

1985 April 8

[LORIS, J.]

DRIADIS MINOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 155/84).

5 *Public Officers—Promotions—Judicial control—Principles applicable—Applicant and interested parties having the same seniority, more or less equally qualified but the latter somewhat superior in merit—Applicant failed to prove “striking superiority”—Merit of the interested parties prevails and justifies the sub judice decision.*

10 *Public Officers—Promotions—Head of Department—Recommendations—Fact that they are coinciding with evaluation of the Commission does not mean that the latter failed to carry out their own comparison and their own evaluations in respect of the candidates—Nor is the sub judice decision fragmented because it was divided into separate paragraphs.*

15 *Administrative Law—Administrative acts or decisions—Fragmentation.*

The applicant was a candidate for promotion to the post of Senior Technician. The Public Service Commission decided to promote the two interested parties to this post and hence this recourse.

20 The seniority of the applicant and the interested parties was the same, their qualifications were more or less the same but the merit of the interested parties was somewhat superior to that of the applicant.

Held, that an administrative Court cannot interfere with

a promotion unless it is established that the persons not selected had striking superiority over those selected; that the applicant failed to prove "striking superiority"; and that since the merit of the interested parties was somewhat superior to that of the applicant, merit prevails and justifies the decision of the respondent Commission which was reasonably open to them; accordingly the recourse should fail. 5

Held, further, that the fact that the evaluation of the Commission did coincide with the recommendations of the Head of the Department does not mean that they failed to carry out their own comparison and their own evaluations in respect of the candidates in the light of all the other material before them. 10

(2) That the fact that the Commission set out in their decision all the recommendations and comments of the Head of Department for all the candidates and considered them and said whether they accepted them and had to employ separate paragraphs in order to do so cannot mean that the decision was in any sense fragmented. 15 20

Application dismissed.

Cases referred to:

Theodossiou v. Republic, 2 R.S.C.C. 44;

Menelaou v. Republic (1969) 3 C.L.R. 36 at p. 41;

Theocharous v. Republic (1969) 3 C.L.R. 318 at p. 323; 25

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. 30

Recourse.

Recourse against the decision of the respondent whereby the interested parties were promoted to the post of Senior

Technician (Department of Inland Transport) in preference and instead of the applicant.

E. Efsthathiou, for the applicant.

5 *R. Gavrielides*, Senior Counsel of the Republic,
for the respondent.

Cur. adv. vult.

LORIS J. read the following judgment. By means of the present recourse, the applicant, a Technician 1st Grade in the Department of Inland Transport, impugnes that part
10 of the decision of the respondent Public Service Commission, published in the Official Gazette of the Republic on 21.1.84, whereby the three interested parties referred to in the list attached to this recourse, were promoted to the post of Senior Technician (Department of Inland Transport in the Ministry of Communications and Works) in preference to and instead of the applicant.
15

It must be mentioned here that the applicant in his written address did not pursue further his case against one of the interested parties namely Symeon Kokkinos (interested party No. 2 on the list) and at the clarification stage on
20 8.3.85 expressly withdrew his recourse against this interested party; therefore the present recourse will be considered in respect of the remaining two interested parties namely Andreas Christodoulou (interested party No. 1 on the list) and
25 Petros Michaelides (interested party No. 3 on the list).

The undisputed facts of the case under consideration are very briefly as follows:

The applicant was appointed for the first time in the Department of Inland Transport on 1.2.1977 in the permanent post of Motor Vehicles Inspector 1st Grade; the title
30 to the said post was changed on 1.1.1980 to Technician 1st Grade; the applicant is holding the aforesaid post from the time of his first appointment till the present day.

The Director-General of the Ministry of Communications and Works had by letter dated 21.4.1983 requested
35 the Public Service Commission to take steps for the filling inter alios 6 vacant posts of Senior Technicians in the Department of Inland Transport (three posts for the Branch

of Inspection of Vehicles and three posts for the Branch of Driving Examiners), the Minister of Finance having given his consent for that purpose (vide Appendix 1 attached to the opposition).

