

1987 December 22

[SAWIDES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHAEL CHRYSANTHOU,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
1 THE MINISTER OF INTERIOR,
2 THE COMMANDER OF POLICE,

Respondents

(Case No 273/85)

*Police Force — Promotions — Seniority — Importance of — The Police
(Promotion) Regulations 1958 Reg 2(2) — Seniority of five or of three years
— Lack of reasons why it was disregarded — Ground of annulment*

5 The applicant challenges the validity of the decision of the respondents by which the interested parties were promoted retrospectively as from 1 3 80, to the rank of Inspector in the Police Force

The applicant is senior by about five years in the case of interested parties Nos 9 and 10 and just under three years in the case of all other interested parties

10 Held annulling the sub judice decision (1) Regulation 2(2) of the Police (Promotion) Regulations 1958, provides that seniority shall be taken into account although more importance should be attached to the professional ability and personal qualities of the officers qualified for promotion

15 (2) On the material before the Court the applicant appears on the whole better than the interested parties and no special reasons were given as to why his seniority was disregarded

*Sub judice decision annulled
Costs against respondents*

Recourse.

20 Recourse against the decision of the respondents to promote

the interested parties with retrospective effect as from 1 3 1980 to the rank of Inspector in the Police Force

St. Drymiotis, for the applicant

M Florentzos, Senior Counsel of the Republic, for the respondents

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Cur adv vult

SAVVIDES J read the following judgment The applicant challenges the validity of the decision of the respondents, published in the Police Weekly Orders on 24 12 84, by which the interested parties were promoted retrospectively as from 1 3 1980, to the rank of Inspector in the Police Force

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The applicant originally challenged the promotion of 30 interested parties, but in the course of the hearing of the case, the recourse was withdrawn as against the first 20 of them The remaining interested parties, whose promotion is challenged by the present recourse, are the following -

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1	Sgt	1467	K Miller,	
2	»	153	K Michaelides,	
3	»	256	K Markoulis,	
4	»	467	S Pafitis,	20
5	»	634	K Loizides,	
6	»	1721	G Georghiades,	
7	»	1962	S HadjiSofocleous,	
8	»	2247	A Ierotheos,	
9	»	266	A Neophytou,	25
10	»	56	G Sapanillas	

The applicant, who joined the Police Force in 1959, was holding, at the material time, since 15.11 1969, the rank of Sergeant and is now holding, since December 1984, the rank of Inspector

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On 1.3 1980, the respondents promoted 30 Sergeants to the rank of Inspector The promotions were effected by the Chief of Police and approved by the Minister of Interior The decision of the Chief of Police was based on the recommendations of the Divisional and Unit Commanders, the recommendations of certain Evaluation Committees appointed for the purpose, the report of the Selection Board and other material and information

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received by the Central Information Service. The applicant was amongst the officers «strongly recommended» by the Selection Board and selected for promotion by the Chief of Police, but his promotion was not approved by the Minister of Interior. As a result, he filed Recourse No. 106/80 in the Supreme Court, which was tried together with a number of other recourses challenging the same decision.

By the judgment of the Court in the said recourses (see *Michael and Others v. The Republic* (1984) 3 C.L.R. 1364), the promotions were annulled on the following grounds:-

- (1) Violation of the rules of natural justice in that the reports of the Central Information Service were taken into consideration without affording the opportunity to the officers affected to be heard.
- (2) The participation of the Evaluation Committees, whose evaluations were taken into consideration in effecting the promotions, was not provided for either by the Law or the Regulations.

As a result of the above annulling decision of the Court, the Chief of Police, before reconsidering the matter, sought the advice of the Attorney-General's Office. The Deputy Attorney-General, by his letter dated 19.12.1984, advised the Chief of Police that in view of the fact that the Divisional Commanders had in the meantime retired and a number of the candidates had been transferred to other districts, evaluation of the candidates by the Divisional Commanders was impossible and the only possible course was the evaluation of the candidates by the Chief of Police himself, who was in a position to know the performance and merit of the candidates at the time of the annulled promotions.

The Chief of Police, acting on the above advice, selected sergeants, the same who had been promoted by the annulled decision (amongst whom the interested parties) and sought the approval of the Minister of Interior for their promotion, which was granted by letter dated 21.12.1984. It is to be noted that the applicant was not, this time, amongst the officers selected by the Chief of Police for promotion. The promotion of the interested parties was published in the Police Weekly Orders dated 24.12.1984, as a result of which the applicant filed the present recourse.

Counsel for the applicant limited his address on the merits of the case and submitted that the applicant is superior to the interested parties and should have been preferred to them. Counsel argued that the Chief of Police by his letter to the Minister dated 16.1.1980 had already selected, using also his personal knowledge, the applicant for promotion as No. 6 on his list. Counsel contended that nothing has changed since then concerning the merits of the applicant and the personal view of the Chief of Police about him and no reasons are given why the applicant was not promoted by the sub judge decision. 5 10

It is the position of counsel that the applicant -

(a) is senior to all interested parties both in the service as well as to the rank of Sergeant.

(b) According to the evaluation of the Chief of Police (see letter of 16.1.1980) he had priority over the interested parties; 15

(c) he has more awards than any of the interested parties;

(d) he has no punishments as compared to interested party No. 1 who has two punishments; and

(e) he has been evaluated higher than the interested parties by the Selection Board. 20

The fact that the applicant has more awards than any of the interested parties has not been contested. This fact can also be ascertained from the letter of the Chief of Police to the Minister, dated 16.1.1980, containing the particulars for each one of them. It has not also been contested that the applicant is senior to the interested parties both in the service and in the rank of Sergeant. His seniority is about five years in the case of interested parties Nos 9 and 10 and just under three years in the case of all other interested parties. 25

Regulation 2(2) of the Police (Promotion) Regulations, 1958, provides that seniority shall be taken into account although more importance should be attached to the professional ability and personal qualities of the officers qualified for promotion. 30

On the material before me I find that the applicant was on the whole better than the interested parties and no special reasons were given as to why his seniority was disregarded. In the circumstances I find that the discretionary power of the 35

respondents was not properly exercised and the sub judice decision must therefore be annulled.

In the result this recourse succeeds and the sub judice decision is hereby annulled with costs against the respondents

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*Sub judice decision
annulled with costs
against respondents*