

1985 September 19

[TRIANTAFYLIDIS, P., DEMETRIADES, LORIS,
STYLIANIDES AND PIKIS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Appellant,

v.

ANTONIOS KOUFETTAS,

Respondent.

(Revisional Jurisdiction Appeal No. 358).

The Public Service Law 33/67—Sections 28, 32, 47 (before their amendment by Law 10/83 s. 3)—Section 32 provides for the filling of a vacancy—Which may be made by secondment, which is of an undeterminable and temporary nature and does not change the status of a public officer—Whereas promotion affects a change in the status. 5

Public Officers—Secondment, meaning of.

Public officers—Promotions—Recommendation of Head of Department—If inconsistent with the overall picture of the confidential reports, they should be disregarded or given limited weight, depending on the extent of inconsistency. 10

Public Officers—Promotions—Seniority of 8 years—Since all other factors were at least more or less equal it should have been taken into consideration in effecting sub judice promotion. 15

The respondent was appointed Surveyor, 2nd Grade, on 1.10.56. On 1.10.66 he was promoted to Surveyor, 1st Grade. The interested party was appointed Surveyor, 2nd Grade, on 1.5.73 and on 1.3.74 he was promoted to Surveyor, 1st Grade. On 15.11.76 the interested party was seconded to the temporary development post of Senior Surveyor. This post was converted in 1978 as a permanent one. The appellant Commission promoted the interested 20

party to the said post of Senior Surveyor on 6.5.78 with effect as from 1.1.78, but such promotion was annulled by this Court as having been made contrary to law. After the said annulment the P.S.C. proceeded to fill the post and after hearing the recommendations of the Head of the Department promoted with effect as from 1.1.78 the interested party. The respondent challenged this promotion by a recourse, as a result of which a Judge of this Court annulled the sub judge decision (*Koufettas v. The Republic* (1983) 3 C.L.R. 1252). The P.S.C. filed the present appeal.

The grounds of appeal are in short (a) That the secondment in 1976 of the interested party was a substantive appointment and/or promotion (b) as a consequence of (a) not only the respondent was not senior by 8 years, but the interested party was the senior (c) that the recommendations of the Head of the Department were not inconsistent with the confidential reports and that he did not express views "probably formed after 1978" as the trial Judge found and (d) The interested party was better in merit and/or on the totality of the criteria better than the applicant-respondent.

Counsel for the appellant argued that a secondment under section 32(2) of the Public Service Law 33/67 is an appointment under section 28 and not a secondment under s. 47; more so, as the secondment in 1976 was made after a comparison and selection.

Held, dismissing the Appeal (1) The post of Senior Surveyor is a promotion post. By promotion the substantive status of a public officer is changed. The law does not support the proposition that secondment under section 32(2) of Law 33/67 is tantamount to "appointment" or "promotion". Secondment is set out in section 47 of the same law. Section 32 provides how a vacancy is filled. It may be filled by secondment. The secondment does not change the status of the public officer. It is of an undeterminable and temporary nature. It is neither a promotion nor an appointment, even if it is effected after selection. Secondment is one of the factors that can be taken into consideration in assessing the overall picture of the

merits of the candidate. The ratio of the decision in the *Republic v. Psaras* (1985) 3 C.L.R. 1939 is confined to the interpretation of the scheme of service under examination in that case. It does not purport to attach any different significance to secondment. It follows that the respondent is by far senior to the interested party. 5

(2) The recommendations of the Head of the Department if inconsistent with the overall picture presented by the confidential reports should be disregarded or given limited weight, depending on the extent of inconsistency. The finding of the trial Judge that the views of the Head of the Department were formed after 1978 is not borne out from the recommendations. But this does not affect the finding that the recommendations were inconsistent with the confidential reports. It follows that the appellant Commission laboured in this respect under a misconception. 10 15

(3) As regards merit the scale was tipped in favour of the interested party because of the recommendations which, however, ought to have been disregarded as inconsistent with the confidential reports. These reports support the view of the trial Judge that merit is in favour of the applicant-respondent. 20

(4) The trial Judge was right when he decided that the seniority of the applicant-respondent (8 years) "should have been taken into consideration since all other factors were, at least more or less equal, and the Commission failed to give weight to the seniority of the applicant once the interested party was not better in merit and qualifications". 25 30

Appeal dismissed.

