

1977
April 5

[MALACHTOS, J.]

—
ELEFTHERIOS
CHR. PERICLES
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND OTHERS)

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION
ELEFTHERIOS CHR. PERICLES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR,
2. THE COMMITTEE EXAMINING OF PHYSICAL
FITNESS FOR SERVICE IN THE NATIONAL
GUARD,
3. THE NATIONAL GUARD HEADQUARTERS,

Respondents.

(Case No. 166/76).

National Guard—Physical fitness during service in—Medical examination—Medical Board—Recruit on six months' suspended service for treatment—Joining the National Guard upon the expiration of the said six months' period—Medically examined and classified as fit for service as an auxiliary in the fourth degree—By a Medical Board constituted under s. 7 of the National Guard Laws 1964-1976—Constitution of the Board a proper one—Cf. section 17(1) (2) (a) of the National Guard Laws (supra).

Administrative Law—Administrative decision—Reasoning—Due reasoning—Appears in the administrative records which the respondents had in mind when taking sub judice decision.

The applicant in this recourse complained against the decision of the respondents by which he was found fit for service in the National Guard as auxiliary in the fourth degree and against the decision of the respondents to release him from service in the National Guard on account of physical unfitness. The main ground on which his recourse was based was that the constitution of the Medical Board, which examined the applicant, was irregular as it was not constituted in accordance

with the provisions of section 7(3)* of the National Guard Laws 1964 to 1976 and that the act and/or decision of the respondents was not duly reasoned or at all.

1977
April 5

ELEFTHERIOS
CHR. PERICLES
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND OTHERS)

5 Before the Court there was evidence that after the expiration of his six months' suspended service for treatment the applicant was examined by a Medical Board consisting of a Medical officer of the Nicosia General Hospital and two other Army Medical Officers which found that the applicant suffered from operation of his spine and classified him as an auxiliary in the fourth degree (see the certificate of this Board at pp. 89-90 *post*).

15 *Held* (1), that the applicant was examined by a Medical Board properly constituted under section 7 of the Law; and that, accordingly, the main ground on which this application is based fails.

20 (2) (*On the question whether the sub judice decision was duly reasoned*) that the reasoning of the *sub judice* decision appears in the certificate of the Medical Board which the respondent authorities had in mind in taking the decision not to discharge the applicant from the ranks of the National Guard as unfit for service.

Application dismissed.

Recourse.

25 Recourse against the refusal of the respondents to release the applicant from service in the National Guard on account of physical unfitness.

Ph. Valiandis, for the applicant.

R. Gavrielides, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment was delivery by:-

MALACHTOS, J.: The applicant in this recourse claims the following remedies -

- 35 (a) A declaration of the court that the decision and/or act of the Medical Board by which he was found fit for service in the National Guard as

* Quoted at pp. 87-88 *post*.

1977
April 5

ELEFThERIOS
CHR. PERICLES
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND OTHERS)

auxiliary in the fourth degree, is *null* and *void* and of no legal effect whatsoever; and

- (b) A declaration of the court that the refusal and/or omission of the respondents jointly and/or severally to release the applicant from service in the National Guard on account of physical unfitness is *null* and *void* and of no legal effect whatsoever.

The applicant was born in Limassol on 12.2.57. In 1971 he underwent an operation of his spine. On 20.7.75 he was enlisted for service in the National Guard and claimed at the same time to be discharged on medical grounds due to his physical condition.

On 1.1.75 upon medical examination by the Medical Board he was granted six months suspended service for treatment. On the 1st May, 1976 upon the expiration of the six months period he again joined the National Guard. By letter dated 25th May, 1976, the applicant through his advocate, applied to the Minister of Interior for his discharge. To this letter he attached a medical certificate dated 9th April, 1976, by Dr. Spanos of the Nicosia General Hospital who had performed the operation of his spine in 1971 in which certificate the physical condition of the applicant is described as "although improved since the operation, nevertheless, a sensitivity remained on his spine" on account of which his discharge was recommended. To the said letter it was also attached a certificate dated 24th May, 1976, from the physiotherapist of the Limassol hospital requesting leave for the applicant to visit the Limassol hospital at 8.30 a.m. daily excepting Wednesdays and Sundays for a period of six months for treatment.

