

1986 November 28

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANDREAS PAPACHRISTOFOROU.

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 323/84).

Public Officers—Promotions —Striking superiority —Meaning of.

Public Officers —Promotions —Merit —Head of Department, recommendations of—Applicant slightly superior to interested party in certain items in the confidential reports, but, in accordance with the views of the Head of the Department, interested party had slight superiority over applicant—Such views make the parties at least equal in merit.

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By means of this recourse the applicant challenges the promotion of the interested party to the post of Meteorological Superintendent in the Meteorological Service instead of and in preference to him.

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A perusal of the confidential reports of the applicant and the interested party discloses that both of them were highly merited, irrespective of the fact that in certain years one of them was graded higher in certain items than the other, whereas in other years the opposite occurred.

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In his recommendations to the Commission, the Head of the Department stated that the interested party has longer

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service, whereas the applicant is superior in respect of one or two items concerning merit. He concluded that on the totality the interested party has a slight superiority.

5 It should be noted that one of applicant's complaints is that for the year 1983 his evaluation was wrong, because the reporting officer was not the supervising officer of the applicant for the whole year, but only for a short part thereof and, notwithstanding such a fact, she failed to consult the previous supervising officers of the
10 applicant.

Held, dismissing the recourse: (1) In fact the report complained of in respect of the year 1983 covered the period 1.9.83 - 31.12.83, when the reporting officer was applicant's supervising officer, whilst for the remaining part of
15 that year there were two other six monthly reports made by another officer and which were, also, before the Commission. These two reports appear to be a little more favourable to the applicant than the one in his confidential file. Moreover, the countersigning Officer, who was
20 the same person, who countersigned all reports for all previous years, certified that the evaluation in the report complained of was the correct one.

(2) In order that an applicant may succeed in a recourse against promotions of others he must show
25 striking superiority over them.

(3) In this case the two parties were more or less equal in merit. Although the applicant was slightly superior to the interested party in certain items in the confidential reports, the views expressed by the Head
30 of Department makes them at least equal in merit.

(4) In the light of all material before the Court, the sub judice decision was reasonably open to the Commission.

35 *Recourse dismissed.*
No order as to costs.

Cases referred to:

HadjiSavva v. The Republic (1982) 3 C.L.R. 76;

Papadopoulos v. The Republic (1982) 3 C.L.R. 1070;

Efthymiou and Others v. The Republic (1984) 3 C.L.R. 1171.

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Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Meteorological Superintendent in the Meteorological Service in preference and instead of the applicant.

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A. S. Angelides, for the applicant.

A. Papasavvas, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant by this recourse prays for a declaration of the Court that the decision of the respondent, published on the 8th June, 1984, whereby A. Yiannoullos was promoted to the post of Meteorological Superintendent in the Meteorological Service instead of and in preference to him, as well as the omission of the respondent to promote him to the above post, be declared null and void and of no legal effect.

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The facts of the case are briefly as follows:

After the approval for the filling of a vacancy in the post of Meteorological Superintendent in the Meteorological Service, which is a promotion post, was given by the Minister of Finance, a Departmental Committee was set up in accordance with the provisions of section 36 of the Public Service Laws, 1967-1983, which, by its report dated 30.3.1984, recommended three candidates for promotion to the post in question, amongst whom the applicant and the interested party.

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The respondent met on the 3rd May, 1984, in order to consider the promotion in question and after hearing

the views and recommendations of the Head of the Department who was present, proceeded to examine the merits of the candidates for the purpose of reaching its sub judice decision.

- 5 The relevant part of the minutes of the meeting of the 3rd May, 1984, read as follows:

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At the meeting the Head of the Meteorological Service Mr. Kleanthis Filaniotis was also present.

- 10 He mentioned the following:

This is one of the difficult cases. Taking into consideration all the established criteria he should say that Andreas Yiannoullos and Andreas Papachristoforou are superior to the other candidate.

- 15 Yiannoullos has longer service whereas Papachristoforou is superior in respect of one or two items concerning merits. On the totality he should say that Yiannoullos has a slight superiority.

- 20 The Commission examined the material facts 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 into consideration the conclusions of the Departmental Committee and the
25 views and recommendations of the Head of the Meteorological Service.

- The Commission compared the candidates on the basis of their merit, qualifications and seniority and noted that Yiannoullos (a) has high Confidential Reports in the last years (it is mentioned indicatively that he was very good in 1981 and 1983 with analytical gradings 5 - 7 - 0 and excellent in 1982 with analytical gradings 8 - 4 - 0), (b) he is senior to the
30 other candidates and (c) he was recommended by the
35 Head of the Meteorological Service.

Bearing in mind the above the Commission selected Yiannoullos for promotion.

