

1988 January 29

[TRIANAFYLLIDES, P., SAVVIDES, LORIS, STYLIANIDES, KOURRIS, J.J.],

CHRISTODOULOS METTAS,

Appellant,

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Revisional Jurisdiction Appeal No. 436).

Public Officers—Promotions—Scheme of Service—Application and interpretation of—Judicial control—Principles applicable.

Public Officers—Promotions—Judicial control—Principles applicable—Striking superiority.

5 *Public Officers—Promotions—Qualifications acquired after the last date appointed for submission of applications for filling of the post—Republic v. Pericleous (1984) 3 C.L.R. 577 approved.*

10 *Public Officers—Promotions—Confidential reports—Report suggesting promotion as soon as possible—Does not amount in the circumstances to a recommendation as to who of the candidates should be promoted.*

Public Officers—Promotions—Interviews, performance at—In the circumstances respondent did not attach undue weight to such performance.

15 This is an appeal from the judgment, whereby appellant's recourse, challenging the validity of the promotion of the interested party to the post of Registrar (Ear, Nose, Throat) in the Medical and Public Health Services, was dismissed.

The appellant submitted that under the relevant scheme of service, published on 8.4.83, the interested party was not qualified for promotion. The interested party contested appellant's own eligibility thereunder.

20 The interested party was senior to the appellant and, moreover his

performance at the interview was rated better than that of the appellant

In the confidential report for 1982 the reporting officer recommended appellant's promotion to the post of Registrar as soon as possible, whereas, as regards the interested party, he stated that he was carrying his duties with excellent zeal.

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Held, *dismissing the appeal*: (1) On the authority of *Republic v Pericleous* (1984) 3 C.L R 577 the qualifications acquired after the date appointed as the last day for submitting applications for the post in question could not have been taken into consideration.

(2) This Court does not interfere with the application and interpretation of a scheme of service by the Public Service Commission, if it was reasonably open to the Commission. In this case, the Court cannot agree that the "7 years' experience" should have been acquired after the obtaining of the specialization in the field of otolaryngology.

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(3) The confidential reports for 1982 could not be treated as a recommendation, as regards who of the two candidates should be promoted.

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(4) The Commission did not give undue weight to the performance of the candidates at the interviews

(5) The appellant failed to prove that he was strikingly superior to the interested party.

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Appeal dismissed
No order as to costs

Cases referred to

Republic v Pericleous (1984) 3 C.L R. 577;

Republic v Aivaliotis (1971) 3 C.L.R.89;

Frangoulides v The Public Service Commission (1985) 3 C.L.R. 1680;

Republic v Xinari (1985) 3 C.L.R. 1922;

Triantafyllides v. The Republic (1970) 3 C.L.R. 235;

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Petrides v. The Republic (1981) 3 C.L.R. 57;

Evangelou v. The Republic (1965) 3 C.L.R. 292;

Georghiou v. The Republic (1976) 3 C.L.R. 1074;

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

5 **Appeal.**

10 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 12th January, 1985 (Revisional Jurisdiction Case No. 494/83)* whereby appellant's recourse against the promotion of the interested party to the post of Registrar in the Otorinolaringological Section in the Medical and Public Health Services was dismissed.

K. Talarides, for the appellant.

A. Vladimerou, for the respondent.

A.S. Angelides, for interested party Chr. Komodikis.

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Cur. adv. vult

20 TRIANTAFYLLIDES P. read the following judgment of the Court. By means of the present appeal the appellant attacks the first instance judgment of a Judge of this Court by virtue of which there was dismissed his recourse (494/83), under Article 146 of the Constitution, against the promotion of the interested party to the post of Registrar (Ear, Nose, Throat) in the Medical and Public Health Services, with effect from 15 August 1983.

The said promotion was effected by a decision of the respond-

* Reported in (1985) 3 C.L.R. 250.

ent Public Service Commission, which was reached on 2 August 1983.

The salient facts of this case are adequately set out in the judgment of the learned trial Judge (see *Mettas v. The Republic* (1985) 3 C.L.R. 250) and will not be repeated in the present judgment except in so far as it is necessary to do so for the purposes of determining this appeal. 5

The post in question is a first entry and promotion post.

At the material time both the appellant and the interested party were Medical Officers Class I (as from 1 May 1974 and 1 January 1974, respectively) and they were serving in the ENT Section of the Nicosia General Hospital (since 1972 and 1973, respectively). 10

Counsel for the appellant has argued that the interested party was not qualified for promotion to the post in question; and, also, counsel for the interested party has argued that the appellant was not qualified for such promotion and that, therefore, he did not possess a legitimate interest, in the sense of Article 146(2) of the Constitution, entitling him to file his aforementioned recourse and to pursue the present appeal. 15 20

The relevant scheme of service was published in the Official Gazette of the Republic on 8 April 1983, when the vacancy in the post concerned was advertised and applications were invited in respect of it up to 30 April 1983. 25

It has been contended by counsel for the appellant that the Diploma in Laryngology and Otology, which was granted to the appellant on 31 July 1980 by the Royal College of Surgeons of England, did not satisfy the requirement of the said scheme of service for a diploma or title of specialization in Otolaryngology. 30

It has been contended, on the other hand, by counsel for the interested party that the appellant did not possess seven years

experience in the specialized field of Otolaryngology as required by the relevant scheme of service.

5 It is to be noted that the interested party obtained a Diploma of specialization in Otolaryngology (Ωτορινολαρυγγολογία) in Greece on 20 July 1983 and the appellant had obtained such a Diploma earlier, on 20 July 1982.

10 In view of the principles expounded in the *Republic v. Pericleous*, (1984) 3 C.L.R. 577, the Greek qualification of the interested party cannot be taken into account, for the purposes of the present case, since it was obtained after the date (30 April 1983) when he could apply for promotion to the post in question.