By letter dated 29th May, 1976, the Ministry of Interior replied to applicant's advocate as follows: "I have been instructed to refer to your letter dated 25th May, 1976, by which you apply that your client, private Eleftherios E. Pericli of Akrotiri, be discharged from the ranks of the National Guard on medical grounds and to inform you that this subject falls within the jurisdiction of the Medical Board to which your client should apply through the commanding officer of his unit".

1977
April 5

—
ELEFThERIOS
CHR. PERICLES
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND OTHERS)

5 The applicant then by letter dated 7th June, 1976, addressed to the commanding officer of his unit, to which letter the certificates of Dr. Spanos and that of the Physiotherapist of the Limassol Hospital were attached, applied for his discharge from the ranks of the National Guard. This letter reads as follows:

10 "I attach a medical certificate from the Nicosia General Hospital dated 9th April, 1976, and a letter of the Physiotherapy Department of the Limassol Hospital dated 24th May, 1976, the contents of which speak for themselves. In the light of the above documents I apply for medical examination by the Medical Board and on the basis of the decision thereof be discharged from the National Guard as unfit for service".

20 It is the allegation of the applicant that on the 10th June, 1976, he was called and was examined by an Army medical officer holding the rank of a major, and after that he was seen by two other Army medical officers who did not examine him but said to him "Since you came twice before why did you come again? Return to your unit and wait for a reply".

25 On the 14th June, 1976, according always to the allegations of the applicant, he was orally informed by the commanding officer of his unit that his application for his discharge was not approved. As a result he filed the present recourse.

30 The main ground of law on which this application is based, is that the constitution of the Medical Board which examined the applicant was irregular as it was not constituted in accordance with the provisions of section 7(3) of the National Guard Laws 1964 to 1976. Section 7 of this Law, as amended by Laws 26/65 and 56/75 is as follows:

35 "7(1) The Council of Ministers may by decision authorise the Minister to proceed to the establishment of Enlistment Boards and a Medical Board.

(2) An Enlistment Board shall consist of -

(a) The Deputy Commanding Officer of the unit;

1977
April 5

—
ELEFTHERIOS
CHR. PERICLES
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND OTHERS)

- (b) An Officer appointed by the Commanding Officer of the unit;
- (c) An Army Medical Officer or in his absence a medical officer; and
- (d) The Officer performing the duties of personnel officer of the unit.

(3) A Medical Board shall consist of the Medical Officer in charge of the Nicosia General Hospital or another medical officer and two other Army medical officers or in their absence of medical officers appointed in that behalf by the Director of Medical Services”.

Counsel for applicant argued that the Medical Board did not include the officer in charge of the Nicosia General Hospital or any other medical officer but consisted only of three army medical officers. The applicant was not examined collectively by the three of them but only by one of these officers. Furthermore, they did not give the proper weight to the medical certificate of Dr. Spanos and the certificate of the Physiotherapist of the Limassol Hospital, which were attached to the application for his discharge.

On the other hand, counsel for the respondents argued that soon after his return on the expiration of his leave on 1.5.76, the applicant was medically examined on 6.5.76 as provided by section 17 of the National Guard Laws 1964 to 1976 by the Medical Board properly constituted under section 7 of the Law and was found fit for auxiliary service in the 4th degree. This section 17 of the Law, as amended by Laws 26/65 and 56/75 is as follows:

“17(1) The examination of physical fitness during service in the Force shall be made by the Enlistment Boards or the Medical Board provided by section 7.

(2) From the physical fitness aspect classification shall be made according to physical afflictions or injuries, as well as to mental abilities, as follows:-

- (a) the recruits on their enlistment as well as during their service whether their enlistment is suspended or their service is suspended up to

three months due to temporary incapacity or up to six months for not temporary incapacity or they are considered fit, or only fit for auxiliary service in the Force or as unfit for service in general;

(b) Officers on probation and other ranks in the reserve at the time of their enlistment as well as during their service shall be classified as either fit or unfit for service in general;

(c) Service volunteers shall be classified like servicemen, both at the time of their initial enlistment and during their service”.