Cases referred to:

- Partellides v. The Republic* (1969) 3 C.L.R. 291;
- Phylaktou v. The Republic* (1973) 3 C.L.R. 444;
- Tourpekki v. The Republic* (1973) 3 C.L.R. 592; 35
- The Republic v. Psaras* (1985) 3 C.L.R. 1939;

Lardis v. The Republic (1967) 3 C.L.R. 64;

Georghiou v. The Republic (1976) 3 C.L.R. 74;

Ioannou v. The Republic (1976) 3 C.L.R. 431;

Ioannou v. The Republic (1977) 3 C.L.R. 61;

5 *Savva v. The Republic* (1980) 3 C.L.R. 675.

Appeal.

10 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Savvides, J.) (Revisional Jurisdiction Case No. 499/80)* given on the 21st December, 1983 whereby the decision of the Public Service Commission to promote the interested party to the post of Senior Surveyor was annulled.

R. Gavrielides, Senior Counsel of the Republic, for the appellant.

15 *C. Loizou* for the respondent.

L. N. Clerides, for the interested party.

Cur. adv. vult.

TRIANAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Stylianides.

20 STYLIANIDES J.: This appeal is directed against the judgment of a Judge of this Court whereby he annulled the decision of the appellant Public Service Commission whereby the interested party, Pantazis, was promoted to the permanent post of Senior Surveyor.

25 The facts in brief are as follows:-

The respondent was appointed Surveyor, 2nd Grade, on 1.10.56. On 1.10.66 he was promoted to Surveyor, 1st Grade.

30 The interested party was appointed Surveyor, 2nd Grade, on 1.5.73 and on 1.3.74 he was promoted to Surveyor, 1st

* Reported in (1983) 3 C.L.R. 1252.

Grade. On 15.11.76 he was seconded to the temporary development post of Senior Surveyor.

As a result of the 1978 Development Estimates the temporary post of Senior Surveyor in the Department of Lands & Surveys was converted to permanent. The Public Service Commission, following a course contrary to the procedure provided in Sections 31(2) and 44(2) of the Public Service Law, 1967 (Law No. 33 of 1967), promoted on 6.5.78 with effect 1.1.78 the interested party who had been seconded to the abolished temporary post of Senior Surveyor.

Such promotion was annulled by this Court in Recourse No. 353/78 (See report (1980) 3 C.L.R. 226), as having been effected contrary to law. Thereafter on 26.8.80 the appellant Commission proceeded to the filling of this promotion post. After hearing the recommendations of the Head of the Department, the appellant Commission promoted the interested party to the same post—Senior Surveyor—with effect 1.1.78, the date of the annulled promotion.

The respondent-applicant filed a recourse and the trial Judge reached the conclusion in an elaborate considered judgment to annul the said promotion on a number of grounds—(See *Antonios Koufettas v. The Republic of Cyprus, through the Public Service Commission* (1983) 3 C.L.R. 1252). Hence this appeal.

The grounds of the appeal that were canvassed before us are:-

- (a) That the secondment of the interested party to the Temporary Post of Senior Surveyor in 1976 was a substantive appointment and/or a promotion;
- (b) That as a consequence of (a) above, the respondent was not senior to the interested party by 8 years, as the trial Judge found, but that the interested party in substance and effect was the senior;
- (c) That the recommendations of the Director were not inconsistent with the confidential reports and/or the administrative documents, and that the Head of the

Department did not express views "probably formed after 1973"; and,

- (d) That the interested party was better in merit and/or on the totality of the criteria he was better than the applicant-respondent.

It was strenuously argued by Mr. R. Gavrielides that a secondment under s.32(2) of the Public Service Law, 1967 (Law No 33 of 1967) is an appointment under s. 28 and not a secondment under s.47; more so, as the secondment in this case was effected after a comparison and selection.

Sections 28, 30, 32 (before its amendement by s.3 of Law 10/83) and 47 read as follows:-

«28. Δια τους σκοπούς του παρόντος Μέρους, εκτός εάν εκ του κειμένου προκύπτει διάφορος έννοια -

15 'διορισμός' σημαίνει την απονομήν θέσεως εις πρόσωπον μη τελούν εν τη δημοσία υπηρεσία ή την απονομήν εις υπάλληλον θέσεως άλλης ή της υπ' αυτού μόνιμως κατεχομένης, μη αποτελούσαν προαγωγήν, ο δε όρος 'διορίζειν' ερμηνεύεται αναλόγως

20 'προαγωγή' σημαίνει αλλαγήν εις την μόνιμον κατάστασην υπαλλήλου ήτις συνεπάγεται αύξησην εις την αμοιβήν του υπαλλήλου ή συνεπάγεται την ένταξιν αυτού εις ανώτερον βαθμόν της δημοσίας υπηρεσίας ή επί μισθοδοτικής κλίμακος εχούσης υψηλότερον ανώτατον όριον, είτε η αμοιβή του υπαλλήλου αυξάνεται αμέσως δια της τοιαύτης αλλαγής είτε μη, ο δε όρος 'προάγειν' ερμηνεύεται αναλόγως».

