

1985 February 16

[LORIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION.

CHRISTOS KARAGIORGHIS,

Applicant,

v.

THE CYPRUS BROADCASTING CORPORATION,

Respondent.

(Case No. 286/82).

Administrative Law—Administrative acts or decisions—Presumption that they are reached after a correct ascertainment of the relevant facts rebutted if a litigant succeeds in establishing that there exists at least a probability that a misconception has led to the taking of the decision complained of. 5

Public Officers—Promotions—Interview of candidates—Consideration of their confidential reports and exchange of views about each one of them—A due inquiry concerning them took place. 10

Administrative Law—Administrative acts or decisions—Reasoning—Due reasoning—Unless the circumstances of the case specifically call for it not necessary that each factor taken into consideration and weighed by the administration should be mentioned in the reasoning for the decision—Reasoning of a decision may be deduced from the material in the file. 15

Public Officers—Promotions—Judicial control—Principles applicable—Seniority—It prevails if all other things are more or less equal—Merit—Should carry the most weight—Interested party had better merit than applicant and recommended for promotion by Head of Department—Therefore the merit of the interested party should prevail 20

—Applicant failed to establish striking superiority over the interested party.

5 The applicant, a Senior Programmes Officer, was a candidate for promotion to the post of "Head of Radio Programmes." The respondent Board promoted the interested party to the above post and hence this recourse. The interested party had better confidential reports than the applicant but the latter was senior and they both had more or less equal qualifications.

10 Counsel for the applicant mainly contended.

(a) That the applicant was ignored as a candidate at the original stage of the selection;

15 (b) That the respondents have excluded the applicant as a candidate taking into consideration material unconnected with their task and using wrong criteria (abuse of powers);

(c) That the sub judice decision was not duly reasoned;

(d) That the respondents failed to carry out a due enquiry concerning the applicant.

20 Contention (b) above related to the fact that the Head of Department did not recommend the applicant for promotion and to the following reasoning which he gave:

25 "The Director-General reiterated to the Board that it is a given fact... that the applicant presents problems of co-operation with the personnel after 1974, which create administrative problems for himself, his superiors and his inferiors and that it was not possible for him (the Director-General) to suggest that Mr. Karagiorghis (the applicant) be promoted..."

30 The legal argument on this ground, was to the effect that (i) the said statement of the Director-General was incorrect as it insinuated that the applicant against whom disciplinary proceedings were commenced on 23.2.79 and ended on 11.1.80 was found guilty, whilst in fact he was
35 acquitted;

(ii) the members of the Board of C.B.C. acted under this misconception of fact;

(iii) therefore their decision, vitiated by the misconception resulted in abuse of power.

Held, (1) that since applicant was interviewed by the respondent in respect of the post he had submitted an application as a candidate there was no question of exclusion of the applicant from being a candidate: accordingly contention (a) must fail. 5

(2) That though according to the principles of administrative law there exists a presumption that an administrative decision is reached after a correct ascertainment of relevant facts such presumption can be rebutted if a litigant succeeds in establishing that there exists at least a probability that a misconception has led to the taking of the decision complained of; that the statement of the Director-General was made in clear and unambiguous words which could not lead by any stress of imagination to a misconception to the effect that the applicant was convicted on the disciplinary charges; and that the material before this Court clearly indicates that there did not exist the slightest probability that the respondent Board might have been labouring under such a misconception of fact, for the simple reason that the members of the respondent Board had before them the personal file of the applicant where the minutes of the decision of the Disciplinary Board appear leaving no room for doubt that the applicant was acquitted and cleared of all the disciplinary charges; accordingly contention (b) must fail. 10 15 20 25

(3) That unless the circumstances of the case specifically call for it, it is not necessary that each factor taken into consideration and weighed by the administration should be mentioned in the reasoning for the decision; that a decision may be held to have been duly reasoned if its reasoning appears not only in its text but can be deduced from the material in the administrative files; that in the case in hand there was ample material in the administrative files to supplement the laconic reasoning of the respondent; accordingly contention (c) must fail. 30 35

(4) That since the respondents interviewed the applicant, asked clarifications from the Director-General of the C.B.C. about the applicant and the latter referred them, inter alia, to the confidential reports of the applicant; and that since the members of the Board exchanged views about each one of the candidates "and after taking into consideration all the data including the interviews" decided to promote the interested party it cannot be said that they failed to carry out due inquiry concerning the applicant; accordingly contention (d) must, also, fail.

