1987 May 30
[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIOTIS STAVROU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 61/84).

Administrative Law — Due inquiry — Acting with hastiness to the detriment of due inquiry — Relevant allegation not borne out by the facts of this case.

Public Officers — Promotions — Merit — Whole career of officers should be taken into account, though it is not wrong to give due weight to the more recent confidential reports

Public Officers — Appointments/Promotions — First entry and promotion post — High office in the hierarchy — Appointing authority vested with quite wide discretionary powers

Public Officers — Promotions — Scheme of Service — New scheme of service enacted after initiation of the procedure for filling the post in question with effect as from a specified future date — Respondent Commission expedited matters and made the relevant promotion before such date — In the circumstances the course adopted was in the public interest.

Administrative Law — Legality of administrative act — Governed by the Law in force at the time, when it was taken.

Public Officers — Seniority — The Public Service Law 33/1967 — Section 46(4) — What matters is not the actual amount drawn by the officers concerned, but the «salary conditions of the respective officers» — The holder of a post on salary scale A16 is senior to the holder of a post on scale A15, notwithstanding that at the material time in this case the latter was paid more money than the former.

Public Officers — Confidential reports — Reporting officers — Appointee to an office entailing the making of confidential reports — Deemed to have been

found responsible, experienced and reliable enough to make accurate confidential reports

Public Officers — Promotions — Confidential reports — Bias — Must be established with certainty — Fact that reporting officer was some years ago a candidate together with applicant for the office to which he was promoted does not by itself support bias

Reasoning of an administrative act — Brevity of decision — Not indicative of lack of reasoning — Required reasoning may be supplemented from the material in the file

Public officers — Promotions — Presumption of regularity — Allegation that academic qualifications of applicant were not taken into account — In this case fails, because of the presumption

Public Officers — Promotions — Striking superiority — An administrative Court does not interfere with a promotion unless applicant is an eligible candidate, who was strikingly superior to the one selected

Public Officers — Promotions — Merit — Carries the more weight

Public Officers — Promotions — Qualifications — Academic qualifications, additional to those required, but not envisaged as an advantage in the scheme of service — Not by themselves sufficient to establish striking superiority

The applicant challenges by means of this recourse the decision, whereby the interested party was promoted to the post of Director General, Ministry of Defence, as from 31 12 83

The grounds, on which the applicant relied in support of his case, may be briefly summarised as follows (A) The respondent Commission acted hastily as the sub judice decision was taken on 30 12 83, whilst on the same day at 11 45 p m they were still interviewing the applicant In support of his submission as to the «hastiness» allegedly exhibited by the Commission, applicant's counsel stated that «all that it appears from the minutes of the Respondents that they took into consideration were the marks of the candidates for the last three years»

(B) The respondent Commission ought to have interrupted the whole procedure of filling of the vacant post in question, because on 15 12 83 the Council of Ministers approved a new scheme of service for the sub judice post as from 1 1 84 It must be noted that the aforesaid procedure began on 26 10 83 and that, the first meeting, at which the Commission examined the applications of candidates and everything submitted in their support, was held on 14 12 83 Further meetings with view to interview the candidates were held on 23 12 83, 29 12 83 and 30 12 83

(C) The respondent Commission erred as regards the seniority of the applicant and the interested party Counsel for the applicant submitted that

the applicant was senior to the interested party In support of his argument he referred, inter alia, to the fact that at the material time applicant was drawing a salary of £7,217, whereas the interested party a salary of £7,073

D(i) Absence of safeguards establishing the accuracy in the compilation of the confidential reports absence of countersigning officer, who might check the absolute discretion of the reporting officer, notably the Director - General of the Ministry of Finance

(ii) Bias on the part of the reporting officer In support of this last contention counsel for the applicant referred to the fact that in 1979 the Director-General was a candidate together with the applicant for the post of the Director - General of the Ministry of Finance

(iii) Absence of knowledge by the Director General of the Ministry of Finance, concerning applicant's activities

(E) The sub judice decision lacks due reasoning

Held, dismissing the recourse (I)(a) From the material before the Court it is clear that the Commission examined the applications and everything else submitted in support thereto as well as the personal files and the confidential reports of all candidates in the service at its meeting dated 14 12 83, and that on 23 12 83, 29 12 83 and 30 12 83 it carried out interviews of the candidates The task of the Commission after the last interview, which ended at 11 45 a m on 30 12 83, was to assess the performance of the 15 candidates, who were interviewed, and to make a general assessment and compare the candidates on facts already known to the Commission