«30. - (1) Δια τους σκοπούς διορισμού ή προαγωγής αι θέσεις διαιρούνται εις τας ακόλουθους κατηγορίας:

30 (α) θέσεις Πρώτου Διορισμού, εις τας οποίας δύνανται να διορισθώσι πρόσωπα μη τελούντα εν τη δημοσία υπηρεσία ή υπάλληλοι

35 (β) θέσεις Πρώτου Διορισμού και Προαγωγής, εις τας οποίας πρόσωπα μη τελούντα εν τη δημοσία υπηρεσία δύνανται να διορισθώσιν ή υπάλληλοι δύνανται να διορισθώσιν ή προαχθώσι

(γ) θέσεις Προαγωγής, αι οποίαι πληρούνται δια της προαγωγής υπαλλήλων υπηρετούντων εις την άμέσως κατωτέρα τάξιν ή θέσιν του συγκεκριμένου κλάδου ή υποδιαίρεσεως της δημοσίας υπηρεσίας, αναλόγως της περιπτώσεως.

5

(2) Η κατηγορία εκάστης θέσεως ορίζεται υπό του Υπουργικού Συμβουλίου εις το οικείον σχέδιον υπηρεσίας.

(3) Δια τους σκοπούς του παρόντος άρθρου, 'κλάδος ή υποδιαίρεσις της δημοσίας υπηρεσίας' σημαίνει κλάδον ή υποδιαίρεσιν της δημοσίας υπηρεσίας αποτελούμενον εκ δύο ή πλειόνων τάξεων της αυτής θέσεως, ή εκ διαφόρων θέσεων παρομοίας φύσεως συνεπαγομένων διαφόρους μισθούς ή μισθοδοτικάς κλίμακας. Εν περιπτώσει αμφιβολίας ως προς τας θέσεις αίτινες υπάγονται εις ωρισμένον κλάδον ή υποδιαίρεσιν της δημοσίας υπηρεσίας αποφασίζει το Υπουργικόν Συμβούλιον».

10

15

«32. - (1) Μόνιμος θέσις πληρούται είτε μονίμως, είτε προσωρινώς επί συμβάσει δι' ωρισμένον χρονικόν διάστημα, είτε από μηνός εις μήνα, ως το Υπουργικόν Συμβούλιον ήθελεν αποφασίσει.

20

(2) Προσωρινή θέσις πληρούται είτε δι' αποσπάσεως μονίμου υπαλλήλου μη τελούντος επί δοκιμασία είτε δια του διορισμού προσώπου επί συμβάσει δι' ωρισμένον χρονικόν διάστημα ή από μηνός εις μήνα, ως το Υπουργικόν Συμβούλιον ήθελεν αποφασίσει».

25

«47. Όταν απαιτήται όπως δημόσιος υπάλληλος ασκήση προσωρινώς τας αρμοδιότητας κενής θέσεως άλλως ή υπό ανασπληρωτικήν ιδιότητα, ή όπως εκτελέση ειδικά καθήκοντα εις κλάδον τινά άλλον εκείνου εις τον οποίον η θέσις αυτού ανήκει, αποσπάται ούτος εις την θέσιν ή τον κλάδον τούτον».

30

(“28. For the purposes of this Law, unless the context otherwise requires -

35

'appointment' means the conferment of an office upon a person not in the public service or the con-

ferment upon an officer of an office other than that which he substantively holds, not being a promotion; and the expression 'to appoint' shall be construed accordingly;

5 'promotion' means any change in an officer's substantive status which carries with it an increase in the officer's remuneration or which carries with it the emplacement of the officer in a higher grade of the public service, or on a salary scale with a higher
10 maximum, whether the officer's remuneration at the time is increased by such a change or not; and the expression 'to promote' shall be construed accordingly."

