

1988 February 3

[LORIS, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS PAPPAS AND ANOTHER,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases No 953/85 and 964/85)

Public Officers—Promotions—Confidential reports—Circular 491/79 concerning their preparation, Reg 4 (a)—Reporting officer must have direct knowledge of the assessed officer—In the light of all the circumstances of this case, any irregularity in the preparation of the confidential report of 1984 for the interested party is not of a material nature and, therefore, does not affect the validity of the sub judice promotion

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Executory act—Intermediate act—Their invalidity leads to annulment of the final act

Public Officers—Promotions—Qualifications—Additional qualifications not envisaged as an advantage in the scheme of service—Weight

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Public Officers—Promotions—Striking superiority—Applicant had slightly better confidential reports and more qualifications, which, however, were not envisaged as an advantage, whereas interested party was recommended by Head of Department—Applicant failed to establish striking superiority

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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.

Recourses dismissed

No order as to costs

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Cases referred to:

Georghiades v. The Republic (1982) 3 C.L.R. 16;

Agrotis v. The Electricity Authority of Cyprus (1981) 3 C.L.R. 503;

The Republic v. Argyrides (1987) 3 C.L.R. 1092;

5 *Cleanthous v. The Republic* (1978) 3 C.L.R. 320;

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

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

Recourses.

10 Recourses against the decision of the respondent to promote the interested party to the post of Meteorological Assistant 1st Grade in preference and instead of the applicant.

I. Typographos, for applicant in Case No. 953/85.

A.S. Angelides, for applicant in Case No. 964/85.

15 *A. Papasavvas*, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

20 LORIS J. read the following judgment. By means of the above intituled recourses, which were heard together as presenting common legal and factual issues, the applicants challenge the decision of the respondent P.S.C., dated 13.9.1985, whereby the interested party namely Marios Agathangelou, was promoted to the post of Meteorological Assistant 1st Grade, in the Department of Agriculture and Natural Resources, in preference to and instead of the applicants.

25 Before proceeding to examine any other issue, I have decided

to consider first the complaint to the effect that the confidential report of the interested party for the year 1984 was prepared contrary to the provisions of regulation 4 (a) of the relevant regulations concerning the preparation and submission of Confidential Reports in respect of public officers contained in Circular 491/79. 5

It is well settled that in matters of promotion confidential reports are intermediate acts and their invalidity leads to the invalidity of the final act of which they form a prerequisite (vide *Georgiades v. The Republic*, (1982) 3 C.L.R. 16, 28 and *Protopoulos v. The Electricity Authority of Cyprus*, (1981) 3 C.L.R. 103, 413). 10

Regulation 4(a) provides as follows:

"(a) Ο Αξιολογών Λειτουργός δέον απαραίτητως να είναι λειτουργός όστις, λόγω των καθηκόντων αυτού, έχει απ' ευθείας γνώσιν της εργασίας του αξιολογουμένου υπαλλήλου και δύναται ως εκ τούτου να εκφράση υπεύθυνον και έγκυρον γνώμην επί της εργασίας και των ικανοτήτων του υπαλλήλου, κανονικώς δε ο Αξιολογών Λειτουργός δέον να είναι ο εποπτεύων τον υπάλληλον λειτουργός". 15 20

(English Translation)

"(a) The Reporting Officer must necessarily be an Officer who on account of his duties has direct knowledge of the work of the assessed Officer and may on account thereof, express responsible and valid opinion on the work and abilities of the Officer and normally the Reporting Officer must be the one supervising the officer". 25

It is the allegation of counsel for the applicants that as the interested party was working at Paphos during 1984 and the reporting officer Mr. L. Stephanou was working in Larnaca, the reporting officer did not have a direct supervision of his work and 30

could not express a responsible and valid opinion on the work of the interested party for 1984.

5 In deciding this issue I bear always in mind the stand of the Supreme Court as expounded in the case of *The Republic v. Argrides* (1987) 3 C.L.R. 1092 and in all subsequent case-law of this Court, as well as the particular circumstances of the present case.