There is no evidence that the sub judice decision was taken before closing time (2 p m) The Commission might have continued its deliberations after 2 p m That does not imply that this Court is prepared to hold that 2 hours and 15 minutes would not have been enough for their deliberations In the light of the above the submission that the Commission acted hastily to the detriment of due inquiry fails *(Theymopoulos and Others v The Municipal Committee of Nicosia* (1967) 3 C L R 588 at pp 608, 609 and *HjiMichael and Others v The Republic* (1972) 3 C L R 246 distinguished)

(b) The whole career of the candidates concerned should be taken into account, but it is not wrong to give due weight to the most recent confidential reports In this case the relevant minutes do not support the contention that the Commission took into account only the three last confidential reports

(c) Applicant's submission raised the question of the power of the appointing authority in appointing a Director-General of the Ministry In this respect it must be observed that in making an appointment to high office in the administrative structure, the appointing authority is vested with quite wide administrative powers *(Frangos v The Republic* (1970) 3 C L R 312 at p 343 adopted)

(2) This Court cannot agree with the aforesaid submission (B) of counsel for the applicant, which is devoid of authority This Court holds the view that the Commission acted in the public interest, when it proceeded to complete the task of filling the post before the coming into operation of the new scheme of service, because it thus saved public time and money It must be borne in mind that «it is a cardinal principle of administrative law that the legality of administrative acts is governed by the legislation in force at the time *they were made (Lordou and Others v The Republic* (1968) 3 C L R 427 at p 433 adopted)

3) From the material before the Court it is clear that ever since 15 11 77 the applicant was holding the post of «Director of the Department of Stores», which was and still is on salary scale A15, whereas as from 1 7 81 and until 30 12 83 the interested party held the office of «Director of Public Administration and Personnel», which was on scale A16 It follows that in accordance with section 46(4) of Law 33/1967 the interested party was senior to the applicant, because what matters in determining seniority thereunder is not the actual amount of money drawn by the officers concerned, but «the salary conditions of the respective officers»

(4)(i) As it has been held in *Georghiou v The Republic* (1976) 3 C L R 74 at p 81 «a public officer who has been appointed to a post among the duties of which is the making of confidential reports about subordinate officers has to be regarded as having been found, by the appointing authority, to be responsible, experienced and reliable enough to make, more or less, accurate assessments of such subordinates»

(ii) Lack of impartiality must be established with sufficient certainty The fact that the reporting officer was a candidate together with applicant for the office of Director-General cannot by any stress of imagination support by itself bias

(iii) From the material before the Court, the conclusion is that the Director-General was in a position to have an opinion regarding the applicant

5) The brevity of a decision is not in itself indicative of lack of due reasoning The reasoning of an administrative decision may be supplemented by the material in the official files Applicant's complaint for lack of due reasoning has not been substantiated, moreover, his other complaint that «academic qualifications of applicant were not considered in full» cannot be accepted in view of the presumption of regularity

6) As it has been repeatedly emphasized an administrative Court cannot intervene in order to annul a decision relating to promotions, unless the applicant was an eligible candidate, who was strikingly superior to the one promoted The applicant in this case failed to establish such striking superiority

Recourse dismissed
No order as to costs

Cases referred to:

Thymopoulos and Others v. The Municipal Committee of Nicosia (1967) 3 C.L.R. 588;

HiMichael and Others v. The Republic (1972) 3 C.L.R. 246;

Georghiou v. The Republic (1976) 3 C.L.R. 74;

Georghiades and Another v. The Republic (1975) 3 C.L.R. 143;

Jacovides v. The Republic (1966) 3 C.L R. 212;

Frangos v. The Republic (1970) 3 C.L.R. 312;

Ierides v. The Republic (1980) 3 C.L.R. 165;

Lordou and Others v. The Republic (1968) 3 C.L.R. 427;

Christou v. The Republic (1980) 3 C.L.R. 437;

HjiSavva v. The Republic (1972) 3 C.L.R. 174;

Petrides v. The Republic (1983) 3 C.L.R. 216;

Marangos v. The Republic (1983) 3 C.L.R. 682;

The Republic v. Ekkeshis (1975) 3 C.L.R. 548,

Piperi and Others v. The Republic (1984) 3 C.L.R. 1306;

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

Menelaou v. The Republic (1969) 3 C.L.R. 36;

Theocharous v. The Republic (1969) 3 C.L.R. 318;

Papadopoulos v. P.S.C. (1985) 3 C.L.R. 405.