15 "30. - (1) For the purposes of appointment or promotion, offices shall be divided into the following categories:-

- (a) First Entry offices to which persons not in the public service or officers may be appointed;
- (b) First Entry and Promotion offices to which persons not in the public service may be appointed and
20 officers may be appointed or promoted;
- (c) Promotion offices which shall be filled by the promotion of officers serving in the immediately lower grade or office of the particular section or sub-section of the public service, as the case may be.

25 (2) The category of each office shall be fixed by the Council of Ministers in the respective scheme of service.

30 (3) For the purposes of this section, 'section or sub-section of the public service' means a section or sub-section of the public service composed of grades of the same office, or of different offices of a similar nature to which different salaries or salary scales are attached. In case of doubt as to the offices comprised
35 in any particular section or sub-section of the public service, the Council of Ministers shall decide in the matter."

"32.-(1) A permanent office may be filled either on

a permanent basis or on a temporary basis on contract for a limited period or on a month-to-month basis, as the Council of Ministers may direct.

(2) A temporary office may be filled either by the secondment of a permanent officer not serving on probation or by the appointment of a person on contract for a limited period or on a month-to-month basis, as the Council of Ministers may direct". 5

"47. When a permanent officer is required temporarily to perform the functions of a vacant office otherwise than in an acting capacity or to perform special duties in a section other than the one to which his office belongs he shall be seconded to such office or section"). 10

A first entry and promotion post is open to everyone who has the qualifications envisaged in the relevant scheme of service, whereas the filling of a promotion post is limited among those in the service holding a post immediately below that to be filled. The post of Senior Surveyor is a promotion post. By promotion the substantive status of a public officer is changed. 15 20

In *Partellides v. The Republic*, (1969) 3 C.L.R. 291, *Hadjianastassiou, J.*, observed at p. 296:-

"I consider it appropriate time to repeat what has been stated by this Court in a number of cases, that the secondment to a post does not create a vested right to the holder concerned. No doubt, the Public Service Commission quite rightly must take into consideration the secondment for purposes of considering the experience of a public officer; but, in their search to select the best candidate for the post, the Public Service Commission should carefully consider the merits and the qualifications of each candidate and should not give undue weight to the fact that one of the candidates was acting on secondment to that particular post". 25 30 35

In *Phylaktou v. The Republic*, (1973) 3 C.L.R. 444, *A. Loizou, J.*, said at pp. 454 - 455:-

“I shall next deal with the claim of the applicant that the secondment of interested parties Andreas Morphitis and Ioannis Charalambous is contrary to law and made in abuse of power, inasmuch as they
5 filled permanent posts by secondment instead of by promotion and/or appointment.

It is clear from the relevant material that six of these posts were to be permanently filled and three to be filled by secondment, as they were temporarily vacated on account of the secondment of officers permanently holding same to temporary development senior posts. That these posts were in such circumstances vacated, was conceded by counsel for the applicant as well.
10

Section 47 of the Public Service Law, 1967 provides that when a permanent officer is required temporarily to perform the functions of a vacant office otherwise than in an acting capacity, or to perform special duties in a section other than the one to which his office belongs, he shall be seconded to such office or section. This is what was done in the present case. Five posts were filled on a permanent basis and in respect of two other posts which were temporarily vacated, two permanent officers were seconded, a step which, in the circumstances, could legitimately be taken under the law and in compliance with the circular of the Council of Ministers dated the 27th December, 1968 (exhibit 11), paragraph 5(a) thereof, regarding the filling of vacant posts in the Civil Service. Likewise, under s. 32(2) of the Law, a temporary office may be filled by the secondment of a permanent officer”.
15
20
25
30

The same Judge in *Tourpekki v. The Republic*, (1973) 3 C.L.R. 592, distinguished between secondment and promotion. At p. 599 he said:-
35

“The first ground of law argued by counsel for the applicant, is that the sub judice decision amounted to a promotion and as such it offended the provisions of section 30 (1)(c) of the Public Service Law, 1967, (Law No. 33/67) hereinafter referred to as ‘the
40

Law') whereby promotion offices are filled by the promotion of officers serving in the immediately lower Grade, and the interested party was not serving in the immediately lower post, inasmuch as the meaning of the word 'service' in this context, means holding the lower post substantively and not on secondment. 5

