

1985 February 15

[LORIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHRYSOSTOMOS KALOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 362/81).

5 *Legitimate interest—Article 146.2 of the Constitution—Acceptance of an act or decision—Deprives acceptor of a legitimate interest entitling him to make a recourse for the annulment of such act or decision—Recourse against promotion of interested party to post of Principal Insurance Officer—Subsequent decision promoting applicant to the said post—Though applicant accepted the promotion he has not accepted the decision impugned but a subsequent*
10 *decision—Not deprived of a legitimate interest entitling him to pursue his recourse against the previous decision.*

15 *Public Officers—Promotions—Qualifications—Additional qualification under the schemes of service—Special reasoning must be given by the respondent Commission where a person not possessing such qualification was selected in preference to another possessing one—Such special reasoning given by the Commission—Moreover better merit of interested party a criterion which was sufficient to outweigh the additional qualification of the applicant.*

20 *Public Officers—Promotions—Seniority—Consideration of—How it may be inferred—It only prevails if all other factors are more or less equal—“Simple seniority”—And substantial seniority—No distinction between—Interested party*

superior in merit which alone outweighs the seniority of the applicant even if it was so substantial (12 years)—Impression created at the interview of candidates—A factor which may legitimately be taken into account.

Public Officers—Promotions—Qualifications—“Wide knowledge of modern social insurance” and “Organising and administrative ability”—Former qualifications possessed by interested party in view of her relevant diplomas and certificates—And latter qualification possessed by her on account of her marks in the relevant head of the confidential reports—Moreover the respondent Commission which reached its decision after considering the relevant files and the recommendations of the Head of Department must be inferred to have been satisfied that the interested party was possessed at the material time of the above qualifications.

The applicant, a Senior Insurance Officer in the Department of Social Insurance, was a candidate for promotion to the post of Principal Insurance Officer, a first entry and promotion post. The Public Service Commission by its decision taken on 31.7.1981 promoted the interested party to the above post; and hence this recourse. Applicant was by 12 years senior to the interested party but the latter had superior qualifications and better confidential reports. By means of another decision, which was taken on 1.7.1982—and whilst this recourse was pending an offer of promotion to the post of Principal Insurance Officer was made to the applicant which he accepted unconditionally; and it was submitted by counsel for the respondent that the acceptance by the applicant of the said offer unconditionally deprived him of the legitimate interest, in the sense of Article 146.2 of the Constitution, entitling him to proceed with this recourse any further.

Counsel for the applicant mainly contended:

- (a) That the interested party did not possess the qualifications required under the schemes of service.
- (b) That the applicant possessed the additional qualification required by paragraph (e) of the relevant scheme of service whereas the interested party did not.

- (c) That the applicant had substantial seniority over the interested party and that his "substantial seniority" (about 12 years), as distinguished from "seniority" should even defeat merit.
- 5 (d) That the respondent did not examine the seniority of the applicant.
- (e) That the respondent Public Service Commission attached undue weight to the interview with the candidates.

10 *Held, (I) on the question of legitimate interest:*

That though a person who expressly or impliedly accepts an act or decision of the administration, is deprived, because of such acceptance of a legitimate interest entitling him to make an administrative re-
 15 course for the annulment of such act or decision, even if the acceptance of applicant is considered "free" and "unreserved" it does not deprive him of the legitimate interest entitling him to pursue his present administrative recourse, for the reason that
 20 he has not accepted the administrative decision impugned i.e. the decision of 31.7.81 but a subsequent decision, that of 1.7.82, the latter having not touched at all the former which is still valid and executory.

