

1988 February 12

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

EPIKTITOS PAPACONSTANTINOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 834/85).

*Public Officers—Promotions—Merit—Recommendations of Head of Department—An element concerning merit.*

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

*Public Officers—Promotions—Head of Department—Recommendations of—* 5  
*Complaint of influencing Commission in an unwarranted manner.*

*Public Officers—Promotions—Striking superiority—A sine qua non element for interfering with decision.*

*Public Officers—Promotions—Merit—Better rating in one rateable item—* 10  
*Does not of itself establish striking superiority.*

The applicant challenges the decision of the respondent Public Service Commission to promote, instead of him, to the post of Land Officer 1st Grade, (Cartography/Photolithography), in the Department of Lands and Surveys, the interested party.

Counsel for the applicant argued that the applicant was superior to the interested party in merit and qualifications and that the "technical" seniority of one year of the interested party over the applicant should not tilt the scales in his favour. 15

5 He further argued that the Director of the Department by stressing that the interested party had attended a two years ' course in Photolithography in England and by not referring, also, to the fact that the applicant had attended a course in Chartography and that he possessed a Law Degree, had influenced the Commission in an unwarranted manner.

10 Held, *dismissing the recourse*: (1) The Director of the Department had rightly referred to the aforesaid qualification of the interested party as a reason for recommending him, because his certificate of attendance to such course was clearly related with his suitability for promotion to the post of Land Officer 1st Grade (Chartography/Photolithography).

(2) The Commission was well aware of the qualifications of the applicant, and, therefore, it cannot be accepted that it was influenced in an unwarranted manner in this respect.

15 (3) The applicant is better rated in one rateable item, for each particular year; this cannot establish striking superiority.

(4) The applicant has more qualifications than the interested party, but such qualifications are not envisaged by the relevant scheme of service as an additional advantage and it is well settled that such qualifications do not indicate by themselves a striking superiority.

20 (5) The seniority was not the decisive factor, but was weighed together with the merit, qualifications and the recommendations of the Head of the Department, the latter being a most weighty consideration affecting merit.

(6) The applicant failed to establish "striking superiority" over the interested party.

25 *Recourse dismissed.*  
*No order as to costs.*

*Cases referred to:*

*HjiSavva v. Republic* (1982) 3 C.L.R. 76;

*HadjiGeorghiou v. Republic* (1977) 3 C.L.R. 35;

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

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

**Recourse:**

Recourse against the decision of the respondent to promote the interested party to the post of Land Officer 1st Grade (Chartography/Photolithography) in the Department of Lands and Surveys in preference and instead of the applicant. 5

*A. Pandelides*, for the applicant.

*R. Gavrielides*, Senior Counsel of the Republic, for the interested party.

*X. Xenopoulos*, for the interested party.

*Cur. adv. vult.* 10

LORIS J. read the following judgment. By means of the present recourse the applicant challenges the decision of the respondent Public Service Commission to promote, instead of him, to the post of Land Officer 1st Grade, (Chartography/Photolithography), in the Department of Lands and Surveys, the interested party L. Telemachou. 15

As the post concerned is a promotion post, a Departmental Committee was constituted, under section 36 of the Public Service Law, 1967 (Law 33/67), which met on 17 May, 1985 and recommended for promotion, in alphabetical order four candidates, including the applicant and the interested party. 20

The relevant meeting of the respondent Commission was held on 21 June 1985, in the presence of the Director of the Department of Lands and Surveys Mr. A. Loizides, who recommended for the promotion the interested party. 25

The Commission having considered all relevant material placed before it, on the basis of the established criteria as a whole, notably merit, qualifications and seniority and having taken into account the recommendations of the Head of the Department

decided that the interested party was the most suitable candidate and promoted him as from 1 July 1985.

5 In challenging the said promotion counsel for the applicant submitted that the Commission failed in its paramount duty to select the best candidate, in that the applicant was superior to the interested party in merit and qualifications and that the "technical" seniority of one year of the interested party over the applicant should not tilt the scales in his favour.