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Director-General, Ministry of Defence in preference and instead of the applicant.

Chr. Triantafyllides, for the applicant.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

LORIS J. read the following judgment. The applicant impugns

by means of the present recourse, the decision of the respondent P.S.C., dated 30.12.1983 (published in the Official Gazette of the Republic dated 13.1.1984), whereby the interested party, namely George Anastassiades, was promoted to the permanent post of Director-General, Ministry of Defence, as from 31.12.1983, in preference to and instead of the applicant.

The applicant is relying on nine grounds of law, appearing in the body of the recourse; in his written address, learned counsel for the applicant reshuffled these grounds and elaborated on them under five heads. I consider it convenient to examine the complaints as listed down in the written address.

Ground 1: The complaint under this head is to the effect that the respondent commission acted hastily as they proceeded to fill the post in question on 30.12.83 whilst on the same day at 11.45 a.m. they were still interviewing the applicant; it was maintained that due to their haste their examination could not have been a thorough one and it was submitted that this state of affairs establishes at least a probability that a misconception has lead to the taking of the decision complained of. The cases of (a) *Thymopoulos & Others v. The Municipal Committee of Nicosia (1967)* 3 C.L.R. 588 at pp 608, 609 and (b) *Hji Michael and others v. The Republic* (1972) 3 C.L.R. 246 were cited in support of this submission.

The case of *Thymopoulos* (supra) was a recourse against the validity of plans prepared by the Municipal Committee of Nicosia under s. 12 of the Streets and Buildings Regulation Law Cap. 96, with the object of widening and straightening a street in Nicosia. The relevant extract at pp. 608 and 609 of the judgment of Triantafyllides J. (as he then was) reads as follows:

«So, with the exception of the Chairman of the Municipal Committee, the remaining members of the Committee - which had to act as a collective organ - had not real opportunity, through access to any written record, other than the relevant survey map, to study in advance the merits of the scheme concerned. Their examination of the matter was limited only to what transpired at that one meeting of the 16th April, 1965.

It is quite clear, thus, that the examination made by the Municipal Committee, as such, of the scheme could not have been a really thorough one;» and the learned President of this Court

went on to add: «this fact may not, perhaps be by itself a sufficient reason for the annulment of the said scheme but it is a factor to be borne in mind in evaluating the significance of other elements relevant to the manner in which the Municipal Committee decided on the matter at its relevant meeting.»

In Hji Michael and others (supra), an appeal challenging the dismissal of the recourses made by the applicants challenging the validity of a requisition order in respect of land, it was held by the Full Bench of this Court (at p. 252) that:

> «According to the principles of administrative law there exists a presumption that an administrative decision is reached after a correct ascertainment of relevant facts; but such presumption can be rebutted if a litigant succeeds in establishing that there exists at least a probability that a misconception has lead to the taking of the decision complained of. (See inter alia, *Stassinopoulos - The Law of Administrative Acts 1951 p.304 et seq.)*»

Reverting to the material before me it is abundantly clear (a) that the respondent P.S.C. at its meeting of 14.12.83 (vide appendix 5) examined «the applications of all candidates and everything submitted in support therewith»; in this connection it must be borne in mind that red 115 in the personal file of the applicant was submitted together with his application dated 28.11.83, it was therefore before the P.S.C. and must have been examined together with his application according to the presumption of regularity.

(b) that the respondent P.S.C. at its meetings of 23.12.83 (Appendix 6), 29.12.83 (Appendix 7) and 30.12.83 (Appendix 8) interviewed the applicants and reached its decision on 30 12.83.

From the above it is clear that the respondent P.S.C. had the opportunity to examine the applications of all applicants together with everything else submitted in support thereto as well as the personal files and confidential reports of all candidates in the service - as the post in question is a first entry and promotion post - On 23.12.83, 29.12.83 and 30.12.83 the respondent P.S.C. carried out interviews of the candidates.