25 *Held, (II) on the merits of the recourse:*

(1) That with regard to the qualification of "Wide knowledge of modern social insurance" one has to look at the means of acquiring such knowledge; and this knowledge can be nowhere else better reflected
 30 than in the relevant diplomas and certificates of the interested party which were filed in her personal file which was before the P.S.C.; that as regards the qualification of "Οργανωτική και διοικητική ικανότης" the material which has to be examined is to be
 35 found in the confidential reports; that the confidential reports of the last 2 years (1979 and 1980) under the heads "ικανότης επιλύσεως προβλημάτων" «Δευθυντική/εποπτική ικανότης» και «Ηγετική ικανότης» indicate that the interested party

was rated "excellent" in all three for both years; furthermore, the respondent P.S.C., which reached its decision after considering the relevant files, the recommendations of the Head of Department, etc. must be inferred to have been satisfied that the interested party was possessed at the material time of the qualifications under (b) and (c) of the scheme of service and was therefore eligible for promotion to the above post (see *Miliatos v. The Republic* (1981) 3 C.L.R. 85 at page 90); and that, therefore, the interested party was possessing at all material times the qualifications acquired under (b) and (c) of the schemes of service. 5 10

(2) That though possession of additional qualifications simpliciter to those required by the relevant scheme of service does not specifically enhance the claims of the holder to promotion where an additional qualification is required under the scheme of service, special reasoning must be given in cases where a person not possessing such qualification was selected in preference to another possessing one, as to why such qualification was disregarded; that in this case the respondent Commission gave special reasoning in its sub judice decision as to why the interested party, who did not possess the additional qualification required under the scheme of service was selected; and that, further, the Commission took, into consideration, inter alia, the better merit of the interested party, a criterion which was sufficient to outweigh the additional qualification of the applicant (vide *Makrides v. The Republic* (1983) 3 C.L.R. 750). 15 20 25 30

(3) That seniority is not the decisive criterion for promotion; that it should be duly taken into consideration and ought to prevail "all other things being more or less equal"; that there is no distinction between "simple seniority" and "substantial seniority"; that if merit and qualifications are superior seniority alone could not tip the scales for promotion in favour of a candidate; that merit should carry the most weight; that as it transpires from the 35 40

confidential reports the merit of the interested party was unique; and that, therefore, the merit of the interested party alone outweighs the seniority of the applicant even if the latter's seniority was so substantial.

5 *Held, further*, that the position for the applicant becomes even worse if it is taken into consideration that an administrative Court cannot interfere with a promotion unless it has been established that the person not selected did have "striking superiority" over
10 those selected.

(4) That since it is clear from the wording of the sub judge decision that the Commission examined inter alia the personal files of the candidates (in which the years of appointment and promotion are clearly stated); and that since the sub judge decision states, inter alia, that one of the criteria is seniority, the only reasonable inference that can be drawn from the above is that the P.S.C. duly examined and had in mind the seniority.
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(5) That the impression created by a candidate when he is being interviewed is always a factor which may legitimately be taken into account; that in this particular case the account for the performance of the candidates at the interview is a comprehensive but very satisfactory account and there is no reflection of undue weight being attached to it in the final decision of the Public Service Commission
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Application dismissed.

Cases referred to:

- 30 *Karapataki v. Republic* (1982) 3 C.L.R. 88 at p. 93;
 Myrianthis v. Republic (1977) 3 C.L.R. 165;
 Piperis v. Republic (1967) 3 C.L.R. 295;
 Ioannou and Others v. Republic (1968) 3 C.L.R. 146;
 Markou v. Republic (1968) 3 C.L.R. 267;
35 *Pericleous v. Republic* (1971) 3 C.L.R. 141;

