

1987 May 30
(STYLIANIDES, J.)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS K. SAVVA,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 259/86).

5 *Public Officers — Promotions — Head of Department — Recommendations of —
Should not be disregarded without giving reasons for disregarding them —
Recommendations inconsistent with the overall picture from the confidential
reports — Should be disregarded or be given limited weight, depending on
the extent of inconsistency.*

*Public Officers — Promotions — Presumption of regularity — In the absence of
indication to the contrary, it has to be presumed that all candidates were duly
considered.*

10 *Public Officers — Promotions — Seniority — It prevails, if in all other respects the
candidates are more or less equal.*

Public Officers — Promotions — Judicial control — Principles applicable.

By means of this recourse the applicant challenges the decision, whereby
the six interested parties were promoted to the post of Technical
Superintendent in the Water Development Department.

15 The Head of the Department recommended six candidates for promotion
to the aforesaid post. Four of those recommended were finally promoted,
whereas the remaining two were not promoted, as in their place the
Commission decided to promote two other candidates, who were the best
20 rated in their confidential reports for the last preceding years. The applicant
had not been among those recommended as aforesaid.

Held, *dismissing the recourse*: (1) The Public Service Commission has to
pay heed to the recommendations of the Head of the Department and if they
decide to disregard them, they have to give reasons for doing so. When the

recommendations are inconsistent with the overall picture of the candidates they should be disregarded or be given limited weight, depending on the extent of inconsistency. In this case and in the light of the confidential reports the respondent Commission rightly preferred the two interested parties, who had not been recommended, to the two candidates, who, despite the recommendations in their favour, the Commission decided not to promote 5

(2) The minutes of the Commission do not bear out applicant's contention that the Commission did not make the necessary comparison of all the candidates. From such minutes it is obvious that all the candidates were considered and it was not in any event, necessary to mention specifically each candidate, because in the absence of any indication to the contrary, it has to be presumed that all of them were duly considered 10

(3) The interested parties though junior to the applicant were strikingly better in merit. It is well settled that seniority prevails, if in all other respects the candidates concerned are more or less equal 15

(4) The complaint that the Commission acted under a misconception of fact because the Head of the Department misrepresented applicant's duties has not been substantiated. There is no difference between applicant's duties, as they were described in a statement of the Head of the Department, and the duties of the applicant, as they were described in the applicant's own handwriting on the first page of the forms of the confidential reports 20

(5) An administrative Court cannot intervene in order to set aside the decision regarding a promotion, unless it is satisfied that the applicant was an eligible candidate, who was strikingly superior to the one, who was selected. In this case the applicant failed to satisfy the Court that he was strikingly superior to the interested parties 25

Recourse dismissed
No order as to costs

Cases referred to

Lardis v The Republic (1967) 3 C L R 64, 30

HjiConstantinou v The Republic (1973) 3 C L R 65,

Petrides v Public Service Commission (1975) 3 C L R 284,

Myrdes and Another v The Republic (1983) 3 C L R 1096,

The Republic v Koufettas (1985) 3 C L R 1950,

Georgiou v The Republic (1976) 3 C L R 74, 35

Ioannou v The Republic (1977) 3 C L R 61,

Savva v. The Republic (1980) 3 C L.R 675,

Michanikos v. The Republic (1976) 3 C.L.R. 237;

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

Partellides v. The Republic (1969) 3 C.L.R. 480;

Smymios v. The Republic (1983) 3 C.L.R. 122;

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

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

Recourse.

10 Recourse against the decision of the respondents to promote the interested parties to the post of Technical Superintendent in the Water Development Department in preference and instead of the applicant.

A. S. Angelides, for the applicant.

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

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Cur. adv. vult.

STYLIANIDES J. read the following judgment. By means of this recourse the applicant challenges the promotion of the 6 interested parties to the post of Technical Superintendent in the Water Development Department.

20 The grounds advanced by counsel for the applicant for the annulment of the sub-judice decision are:-

(a) The respondent Commission failed to carry out a due inquiry;

25 (b) It failed to make a comparison of all the candidates and particularly of the applicant with the interested parties and with the two candidates recommended by the Head of the Department but not promoted;

(c) It laboured under a misconception of fact;

(d) The recommendations of the Director were faulty; and,

30 (e) Generally, it failed in its paramount duty to select the best suitable candidate for the filling of the vacant post.

