asking for -

- (a) a supplementary list of the remaining candidates (those not recommended), in accordance with regulation 6, and, 5
- (b) a clarification as to whether the 15 candidates recommended were the only suitable candidates for promotion.

It was also pointed out in the same letter that regulation 6 provides that "not less than 2 and not more than four should be recommended for each vacant post, provided there are persons suitable for such recommendation." 10

On 10.12.1979 a new supplementary list was sent to the Public Service Commission, containing the names of five more warders as recommended for the said post, and its comments about them and also the comments in respect of 79 other warders, not recommended for promotion whose names were included in the same list. 15

On 12.3.1980, this second list was again returned by the Public Service Commission to the Departmental Committee, because, as remarked by the respondent, it was made contrary to the Law and the Regulations, in that certain officers were commented upon as "of doubtful political beliefs" or "unstable political beliefs" or "a supporter of the coup d' etat" or "as having undergone psychiatric treatment." (See, for example, the remarks in respect of officers 1, 5, 11, 15, 19, 20, 25, 34, 44, 47 and 48 on the second list, Appendix 6 to the Opposition). 20 25

The observations of the Public Service Commission appear in Appendix 7 attached to the Opposition.

As a result, the Departmental Committee met again on 15.3.1980 and prepared the new final list in accordance with the observations of the respondent Commission, (Appendix 8 to the Opposition). This was the list which the respondent had before it and took into consideration in making the promotions. 30 35

The respondent Commission met on 16.5.1980 and, according to the minutes of their meeting (Appendix 9 to the Opposition)

they read the report of the Departmental Committee and decided to consider the matter at a future meeting and ask the Senior Superintendent of Prisons, who is the Head of the Department concerned, to be present.

5 The respondent finally met on 7.7.1980 to consider the said promotions. The minutes of such meeting appear in Appendix 10 to the Opposition. At such meeting the Senior Superintendent of Prisons attended, who expressed his views and recommendations about the 20 candidates selected and recommended
10 by the Departmental Committee, giving his reasons for each one of them which were recorded in detail in the minutes. He also answered various questions put to him by members of the respondent Commission concerning certain candidates. After he made his recommendations, he left the meeting, and the
15 respondent proceeded to consider who out of 20 candidates recommended, were the most suitable candidates for promotion to the post of Senior Warder. The respondent before taking its decision, as it is stated in the last paragraph at page 2 of the minutes, took into consideration "all the material before it,
20 that is, the Personal Files and the Confidential Reports of the above candidates, as well as the conclusions of the Departmental Committee and the views and recommendations of the Senior Superintendent of Prisons, considered that the following candidates are superior, taking into consideration all the established
25 criteria (merit, qualifications, seniority), compared with the remaining candidates and found them suitable and decided to promote them to the post of Senior Warder in the Department of Prisons as from 1.8.1980.

1. Kasieris Loizos.
- 30 2. Papadopoulos Antonios.
3. Pontikides Andreas.
4. Telemachou Andreas.
5. Hj. Panayiotou Mikis".

35 The respondent Commission as it appears from the minutes, gave reasons why in respect of certain candidates it agreed with the recommendations of the Departmental Committee and the Senior Superintendent of Prisons and that in respect of Kasieris Loizos the Commission elected him notwithstanding the fact that he was not recommended by the Head of the Department,

because, as stated in the minutes, "he had the best performance of all candidates, as it emanates from the confidential reports about him, he has secondary education and the comments about him of the Departmental Committee are excellent". Reasons are also given why the respondent did not adopt the recommendation of the Head of the Department concerning some other candidates. 5

The applicant filed the present recourse against the said promotions, praying for a declaration of the Court that the decision of the respondent Commission to promote the five interested parties to the post of Senior Warder in preference and instead of the applicant, is void and of no legal effect whatsoever. 10

The application is based on the following grounds of law:

"The Respondent acted contrary to the principles established by the judgments of the Supreme Court that the Respondent in selecting candidates for promotion to a higher post has a duty to select the most suitable persons. In violation of the said principles and acting under circumstances amounting to abuse of power, the Respondent Commission promoted the interested parties to the post of the Senior Warder without taking into account 15 20

- (1) the seniority of the applicant;
- (2) the recommendations of the Departmental Committee of Prisons;
- (3) the professional abilities of the applicant, his ability for leadership and the superiority of his character; 25
- (4) the fact that certain of the persons promoted in particular, Nos 1, 2 and 4, do not possess the necessary qualifications and experience for the promotion to the post of Senior Warder." 30

The persons referred to in the last ground of law as Nos 1, 2 and 4, are interested parties Andreas Telemachou, Antonios Papadopoullos and Loizos Kasieris, mentioned in the sub justice decision under Nos 4, 2 and 1, respectively.

