

(1988)

1988 May 10

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRIOS PAPADOPOULOS,

Applicant,

v.

THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 671/86).

Collective organs—Composition—Change, by participation of members not participating in earlier meeting or by the absence of members participating in the first meeting—No valid decision can be taken, unless whole process repeated in the new meeting.

Public Officers—Transfers—Divisional Engineer of Paphos, holding the post of Senior Executive Engineer, transferred to Nicosia—Complaint that such transfer constitutes a demotion in that he will lose the title "Divisional Engineer"—Complaint untenable—His status remains the same—The title "Divisional" is descriptive. 5

Public Officers—Transfers—The from time to time transfer from one post to another or one place to another—It cannot be considered as hampering the discretion of the Commission or as offending any principle of administrative law. 10

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

Recourse dismissed. 15
No order as to costs.

Case referred to:

Decision 1035 (1957) of the Greek Council of State.

Recourse.

5 Recourse against the decision of the respondent to transfer applicant from Paphos to Nicosia.

L. Clerides, for the applicant.

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

Cur. adv. vult

10 A. LOIZOU P. read the following judgment. By the present recourse the applicant a Senior Executive Engineer serving until then as the Divisional Engineer of Paphos, seeks a declaration of the Court that the act and/or decision of the respondent Commission by which he was transferred from Paphos to Nicosia as from
15 22nd September 1986 is null and void and with no legal effect.

20 The Director of the Public Works Department by letter dated the 28th July 1986 made a submission for the transfer of the applicant from Paphos to Nicosia in order to take over the duties of Head of the Section of Workshop and Supervision. He attached thereto copy of a letter of the applicant dated the 15th July 1986 with which he was putting forward various family and service reasons for his non transfer. Submissions for transfers of another three Senior Executive Engineers of the Department were also made by the Director on the same date. (Appendices 1 and 2).

25 The Respondent Commission at its meeting of the 5th August 1986 after examining the four submissions, considered that the Director of the Department should be invited to comment on the representations of the officers affected (Appendix 3) which the Director did by letter dated the 12th August 1986 (Appendix 5)

stating that the grounds raised by the applicant in his letter of the 15th July 1986 were not considered sufficient and material so that he would change his recommendation for the transfer of the applicant and he suggested that the objections might be dismissed. It was further mentioned in the said letter of the Director that the transfer of the applicant was sought for the more orderly and efficient functioning of the Department and there was no question of discrimination.

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The Respondent Commission at its meeting of the 14th August 1986 having examined all the material placed before it, including the representations of the applicant and the other three public officers and the relevant views of the Director, decided to effect the transfer of all four officers including the applicant in the interests of the service. Copies of the relevant minutes of the Respondent Commission have been produced as Appendices 3 and 6 and I need not reproduce them here verbatim.

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As against this decision of the Respondent Commission which was communicated to the applicant by their letter dated the 16th August 1986 (Appendix 7), the applicant filed the present recourse.

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It is the case for the applicant that the said decision constitutes an adverse transfer not made on account of the exigencies of the service because by being transferred he was in effect demoted having lost the title of the Divisional Engineer which he had in Paphos, his title being limited to that of the Senior Executive Engineer. It was further claimed that the transfer of the applicant was arbitrary and contrary to Law and it did not take into consideration, that the exigencies of the service could be better served by the applicant continuing to be posted at Paphos. Moreover the guidelines for transfer by rotation does not give to the Respondent Commission the possibility to exercise its discretionary power on the basis of the exigencies of the service that exist from time to time.

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Finally it was argued that the composition of the Respondent

Commission was defective in as much as its members Messrs Papaxenofontos and Xenopoulos were absent at the first meeting of the Respondent Commission, that is the meeting of the 5th August 1986 and that at the meeting of the 14th August 1986 its
5 Chairman was absent, when the Commission composed of the remaining four members, decided to act in accordance with s. 11(1) of the Public Service Laws 1967 to 1986 and chose Mr. HjiProdromou to preside at the meeting.

10 This contention is based on the well established principle that if there is a change in the composition of a collective organ at one of its meetings by the participation of members not participating in the earlier meeting or meetings or by the absence of members participating in the first meeting the collective organ cannot validly take decisions at its last meeting unless at that meeting it repeats
15 fully and from the beginning the whole process and the whole deliberation, in which case it is considered that the deliberation of the case was concluded at only this last meeting. In support of that proposition I was referred to Stassinopoulou Discourses of Administrative Law 1957 p. 235, to the Conclusions of the Greek Council of State 1929 - 1959 and the Decision of the Greek
20 Council of State 1035 (1957).

From the facts of the case as hereinabove set out, it appears that what actually took place at the first meeting of the Respondent Commission of the 5th August 1988, (Appendix 3) was referred to once more at the second meeting held on the 14th August 1986 and in its minutes (Appendix 6), there is a note to that effect namely that there was a further examination of the matter and a reference to item 5 of the minutes of the meeting of the commission dated the 5th August 1986. Furthermore, in the body
25 of the minutes it is stated that "the Public Service Commission having examined all the material before it including the representations of the officers and the relevant views of the Director decided to make in the interest of the service the following transfers."
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It is obvious from a perusal of the relevant minute that the
35 whole process and the whole deliberation was repeated fully from

the beginning and so it must be concluded that the case has, as laid down by the General Principles of Administrative Law been considered and concluded at the last meeting.

Moreover the claim of the applicant that his transfer amounted to a demotion cannot stand as the transfer in no way affects his status in the hierarchy of the service. His rank is one of Senior Executive Engineer and he continues to be one and performs the duties expected of him by the relevant Scheme of Service. The title of Divisional Engineer being only a description of the post of being responsible for the Public Works Office in a Division or District. Nor the "rotation" of the officers or as more accurately can be put, the from time to time transfer of officers from one post to another or from one place to another can be considered as offending any principles of Administrative Law and as hampering in particular as claimed the discretion of the Respondent Commission in the matter. Transfer officers serve on the contrary the very purpose of fair dealing on the one hand and of having as many if not all officers acquiring an all round knowledge of the duties of their officer as well as preventing stagnation by the long stay of the same officers in one place or section of the service, on the other hand, but in any event leave the ultimate decision for the transfer in the discretion of the Respondent Commission as it has been the present case.

For all the above reasons I find that the sub-judice decision was taken lawfully and correctly in accordance with the provisions of the Law and as the result of the proper exercise of the discretionary powers given by Law to the Respondent Commission, once all relevant matters and circumstances were duly taken into consideration including the views of the applicant himself.

For all the above reasons the recourse is dismissed but in the circumstances there will be no order as to costs.

*Recourse dismissed.
No order as to costs.*