Held, further, 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 merit should carry the most weight even vis-a-vis superior qualifications; that, furthermore, an administrative Court will not interfere with a promotion unless it has been established that the person not selected had "striking superiority" over those selected; that from the confidential reports it is apparent that the interested party has a better merit than the applicant has; that taking into consideration that the Head of the Department expressly did not recommend the applicant for promotion the merit of the applicant may be taken to subside further vis-a-vis the superior merit of the interested party; that even if the applicant is treated as senior to the interested party the merit of the latter should prevail; that therefore the applicant failed to establish striking superiority over the interested party; and that, accordingly, it was reasonably open to the respondent Board to reach the sub judice decision.

Application dismissed.

Cases referred to:

- Michaelides and Another v. Republic* (1979) 3 C.L.R. 56;
Konnaris and Another v. Republic (1974) 3 C.L.R. 377;
 35 *HjiMichael and Others v. Republic* (1972) 3 C.L.R. 246 at p. 252;
Partellides v. Republic (1969) 3 C.L.R. 480;
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 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; 5
HjiSavva v. Republic (1982) 3 C.L.R. 76;
Papadopoulos v. Republic (1982) 3 C.L.R. 1070;
Hjiloannou v. Republic (1983) 3 C.L.R. 1041;
Mouzouris v. Republic (1972) 3 C.L.R. 43;
Petrides v. Republic (1983) 3 C.L.R. 216. 10

Recourse.

Recourse against the decision of the respondent whereby the interested party was promoted to the post of Head of Radio Programmes in preference and instead of the applicant. 15

L. N. Clerides, for the applicant.

P. Polyviou, for the respondents.

Cur. adv. vult.

LORIS J. read the following judgment. The applicant impugns by means of the present recourse the decision of the respondent Cyprus Broadcasting Corporation (C.B.C.) dated 8.6.82 whereby the interested party namely Takis Thoma was promoted to the post of 'Head of Radio Programmes' as from 16.6.82, in preference to and instead of the applicant. 20
25

The undisputed facts of the present case may be very briefly summarised as follows:

The Director-General of C.B.C. by virtue of circular under No. 3/82 dated 9.3.82 invited applications for the filling of several posts in the C.B.C. including the post of 'Head of Radio Programmes' (vide exhibit 1 attached to the opposition). 30

The duties and the qualifications required for the aforesaid posts are set out in exhibit 2, which is also appended to the opposition.

5 The applicant in the present recourse as well as the interested party who were holding at the material time the post of 'Senior Programmes Officer', applied and were amongst the candidates for promotion to the post of 'Head of Radio Programmes'.

10 The Board of the C.B.C. held several meetings during which the position with respect to the candidates was considered; it is transparent from the minutes of the meetings of the Board held on 25.5.82 and 8.6.82 (vide ex. E & F attached to the written address of the respondent) that the Board sought clarifications from the Director-General
15 of the C.B.C. in respect of the position with regard to the applicant amongst other candidates, and such clarifications were in fact furnished by the Director-General and they appear in exhibits H, Θ, Ι, (attached to the written address of the respondent) as well as in ex. E.

20 Finally, on 8.6.82 the members of the Board after exchanging views about each one of the candidates, having in mind all "data" (δεδομένα) as they put it, including the interviews, reached at their decision unanimously to promote the interested party namely Takis Thoma to the
25 post of "Head of Radio Programmes" as from 16.6.82 in preference to and instead of the applicant (vide ex. Γ).

The applicant, feeling agrieved, filed the present recourse praying for a declaration to the effect that the said decision of the respondent dated 8.6.82 is null and devoid
30 of any legal effect.

