

1986 February 1

(TRANTAFYLIDES, P)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHAEL ZINIERIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 373/82).

*Public Officers — Promotions — Confidential reports — Circular 491/79, Reg. 9—
Observations by countersigning officer recording oral reservations expressed
by the reporting officer — In the circumstances there was no necessity to
follow the procedure of Reg 9.*

Public Officers — Promotions — Seniority — It can prevail only, if other factors are 5
more or less equal.

*Public Officers — Promotions — Striking superiority — An applicant, in order to
succeed, should establish such superiority.*

Public Officers — Promotions — Confidential reports — They are part of the 10
*overall picture of the merits of the candidates, which the Commission should
weigh as a whole.*

By means of this recourse the applicant challenges the promotion of the interested parties to the post of Supervisor of Accounts

The 4 interested parties were recommended for promotion by the Head of the Department, who regarding the applicant, stated that unfortunately he 15
did not show the required zeal in his work and, therefore, he could not be recommended for promotion.

The applicant was senior to interested party Kramvis by three months and to the other three interested parties by approximately twenty-eight months.

It must be noted that in the confidential report for the applicant for 1980 the 20
Head of the Department stated that there had been expressed about the applicant orally by the reporting officer certain reservations about his zeal and interest in his work. Applicant complained that this observation was made

in contravention of Reg. 9 of Circular 491/79, concerning the preparation of confidential reports.

5 Held dismissing the recourse (1) The observations of the Head of the Department in the report of 1980 are only a record of what were described as certain reservations entertained by the reporting officer of the applicant. Such observations do not indicate a disagreement with the reporting officer of such an extent, as to render necessary the application of the procedure of Reg. 9 of Circular 491/79.

10 (2) Seniority should be weighed together with merits and qualifications and can only prevail in case all other relevant factors are more or less equal

(3) For an applicant to succeed in a recourse for annulment he must establish that he was strikingly superior to the interested parties

Recourse dismissed.

No order as to costs

15 *Cases referred to:*

Kalos v. The Republic (1985) 3 C L R 135.

Ioannides v The Republic (1979) 3 C.L.R. 628:

Makris v The Republic (1985) 3 C L R 1103.

Spanos v The Republic (1985) 3 C L.R. 1826.

20 *Kyprianou v The Electricity Authority of Cyprus* (1985) 3 C L.R. 1157.

Anstocleous v The Republic (1974) 3 C L R 321.

Ioannou v The Republic (1976) 3 C L R. 431.

Nissiotis v The Republic (1977) 3 C L R 388

Recourse.

25 Recourse against the decision of the respondent to promote the interested parties to the post of Supervisor of Accounts in preference and instead of the applicant.

A. Eftychiou, for the applicant.

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

Cur. adv. vult.

TRIANAFYLLIDES P read the following judgment By means of the present recourse the applicant is challenging the decision of the respondent Public Service Commission to promote instead of him, to the post of Supervisor of Accounts the interested parties in the present proceedings, M Palazis N Pissourios Ch Kramvis and Ph Stavri 5

The applicant and the interested parties were serving at the material time, in the post of Accounting Officer 1st Grade in the Treasury Department

As the post concerned is a promotion post a Departmental Committee was set up and it submitted a report to the Public Service Commission, on 16 February 1982, by means of which it recommended for promotion fifteen candidates, including the interested parties and the applicant 10

The meeting of the respondent Commission at which the sub judice decision was reached was held on 6 May 1982, in the presence of the then Accountant-General, Mr St Nathanael 15

As it appears from the minutes of the Commission Mr Nathanael recommended for promotion, from among the fifteen candidates, the four interested parties and another officer who is not a party to the present proceedings Regarding the applicant he stated that unfortunately he did not show the required zeal in his work and, therefore, he could not be recommended for promotion 20

After the Accountant-General had left the meeting the Commission proceeded with its own evaluation and comparison of the candidates It recorded in its minutes that having considered all relevant material from the personal files and the confidential reports files of the candidates and having taken into account the report of the Departmental Committee and the views and recommendations of the Accountant-General, it came to the conclusion that the interested parties were superior to the remaining candidates on the basis of the established criteria, that is merit, qualifications and seniority, and were suitable for promotion and it decided to promote them to the post concerned as from 15 February 1982. 25 30 35

It has been contended by counsel for the applicant that because of the unfavourable views about the applicant which were expressed before the Commission by the Accountant-General.

which, as counsel submitted constituted the main reason for not promoting him the Commission had acted under a misconception in evaluating the abilities and suitability of the applicant for promotion to the post of Supervisor of Accounts

- 5 It was submitted in this respect that the said recommendations were contrary to the contents of the confidential reports in respect of the applicant for the last three years and, also, that the observations of the Accountant-General in the confidential report for the applicant for the year 1980, to the effect that
10 notwithstanding the overall «very good» rating there had been expressed about the applicant orally by the reporting officer certain reservations about his zeal and interest in his work, had been made in a manner contravening the provisions of the relevant administrative Circular, dated 26 March 1979, regarding
15 the mode of the preparation and submission of confidential reports by reporting officers and countersigning officers