- Tompoli v. C.Y.T.A.* (1980) 3 C.L.R. 266;
- Neocleous v. Republic* (1980) 3 C.L.R. 497;
- Christofides v. C.Y.T.A.* (1979) 3 C.L.R. 99;
- Miliatos v. Republic* (1981) 3 C.L.R. 85 at p. 90;
- Larkos v. Republic* (1982) 3 C.L.R. 513 at p. 518; 5
- Protopapas v. Republic* (1981) 3 C.L.R. 456;
- Stylianou v. Republic* (1984) 3 C.L.R. 776;
- Skarparis v. Republic* (1978) 3 C.L.R. 106 at p. 116;
- Makrides v. Republic* (1983) 3 C.L.R. 750 at p. 758;
- Partellides v. Republic* (1969) 3 C.L.R. 480; 10
- Menelaou v. Republic* (1969) 3 C.L.R. 36 at p. 41;
- Theocharous v. Republic* (1969) 3 C.L.R. 318 at p. 323;
- Michanicos v. Republic* (1976) 3 C.L.R. 237;
- Michaelides v. Republic* (1976) 3 C.L.R. 115;
- Christou v. Republic* (1977) 3 C.L.R. 11; 15
- Duncan v. Republic* (1977) 3 C.L.R. 153;
- HjiSavva v. Republic* (1982) 3 C.L.R. 76 at p. 78;
- Papadopoulos v. Republic* (1983) 3 C.L.R. 1070 at p. 1075;
- Hjiloannou v. Republic* (1983) 3 C.L.R. 1041 at p. 1045;
- Psaras v. Republic* (1985) 3 C.L.R. 229; 20
- Theodossiou v. Republic*, 2 R.S.C.C. 44.

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Principal Insurance Officer in preference and instead of the applicant. 25

Chr. Triantafyllides, for the applicant.

A. *Vladimirou*, for the respondent.

Cur. adv. vult.

LORIS J. read the following judgment. The applicant, a
5 Senior Insurance Officer in the Department of Social Insurance in the Ministry of Labour and Social Insurance, by means of the present recourse impugns the decision of the respondent Public Service Commission dated 31.7.81, published in the Official Gazette of the Republic on 4.9.81,
10 whereby the interested party, namely Eleni Samuel was promoted to the post of Principal Insurance Officer in preference to and instead of the applicant.

After the filing of the opposition and written addresses
15 pursuant to relevant directions of this Court and after judgment was reserved, it was found necessary to re-open this case twice; on the first occasion it was re-opened by the Court owing to the necessity for the clarification of a point connected with one of the grounds on which the applicant is relying, notably an allegation to the effect that
20 the officer who was preparing the confidential reports in respect of the interested party was related to her; I shall be dealing with this matter later on in the present judgment.

On the 2nd occasion the case was re-opened on the application of the respondent Public Service Commission,
25 who informed this Court that the applicant in the present case was promoted to the post of Principal Insurance Officer in the Department of Social Insurance (Ministry of Labour and Social Insurance) by virtue of another decision of the Public Service Commission dated 1.7.82; learned
30 counsel appearing for the respondent stated that pursuant to the decision of 1.7.82 an offer was made to the applicant by letter dated 28.6.82 (vide red 80 in the personal file of the applicant to that effect) and the applicant replied by letter dated 3.7.82 (red 81 in the same file) accept-
35 ing unconditionally the aforesaid offer; it was submitted by learned counsel appearing for the respondent that in the circumstances the acceptance by the applicant of the aforesaid offer unconditionally deprived him of the legitimate interest entitling him to proceed with the present recourse

any further. Learned counsel cited in support of his submission the case of *Karapataki v. The Republic*, (1982) 3 C.L.R. 88 at p. 93.

Learned counsel appearing for the applicant did not dispute the facts but maintained that the applicant did accept an offer made to him by the Public Service Commission in furtherance of an altogether different decision of the respondent, reached at about 2 years later than the sub judice decision; learned counsel referred the Court to the case of *Myrianthis v. The Republic*, (1977) 3 C.L.R. 165, in support of his submission.

In spite of the fact that learned counsel for the respondent exhibited an intention to withdraw his application for re-opening and abandon his submission on the issue of existing legitimate interest, I feel dutybound to examine this issue which goes straight to the jurisdiction of this Court and it was repeatedly stressed it should be even examined by the Court acting *ex proprio motu*.

