

1985 January 15

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ELEFThERIOS CHRYSOCHOS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION.

Respondent.

(Case No. 133/83).

Public Officers—Promotions—Qualifications—Additional qualifications—Not expressly stated as an advantage under the schemes of service—Effect.

Public Officers—Confidential reports—Preparation—Reporting Officer—Duties of, including supervision and instruction of his subordinates one of whom was applicant—He had direct knowledge of the latter's performance and could rightly prepare his confidential reports—Moreover not imperative for a reporting officer to have direct knowledge of every item as regards the performance of his subordinates but he may obtain information from any other proper source. 5 10

Public Officers—Absence for studies—Period of absence—Whether it can be considered as service or experience—Circular No. 614 of the 3rd May, 1982. 15

The applicant, a Collector of Customs, was a candidate for promotion to the post of Senior Collector of Customs. The Public Service Commission promoted the interested parties in preference and instead of the applicant and hence this recourse. The Head of Department recommended for promotion the two interested parties and did not recommend the applicant because in com- 20

parison with the interested parties "he lacks in experience and service output". The interested parties were by nine years senior to the applicant; and though all the candidates possessed the qualifications required by the schemes of service, the applicant had additional qualifications, namely a diploma in law of the University of Athens and a post-graduate diploma in European Intergration of the University of Amsterdam.

Counsel for the applicant mainly contended:

- 10 (1) That the post-graduate diploma of the applicant, since not required by the scheme of service, ought to have been considered as service or experience upto two years, in accordance with circular No. 614 dated 3rd May, 1982.
- 15 (2) That the qualifications of the applicant were superior to those of the interested parties and so he should have been considered as far better qualified to cope with the duties of the post.
- 20 (3) That the officer who prepared his confidential reports for the years 1980 onward had never supervised the applicant or had no direct or personal knowledge of his performance

Held, (1) That even if circular No. 614 could modify or vary the length of his service or experience, it could in no way affect his seniority since matters of seniority are clearly governed by the law; that any possible time which may be credited to him in terms of service and which in any case would not be two years, but a maximum of eight months (the duration of the course), would under no circumstances be able to override the overwhelming seniority of the interested parties of 9 years and their resulting greater experience.

- 35 (2) That a qualification cannot be considered as an advantage over other candidates if it is not expressly stated, as it is in this case, to be so by the relevant schemes of service and that the possession of higher qualifications should not weigh so greatly in the mind of the Public Service Commission but

they should decide in selecting the best candidate on the totality of all circumstances before them.

- (3) That the confidential reports were prepared by the Chief Inspector of Customs, who according to the relevant scheme of service of his post, among his duties is the supervision of all staff, their instruction and guidance as to their duties, and inspection of the work of the Department; that it is clear, therefore, that the reporting officer did have direct knowledge of applicant's performance and work and could thus rightly prepare his confidential reports. 5 10

Held, further, that it is not imperative for a reporting officer to have direct knowledge on every item as regards the performance of his subordinates but he may obtain information from any other proper source. 15

- (4) That, therefore, it was reasonably open to the respondent Commission to prefer and promote the interested parties instead of the applicant, who has failed to establish the striking superiority which is necessary to lead to the conclusion that the respondent Commission has acted in abuse or excess of powers; that there is no misconception of fact and the sub judice decision was taken in accordance with the law; accordingly the recourse must fail. 20 25

Application dismissed.

Cases referred to:

Tokkas v. The Republic (1983) 3 C.L.R. 361 at pp. 367-368. 30

Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Senior Collector of Customs in preference and instead of the applicant.

A. *Haviaras*, for the applicant. 35

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

Cur. adv. vult.

5 MALACHTOS J. read the following judgment. The applicant in this recourse claims a declaration of the Court that the act and/or decision of the respondent Commission published in the Official Gazette of the Republic, dated 21st January, 1983 to promote and appoint interested parties 1. Phidias Kyprianou and 2. Christodoulos Parlas to the permanent post of Senior Collector of Customs, in the Department of Customs and Excise, as from 15th November, 10 1982, instead of the applicant, is null and void and of no legal effect whatsoever.

15 The post of Senior Collector of Customs is a promotion post and among the qualifications required are:

- (1) Full knowledge of the Law and practice in respect of all matters for which the Department of Customs and Excise has responsibility.
- 20 (2) Wide experience of customs work and at least two years service in the post of Collector of Customs.

