

1985 November 12

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

ELPIDOFOROS ALVANIS,

*Applicant,*

v.

THE CYPRUS TELECOMMUNICATIONS AUTHORITY.

*Respondents.*

(Case No. 352/84).

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5 *The Cyprus Telecommunications Authority—Promotions—Confidential reports—Report to the effect that applicant is a mediocre officer and that he is in the wrong profession—Natural Justice—The rule is that accusations of criminal and disciplinary nature should be communicated to the officer in order to afford him opportunity to answer—But no duty on the part of a reporting officer to disclose his views, if he forms a poor opinion of the worth of the services of the officer concerned—The Authority's Personnel General Regulations, 1982 Regs. 23(4) and 10(a)—*  
10 *No rules made regarding preparation and contents of confidential reports—Preparation of such reports is an essential formality—As in this case much weight had been attached to the confidential reports, sub judice decision*  
15 *has to be annulled.*

*Natural Justice—Confidential reports—Poor opinion of the worth of applicant's services—No duty to disclose such opinion to him.*

20 *Administrative Law—Administrative act—Formalities—Non-compliance with an essential formality—Effect.*

Following the annulment by the Supreme Court of the promotions made by the Board of the respondent authority to the post of Assistant Manager, Technical Services, the

respondent became duty bound to examine the matter afresh in the light of the legal and factual reality obtaining on 27.10.82, the date when the annulled promotions were made.

As a result of such examination the two interested parties Mourouzides and Kyprianou were selected for promotion to the said post. At some stage the applicant withdrew his recourse against interested party Mourouzides.

The promotion of interested party Kyprianou was challenged on the following grounds, namely:

(1) That the General Manager, when he recommended the promotion of the interested party and doubted the suitability of applicant for promotion, did not speak from personal knowledge of the worth of the services of the applicant.

(2) That contrary to the rules of Natural Justice no opportunity was afforded to the applicant to answer a comment in the confidential report for the year 1982 made by the Head of the Department Mr. Papaioannou to the effect that applicant is a mediocre officer and he is in the wrong profession.

(3) Reliance on the confidential reports prepared in derogation from the provisions of Reg. 23(4) (Notification 220/82 - 26.7.82, Supplement 3 of the Official Gazette).

*Held, annulling the sub judice decision:*

(1) The evidence adduced showed that the General Manager of the respondent authority had sufficient knowledge of the applicant to form an opinion of his capabilities.

(2) The rule of natural justice is that accusations or impropriety attributed to an officer in a context relevant to his position and status must be brought to his notice in order for him to have an opportunity to answer them. The application of this rule is basically confined to accusations of a criminal and disciplinary character. It does not impose a duty on a superior reporting on a subordinate in the course of his duties to disclose his views if

he forms a poor opinion of the worth of such subordinate's services. The comments made in this case by the head of the Department did not import anything in the nature of an accusation or neglect of duty. Therefore, there was no duty to communicate them to the applicant.

(3) Reg. 23(4) of the Authority's Personnel General Regulations 1982 (Not. 220/82 - 26.7.82) empowered the Board to make rules for the preparation, content and other matters incidental to service reports on personnel. As may be gathered from Reg. 10(9) Confidential Reports envisaged by Reg. 23(4) were an essential source of information for the evaluation of the services of an officer for promotion purposes. The invocation of the rule making power under Reg. 23(4) was the only means of providing for the making of confidential reports. As no such rules were made the inescapable conclusion is that the Confidential Reports have been prepared outside the framework of the Regulations; and as the preparation of such reports was an essential formality to be complied with and as in this case much weight had been attached to such reports, the sub judge decision would be annulled on this ground.

*Sub judice decision annulled.  
No order as to costs.*

Cases referred to:

- Kontemeniotis v. C.B.C* (1982) 3 C.L.R. 1027;  
*Soteriadou and Others v. The Republic* (1984) 3 C.L.R. 300;  
*Frangides and Another v. The Republic* (1968) 3 C.L.R. 90;  
*Papantoniou and Another v. The Public Service Commission* (1983) 3 C.L.R. 64;  
*Papadopoulos v. The Republic* (1985) 3 C.L.R. 154;  
*J. N. Christofides Trading Ltd. v. The Republic* (1985) 3 C.L.R. 546.

Recourse.