It is clear from Appendix 5 that the P.S.C. examined the applications of all applicants together with everything submitted in support therewith as early as the 14.12.83; and the result of their

aforesaid examination was that three out of the 25 candidates were excluded as they were not satisfying the qualifications envisaged by para (b) of the scheme of service in force at the time. In the circumstances the submission of learned counsel for the applicant cannot be accepted. What the P.S.C. say in the sub-judice decision is that after the completion of the interviews they proceeded to assess the performance of the candidates at the interview and following that «they occupied themselves with general assessment and comparison of the candidates».

From the contents of Appendix 5 attached to the opposition it is clear that the respondent P.S.C. was well acquainted at least as early as 14. 12.83, with the applications of all candidates and everything submitted in support therewith, which must be taken to include all confidential reports and personal files of those in the service. Therefore their task after the last interview, which was admittedly held on 30.12.83 at 11.45, was to assess the performance of the 15 candidates at the interview and to make a general assessment and compare those candidates on facts which were already known to the Commission.

The applicant giving evidence viva voca before me clearly stated that his interview by the respondent commission was completed at 11.45 hours of the 30.12.83; and he was the last candidate to be interviewed. He was not cross-examined and I have no reason to disbelieve him.

Although I do not think that an administrative Court should go as far as computing the hours and the minutes an administrative body has taken for its deliberation with a view to reaching its decision I am not ready to hold that the respondent Commission acted hastily to the detriment of a due inquiry, as submitted. After all there is no material to indicate that the sub-judice decision was reached before closing time (i.e. at 2 p.m.) on 30.12.83 as submitted by learned counsel for applicant at the final stage of the hearing of this recourse. The respondent commission which has taken steps to expedite the process of filling the post in question, after the 15th December 1983 when the new scheme of service was published, by meeting day in day out, 23.12.83 - Christmas Holidays - 29.12.83, 30.12.83, they might have continued their deliberations even after 2 p.m. of 30.12.83 before reaching their decision. Not that I imply that 2 hours and a quarter would not have been enough for their deliberations but it must be borne in mind (a) that there was nothing to prevent them from having

deliberations after 2 p.m. and (b) that there is no material indicating that in fact their decision was reached up to 2 p.m. of 30.12.83.

Having considered the material before me I hold the view (i) that the present case has no similarity whatever with Thymopoulos case (supra) where the Municipal Committee as collective organ had a single opportunity - on 16.4.65 - to acquaint themselves with a difficult and complicated matter notably the street widening scheme and its repercussions on Nicosia Town.

(ii) that in the present case no propability was established tending to rebut the presumption that the administrative decision in question was reached after the correct ascertainment of the relevant facts (vide *Hji Michael and others* - supra -).

Learned counsel for the applicant in support of his argument on Ground 1 and his relevant submission as to the hastiness allegedly exhibited by the respondent Commission stated the following in his written address:

> «I restrict myself at this stage to say that all that it appears from the minutes of the Respondents that they took into consideration were the marks of the candidates in the last three years. I submit that for a post such as the one in issue this is hardly enough....»

Having held on ground 1, as I did, it might have been considered superfluous to deal with the latter submission; nevertheless I feel duty bound to deal specifically with it as it touches two issues of immense importance, notably the confidential reports and the «Post in question» which is really a High Office in the administrative structure:

In the first place I agree with the submission of learned counsel for the respondent that the P.S.C. do not say in the sub-judice decision that they took into consideration only the confidential reports of the last 3 years; they simply mention «ενδεικτικά» (vide page 3 of Appendix 8) the rating of the candidates for the last three years whilst in the paragraph immediately before that they say that the commission took into consideration the merit of the candidates as it transpires from the material before it... «including the Confidential Reports of the candidates who are civil servants.» And it is clear that the confidential reports of the applicant which date back to 1958 and they are Ex1A, as well as the confidential

reports of the interested person, which date back to 1965 and they are Ex. 2A before me, were before the respondent P.S.C. as well.

As regards confidential reports the position has thus been stated by the Full Bench of this Court in the appeal of *Odysseas Georghiou v. The Republic (1976) 3 C.L.R. 74 at page 82:* «We are in agreement with the learned trial Judge that the whole career of the candidates concemed had to be taken into account; this view has been propounded in, inter alia, *Georghiades and Another v. The Republic* (1975) 3 C.L.R. 143, 150; but in the judgment in that case it is stated (at p. 151) that it is not wrong to give due weight to the more recent confidential reports; and the importance of the more recent of such reports has been, also, recognised in *Jacovides v. The Republic* (1966) 3 C.L.R. 212, 221, and may be derived, too, from the provisions of paragraphs (c) and (d) of sub-section (1) of section 44 of Law 33/67».