10 From a perusal of the confidential report concerned, it appears that in order to prepare such a report the reporting officer had taken into account the views of the reporting officer E. Eliadou, as well as those of Metereological Officers C. Charalambides, A. Larkos and S. Michaelides, who were responsible for shifts. Also, from the confidential reports' file, it is apparent that the reporting officer for the year 1984, namely, L. Stephanou, was
15 the reporting Officer for the interested party for the previous three years and for 1979, and, therefore, he is presumed to have known him very well; furthermore in all those reports the Head of Department, Cl. Filaniotis, had acted as the countersigning officer and he had never disagreed with the rating of the reporting
20 officer.

Having all the above in mind, I have reached the conclusion that any irregularity in the preparation of the 1984 report only, is not, in view of all the circumstances of this case, of a material nature so as to affect the validity of the sub-judice decision.

25 Coming now to the merits of the case I will consider first the submission of counsel for the applicants, that they should have been promoted, instead of the interested party, because they were strikingly superior to him.

30 Particulars of the qualifications and service of the candidates are to be found in a list attached to the relevant oppositions and I do not intend repeating them.

It is obvious from such list that the interested party was senior

to the applicants by eight months in the immediately lower post of Meteorological Assistant 2nd Grade. As regards qualifications all the candidates possessed the qualifications required by the relevant scheme of service and applicant Parpas and the interested party were more or less equally qualified. What has to be mentioned is that, applicant in Case No. 964/85 (Stavrou) was at the time, a 4th year student in Law of Salonica University and had attended a correspondence course in Advanced Level Physics, Hall Oxford U.K. Since such qualifications of this applicant were not envisaged by the scheme of service they cannot be treated as an additional qualification, but they have to be weighed together with all other criteria and cannot constitute a decisive factor in favour of the applicant nor can they indicate by themselves striking superiority of the said applicant over the other candidates. (Vide, *Cleanthous v. The Republic*, (1978) 3 C.L.R. 320 and *Hjloannou v. The Republic* (1983) 3 C.L.R. 1041).

From a perusal of the files of the confidential reports, it appears that, having in mind the reports for the last three years, the interested party and applicant Stavrou, were more or less equal with no marked differences and that the interested party had a better confidential report to that of applicant Parpas for the year 1984.

From the relevant minutes of the respondent Commission it appears that the whole career, as it emerges from the files of the confidential reports of the candidates, was taken into consideration by it and reference was made indicatively to the reports of the last three years. I find that there is nothing wrong with the way in which the Commission had acted in this respect, in view of the fact that all relevant material contained in the personal files and the confidential reports of the candidates were taken into consideration and weighed together.

In view of all the foregoing and the fact that the interested party was recommended for promotion by the Head of Department, notwithstanding the slight superiority of applicant Stavrou as regards merit emerging from the relevant confidential

5 reports and qualifications, I am not convinced by the applicants, on whom the burden was cast, that they were strikingly superior to the interested party. It is well settled that mere superiority on their part could not justify the intervention of the Court in their favour and that the interested party did not have to show that he was strikingly superior to the other candidates.

10 Counsel for applicant Parpas complained that after the respondent Commission had found that he was qualified under the scheme of service and decided to treat him, as an eligible candidate as well, contrary to the conclusion of the Departmental Committee in this respect, it failed to carry out a due inquiry as to the real merit of the applicant and acted, in this connection, under a misconception.

15 I cannot accept this contention because all relevant material contained in the personal and confidential reports files of this applicant was before the Commission at the material time and it is to be presumed that they were duly taken into consideration.

20 Now as regards reasoning, it is well settled that the reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto (*Haji Savva v. The Republic*, (1972 3 C.L.R. 174, 205). In the present case I am of the view that the reasoning appears adequately in the decision itself and can also, find support from the material contained in the relevant administrative files.

25 In the result present recourses fail and they are both dismissed; let there be no order as to costs.

*Recourses dismissed.
No order as to costs.*