

1986 December 16

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

COSTAKIS CHRISTOFOROU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 922/85).

*Public Officers—Promotions—Qualifications—Possession of—
Due inquiry into such matter.*

5 *Public Officers—Promotions—Qualifications—Scheme of service
—University Diplomas—Not envisaged as an advantage in
the scheme—The fact that such diplomas were taken into
consideration is not a ground of annulment if no undue
weight was attached to them.*

10 *Public Officers—Promotions—Head of Department—Non re-
commendation of candidates—Its reasoning may be de-
rived from the material in the file and in particular ap-
plicant's confidential reports.*

15 *Public Officers—Promotions—Confidential reports—Changes
by countersigning officer without prior consultation with
reporting officer—The Regulatory Order for Preparation
and Submission of Confidential Reports, Reg. 9—Lack of
prior consultation revealed in time and as a result both the
Departmental Board and the Commission ignored such
changes—In the circumstances anything that might be
wrong was put right.*

20 By means of this recourse the applicant challenges the

validity of the promotion of the interested parties to the post of Assistant Collector of Customs.

The applicant and the interested parties were among the candidates recommended by the Departmental Board set up under s. 36 of the Public Service Laws, 1967 - 1983. As a "very good knowledge of English" is one of the qualifications of the post and as there was no sufficient material for some of the candidates, the Commission asked the Director of Customs to submit to it all elements relating to the knowledge of English by the candidates. By a letter dated 8.7.85 the Director submitted those elements which "are missing from their personal files at the Office of the Commission". This document was taken into consideration in effecting the sub judice promotions.

The applicant was not among the candidates who were recommended for promotion by the Head of the Department.

Held; dismissing the recourse: (1) There is no merit in the allegation that the Commission failed to carry out a due inquiry as to the possession of the qualification of "very good knowledge of the English language". The very fact that the Commission asked to be supplied with particulars shows the depth of the inquiry carried out. The Director supplied the Commission with elements which "were missing" from the personal files. He particularly referred to lost school leaving certificates in respect of 23 candidates. There was no need for him to refer to the school leaving certificates of the candidates as such certificates were already in the files before the Commission. All the necessary material was before the Commission.

(2) The complaint that the Commission attached undue weight to the University Diplomas of some of the candidates, which were not envisaged as an advantage in the scheme of service, is unmerited; because perusal of the minutes of the Commission shows that no undue weight was given to such diplomas, but on the contrary reference to them was made in the context of the overall picture of the candidates.

(3). The fact that the Director was brief as regards the

5 candidates he did not recommend for promotion does not offend the case Law of this Court. The reasoning of a non-recommendation may be found in the material in the file and in particular the confidential reports of an applicant. In this case it was not necessary for the Commission to seek explanations and clarifications from the Director.

10 (4) Some changes were brought about by the Director in the confidential reports of 1983 without prior consultation with the reporting officer. (Paragraph 9 of the Regulatory Order for Preparation and Submission of Confidential Reports). This fact, however, was revealed by the Director before the Departmental Board and as a result both the Board and the Commission ignored such changes. It follows that anything that might be wrong was clearly put right.

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Recourse dismissed.
No order as to costs.

Cases referred to:

- 20 *Mikellidou v. The Republic* (1981) 3 C.L.R. 467;
Kapsou v. The Republic (1983) 3 C.L.R. 1336;
Makrides v. The Republic (1983) 3 C.L.R. 622;
Larkos v. The Republic (1982) 3 C.L.R. 512;
Papadopoulos v. The Republic (1985) 3 C.L.R. 405;
Hadji Ioannou v. The Republic (1983) 3 C.L.R. 1046;
25 *Partellides v. The Republic* (1969) 3 C.L.R. 480;
Theodossiou v. The Republic, 2 R.S.C.C. 44;
Republic v. Haris (1985) 3 C.L.R. 106.

Recourse.

30 Recourse against the decision of the respondent to promote the interested parties to the post of Assistant Collector of Customs in preference and instead of the applicant:

A. S. Angelides, for the applicant.

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

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By this course the applicant challenges the validity of the promotion of 1. Iacovos Mattheou, 2. Avraam Thrasivoulides, 3. Andreas Demetriou, 4. Zacharias Spyridonos, 5. Stavros Pallikaropoulos, 6. Charalambos Poyadji, 7. Costas Loizou, (hereinafter to be referred to as the interested parties), to the permanent post of Assistant Collector of Customs, which is a promotion post.