In conclusion the Commission, bearing in mind all the material facts before it, found, on the basis of the established criteria as a whole (merit, qualifications, seniority), that Andreas Yiannoullos is superior to the other candidates and decided to promote him as the most suitable, to the permanent post of Meteorological Superintendent in the Meteorological Service as from 15.5.1984.”

The applicant having felt aggrieved by the sub judice decision filed the present recourse.

It was the submission of counsel for the applicant by his written address that the applicant was superior to the interested party both in respect of experience and merit and that he should have been preferred in view of his wide experience.

Counsel further contended that the evaluation of the applicant for the year 1983 was wrong as it was made by a reporting officer who was not the supervising officer of the applicant for the whole year but only for a short part thereof and that in preparing her reports she should have consulted the previous supervising officers of the applicant.

Counsel for the respondent, on the other hand, submitted that the respondent Commission discharged its duty in selecting the best candidate properly, having taken into consideration all relevant material before it as well as the recommendation of the Head of the Department which was in favour of the applicant.

The whole question turns as to whether the respondent Commission discharged properly its duty by selecting the interested party as the best candidate for appointment or whether such decision was wrong and in violation of the principle that the best candidate should be selected on the basis of the established criteria.

The applicant was first appointed to the temporary post

of Meteorological Assistant 1st Grade in the Meteorological Service on the 1st March, 1978, which post was renamed, as from 1.1.1980, to Meteorological Assistant 2nd Grade and as from 15.3.1981 he was promoted to the permanent post of Meteorological Assistant 2nd Grade. On the 1st September, 1981 he was promoted to the permanent post of Meteorological Assistant 1st Grade. His qualifications are: Samuel's Commercial School, 1945 - 1950, English ordinary, English distinction.

The interested party A. Yiannoullos, was first appointed to the temporary post of Meteorological Assistant, 2nd Grade on 1st October, 1967 and in the corresponding permanent post on the 1st January, 1973. He was seconded to the post of Meteorological Assistant, 1st Grade on the 1st December, 1977 and as from the 1st June, 1979 he was seconded to the corresponding permanent post. The titles of the posts were changed as from 1.1.1980 to Meteorological Assistant 3rd Grade and 2nd Grade respectively. The interested party was promoted to the permanent post of Meteorological Assistant 2nd Grade on 15.3.1981 (the same date as the applicant). He was finally promoted to the post of Meteorological Assistant 1st Grade on 1.9.1981 (again the same date as the applicant). His qualifications are the following: Mitsis School, Lemythou, 1956 - 1962 a course in Mechanical and Instrument Maintenance Farnborough College of Technology, U.K. (ten weeks) (1980); a course in Instrument Maintenance at the Meteorological Office, U.K. (30.6.1980 - 8.8.1980); a course on instruction in Instrument Maintenance, U.K. (April - August, 1980); a certificate of attendance at the Linguists' School of English, London 18.2.1980 - 11.4.1980).

A perusal of the confidential reports of the applicant and the interested party discloses that both of them were highly merited irrespective of the fact that in certain years one of them was graded higher in certain items than the other, whereas in other years the opposite occurred. The observations which appear in the comments of the reporting and the countersigning officers in respect of the candidates describe both of them as very efficient and this goes on for a number of years.

In the annual confidential report for the year 1978 the reporting officer made the following observations about the applicant: "His wide knowledge of Meteorological Assistant's work and long experience make him one of the best Assistants at Larnaca airport", and he graded him with "excellent" in six items and "very good" in four items. The countersigning officer agreeing with the above assessment expressed the view that the applicant was an excellent Meteorological Assistant. 5

For 1980 he was graded with "excellent" in nine items and "very good" in three items. The reporting officer made the following observations: "His deep knowledge and the way of facing all meteorological problems, due to his long experience, his leadership abilities, his excellent relations with the personnel, the respect and confidence which he inspires to all employees, make him deserve an excellent grading." 10 15

For 1981 he was graded as "excellent" in eight items and "very good" in 4. In fact the reporting officer had assessed him with six "excellent" and six "very good" but he changed them later, after consultation with the countersigning officer, as it is stated by the latter in the confidential report. The observations about him are that "in respect of sections 1, 2, 3, 4, 7 and 12, he was graded as 'excellent' because he is distinguished to the highest degree, due to his long experience, as well as his perfect behaviour towards subordinates and superiors. He administers and guides subordinate staff with exemplary facility". 20 25

In the confidential report for 1983 he is graded as "excellent" in six and "very good" in six items and the reporting officer made the following observations: "The excellent quality of his work, his foreseeability and ability to supervise subordinate staff make him a very very good officer". This report is being contested by the applicant on the ground that the reporting officer did not supervise the applicant for the whole year but only for a short period and she failed to make her report after consultation with the previous supervising officers. 30 35