A certificate was produced indicating that the applicant was examined by the Medical Board on the 6th May, 1976. This certificate reads as follows:

“Εν Λευκωσία τῇ 6ῃ τοῦ μηνὸς ΜΑΪΟΥ τοῦ ἔτους 1976 ἡ Ἐπιτροπὴ Ἐξετάσεως τῆς Σωματικῆς Ἰκανότητος Στρατευσίμων Λευκωσίας, Συγκειμένη ἐκ τοῦ Προέδρου αὐτῆς Δρς Χαρ. Σταματιάδη καὶ τῶν Μελῶν ΕΠΙΑΤΡΟΥ ΦΩΤΟΠΟΥΛΟΥ ΔΙΟΝΥΣΙΟΥ καὶ ΛΟΧΑΓΟΥ ΙΑΤΡΟΥ ΡΟΥΣΣΑΚΗ ΠΑΝΑΓΙΩΤΗ προέβη εἰς τὴν ἐξέτασιν τῆς Σωματικῆς Ἰκανότητος τοῦ ἐνώπιον παρουσιασθέντος Στρ. Περικλῆ Λευτέρη τοῦ Χριστάκη Α.Σ.Μ. 9417 καὶ παραπεμφθέντος ἡμῖν παρὰ τῆς ΙΥΣΔΙ ἐγγεγραμμένου εἰς τὸ Μ. Ἄρρεν τοῦ Δήμου ἢ Κοινότητος ΛΕΜΕΣΟΥ τῆς Ἐπαρχίας ΛΕΜΕΣΟΥ ἔτους γεννήσεως 1957 καὶ κλάσεως 1975.

Α Π Ο Φ Α Ι Ν Ε Τ Α Ι

“Ὅτι ὁ ἐν λόγῳ πάσχει χειρουργηθεῖσα κήλη μεσοσπονδυλίου δίσκου 02 σπονδύλου μετὰ λειτουργικῶν διαταραχῶν καὶ κρίνει τούτον Βοηθητικὸν Τετάρτης ὁμοφώνως (613) 1/4 ΔΙΑ ΣΤΡΑΤΙΩΤΙΚΗΝ ΘΗΤΕΙΑΝ”.

(“Nicosia 6th May, 1976. The Committee of Examining the physical fitness of the Nicosia recruits, consisting of its Chairman Dr. Char. Stamatiades and the members, surgeon-major Fotopoulos Dionysiou and Captain-Doctor Roussakis Panayiotis, exa-

1977

April 5

—
ELEFTHERIOS
CHR. PERICLES

v.

REPUBLIC
(MINISTER
OF INTERIOR
AND OTHERS)

1977
April 5

—
ELEFThERIOS
CHR. PERICLES
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND OTHERS)

mined the physical fitness of private Periclis Lefteri Christaki A.S.M. 9417 who has been referred to us by the 6th Military Command and is registered in the register of births of Limassol town in the District of Limassol, year of birth 1957 and class 1975 and FINDS that the said recruit suffers from operation of his spine with operational sensitivities and unani- mously classifies him as an auxiliary in the fourth degree for military service”).

5

It is clear from the above certificate that the applicant, after the expiration of the period of six months was examined on 6.5.76 by the Medical Board properly constituted under section 7 of the Law and, therefore, the main ground on which this application is based fails.

10

Another ground on which the applicant based his application is that the act and/or decision of the respondents is not duly reasoned or at all.

15

The short answer to this is contained in the certificate of 6.5.76 referred to hereinabove which the respondent authorities had in mind in taking the decision not to discharge the applicant from the ranks of the National Guard, as unfit for service.

20

For these reasons this recourse fails.

There will be no order as to costs.

Application dismissed.
No order as to costs.

25