A list of all candidates eligible for promotion was prepared and forwarded to the Departmental Board which on the 14th October, 1982, decided, after considering their merit, qualifications and seniority, that all candidates 25 possessed the qualifications required by the scheme of service and as a result recommended all of them for promotion. Its views were recorded separately for each one of the candidates and were forwarded to the Public Service Commission. 30

The respondent Commission met on the 6th November, 1982. The Director of the Customs and Excise Department, who was present at the meeting, expressed the following views:

35 "At first, Phidias Kyprianou is recommended, who is the most senior of the candidates and a very able employee. He has served as Collector of Customs at Famagusta and thereafter at the Customs Headquarters as administrative

Collector of Customs and co-ordinator of the office. He is thoroughly familiar with customs legislation and procedures, he is a close associate of the Director of Customs and is extremely useful. Without any reservation he is the best from the aspect of merit.

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For the second post the choice must be between Christodoulos Parlas and Georghios Angelides. Parlas has served as Inspector at the office of the Chief Inspector in Famagusta subsequently he worked as Collector of Customs of Famagusta and at the Customs Headquarters on technical matters. Then, he served again at the office of the Chief Inspector as Collector of Customs in Nicosia and now he is Collector of Customs in Limassol. Thus, he has served in all the posts and has performed the duties assigned to him in an absolute degree. He is familiar with customs work and procedure, he has the ability to see through problems and to find solutions. In the district administration he has proved that he has the ability to direct personnel and to plan the work of the Customs Office.

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From the other candidates, there is no one who can draw the attention of the Director. Eleftherios Chrysochos is the most junior in the post held today and has not acquired as wide experience as the others, even though he is a promising employee. He has five years experience at the Customs Headquarters and for the last year he has been serving in Limassol. He is the only one who holds a University degree and has obtained through a scholarship a post-graduate diploma in subjects concerning the Common Market. Despite his academic qualifications, in comparison with those who were recommended, he lacks in experience and service output.

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Taking into consideration the established criteria in their totality (merit, qualifications, seniority) Kyprianou, Parlas and Angelides are superior to the other candidates including also Chrysochos."

According to the relevant minutes the Director then withdrew and the Commission proceeded and examined the essential elements contained in the personal files and confidential reports of the candidates and made an assessment and a comparison of the candidates between them-

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selves, having always in mind the conclusions of the departmental Board and the recommendations of the Director.

5 The Commission, taking into consideration the merit, qualifications and seniority of the candidates, adopted the view of the Director that Phidias Kyprianou and Christodoulos Parlas were the best candidates and decided to promote them to the permanent post of Senior Collector of Customs in the Department of Customs and Excise as from 15th November, 1982.

10 Hence, the present recourse which is based, as stated therein on the following grounds of law:

- (a) The sub judice decision was taken in excess and/or abuse of power.
- 15 (b) The sub judice decision was taken under a misconception of fact and/or law.
- (c) The sub judice decision was reached contrary to the Constitution, the principles of Administrative Law and the provisions of the Public Service Laws.
- 20 (d) The sub judice decision was based on reports made by non competent organs; and
- (e) The respondent failed in its duty to select the most suitable candidate.

25 It was contended on behalf of the applicant that the respondent Commission erred in its evaluation of the facts appertaining to the applicant. It was argued that he was considered by the Head of Department when expressing his views and recommendations as lacking in experience. This was wrong, he claimed, as, though more senior, the interested parties were not more experienced. The applicant
30 had wide experience in all aspects of customs work, as required by the scheme of service. Moreover, he had obtained a post-graduate diploma which, in accordance with circular No. 614 dated 3rd May, 1982, since not required by the scheme of service, ought to have been considered as service or experience upto two years; thus he ought
35 to have been credited with two extra years experience.

As regards qualifications, those of the applicant are

superior to those of the interested parties and so, he should have been considered as far better qualified to cope with the duties of the post.

Finally, as to merit, it was argued that the respondent erred in taking into account the confidential reports concerning the applicant which were irregular and should have therefore, been rejected. Also, the Head of Department had wrongly relied on these irregular reports to form the opinion that the applicant was not as experienced as the interested parties. A reporting officer must have direct knowledge of the performance and should be supervising any employee in respect of whom he is reporting. In the case of the applicant from 1981 he was serving in Limassol. His confidential reports as well as those of the interested parties for the years of 1980 onwards were prepared by Mr. J. Evripidou, the Chief Inspector of the Customs and Excise Department, who had never supervised the applicant or had no direct or personal knowledge of his performance. Therefore, the confidential reports of the years 1980 onwards ought not to have been taken into consideration by the respondent Commission as they ought to have been prepared by his immediate superior at Limassol, where he was working.

It would be useful at this stage to make a brief reference to the career of the parties.

The applicant graduated from the Limassol Gymnasium in 1947 and in the same year, on 6th October, 1947, he entered the Government Service as a Temporary Clerical Assistant. He was appointed as a Customs and Excise Officer, 3rd Grade on 1st March, 1953, he was promoted to Customs and Excise Officer 2nd Grade, on 1st April 1956, to Customs and Excise Officer, 1st Grade, on 1st August, 1967, to Assistant Collector of Customs on 1st June, 1974 and to the post which he now holds of Collector of Customs on 15th October, 1977. He holds a Diploma in Law of the University of Athens and a post-graduate Diploma in European Intergration of the University of Amsterdam.