The post of Technical Superintendent is a promotion post. .

A Departmental Board was set up under the relevant Regulations. After considering the candidates, it found that only 13 possessed the required qualifications under the scheme of service.

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The respondent Commission, after receiving the report of the Departmental Board, had a special meeting at which the Head of the Department made his recommendations. The Head of the Department stated that all the eligible candidates were excellent officers but as the candidates were more than the vacancies, he had to make recommendations. He recommended Frangopoulos, Hji-loannou, Pitsillides, Liassis, Kastanas and Eliades. He proceeded further and expressed his opinion and recommendations concerning the other 7 candidates. He said that Andreas Savva (the present applicant) is an excellent officer, most capable, who works for the tenders of the Department and matters pertaining to compulsory acquisitions as well as subjects concerning private water rights for the works constructed by the Department.

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Lanitis is an excellent, most capable and willing officer. He described the work this officer was doing. Lanitis was dealing with water resources, the co-ordination of the various hydrological works of the District Offices and the control of private drills.

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Pantelis Alexandrou is also an excellent and extremely devoted officer. He worked in the hydrological service and his main duties were hydrological studies and the computers of the Department.

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The Commission having regard to the recommendations of the Head of the Department, the contents of the personal files and the files of the confidential reports of the candidates, after evaluation and comparison of the candidates, reached the sub-judice decision whereby it promoted the 6 interested parties, four of which were recommended by the Head of the Department, the Director of the Water Development Department, and two who, though not recommended by the Director, were the best rated in their confidential reports for the last preceding years.

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The Commission in making a promotion shall have due regard to the annual confidential reports on the candidates and to the recommendations made in this respect by the Head of the Department in which the vacancy exists - (Section 44(3) of the Public Service Law No. 33/67).

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The Head of a Department is in a position to appreciate the demands of the post to be filled and the suitability of the candidates to discharge the duties of the post. It is well established that the Public Service Commission has to pay heed to such
5 recommendations and if they decide to disregard them, they have to give reasons for doing so - (See, inter alia, *Lardis v. The Republic*, (1967) 3 C.L.R. 64; *HjiConstantinou v. The Republic*, (1973) 3 C.L.R. 65; *Petrides v. Public Service Commission*, (1975) 3 C.L.R. 284; *Mytides and Another v. The Republic*, (1983) 3
10 C.L.R. 1096; *The Republic v. Koufettas*, (1985) 3 C.L.R. 1950).

It is well established further that when the recommendations of the Head of a Department are inconsistent with the overall picture presented by the confidential reports, they should be disregarded or be given limited weight, depending on the extent of the
15 inconsistency - (See, inter alia, *Georghiou v. The Republic*, (1976) 3 C.L.R. 74, 84; *Ioannou v. The Republic*, (1977) 3 C.L.R. 61; *Andreas Savva v. The Republic*, (1980) 3 C.L.R. 675, 684; *The Republic v. Koufettas* (supra)).

The respondent Commission, having gone meticulously
20 through the confidential reports of each one of the 13 candidates, disregarded the recommendations of the Head of the Department with respect to Pitsillides and Liassis and selected Lanitis and Alexandrou.

Alexandrou has the best confidential reports of all the
25 candidates all through the years. For the last four years, i.e. 1981, 1982, 1983 and 1984, he had 12 «Excellent» and for 1979 and 1980 9.3.0 and 11.1.0. Lanitis was rated slightly inferior to Alexandrou but better than any other candidate. He was rated
30 «Excellent» for the 6 years taken into consideration by the Commission.

The Commission made extensive comparison between the two recommended by the Director and not selected and Lanitis and Alexandrou who were preferred. The Commission in preferring the two — Lanitis and Alexandrou — acted properly and within the
35 principles pronounced by this Court and their such preference is not faulty.

