

1986 August 18

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

NICOS LOFITIS AND ANOTHER,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE
PUBLIC SERVICE COMMISSION,

Respondents.

(Cases Nos. 13/85, 253/85).

Public Officers—Promotions—Qualifications—Scheme of service requiring “Very good knowledge of Greek” and “Administrative and Organizing ability”—Due inquiry as to such qualifications—Meaning of “ability”.

Public Officers—Promotions—Confidential reports—The Circular of 1979—Regulation 4—Whether Reporting Officer, not having continuous supervision over the officer, whom he evaluates, should consult other officers, under whom such officer, also, serves—Reg. 9—Corrections in red ink—Failure to comply with such requirement—Not a material irregularity. 5
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Administrative Law—General principles—Irregularity—Only a material one leads to the annulment of an administrative act.

Each of the applicants in the above recourses challenges 15
the validity of the promotion of the interested party to the post of Senior Weather Forecaster in the Meteorological Service of the Ministry of Agriculture and Natural Resources as from 1.5.85.

The complaints of applicant in recourse 13/85 are that: 20
(a) There was failure of due inquiry concerning the qualifications of the interested party as regards the require-

ments of "Very good knowledge of Greek" (the interested party was a graduate of English School) and "Administrative and Organising Ability". (b) The Confidential reports of the interested party were invalid because contrary to the circular of 1979 about confidential reports the reporting officer rated him on her own without having continuous and immediate supervision on him during the whole of his yearly service, (c) some of the ratings of the confidential report on the applicant for 1979 were changed by the Countersigning Officer without this being recorded in red ink and without special reasoning being given contrary to the said circular and, as regards the report of 1983, the Countersigning Officer persuaded the Reporting Officer to change his report.

Some of the complaints of the applicant, in recourse 253/85 were directed against the applicant in recourse 13/85. The complaint directed against the promotion of the interested party was that the conclusion of the respondent Commission that the interested party had the best confidential reports from all the applicants was erroneous. In support of this complaint counsel for the applicant referred to the fact that the Reporting Officer for the applicant was always consulting other officers under whom he was also working, whereas the Reporting Officer for the interested party did not consult such other officers.

Held, dismissing the recourse: (1) As regards the complaint about lack of due inquiry concerning the qualification of "very good knowledge" of Greek, applicant, in recourse 13/85 ignored, apart from the fact that the interested party is a Greek Cypriot, that the interested party had stated in his original application for appointment—and there is nothing to disprove the accuracy of this statement—to have had excellent knowledge of Greek and that he passed the General Certificate of Education in modern Greek at advanced level. The aggregate effect of the above establishes a "very good knowledge of Greek".

As regards the complaint about lack of due inquiry as to the qualification of "Administrative and Organizing Ability" it should be stressed that the applicant does not

claim to have had any different experience from the interested party, but he only bases his claim on the fact that he has a diploma in Political Science and Public Administration from Athens University. "Ability" presupposes performance and practical expression of a person's capabilities and not just a mere theoretical and academic knowledge of a matter. Moreover, there are in the relevant confidential reports of all candidates a number of rateable items, such as "Managerial/Supervising ability," "Ability of leadership," "Ability to solve problems" and "Co-operation/Relations" on which their ability and performance was evaluated that establish the qualification of the candidates as regards the said requirement of the scheme of service. 5 10

(2) In the light of Regulation 4* of the Circular of 1979 about confidential reports, in so far as relevant and as no other relevant provision could be traced in the said circular, the second complaint of the applicant is not justified. 15

(3) There is no material irregularity regarding the reports to which the third complaint of the applicant relates. Failure to comply with the requirement of Reg. 9 of the Circular to make corrections in red ink does not vitiate the report. As only an irregularity of a material nature leads to an annulment of an administrative act, the third complaint of applicant in recourse 13/85 also fails. 20 25

(4) There is no need to examine the complaints of the applicants in recourse 253/85, in so far as they are directed against applicant in recourse 13/85. As regards his complaint against the promotion of the interested party it should be noted that it is similar in nature with the second complaint of applicant in recourse 13/85 and, therefore, it has to be dismissed for the same reasons. 30

(5) On the totality of the material before the respondent Commission the sub judice decisions were reasonably open to it. 35

Recourse dismissed.
No order as to costs.

* Quoted at p. 1328.