Recourse against the decision of the respondents to promote the interested parties to the post of Assistant Manager,

Technical Services, in the Cyprus Telecommunications Authority in preference and instead of the applicant.

*A. Ladas*, for the applicant.

*A. Hadjiloannou*, for the respondents.

*Cur. adv. vult.* 5

PIKIS J. read the following judgment. Following the annulment by the Supreme Court<sup>1</sup> of the promotions made by the Board of the respondent Authority to the post of Assistant Manager, Technical Services, the respondents became duty bound to examine the matter afresh in the light of the legal and factual reality obtaining on 27.10.82 the date on which the annulled appointments were made. To that end the administrative machinery was set in motion referring the matter to the Personnel Committee for a preliminary screening and evaluation of the seven candidates' applications for promotion, including those of the applicant and interested party. The views of the Committee transmitted to the Board were that -

- (a) Two of the candidates were ineligible for promotion for lack of the necessary qualifications and,
- (b) the most suitable candidates for promotion were S.I. Mourouzides and A. Kyprianou who were recommended accordingly.

They felt unable to recommend the applicant despite his seniority, on account of the poor rating in the confidential or service reports of the quality of his services.

The filling of the vacancies came before the Board on 26.4.84. The service reports of the candidates were placed before the Board, as well as the views of the General Manager, on the suitability of the candidates for promotion; they coincided with those of the Personnel Committee. Not only the candidates recommended had superior merits that justified their promotion but he doubted the suitability at all of the applicant for appointment to the vacant position. Applicant disputed the knowledge claimed by Mr. Stylianides to speak from personal knowledge of the worth of the

<sup>1</sup> *Alvanis v. CY.T.A.* (1984) 3 C.L.R. 42.

services of the applicant, and challenged the validity of his recommendation on that score. Having heard evidence on the matter, I entertain no doubt Mr. Stylianides had sufficient knowledge of the applicant to form an opinion on his capabilities. Consequently, I dismiss every suggestion that his views were either arbitrary or founded on facts not placed before the Board. Guided by the material before them and having taken stock of the recommendations of the General Manager the respondents promoted Mr. Mourouzides and Mr Kyprianou to the vacant posts of Assistant Manager, Technical Services. The present recourse is directed against the validity of the above decision. Originally, the recourse was directed against the decision in its entirety but in the course of the proceedings it was confined to the promotion of Mr. Kyprianou. The recourse against Mr. Mourouzides was discontinued and dismissed. Therefore, at issue is the validity of the decision pertaining to the promotion of Mr. Kyprianou.

The decision is challenged on three grounds, one of which has already been dismissed as unfounded, that relating to the alleged lack of personal knowledge of the services of the applicant by the General Manager. The other two are -

- (A) Failure on the part of the respondents to afford an opportunity to answer adverse comments in the confidential reports on applicant made by the Head of the Department, Mr. Papaioannou. Associated with this complaint is the allegation that Mr. Papaioannou, like Mr. Stylianides, lacked the necessary personal knowledge to form an opinion on the services of the applicant and make an evaluation of them. The evidence before me persuades me otherwise and cannot sustain the contention that the observations of Mr. Papaioannou were capricious.
- (B) Reliance on the confidential reports prepared in derogation from the provisions of reg. 23(4)<sup>1</sup>. It is common ground that the confidential reports were prepared outside the context of the above Regulation

<sup>1</sup> See, Supplement No. 3, Notification 220/82 — 26.7.82.

that made their preparation and content the subject of specific directions of the Board.

The complaint for breach of the natural right of applicant to controvert allegations adverse to his status and career, is directed primarily to the comment of Mr. Papaioannou, the Head of his Department, made in the confidential report on applicant for the year 1982, to the effect that not only applicant is a mediocre officer but that he is also in the wrong profession. 5

The rule of natural justice is that accusations or impropriety attributed to an officer in a context relevant to his position and status, must be brought to his notice in order for him to have an opportunity to answer them like any charge against him. The nature, extent and implications of this right were reviewed by the Full Bench of the Supreme Court in *Kontemeniotis v. C.B.C.*<sup>1</sup>. As explained in that judgment, the application of the rule is basically confined to accusations of a criminal and disciplinary character. It does not impose a duty on a superior, bona fide reporting on a subordinate in the course of his duties, to disclose his views if he forms a poor opinion of the worth of his services. Any such duty would impose constraints upon the reporting officer, incompatible with the task required of him, notably to make a true evaluation of his services<sup>2</sup>. This rule of natural justice is given statutory effect by s. 45(4) of the Public Service Law<sup>3</sup>. The comments made by the head of the department in which applicant served in this case though made in an unusually strong language, did not import anything in the nature of an accusation or neglect of duty. They merely reflected the reporting officer's poor opinion of the worth of the services of the applicant. No duty laid on the respondents to communicate them to the applicant. The only substantive complaint concerns the legal framework in which the reports were made or, better still, lack of it. Regulation 23(4) of the Authority's Personnel Ge- 35

<sup>1</sup> (1982) 3 C.L.R. 1027.

