

1988 October 3

[HADJITSANGARIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRAKIS STAVRIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 404/83).

Public Officers—Promotions—Confidential reports—Bias—It must be established with sufficient certainty either by facts emerging from the administrative records or by safe inferences to be drawn from the existence of such facts.

Public Officers—Promotions—Seniority—Significance of—The least consequential factor—It prevails only if other factors are more or less equal.

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Public Officers—Promotions—Head of Department—Recommendations of—They go to merit and cannot be lightly disregarded.

Public Officers—Promotions—Judicial Control—Principles applicable.

Natural Justice—Bias—How established.

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Reasoning of an administrative act—May be found either in the decision itself or in the official records related thereto.

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

Recourse dismissed.

No order as to costs.

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Cases referred to:

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

Soteriadou v. The Republic (1985) 3 C.L.R. 300;

Thalassinou v. The Republic (1988) 3 C.L.R. 1683;

5 *Karagiorgis v. C.B.C.* (1985) 3 C.L.R. 378;

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

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

Recourse.

10 Recourse against the decision of the respondent to promote the interested parties to the post of Senior Clerical Officer in the General Clerical Staff in preference and instead of the applicant.

M. Christofides, for the applicant.

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

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Cur. adv. vult.

HADJITSANGARIS J. read the following judgment. The applicant by means of this recourse challenges the decision of the respondent Public Service Commission dated 17th June 1983, whereby the interested parties, namely 1. Andreas Athanasiou, 2. 20 Anninos Pavlides, 3. Nicos Kailides, 4. Andreas Antoniou, 5. Kyriacos Pavlides, 6. Michael Paphitis, 7. Leonidas Kyriacou, 8. Antonios Nicolaou, 9. Emilios Lazarou and 10. Josef Nacousi were promoted to the post of Senior Clerical Officer in the General Clerical Staff in preference of and instead of the applicant. The 25 complaints of the applicant can be classified as follows:

- (a) That the interested parties were inferior to the applicant, who had striking superiority over them as regards merit, qualifications and seniority.
- (b) That the decision of the respondent is not duly and/or legally reasoned.

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In this written address learned counsel for the applicant complains against the validity of the confidential reports which were prepared for the applicant during the years 1981 and 1982. As regards the confidential report of the applicant for the year 1981 it is his allegation that the reporting officer failed to consult his predecessor in respect of the preceding period of 9 months during which he had no knowledge about applicant's service. The applicant was rated generally as "very good" in his confidential report for the year 1981, by the reporting officer for that year, a certain Mavromoustakis. The aforesaid reporting officer says clearly (vide red 137 in the personal file of the applicant) that the confidential report of the applicant for 1981 was prepared by him after exchange of views on the matter with the then acting Director—General of the Ministry of Defence Mr. Kontozis who knew the applicant very well and who countersigned the aforesaid confidential report of the applicant.

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Complaints are also advanced by the applicant about his confidential report in respect of the year 1982, during which he was rated as "Good". The applicant has also filed an affidavit dated 18.2.1986 imputing lack of impartiality and bias against him on the part of the reporting and countersigning officer, who was the same person.

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I have carefully considered the allegations of the applicant as regards lack of impartiality in his confidential reports for 1981 and 1982. Lack of impartiality must be established with sufficient certainty either by facts emerging from the relevant administrative records or by safe inferences to be drawn from the existence of such facts. (*Christou v. The Republic* (1980) 3 C.L.R. 437 at p. 449; *Soteriadou v. The Republic* (1985) 3 C.L.R. 300 and the recent case of *Thalassinou v. The Republic* (1988) 3 C.L.R. 1683).

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In the instant case, on the material before me, I find that the applicant has failed to establish bias or lack of impartiality. In the result this ground fails.

5 I shall now proceed to examine the other complaints that is (a) the alleged superiority of the applicant over the interested parties as regards merit, qualifications and seniority and (b) lack of due reasoning of the sub-judice decision.

10 The picture of the applicant and the interested parties as regards merit transpires from their confidential reports. Thus although the applicant appears to be better than most of the interested parties in 1980 (with the exception of interested parties 8 and 10), all interested parties appear to be better than the applicant in 1981 and 1982. The interested parties have, moreover, the recommendations of the Head of the Department which goes to
15 merit and counts in favour of those recommended and cannot be lightly disregarded. (*Karagiorgis v. C.B.C.* (1985) 3 C.L.R. 378 at p. 388). As a result the applicant is inferior in merit to the interested parties.

20 As regards qualifications, the qualifications of the applicant and the interested parties are more or less the same. Knowledge by the applicant of the French language which is not envisaged by the scheme of service, does not put the applicant in an advantageous position vis-a-vis the interested parties.

25 Coming now to the factor of seniority, the applicant is senior to all interested parties, his seniority ranging from one year eight months to four years and one month. Seniority however is the least consequential factor and should prevail only when all other criteria are more or less equal (*Partelides v. The Republic* (1969) 3 C.L.R. 480) which is not the case here, since the interested parties are better in merit than the applicant.
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It is a cardinal principle of Administrative Law that an administrative court will not interfere in order to set aside a decision regarding a selection or promotion unless it is satisfied by an appli-

cant in a recourse that he was strikingly superior to those promoted. Although the applicant is senior to the interested parties seniority of itself cannot establish striking superiority in the present case. In the circumstance I find that the applicant has failed to show any reason why this Court should interfere with the discretion of the respondent which was reasonably exercised in the present case. 5

As regards the last complaint, notably reasoning, it is well settled that "reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto" (*Hadjisavva v. The Republic* (1972) 3 C.L.R. 174 at p.205). In the instant case I hold the view that the decision itself provides the necessary reasoning for the administrative decision and at the same time the material in the administrative files support the reasoning afforded by the respondent Commission enabling unhindered judicial scrutiny. 10 15

In view of all the above I am of the opinion that the sub-judice decision was reasonably open to the respondent Commission on the material before it and the recourse must therefore fail.

For all the above reasons the present recourse fails and is accordingly dismissed with no order as to costs. 20

*Recourse dismissed.
No order as to costs.*