As it appears from its relevant minutes the Commission in evaluating the candidates before it took into consideration the views and recommendations of the Accountant-General, as Head
20 of Department, but such views were only one of the relevant factors and were weighed together with the contents of the confidential reports and, also, generally the merits the qualifications and seniority of the candidates

The views which were expressed by the Accountant-General
25 about the applicant before the Commission were supported by his already referred to observations about the applicant in the confidential report for the year 1980 Such observations do convey a personal assessment of the zeal and interest of the applicant in his work but it is only a record of what were described
30 as certain reservations entertained by the reporting officer of the applicant

I do not think that the said observations indicate that the Accountant-General had disagreed to such an extent with the assessment made by the reporting officer that he ought to have
35 followed the procedure envisaged by regulation 9 of the aforesaid Circular, that is to make his own assessment in red ink, to initial it and to give reasons for such assessment

The Commission had before it all relevant material regarding the abilities and the suitability of the applicant for promotion and
40 it cannot really be said that it acted, in any way, under a

misconception as to the correct situation The personal file and the confidential reports file of the applicant showing his whole career were before the Commission and it is to be presumed that every material factor was adequately assessed

As the applicant has not established to the satisfaction of the Court that the Accountant-General was in any way biased against him the confidential report for 1980 about the applicant was in my view, rightly taken into consideration 5

Regarding the contention of counsel for the applicant that the Accountant-General was not in a position to assess the abilities of the applicant as he was not his immediate superior I must point out that from a perusal of the confidential reports file of the applicant there is to be derived that the Accountant-General had acted in the past as reporting officer in respect of the applicant and for many years as countersigning officer and I have no doubt that he must have been sufficiently well acquainted with the abilities of the applicant 10 15

I am, therefore, of the opinion that the Commission quite rightly acted both on the basis of the recommendations of the Accountant-General and on the basis of the confidential reports in evaluating the merits of the applicant and did not labour in any way under a misconception as to the correct situation 20

Counsel for the applicant had further submitted that as the applicant and the interested parties were more or less equal in merit and qualifications the seniority of the applicant ought to have tilted the scales in his favour 25

As it appears from a comparative table appended to the Opposition the applicant was appointed to the post of Accounting Officer, 1st Grade, on 1 August 1976, interested party Kramvis on 1 November, 1976, interested parties Palazis, Stavri and Pissounos on 15 December 1978 Thus, the applicant was senior to interested party Kramvis by three months and was, also, senior to the other three interested parties by approximately twenty-eight months 30

It is well settled that in effecting promotions seniority should be weighed together with merits and qualifications and can only prevail in case all other relevant factors are more or less equal (see, in this respect, *Ioannides v The Republic*, (1979) 3 C L R 628, 637, 638, *Kalos v The Republic*, (1985) 3 C L R 135, 150 and *Makris v The Republic*, (1985) 3 C L R 1103, 1110). 35 40

Also, for an applicant to succeed in a recourse for annulment he must establish that he was strikingly superior to the interested parties (see, inter alia, *Spanos v. The Republic*, (1985) 3 C.L.R. 1826, 1832, *Kyprianou v. The Electricity Authority of Cyprus*, 5 (1985) 3 C.L.R. 1157, 1169, and *Makris*, supra, 1110); and such striking superiority cannot be established by reference to one of the three criteria only but must be the result of the assessment of the overall picture (see *Kyprianou*, supra, 1167, 1168).

I have considered the confidential reports for the interested 10 parties and for the applicant, bearing in mind the view taken by this Court in *Aristocleous v. The Republic*, (1974) 3 C.L.R. 321, 326, *Ioannou v. The Republic*, (1976) 3 C.L.R. 431, 441 and *Nissiotis v. The Republic*, (1977) 3 C.L.R. 388, 397, to the effect that 15 confidential reports do not constitute recommendations for the filling of a particular vacancy but part of the overall picture of the merits of the officers concerned, which the Commission had to weigh as a whole, and I have reached the conclusion that the 20 interested parties, at least for the three more recent years, appear on the face of the confidential reports to be superior in merit to the applicant.

Regarding the aspect of the qualifications the applicant and the interested parties were all qualified under the relevant scheme of service but it is useful to bear in mind that interested parties 25 *Kramvis* and *Palazis* possessed university qualifications relevant in a way to the duties of the post concerned.

Having considered all the material before me I find that I have not been persuaded by the applicant, on whom the burden lay that he was strikingly superior to any one of the interested parties on the basis of the totality of the relevant criteria.

30 The task of selecting the most suitable candidate for a particular post is a matter for the Public Service Commission and this Court cannot substitute its own decision in the place of the decision of the Commission.

In the result the present recourse fails and has to be dismissed; 35 but with no order as to its costs.

Recourse dismissed.
No order as to costs.