Article 146.2 of the Constitution requires a recourse under Article 146.1 "to be made by a person whose any existing legitimate interest... is adversely and directly affected by such decision or act or omission."

In Greece, the position of legitimate interest is regulated by section 48 of Law 3713/1928; the relevant decisions of the Greek Council of State (*vide* the Conclusions of the Greek Council of State 1929—1959 at pages 257-266) have laid down the principle shortly as follows:

«Η γενομένη τυχόν αποδοχή της προσβαλλομένης πράξεως υπό του αιτούντος καθιστά απαράδεκτον την κατ' αυτής στρεφομένην αίτησιν ακυρώσεως ελλείψει συμφέροντος... Πάντως η αποδοχή δέον να είναι ανεπιφύλακτος και ελευθέρα και ουχι να έλαβε χώραν υπό την πίεσιν της επελεύσεως επιβλαβών συνεπειών δια τον αιτούντα »

(*vide* p. 261 of the Conclusions of the Greek Council of State-supra).

("The acceptance, if any, of the attached act, by the applicant makes unacceptable the application for annul-

ment directed against it due to lack of interest.. In any way the acceptance must be unreserved and free and should not have taken place under the pressure of harmful consequences to befall on the applicant”).

5 The above principle has been adopted by our Courts long ago and it is now well settled “that a person who expressly or impliedly accepts an act or decision of the administration, is deprived, because of such acceptance, of a legitimate interest entitling him to make an administrative recourse for the annulment of such act or decision”
 10 (vide *Piperis v. The Republic* (1967) 3 C.L.R. 295; *Ioannou & Others v. The Republic* (1968) 3 C.L.R. 146; *Markou v. The Republic*, (1968) 3 C.L.R. 267; *Pericleous v. The Republic*, (1971) 3 C.L.R. 141; *Tomboli v. CYTA*, (1980)
 15 3 C.L.R. 266; *Neocleous v. The Republic*, (1980) 3 C.L.R. 497; *Christofides v. CYTA*, (1979) 3 C.L.R. 99; *Myriarithis v. The Republic*, (1977) 3 C.L.R. 165; *Karapataki v. Republic*, (1982) 3 C.L.R. 88).

20 In the latter case of *Karapataki v. The Republic* (supra) it was emphasized that the applicant must possess a legitimate interest on the three crucial stages for the pursuit of a recourse, that is, at the time when—(a) the decision is taken; (b) the recourse is filed; and (c) at the trial.

25 It is crystal clear from the above that there must be (i) acceptance of the act or decision impugned “αποδοχή της προσβαλλομένης πράξεως”. “acceptance of such an act or decision”).

(ii) The acceptance must be unreserved and free.

Turning now to the facts of this case:

30 1. The act and/or decision of the respondent Public Service Commission impugned by means of the present recourse is the decision of 31.7.81, whereby the applicant was not promoted to the post of Principal Insurance Officer but the interested party was preferred instead.

35 2. The applicant in this case was promoted by the Public Service Commission by virtue of another decision dated 1.7.82 i.e. a decision reached at almost a year later whilst the present recourse having been filed on 7.10.81 was still pending.

In this respect it may be noted as well that the decision of 1.7.82 had nothing to do with the earlier decision of 31.7.81 which remained unaffected.

3. The decision of 1.7.82 was to take effect from the same day it was communicated to the applicant (vide red 80 in his personal file) and he accepted it by letter dated 3.7.82 (red 81 in the same file). 5

In view of the legal principles exposed above and the facts of the present case also above summarised, I hold the view that even if his acceptance is considered "free" and "unreserved" it does not deprive him of the legitimate interest entitling him to pursue his present administrative recourse, for the reason that he has not accepted the administrative decision impugned i.e. the decision of 31.7.81 but a subsequent decision, that of 1.7.82, the latter having not touched at all the former which is still valid and executory. 10 15