<sup>2</sup> An instance of breach of the rules of natural justice and its effects may be found in the case of *Soteriadou and Others v. Republic* (1984) 3 C.L.R. 300. See, also, *Frangides and Another v. Republic* (1968) 3 C.L.R. 90.

<sup>3</sup> Law 33/67 — Its application is confined to public officers coming under the Public Service Law.

neral Regulations 1982<sup>1</sup>, given effect retrospectively, from 21.11.77, empowered the Board to make rules for the preparation, content and other matters incidental to service reports on the personnel of the Authority. Confidential reports envisaged by reg. 23(4) were, as may be gathered from the provisions of reg. 10(9), an essential source of information for the evaluation of the services of an officer for promotion purposes. As in the case of the Civil Service, confidential reports constitute an important guide to the value of the services of the personnel of the Authority<sup>2</sup>. The invocation of the rule-making power of the Authority was the only means of providing for the making of confidential reports and matters to be included therein. Counsel for the Authority argued the gap was filled by a practice decision of the Authority, dated 13.6.66, laying down the criteria for promotion. In the first place, the decision has no bearing on the manner of preparing a confidential report, the nomination of the reporting officers or its content. The aforesaid decision of the Authority was incorporated in the Regulations of 1982, reg. 10(9), establishing the criteria for promotion. The inescapable conclusion is that the reports were prepared outside the framework of the Regulations and the question arises whether any significance can be attached to them. It is settled that formalities prescribed by the law must be observed as a condition for the validity of an administrative act. Unless the formality ignored is of an inessential character and, as such, inconsequential for the decision taken, breach of a formality laid down by law taints the decision with invalidity<sup>3</sup>. A similar result must follow where action is taken outside the framework of a regulatory decision of the rule-making body. The preparation and content of confidential reports was an essential formality for the promotion of personnel of the Authority. As such it had to conform to the conditions laid down in the law; in this case the exercise of the rule-making power of the Authority as to its content and persons who would be entrusted with the task of reporting upon their

<sup>1</sup> See, Supplement No 3, Notification 220/82 — 26.7.82.

<sup>2</sup> Papantoniou and Another v. Public Service Commission (1983) 3 C.L.R. 64.

<sup>3</sup> See, inter alia, Papadopoulos v. Republic (1985) 3 C.L.R. 154; J. N. Christofides Trading Ltd. v. Republic (1985) 3 C.L.R. 546.

colleagues or subordinates. The preparation of reports outside the context of such a decision was arbitrary and of no effect. Who determined the content of the reports and the reporting officer's name is unknown. Presumably this was done on the authority of senior officers of the Authority. If that was the case, rule-making power was assumed by a body other than the one authorised by the law and as such would be ultra vires its provisions. Only reports prepared in accordance with a directive of the Board, issued under reg. 23(4), could be validly taken into consideration for promotions under reg. 10(9). Consequently, the reports placed before the Board were prepared outside the framework of the law and as such ought to have been ignored. 5 10

It is evident from the sub judge decision that much weight was attached to the reports as a guide to the merits of the candidates and had a material bearing on the decision taken. The divergence of opinion between the reporting officer and the head of the department on the value of the services of the applicant is indicative of the implications of the omission of the Board to exercise its powers under reg. 23(4). If no reporting duties were assigned to the head of the department the picture of the services of the applicant would be considerably better. It is a matter of speculation which officers the Board will name to report on the different categories of personnel of the Authority. 15 20 25

For the above reasons I am disposed to annul the decision. It is only fair to say that had the reports been prepared in accordance with a decision taken under the Regulations of the Authority, I would find no ground for interfering with the decision. 30

In the result the decision is annulled. Let there be no order as to costs.

*Sub judge decision annulled.  
No order as to costs.*