The grounds on which the applicant is relying in impugning the sub judice decision are stated in the recourse and they were expounded under four heads in his written address as follows:

- 35 (I) The applicant was ignored as a candidate at the original stage of the selection;
- (II) The respondents have excluded the applicant as a candidate taking into consideration material

unconnected with their task and using wrong criteria (abuse of powers);

(III) The sub judge decision is not duly reasoned;

(IV) The respondent failed to carry out due enquiry.

I shall proceed to examine the above listed complaints of the applicant: 5

Ground (I) The applicant in the present recourse has applied for promotion to the posts of "Head of Radio Programmes" and "Head of Television Programmes" which were published by virtue of the circular of the Director-General of the C.B.C. under No. 3/82 dated 9.3.82 (vide ex. 1). 10

It is the complaint of the applicant that the Director—General in his minute of 13.5.82 (exh. 'H') does not make any reference to applicant's name whilst he refers to all other candidates; the applicant admits though that he was interviewed by the members of the Board of C.B.C. on 25.5.82 and that it was pointed out to him that he was being interviewed in respect of both posts i.e. radio and television. 15 20

It is abundantly clear therefore from the admission of the applicant himself and from several documents before me to which I have already referred that the applicant was interviewed by the respondent in respect of both posts he had submitted application as a candidate and it is also clear that such interview took place about 15 days prior to the date the respondent reached the sub judge decision. Furthermore, it is apparent from ex. E dated 25.5.82 that the respondent prior to that date applied to the Director-General for clarifications in respect of the position of the applicant and it can be inferred from ex. E that the Director-General furnished the required information prior to the 25.5.82. 25 30

So there was no question of exclusion of the applicant from being a candidate by the respondent and I fail to comprehend what is meant by "original stage of the selection"; the selection of the most suitable candidate was made by the respondent Board on 8.6.82, when the sub 35

judice decision was reached at and I could not trace any other stage of selection; if the applicant refers to the Director-General he never had competence to select nor did he in fact select anybody; he simply recommended,
5 and it was perfectly legitimate for him either to recommend or not to recommend the applicant for promotion.

The case of *Michaelides & Another v. The Republic* (1979) 3 C.L.R. 56 cited by learned counsel for applicant, in support of the ground is an altogether different matter;
10 in that case those eligible for promotion to the post of Assistant Headmaster Secondary Education had to be placed on the list under class A or B; and the applicants in that case were not included in the list at all from which the selection of candidates for promotion was to
15 be made.

In the case in hand both the applicant and the interested party were eligible for promotion, they have submitted the respective applications for consideration and the decision by the respondent was reached at on 8.6.82 (vide ex. Γ).

20 The case of *Konnaris & Another v. Republic*, (1974) 3 C.L.R. 377 which was also cited in support of the same ground has no similarity whatever with the facts of the case under consideration; in *Konnaris* case (supra) the appointment of interested parties was annulled because
25 the E.S.C. used as a criterion for their promotion "specialization" which was found by the learned trial Judge to be immaterial with the promotion in question.

I hold the view that this ground on which the applicant relies is doomed to failure and it is accordingly dismissed.

30 Ground II. This complaint relates to the fact that the Director-General did not recommend the applicant for promotion and to the reasoning he gave which appears as follows on record (ex. E.) "The Director-General reiterated to the Board that it is a given fact... that the
35 applicant presents problems of co-operation with the personnel after 1974, which create administrative problems for himself, his superiors and his inferiors and that it was not possible for him (the Director-General) to suggest that Mr. Karagiorghis (the applicant) be promoted...".