In accordance with the Regulatory Orders which govern the establishment, competence and method of action of Departmental Boards in accordance with Section 36 of the Pubic Service Laws, 1967 - 1983, a Board was set up under the Chairmanship of the Director of the Department of Customs and Excise as a step in the process of filling fourteen vacant permanent (Ord'nary Budget) posts of Assistant Collector. The report of the Board was submitted to the respondent Commission on the 20th June, 1985 (Appendix 4). The Board recommended for selection for promotion in alphabetical order all the thirty-two candidates who possessed the required qualifications, among whom were the applicant and the interested parties.

As a very good knowledge of English is one of the required qualifications under the Scheme of Service and as there was no sufficient material for some of the candidates, the respondent Commission asked the Director of the Department of Customs to submit to it all elements relating to the knowledge of the English language by the thirty-two recommended candidates so that it would be in a position to decide whether they satisfy the said qualification. The Director by his letter dated 8th July 1985, (Appendix 7) submitted the elements which as he states therein "are missing from their personal files at the office of the Commission". The respondent Commission took into considera-

tion this document "which contains various elements for the candidates relating to the knowledge of English", (Appendix 8, page 9).

5 The respondent Commission at its meeting of the 9th July 1985, heard the views and recommendations of the Director. After he withdrew from the meeting of the respondent Commission, having examined all material elements from the personal files and the confidential reports on the candidates and having taken into consideration the con-
10 clusions of the Departmental Board and the recommendations of the Head of the Department, came to the conclusion that the following officers among whom were included the interested parties were superior to the other candidates on the basis of the totality of the established criteria (merit,
15 qualifications, seniority), and selected them as the most suitable for promotion to the post of Assistant Collector as from 15th July, 1985. Those selected were the following:

Demetriou Andreas P. (3)

Efthymiou Nicolas

20 Thrasyvoulides Avraam (2)

Loizou Costas A. (7)

Mattheou Iacovos (1)

Pallikaropoulos Stavros (5)

Poyadjis Charalambos (6)

25 Savva Kyriakos

Shakallis Christakis G.

Spyridonos Zacharias (4)

Stavrou Kyriakos

Tosounis Michael

30 Charalambous Andreas

Hadji Georghiou Antonios.

(The numbers opposite the names of certain of the can-

didates indicate the interested parties and the order in which they have been referred to in the prayer for relief of this recourse).

In the minutes of the respondent Commission Appendix 8. there appears a detailed record of the recommendations made by the Head of the Department. He was positive as regards those recommended for promotion to the first twelve posts but as regards the 13th and 14th post he recommended together by referring as, "borderline" cases «αυστηρόντα οριακά» six of the candidates namely, P'eri-des, Andreou, Spyridonos, Afxentiou, Loizou and Michael. At the same time he did not recommend for promotion the remaining fourteen candidates among whom the applicant.

The respondent Commission dealt at length with the thirteen candidates selected by it and referred specifically to the contents of their confidential reports, their qualifications and the recommendations of the head of the Department. It did so for thirteen of the candidates by choosing among them interested party Costas Loizou who is senior to the applicant by almost nineteen months from their promotion to the last post and in respect of whom the respondent Commission said that he has high confidential reports during the recent years indicatively mentioning that he was rated as "very good" in 1982 and "excellent" in 1983 and 1984. He has a University diploma and he is twenty-first in line of seniority. The Commission went further and said that it considered that this candidate who was recommended by the Director together with others for selection for two of the vacant posts, was entitled in view of his high confidential reports and University diploma for promotion. As regards the 14th post after comparing those recommended as being "borderline" cases the respondent Commission chose interested party Spyridonos and stated that what tipped the scales in his favour vis a vis the other similarly recommended and in particular Andreou with whom he had the same seniority, except that he was slightly senior, having earlier entered the service was that in the confidential reports of the last two years he has slight superiority as against Andreou. I must admit that this record of the respondent Commission was both meticulous and de-

tailed and it constitutes the reasoning of the sub judice decision supplemented in any event by the rest of the material in the relevant files that it had before it.