As to the question whether the appellant accepted the decision, he has accepted (the one of 1.7.82—not the sub judge) unreservedly: his letter of acceptance (red 81) on the face of it does not present any reservation whatever; but the conduct of the applicant points to the contrary: his present recourse was pending at the time of the 2nd decision; he did not abandon it though; on the contrary he pursued it further and his learned counsel stated that the applicant wishes to proceed with his present case as his seniority over the interested party will remain prejudicially affected if the sub judge decision is allowed to stand. 20 25

So the applicant possessed legitimate interest at all crucial times of this recourse: at the time the sub judge decision was taken, at the time this recourse was filed and at the trial. 30

In the result, the objection of the defence on the issue of existing legitimate interest fails and is dismissed accordingly. 35

- Let us now proceed to the merits of this recourse:

Three vacancies existed at the material time in the post of Principal Insurance Officer in the Department of Social

Insurance in the Ministry of Labour and Social Insurance and the Director General of the Ministry had, by letter dated 25.11.80 requested the Public Service Commission to take steps for the filling of the vacancies in question, the
5 Minister of Finance having given his consent for the purpose.

The post of Principal Insurance Officer being first entry and promotion post, the Public Service Commission decided to make the relevant publication in the official Gazette; the
10 relevant publication was made on 9.1.81 inviting applications up to 31.1.81.

There were 37 applicants in all, including the applicant in the present recourse, as well as the interested party.

The applicant was a candidate for the promotion to the
15 said post, having been included in the list of 4 candidates prepared in alphabetical order and submitted by the Departmental Board established pursuant to the provisions of s. 36 of the Public Service Law 1967 (Law 33/67) and the relevant regulations.

20 The respondent Public Service Commission interviewed the 4 candidates separately in the presence of the Head of the Department at its meeting of 29.7.81; after the completion of the interview the respondent P.S.C. heard the views of the Head of the Department for the candidates and
25 adjourned for consideration to another meeting (vide Appendix 8 attached to the opposition.)

The respondent P.S.C. at its meeting of 31.7.81 bearing in mind the conclusions of the Departmental Board, the performance of the candidates at the interview, in the light
30 of the views expressed by the Head of the Department in which the vacancies existed, and having given due regard to the personal files and the annual confidential reports of the candidates which were before it (as all the candidates were civil servants) decided that the most suitable for pro-
35 motion were the three persons named in the minutes (vide Appendix 9 attached to the opposition) amongst whom was the interested party but not the applicant, and decided to promote them to the post of Principal Insurance Officer as from 15.8.81.

The applicant feeling aggrieved from the aforesaid decision of the P.S.C. filed the present recourse praying for the annulment of the sub judice decision, in respect of the interested party Eleni Samuel, relying on the grounds appearing in the recourse. 5

In this connection it must be noted that the grounds of law, as set out in the recourse are somewhat confused in connection with the allegation that the interested party is not possessed with the qualifications required by the scheme of service. 10

The qualifications required as appearing in Greek in Appendix 2 attached to the opposition are as follows:

«Απαιτούμενα Προσόντα:

- (α) Πανεπιστημιακόν Δίπλωμα ή τίτλος ή ισότιμον προσόν εις κατάλληλον θέμα, π.χ. τα Νομικά (περιλαμβανομένου του Barrister at Law) τας Οικονομικάς, τας Κοινωνικάς και τας Πολιτικές Επιστήμας, την Διοίκησιν Επιχειρήσεων κλπ. 15
- (β) Ευρεία γνώσις της συγχρόνου κοινωνικής ασφάλισης. 20
- (γ) Οργανωτική και διοικητική ικανότης. Ακεραιότης χαρακτήρος, ευθυκρισία, πρωτοβουλία, ζήλος και ικανότης αναλήψεως ευθύνης.
- (δ) Πολύ καλή γνώσις της Ελληνικής και Αγγλικής γλώσσης. 25
- (ε) Πείρα εις τας Υπηρεσίας Κοινωνικῶν Ασφαλίσεων θεωρείται ως πρόσθετον προσόν.

