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A. MALAIS AND
OTHERS
and
THE REPUBLIC OF
CYPRUS
THROUGH THE
MINISTER OF
INTERIOR

[TRIANAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

A. MALAIS AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Respondent.

(Cases Nos. 20/65-25/65).

Public Officers—Promotions—Police Force—Recourse against decision of the Commander of Police to promote the Interested Parties to the rank of Sergeant in preference and instead of Applicants—Competence to make promotions from Police Constable to Sergeant—Validity of Directive of the Minister of Interior dated 10th July, 1961, on the subject of promotions—Promotions of two Interested Parties not made through the exercise of the competence of the Commander of Police under section 13(2) of the Police Law, Cap. 285, annulled—Remaining sub judice promotions made through the exercise of such competence valid—Latter promotions not made in abuse of powers—Constitution of Cyprus, Article 58, the Police Law Cap. 285, section 13(2), (as amended by the Police (Amendment) Law, 1964 (Law 21 of 1964), the Police (Promotion) Regulations, 1958, regulations 2(2), 4, 6(1)(a)-(e)(3)(a)(b), and the Police (General) Regulations, 1958, regulation 10(1)(a).

Administrative Law—Principles—Statutory competence—A clearly established principle of administrative law that a hierarchically superior organ cannot assume the statutory competence of one of its subordinate organs and exercise it himself.

Hierarchically Superior Organ—Cannot assume or exercise the statutory competence of one of its subordinate organs—See, also, above.

Promotions—Abuse of powers—Discretion—Principles applicable—Onus that there has been an abuse of powers cast on applicants—See, also above and herebelow.

Abuse of powers—See above and herebelow.

Discretion—Discretionary powers—Defective exercise—See above and herebelow.

Statutory Competence—See above under Public Officers; Administrative Law.

Administrative Law—Police Force—Promotions to the rank of Sergeant—Abuse of powers—Applicants did not discharge the onus cast upon them of satisfying the Court that the promotions in question have been made in abuse of powers.

The Applicants in the instant recourses complain against the decision of the Commander of Police dated the 27th January, 1965, to promote the Interested Parties in preference to and instead of them, to the rank of Sergeant.

(Editor's note: The Interested Parties appear in Appendix "A" at the end of this Judgment at p. 466 post). Promotions to Sergeant are governed by the Police (Promotion) Regulations 1958 and particularly regulation 6 thereof.

(Editor's note: Regulation 6 appears in the Judgment at pp. 452-453 post).

A Selection Board constituted under regulation 4 of the Police (Promotion) Regulations (*supra*) met both in 1962 and in 1965 for the purpose of making recommendations for promotion to Sergeant; also the member of the 1965 Selection Board, met not as the Selection Board provided for under regulation 4, but as an ad hoc Board, for the purpose of examining the suitability for promotion to Sergeant of persons who though they were not qualified, under regulation 6, (*supra*), for such promotion, could be considered for promotion to sergeant on special grounds. The said Selection Boards prepared lists of those qualified for promotion under regulation 6, and a list of those eligible for promotion on special grounds. These lists together with a report drawn up by the Selection Board of 1965 and dated 18th January, 1965, were forwarded to the Commander of Police; and on the basis of such report the Commander of Police wrote a letter dated 19th January, 1965, to the Minister of Interior, putting forward his views and attached thereto the said report together with the lists accompanying it. In his said letter the Commander of Police adopted the views set out by the Selection Board and requested the Approval

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of the Minister to make promotions to the vacant posts of Sergeant, in order of priority out of those who were mentioned in the lists prepared by the Selection Board.

The Commander further stated that should it become necessary to examine cases of candidates who would be promoted exceptionally then such cases should be limited to the minimum. The Commander in his said letter further dealt with those of the candidates, in whose cases, in his view, there existed special grounds rendering them eligible for promotion, and he concluded by saying that should any of those be promoted they should be promoted on a temporary basis subject to certain conditions which they would have to satisfy before receiving a permanent appointment.

It will be seen that in his said letter the Commander appears to make recommendations, without stating any final decision of his, the reason being the fact that on the 10th July, 1961, the Minister of Interior communicated to him, inter alia, the following directive on the subject of promotions:

"Promotions. No promotions will be sanctioned unless authorized by the Minister. Your recommendations for the promotion of deserving cases should be submitted to this Ministry for consideration provided there are vacancies in the appropriate rank".

The Commander regarded the above directive as binding on him.

On receipt of the aforesaid letter of the Commander the Minister of Interior summoned him to a meeting and they went together through the list of candidates. They eventually reached an agreement as to those who were to be promoted to Sergeants, with the exception of two instances where the Commander did not agree with the Minister.