5 The first ground of Law argued on behalf of the applicant is that the respondent Commission acted under a material misconception or probable misconception of fact. This is based on the fact that the inquiry of the respondent Commission as regards the knowledge of the English language by the candidates, the Director does not refer in
10 his letter, Appendix 7, to the question of very good knowledge of English for interested parties Demetriou, and Pallikaropoulos, and as regards interested party Poyadjis, he merely mentions that he is a graduate of the Lanition Gymnasium for Boys in Limassol.

15 The Director in his letter as already indicated sets out those elements which were "missing from the personal files" of the various candidates and he gave particulars in respect of twenty-three of them as it seems that, particularly so for several candidates their school leaving certificates
20 had been lost. The rest of the certificates were already in the personal files of the applicants and obviously there was no need for him to refer to them. The reference to the school-leaving certificate of the Limassol Gymnasium of Charalambos Poyadjis, was made because this officer,
25 having graduated in 1957 did not have such a school leaving certificate, obviously because of the situation with the schools during the EOKA struggle. The very fact that the respondent Commission requested the Director to supply them with any particulars relating to the knowledge of
30 English language by the candidates, shows the depth at which the respondent Commission inquired into the matter. This, however, should in no way be taken as meaning that there did not, already, exist in the relevant files before the Commission the necessary material from which it could
35 ascertain whether the candidates possessed or not this qualification.

This is clearly established from a perusal of the relevant files as tabulated in Appendix A. It appears therefrom that interested party Andreas Demetriou passed nu-

merous examinations in English including the Cyprus Certificate of Education, English Lower and English Higher. Interested party Pallikaropoulos in addition to having passed numerous examinations in English he likewise passed the Cyprus Certificate of Education, English Lower and English Higher exams. Moreover he attended the Group Training Course of Industrial Free Zones Development and Management, a course organised under the joined auspices of the United Nations Industrial Development Organization (UNIDO) and the Governments of Ireland and the Shannon Free Airport Development Company Limited, certainly a course held in English.

As regards interested party Poyadjis, in addition to his success in the English Lower of the Cyprus Certificate of Education he attended the 33rd Mid-Management Seminar, conducted by the U. S. Customs Services at Washington DC and participated in the Programme of introduction to the United States of America offered at Merridean House by the Washington International Centre. (See blues 79, 80, 81 in exhibit 7). No doubt the respondent Commission discharged the duty cast on it to inquire whether the candidates possess the required qualifications and having had before it the relevant material it cannot be charged to have failed in its duties. The reference therefore to the Case Law of this Court inter alia to *Mikellidou v. The Republic* (1981) 3 C.L.R. 467; *Kapsou v. The Republic* (1983) 3 C.L.R. 1336; *Makrides v. The Republic* (1983) 3 C.L.R. 622, that turn on the duty of an administrative organ to carry out a due inquiry as regards the possession by a candidate of the required qualification carries the case of the applicant no further. This ground is without any merit and it fails.

The second ground of Law relied upon is based on the fact that the Director, the departmental Board and the respondent Commission in the last analysis, made special reference to the University degrees, especially in Law which certain of the candidates possess and in particular the three interested parties, Poyadjis, Loizou and Pallikaropoulos. This reference appears in Appendix 8, paragraphs 7, 8 and 11 and in Appendix 4, pp. 3, 4, and 5. It was argued that the Scheme of Service, Appendix 3(c) does

not require a university diploma or degree as a qualification and that from the minutes just referred to it appears that the university diploma in Law, possessed by the aforesaid three interested parties was taken unduly into consideration as a decisive, separate, additional qualification. In that respect I was referred to the judgments of this Court that have dealt with the question of additional qualifications and their relevance to the questions of appointment and promotion. These cases are *Larkos v. The Republic* (1982) 3 C.L.R. 512; *Papadopoulos v. The Republic* (1985) 3 C.L.R. 405 and the judgment of the Full Bench in *HadjiIoannou v. The Republic* (1983) 3 C.L.R. 1046. In the latter case at p. 1046, it was said:

“Possession of academic qualifications additional to those required by the scheme of service, which are not specified in the scheme of service as an advantage, should not weigh greatly in the mind of the Commission who should decide in selecting the best candidate on the totality of the circumstances before them. Additional qualifications to those provided by the scheme of service do not indicate by themselves a striking superiority. (See *Elli Chr. Korai and Another v. The Cyprus Broadcasting Corporation*, (1973) 3 C.L.R. 546; *Andreas D. Georghakis v. The Republic*, (1977) 3 C.L.R. 1; *Evangelos HadjiGeorghiou v. The Republic*, (1977) 3 C.L.R. 35; *Cleanthis Cleanthous v. The Republic*, (1978) 3 C.L.R. 320).”