("Required qualifications:

- (a) University diploma or title or an equivalent qualification in a proper subject, i.e. Law (including Barrister-at-Law), Economics, Social and Political Sciences, Business Administration etc. 30
- (b) Wide knowledge of modern social insurance. 35

- (c) Organising and administrative ability. Integrity of character, good judgment, initiative, zeal and ability to undertake responsibility.
- 5 (d) Very good knowledge of the Greek and English languages.
- (e) Experience in the Social Insurance service is considered as an additional qualification”).

10 The grounds of Law set out in the recourse, as I understand them go as far as alleging that the interested party is not possessed with the qualifications appearing in para (b) as well as with the additional qualification required by paragraph (e)

15 In the written address of the applicant the attack is substantially confined to the additional qualification under paragraph (e), whilst in the written address in reply the applicant refers to the qualifications under paragraphs (b) (γ) and (e)

20 In view of the fact that the grounds set out in the recourse are in a way stated somehow generally, they may be taken as impugning the sub judice decision on the ground that the interested party was not possessed with the required qualification under paragraph (γ) above, as well; I shall therefore proceed to examine the complaints in connection
25 with non-possession of qualifications (β) (γ) and (ε) as the existence of qualifications under (β) and (γ) touch the issue of “existing legitimate interest”, an issue which has to be examined by the Court, even acting *ex proprio motu*.

30 I intend to examine in the first place the complaints as to non-possession by the interested party of the qualifications as above and thereafter, I shall proceed to examine the remaining complaints i.e. seniority, striking superiority etc.

35 It is apparent from the list of required qualifications that qualifications under (β) and (γ) above are qualifications ‘sine qua non’ the promotion could not be made and without possession of same no one could be even considered as a candidate.

As regards paragraph (β)—“Wide knowledge of modern

social insurance"— one has to look at the means of acquiring such knowledge; and this knowledge can be nowhere else better reflected than in the relevant diplomas and certificates of the interested party which were filed in her personal file which was before the P.S.C. 5

As regards paragraph (γ) and in particular in respect of «Οργανωτική και διοικητική ικανότης» the material in my view which has to be examined is to be found inter alia in the confidential reports. Thus a glance in the confidential reports of the last 2 years (1979 and 1980) under the heads 10
«Ικανότης επιλύσεως προβλημάτων» «Διευθυντική/Εποπτική ικανότης» and «Ηγετική ικανότης» will indicate that the interested party was rated "Excellent" in all three for both years, (and whilst here, although this is not the proper time for comparison, it may be noted that the applicant in the 15
confidential reports of 1979 and 1980 is rated with "good" in all three heads as above for both years).

In connection with qualifications (b) and (γ) of the interested party, it must also be borne in mind that the Departmental Board has included her name in the list of 20
candidates after an examination to that effect, that the head of the Department, who examined inter alios the interested party as a candidate before the P.S.C., had observed that the interested party was not possessed only of the 25
additional qualification under paragraph (ε) of the scheme of service; and it can be inferred that he would be mentioning non-possession by the interested party of qualifications under (b) and (γ) of the scheme of service, if that was really the position.

Furthermore, the respondent P.S.C., which reached its 30
decision after considering the relevant files, the recommendations of the Head of Department, etc., must be inferred to have been satisfied that the interested party was possessed at the material time of the qualifications under (b) and (γ) 35
of the scheme of service and was therefore eligible for promotion to the above post. (*Vide Miliatos v. The Republic* (1981)-3 C.L.R. 85 at page 90).

For all the above reasons, I hold the view that the interested party was possessing at all material times the qualifications required under (b) and (γ) of the scheme of 40

service set out above and she was, therefore, eligible for promotion in this respect.

I shall now proceed to examine the issue of additional qualification under paragraph (ε) of the scheme of service.