This point may be disposed of briefly by examining whether the sub judice decision comes within the definition of the word 'promotion' to be found in section 28 of the Law. By the said definition 'promotion means any change in an officer's substantive status which carries with it an increase in the officer's remuneration or which carries with it the emplacement of the officer in a higher division of the public service or on a salary scale with a higher maximum, whether the officer's remuneration at the time is increased by such a change or not; and the expression 'to promote' shall be construed accordingly.' 10 15

Looking at the aforesaid definition one sees that the first prerequisite to be satisfied is that there should be a change in an officer's substantive status. In my view when an officer is seconded to another post, he cannot be held to be promoted to that post as his substantive status is not changed; secondment is a matter separately dealt with by the Law. Under section 47 thereof, when a permanent officer is required temporarily to perform the functions of a vacant office, otherwise than in an acting capacity or to perform special duties in a section other than the one to which his office belongs, he is seconded to such office or section. The gist of this section is the temporary performance of the functions of a vacant office and it may be said that since this office was temporarily vacated by the secondment of its holder to a senior post, the interested party was seconded temporarily to this post and not promoted, his substantive status remaining the same, as his secondment could be terminated at any time and so automatically revert to the substantive post he held. Furthermore, section 32 of the Law which deals with the methods of filling offices provides, inter alia, that a temporary office 20 25 30 35 40

5 may be filled by the secondment of a permanent officer not serving on probation. The office in question, as already stated, is a temporary development one and as such it could be filled by the secondment of a permanent officer, such as the applicant. The prohibition, therefore, of promotions for more than one Grade at a time, set out and elaborated upon in *Arkatitis & Others (No. 2) v. The Republic*, (1967) 3 C.L.R. p.429 (as a general principle of Public Service Law and subsequently embodied in section 30(1)(c) of the Law, cannot be invoked in favour of the applicant; there exists now the statutory definition of the word 'promotion' in section 28 of the Law enacted after the *Arkatitis* case, with which the learned trial judge in that case was not confronted. The fact that this secondment is of an undeterminable duration, does not change its temporary character and does not make it a promotion".

20 Mr. Gavrielides submitted that there are two kinds of secondment: one under s.32(2) that is tantamount to "appointment" or "promotion", and one under s.47. The Law does not permit us to agree with such a submission. Secondment is set out in s.47 of the Law as quoted above.

25 Section 32 provides how a vacancy is filled. It may be filled by secondment. Secondment does not change the substantive status of a public officer. It is of an undeterminable duration; it is of a temporary nature. It is neither a promotion nor appointment. The fact that a secondment is effected after selection does not change its character. 30 Secondment, however, is one of the factors that may be taken into consideration in assessing the overall picture of the merits of a candidate.

35 The decision in *The Republic v. Psaras* (1985) 3 C.L.R. 1939 does not purport to attach any different significance to secondment than the one indicated in this judgment. Its ratio is confined to the interpretation of the scheme of service under examination in that case.

In the present case the validity of the secondment of the

interested party to the temporary post of Senior Surveyor was challenged by Recourse No. 81/77 which, in view of the developments that followed, has not been finally determined.

The *secondment* does not affect in any way the seniority of the public officers which is expressly governed by s.46 of the Law. The applicant-respondent is by far senior to the interested party as the effective date of promotion to the post of Surveyor, 1st Grade, for the applicant is 1st October, 1966, whereas for the interested party is 1st March, 1974.

The Commission in making a promotion shall have due regard to the recommendations made in this respect by the Head of the Department in which the vacancy exists.

It is well established, however, that when the recommendations of the Head of a Department are inconsistent with the overall picture presented by the confidential reports, they should be disregarded or be given limited weight, depending on the extent of inconsistency - (*Lardis v. The Republic*, (1967) 3 C.L.R. 64, at p. 78; *Georghiou v. The Republic*, (1976) 3 C.L.R. 74, at p. 84, a Full Bench case; *Niki Ioannou v. The Republic*, (1976) 3 C.L.R. 431, at p. 432; *Ioannou v. The Republic*, (1977) 3 C.L.R. 61; *Andreas Savva v. The Republic*, (1980) 3 C.L.R. 675, at p. 696).

This Court in the exercise of its judicial control and considering the validity of a promotion scrutinizes the reasons given for the recommendations of the Head of the Department in order to ascertain whether they are consistent with the overall picture presented by the confidential reports of the applicant and the interested parties.