The applicant was a candidate for the promotion to the said post, which is a promotion post, having been included in the list of nine candidates (5 for the Branch of Inspection of Vehicles and 4 for the Branch of Driving Examiners) prepared in alphabetical order and submitted to the Public Service Commission 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 (vide Appendix 4 attached to the opposition).

The respondent P.S.C. at its meeting of 7.11.83, bearing in mind the conclusions of the Departmental Board and after hearing 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, decided that the most suitable for promotion were the 6 candidates mentioned in its decision (vide appendix 6 attached to the opposition pp. 8 and 9) and promoted them accordingly to the post of Senior Technician in the Department of Inland Transport as from 15.11.83.

The applicant who was not included in the aforesaid persons promoted, obviously feeling aggrieved, filed the present recourse praying for the annulment of the aforesaid decision of the P.S.C. in respect of two out of the six promoted, i.e. interested parties Andreas Christodoulou and Petros Michaelides (as now eliminated by the withdrawal against Symeon Kokkinos).

The complaints of the applicant as they emerge from his written address (the main address and the reply) may be conveniently grouped under the following heads:

A. A general complaint to the effect that the P.S.C. failed to carry out a comparison of the candidates, coupled with an allegation that the decision was substantially fragmented into three unconnected decisions;

B. Complaints against the recommendations of the Head

of Department coupled with a submission to the effect that they should be disregarded by the P.S.C.:

5 C. Complaints to the effect that the superior merit, qualifications and in particular the seniority of the applicant vis-a-vis the two interested parties were ignored by the P.S.C.

I shall proceed to examine these complaints as grouped above.

10 The complaints under group A above to my comprehension refer rather to the way the decision was drafted by the P.S.C.; in this respect we should not lose sight of the fact that the P.S.C. had to deal with nine candidates and not only with the applicant and the two interested parties of the present recourse; further they had to give due regard among other things to the recommendations made by the
15 Head of Department as they were required by Law (s.44(3) of Law 33/67); they thought it proper under the circumstances, and I agree with them, that they should set out all the recommendations and comments of the Head of Department for all 9 candidates, consider them, as they did,
20 and say whether they accept or whether they intended to deviate from them in which case they should give their reasons. (*Theodossiou v. The Republic*, 2 R.S.C.C. 44). The inclusion of all these matters in their decision would unavoidably lead to a rather long decision which in fact
25 covered five typewritten pages; all this material could not be put, of course, into one paragraph; they had to employ separate paragraphs but this cannot mean that the decision was in any sense fragmented.

30 It is apparent from the decision that the P.S.C. examined everything according to Law independently of the recommendations of the Head of the Department; the fact that their evaluation did coincide with the recommendations of the Head of the Department it does not mean that they failed to carry out their own comparison and their own
35 evaluations in respect of the candidates in the light of all the other material before them.

Coming now to group B of the complaints: I must say at the outset that the recommendations of the Director at least in respect of his comparison between the applicant and

the interested party Petros Michaelides is not happily worded; nevertheless, it conveys the message he intended to convey for both and after all the P.S.C. had before them, apart from the conclusions of the Departmental Board the personal files and the confidential reports of the candidates from which they could draw their own conclusions and if such conclusions were different from the recommendations of the Director (which is not the case) they could disregard the recommendations of the Director explaining in their decision the reasons for which they have adopted such a course. 5 10

I shall proceed now to examine the substantial complaints relating to merit, qualifications and seniority.

