

1988 May 21

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. CHARALAMBOS STYLIANOU,

2. ANDREAS ARISTODEMOU,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Consolidated Cases Nos. 365/87 and 519/87).

*Public Officers—Promotions—Head of Département—Recommendations—
Constitute an additional source of information regarding merit and suitability
of candidates.*

5 *Public officers—Promotions—Qualifications—Commission the arbiters of fact
finding process of their elicitation—If an inquiry is adequate, their findings
will not be faulted unless they were not reasonably open to them—
Addressing specific questionnaire to the Departmental Committee—Having
received the answers, it was, in the circumstances reasonably open to them
to conclude that all candidates possessed the required qualifications.*

10 *The facts of this case appear sufficiently in the judgment of the Court.*

Recourses dismissed.

Cases referred to:

Thalassinos v. The Republic (1973) 3 C.L.R. 386;

Christoudias v. The Republic (1984) 3 C.L.R. 657;

Demetriades v. The Republic (1986) 3 C.L.R. 2473;

Georgiou and Others v. The Republic (1988) 3 C.L.R. 678.

Recourses.

Recourses against the decision of the respondents to promote the interested parties to the post of Airport Inspector in preference and instead of the applicants.

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E. Efstathiou, for applicant in Case No. 365/87.

Ph. Valiantis, for applicant in Case No. 519/87.

P. Hadjidemetriou, for the respondents.

Cur. adv. vult.

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PIKIS J. read the following judgment. The applicants and the two interested parties were candidates for promotion to the post of Airport Inspector (promotion post). They were, among five candidates, recommended by the departmental committee as eligible and suitable for promotion. Before evaluating their report the Public Service Commission sought elicitation of one aspect of it concerning the inquiry of the departmental committee into the knowledge of the candidates of the English language. The scheme of service required very good knowledge of English as one of the qualifications for promotion. They replied that all recommended candidates satisfied the aforementioned requirement of the scheme of service. No specific reference had been made to that aspect of the scheme of service because, as it was explained, it appeared to them fairly obvious that each of the recommended candidates had very good knowledge of the English language. A similar qualification was postulated as a prerequisite for appointment to the position of Airport Assistant second grade. All the candidates had passed the departmental examination set in English for appointment or promotion to positions lower in the hierarchical ladder, signifying an appropriate level of knowledge of English. Their

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5 daily work, on the other hand, demanded amenity to use the English language at a fairly high level. The Public Service Commission was evidently satisfied that all recommended candidates were eligible for promotion; and they proceeded to make their selection.

10 Before evaluating the rival merits of the candidates they heard the views of Mr. Herodotou, the Head of the Department. What Mr. Herodotou imparted to the respondents was that upon consideration of the merits, qualifications and seniority of the candidates, the interested parties, namely, Vassos Georghiou and Vassos Theocharous, were best qualified to assume the duties carried by the post. Charalambos Stylianou, the applicant in Recourse No.365/87, confined his challenge to the promotion of only one of the two interested parties, namely Vassos Theocharous. Put in a nutshell, his objections were that the respondents, in choosing
15 the interested party, abused their powers by ignoring the superior merits and seniority of the applicant compared to the interested party. When required to articulate this statement, propounded in his written address by reference to the material upon which it was founded, notably the confidential reports, counsel felt constrained
20 to acknowledge that that statement was incorrect so far as the merits of the two candidates were concerned. His final appraisal of the rival merits of the parties, as defined in their respective confidential reports is, that they are more or less equal. Counsel for the Republic submitted that the revised assessment, too, is contradicted by the material upon which it is allegedly founded,
25 notably the content of the confidential reports for the parties for the five years immediately preceding the promotion.

30 Examination of the confidential reports themselves bears out counsel of the Republic and as a matter of fact the confidential reports on the interested party were more favourable than those on the applicant. This superiority was reinforced by the recommendation of the Head of the Department that constituted an additional source of information on the merits and suitability of the candidates for promotion. (See, inter alia, *Thalassinos v. The Republic* (1973) 3 C.L.R. 386; *Chistoudias v. The Republic* (1984) 3

C.L.R. 657; *Demetriades v. The Republic* (1986) 3 C.L.R. 2473).

It is acknowledged that the applicant and interested party had the same length of service in government. Nonetheless, applicant was senior because he was 25 months older than the interested party. Therefore, he was senior to the interested party in accordance with the provisions of s. 46(7) of the Public Service Law. Counsel for the Republic pointed out that seniority originating from the distant past is a factor of little significance, in accordance with the majority decision of the Supreme Court in *Georghiou and Others v. Republic*. (1988) 3 C.L.R. 678. This is not a proper case to examine the implications of the decision in *Georghiou*, supra. I content with noting that the respondents did direct themselves specifically to the order of seniority of the candidates and nonetheless chose the interested party. In the light of the material before them, it was at the least reasonably open to them to choose Vassos Georghiou. In the light of this conclusion Recourse 365/87 must be dismissed.

Andreas Aristodemou, the applicant in Recourse No. 519/87, challenges the promotion of both interested parties. One of the grounds upon which the challenge was founded was abandoned after explanation that the numbers in the margin next to the names of the candidates recommended by the departmental committee, merely served to identify them on the list of candidates.

The inadequacy of the inquiry of the respondents into the eligibility of the candidates with particular reference to their knowledge of English is yet, in the contention of counsel, another reason vitiating the sub-judice decision. It is evident from the correspondence between the Public Service Commission and the departmental committee that the respondents directed themselves specifically to the eligibility of the candidates for promotion under the scheme of service, and were eventually satisfied that all five candidates were eligible in view of the letter of the chairman of the departmental committee dated 5.2.87. Evidently, the respondents espoused the views of the departmental committee as they

were entitled to do, and, found that the candidates satisfied the relevant provision of the scheme of service.

5 The Public Service Commission are the arbiters of the fact-finding process relevant to the elicitation of the qualifications of the candidates. And so long as the inquiries made are adequate, their findings will not be faulted unless it appears that they were not reasonably open to them. It is clear that the respondents did not in any way relinquish their powers or subordinate their decision to that of the departmental committee, an advisory body. 10 Therefore, they addressed a specific questionnaire to the departmental committee, as they were entitled to do, in order to elicit the foundation of their advice on the eligibility of the candidates. Having received their explanation it was perfectly open to them to conclude, as they had done, that all five candidates were qualified 15 under the scheme of service.

The decision of the Public Service Commission is, in the submission of counsel, also indefensible on a review of its merits, liable to be set aside for disregard of the seniority of the applicant over the interested parties, extending to no less than three years. 20 As the rating of the applicant and the interested parties in their confidential reports was approximately similar and they had like qualifications, the seniority of the applicant ought to have been decisive. The submission is founded, as counsel for the respondents observed, on a misconception of the content of the confidential reports. Examination of the confidential reports reveals the 25 interested parties as more meritorious candidates. Their superiority in this regard became all the greater in view of their recommendation by the Head of the Department. As in the case of applicant Charalambos Stylianou, the respondents having adverted to every consideration relevant to the taking of the sub-judicé decision, it was, in the light of the material before them, at the least reasonably open to them to select the interested parties. 30

Recourse No. 519/87, too, must be dismissed.

35 In the result, each one of the two consolidated recourses is dismissed. The sub-judice decision is confirmed pursuant to the provisions of article 146.4(a) of the Constitution.

Recourses dismissed.