The legal argument on this ground, as I comprehend it, is to the effect that (i) the said statement of the Director-General was incorrect as it insinuated that the applicant against whom disciplinary proceedings were commenced on 23.2.79 and ended on 11.1.80 was found guilty, whilst in fact he was acquitted; 5

(ii) the members of the Board of C.B.C. acted under this misconception of fact;

(iii) therefore their decision, vitiated by the misconception, resulted in abuse of power. 10

It is true that if "misconception" is established it vitiates an administrative decision. As stated by the learned President of this Court in delivering the judgment of the Full Bench in the case of *Koumis HjiMichael and others v. The Republic*, (1972) 3 C.L.R. 246 at p. 252 "According to the principles of administrative law there exists a presumption that an administrative decision is reached after a correct ascertainment of relevant facts; but such presumption can be rebutted if a litigant succeeds in establishing that there exists at least a probability that a misconception has led to the taking of the decision complained of." 15 20

In the present case I am satisfied that the statement of the Director-General was made in clear and unambiguous words which could not lead by any stress of imagination to a misconception to the effect that the applicant was convicted on the disciplinary charges; and the material before me clearly indicates that there did not exist the slightest probability that the respondent Board might have been labouring under such a misconception of fact, for the simple reason that the members of the respondent Board had before them the personal file of the applicant where the minutes of the decision of the Disciplinary Board appear (vide red 90b) leaving no room for doubt that the applicant was acquitted and cleared of all the disciplinary charges. 25 30 35

The aforesaid statement of the Director-General was a bona fide statement of his opinion formulated in the course of his duty as Head of the Department, who has to

exercise a vigil eye over the conduct and behaviour of his inferiors during the performance of their duties; it must be noted in this respect that his said conclusion was expressed by him at an unsuspected time as well, more
5 than a year prior to the sub judice decision, on the occasion of his countersigning the confidential report of the applicant for the year 1980.

The said statement of the Director-General imputes no stigma whatever on the applicant who has been acquitted
10 of the disciplinary charges; but he had to repeat his said conclusion to the members of the respondent Board who have asked him for clarifications in respect of the applicant, as they would be exercising a discretion at the time, which would lead to the selection of the most suitable candidate
15 for promotion to a post requiring, inter alia administrative ability which entails good relations between the Head and the members of the Division.

I repeat: from the material before me it is clear that there does not exist the slightest probability that a mis-
20 conception of fact, as alleged, might have led to the taking of the sub judice decision; the presumption of regularity in favour of this administrative decision remains intact and therefore this ground fails as well.

I shall now proceed to consider Ground (IV) before
25 dealing with ground III, which will be examined last.

Ground IV.— Due enquiry. The applicant complains that the respondent failed to carry out due enquiry concerning him; in particular he complains that his merits and qualifications were absolutely ignored.

30 From ex. E and ex. Γ, the minutes of the meeting of the respondent held on 25.5.82 and 8.6.82 respectively it is obvious that the respondent Board having in mind the application for promotion submitted by the applicant, interviewed the applicant, asked clarifications from the
35 Director-General of the C.B.C. about the applicant and that the latter referred them inter alia to the confidential reports of the applicant. Furthermore it is mentioned in ex. Γ, inter alia, that the members of the Board exchanged views about each one of the candidates “and after taking

into consideration all the data (δεδομένα) including the interviews" decided...

These "data" referred to in the minutes of the respondent include inter alia the personal files and the confidential reports of the candidates. The confidential reports are referred to specifically in the minutes of 25.5.82 and it must be inferred that when the respondent says in ex. Γ that they took into consideration "all the data" they are referring inter alia to the confidential reports and the personal files of the candidates which were placed before the respondent Board.

The respondent in order to reach its decision had to examine: the merits, qualifications and seniority of the candidates and give due regard to the recommendations of the Head of the Department. The performance of a candidate during the interview is one of the criteria which may be taken into consideration but undue weight should not be attached to the performance at the interview.

The merits of a candidate are reflected in the confidential reports whilst the recommendations by the Head of Department is an additional merit which cannot be lightly disregarded by an administrative body dealing with promotions.

The qualifications and seniority can be deduced from the personal files.

So in the case under consideration the respondent Board had before it the personal files of the candidates, their respective confidential reports, they had the views of the Director from whom they have repeatedly asked clarifications according to the minutes and further they had the opportunity of interviewing the candidates and forming an opinion as to the performance of each candidate.

