

1988 January 20

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAKIS HADJIAGATHANGELOU AND OTHERS,

*Applicants,*

v.

THE PORTS AUTHORITY OF CYRUS,

*Respondent.*

*(Case No. 143/84).*

*Public Corporations—Ports Authority of Cyprus—Promotions—Judicial Control—Principles applicable—Failure of applicants to establish striking superiority over interested party—Applicant's complaint that the respondents failed to select the most suitable candidate must be dismissed.*

- 5 *Public Corporations—Ports Authority of Cyprus—Promotions—Setting up a Committee for the purpose of submitting proposals to the Board of the Authority for the persons to whom promotion should be offered—Such proposals taken into consideration by the Board together with all other material before it—As neither the law nor the Regulations precluded the*  
10 *setting up of such a Committee and as the Board went through all the material before it and reached its own decision, the sub judice decision cannot be faulted in this respect.*

*Reasoning of an administrative act—It may be found either in the material itself or in the official records related thereto.*

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

*Recourse dismissed.*

*No order as to costs.*

*Cases referred to:*

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

*Meletis and Others v. Cyprus Ports Authority* (1987) 3 C.L.R. 1988;

*HjiSavva v. Republic* (1972) 3 C.L.R. 174;

*Stavrou v. Republic* (1987) 3 C.L.R. 725.

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**Recourse.**

Recourse against the decision of the respondent to promote the interested parties to the post of Senior Ports Officer in preference and instead of the applicants.

*E. Liatsou (Mrs.) for G. Cacoyiannis*, for applicants.

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*N. Papaefstathiou for T. Papadopoulos*, for the respondent.

*H. Panayides for Y. Panayi*, for interested party No. 1.

*K. Talarides*, for interested parties Nos. 2 and 4.

*L. Papaphilippou*, for interested party No. 3.

*Cur. adv. vult.* 15

LORIS J. read the following judgment. The applicants impugn by means of the present recourse 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 applicants.

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The main complaints of the applicants, as they transpire from the five grounds of law relied upon in support of the present recourse, may be conveniently grouped under three Heads as follows:

(A) Failure of the respondent to select the most suitable candidate (Ground 2) - Ignoring the superior merit of the applicants (Ground 1) and in particular their alleged superior confidential reports as well as their recommendation by their superior for promotion (Ground 3).

(B) Alleged violation by the respondent of the principle of equality to the detriment of applicants, contrary to Article 28 of the Constitution (Ground 4).

(C) Failure to provide due reasoning for the sub-judice decision (Ground 5).

I shall proceed to examine the complaints as grouped above:

"It is a settled principle of administrative law that when an organ, such as the Public Service Commission, selects a candidate on the basis of comparison with others, it is not necessary to show, in order to justify his selection, that he was strikingly superior to the others. On the other hand, an administrative Court cannot intervene in order to set aside the decision regarding such selection unless it is satisfied, by an applicant in a recourse before it, that he was an eligible candidate who was strikingly superior to the one who was selected, because only in such a case the organ which has made the selection for the purpose of an appointment or promotion is deemed to have exceeded the outer limits of its discretion and, therefore, to have acted in excess or abuse of its powers ..."

(*HadjiIoannou v. Republic* (1983) 3 C.L.R. 1041 at p. 1045).

The applicants failed to establish striking superiority over the interested persons; a reflection on the merits and qualifications of the parties as disclosed in the confidential reports and the personal files of the candidates, indicates that the interested parties were better merited than the applicants, whilst two of the interested parties, notably Int. Parties 2 and 4, had superior qualifications compared with applicants and the remaining interested parties, taking

a view most favourable to the applicants, had at least equal qualifications.

The Operations Manager of the Respondent Authority - the Head of the Department of the Applicants and the interested parties - expressed the view that the interested parties were the candidates most suitable for promotion, another weighty consideration in evaluating the merits of the parties for promotion. 5

Thus the complaints of the applicants, emerging from grounds of law under Nos. 1 to 3 on the recourse, and grouped under Head (A) above are doomed to failure. 10

The complaints of the applicants grouped under (b) above emerge from ground of Law No. 4 of the recourse which states that "The Respondent Authority acted under a state of discrimination against the applicants as they were unequally treated vis-a-vis the interested parties in violation of Article 28 of the Constitution". 15

This complaint, which is quite vague, was not pursued any further at a latter stage and I could trace nothing to that effect in the written address of the applicants or elsewhere. I do not think that the said complaint refers to regulation 24 of the Cyprus Ports Authority (Officers' Schemes of Service and Other Conditions of Service) Regulations 1982, (an issue settled by the Judgment of the Full Bench of this Court in *Antonis Meletis and others v. The Cyprus Ports Authority* (1987) 3 C.L.R. 1988) as all the applicants and the interested parties were considered for promotion by the respondent Authority in the instant case. 20 25

In the circumstances in connection with the aforesaid vague uncertain complaint I shall confine myself in stating this much: I was unable to trace an iota of evidence in respect of the alleged violation by the Respondent Authority of the principle of equality to the detriment of the applicants concerning the sub-judice decision. 30

Before proceeding to examine the last complaint of the appli-

cants notably "failure to provide adequate reasoning for the sub-  
justice decision" I consider it necessary to dispose of, albeit brief-  
ly, another complaint which although not appearing in the body  
of the recourse, has been inserted in the written address filed on  
5 behalf of the applicants and has been dealt with at length by the  
written address filed by the Respondent and interested parties as  
well. This complaint refers to the setting up of a Committee by  
the Board of the Respondent Authority (vide Appendix E At-  
tached to the opposition).

10 In the first place it is clear to my mind that the Board of the Re-  
spondent Authority was not precluded by any law or Regulation  
from setting up such a Committee.

The Committee in question, according to the decision of the  
Board of the Respondent Authority, (vide Appendix 5 attached to  
15 the opposition) would, after considering the matter and after hav-  
ing consultations with the Management of the Authority, submit  
proposals to the Board for the persons to whom promotion would  
be offered.

It is clear from the material before me that the Committee so  
20 appointed considered the matter and after having carried out con-  
sultations with the Operations Manager of the Authority recom-  
mended to the Board - one of its members dissenting - the promo-  
tion of the interested parties.

It is apparent from the decision of the Board dated 15.12.83  
25 (vide Appendix "Z" attached to the opposition) that the Board  
"having considered the matter and having taken into account the  
recommendations of the Committee and all the material before it",  
decided to promote the four interested parties.

The aforesaid decision of the Board dated 15.12.83 indicates  
30 that the Board did not abdicate its task. It did not transfer its duty  
on the shoulders of the Committee. It took into consideration the  
recommendations of the Committee, but it examined the case for  
itself, went through all the material before it, including the per-

sonal files and the confidential reports of all candidates which were before it, and reached its own decision. In the circumstances the sub-judice decision, which is the decision of the Board of the Respondent Authority, was reached at legitimately by the competent administrative organ and therefore it cannot be faulted in this respect. 5

Coming now to 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". *HjiSavva v. The Republic* (1972) 3 C.L.R. 174 at p. 205 - vide also *Stavrou v. Republic* (1987) 3 C.L.R. 725. 10

And in the case under consideration the administrative files produced constitute sufficient reasoning enabling ample judicial scrutiny.

For all the above reasons present recourse fails and is accordingly dismissed. 15

Let there be no order as to costs.

*Recourse dismissed.  
No order as to costs.*