Cases referred to:

Georgiades v. The Republic (1982) 3 C.L.R. 16;

Agrotis v. Electricity Authority (1981) 3 C.L.R. 503;

Christofides v. The Republic (1985) 3 C.L.R. 1127;

Livadhas v. P.S.C. (1985) 3 C.L.R. 506.

5 Recourses.

Recourses against the decision of the respondents to promote the interested party to the post of Senior Weather Forecaster in the Meteorological Service of the Ministry of Agriculture and Natural Resources in preference and
10 instead of the applicant.

A. S. *Angelides*, for applicant in Recourse No. 13/85.

P. *Petrakis*, for applicant in Recourse No. 235/85.

A. *Papasavvas*, Senior Counsel of the Republic, for the respondents.

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Cur. adv. vult.

A. LOIZOU J. read the following judgment. The two applicants, with their respective recourses challenge the validity of the decision of the respondent Commission of which Ioannis Andreou, (hereinafter to be referred to as
20 the interested party) was promoted to the post of Senior Weather Forecaster in the Meteorological Service of the Ministry of Agriculture and Natural Resources as from the 1st January, 1985, instead of either of them. Hence the direction of the Court that they be tried together as
25 presenting common questions of law and fact.

In accordance with the scheme of service the post in question is a promotion post and so the respondent Commission, on the basis of the Regulatory Orders that govern the establishment, competence and the function of De-
30 partmental Boards in accordance with s. 36 of the Public Service Law, sent all relevant material to the Chairman of the Board.

On the 1st November, 1984 the Chairman of the said Board transmitted their report (Appendix 4) to the res-

pondent Commission recommending therein four of the five candidates, among whom were included the two applicants and the interested party.

On the 14th December, 1984, the respondent Commission took the sub judice decision. The relevant minutes (Appendix 6) read as follows:

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Present at the meeting, was also the Head of the Meteorological Service Mr. Kleanthis Philaniotis. He mentioned the following:

The general performance of the candidates for 1984 until to-day is about the same with that of 1983 with very slight re-adjustments.

Hadji Jovanni Michael continues to lack behind in comparison to the rest in a general manner. Among the four candidates they are in a position of their own, Andreou Ioannis and Lofitis Nicos. Between the two candidates Andreou is slightly superior in merit from Lofitis, whereas Lofitis is superior in qualifications.

From the point of view of seniority Andreou is ahead by one year in the post of Weather Forecaster, as regards the whole service Lofitis is ahead. These two can be considered as of equal merit (ισότιμοι και ισόξιοι).

Lofitis has special training in Public Law which must be taken into consideration.

At this point the Head of the Meteorological Service withdrew from the meeting.

Thereafter the Commission was engaged with the evaluation and comparison of the candidates.

The Commission examined the material factors from the file for the filling of the post as well as from the Personal Files and the confidential reports of the candidates and took also into consideration the conclusion of the Departmental Board and the assessment and recommendations of the Head of the Meteorological Service.

The Commission took into consideration the Confidential Reports on the candidates and noted that on the totality of the confidential reports since 1979 when the new form of confidential reports was adopted, Andreou is presented as better. Indicatively it is mentioned hereinafter, the rating of all candidates in the confidential reports of the last three years:

	HadjiJovannis Michael	1981 "V.G." (3-9-0)
		1982 "V.G." (3-9-0)
10		1983 "V.G." (3-8-1)
	Josephides Elias	1981 "V.G." (3-9-0)
		1982 "V.G." (5-7-0)
		1983 "V.G." (6-6-0)
	Maryiannis Georghios	1981 "V.G." (2-10-0)
15		1982 "V.G." (3-9-0)
		1983 "V.G." (6-6-0)
	Andreou Ioannis	1981 "V.G." (2-10-0)
		1982 "V.G." (4-8-0)
		1983 "E." (8-4-0)
20	Lofitis Nicos	1981 "V.G." (1-11-0)
		1982 "V.G." (4-8-0)
		1983 "V.G." (6-6-0)

As regards seniority, the Commission noted that Hadji-Jovanni, Josephides, Maryiannis and Andreou, were appointed to the post of Weather Forecaster, on the same date, that is, on the 1st February, 1978, whereas Lofitis was seconded to the same post on the 1st February, 1979. The seniority of the first four is ascertained on the basis of their age.

The Commission took into consideration the qualifications of the candidates and noted the fact that Lofitis has a University Diploma in Political Science and Public Administration of Athens University.