As the question of the power of the appointing authority in appointing a Director-General in a Ministry was in a way raised by the aforesaid submission, I feel that I should refer to the case of *Frangos v. The Republic* (1970) 3 C.L.R. 312, a case in which the appointment to the post of Director-General Ministry of Interior was impugned, where Triantafyllides J. (as he then was) stated the following at p. 343: «Before concluding I might refer also in this respect, to case 2338/64 which was decided by the Greek Council of State; it was stressed therein that in selecting the most suitable candidate for appointment to high office in the administrative structure the appointing authority is vested with quite wide discretionary powers.»

And the above principle was adopted by the Full Bench of this Court in *Ierides v. The Republic* (1980) 3 C.L.R. 165 at p. 183.

For all the above reasons ground 1 is doomed to failure.

Ground 2. On 26.10.83 (vide appendix 1 attached to the opposition) the respondent was asked to fill the vacant post of Director-General Ministry of Defence. Several steps were taken by the Respondent Commission to which reference will be made later on in dealing with present ground and on 30.12.83 the sub-judice decision was reached filling the vacant post in question.

On 15.12.83 the Council of Ministers approved a new Scheme of Service for the post of Director-General with effect from the 1.1.1984.

The complaint of the applicant is twofold:

(a) The respondents ought to have taken cognisance of the fact that the Scheme of Service for the post in issue had changed and taken the appropriate decision.

(b) The respondents in view of the Scheme of Service ought to have interrupted the whole procedure and commenced it from the beginning; allegedly their failure to start afresh with the new scheme of Service rendered their procedure in reaching the sub-judice decision defective.

As already stated the respondent commission was requested on 26.10.83 to take the necessary steps to fill the vacant post of Director-General Ministry of Defence.

As the post in question is a first entry and promotion post, the respondent P.S.C., decided on 3.11.83 to cause a relevant publication in the Official Gazette inviting applications within 3 weeks (vide appendix 2 attached to the opposition).

The relevant publication was in fact made on 11.11.83 (vide Appendix 3).

Twenty-five applicants submitted applications for appointment in the said post (vide Appendix 4).

On 14.12.83 a meeting of the respondent P.S.C. was convened; the applications of all candidates and everything submitted in support therewith was examined by the respondent (vide appendix 5). As a result of the said examination 3 candidates were excluded by the respondent as not possessing the qualifications envisaged by para (b) of the Scheme of Service.

The aforesaid meeting of the respondent P.S.C. was adjourned with a view to interviewing the remaining 22 applicants who possessed the required qualifications by the scheme of service then in force.

Meetings to that effect were held by the respondent as aforesaid on 23.12.83, 29.12.83 and 30.12.83 (vide Appendices 6, 7 and 8).

The sub-judice decision was reached on 30.12.83 and the interested party was appointed with effect from 31.12.83.

In the meantime the Council of Ministers on 15.12.83 approved a new Scheme of Service for the Post of Director-General with effect from 1.1.1984. The aforesaid new Scheme of Service was

forwarded by the Secretary of the Council of Ministers to the Chairman of the Respondent Commission on 27.12.83 and it was received at the offices of the Respondent Commission on 29.12.1983 (vide Exhibit 1 attached to the written address of the Respondent).

It is clear from the facts stated above that the Chairman of the respondent P.S.C. was requested by the appropriate authority as early as 26.10.83 to take all necessary steps that the vacant post of the Director-General, Ministry of Defence, be filled in at the earliest possible date after the 1.11.1983.

According to the provisions of s.10(4) of Law 33/67 «The Chairman shall insert in the agenda, within one week of the receipt of a request therefor, any subject referred to him by the appropriate authority».

As already seen the respondent Commission was convened on 3.11.83 and a publication for the post in question was made on 11.11.83.

As stated by learned counsel of applicant in his written address the post to be filled in is the most important and the highest post in the civil service; therefore it could not remain vacant for long. The respondent P.S.C. taking into consideration the significance of the post to be filled in, as well as the relevant request of the appropriate authority was proceeding expeditiously towards the achievement of this end as requested.

On the 14.12.83 at its meeting examined the application of all applicants excluding 3 out of the 25 for not possessing certain qualifications envisaged by the scheme of service then in force.