Seniority: It is apparent from the personal files of the applicant and both interested parties that all three of them were appointed for the first time in the Government Service on the same day i.e. the 1.2.1977; they were so appointed in the permanent post of Motor Vehicles Inspector 1st Grade (The title of which changed to Technician 1st grade on 1.1.1980), a post which they were holding from the day they were so appointed till today in the case of the applicant, till the day of their promotion on 15.11.83, in the case of the interested parties. It is further abundantly clear that they all were on scale A7 and they were drawing the same salary. 15 20 25

So according to the definition of "previous seniority" in s.46(7) of Law 33/67 (which remained unaffected in this connection inspite of the amendment of other parts of s. 46 by s. 5 of Law 10/83) "...In case seniority in the first appointments is the same, then previous seniority shall be determined by the age of the officers". As Petros Michaelides was born on 4.5.36 he was senior to the applicant, who was born on 16.9.47 and the applicant was also junior to Andreas Christodoulou the latter having been born on 27.2.44. 30 35

In connection with seniority I feel that I should state a few more things with particular reference to the allegation of the applicant that he was employed in the Electrical and Mechanical Services of the Republic during the period

1974 up to 1.2.77, an allegation which is denied by the respondent.

5 In the first place, the photocopies of two forms he has attached to his written address in reply (both certificates of the Income Tax Office) can denote nothing more than that (a) during the year 1974 he was paid by the Electrical and Mechanical Services £131.- and that the income tax deductions in connection therewith were £0.750 mils;

10 (b) During the year 1975 he was paid by the Electrical and Mechanical Services £614.- and that the income tax deductions therefrom were £12.450 mils.

15 That is the maximum these receipts can prove; they do not indicate in what capacity he was working with the Electrical and Mechanical Services nor are they implying continuous service from 1974 till 1.2.77 as alleged in the written address.

20 Be that as it may, these receipts do not exist in the personal file of the applicant nor could I trace any other document, relevant thereto; it must be implied therefore, that such material was never placed before the P.S.C.

25 *Qualifications:* The qualifications of the applicant and the two interested parties appear in Appendix 3 attached to the opposition—the relevant pages are 2, 3, & 4; the picture is more explicit in their respective personal files.
30 The secondary education of all three is more or less the same; in spite of the fact that at first sight one might form the opinion that applicant and Michaelides have more qualifications than interested party Christodoulou, yet thorough examination of the personal files in particular, indicates that all three possess more or less equal substantive qualifications.

Merit: The relevant confidential reports indicate that the applicant and the two interested parties were rated for the last 3 years (1980, 1981, 1982) as follows:

Loris J.	Driadis v. Republic	(1985)
Applicant	for 1980	11 very good 1 good.
"	" 1981	8 excellent 4 very good
"	" 1982	8 excellent 4 very good
A. Christodoulou	" 1980	12 very good
	" 1981	8 excellent 4 very good
	" 1982	8 excellent 4 very good
P. Michaelides	" 1980	1 excellent 11 very good
	1981	7 excellent 5 very good
	1982	8 excellent 4 very good

The two interested parties were described by the Head of Department as having further improved in 1983; further Christodoulou was strongly recommended by the Head of Department whilst Michaelides was recommended in preference to the applicant. 10

Certainly the views of the Head of Department as to the performance of the interested parties during 1983 and his recommendations are raising their merit more than the merit of the applicant. And it is well settled that "merit should carry the most weight" even vis-a-vis superior qualifications (*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). 15 20

So once the seniority is the same (independently of the age) qualifications are more or less the same but the merit of the interested parties is somewhat superior to that of the applicant, merit prevails and justifies the decision of the respondent Commission, a decision which was reasonably open to them. 25

But independently of the above, we should not forget that an Administrative Court cannot interfere with a promotion unless it is established that the persons not selected had "striking superiority" over those selected (*Michanicos and Another v. Republic* (1976) 3 C.L.R. 237; *Michaelides v. The Republic*, (1976) 3 C.L.R. 115; *Christou v. Repu-* 30

blic (1977) 3 C.L.R. 11, *Duncan v. Republic* (1977) 3 C.L.R. 153; *HjiSavva v. Republic* (1982) 3 C.L.R. 76).

5 In the present case the applicant failed to prove “striking superiority”; on the contrary the interested parties were proved to have at least superior “merit”.

The present recourse is, therefore, doomed to failure; and it is accordingly dismissed. Let there be no order as to costs.

Recourse dismissed.

No order as to costs.