

1986 July 28

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

IOANNIS HJIOSIF,

Applicant,

v.

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondents.

(Case No. 212/85).

-
- 5 *Public Corporations—Promotions—Cyprus Telecommunications Authority—The Cyprus Telecommunications (Personnel) General Regulations, 1982—Regulations 10(9), 8(1)(B) (b), 10(8), 10(9), 23(4) and 56—Qualifications—Not necessary to state under what Regulation a candidate's qualifications were examined so long as he satisfies them—Reg. 56 is a valid regulation—Seniority—Striking superiority, meaning of —Lists of those entitled to promotion*
- 10 *not made at the time provided by the Regulations—It is an irregularity of an immaterial nature—Departure from the provisions relating to service reports (Reg. 23(4))—It is an irregularity of a material nature rendering the report invalid—Decision taken on basis of an invalid service report is in law defective.*
- 15 *Administrative Law—Irregularity—It does not affect the validity of the administrative act, if it is of an immaterial nature—If it is of a material nature, it affects the validity of the act.*

20 The Personnel Committee of the respondent Authority decided on the basis of Regulation 10(9) to promote the interested party in preference to the applicant to the post of Head "B" Οικονομικόν Προσωπικόν. The decision was approved by the General Manager. The Board

of the Authority dismissed an objection filed by the applicant against the said promotion.

As a result the applicant filed the present recourse complaining that his seniority was not duly taken into consideration, that the interested party did not possess the required qualifications, that Regulation 56(7)(c) is not a valid one, that the sub judice decision lacks due reasoning, that no lists of those entitled to promotion had been prepared according to Regulation 10(8), that he was not selected, notwithstanding that he was strikingly superior to the interested party and lastly that the service reports relied upon in taking the sub judice decision were made contrary to the express provisions of Regulation 23(4). 5 10

Held, annulling the sub judice decision: (1) The qualifications for the post in question are prescribed by Regulation 8(1)(B)(b), which, however, applies subject to the transitional provisions of Regulation 56. There is no merit in the submission that Regulation 56 was not a valid one. The applicant himself had had the benefit of such Regulation. It is not necessary for the Personnel Committee or any other body of the Authority to state under which Regulation they considered the qualifications of a candidate so long as he satisfies them. The interested party satisfied the requirement of Regulation 56. 15 20

(2) The seniority of the applicant was duly taken into account, but could not tip the scales in his favour in view of the superiority in merit of the interested party. 25

(3) The sub judice decision is amply and duly reasoned and the applicant failed to establish a case of striking superiority, i.e. a superiority so telling as to strike one at first sight. 30

(4) It is not clear whether the lists of those entitled to promotion referred to in Regulation 10(8) were made in May or the preceding year. If the lists were not made at the time appointed by the Regulations, this is an irregularity of immaterial nature, which does not affect the validity of an administrative act. 35

5 (5) In making promotions under Reg. 10(a) the Personnel Committee should take into consideration the service reports, which must have also been weighed on the mind of the General Manager when he approved the decision of the Committee. Service reports are prepared under the authority of Regulation 23(4), which lays down the contents and manner of their preparation and that the nominations of reporting officers are nominated by the Board. The Board did not take any decision on the matter. Deviation from the provisions of Reg. 23(4) is an irregularity of a material nature, affecting the validity of the service reports. Any decision taken on the basis of an invalid service report is in law defective. The sub judge decision should, therefore, be annulled on this ground.

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

Cases referred to:

Arsalides v. CY.T.A. (1984) 3 C.L.R. 48;

20 *Kyprianou v. Public Service Commission* (1973) 3 C.L.R. 206;

Hjiloannou v. Republic (1983) 3 C.L.R. 1041.

Recourse.

25 Recourse against the decision of the respondent to promote the interested party to the post of Head "B" (Economic Personnel) (Οικονομικών Προσωπικών) in preference and instead of the applicant.

M. Tsangarides, for *E. Efsthathiou*, for the applicant.

A. Hadjiloannou, for the respondent.

Cur. adv. vult.

30 STYLIANIDES J. read the following judgment. The applicant by means of this recourse challenges the promotion of the interested party, Andreas Constantinou, to the post of Head "B" "Οικονομικών Προσωπικών", in preference to him.

Both the applicant and the interested party were, prior to the sub judice decision, holding the post of Inspector in the same department of CY.T.A. The Personnel Committee of the Authority, established under Regulation 24 of the Cyprus Telecommunications (Personnel) General Regulations, 1982, on the basis of Regulation 10(9) decided on 20.6.1984 to promote the interested party in preference to the applicant. Such decision was approved by the General Manager under Regulation 24.A.1.7.

The applicant, on being informed, objected to this decision to the Board of the Authority in exercise of his right under Regulation 24.A.1.8. The Board dealt with the objection on 11.10.84 and after due consideration rejected it.