The new scheme of service was approved by the Council of Ministers on 15.12.83. Independently of the fact that it came to the knowledge of the respondent Commission as late as the 29.12.83 many steps were taken by the respondent Commission prior to the approval of the new scheme of service. If the submission of learned counsel for applicant were correct, all these steps ought to have been set aside and new steps ought to have been taken afresh on the basis of the new scheme after the 1.1.84, as the new scheme of service was effective as from 1.1.84; I find myself unable to agree with this submission which is devoid of authority. I have not examined the criteria of the new scheme of service and the allegation of the applicant that he «might have faired better

than what he did under the old scheme of service», is something irrelevant to the concern of the Respondent Commission. I hold the view that it was in the public interest that respondent P.S.C. proceeded to complete its task as they did; prior to the coming into operation of the new scheme, saving thus public time and money which would not have been saved had the respondent interrupted a well advanced procedure which was leading up to the filling of the post in question which was urgently needed for the proper functioning of the Ministry of Defence.

The respondent Commission took cognisance of the new scheme of service, which was operative as from 1.1.84, and in fact they refer to it verbatim in the last paragraph of the minutes of their meeting held on 30.12.1983 (vide Appendix 8).

Concluding on this ground I repeat that the new scheme of service was approved by the Council of Ministers on 15.12.83 and it became operative on the 1st January 1984. Needless to add that the sub-judice decision was reached on the basis of the scheme of service in force at the time the decision was made; in this connection it must be borne in mind that «it is cardinal principle of Administrative law that the legality of administrative acts is governed by the legislation in force at the time they were made». *(vide Lordou and Others v. The Republic (1968) 3 C.L.R. 427 at p. 433.).*

For all the above reasons ground 2 fails as well.

Having considered grounds 1 and 2 above, I intend, for convenience sake, to proceed now with the examination of grounds 4 and 5, which refer to specific issues (Seniority - Confidential reports), leaving ground 3 to be determined thereafter.

Ground 4

Ground 4 refers to the «Seniority» of the applicant and the interested party and revolves on the construction to be placed on sub sections (4) and (5) of s. 46 of the Public Service Law 1967 (Law 33/67) as amended.

Section 46(4) of Law 36/37 reads as follows:

> «Seniority between officers holding offices with different salary conditions shall be determined according to the salary conditions of the respective offices.»

Section 46(5) as amended by s. 5(d) of Law 10/83 reads as

follows:

«The seniority of officers holding the same office (ή τάξιν της αυτής θέσεως – Άρθρον 5(δ) Νόμου 10/83) the salary and title of which have been changed as a result of a salary revision or reorganization, shall be determined according to the officers' seniority immediately prior to such revision or reorganization.»

Learned counsel for applicant contests the finding of the respondent P.S.C. to the effect that the interested party is senior to the applicant and maintains that on the contrary the applicant is senior to the interested party.

He submitted that in the case under consideration the provisions of s. 46(5) of Law 33/67 should apply as allegedly «previously to 1.1.82 both the applicant and the interested party were on salary scale A15. It is after this date that due to re-organisation that both the title and the salary scale of the interested party changed.»

And the learned counsel proceeds with another submission - which as I comprehend it is an alternative one to his first submission - as follows:

«Going back now to s. 46(4) of Law 33/67 and in view of the provisions of s. 46(5) of Law 33/67, I submit that the applicant is not only junior to the interested party, but is in fact his senior because on the 31.12.83 the basic salary of the applicant was £7,217, while that of the interested party was £7,073 ....»

In order to decide on the submissions of learned counsel for applicant we have to examine the factual substratum of these submissions and ascertain the actual facts as they emerge from the material before me which was also before the respondent Commission at all material times.

Thus as it is apparent from Enclosure No. 9 attached to the opposition (I) the applicant was holding ever since 15.11.77 his present post which is that of «Director of the Department of Stores». This permanent post was and still is on Salary Scale A15 (£6002 x243 - 7217).