Counsel for applicant contended in his address concerning interested party No. 4, Loizos Kasieris, that the fact that the 35

applicant was included in the first list of 15 persons recommended by the Departmental Committee for promotion, whereas interested party No. 4 was not so included, shows that he was considered by such Committee to be better than interested party No. 4. Another argument advanced by him was that the respondent Commission seems to have been biased by promoting interested party No. 4 who was not recommended by the Head of the Department and failed to promote the applicant without giving reasons for such failure.

I find myself unable to accept either of these contentions. Neither the first list, nor the second list were proper lists prepared by the Departmental Committee as mentioned earlier, and having regard to their contents, they were prepared contrary to the Law, the Regulations and the principles governing promotions. It was for these reasons that both were rejected by the respondent Commission which asked for a new list to be prepared in accordance with the Law and the Regulations applicable. It was only the third list (Appendix No. 8) which was prepared by the Departmental Committee in accordance with the law which was the only valid one before the respondent Commission for consideration and the respondent Commission acted properly by taking only such final list into consideration. Therefore, I cannot take into account in the present case the contents of any other invalid or irregular list which was rightly not considered or acted upon by the respondent Commission, as material on which I can test the validity of the exercise by the respondent Commission of its discretion.

As to the second contention, cogent reasons appear in the sub judice decision, which are recorded in the minutes of the meeting at which such decision was taken, as to why the respondent Commission did not follow the recommendations of the Head of the Department concerning this interested party. The respondent was not bound to act on the recommendation of the Head of the Department and follow such recommendation without exercising its own discretion. A conclusion to the contrary would have amounted to deprivation of the respondent of the independent exercise of its own discretion and substitution of same by the discretion of the Head of the Department whose recommendations would have been binding on the respondent. From a perusal of the contents of the minutes of the meeting

at which the decision was taken, I am satisfied that cogent reasons are given for ignoring the recommendation of the Head of the Department and I find that in the light of such reasons, I cannot interfere with the discretion of the respondent Commission which, in the circumstances, was properly exercised. 5

Furthermore, by a perusal of the files and confidential reports of the applicant and interested party No. 4, it is evident that interested party No. 4 is better in merit and slightly senior to the applicant. In any case, applicant has not proved striking superiority over interested party No. 4 and, therefore, this recourse against such party fails. 10

I come now to compare applicant to interested parties 1,2 and 5, Andreas Telemachou, Antonakis Papadopoulos and Mikis Hj. Panayiotou. 15

Leaving aside the recommendations of the Head of the Department which appear in the record of the minutes in respect of these interested parties and which were accepted and taken into consideration by the respondent when taking the sub judice decision, a perusal of their personal files and confidential reports, as well as of the file of the applicant, shows that all three interested parties are better than the applicant both in respect of qualifications and merit. Furthermore, the observations and recommendations of the Departmental Committee for these three interested parties are by far superior to those concerning the applicant. 20 25

On the question of seniority, interested party No. 2 is by 20 months senior to the applicant and interested party No. 5 by four months senior. Therefore, in respect of these interested parties the applicant has not shown any superiority at all over them, but, on the contrary, both these interested parties appear to be superior in all respects, that is, merit, qualifications and seniority. Applicant is senior by nine months compared to interested party No. 1 but such seniority cannot be treated as a matter which can override the better merits and qualifications of interested party No. 1. 30 35

As it has been held time and again by this Court, seniority is a decisive factor when all other factors are equal, (see

*Georghiou v. The Republic of Cyprus through the Educational Service Committee Case 437/80, not yet reported**. Seniority of one candidate by itself cannot outweigh the better qualifications of others see inter alia, *Ioannides and Another v. Republic* (1979) 3 C.L.R. 628 at p. 638, *Constantinou v. The Republic* (1980) 3 C.L.R. 551 at p. 558, 561, *Michaeloudis v. The Republic* (1982) 3 C.L.R. 963, 974, 975. *Georghiou v. The Republic* (supra) and the cases referred to therein). It is also well settled that mere superiority of one candidate over others is not enough to make this Court intervene. What has to be established, is striking superiority and in this case the applicant failed to prove any striking superiority. (see, *Georghiou v. The Republic* (supra)).