The Commission, taking into consideration all material factors that were before them, considered on the basis of the established criteria in their totality (their qualifications, seniority) that Ioannis Andreou is superior to all candidates and decided to promote him as the most suitable to the permanent (Dev. Budget) post of Senior Weather Forecaster in the Meteorological Service as from the 1st January, 1985." 5

With the exception of Nicos Lofitis, applicant in recourse No. 13/85, all the other four candidates were fully qualified Weather Forecasters before they joined the service, first on contract, on 1.2.76 and, then, by appointment on 1.2.78. Until, then, they were working as Weather Forecasters in the British Royal Air Force, at Nicosia Airport and since the Turkish Invasion of Cyprus in 1974, at Akrotiri. To qualify as Weather Forecasters they had to possess, (a) The Certificate of the Initial Training Course of the British Meteorological office and (b) the necessary experience and training. All the candidates acquired their academic qualification in England. 10 15 20

Applicant Lofitis was working with the Cyprus Meteorological Office which at the time did not have a comprehensive Weather Forecasting service of its own. It suffices to say that until 1974 Weather Forecasting Services to the Civil Aviation of the Republic were provided by R.A.F. who had a branch office at Nicosia airport. The applicant and the other candidates, Lofitis excepted, formed the team which provided these services. 25

It was claimed by applicant HadjiJovannis that for this reason, alone, if nothing else, Lofitis could not acquire the relevant practical experience necessary for a Weather Forecaster even though he possessed the certificate of the Initial Training Course. 30

At about the end of 1975 and beginning of 1976 the International Airport of Larnaca was completed and the need for a Weather Forecasting Service for the Civil Aviation of Cyprus became obvious. The Republic, in consultation, with the R.A.F. Authorities arranged for the recruitment of applicant HadjiJovanni and the other three candi- 35

dates as Weather Forecasters, for the Civil Aviation at Larnaca Airport. Applicant Lofitis was not a Weather Forecaster, then, and began his training as Forecaster as alleged by applicant HadjiJovannis much later, under his supervision and that of the other three candidates. In support of this contention counsel for the applicant referred to a copy of a letter dated 10.3.77 from the Director of the Cyprus Meteorological Office attached to his written address as speaking for itself. He was finally appointed a Weather Forecaster on 1.2.79.

Applicant, HadjiJovannis, was appointed in the R.A.F. as a Meteorological Assistant in 1957 and in 1969 he became a Weather Forecaster after obtaining the Certificate of Initial Training Course of the Meteorological Office of the United Kingdom, the interested party, was appointed to the R.A.F. as a Meteorological Assistant in 1963-64 and he became a Weather Forecaster in 1970-71 after acquiring the Certificate in Initial Training. Thereafter like applicant HadjiJovannis he was appointed as Weather Forecaster as from 1.2.78. In 1979 applicant HadjiJovannis won a scholarship from the British Council and he obtained the Diploma in Advanced Forecasting Course.

A complete picture of the qualifications and careers of all candidates is set, in tabulated form in Appendix "A", and I need not repeat them here.

Suffice it to say that all candidates were found both by the Departmental Board and by the respondent Commission to possess all the required qualifications under the relevant scheme.

The first argument advanced on behalf of applicant Lofitis was that the respondent Commission failed to carry out a proper inquiry as to whether the interested party possessed the required qualifications namely as to whether he had "Very good knowledge of Greek" and "Administrative and organizing ability."

It was urged that as at the earlier stages of his career this matter was not relevant as there were no such requirements in the Scheme of Service for the lower post the

matter had to be inquired into at this stage of promotion. In this respect counsel argued that the interested party appeared to have attended only the English School hence the qualification of "Very good knowledge of Greek" should have been inquired into by the respondent Commission. He ignored, however, that apart from the obvious thing that the interested party is a Greek Cypriot he had in his original application for appointment, stated, and there is nothing to disprove its accuracy, to have had excellent knowledge of Greek to read, write and speak and furthermore that in the list of his qualifications he appears to have passed the General Certificate of Education in Modern Greek at Advanced Level. The aggregate effect of this is undoubtedly established a "Very good knowledge of Greek" as required by the Scheme of Service.