(II) (a) The interested party was holding as from 1.12.1975 the permanent post of «Director of the Department of Personnel»

(vide red 79 in Ex 2)

(b) The post of «Director of the Department of Personnel» was abolished by Law 45/80 and a new post was created that of «Director of Public Administration and Personnel» (vide Appendix to the First Schedule of Law 45/80 at p 991 - Copy of which is attached to the written address of the respondent as Exhibit 2) The new post created was on scale A16 (£6,587 × 243-£7,802)

(c) The interested party was promoted to the permanent post of «Director of Public Administration and Personnel» on 1 7 81 (vide red 94 in Ex 2 and Enclosure No 9 attached to the opposition)

(d) The interested party was holding the aforesaid post of «Director of Public Administration and Personnel (Scale A16) from 1 7 81 up to 30 12 83 when he was promoted to the post of Director-General, Ministry of Defence by virtue of the sub judice decision, it is perhaps necessary to add that in virtue of Law 5/82 (The Budget of the Republic - vide p 222) the post of «Director of Public Administration and Personnel» was simply renamed as from 1 1 82 to 'Director' without any other repercussions on the post or the salary scale which remained the same i e A16

The renaming of the Post as aforesaid from 1 1 82 was communicated to the interested party (vide red 105 in his personal file Ex 2 - before me)

From the facts stated above which clearly emerge from the material before me -which material was before the respondent P S C - it is abundantly clear that the applicant was and still is on salary scale A15 (£6002 × 243-7217) whilst the interested party was on salary scale A16 (6587 × 243-7802) ever since 1 7 81 until 30 12 83 when he was promoted in virtue of the sub-judice decision

From the aforesaid it is clear that s 46(4) of Law 33/67 is applicable to the case under consideration and the respondent P S C rightly held that the interested party was senior to the applicant

It is clear from the above that the first submission was based on a misconceived factual substratum, the applicant and the interested party where holding offices with different salary conditions at the material time, they were not on the same salary scale A 15 as alleged, the applicant was on salary scale A15 whilst

the interested party was on salary scale A16, as indicated above. With regard to the second submission I find myself unable to agree with learned counsel for the applicant. It is immaterial whether actually on the 31.12.83 the applicant was drawing a salary of £7,217 - (being on the top scale of salary scale A15) and the interested party was drawing a salary of only £7,073 (having received only 2 increments on the salary scale A16). What sub-section 4 of s. 46 provides is that the seniority will be determined «according to the salary conditions of the respective offices» and not the actual amount of money drawn at the material time; and the salary condition of the office held by the applicant at the time was salary scale A15 whilst the salary condition of the office of the interested party was salary scale A16.

For all the above reasons ground 4 cannot succeed.

Ground 5: This ground constitutes an all out attack against the compilation of confidential reports.

The attack, as I was able to comprehend it, is threefold:

(a) Absence of safeguards establishing the accuracy in the compilation of confidential reports: the complaint extends to the absence of countersigning officer who might check the «absolute discretion and freedom» of the reporting officer notably the Director-General of the Ministry of Finance.

(b) Presence of bias: A general allegation is made in the written address of the applicant to the effect that the Director-General of the Ministry of Finance who prepared the confidential reports for the applicant, and was until 1979 junior to him, was a candidate together with the applicant for the post of Director-General, Ministry of Finance, when the post in question was vacant some years ago. The relevant portion in the written address concludes as follows: «Mr. HjiPanayiotou ended up being appointed (as Director-General of the Ministry of Finance) and as such having exclusive, sole and unchecked right to judge the applicant ...»

(c) Absence of means of knowledge by the Director-General of the Ministry of Finance, concerning the activities of the applicant, «heading an independent Department with over 150 employees spread all over Cyprus.»

As regards allegation under (a) above, I shall confine myself in repeating what was stated by the Full Bench of this Court in the case of *Odysseas Georghiou (Supra)* at p.81. «.. In our opinion a public officer who has been appointed to a post among the duties

of which is the making of confidential reports about subordinate officers has to be regarded as having been found, by the appointing authority, to be responsible experienced and reliable enough to make, more or less, accurate assessments of such subordinates »

In connection with allegations of bias of the reporting officer contained in the written address of the applicant which are somewhat diminished by the written address in reply it must be stated at the outset that «the lack of impartiality must be established with sufficient certainty, either by facts emerging from relevant administrative records or by safe inferences to be drawn from the existence of such facts » *Christou v Republic (1980) 3 C L R 437 at p 449* In the case under consideration neither an allegation of bias was ever placed before the respondent Public Service Commission nor such alleged bias was ever proved The mere fact that the reporting officer in the case of the applicant, was around 1979 a competitor with him for the office of the Director-General cannot by any stress of imagination support by itself bias or impartiality against the applicant

