

1988 January 20

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SOTERIS RODOTHEOU,

Applicant,

v.

THE PORTS AUTHORITY OF CYPRUS,

Respondent.

(Case No. 149/84).

5 *Public Corporations—Ports Authority of Cyprus—Setting up of a Committee, which would submit proposals in respect of the persons to be promoted—In reaching sub judice decision the Board did not abdicate its task, but, on the contrary, conducted an inquiry of its own, taking into consideration the proposals of the Committee and all other material before it—Sub judice decision reached by a competent organ after due inquiry.*

10 *Public Corporations—Ports Authority of Cyprus—Promotions—Scheme of service—Complaint that interested party had not completed 6 years' aggregate service in posts of Ports Officer 3rd, 2nd and 1st Grade, as required by the scheme in question—Factual basis of complaint not substantiated.*

Reasoning of an administrative act—It may be found either in the decision itself or in the relevant official records.

The facts of this case are sufficiently indicated in the hereinabove head-note.

15

*Recourse dismissed.
No order as to costs.*

*Cases referred to:**HadjiIoannou v. Republic* (1983) 3 C.L.R. 1041;*HadjiSavva v. Republic* (1972) 3 C.L.R. 174.**Recourse.**

Recourse against the decision of the respondents to promote the interested parties to the post of Senior Ports Officer in preference and instead of the applicant. 5

Chr. Vakis, for the applicant.*N. Papaefstathiou for T. Papadopoulos*, for the respondent.*L. Papaphilippou*, for interested party No. 3. 10*Cur. adv. vult.*

LORIS J. read the following judgment. The applicant in the present recourse was initially impugning the promotion of the four interested parties to the post of Senior Ports Officer with the respondent Authority as from 1.10.83, in preference to, and instead of the applicant. 15

After the filing of the written addresses on behalf of all the interested parties, the applicant withdrew his recourse - on 18.1.1986 - against interested parties 1, 2 and 4 and proceeded only against Interested Party No. 3 namely Andreas Patallos. 20

The complaints of the applicant as eliminated by his written address are the following:

1. Interested party No. 3 did not qualify for promotion as, allegedly, he was promoted to the post of Ports Officer 3rd grade as late as the 1.4.1979 and thus he had not six years aggregate service in the posts of Ports Officer 1st, 2nd and 3rd grade as en- 25

visaged by the Scheme of Service (vide Note 2(b)(ii) of the Scheme of Service set out in Appendix 'B' attached to the opposition).

2. The applicant is allegedly strikingly superior to Interested
5 party No. 3.

3. The sub-judice decision of the respondent Authority was reached at without due inquiry and lacks due reasoning.

As regards complaint under No. 1 above, it must be noted that the scheme of Service set out in Appendix 'B' attached to the
10 opposition requires, for promotion to the post of Senior Ports Officer (which is a promotion post), inter alia, six years aggregate service in the posts of Ports Officer 1st, 2nd and 3rd grade. (Vide: Note 2(b)(ii) of the Scheme of Service).

The issue raised in this connection revolves on the date of ap-
15 pointment of interested party No. 3 to the post of Ports Officer 3rd grade; if he was promoted to the post of Ports Officer 3rd grade on 1.4.79, as alleged by the applicant, (having been promoted to the posts of: Ports Officer 2nd grade in 1979 and Ports
20 Officer 1st grade on 1.1.83) then definitely the aggregate service of interested party No. 3 in the aforesaid three posts is less than the 6 years required by the Scheme of Service, as aforesaid.

Having carefully gone through the material before me, I hold the view that interested party No. 3 was holding the post of Ports
25 Officer 3rd grade as from 1.10.1977; this is clear from an earlier decision of the respondent Authority set out in blue 36 of the Personal File of interested part No. 3, which is before me. It is thus clear that the interested party served: in the post of Ports Officer
30 3rd grade from 1.10.1977, in the post of Ports Officer 2nd Grade from 1.4.1979 and in the post of Ports Officer 1st grade from 1.1.83; he had therefore covered the aggregate of 6 years required by the Scheme of Service and he was eligible to be considered for promotion to the post of Senior Ports Officer to which he was eventually promoted by the respondent Authority in virtue of the

sub-judice decision.

The complaint of the applicant under No. 1 above is accordingly dismissed.

Complaint No. 2: According to the confidential reports of the years 1979-1982 the merit of the applicant and that of interested party No. 3 may be described as more or less equal. 5

Furthermore interested party No. 3 has another weighty consideration in his favour in respect of merit: the Operations Manager of the respondent Authority - the Head of the Department of the applicant and the interested party as well - expressed the view that interested part No. 3 (together with the remaining three interested parties) were the candidates most suitable for promotion. 10

It is apparent from the personal files of the applicant and interested party No. 3 that the latter is better qualified; in this connection blue 24 in the personal file of the applicant is indicative of the position in respect of the secondary education of the applicant. 15

In the circumstances slight seniority of the applicant who was promoted to the post of Ports Officer 1st grade on 1.1.83 as well, over the interested party is insignificant (Applicant was promoted to the post of Ports Officer 2nd grade on 1.8.78, - vide blue 25 in his personal file - whilst interested party No.3 was so promoted on 1.4.1979). 20

In view of the above, complaint No. 2 also fails as the applicant failed to establish striking superiority over interested party No. 3; and without establishing striking superiority an Administrative Court cannot intervene in order to set aside the decision regarding such selection (vide *HadjiIoannou v. Republic* (1983) 3 C.L.R. 1041 at p. 1045). 25

There now remains for consideration complaint No. 3 which has two legs notably due inquiry and due reasoning. 30

As regards the allegation of the applicant that the sub-judice decision was reached without due inquiry on behalf of the Respondent Authority there is another interconnected issue notably the setting up of a Committee by the Board of the Respondent
5 Authority (vide Appendix E attached to the opposition).

The Committee in question, according to the decision of the Board of the Respondent Authority, would, after considering the matter and after having consultations with the Management of the Authority, submit proposals to the Board in respect of the per-
10 sons to whom promotion would be offered.

It is apparent from the material before me, that the Committee so appointed, considered the matter, examined inter alia the eligibility of candidates to promotion and after having consultations with the Operations Manager of the Authority recommended to
15 the Board - one of its members dissenting - the promotion of the interested parties (including interested party No. 3).

It is clear from the decision of the Board dated 15.12.83 (vide Appendix "Z" attached to the opposition) that the Board "having considered the matter and having taken into account the recom-
20 mendations of the Committee and all the material before it, " decided to promote the four interested parties (including interested party No. 3)

The aforesaid decision of the Board dated 15.12.83 indicates that the Board did not abdicate its task. It did not throw the bur-
25 den of decision on the shoulders of the Committee. Far from it; although taking into consideration the recommendations of the Committee, it carried out an enquiry for itself; it went through all the material before it, including the personal files and the confidential reports of all candidates, and reached its own decision.

30 Having given to the matter my best consideration, I hold the view that the sub-judice decision was reached at by the competent administrative organ, notably the Board of the Respondent Authority, after the carrying out of due enquiry which cannot be faulted.

As regards 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" (vide *HjiSavva v. The Republic* (1972) 3 C.L.R. 174 at p. 205). In the present case the administrative files produced afford sufficient reasoning enabling unhindered judicial scrutiny. 5

In the result present recourse fails for the reasons above stated; and it is accordingly dismissed. In the circumstances I have decided to make no order as to its costs.

Recourse dismissed. 10
No order as to costs.