A perusal of the relevant minutes of the respondent Commission shows that no undue weight was given to this qualification. On the contrary reference to it was made in the context of the overall picture of the candidates who had in their favour the recommendation of the Head of the Department, the first two, Poyadjis and Loizou nineteen months seniority over the applicant and whilst for Pallikaropoulos the respondent Commission said in its minutes. Appendix 8, page 11, that “he had high confidential reports, the last years. Indicatively it is mentioned that he was ‘Very Good’ in 1982 and in 1983 (7-5-0) and ‘Excellent’ for 1984 (9-3-0)’. He has university diploma and he was recommended by the Director. The Commission did not omit to note that he is behind in seniority, it consi-

dered, however, that this element is not sufficient to upset the general picture in accordance with which this candidate is entitled to promotion". This ground should also fail.

The next ground argued on behalf of the applicant is that the Director did not give reasons for his nonrecommending the applicant at the meeting of the respondent Commission of the 9th July 1985. At the said meeting the Director recommended and duly reasoned his recommendations but he was brief as regards the candidates he did not recommend for promotion among whom was the applicant. This, however, in no way offends the established Case Law of this Court to which I have been referred, namely *Partellides v. The Republic* (1969) 3 C.L.R. 480; *Theodossiou v. The Republic*, 2 R.S.C.C. 44 and the judgment of the Full Bench in the *Republic v. Haris* (1985) 3 C.L.R. 106, at p. 112.

No doubt the reasoning for a nonrecommendation may be found in the material in the file and in particular the confidential reports of an applicant. It was not therefore necessary as argued for the respondent Commission following the case of *Theodossiou v. The Republic*, 2 R.S.C.C. p. 44 at p. 46 to seek clarifications and explanations from the Director, nor can it be said that the respondent Commission selected those recommended and for no valid reason. There was nothing therefore arbitrary or contrary to the overall performance of the applicant which led to a misconception of fact and therefore to an omission to compare the applicant with the rest of the candidates. This ground therefore also fails.

The last ground stems from the fact that in the minutes of the departmental Board of the 4th June 1985 (Appendix 4), the Director is recorded to have mentioned in the confidential reports of 1983 that he brought about certain changes in some instances without prior exchange of views with the reporting officers as provided by paragraph 9 of the Regulatory Orders for the preparation and submission of confidential reports. In fact the Director stated that this step was due to an oversight and accepted the assessment of those officers as it had been made by the reporting of-

5 officers and that his changes should be ignored. The respondent Board then in view of this statement of the Director proceeded to examine the confidential reports as they had been prepared by the reporting officers. The officers affected thereby were interested parties Mattheou, Thrasyvoulides, Demetriou and Spyridonos. This was a material that was before the respondent Commission when the sub judice decision was reached and duly taken into consideration as stated in its minutes, (Appendix 8). The
10 respondent Commission went on to say that at the examination of the confidential reports of the candidates it noted that the countersigning officer changed the confidential reports for the year 1983 of the aforementioned candidates. The Commission observed further that these changes were
15 made by the countersigning officer without previous consultation with the reporting officer contrary to the Regulatory Orders. For that reason "it decided to take into consideration only the assessment of the reporting officer". Anything that might be wrong was clearly put right both by
20 the Director, the departmental Board and the respondent Commission. This ground also fails.

On the totality of the circumstances therefore before me I have come to the conclusion that the sub judice decision was reasonably open to the respondent Commission and
25 there is neither misconception of fact nor of Law, nor an excess or abuse of power. The applicant upon whom the burden lied failed to establish that there existed striking superiority over the interested parties or any of them as to lead to the conclusion that the sub judice decision was
30 taken in excess or abuse of power.

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

*Recourse dismissed.
No order as to costs.*