As regards allegation 3 above I hold the view that the reporting officer who is the Director-General of the Ministry under which the department headed by applicant comes was in a position to express properly a judgment and have an opinion regarding the applicant, as the applicant himself stated on oath before me, he (the applicant) himself was making reports to the Director-General of the Ministry of Finance although very rarely - once or twice a year Apart from these reports certainly there are many other ways other than personal contact with a subordinate, enabling the reporting officer to form an opinion and express an appropriate judgment in respect of the performance of his subordinate

For the reasons I have endeavoured to explain above, Ground 5 fails as well

Reverting now to ground 3, notably the complaint to the effect that the sub-judice decision lacks due reasoning

In the first place I am not ready to subscribe to the view advanced by the applicant that the sub-judice decision is brief; same appears in Appendix 8 attached to the opposition and speaks for itself

It must also be borne in mind always that «reasoning behind an

administrative decision may be found either in the decision itself or in the official records related thereto.» (*Georghios HjiSavva v. The Republic* (1972) 3 C.L.R. 174 at p. 205).

Furthermore the brevity of an administrative decision is not in itself indicative of lack of due reasoning. *(Petrides v. The Republic* (1983) 3 C.L.R. 216 - *Marangos v. The Republic* (1983) 3 C.L.R. 682).

The complaint of the applicant related to reasoning to the effect that «academic qualifications of the applicant were not considered in full» cannot be supported in view of the presumption of regularity which is applicable in relation to administrative actions *(The Republic v. Ekkeshis,* (1975) 3 C.L.R. 548, 556 - *Piperi & Others v. The Republic* (1984) 3 C.L.R. 1306, 1310). And there is nothing before me tending to rebut such presumption; on the contrary it is crystal clear that all the academic qualifications of the applicant as well as those of the interested party appearing in their personal files, which are before me and they were also before the respondent Commission at the material time, as already stated earlier on in the present judgment, were adequately taken into consideration by the respondent in reaching the sub-judice decision.

Before concluding I feel that I should lay stress to what has been repeatedly emphasized and recently reiterated by the Full Bench of this Court in *Hjiloannou v. The Republic* (1983) 3 C.L.R. 1041 at p. 1045:

> «An administrative court cannot intervene in order to set aside the decision ... unless it is satisfied, by an applicant in a recourse before it, that he was an eligible candidate who was strikingly superior to the one who was selected, because only in such a case the organ which has made the selection for the purpose of an appointment or promotion is deemed to have exceeded the outer limits of its discretion and, therefore, to have acted in excess or abuse of its powers ...»

In the case under consideration the applicant failed to discharge the burden of establishing «striking superiority» over the interested party. Both applicant and the interested party are public officers; it is clear that in the relevant confidential reports the interested party is better rated than the applicant; at least in the more recent confidential reports (those of the last 3 years) the interested party

is rated «excellent» (12-0-0) whilst the applicant is rated «very good» (0-9-3) for 1980 (1-9-2) for 1981 and (0-9-3 for 1982). And it is clear that in cases of promotion merit should carry the most weight *(Menelaou v. The Republic* (1969) 3 C.L.R. 36 at p. 44 - *Theocharous v. The Republic* (1969) 3 C.L.R. 318 at p. 322.)

The qualifications of the applicant and the interested party are more or less equal; even if I were to hold that the applicant possesses an additional Academic qualification - which is not the case - such an additional qualification is not envisaged by the scheme of service under consideration as an advantage, and cannot by itself, constitute striking superiority over the interested party *(vide Hjiloannou v. The Republic* - supra - and also the majority decision of the Full Bench in *Andrestinos Papadopoulos v. P.S.C.* (1985) 3 C.L.R. 405).

For the reasons stated in dealing with Ground 3 above, the respondent P.S.C. rightly held that the interested party is senior to the applicant.

In the light of the above, I am satisfied that the respondent P.S.C. carried out due inquiry taking into consideration all relevant criteria and properly applying the law in reaching at the sub-judice decision which was reasonably open to it.

Finally I may repeat that having examined the sub-judice decision in the light of the material before me I am satisfied that it clearly conveys the reasoning why the interested party was preferred for the promotion in question instead of the applicant; and as a matter of fact the files before me, which were also before the respondent P.S.C. contained more than the required material which can support the sub-judice decision allowing at the same time an unhindered judicial scrutiny.

In the result present recourse fails and is accordingly dismissed; let there be no order as to its costs.

Recourse dismissed.
No order as to costs.