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As regards the question of the qualification of "Administrative and organizing ability" counsel for the applicant based his argument on the fact that at a meeting of the Head of the Meteorological Service and Meteorological Officer "A" Miss Eliana Eliadou, Officer in charge at Larnaca Airport and the Branch Committee of the Staff, the applicant raised the question of including in the new Scheme of Service which was being prepared, a qualification regarding "Administrative work" and that at that meeting the Head of the Meteorological Service Mr. Philaniotis is recorded to have disagreed because, as he said, this does not apply, such qualification applying only to Administrative Staff (See Appendix "D"). This does not, in my view, carry the case any further as both the Departmental Board and the respondent Commission examined the question of qualifications—they say so in the relevant minutes—and found all the candidates to possess same and the applicant does not claim to have had any different experience relating to administrative and organizing ability but he only bases his claim to the fact that he has a Diploma in Political Science and Public Administration from Athens University.

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In my view, however, this does not prove him to possess anything beyond the "Administrative and Organizing Ability" which the other candidates were found to possess as

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ability presupposes performance and practical expression of a person's capabilities and not just mere theoretical and academic knowledge of a matter which, if not possessed does not preclude a person from possessing such ability.

5 But apart from this an examination of the confidential reports of all candidates shows that there are a number of rateable items on which their ability and performance was evaluated that establish the qualification of the candidates regarding Administrative and Organizing Ability. Leaving
10 aside all other rateable items, item 10 calls for assessment on "Managerial/supervising ability" which is explained therein as being "The ability to manage and to supervise staff, to co-ordinate and organize the work and utilise beneficially and with good results the manpower at his
15 disposal. Also rateable item 11 which is for "Ability of leadership" and which is explained to be therein as "The ability to inspire confidence, lead and promote harmonious relations and the encouragement by one's own example of increased productivity." These rateable items together with
20 such other rateable items as item 7 for "Co-operation/Relations" and rateable item 9 "Ability to solve problems" compose the qualification of Administrative and Organizing Ability.

25 All this material was before the respondent Commission as well as the Departmental Board and this ground of law, which has unnecessarily been raised in this case, fails.

The next ground relied upon on behalf of this applicant is the question of the validity of the confidential reports. It was claimed that once they are found to be defective,
30 then, the ascertainment of their invalidity brings the invalidity of all subsequent acts for the issue of which the acts found to be illegal constitutes a legal prerequisite (See *Georghiades v. The Republic* (1982) 3 C.L.R. p. 16 at p. 28 where reference is made also to *Agrotis v. Electricity*
35 *Authority of Cyprus* (1981) 3 C.L.R. p. 503 at 513.

The alleged irregularity in the confidential reports on the interested party is claimed to stem from the fact that the Reporting Officer Eleni Eliadou, Officer in charge at Larnaca Airport, rated him on her own without having
40 continuous and immediate supervision on him during the

whole of his yearly service and without consulting other Officers under whom he was working for the rest of the year. More concretely she was supervising him during shifts and she had immediate supervision on him to an extent of 26 - 36 per cent of his whole service and so she acted contrary to the Circular about Confidential Reports of 1979 (Appendix E).

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What the relevant regulation 4 in so far as having any bearing in this case provides is the following:

«4. Οι Αξιολογούντες και οι Προσυπογράφοντες Λειτουργοί εις έκαστον Υπουργείον, Ανεξάρτητον Γραφείον ή Υπηρεσίαν, ορίζονται υπό του οικείου Προϊσταμένου, εις την Υπηρεσίαν του οποίου υπηρέτησαν οι αξιολογούμενοι υπάλληλοι λαμβανομένων υπ' όσων των ακολούθων παραγόντων:-

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(α) Ο Αξιολογών Λειτουργός δέον απαραίτητως να είναι λειτουργός όστις, λόγω των καθηκόντων αυτού, έχει απ' ευθείας γνώσιν της εργασίας του αξιολογούμενου υπαλλήλου και δύναται ως εκ τούτου να εκφράση υπεύθυνον και έγκυρον γνώμην επί της εργασίας και των ικανοτήτων του υπαλλήλου, κανονικώς δε ο Αξιολογών Λειτουργός δέον να είναι ο εποπτεύων τον υπάλληλον λειτουργός».

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In English it reads:-

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“4. The Reporting and Countersigning Officers in each Ministry, Independent Office or Service are designated by the respective Head of the Service in which the Officer to be reported upon served taking into consideration the following factors:-

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(a) The Reporting Officer must necessarily be an Officer who on account of his duties has direct knowledge of the work of the assessed Officer and may on account of this, express responsible and valid opinion on the work and the abilities of the Officer and normally the Reporting Officer must be the one supervising the Officer”.