It has been alleged by counsel for applicant that interested party No. 5 was interdicted for certain offences and was punished by reprimand and also that he was punished disciplinarily by the Senior Superintendent of Prisons. Nothing of this sort appears in the files of the interested party. Though counsel for applicant was aware of the absence of any material to substantiate such allegations and that such allegations were denied by counsel for the respondent, he failed to call any evidence to prove them. Therefore, I find that any allegations about disciplinary punishments imposed on interested party No. 5 by the Senior Superintendent of Prisons and/or any alleged reprimand, is unfounded and unacceptable. I wish further to add that only punishments during the preceding two years for any disciplinary offences of a serious nature can be taken into consideration by the Public Service Commission under section 44(1) of the Public Service Law, 1967 (Law 33/67) when considering a promotion. Section 44(1) reads as follows:

“No officer shall be promoted to another office, unless—

(a) a vacancy exists in that office:

Provided that in the case of offices with a combined establishment, promotion from the lower to the higher office or grade of that office may be made irrespectively of whether there is a vacancy in the higher office or grade or not, and in accordance with any general directions given by the Council of Ministers in this respect;

* Now reported in (1983) 3 C.L.R. 17.

- (b) he possesses the qualifications laid down in the schemes of service for that office;
 - (c) he has not been reported upon in the last two annual confidential reports as unsuitable for promotion;
 - (d) he has not been punished during the preceding two years for any disciplinary offence of a serious nature. 5
- (2) The claims of officers to promotion shall be considered on the basis of merit, qualifications and seniority”.

In respect of disciplinary offences of a nature which is not serious, under section 44(1)(d) of the above provision, the position is explained in *Tapacoudis v. The Republic* (1981) 3 C.L.R. 9, where, at page 13, it is stated: 10

“As it appears 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 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”. 15 20

(see, also, *Gavriel v. Republic* (1971) 3 C.L.R. 185 at pp.200–203 where it was held that if the appropriate Authority after an inquiry into the matter, decides that the offence is not of a serious nature, it is not for the Commission to consider its seriousness). 25

I come now to the allegation of counsel for applicant concerning the interdiction of interested party No. 5 for certain disciplinary offences. Such interdiction appears in Reds 31 and 32 in the file of this interested party. Red 31 is a confidential letter addressed to the Chairman of the Public Service Commission informing him that the Ministry of Justice had appointed an investigating officer to carry out an investigation in respect of certain disciplinary offences against a number of prison warders, one of whom was interested party No. 5 and requesting that in the public interest such warders be interdicted pending 30 35

the completion of the investigation. Red 32 is an extract from the minutes of the Public Service Commission containing a decision to interdict the said warders under the provisions of section 84(1) of the Public Service Law, Law 33/67, as from 15.2. 5 1979 for the purpose of facilitating the investigation against them. Such interdiction lasted from 15.2.1979 till 22.3.1979, when the Director-General of the Ministry of Justice informed the Chairman of the Public Service Commission that the disciplinary investigation was completed and that no material was 10 found to frame any disciplinary offence against interested party No. 5, requesting him at the same time to terminate the interdiction. Such interdiction was in fact terminated by a decision of the Public Service Commission which was taken on the same day. Once the result of the investigation was that no disciplinary 15 offence was committed by the interested party, his mere interdiction pending the investigation cannot be treated as amounting to disciplinary punishment or be taken into consideration against him when the question of his promotion is considered.

20 For all the above reasons, the recourse against interested parties 1, 2 and 5, fails.

I, lastly, come to compare applicant with interested party No. 3, Andreas Pontikides. With regard to qualifications from what appears in Appendix 11, applicant attended a secondary 25 school for a period of seven years, but there is nothing in his file that he graduated a secondary education school. No secondary school graduation certificate appears in his personal file.