On the 27th January, 1965, the Commander received a letter from the Ministry of Interior stating that the promotion to sergeants of the policemen whose names were set out therein had been approved; and on the same day the Commander issued an order announcing the promotion to sergeants, with effect from the 1st February, 1965, of all those mentioned in the Ministry's letter; in the said

order there were included the two interested parties for whose promotions the Commander had not agreed with the Minister.

The competence to make promotions from police-constable to Sergeant is to be found laid down in subsection (2) of section 13 of the Police Law, Cap. 285. Such competence is vested, most clearly, in the Chief Constable, now the Commander of Police.

By an amendment of Cap. 285 effected by the Police (Amendment) Law, 1964 (Law 21/64) the Minister of Interior has been given, by virtue of section 3A, the responsibility of the application of Cap. 285, the general supervision of the Police Force, and the right to issue such directions for the purpose of the discharge of its functions as he may deem fit; section 3A appears, to some extent, to repeat in statutory form the powers already possessed by the Minister of Interior, by virtue of Article 58 of the Constitution, in a matter falling within the domain of his Ministry, such as the Police Force.

The validity of the *sub judice* promotions was attacked mainly on the following grounds.

(I) That they were made, in effect by the decision of the Minister of Interior, and therefore, not by the competent organ, the Commander of Police.

(II) That applicants' seniority, merits and qualifications were so superior to those of the Interested Parties, or at any rate of the most of them, that to disregard applicants in favour of such Interested Parties, when making the promotions in question amounted to abuse of powers.

(III) That in the case of the promotion of I.P. Nos. 22, 23 and 28 there existed personal relationships of the said I.P. with the Minister of Interior, which led to favouritism on his part.

(IV) That the promotions of I.P. Nos. 21-29 (in Appendix "A") were made contrary to law and particularly contrary to regulation 6(1) of the Police (Promotion) Regulations, 1958, in that they did not possess the necessary qualifications.

Held, on ground (I) (supra):

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(1) It is a clearly established principle of Administrative Law that a hierarchically superior organ cannot assume the statutory competence of one of its subordinate organs and exercise it itself. (Vide *Georghiades and The Republic, reported in this part at p. 153 ante*; and also Tsatsos on the Recourse for Annulment, 2nd Edition, pp. 129-131 and Kyriakopoulos on Greek Administrative Law 4th Edition, volume 2, p. 35).

(2) In my opinion, therefore, the Minister of Interior, in spite of his supervisory powers, under Article 58 of the Constitution and the aforesaid section 3A of the relevant legislation, could not assume upon himself the exercise of the Commander's competence under section 13(2) of Cap. 285; and this view is, also, shared by counsel for Respondent himself.

(3) It follows, also, that the aforementioned directive of the Minister of Interior (*exhibit 12*) must have been based not on a correct view of the legal position, in so far as promotions within the competence of the Commander of Police, under section 13(2) of Cap. 285, are concerned.

(4) On the basis of the foregoing I am of the opinion that the two promotions—of Interested Parties Nos. 24 and 28 (in Appendix "A") with which, as aforesaid, the Commander of Police disagreed to the very end with the Minister, were in effect, made contrary to section 13(2) of Cap. 285.

(5) As the Commander has stated himself in his evidence he regarded the letter of the Ministry of Interior, *exhibit 11*, in which, inter alia, the above two promotions were included, as an order binding on him—no doubt because of the previous directive, *exhibit 12*. As a result the Commander of Police, in including the names of Interested Parties Nos. 24 and 28 in *exhibit 1*—his sub judice order for promotions—has acted in compliance with the aforesaid letter of the Ministry, *exhibit 11*, having failed to exercise his own discretion and competence in the matter under section 13(2). In fact, had he done so, the Commander would not have promoted to Sergeants Interested Parties Nos. 24 and 28, because he disagreed with their promotions; he only gave effect to a decision of the Minister of Interior (per *exhibit 11*) which decision was taken in substitution of his—the Commander's —

own competence in the matter under section 13(2) of Cap. 285. Thus the two promotions concerned have to be annulled as being contrary to law.

(6) Regarding all the remaining *sub judice* promotions I have reached the conclusion—after giving the matter a lot of thought—that they must be attributed to the exercise of the competence of the Commander under section 13(2) of Cap. 285 and that, therefore, they do not have to be annulled on the same ground as the promotions of Interested Parties Nos. 24 and 28, above.

