

1987 April 2

[MALACHTOS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
KYRIAKOS PAYATSOS AND OTHERS,

Applicants,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent

*(Cases No 178/83, 205/83, 206/83,
212/83, 213/83, 215/83)*

Public Officers — Promotions — Conviction for common assault — Does not involve dishonesty or moral turpitude and does not amount to neglect of duty — Rightly not taken into account — The Public Service Law 33/67, sections 44(1)(d) and 73(1)

5 *Revocation of an administrative act — Promotions of Public Officers — Revoked on account of failure by the Head of Department to take into account a relevant fact in making his recommendations — New decision — No obligation to issue an identical decision as the one revoked*

10 *Public Officers — Promotions — Confidential reports — Reporting officer — Not imperative to have direct knowledge on every particular concerning his subordinates, but he may gather information from any other proper source — Particularly when subordinates are not working within same premises but spread out in different areas due to nature of their work*

15 *Public Officers — Promotions — Seniority — Seniority ranging between two weeks and 1 1/2 months — Too short to bear any weight*

Public Officers — Promotions — Seniority — It does not prevail, if other things are not equal

20 *These recourses are directed against the promotions of the interested parties to the permanent post of Forest Officer in the Department of Forests instead of the applicants*

On 17 12 82 the respondent Commission, having considered the matter on the basis of the material before it, decided to promote 36 of the candidates to

the said post, but as it was subsequently informed by the Head of the Department that the latter, in making his recommendations, which were among the factors taken into consideration in reaching the said decision, did not take into account the fact that until 31 12 80 certain of the candidates were holding the post of Forest Ranger, which carried heavier duties than the post of Forester (renamed as from 1 1 81 to Forest Ranger) held by other candidates, and that if such a fact had been taken into account, the recommendations would have been different, the Commission revoked its said decision, considered the matter and reached the sub judice decision 5

The grounds of law upon which these recourses are based are the following, namely that the Commission failed to select the best candidate and that interested party Alexandros Kypranides, who was not recommended, was wrongly promoted in view of his conviction for common assault by a Court, his promotion being contrary to s 44(1)(d) of the Public Service Law, 33/67 It must also be noted that some of the applicants argued that there was an inconsistency between the decision of the 17 12 82 and the sub judice decision, and that the applicants in Case 215/83 complained that the manner of preparing their confidential reports was contrary to Law and to Circular 491 in that they were not assessed by the appropriate reporting officer 10 15

Held, *dismissing the recourses* (1) There is no obligation on the part of the administration to issue an identical decision to the one already revoked 20

(2) Common assault is not an offence involving dishonesty or moral turpitude or amounting to neglect of duty and, therefore, interested party Kypranides was not liable to disciplinary proceedings under s 73(1) of Law 33/67 As in accordance with s 44(1)(d) of Law 33/67 a public officer is precluded for promotion, if he has been punished for any disciplinary offence of a serious nature during the two years prior to the intended promotion, the conviction for common assault was rightly not taken into account 25

(3) The confidential reports for applicants in Case 215/83 were prepared by an officer, who, being the Divisional Forest Officer and in charge of the section in which the applicants were employed, was entitled to prepare their reports It is not imperative for a reporting officer to have direct knowledge on every particular in respect of his subordinates, but he may gather information from any other proper source, particularly in cases where such subordinates are not working within the same premises, but are spread out in different areas, due to the nature of their work 30 35

(4) Though the confidential reports taken into consideration concerned the period upto and including 1981, there was nothing wrong for the Head of the

Department to take into account, in formulating his recommendations, the performance of the candidates in 1982

(5) The seniority of applicant Payatsos (Case 178/83) cannot prevail, as all other things were not equal in view of better merit of the interested parties

5 (6) The interested parties in Case 205/83 were much senior to applicant Pavlides though the latter was better in merit but was not recommended for promotion. In the light of such facts it was reasonably open to the Commission to select the interested parties

10 (7) Applicant Gregoriou (Case 206/83) was senior to the interested parties by one month. Such seniority is too short to bear weight and in any event as the interested parties were better in merit, could not prevail, other things not being equal

15 (8) Applicant Kypnanou (Case 212/83) was by far senior to the interested parties, who, however, were better in merit, whereas, as regards qualifications some of the interested parties had better qualifications and some others equal qualifications with applicant's qualifications. It follows that applicant's seniority cannot prevail, other things not being equal

20 (9) The seniority of applicant Solomonides (Cases 213//83) as regards all interested parties except one, who was his senior, ranging from two weeks to 1 1/2 months, is too short to bear any weight and in any event, in view of better merit of the interested parties, could not prevail, other things not being equal

25 (10) The seniority of applicants Kallinos and Charalambides (Case 215/83) over some of the interested parties (two weeks) is too short to bear any weight and in any event could not prevail as, in view of better merit of the interested parties, other things were not equal

(11) It should be emphasized that all interested parties except Kypranides were recommended for promotion by the Head of the Department and that in the case of Kypranides special reasons were given for promoting him

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Recourses dismissed
No order as to costs

Cases referred to

Stavrides v The Republic (1985) 3 C L R 95,

Chrysochos v The Republic (1985) 3 C L R 78

Recourses:

Recourses against the decision of the respondent to promote the interested parties to the post of Forest Officer in the Department of Forests in preference and instead of the applicants.