5 “The possession of additional qualification simpliciter to those required by the relevant scheme of service does not specifically enhance the claims of the holder to promotion” (*Larkos v. The Republic* (1982) 3 C.L.R. 513 at p. 518).

10 It is settled law though, that where an additional qualification is required under the scheme of service, special reasoning must be given in cases where a person not possessing such qualification was selected in preference to another possessing one, as to why such qualification was disregarded (*Protopapas v. The Republic* (1981) 3 C.L.R. 456, *Stylianou & Others v. Republic* (1984) 3 C.L.R. 776).

15 In *Skarparis v. The Republic* (1978) 3 C.L.R. 106 at p. 116, the learned President of this Court held that “The recommendation of the Ministry concerned—the Head of the Department—constitutes a very good reason for not preferring a candidate in spite of his post-graduate qualification.”

20 In *Makrides v. The Republic*, (1983) 3 C.L.R. 750 where the applicant possessed additional qualifications but the interested parties were senior and better in merit, it was held that it was reasonably open to the respondent Commission to prefer any of them and to promote them instead of the applicant (vide p. 758).

30 In the present case it is crystal clear that the P.S.C. were conversant with the fact that the interested party could not have the additional qualification of experience in the services of social insurance as she did not work in the Social Insurance, something which appears from her personal file and it was so stated by the Head of Department at the interview. (Vide appendix 8 attached to the opposition); (In this connection it was known that the interested party was serving in the Department of Employment as an assistant to the Director-General of the Ministry.)

35 It is also clear that the respondent P.S.C. in its sub judice

decision gave special reasoning in this respect which appears in Appendix 9 attached to the opposition; furthermore it is abundantly clear from the general reasoning of the P.S.C. appearing in the same appendix that they took into consideration inter alia the better merit of the interested party, a criterion which was held as above sufficient to outweigh the additional qualification of the applicant (vide *Makrides v. The Republic—supra*).

So this ground is doomed to failure as well.

I shall now examine the remaining grounds:

(a) Complaints about the confidential reports of the interested party allegedly prepared by a relative (κουμπόρος) of hers; the submission of learned counsel for applicant was that such reports “violate the rules of natural justice relating to bias”.

This ground was withdrawn by the applicant on 30.1.84 when this case was re-opened by the Court with a view to clarifying this issue.

(b) *Seniority, qualifications, merit—Striking Superiority*. The applicant maintains that he has substantial seniority over the interested party and in a way maintains that “substantial seniority” (about 12 years) as distinguished from “seniority” should even defeat merit.

The second complaint about seniority, is to the effect that the respondent P.S.C. failed even to refer to it in its decision; this omission, learned counsel for applicant submitted, indicates that the P.S.C. failed to examine applicant’s seniority altogether.

As regards seniority it is well settled that it is not the decisive criterion for promotion; it should be duly taken into consideration and according to the Full Bench case of *Partellides v. The Republic* (1969) 3 C.L.R. 480 seniority ought to prevail “all other things being more or less equal”. And this case which is binding upon me speaks clearly of seniority and does not make any distinction between simple seniority and substantial seniority. If, therefore, merit and qualification are superior, seniority alone

could not tip the scales for promotion in favour of a candidate.

Further it is clear that "merit should carry the most weight" even vis-a-vis superior qualifications (vide *Mene-laou v. The Republic* (1969) 3 C.L.R. 36 at p. 41 *Theo-charous v. The Republic* (1969) 3 C.L.R. 318 at p. 323).

The merit of the interested party as it transpires from the confidential reports is unique; she has been rated with 10 "excellent" and 2 "very good" for each one of the last 2 years (1979-1980) whilst the applicant for the same period was rated with 1 "excellent", 2 "very good" and 9 "good" (for 1979) and 1 "excellent", 3 "very good" and 8 "good" (for 1980). Furthermore, the interested party has 6 special confidential reports. The applicant none.

