

1984 January 26

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELPIDOROS ALVANIS,

*Applicant.*

v.

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

*Respondent.*

(Case No. 491/82).

*Administrative Law—Inquiry—Sufficiency of—Promotions to post of Deputy Director Cyprus Telecommunications Authority—Personal files and confidential reports of candidates not considered by respondent Board—Inquiry carried out by the Board insufficient because it acted in disregard and/or in ignorance of most material facts pertaining to the criteria upon which promotions should be made—Promotions annulled.*

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The applicant in this recourse challenged the validity of the promotion of the interested parties, who have been promoted in preference to him, to the post of Deputy Director of the respondent Authority.

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Counsel for the applicant mainly contended that at the meeting of the board when the decision was taken the members of the board did not have before them nor did they peruse the personal files and confidential reports not even a comparative table showing details of the service and qualifications of the candidates.

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*Held*, that in the light of all the circumstances of this case it does not seem that the conclusion reached by the board can be said to be an independent decision reached after due inquiry; that on the contrary it is clear that the inquiry was quite insufficient due to the fact that the respondents acted in disregard and/or in ignorance of most material facts pertaining to the criteria upon which promotions should be based; and that, there-

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fore, the sub judge decision must be annulled and it is now up to the respondents to reconsider the matter in a manner warranted by law and the principles of good administration.

*Sub judge decision annulled.*

5 Cases referred to.

*Zimieris (No. 2) v Republic* (1975) 3 C.L.R. 224;

*Iosif v. C.Y.T.A.* (1975) 3 C.L.R. 261.

*Evipides v. E.A.C.* (1982) 3 C.L.R. 850.

**Recourse.**

10 Recourse against the decision of the respondent to promote the interested parties to the post of Deputy Director of the Cyprus Telecommunications Authority in preference and instead of the applicant.

*A. Ladas*, for the applicant.

15 *A. HadjiIoannou*, for the respondent.

*Cur. adv. vult*

L. LOIZOU, J. read the following judgment. The applicant by this recourse challenges the validity of the promotion of the interested parties, chosen in preference to him, to the post of Deputy Director of the respondent Authority.

The post of Deputy Director is a promotion post from the immediately lower post of Section Head except in exceptional circumstances which do not arise in the present case as all the candidates held the post of Section Head.

25 Provision for the promotions of members of the staff of the Authority is made in the Cyprus Telecommunications Authority (Personnel) (General) Regulations, 1982 and particular regulation 10 thereof. In the case of the highest personnel (anotaton prosopikon) which comprises the post of Director and Deputy Director the promotions are effected by the administrative board of the Authority and in the case of all other grades of the staff by the Personnel Committee. This Committee also expresses its opinion to the Board in cases of promotions of Section Heads which is the highest post of th

second grade or category of personnel i.e. higher personnel (anoteron prosopikon). In effecting a promotion the board of the Authority also hears the recommendations of the General Manager.

In the present case the vacant posts which had to be filled were two posts of Deputy Director. In accordance with the provisions of regulation 10 the Personnel Committee met on the 10th September, 1982 and considered all members of the staff holding the post of Section Head who were eligible for promotion to the post of Deputy Director and, after taking into consideration all relevant factors, expressed the opinion that the most suitable were the two interested parties, A. Kyprianou and S. Mourouzides. The minutes of the meeting of this Committee are *exhibit 3*.

The meeting of the board at which the decision challenged was taken took place on the 27th October, 1982. Present at this meeting was also the General Manager of the Authority, Mr. Stylianides. The minutes of the meeting of the board have been produced in the course of the hearing and are *exhibit 2*.

The grounds of law upon which the application is based, as set out in the Application itself, are the following:

- (1) The sub judice decision was taken under a misconception of facts and/or without taking into consideration material facts and/or by a wrong exercise of the discretionary power of the competent administrative organ.
- (2) The sub judice decision is not duly or at all reasoned.
- (3) In addition and/or in the alternative the sub judice decision was taken by an incompetent organ or persons and/or in contravention of the relevant regulations and/or the established principles of administrative law.

In the course of the hearing learned counsel for the applicant based applicant's case virtually on the ground i.e. that at the meeting of the board when the decision was taken the members of the board did not have before them nor did they peruse the personal files and confidential reports not even a comparative table showing details of the service and qualifications of the candidates. Learned counsel, at a later stage of the proceedings,

made a similar allegation regarding the meeting of the Personnel Committee but did not pursue this latter ground.