G. *Triantafyllides*, for applicant in Case No. 178/83.

E. *Lemonaris*, for applicants in Cases Nos. 205/83 and 206/83. 5

K. *Michaelides*, for applicants in Case Nos. 212/83 and 213/83.

M. *Christofides*, for applicant in Case No. 215/83.

N. *Charalambous*, *Senior Counsel of the Republic*, for the respondents.

Cur. adv. vult. 10

MALACHTOS J. read the following judgment. By the present recourses, which were heard together as they attack the same administrative decision, the applicants seek a declaration of the Court that the decision of the respondent Commission, published in the Official Gazette of the Republic No 1847 dated 11.3.83, to promote the interested parties to the permanent post of Forest Officer in the Department of Forests, instead of the applicants, is null and void and of no legal effect whatsoever. 15

The relevant facts of the case are the following: 20

On 26.3.82 the Director-General of the Ministry of Agriculture and Natural Resources requested the approval of the Ministry of Finance for the filling of 39 vacant posts of Forest Officer in the Department of Forests. The post of Forest Officer being a promotion post, the respondent Commission in accordance with section 36 of the Public Service Law 1967 (Law 33 of 1967) decided that lists of the candidates for promotion be prepared and sent to the Departmental Board together with their confidential reports and the relevant scheme of service. 25

At its meeting of 6.11.82 the respondent Commission decided that as a result of the proposed promotions to higher posts, «only one of four posts of Forest Officer could be filled by a supernumerary promotion. Therefore, the posts of Forest Officer which can now be filled are 36, that is, 27 vacant permanent (25

of the Ord. Budget and two of the Dev. Budget), 8 which may possibly be vacated after promotions and one Supernumerary to a Permanent post (ordinary budget) on temporary basis».

5 On 4.11.82 there were sent to the Departmental Board on the basis of section 36 of Law 33 of 1967, lists of 146 candidates, their confidential reports and copies of the relevant scheme of service.

The Departmental Board met on 23.11.82 and found that 137 candidates satisfied the requirements of the scheme of service, and on the basis of merit, qualifications and seniority recommended 72
10 as superior to the remaining 65.

The respondent Commission met on 4.12.82 and taking into account the recommendations of the Departmental Board and the other material before it, decided that another 8 candidates be also considered in view of their seniority and their confidential reports.

15 At its meeting of 17.12.82 the respondent Commission considered their merit, qualifications and seniority and taking also into consideration the recommendations of the Head of the Department of Forests, who was present at the meeting, decided to promote 36 candidates, i.e. 29 to the permanent post Ord.
20 Budget, 6 to the permanent post Dev. Budget and 1 supernumerary post on secondment, Ord. Budget.

Subsequently, the Head of Department informed the Chairman of the Respondent Commission that when he made his aforesaid recommendations on 17.12.82, he did not take into account the
25 fact that certain of the candidates, until 31.12.80 were holding the post of Forest Ranger which carried higher duties than the post of Forester held by certain other candidates and who had been renamed to Forest Rangers on 1.1.81, and that had he taken this into consideration, his recommendations would have been
30 different.

In the light of this development on 18.1.83 the respondent Commission revoked its aforesaid decision.

The Commission met again on 24.1.83 whereupon the Head of Department stated that «Taking into consideration also that
35 officers Nos.1-51 on the list of candidates were evaluated until and

including 1980 in respect of higher duties than the rest of the candidates the candidates recommended the previous time are recommended again except Christodoulos Kyprianou, Christakis Kyrris, Christodoulos Pavlides and Evcleides Stylianou, who previously held the post of Forest Ranger and instead of whom he recommended Michael Michaelides, Michael Papacharalambous, Panayiotis Xanthos and Savvas Daniel».

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The respondent Commission having taken into consideration all the material before it, on the basis of the established criteria i.e. merit, qualifications and seniority, decided to promote as most suitable to the post of Forest Officer 29 candidates to the permanent (Ord. Budget) post of Forest Officer, 6 candidates to the permanent (Dev. Budget) post as from 1.1.83 and to second 1 officer to the supernumerary post (Ord. Budget) of Forest Officer as from 31.12.82.

