

1987 May 5

{PIKIS J}

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS TILLIRIDES,

Applicant,

v

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondent

(Case No 483/86)

Reasoning of an administrative act — Promotion of officers of Public Corporations — Absence of reference to the candidates or the results of comparison — Gap with regard to the process of comparison difficult to bridge by reference to the material in the file

Public Corporations — Promotions — Cyprus Telecommunications Authority — Service reports — The Personnel Regulations of Cyprus Telecommunications Authority General Regulations 1982, Reg 23(4) — Service reports for years 1982-1985 not prepared in accordance with said regulation — Ought to have been disregarded — Service reports for years 1970-1982 prepared outside the framework of the law then in force, notably section 3 of the Public Corporations (Regulation of Personnel Matters) Law 61/70 — Ought to have been disregarded 5 10

Public Corporations — Promotions — Cyprus Telecommunications Authority — The Personnel Regulations of Cyprus Telecommunications Authority 1982 — Regulations 10(7)(8)(9)(10) and (13) — Failure to compile yearly promotion tables — In the absence of evidence to the contrary, the omission is consequential 15

By means of this recourse the applicant challenges the promotion of the interested parties to the post of Section Leader. It must be noted that the respondents made no specific reference to the candidates or the results of the comparison that led them to the sub-judice selection. 20

Held, *annulling the sub-judice decision* (1) At its highest the reasoning of the sub-judice decision is sketchy. Though it may, to an extent, be supplemented by the material in the files, the gap is difficult to bridge with regard to the absence of any record of the process of comparison. Such details, as are given, leave question marks about the criteria followed. For 25

example a statement in respect of interested party Serghiou indicates attachment of undue importance to the factor of seniority, whereas as regards interested party Kynacou seniority is not even mentioned

5 (2) The service reports for the years 1982-1985 were not prepared in accordance with Reg 23(4) of the aforesaid Regulations. Adopting the reasoning in *Alvanis v CYTA* (1985) 3 C L R 2695, this Court finds that the said reports ought to have been disregarded. The service reports of the previous years 1970-1982 ought also to have been disregarded as they were prepared outside the law then in force, notably section 3 of Law 61/70

10 Inevitably the sub judice decision, which to a large measure rested on inadmissible facts, i.e. the said reports, must be annulled. Reliance on the said reports made the decision vulnerable for misconception of facts and consideration of material extraneous to the discretionary powers of the respondents

15 (3) In the absence of evidence that the failure to heed the relevant provisions (paragraphs (7)(8)(9)(10) and (13) of Reg 10, relating to the compilation of yearly promotion tables, had no noticeable effects on the sub judice decision, the omission to compile such tables must be treated as consequential and the decision is liable to be set aside on this additional ground as well (*Hjilosif v CYTA* (1986) 3 C L R 1353 explained and distinguished)

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Sub judice decision annulled
No order as to costs

Cases referred to

25 *Alvanis v CYTA* (1985) 3 C L R 2695,
Hjilosif v CYTA (1986) 3 C L R 1353,
Frangos and Others v The Republic (1982) 3 C L R 53,
Arsalides and Another v CYTA (1983) 3 C L R 510,
Ploussiou v Central Bank (1983) 3 C L R 398,
30 *Sofocleous v E A C* (1985) 3 C L R 1089,
Savva v C E A (1986) 3 C L R 80

Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Section Leader in preference and
35 instead of the applicant

A. S Angelides, for the applicant

A. HjiIoannou, for the respondent.

Cur. adv. vult.

PIKIS J. read the following judgment. Georghios Tillirides, the applicant, challenges the promotion of two of his colleagues formerly fellow Sub-Section Leaders, to the post of Section Leader. The decision to promote the interested parties was taken by the Personnel Committee at its meeting of 28th May, 1986 and approved by the General Manager on 31st May, 1986; the two authorities of the Corporation entrusted with the promotion of personnel at that level of the hierarchy. In the decision of the Personnel Committee it is minuted that in making their selection they took into consideration the service record of the candidates as reflected in their files, their qualifications and generally their contribution to the service. No specific reference is made to the candidates or the results of the comparison that led them to select the interested parties. At its highest the reasoning of the decision is sketchy. Of course it may, to an extent, be supplemented by reference to administrative records, but the gap is more difficult to bridge with regard to the absence of any record of the process of comparison. Such details, as are given in the decision for the choice of the interested parties, leave question marks about the criteria relied upon for their choice. For example, in the case of interested party Costas Serghiou, emphasis is laid on the fact that he was the most senior of the candidates eligible for promotion, a statement apt to give the impression that they attached undue importance to that consideration; whereas in the case of the second interested party, Christos Kyriacou, no specific mention is made of the factor of seniority.

Applicant challenges the validity of the selection for lack, inter alia, of due regard to his striking superiority. The nature of the complaint brings immediately to the fore the absence of proper record of the claims of competing candidates to promotion. That, however, is not the only ground upon which the sub judge decision is challenged. It is contested on other equally important, if not more consequential grounds that concern the substratum and framework within which the decision was taken. These objections may be summarised and recounted as follows:-

(a) Invalidity of confidential reports considered by

respondents for lack of compliance with the provisions of Reg. 23(4)*.

(b) Failure to compile promotion tables in accordance with the provisions of Reg. 10(7), (8), (9), (10) and (13).