5 Counsel's allegation as to the meeting of the board was initially based on the wording of the minutes of the meeting (exhibit 2). It is, in fact, therein recorded that at the commencement of the meeting the General Manager placed before the members of the board the minutes of the meeting of the Personnel Committee and no mention is made that anything else was placed before them. Furthermore, although such minutes purport to explain how the decision was arrived at and what was taken into consideration in selecting the candidates promoted nowhere is it stated that the members of the board either considered or had before them anything else other than the minutes of the meeting of the Personnel Committee and the recommendations of the General Manager who, in fact, was also the person who kept the minutes.

15 I do not propose to dwell on this issue in any detail because eventually it was resolved by evidence adduced by both sides. Learned counsel for the respondent called the General Manager of the Authority as a witness who, very frankly and fairly, stated in evidence that the relevant files were not, in fact, before the members of the board at the meeting in question but were in a cabinet in the Personnel Department. He added that he had told the members that the Personnel Manager was available in his office and that if the members required any file he would be requested to fetch it and place it before them. The witness did not remember if, any member of the board asked for or inspected any file. Counsel for the applicant, on the other hand called as a witness a member of the respondent board, Mr Efstathios Kittis, who was present and, in fact, acted as secretary at that particular meeting. He confirmed that the personnel files and confidential reports of the candidates were not before the members of the board and went on to say that no member had requested the production of any file and that the decision was taken on the basis of the minutes of the meeting of the Personnel Committee and the recommendations of the General Manager. It is significant to note that this witness was not cross-examined by learned counsel for the respondent.

40 In the light of the uncontested evidence before the Court learned counsel for the respondent altered the course of his

defence and submitted in his final address that it was not necessary for the members of the board to examine the files themselves but that they could appoint some committee or other organ to make the necessary inquiries and they could utilize the conclusions reached by such committee or organ in reaching their decision and this in view of the provisions of paragraph 9 of regulation 10. 5

This paragraph reads as follows:

“(9) Αί προς προαγωγήν κρίσεις διενεργούνται ἐν ὄψει τῆς ὑπηρεσιακῆς ἐπιδόσεως καὶ ἀποδόσεως καὶ τῆς ἐν γένει οὐσιαστικῆς καταλληλότητος ἐκάστου, ἐλεγχομένων ἐκ τῶν στοιχείων τοῦ ἀτομικοῦ του φακέλλου, ἐκ τῶν φύλλων ποιότητος καὶ τῶν φύλλων προαγωγῆς αὐτοῦ ἐν συνδυασμῶ πρός τὴν προσωπικὴν ἀντίληψιν τῶν μελῶν τοῦ οἰκείου Συμβουλίου περὶ τοῦ κρινομένου”. 10 15

“(9) The decisions to promote are taken in view of the service record and performance and in general the substantial suitability of each, as appearing on the particulars in his personal file, from the quality sheets and promotion sheets in conjunction with the personal view of the members of the particular Council of the candidate”. 20

I am clearly of the view that this paragraph cannot be construed in the way submitted by counsel. Such construction would, in effect, mean that the assessment of the relevant criteria relating to promotions and moreover the actual decision would not be the decision of the board which is the competent organ but of some other organ which has no competence under the law. 25

In the light of all the circumstances of this case it does not seem to me that the conclusion reached by the board can be said to be an independent decision reached after due inquiry. On the contrary it is clear that the inquiry was quite insufficient due to the fact that they acted in disregard and/or in ignorance of most material facts pertaining to the criteria upon which promotions should be based. (See, inter alia, *Zinieris (No.2) v. The Republic* (1975) 3 C.L.R. 224; *Iosif v. CYTA* (1975) 3 C.L.R. 261; *Euripides v. E.A.C.* (1982) 3 C.L.R. 850). 30 35

In the result I feel bound to annul the decision and it is now

up to the respondents to reconsider the matter in a manner warranted by law and the principles of good administration.

*Mr. Ladas:* I claim my costs.

5 *Court:* Respondents are adjudged to pay £45 towards applicant's costs.

*Sub judice decision annulled.  
Order for costs as above.*