15 It is common ground that both the Departmental Committee in the Department of Medical and Public Health Services, which reported to the respondent Public Service Commission on the candidates for the post in question, and the Public Service Commission, subsequently, found that both the appellant and the interested party were duly qualified, under the relevant scheme of service, for promotion to the post concerned.

20 It is well settled that this Court, as an Administrative Court, in the exercise of its jurisdiction under Article 146 of the Constitution, will not interfere judicially with the interpretation and application of a scheme of service by the Public Service Commission if it was reasonably open to the Commission in the particular circumstances (see, inter alia, in this respect, *The Republic v. Aivaliotis*, (1971) 3 C.L.R. 89, *Frangoulides v. The Public Service Commission*, (1985) 3 C.L.R. 1680 and *The Republic v. Xinari*, (1985) 3 C.L.R. 1922).

30 We cannot agree with the contention of counsel for the interested party that the total experience of seven years in the specialized field of Otolaryngology, which is required under the relevant scheme of service, ought to have been acquired after the appellant had obtained his relevant specialization in Greece on 20 July 1982. Since, therefore, the appellant had experience in such

a field dating back continuously to 1972 , and such experience included at least three years service in the posts of Medical Officer Class II, (as from 1 April, 1972) and Medical Officer Class I, it was clearly open to the Public Service Commission to find that the appellant was duly qualified, in this respect, under paragraph 3 B(2) of the relevant scheme of service for promotion to the post concerned; and, consequently, he was entitled to apply for such promotion and, having not been selected for this purpose by the respondent Public Service Commission, he was entitled, under Article 146.2 of the Constitution, to file his recourse against the promotion of the interested party and to pursue, also, the present appeal.

We are, also, of the view that it was reasonably open, in the circumstances, to the respondent Commission to find that the interested party was qualified for promotion, because even though he did not possess a fellowship in Otolaryngology of the Royal College of Surgeons of England he possessed the Diploma in Laryngology and Otology of the said College, which could properly be treated as an alternative qualification under the first part of paragraph 3. A(2) of the relevant scheme of service.

Counsel for the appellant has, also, contended that the appellant ought to have been preferred to the interested party for promotion inasmuch as in the confidential report regarding the appellant for 1982 the then Senior Specialist (ENT), Dr. I. Kourris, had reported that the appellant was replacing him when absent and was carrying out surgical operations in cases referred from the District Hospitals and had recommended him for promotion to the post of Registrar as soon as possible, whereas in his report for 1982 regarding the interested party Dr. Kourris had not made any such recommendation.

It is a fact, however, that in the said report for 1982 regarding the interested party Dr. Kourris had stated that he was carrying out his duties with excellent zeal. Moreover, what Dr. Kourris had written in the reports for 1982 regarding the appellant and the interested party cannot be treated as amounting to a

5 recommendation which was made by Dr. Kourris, as regards who out of the two of them was to be promoted to the post of Registrar, after he had compared the merits of these two subordinates of his; and it is to be noted that Dr. Kourris in previous confidential reports had stated, about both the appellant and the interested party, that they were carrying out their duties without any problem when he was absent.

10 The Director of Medical and Public Health Services, Dr. A. Markides, who was present, as Head of the Department concerned, when the appellant and the interested party were interviewed as candidates by the respondent Public Service Commission rated the performance of the appellant when interviewed as "very good" and of the interested party as "very very good" and, after he had left the meeting of the Commission on 2 August 1983, the Commission proceeded to evaluate the performance of the candidates when interviewed by it and found 15 that the appellant was "nearly very good" and the interested party "very good". The Commission then, at its same meeting on 2 August 1983, proceeded to record in its minutes that the interested party was senior to the appellant, was found both by the Head of the Department concerned and by the Commission to be better 20 than the appellant when interviewed and that, having taken into account the qualifications as well of both of those two candidates, the Commission found that the interested party was on the whole superior to the appellant on the totality of the prescribed criteria and proceeded to promote the interested party. 25

30 Counsel for the appellant has argued that the Commission has attributed undue weight to the performance of the two candidates in question when interviewed and he referred, in this respect, to *Triantafyllides v. The Republic*, (1970) 3 C.L.R. 235, 246 and *Petrides v. The Republic* (1981) 3 C.L.R. 57, 66, 67.

35 We cannot agree that the respondent Public Service Commission has attributed undue weight to the evaluation of the performance of the candidates in question when they were interviewed by it and we think that it took into account such

evaluation properly as part of the overall assessment of the candidates; and that in reaching its decision about its own evaluation of the performance of the candidates when interviewed it was open to the Commission to take into account the evaluation made, in this respect, by the Head of Department, as an element assisting its own evaluation.

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In the light of all the material before us we do not think that the appellant has succeeded in these proceedings to discharge the onus, that was cast on him, of satisfying us that he was strikingly superior to the interested party and, therefore, in the proper exercise of its relevant discretionary powers the Commission ought to have preferred him to the interested party for promotion (see, inter alia, in this respect, *Evangelou v. The Republic*, (1965) 3 C.L.R. 292, *Georghiou v. The Republic*, (1976) 3 C.L.R. 1074 and *Hjiloannou v. The Republic*, (1983) 3 C.L.R. 1041); and, in our opinion, it was reasonably open, in all the circumstances of this case, to the respondent Public Service Commission to select for promotion the interested party instead of the appellant on the basis of the reasoning set out in its relevant minutes and to be derived, also, from relevant administrative records.

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In the light of all the foregoing we are of the view that this appeal cannot succeed and has to be dismissed; but with no order as to its costs.

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Appeal dismissed.
No order as to costs.