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It is obvious from the aforesaid provision that none of the duties claimed by counsel for the applicant are cast on a Reporting Officer nor could I trace any other provision in the Circular referred to by him. The fact that other
5 Reporting Officers have recorded in the relevant confidential reports that they consulted others, does not affect the validity of the confidential report on the interested party. The other Reporting Officers did so for reasons given by them in the reports themselves.

10 Moreover, the reports on the interested party for the years 1981 and 1982 were made by the said Reporting Officer in co-operation, as stated therein, with Mr. Loizos Stephanou, a Meteorological Officer, Grade "A" for the year 1982 and for the year 1981 which was made by Mr.
15 Stephanou in consultation with Miss Eliadou.

What is significant is that the Head of the Meteorological Services countersigned these reports and in particular that of 1983 for which the complaint was made having found it to be objective and correct. And further confirmed
20 that the performance of the interested party and the rest of the candidates during 1984 was more or less the same as rated in 1983.

The second point about irregularity in the confidential reports is that in that of 1979 there are instances
25 of reduction of assessment made on the applicant by the countersigning officer without this being recorded in red ink and without special reasoning being given contrary to the aforementioned Circular. Reference in this respect was made to the judgment in *Christofides v. The*
30 *Republic* (as yet unreported delivered on 4.5.85).*

Connected with this is the point that for 1983 the countersigning officer is claimed to have persuaded the reporting officer to change his report that is, to reduce the ratings for the applicant again contrary to the provisions of the
35 Circular.

As regards the 1979 report the only initials appear in items 3 and 7 in the square for "Very Good" and the rating appears to be "Good".

* Reported in (1985) 3 C.L.R. 1127.

In the 1983 report there appears to have been a reduction from "Excellent" to "Very good" in rateable item 5 which is for ability for "Written expression" but which does not, in any way, change the general average of "Very good."

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In the 1979 report there is no comment whereas in the report for 1983 there is the following comment by the Reporting Officer:- "He performs at the greatest possible degree, he assumes fully his responsibilities and he is completely qualified to assume any work that is assigned to him. He has great capabilities in managing and supervising subordinate staff as well as in solving problems that arise in the course of his work". This report was countersigned by the Head of the Department and certified to be objective and correct except for any corrections or observations made and monographed by him.

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There is to my mind, no material irregularity whatsoever regarding these reports nor does the fact that any correction was made in blue and not in red ink vitiate the report. Failure to comply with the requirement of Regulation 9 to make corrections in red ink does not vitiate in any way the report. I must, however, say that in any event it is not clear that there has been any change in the ratings of this applicant by the Countersigning Officer. In any event there has been no material irregularity and on the authorities only an irregularity of a material nature could affect the validity of an administrative act (See *Vias Livadas v. Public Service Commission* (1985) 3 C.L.R. 506.

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This ground, therefore, also fails.

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It has been submitted on behalf of applicant HadjiJovanni that the respondent Commission was wrong in concluding that the interested party had the best confidential reports from all the applicants. It was claimed that this may appear so on the face of them but had the Commission made a proper inquiry it would have seen that this was not so and that there existed a different picture.

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Counsel for this applicant referred in this respect to the work of the Forecasters done in shifts and the fact that

the Reporting Officer for this applicant was always consulting the other Weather Forecasting Officers with whom the applicant was working whereas for the interested party the Reporting Officer concerned did so without consultation with any other officer under whom like the applicant he worked during the shifts.

The answer to this argument is to be found on what was said in relation to a somehow similar argument advanced on behalf of applicant Lofitis and there is nothing to be added to that.

I need not deal with the further arguments advanced on behalf of this applicant as they are really directed on the unsuccessful candidate applicant Lofitis and not as against the selection of the respondent Commission.

Having given the matter my best consideration I have come to the conclusion that on the totality of the material before the respondent Commission the sub judice decision was reasonably open to it and it was reached in accordance with the general principles of administrative law and there has been neither misconception of fact or law nor any failure on its part to carry out the proper and due enquiry required in the circumstances.

For all the above reasons these recourses are dismissed and the sub judice decision affirmed but in the circumstances there will be no order as to costs.

*Recourses dismissed.
No order as to costs.*