

1976
Oct. 14

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIOTIS
DOUCANARIS
v.
COMMANDER
OF POLICE
AND ANOTHER

PANAYIOTIS DOUCANARIS,

Applicant,

and

THE COMMANDER OF POLICE AND ANOTHER,

Respondents.

(Case No. 342/74).

Police Law, Cap. 285—Chief of Police—Power to deal with appeals under regulation 20 of the Police (Discipline) Regulations, 1958–1973—Can be delegated to the Deputy Chief of Police—Section 8 of the Law—Deputy Chief of Police—He can act as the Deputy of the Chief of Police even when the latter is in Cyprus and is capable of acting. 5

Police officers—Disciplinary offences—Oppressive conduct towards inferior in rank—Reg. 7(2)(b) of the Police (Discipline) Regulations, 1958–1973—Not necessary for complainant to know at the material time that offender was a member of the Police Force—Discreditable conduct contrary to Regulation 7(1) of the said Regulations—Defence of animus jocandi—Put before Disciplinary Board and rejected—Open to the Board, from the record of the proceedings, to reach the conclusions they did on this issue. 10

The applicant, a sergeant in the Fire Brigade, was on the 5th December, 1973 tried by a Disciplinary Board and found guilty on two counts for offences against discipline contrary to regulations 7(1) and 7(2)(b) of the Police (Discipline) Regulations, 1958–1973. After this decision had been confirmed by the Commander of the Fire Brigade, the applicant appealed from the decision of the Commander to the Chief of Police pursuant to the provisions of regulation 20 of the said regulations. The Chief of Police referred the matter to the Deputy Chief of Police who heard and dismissed the appeal. 15 20

In challenging the validity of this dismissal, by means of the present recourse, counsel for the applicant contended: 25

(a) That the Chief of Police had no right or power to refer

the case to his Deputy as there is no such provision in the Police Regulations.

5 (b) That section 8 of the Police Law, Cap. 285 (quoted at p. 317 *post*) which provides that the Deputy Chief of Police may perform the duties of the Chief of Police is only applicable when the Chief of Police is out of Cyprus, or, he is incapable to act for any reason.

10 (c) That the facts of the case as accepted by the Disciplinary Board cannot support the offences for which the applicant was found guilty because as regards the first count the oppressive conduct alleged was directed against a Police Constable who was not known to the applicant and who also did not know the applicant; and as regards the second count the evidence adduced
15 proved *animus jocandi*.

Held (1) that section 8 of the Law is clear and unambiguous and there is nothing in that section to indicate that the Deputy Chief of Police shall act as the Deputy of the Chief of Police in the performance of his duties and in respect of the Force only
20 when the Chief of Police is out of Cyprus or is incapable of acting.

(2) That there was ample evidence in the record of the proceedings indicating that the applicant at the material time knew that the complainant was a policeman and this is sufficient as far as the requirements of the regulation are concerned; and that it is
25 not necessary for the complainant to know at the time that the applicant was a member of the Police Force.

(3) That the defence of *animus jocandi* was put forward before the Disciplinary Board and rejected; and that it was open to the
30 Board, as is appears from the record of proceedings, to reach the conclusions they did on this issue.

Application dismissed.

Recourse.

35 Recourse against the decision of the Duputy Chief of Police dismissing applicants's appeal from the decision of the Disciplinary Board whereby he was found guilty on two counts for offences against discipline.

E. Lemonaris, for the applicant.

40 *V. Aristodemou*, Counsel of the Republic, for the respondent.

Cur. adv. vult.

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The following judgment was delivered by:-

MALACHTOS, J.: The applicant in this recourse claims a declaration of the Court that the decision of the respondents dated 27. 4. 74 dismissing his appeal against the decision of the Disciplinary Board, is null and void and of no effect whatsoever. 5

The facts relevant to the issue are as follows:

The applicant was at all material times a sergeant in the Fire Brigade posted in Famagusta. On the 5th December, 1973, he was tried by the Disciplinary Board and was found guilty on two counts for offences against discipline. The charges brought against him were for oppressive conduct contrary to the Police (Discipline) Regulations 1958-1973, regulation 7(2)(b) and discreditable conduct contrary to regulation 7(1). 10

The sentence imposed was severe reprimand on Count 1 and reduction in rank on count 2. 15

These Regulations read as follows:

“ 7(1) Discreditable conduct, that is to say, if a member of the Force acts in a disorderly manner or in any manner prejudicial to discipline or reasonably likely to bring discredit on the reputation of the Force. 20

(2) Insubordination or oppressive conduct, that is to say, if a member of the Force -

(a)

(b) is guilty of oppressive or tyrannical conduct towards an inferior in rank”.

On the 6th December, 1973, the decision of the presiding officer was confirmed by the Commander of the Fire Brigade and on the 10th December, 1973 the applicant appealed from the decision of the Commander of the Fire Brigade to the Chief of Police pursuant to the provisions of regulation 20 of the said Regulations. 25
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On 12. 12. 73 the Chief of Police referred the matter to the Deputy Chief of Police who heard the appeal on 18. 4. 74 and on 27. 4. 74 issued his judgment by which the appeal was dismissed.

Counsel for applicant submitted that the Chief of Police had 35

no right or power to refer the case to his Deputy as there is no such provision in the Police Regulations. He also submitted that once the Chief of Police had decided to exercise his right of reviewing the appellant's case he was bound to exercise that power personally. He had no power to delegate to an inferior officer the power of review which is given to him. Section 8 of the Police Law, Cap. 285, which provides that the Deputy Chief of Police may perform the duties of the Chief of Police is only applicable when the Chief of Police is out of Cyprus, or, he is incapable to act for any reason. This section is as follows:

“ 8. The Deputy Chief of Police shall act as the Deputy to the Chief of Police in the performance of his duties, in respect of the Force, and shall have power to exercise any authority or perform any duty which may by law be exercised or performed by the Chief of Police”.

I must say that I do not agree with the submission of counsel on this point. Section 8 of the Law is clear and unambiguous and there is nothing in that section to indicate that the Deputy Chief of Police shall act as the Deputy of the Chief of Police in the performance of his duties and in respect of the Force only when the Chief of Police is out of Cyprus or is incapable of acting.

The other argument of counsel for applicant is that the facts of the case as accepted by the Disciplinary Board cannot support the offences for which the applicant was found guilty. He submitted that as regards count 1 the oppressive conduct of the applicant was directed against P.C. 3095 whose identity did not know and who did not know the identity of the applicant, as they were both dressed in mufti at the time.

As regards the second count, he submitted that the evidence adduced proves *animus jocandi* and this supports the allegation of the applicant that he was joking when he behaved in the way he did.

Having gone through the record of proceedings, which has been produced as *exhibit* 1 before me, I am convinced that there is ample evidence indicating that the applicant at the material time knew that the complainant was a policeman, and this is sufficient as far as the requirements of the regulation are concerned. It is not necessary for the complainant to know at the time that the applicant was a member of the police force.

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The defence of animus jocandi was put forward before the Disciplinary Board and was rejected. It was open to the Board, as it appears from the record of proceedings, to reach the conclusions they did on this issue.

This recourse, therefore, fails and is dismissed.

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On the question of costs I make no Order.

*Application dismissed. No order
as to costs.*