There is nothing on record indicating that the respondent Board failed to examine the merit and qualifications of the applicant.

Before proceeding further with the facts related to this ground I consider it very helpful to deal at this stage very briefly with the legal aspect of the case.

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".

It is well established that "merit should carry the most weight" even vis-a-vis superior qualifications (vide *Menelaou v. The Republic* (1969) 3 C.L.R. 36 at p. 41, *Theocharous v. The Republic* (1969) 3 C.L.R. 318 at p. 323).

Furthermore an administrative Court will not interfere with a promotion unless it has been established that the person not selected had "striking superiority" over those selected (vide *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, *Papadopoulos v. Republic* (1982) 3 C.L.R. 1070, *Hjiloannou v. Republic* (1983) 3 C.L.R. 1041).

Turning now to the facts of this case:

The applicant for the last 3 years is rated in the confidential reports with 11A and 4 B (in the reports of 1980 dated 30.3.81 13A and 3 B). The interested party during the same period is rated with 14A and 1B.

From the confidential reports it is apparent that the interested party has a better merit than the applicant has. Taking into consideration that the Head of the Department expressly did not recommend the applicant for promotion the merit of the applicant may be taken to subside further vis-a-vis the superior merit of the interested party.

In connection with qualifications the scheme of service must be examined first (ex. 3 attached to the opposition).

The 1st and 2nd paragraph of the required qualifications under the scheme of service are in the alternative.

The first paragraph requires academic qualifications; in the alternative the second paragraph thereof refers to "High educational substratum and long experience and

successful and sufficient employment in radio organizations preferably in interconnected (συναφή) work.”

It is obvious from the perusal of their personal files that the applicant as well as the interested party were in possession of the qualifications required by the scheme of service so that they were both eligible for consideration for promotion. 5

The applicant was born on 27.5.1934. He graduated the Pancyprrian Gymnasium in 1952 (red 60); he graduated the teachers College of Morphou (red 60ε) worked as a schoolmaster up to 1.2.63 when he was appointed in the C.B.C. as Senior Programme Officer on probation. 10

On 1.1.68 he was promoted to the permanent post of Assistant Head of Radio Programmes, a post he is holding till the present day. 15

He possesses a certificate of attending a school-teachers post-graduate course in Athens for 2 years and another certificate «Ψυχικής Υγιεινής» obtained in Athens in 1961 (vide red 60 θ and 60 γ in his personal file. He also possesses a Cyprus Certificate of Education (red 60 a in his personal file.) 20

~~Applicant attended a 3 months course in 1967 in U.S.A. on radio-television.~~

The interested party was born on 24.3.1933; he attended the Pancyprrian Commercial Lyceum Larnaca for 5 years and also the American Academy of Larnaca for 4 years; thereafter he worked as a teacher at Terra Santa School Larnaca for 2 years. On 1.6.55 he was appointed for first time with the C.B.C. (Colonial). He was promoted to the permanent post of Senior Programme Officer on 1.1.68. 25 30

The interested party attended courses twice in 1958 abroad and was posted in the C.B.S. London office as Programme Supervisor in February 1958 and in 1959 he was in charge of the London office.

The service of the interested party is described extensively in ex. K where the qualifications of both the applicant and the interested party are set out in detail. 35

It seems that the applicant has more qualifications as a schoolmaster, having graduated the Morphou College in Cyprus and having attended for 2 years a post graduate course in Athens where he has also obtained a certificate which appears in red 60γ in his personal file. But the interested party has apart from high educational substratum (9 years altogether in 2 schools of secondary education) a very long experience in radio organisations; he was employed in the C.B.C. ever since 1.6.55 whilst the applicant was appointed with the C.B.C. for first time some 8 years later.

The qualifications of both although on a different basis cannot be compared with precision owing to their nature but definitely for the purposes of the service in the C.B.C. they may be termed as more or less equal.

The seniority of the C.B.C. employees is regulated by virtue of regulation 11 of the C.B.C. regulations published in the Official Gazette No. 486 of 7.4.66 under Not. 166.