- 5 (c) Breach of the provisions of Reg. 24(A)(3) in the composition of the Personnel Committee, resulting in the assumption of power to make promotions by an incompetent organ.

10 In the course of the proceedings one other objection was taken referable to the validity of the scheme of service under which Christakis Kyriacou was promoted.

Evaluation reports - Reg. 23(4):

15 Counsel for the respondents acknowledged that the evaluation reports, that is the reports on the worth of the services of the candidates, were not prepared or submitted in accordance with the provisions of Reg. 23(4). As a matter of fact upto 8th November, 1985, the respondent Authority never adverted to the exercise of its rule making power and failed to define the content and related matters to which reports should conform. On at least
20 two occasions, namely, *Alvanis v. CYTA*** and *Hjilosif v. CYTA**** the Supreme Court ruled that evaluation reports prepared and submitted outside the framework of Regulation 23(4) are invalid and for that reason inadmissible material for consideration for purposes of promotion.

25 Counsel for the respondents submitted that neither decision is binding on this Court and should, on that account, not be followed. But no persuasive arguments were advanced casting doubts on the reasoning on which the decision were founded.
30 Although this Court is not strictly bound by decisions of courts of co-ordinate jurisdiction, they are, as a rule, followed unless the Court is persuaded that they are clearly wrong in law.**** Not only I am not that way persuaded but on further reflection I am reinforced in the view that they embody a correct appreciation of the law, in no way fraught with error or disregard of binding
35 precedent. Therefore, I am content to adopt the reasoning in

* Personnel Regulations of Cyprus Telecommunications Authority General Regulations, 1982 -Official Gazette, Part III(1), No 220

** (1985) 3 C.L.R. 2695.

*** (1986) 3 C.L.R. 1353

**** (1982) 3 C.L.R. 53, Frangos & Others v. Republic

Alvanis and for similar reasons I find that the reports submitted on the candidates for the years 1982-1985, the crucial period immediately preceding the selection, ought to have been disregarded.

Previous reports, those submitted between the years 1970-1982 should also have been ignored, as they had likewise been prepared outside the framework of the law then in force notably section 3 of the Public Corporations (Regulation on Personnel Matters) Law, 1970. No Regulations were in force at the time of the enactment of the above law, as none had been promulgated under the Inland Telecommunications Service Law, Cap. 302, as the Court held in *Arsalides and Another v. CYTA*. * Earlier, in the case of *Ploussiou v. Central Bank*** the Court decided no rule or regulation and generally no act having legislative attributes acquires the force of law without prior publication in the official Gazette. This principle was applied in *Sofocleous v. E.A.C.**** resulting in a decision to invalidate pertinent regulations of the Electricity Authority for lack of publication. Recently the case law on the subject was reviewed by Savvides, J. in *Savva v. C.E.A.***** Inevitably the sub judice decision must be annulled because it rested, in large measure, on inadmissible facts, viz. the evaluation reports on the candidates eligible to promotion. Reliance on those reports made the decision vulnerable for misconception of relevant facts and consideration of material extraneous to the discretionary powers of the respondents.

Promotion Tables — Regulation 10(7), (8), (9), (10) and (13).

The Regulations envisage the compilation of yearly promotion tables eliciting the claims of personnel to promotion. The importance of those tables and the priorities established thereby are evident from the right given to those affected to object to their content and the procedure of hierarchical review designed to heed those objections. No promotion tables were prepared in this case relevant to the expectation of eligible candidates to promotion, a fact that rendered the promotions effected in absence of them, abortive. In *Hji.losif* (supra), Stylianides, J. ruled that omission to compile the tables envisaged by the rules, was not of itself fatal to

*(1983) 3 C.L.R., 510.

** (1983) 3 C.L.R., 398.

*** (1985) 3 C.L.R., 1089

**** (1986) 3 C.L.R., 80.

the validity of the promotions reviewed in that case As I comprehend the judgment of the Court it is fastened to the effects of the absence of tables in that particular case It was not decided that failure to heed the provisions of the relevant Regulations, that
 5 is, Regulation 10(7), (8), (9), (10) and (13) would, in every case, be inconsequential

To my comprehension, the relevant provisions of Regulation 10 aim to establish an essential prerequisite for the valid exercise of the power to promote, intended to forewarn personnel of their
 10 chances of promotion and safeguard their right to object in time with a view to eliminating errors or abuse of power in the compilation of the tables In the absence of evidence that failure to heed the relevant provisions of Regulation 10 had no noticeable effects on the sub judge decision, the omission must be treated as
 15 consequential and the decision is liable to be set aside on that additional ground as well Failure of the Personnel Committee to detail the effect of comparison of the rival merits of the candidates, makes the failure to observe the relevant provisions of Regulation
 20 10 more prominent still rendering the decision vulnerable to annulment

In the light of the grounds indicated above exposing the decision to invalidity, it is unnecessary to probe the remaining complaints, especially those pertaining to the merits of the candidates The need for certainty, however, compels me to draw
 25 attention to the absence of publication of the scheme of service under which interested party Christos Kynacou was promoted, an omission that prima facie seems to render it invalid in accordance with the decisions in *Ploussiou* and *Savva* (supra) On the other hand, I make little of the complaint that the Personnel Committee
 30 was ill-composed on account of the rank of its members

In the result the sub judge decision is annulled No order as to costs

*Sub judge decision
 annulled No order
 as to costs*