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The present recourses are directed against the promotion of 30 out of those candidates who were promoted, namely:

1. Georgios Christodoulou, 2. Constantinos Chimonas, 3. Adamos Ignatiou, 4. Sofronis Philippou, 5. Michael Papacharalambous, 6. Andreas Neophytou, 7. Andreas Chrysanthou, 8. Charalambos Charalambides, 9. Ioannis Constantinides, 10. Christos Economides, 11. Michael Koupparis, 12. Zacharias Ioannou, 13. Christos Lambrou, 14. Michael Michaelides, 15. Andreas Michaelides, 16. Takis Paris, 17. Christodoulos Stylianides, 18. Christos Theodoulou, 19. Panayiotis Xanthos, 20. Alexandros Kyprianides, 21. Savvas Salatas, 22. Andreas Christofi, 23. Ploutis Chrysanthou, 24. Andreas Constantinou, 25. Ioannis Koudjis, 26. Costas Ioannou, 27. Andreas Nicolaou, 28. Frixos Ioannou, 29. Georghios Mayirou and 30. Charalambos Constantinou.

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In Case No.178/83, applicant Kyriakos Payiatsos as against the promotions of interested parties No 1-23.

In Case No.205/83, applicant Christakis Pavlides as against the promotions of interested parties Nos.5,6,15, 19-21, 24-29.

In Case No.206/83, applicant Ploutis Georghiou as against the promotions of interested parties Nos. 5, 6, 19-21, 24-29.

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In Case No.313/83, applicant Polydevkis Kyprianou, as against the promotions of interested parties Nos. 1-12 and 14-30.

In Case No. 213/83, applicant Evagoras Solomonides as against the promotions of interested parties Nos. 5-8, 11, 12, 14-16, 19-22, and 24-29.

In Case No.215/83, applicants Charalambos Kallinos and Ioannis Charalambides as against interested parties Nos. 5-8, 11, 12, 14-16 and 19-29.

The grounds of law upon which these recourses are based, may be summarised as follows:

That the respondents failed to select the best candidates on the basis of merit, qualifications and seniority and the recommendations of the Head of the Department and that they exercised their discretion wrongly and acted in excess and/or abuse of power and contrary to Law.

It was argued on behalf of the applicants in Cases Nos. 205/83 and 206/83, that there was inconsistency between the two decisions of the respondent Commission of 17.12.82 and 24.1.83 as they are different to each other.

Furthermore, it was argued that interested party No.20 Alexandros Kyprianides, who was not recommended, was wrongly promoted in view of his conviction by the Court, of common assault, his promotion being contrary to section 44(1)(d) of the Public Service Law, 1967 (Law 33/67).

In the first place I find that there was no inconsistency between two decisions because there is no obligation on the part of the administration to issue an identical decision to one already revoked. In the present case the revocation was considered necessary in order to remedy a situation which was created by the oversight of the Head of the Department.

As regards interested party No.20, Kyprianides, as correctly stated by counsel for the respondent, the criminal offence of common assault for which he had been convicted does not constitute an offence of dishonesty or involves moral turpitude or amounts to neglect of his duties as a public officer, and he was,

therefore, not liable to disciplinary proceedings under section 73(1) of Law 33/67. Consequently, such criminal conviction was rightly not taken into account as under section 44(1)(d) of Law 33/67 a public officer is not promoted if he has been punished for any disciplinary offence of a serious nature during the two years prior to the intended promotion, which is not the case here: (See *Stavrides v. The Republic* (1985) 3 C.L.R. 95 at pp.104-5).

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On behalf of the applicants in Case No.215/83, it was argued that the manner of preparing their confidential reports was contrary to Law and to Circular No. 491 dated 23.3.79 of the Ministry of Finance, in that the applicants were not assessed by the appropriate reporting officer but by somebody else, a certain Andreas Charalambous, who, in any case, was prejudiced against them.

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From what is before me, there is nothing irregular about the mode of preparing the confidential reports. The said Charalambous being the Divisional Forest Officer and in charge of the section in which the applicants were employed, correctly prepared their reports; it is not imperative for a reporting officer to have direct knowledge on every particular aspect of his subordinates as to their performance but he may obtain information from any other proper source and particularly in cases as the present one where such subordinates do not work within the same premises but are spread out in different areas due to the nature of their work. — See *Chrysochos v. The Republic* (1985) 3 C.L.R. 78 at p. 87.

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Furthermore, from the evidence given I find that any allegations of bad faith or prejudice on behalf of this officer are totally unfounded.

It was further argued that though the confidential reports of the candidates taken into consideration were upto and including 1981, the Head of Department wrongly, appears to have taken also into consideration their performance in 1982 when making his recommendations.

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I find nothing wrong in this as the performance of the candidates in 1982 can validly be taken into account, as it is a part of the overall picture presented by a candidate that a Head of

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Department must consider when making his recommendations.