The contention that they failed to carry out a due inquiry has no merit. The Commission took pains not only to go through the personal files and confidential reports of the candidates but also
40 they recorded in their decision the marks of all 13 candidates for

the last 6 years and further they looked into the seniority of them having regard to the fact that 11 of the candidates were promoted to the immediately lower post of Senior Technician on the same date, namely, 15.11.81. It is true that the applicant is senior to Alexandrou and Lanitis; it is also correct that Pitsillides and Liassis, who were not preferred, are senior to the applicant and to the aforesaid two interested parties. 5

I examined with care the complaint of the applicant that the respondent Commission did not make the necessary comparison of all the candidates and in particular of the applicant with the interested parties and the two who were recommended and not preferred. The minutes of the Commission do not bear out the submission of counsel for the applicant. It is obvious from the contents of such minutes that all the candidates were considered and it was not, in any event, necessary to mention specifically each candidate in the minutes, because in the absence of any indication that any candidate has been excluded from consideration, it has to be presumed that all of them were duly considered - (See, inter alia, *Michanikos v. The Republic*, (1976) 3 C.L.R. 237, 244; *Piperi and Others v. The Republic*, (1984) 3 C.L.R. 1306, 1312). 10 15 20

It was submitted that the seniority of the applicant was disregarded or was not duly taken into consideration. The seniority of all the candidates, including the applicant, was taken into consideration in reaching the sub-judice decision. This is borne out from the minutes of the Commission; even if it were not, in view of the presumption of regularity, which is applicable in relation to administrative actions, this submission has no merit. 25

The interested parties junior to the applicant were strikingly better in merit, as depicted in the confidential reports. The Commission gave cogent reasons for their selection. It is well settled that seniority prevails if in all other respects the candidates concerned are more or less equal - (*Partellides v. The Republic*, (1969) 3 C.L.R. 480; *Smyrnios v. The Republic*, (1983) 3 C.L.R. 122). 30

It was submitted that the Commission laboured under a misconception of fact in the sense that the Head of the Department misrepresented the duties performed by the applicant and the fact that he stated that the performance of the candidates during 1985, for which there were no confidential reports, was more or less equal to the previous years. 35 40

The duties performed by an officer are written by him in his own handwriting on the first page of the forms of the confidential reports which were before the Commission. The duties which he was performing, according to the form of the confidential reports,
5 for the last 6 years were: He was in charge of the tenders' branch, water rights and land acquisitions. I see no difference between the statement of the Director and the duties performed by the applicant. The Director did not underestimate the applicant in the eyes of the Commission in any respect and to any degree
10 whatsoever. The Commission had before them besides the statement of the Director the confidential reports and, as it is obvious from the contents of the sub-judice decision, they went meticulously through them. This ground was not substantiated and fails.

15 It was finally submitted that the Commission failed in its duty to select the best suitable candidate for the post.

The public service is a most important factor for the efficient functioning of the State. The interests of the citizens in a modern State, whose activities are expanding, are best served by qualified,
20 experienced and efficient civil servants. The object of the Public Service Law and the principles of administrative Law pertaining to promotions is the furtherance of such interest as well as the care of the rightful claims of the civil servants for elevation in their career. The paramount duty of the Commission is to select the best
25 suitable candidate. The burden that the Commission failed in its such duty lies squarely on the shoulders of the applicant. The Commission made a selection for the purpose of promotion. An administrative Court cannot intervene in order to set aside the decision regarding such selection unless it is satisfied, by an
30 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 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
35 acted in excess or abuse of its powers; also, in such a situation the complained of decision of the organ concerned is to be regarded as either lacking due reasoning or as based on unlawful or erroneous or otherwise invalid reasoning - (*Odysseas Georghiou v. The Republic*, (1976) 3 C.L.R. 74, 83).

40 «Striking superiority» was aptly analysed in *Hji-Savva v. the*

Republic, (1982) 3 C.L.R 76, and *Hji-loannou v. The Republic*, (1983) 3 C.L.R. 1041.

The applicant failed to satisfy the Court that he was strikingly superior to the interested parties.

In view of the aforesaid the sub-judice decision is not faulty. The Commission acted according to the Law and within the limits of its discretion. The sub-judice decision was reasonably open to it and this recourse fails. The challenged decision for promotion of the 6 interested parties is, therefore, confirmed in whole under Article 146 4(a). The Recourse is hereby dismissed. 5
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It may be said that the applicant during the pendency of these proceedings was promoted to the same post but, as he had a right in Law, he pursued this recourse to the end.

With some hesitation I make no order as to costs.

Recourse dismissed. 15
No order as to costs.