Counsel for the applicant put in evidence the affidavit of 4 Meteorological Officers who were supervising the applicant during 1983, to the effect that the reporting officer did not consult them before making her report for the applicant for the year 1983. As it appears from the report itself, the report covers only the period between 1.9.1983 - 31.12.1983, during which the reporting officer was the applicant's immediate superior and it does not cover the performance of the applicant during the whole year. For the remaining part of the year, there are two other six monthly reports which were made by another reporting officer, who is one of the 4 officers swearing the above affidavits. These two reports, which appear to be a little more favourable to the applicant than the one appearing in his confidential file, were in his personal file which was before the respondent and there is nothing to show that they were disregarded. Moreover, the countersigning officer, who is the same person who was countersigning all reports for all previous years and who knew the applicant very well, as it appears from his observations in the various reports, certified that the evaluation of the reporting officer about the applicant, was the correct one.

I come next to the confidential reports of the interested party. The interested party was assessed as follows:

1978: "Excellent" on eight items and "very good" on two items. The remarks of the reporting officer are as follows: "During the previous year he has shown great interest to improve his knowledge in the field of meteorological instrument. His devotion to duty was excellent" to which the countersigning officer added: "Mr. Yiannoulou has always been a very good officer and he is continuously trying to improve himself."

1979: "Excellent on eight items and "very good" on four items. Average "excellent". The remarks of the reporting officer are as follows: "The wide knowledge of the applicant concerning his work, his devotion to duty and his performance make him excellent".

1980: "Excellent on eight items and "very good" on four items. Average "excellent". The remarks of the reporting officer are as follows: "The wide knowledge of the applicant concerning his work, his devotion to duty and his performance make him excellent".

porting officer are as follows: "His devotion to duty, his sense of responsibility, his service and general knowledge and the observance of regulations prove Mr. Yiannoullos an excellent officer."

1981: "Excellent" in five items and "very good" in seven items. Average: "Very good". The remarks of the reporting officer are as follows: "His devotion to duty, his sense of responsibility, his willingness for co-operation with his colleagues, the promotion of harmonious relations and the integrity of his character form the basic virtues of this officer." 5
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1982: "Excellent" in eight items and "very good" in four items. Average: "Excellent". The remarks of the reporting officer are as follows: "His performance, devotion to duty and sense of responsibility make him an excellent officer". 15

1983: "Excellent" in five items and "very good" in seven items, Average: "Very good". There are no remarks about him in this report.

Leaving aside the evaluation of the applicant and the interested party for the year 1983, which is contested by applicant, their evaluation for the three years 1978, 1980, 1981 in respect of which comparable reports for both of them appear in their files, the applicant was totally assessed with 23 "Excellent" and 11 "Very Good" as against 21 "Excellent" and 13 "Very Good" of the interested party. It is obviously for this reason that the Head of the Department in making his recommendations at the meeting at which the sub judice decision was taken, observed that the applicant was merited better in respect of one or two items. He concluded, however, that in the totality the interested party was slightly superior to the applicant. 20
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The picture presented from the confidential reports is such that, as mentioned earlier, it shows that both of them were assessed and commended highly. Also, the Head of the Department, recommended highly both of 35

5 them but comparing the two of them expressed the opinion that the interested party was slightly superior to the applicant. The Head of the Department knew very well both parties and was the countersigning officer in all the above confidential reports.

10 In order that an applicant may succeed in a recourse against the promotion of others he must prove striking superiority over them. What amounts to striking superiority has been explained in a number of cases and I need not repeat it. (See *Hadji Savva v. Republic* (1982) 3 C.L.R. 76, at p. 78; *Papadopoulos v. Republic* (1982) 3 C.L.R. 1070, at p. 1075; *Efthymiou & Others v. Republic* (1984) 3 C.L.R. 1171, at p. 1175). It must be evident from the overall assessment of the candidates.

15 The two parties in the present recourse were more or less equal regarding merit. Although the applicant was slightly superior to the interested party in certain items in the confidential reports, the fact that the Head of the Department expressed the view that in the overall he
20 would say that the interested party was slightly superior, makes them at least equal in merit, and the applicant has failed to establish striking superiority over the interested party.

25 Concerning the argument of counsel for applicant that the respondent did not conduct a due inquiry into the possession by the interested party of the requirement of very good knowledge of English, from the material before me and bearing in mind the qualifications of both parties, I find such argument untenable and that in the
30 circumstances it was reasonably open to the respondent Commission to find that both the applicant and the interested party satisfied the requirement of sufficient knowledge of the English language.

35 In the light of all the material before it and the opinion expressed by the Head of the Department, it was reasonably open for the respondent to promote the interested

party and I see no reason to interfere with the sub judice decision.

In the result, this recourse fails and it is hereby dismissed. In the circumstances I make no order for costs.

Recourse dismissed.
No order as to costs.

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