Finally, it was argued by all applicants that they are superior to the interested parties and should have, therefore, been promoted instead of them.

5 Proceeding to a comparison between the parties, from a perusal of their personal files and confidential reports, which are before me, the situation appears as follows:

In Case No.178/83, applicant Payiatsos has been rated as very good for the years 1979, 1980 and 1981, whereas the interested parties have been rated as excellent and/or very good.

15 He possesses the basic qualifications as all the candidates, whereas interested parties 2,6,8,10,13,16,20, and 22 possess better qualifications. He is senior to most of the interested parties, except interested parties Nos. 1 and 13. However, such seniority of his cannot prevail in view of the fact that all other things are not equal, as all the interested parties have a better merit.

20 In Case No.205/83 applicant Pavlides is slightly better in merit to the interested parties, having been rated as excellent in all years, whereas all interested parties are either excellent and very good or very good.

As regards qualifications, he has the same as most of the interested parties, except interested parties Nos.6, 20 and 27, who are better.

25 As regards seniority, however, he became Forester on 1.10.66, which title was changed to Forest Ranger on 1.1.81. The interested parties had become Foresters long before 1966 and were promoted to Forest Rangers the latest on 16.6.79. They are all, therefore, much senior to this applicant. Furthermore, all the interested parties were recommended for promotion, whereas this applicant was not. I, therefore, find that it was reasonably open to the respondent Commission to select them for promotion instead of the applicant.

35 In Case No. 206/83 applicant Gregoriou was rated as good and very good, whereas the interested parties were rated as either excellent and/or very good. So, the interested parties have a

better merit than this applicant. As regards qualifications, the applicant possesses the basic qualifications whereas interested parties are either the same or better (interested parties Nos. 6, 20, 27).

As regards seniority, he was promoted to Forest Ranger on 15.5.79 which makes him senior to all interested parties by one month, they having been promoted to such post on 15.6.79. Such seniority of one month, however, is too short to bear any weight, on the one hand, and on the other hand, the interested parties being better in merit, cannot prevail. 5
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In Case No.212/83, applicant Kyprianou, has been rated as either very good or good, therefore, all interested parties being excellent and/or very good, are better.

Interested parties Nos. 2, 6, 8, 10, 16, 27, 30, have better qualifications, whereas he is more or less the same as the rest. He became Assistant Forest Officer on 15.3.82, the same day as all interested parties, and to the previous post of Forest Ranger on 1.8.66, which makes him senior to all. Such seniority, however, cannot prevail, all other things not being equal. 15

Applicant Solomonides in Case No.213/83 was rated in the relevant years as good, good and very good, the interested parties are thus better in merit. 20

He has the same qualifications with the interested parties except Nos. 8, 16, 20, 22, 27, who have better qualifications than him.

He was promoted to Forest Ranger on 1.6.79 and so he is senior to interested parties Nos. 5, 6, 19, 20, 21 and 24-29 by 1 1/2 months and to Nos. 7, 11, 12, 14, 15, 16, 22 by two weeks. Interested party No.8 is senior to him. Such seniority of his, in view of it being far too short cannot be taken into account, as all other relevant factors are not equal. 25
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In Case No.215/83 applicants Kallinos and Charalambides have both been rated as very good, good and good for the years 1979-1981, respectively. So, all interested parties are better as regards merit.

They possess the same qualifications except interested parties Nos.6, 8, 16, 20, 22, 27, who have better qualifications.

5 They became Forest Rangers on 1.6.79, which makes them junior to interested parties Nos.8 and 23, equal to Nos.7, 11, 12, 14, 15, 16, 22 and senior to the rest by two weeks, which seniority, as already stated above, cannot prevail as all the interested parties are better in merit.

10 Finally, it should be emphasised that all interested parties, except No.20, namely Kyprianides, were also recommended by the Head of Department, whereas none of the applicants were recommended. As regards interested party No.20, special reasoning was given for preferring him, which appears in the minutes of the respondent Commission of the 24.1.83 and is as follows:

15 «...in the case of Kyprianides, whom the Commission preferred to Daniel, who was recommended by the Director, the Commission took into consideration that Kyprianides (a) had previously been selected for promotion to the post of Forest Ranger as from 15.6.79 as more suitable to Daniel
20 (Daniel was seconded to the same post on the same date), (b) is senior to Daniel, and (c) has better confidential reports.»

25 In the circumstances, I would conclude that it was reasonably open to the respondent Commission to prefer the interested parties, instead of the applicants, who also failed to establish any striking superiority over them. I, therefore, find that the promotions were correctly made and that the sub judice decision is duly reasoned and in accordance with the Law.

For the reasons stated above, these recourses fail and are hereby dismissed.

30 There will be no order as to costs.

Recourses dismissed.

No order as to costs.