Regulation 11 reads as follows:

«Εις περιπτώσεις καθ' ας η αρχαιότης αποτελεί σχετικόν παράγοντα εφαρμόζονται, εκτός ειδικάς περιστάσεις, τα ακόλουθα:

(α) η αρχαιότης καθορίζεται εκ της ημερομηνίας του διορισμού του υπαλλήλου εις την ειδικήν τάξιν ή βαθμόν εις ον υπηρετεί.

(β) η αρχαιότης υπαλλήλων του αυτού βαθμού, ων οι μισθοί και οι τίτλοι μεταβάλλονται συνεπεία αναθεωρήσεως μισθών ή αναδιοργανώσεως βαθμών, είναι οίαν ούτοι είχαν κατά την αμέσως προηγούμενην της τούτης αναθεωρήσεως ή αναδιοργανώσεως ημέραν».

(“In cases in which seniority constitutes a relative factor, the following are applicable, except in special circumstances:

(a) seniority is determined from the date of appointment of the officer in the special class or grade in which he is serving;

(b) the seniority of officers of the same grade whose salaries and titles are changed due to revision of salaries or reorganisation of grades, is that which they had on the day immediately prior to such revision or reorganisation”).

5

Now the interested party who was appointed by the C.B.S. as early as 1.6.55 was promoted to the post of Head of Greek Programmes as from 1.2.61 i.e. prior to the appointment of the applicant with the C.B.C. As it appears from the personal file of the interested party (red 112) the said post was renamed (after a reorganisation in the C.B.C.) into “Programme Officer A.”

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There is no material in the file to indicate whether special circumstances exist in the present case so that the computation of the seniority of the interested party can deviate from the provisions of regulation 11(a); in the absence of such material I shall have to treat the applicant as having seniority over the interested party at the material time pursuant to the provisions of regulation 11(a).

15

But even treating the applicant as senior to the interested party the merit of the interested party should prevail according to the principles set out above.

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In the circumstances therefore it was reasonably open to the respondent C.B.C. to reach at the sub judice decision.

For all the above reasons ground (IV) fails.

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The last complaint of the applicant which remains for consideration is the one under Ground III, notably undue reasoning.

Learned counsel for the applicant submitted in his written address that the reasoning contained in the minutes of 8.6.82 is so laconic and does not state either the criteria on the basis of which the candidates were considered or the reason for which the interested party was promoted in preference to the applicant.

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First of all it must be observed that the sub judice decision was reached at on 8.6.82 after the respondent Board had successive meetings on several occasions; in this

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connection the minutes of 25.5.82 have to be examined (ex. E) together with the minutes in ex. Γ of 8.6.82.

5 On the other hand unless the circumstances of the case specifically call for it, it is not necessary that each factor taken into consideration and weighed by the administration should be mentioned in the reasoning for the decision. A decision may be held to be duly reasoned if its reasoning appears not only in its text but can be deduced from the material in the administrative files (*Mouzouris v. The Republic* (1972) 3 C.L.R. 43, *Petrides v. The Republic* 10 *(1983) 3 C.L.R. 216*).

In the case in hand there was ample material in the administrative files before me to supplement the laconic reasoning of the respondent.

15 Concluding I feel duty bound to state that the applicant in the present recourse failed to establish striking superiority over the interested party selected. As stated in *HjiSavva v. The Republic* (supra) "superiority must be of such a nature as to emerge on any view of the combined effect 20 of the merits qualifications and seniority of the parties competing for promotion..." The applicant singularly failed to establish a case of striking superiority; a reflection on the merits and qualifications of the parties, as disclosed in the confidential reports and the personal files of the 25 candidates suggests that the interested party has superior merits, a fact admitted in the written address of the applicant, whereas their qualifications may be considered as already stated earlier on in the present judgment more or less equal.

30 In the result present recourse fails and is accordingly dismissed; in the circumstances I shall make no order as to its costs.

Recourse dismissed.

No order as to costs.