In connection with confidential reports learned counsel for applicant submitted that his position was more demanding than that of the interested party; he further invited the Court to take serious view of the fact that the confidential reports were prepared by different officers using different standards. I have considered the confidential reports in the light of the respective submissions of learned counsel. I hold the view that the superiority of the interested party as it transpires from the reports is overwhelming.

The respective qualifications appear in Enclosure No. 10 (pages 1 & 2) attached to the opposition; those of the interested party are definitely superior.

So the merit of the interested party alone outweighs the seniority of the applicant even if latter's seniority is so substantial; there is no necessity to add to interested party's merit her superior qualifications as well, in order to combat the seniority of the applicant.

But the position for the applicant becomes even worse if we take into consideration that an administrative Court cannot interfere with a promotion unless it has been established that the person not selected did have "striking superiority" over those selected (*Michanicos and Another v. Republic* (1976) 3 C.L.R. 237, *Michaelides v. Republic*, (1976) 3 C.L.R. 115, *Christou v. Republic* (1977) 3 C.L.R. 11, *Duncan v. Republic* (1977) 3 C.L.R. 153, *HjiSavva v.*

Republic (1982) 3 C.L.R. 76—where at p. 78 a definition of striking superiority is given as well—, *Papadopoulos v. Republic* (1982) 3 C.L.R. 1070 at p. 1075 *Hjioannou v. Republic* (1983) 3 C.L.R. 1041 at p. 1045, *Psaras v. Republic* decided on 25.1.85 in recourse 454/82 still un-reported).*

In connection with the complaint that the P.S.C. ignored altogether the seniority of the applicant, I feel myself unable to agree with the learned counsel of applicant that the question of seniority was never examined by the respondent P.S.C. It is clear from the wording of the decision appearing at p. 2 of Appendix (9)(i) that the Committee examined inter alia the personal files of the candidates (in which the years of appointment and promotion are clearly stated) (ii) the sub judice decision states inter alia that one of the criteria is seniority. The only reasonable inference that can be drawn from the above is that the P.S.C. duly examined and had in mind the seniority.

- (c) Another ground relied upon by the applicant is the allegation extensively dealt with in his written address to the effect that the recommendations of the Head of Department in respect of the interested party were ignored by the P.S.C. What is referred to as “recommendation of the Head of Department” is the latter’s observation that the interested party is not possessed with the additional qualification envisaged by paragraph (ε) of the Scheme of Service (vide Appendix 8 attached to the opposition at the bottom of page 2). It is abundantly clear that the Head of Department just mentioned a fact; he did not make any recommendation in connection with same. Of course had it been a recommendation and had the P.S.C. acted contrary to such recommendation—which is not the case—they ought to give reasons for such an exceptional course being followed and should clearly record it in the relevant minutes according to the case of *Theodossiou v. The Republic*, 2 R.S.C.C. 44 as the recommendations of

* Reported in (1985) 3 C.L.R. 229.

the Head of Department must be given due regard according to s. 44(3) of Law 33/7.

5 For the reason stated above I find that the respondent P.S.C. did not act contrary to any recommendation of the Director; they simply noted carefully his observation as to the additional qualification and proceeded to give special reasons for disregarding the additional qualification.

10 (d) Lastly the complaint in connection with the interview; it is maintained that the P.S.C. attached undue weight to the interview with the candidates.

15 It must be remembered that the impression created by a candidate when he is being interviewed is always a factor which may legitimately be taken into account; in this particular case the account for the performance of the candidates at the interview appears in Appendix 8 attached to the opposition. It is a comprehensive but very satisfactory account and I could trace no reflection of undue weight being attached to it, in the final decision of the Public Service Commission (Appendix 9).

20 For all the above reasons, I hold the view that it was open to the P.S.C. to reach the sub judice decision.

In the result, the present recourse is hereby dismissed. There will be no order as to costs hereof.

25 *Recourse dismissed.*
No order as to costs.