In so far as interested party No. 3 is concerned, there is also 30 a similar statement that he attended a secondary education school for three years and, in fact, up to the third form. In any case, a secondary school graduation certificate or secondary school education is not required under the schemes of service. As to other qualifications, both parties passed the Departmental 35 examinations which were necessary under the schemes of service. From the personal record form containing the confidential reports the interested party is mentioned as having passed examinations in First Aid, whereas nothing of this sort is mentioned about applicant. It has been contended on behalf of

the applicant that applicant passed an examination in First Aid as well. He submitted that such certificate did not appear in the file because of an omission of the officer responsible to file same and in his written address in reply he mentioned that he was going to call evidence to substantiate this allegation, a fact which he failed to do. Therefore, as a result of the failure of the applicant to prove his allegation, once the burden of proof rested on him and bearing in mind the presumption of regularity (see, *Antoniou v. The Republic* (1975) 3 C.L.R. 510, at p. 516; *Skarparis v. The Republic* (1978) 3 C.L.R. 106), I find such contention as groundless.

Therefore, on the material before me which is the same which was put before the respondent, the qualifications of both parties are more or less equal and no striking superiority of the applicant has been shown over interested party No. 3 in this respect.

Coming now to the merits of the parties, the general assessment in their files for the last two years is the same, though interested party in older reports appears slightly better, but such older reports cannot be taken into consideration in evaluating the merits of the parties. There is, however, difference in the remarks appearing in their reports which, in the case of the applicant, are "trustworthy and obedient. Co-operative and loyal", whereas, in the case of interested party No. 3 they are, "trustworthy and loyal. Co-operative, willing. He has power to impose discipline over prisoners". In the report of the Departmental Committee, applicant was commented as follows: "For a long time he was performing clerical duties with reduced efficiency. Lately, he has been transferred to the departments. He seems to be much better, developing and firm. We believe that he will become even better". Interested party No. 3 was commented as being of "strong personality, firm, capable of imposing discipline and order and hard working". Interested party No. 3, furthermore, was one of the five officers recommended by the head of the Department for promotion, whilst applicant was not so recommended. All the above, put interested party in a more advantageous position than the applicant regarding merits. See, *Antoniou v. The Republic* (1975) 3 C.L.R. 510 at p. 515, where it was stated that:

5 “We should say that we have felt some anxiety because of
the fact that the most senior candidate was not selected
for appointment even though he was described as an ‘average
officer’; one does not have to be ‘exceptional’ in order
10 to enjoy the benefit of the advantage of seniority. 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
15 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”.

15 Applicant is senior by 9 months compared to interested party
No. 3. The seniority of the applicant over such interested party
cannot prevail in the present case all other matters not being
equal and the applicant has not proved striking superiority over
20 interested party No. 3. It was, therefore, reasonably open to
the respondent, on the material before it, to select the interested
party No. 3 as more suitable than the applicant. (see, *Evangelou*
v. The Republic (1965) 3 C.L.R. 292 at pp. 298, 299).

25 An allegation has been made by counsel for applicant that
interested party No. 3 has been convicted of a criminal offence,
that of gambling, and should not, therefore, have been selected
in preference to the applicant whose criminal record is clean.
Nothing of this sort appears in the file of interested party No. 3
and no evidence has been produced to substantiate this
30 allegation. Therefore, I find such allegation unfounded. As
I have already mentioned earlier in this judgment, in any event,
only cases where punishment has been imposed on a public
officer during the preceding two years for any disciplinary offence
of a serious nature can be taken into consideration under section
44(1)(d) of Law 33/67. No mention is made in the said section
35 about criminal offences. Such offences can only be taken into
consideration if disciplinary proceedings have been taken in
respect of them and a disciplinary punishment imposed upon
the person concerned. Therefore, even if there was a criminal
conviction for gambling appearing in the records before the

respondent, same should not have been taken into account by it, in effecting the promotions. The recourse, therefore, against interested party No. 3, also fails.

In the result, this recourse is dismissed, but in the circumstances of the case I make no order for costs.

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*Recourse dismissed. No order
as to costs.*