The finding of the trial Judge that Mr. Sofocleous in 1978 was not the Director of Lands & Surveys and the views expressed before the Commission were probably formed after 1978, and, therefore, should not have been taken into consideration, is not borne out from the recommendations. This does not in any way affect the finding that a substantive part of the recommendations were inconsistent with the confidential reports. The Head of the

Department, after stating that the applicant-respondent and the interested party were superior in merit, qualifications and seniority to the other candidates, he recommended "as more suitable between the two Mr. Alexandros Pantazis
5 who has better personality and was more co-operative with the staff and faster in his work".

The learned trial Judge had this to say on the above:-

10 "The picture as appearing from the two last confidential reports prior to May, 1978, the date on which the post had to be filled, is as follows:

For the year 1976 applicant is graded on one topic as excellent, on seven topics as very good and on two topics as good, whereas the interested party is graded with ten very good on ten topics. On the topic
15 of ability to co-operate with colleagues, they are both graded very good. Also, on the topic concerning competence in present work. Regarding courtesy in dealing with the public, applicant is graded excellent, whereas the interested party is graded very good. The following observations, however, were made in respect
20 of each one of the two candidates by the reporting officer:

In the case of the applicant, the following appears in his confidential report for that year:

25 'Although he is of higher education, yet, he is slow at work and hardly grasps the nature of treatment of survey works to be done. In all other respects he is very good,'

30 and there are no remarks by the countersigning officer.

In case of the interested party, the following appear in his confidential report for 1976;

35 'Besides the academic qualification he possesses, otherwise he has shown less interest than expected to on the practical exercise of field works that the profession requires, especially in Cyprus where surveys vary from place to place and need special care, study and idiomatic program of execution. His grievance was probably due to desire of promotion. Now that

he has been promoted, I expect him to refrain and cover up what he missed in the past.'

The countersigning officer had this to add:

'Much more was expected from him. His present attitude towards work in the Branch is not far from negative. He is obstinate and argumentative. Unless he improves, there is little chance of him going higher.'

For the year 1977 the applicant was graded on two topics as excellent and on eight topics as very good. The interested party was graded on one topic as excellent, on seven topics very good and on two topics as good. Both were graded as very good concerning competence in present work. Applicant was graded as excellent concerning courtesy in dealing with the public, whereas interested party was graded as very good on the same topic. Applicant was graded as very good concerning co-operation with his colleagues, whereas interested party was graded as excellent. The observations of the reporting officer as recorded in the confidential report of the applicant, read as follows:

"His academic qualification in this profession recommend him to be considered amongst those for promotion".

To that, the countersigning officer had this to add:

"He is commended for passing the (Finals) Direct Membership Examination of the R.I.C.S. His initiative, competence in present work and devotion to duty may be graded to excellent. He deserves high consideration amongst those for promotion."

In the case of the interested party, the observations of the reporting officer were as follows:

"His academic education recommend him to be considered in future for promotion because he still lacks the practical experience in the field survey work".

And to that, the countersigning officer made no comments, thus agreeing with the assessment made.

5 “The picture appearing from a perusal of the confidential reports of the two candidates for the years 1976 - 1977 which was the material time to be taken into consideration, as the promotion had to be considered as things stood in May, 1978, does not support the recommendations of the Director of Lands and Surveys at the meeting when the sub judice decision was taken and it is clear that his recommendations are inconsistent with the picture appearing from the confidential reports.”

10 This bears out the finding that the recommendations of the Head of the Department are inconsistent with the overall picture presented by the confidential reports of the interested party and, therefore, the Commission acted under a misconception of fact.

15 The appellant Commission concluded that the interested party was superior to the respondent on the basis of the established criteria - merit, qualifications and seniority. Mr. Gavrielides exerted great effort before us to support this reasoning which was rejected by the trial Judge.

20 On the question of qualifications, as it appears from the personal files, both the respondent and the interested party possess equal qualifications and the one is not superior to the other.

25 With regard to their merit, the scale was tipped in favour of the interested party in the decision of the appellant by the recommendations of the Head of the Department which, as we said earlier, should have been disregarded. The confidential reports support the view expressed in the judgment under appeal that “the overall picture on merit is in favour of the applicant in comparison with the interested party”.

30 The respondent is by almost 8 years senior to the interested party. We are in agreement with the trial Judge that “such seniority should have been taken into consideration

by the respondent Commission since all other factors were, at least more or less, equal, and the respondent Commission failed to give due weight to the seniority of the applicant once the interested party was not better in merit and qualifications".

5

For all the aforesaid reasons this appeal fails and it is hereby dismissed.

Appeal dismissed.