10 He further argued that the Director of the Department by stressing that the interested party had attended a two years' course in Photolithography in England and by not referring, also, to the fact that the applicant had attended a course in Chartography and he possessed a Law Degree, had influenced the Commission in an unwarranted manner and that his said recommendations are  
15 inconsistent with the overall picture presented by the qualifications and merit and should, therefore, be disregarded.

Dealing with this last submission of counsel I hold the view that the Director of the Department had rightly referred to the aforesaid qualification of the interested party as a reason for  
20 recommending him, because his certificate of attendance to such course was clearly related with his suitability for promotion to the post of Land Officer 1st Grade (Chartography/Photolithography).

As the Commission was well aware of the qualifications of the applicant, appearing in his personal file, and specific reference  
25 was made, also by the applicant to his said qualifications in a letter addressed to the Commission by him on 30 May, 1985, I cannot accept the contention of counsel that the Commission was influenced in an unwarranted manner in this respect, nor that such recommendations are inconsistent with the particulars in the  
30 relevant files. I find, therefore that the recommendations of the Director were rightly taken into account and acted upon by the respondent Commission.

Regarding now the submission of counsel for the applicant

that he was superior in merit and qualifications to the interested party and should be preferred instead of him, I must stress that the applicant in order to succeed he has to establish, in this respect, that he was strikingly superior; mere superiority is not sufficient in order to annul the sub judice decision.

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As to the notion of striking superiority I will refer to the analysis made by Pikiis J. in *HadjiSavva v. The Republic*, (1982) 3 C.L.R. 76, where (at p. 78) he stated:

"As the expression 'striking superiority' suggests, a party's superiority, to validate an allegation of this kind, must be self-evident and apparent from a perusal of the files of the candidates. Superiority must be of such a nature as to emerge on any view of the combined effect of the merits, qualifications and seniority of the parties competing for promotion; in other words it must emerge as an unquestionable fact; so telling, as to strike one at first sight."

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From a perusal of the confidential reports files of the applicant and the interested party it emerges that both of them are equally rated "excellent" for the years 1980, 1982, and 1983. For the years 1979, 1981 and 1984 they are, also, rated as "excellent" but the applicant is better rated in one rateable item, for each particular year; this in my view, cannot establish striking superiority of the applicant over the interested party.

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From a comparative table (enclosure 9) containing particulars of the qualifications and service of the candidates, it is evident that the applicant has more qualifications than the interested party, but such qualifications are not envisaged by the relevant scheme of service as an additional advantage and it is well settled that such qualifications do not indicate by themselves a striking superiority (see, inter alia, *HadjiGeorghiou v. The Republic* (1977) 3 CLR 35 and *Cleanthous v. The Republic*, (1978) 3 C.L.R. 320) but must be weighed together with all other relevant considerations (vide *HjiIoannou v. The Republic*, (1983) 3 C.L.R. 1041, 1046).

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5 Both the applicant and the interested party were appointed to the immediately lower post of Land Officer 2nd Grade on 15.1.82. By means of the revision of salaries effected in 1970 the interested party, who was holding the post of Senior  
10 Photolithographer, was emplaced, by means of Law 32/70, to which the applicant was posted, as Senior Draughtsman, on 1.1.71. Thus a seniority of one year of the interested party over the applicant was created. But such seniority was not, as it appears from the sub-judice decision (see reds 47-49 in the personal file of the interested party) the decisive factor, but was  
15 weighed together with the merit, qualifications and the recommendations of the Head of the Department, the latter being a most weighty consideration affecting merit.

15 Taking into consideration the above, it is clear that the applicant failed to establish "striking superiority" over the interested party, a sine qua non element for interfering with the sub-judice decision, which in the circumstances was reasonably open to the respondent Commission and cannot otherwise be faulted.

20 In the result the present recourse fails and it is accordingly dismissed. In the circumstances I shall make no order as to costs.

*Recourse dismissed.  
No order as to costs.*