The grounds on which this recourse is based are that the applicant's seniority was not duly taken into consideration; the interested party does not possess the required qualifications; Regulation 56(7) (c) is not a valid one; the sub judice decision lacks due reasoning; no lists of those who were entitled to promotion were prepared according to Regulation 10(8); they failed to select the applicant who is strikingly superior to the interested party; and, lastly, the service reports, on which the Personnel Committee and the other organs of the Authority relied upon in taking the sub judice decision, were made contrary to the express provisions of Regulation 23(4).

The qualifications required for the post in question are set out in Regulation 8(1) (B) (b) and include university degree in economics or equivalent university degree recognized by the Authority or vocational title Chartered Accountant or Certified Accountant or Cost and Works Accountant. Regulation 8, however, applies subject to the transitional provisions of Regulation 56.

Regulation 56(7) provides that personnel of the Authority appointed prior to 13.5.72 is promoted on the basis of the scheme of service in operation prior to 13.5.72 and personnel of the Authority with continuous service prior to 1.1.55 is promoted if the Authority is satisfied that he is in a position to adequately perform the duties of the post.

I find no merit in the submission that Regulation 56(7) is not valid. It may be noted that the qualifications of the applicant enumerated in his recourse do not meet the requirements of Regulation 8 and, therefore, he had the benefit of the transitional provision of Regulation 56. It is not necessary for the Personnel Committee or other bodies of the Authority to state in the recourse under which Regulation they considered the qualifications of a candidate so long as he satisfies them— (*Arsalides v CY.T.A.* (1984) 3 CLR 48)

The applicant is senior in grade to the interested party by 9 months only, having been promoted to the lower post on 1976 whereas the interested party on 1.6.77

Though seniority is the last factor to be taken into consideration, having gone through the sub judice decision, this seniority was duly taken into consideration as it appears from the decision of the Personnel Committee, the approval by the General Manager and the decision of the Board on the objection. Both the seniority in grade and the seniority in service were taken into consideration but as the interested party was found by far better in merit, the applicant's seniority could not tip the scales in his favour.

The decision of the Personnel Committee, the approval by the General Manager and the determination by the Board give cogent and detailed reasons. All the factors envisaged by the Regulations, especially Regulation 10(9), were taken into consideration in performance of their duties to select the most suitable candidate for the post. The sub judice decision is amply and duly reasoned.

It is not clear whether the lists of those entitled to a claim for promotion (προακτέων) referred to in Regulation 10(8) were made in May or the preceding year. Regulation 10(7) prescribes the contents of these lists. The fact, however, that the applicant and others were before the appropriate organs as candidates for promotion points out that even if the lists were not made in May, they were indeed made at some time otherwise he could not have been a candidate for promotion.

It has been laid down by Case-Law that there are irregularities which are of a substantial nature and affect the validity of the relevant administrative process and that there are less serious, immaterial, irregularities which do not affect such validity—(See, in this respect, *Traité Pratique de la Fonction Publique* by Plantey, 3rd Edition, Volume A, p. 495, paragraph 1544, and *Contentieux Administratif* by Odent 1970/71, Volume 5, p. 1446; *Kypros Kyprianou v. Public Service Commission*, (1973) 3 C.L.R. 206). If the lists were not made at the time appointed by the Regulations, this is an irregularity of immaterial nature. 5 10

“Striking superiority” has been defined by the Full Bench in *Hji Ioannou v. Republic*, (1983) 3 C.L.R. 1041, as superiority of such a nature as to emerge on any view of the combined effect of the merits, qualifications and seniority of the parties competing for promotion. It must be so telling as to strike one at first sight. 15

On the totality of the material before this Court I have not been satisfied that the applicant has established that he was strikingly superior over the interested party. 20

The Personnel Committee in exercise of its power under Regulation 10(9) for the promotion of the personnel of the Authority, in making its evaluation of the candidates has to take into consideration the service reports (“ούλλα ποιότητα”). This, as it emerges from the sub judice decision, was done in the present case. The service reports must have also weighed on the mind of the General Manager when he approved the decision of the Personnel Committee and were taken into consideration by the Board on the determination of the objection of the applicant. These service reports are prepared under the authority of Regulation 23(4). Service reports not prepared in conformity with Regulation 23(4) cannot validly be used in the process of selecting a candidate for promotion. Departure from the provisions of Regulation 23(4) is not an immaterial irregularity; it is of material nature and does affect the validity of the service reports. Any decision taken on the basis of an invalid service report is in law defective and cannot survive the judicial control of the administrative Court. 25 30 35 40

5 Regulation 23(4) lays down that the contents and the manner of the preparation of the service reports and the nomination of the reporting officers are decided by the Board. The Board did not take any decision on the matter. The service reports for the applicant and the interested party were probably prepared by their superior in the service who, however, were not nominated either by name or by post or otherwise by the Board, as provided in Regulation 23(4).

10 It was submitted by counsel for the respondents that the contents of the reports and the way of preparation of same are based on a decision of the Authority of 13.6.66, long before the coming into operation of the Regulations in question. This does not satisfy the essential formality
15 prescribed by Regulation 23(4). The reports used for the taking of the sub judge decision were not validly made and inescapably the sub judge decision has to be annulled.

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

20

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