Interested party Phidias Kyprianou graduated the Pancyprian Gymnasium in 1946. He then entered the Govern-

ment Service as a Temporary Clerical Assistant on 4th November, 1946. He was appointed as a Customs and Excise Officer, 2nd Grade on 1st February, 1952 and was promoted to Customs and Excise Officer 1st Grade, on 1st June, 1961, to Assistant Collector of Customs on 1st August, 1967 and to Collector of Customs on 1st February, 1968. On the 15th November, 1982 he was promoted to his present post of Senior Collector of Customs. He attended a six week's training course in Value Added Tax at the Customs and Excise Training Centre, U.K.

Interested party Christodoulos Parlas graduated the English School, Nicosia, in 1951. He first entered the Government Service as a Temporary Clerical Assistant on 8th October, 1951. He was appointed as a Customs and Excise Officer, 2nd Grade, on 1st May, 1953 and was promoted to Customs and Excise Officer, 1st Grade, on 1st June, 1961, to Assistant Collector of Customs, 1st August, 1967 and to Inspector on 1st February, 1968, (on 1st January, 1981 the title of Inspector was changed to Collector of Customs). On the 15th November 1982 he was promoted to his present post of Senior Collector of Customs.

As regards applicant's first contention that he was wrongly not credited with two extra years experience in view of his post-graduate diploma, contrary to the provisions of the aforesaid circular I find no merit in it. Even if this circular could modify or vary the length of his service or experience, it could in no way affect his seniority since matters of seniority are clearly governed by the law. Any possible time which may be credited to him in terms of service and which in any case would not be two years, but a maximum of eight months (the duration of the course), would under no circumstances be able to override the overwhelming seniority of the interested parties of 9 years and their resulting greater experience.

But, in any case, the respondent Commission in its decision does not allege that the applicant did not have enough experience, because if that was the case he would not have been recommended for promotion in the first place. On the contrary he was recommended but it was considered that the others had more experience.

As regards qualifications, it is not disputed that the applicant possesses a University degree while the others do not, and a post-graduate diploma, but such qualifications are not required by the scheme of service.

In the case of *Tokkas v. The Republic* (1983) 3 C.L.R. 361 at pp. 367-8, the following is stated: 5

“As regards the second ground, namely, the possession by the applicant of the Diploma in Law, it has been said time and again that a qualification cannot be considered as an advantage over other candidates if it is not expressly stated, as it is in this case, to be so by the relevant schemes of service and that the possession of higher qualifications should not weigh so greatly in the mind of the Public Service Commission but they should decide on selecting the best candidate on the totality of all circumstances before them (see *Cleanthous v. The Republic* (1978) 3 C.L.R. p. 320, at p. 327, and the authorities therein mentioned namely, *Bagdadis* (supra) at pp.427 and 428; *Ioannou v. The Republic* (1976) 3 C.L.R. p.431; and *Larcos v. The Republic* (1982) 3 C.L.R. p.513, at p.518, where Pikis, J., deals with the matter by reference also to the previous caselaw of this Court).” 10 15 20

Finally, as regards his assertion that the confidential reports of the applicant were irregular and ought not to have been taken into account by the respondent Commission because they were prepared by persons who did not have direct knowledge of the applicant, his work and performance, this argument must fail too. The reports were prepared by the Chief Inspector of Customs, Mr. J. Evripidou, who according to the relevant scheme of service of his post, among his duties is the supervision of all staff, their instruction and guidance as to their duties, and inspection of the work of the Department. It is clear, therefore, that the reporting officer did have direct knowledge of applicant's performance and work and could thus rightly prepare his confidential reports. 25 30 35

Moreover, this matter of the alleged irregularity of the reports was considered by the respondent Commission, after a complaint was lodged by the “managerial staff of the 40

Limassol Customs." The respondent inquired into the matter and decided that there was no irregularity concerning the reports, having been informed by the Director of Customs that the said reports were properly made by the Senior Inspector of Customs as he had direct knowledge of their work.

Before concluding my judgment I must say that it is not imperative for a reporting officer to have direct knowledge on every item as regards the performance of his subordinates but he may obtain information from any other proper source.

In view of the above, I find that it was reasonably open to the respondent Commission to prefer and promote the interested parties instead of the applicant, who has failed to establish the striking superiority which is necessary to lead to the conclusion that the respondent Commission has acted in abuse or excess of powers. There is no misconception of fact and the sub judice decision was taken in accordance with the law.

For the above reasons, this recourse is dismissed with no order as to costs.

*Recourse dismissed.
No order as to costs.*