Held, on ground (II) (supra) :

(1) Bearing in mind, *inter alia*,—

(i) that regulation 2(2) of the Police (Promotion) Regulations 1958, provides expressly that “Seniority shall be taken into account, but shall not be allowed to govern promotion, and greater importance shall be attached to professional ability and personal qualities of leadership, loyalty, initiative, excellence of character, zeal and a true appreciation of the objects of the Police”;

(ii) that an Administrative Court, such as this, in deciding on the validity of promotions, and particularly in the Police, cannot substitute its own evaluation of the substantive personal merits of candidates for that of the appropriate for the making of promotions authority’s—such as the Commander of Police (see also in this respect Decisions of the Council of State in Greece Nos. 238/57, 874/57); and

(iii) the evidence given by the Commander of Police and Mr. A. Rigas regarding the merits of specific cases, which evidence I accept and I need not repeat herein in detail;

I have reached the conclusion that the Applicants have not discharged the onus cast upon them of satisfying the Court that the promotions in question have been made in abuse of powers.

Held, on ground (III) (supra) :

I have reached the conclusion that no abuse of powers has been established, on the basis of favouritism by the Minister of Interior, because though it is not disputed

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that Interested Party No. 22 was at a time the personal driver of the Minister of Interior, and Interested Party No. 23 had given refuge to the Minister during the Liberation Struggle of 1955-1959, it has not been established to my satisfaction that it is on these grounds that the Commander of Police agreed on their promotions and decided accordingly; on the contrary both of them were put forward as eligible for promotion, on special grounds, by the Commander himself, *in exhibit 9*, before he had been to see the Minister and discuss the matter of promotions with him, and the existence of special grounds has been affirmed, also, on oath by the Commander in his evidence before the Court.

Held, on ground (IV) (supra) :

(1) In my opinion the provisions of regulation 6(3)(b) of the said Regulations, provide sufficient legal basis for promotion without the necessary qualifications laid down in regulation 6(1), and I am satisfied on the evidence before me that in the cases of Interested Parties Nos. 21-23, 25-27 and 29 (the promotions of Interested Parties Nos. 24 and 28 having been annulled, otherwise, already) there existed sufficient material making it open to the Commander of Police to effect promotions under regulation 6(3)(b).

(2) It is correct that the Commander has made the said promotions temporary, in the first instance, and subject to conditions, but I think that such a course was open to him under regulation 6(3)(b), once it was open to him under such regulation to make the said promotions permanent and without conditions; the greater includes the lesser. Moreover, it was open to the Commander in making the said promotions temporary to rely for the purpose on his relevant powers under regulation 10 of the Police (General) Regulations, 1958.

Recourses succeed as against the promotions of Interested Parties Nos. 24 and 28 in Appendix "A"; and fail as regards all the other sub judice promotions.

Cases referred to:-

Georgiades and The Republic, reported in this vol. at p. 153 *ante*;

Decision No. 238/57 of the Greece Council of State;

Decision No. 874/57 of the Greek Council of State.

Recourse.

Recourse against the decision of the Respondent to promote the Interested Parties in preference to and instead of, Applicants to the rank of Sergeant.

L. Clerides for the Applicants.

K. Talarides, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:—

TRIANAFYLLIDES, J.: By order made, with the consent of counsel on both sides, on the 8th September, 1965, these six Cases have been consolidated and heard together. It is, therefore, proposed to give one judgment in respect of all six of them.

These recourses have been filed against the "Republic of Cyprus, through the Minister of Interior", though the immediate Respondent organ appears to be the Commander of Police; as, however, the Police comes under the Ministry of Interior, I think that the description of Respondent in the title of proceedings is sufficiently correct, for the purpose of defining the sphere of Administration in respect of which the Republic is being made a Respondent, and need not be amended in any way for the purpose.

The relief claimed by each Applicant in each of these six Cases is identical: First, a declaration is sought that the decision of the Commander of the Police, dated the 27th January, 1965, to promote the Interested Parties in preference to, and instead of, Applicants to the rank of Sergeant is *null* and *void*; and, secondly a declaration that the omission of the said Commander not so to promote the Applicants ought not to have been made. This second claim for relief, regarding an omission, is alternative to the first one, and

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counsel for Applicants has stated during the hearing that he was not proceeding further in respect thereto; thus, this second alternative claim of Applicants should be deemed to have been abandoned and is hereby dismissed accordingly.

The aforementioned Interested Parties i.e. the policemen who have been promoted to Sergeant in preference to, and instead of, each of the Applicants, were specified originally in Schedules attached to the several Applications; subsequently, during the proceedings, counsel for Applicants filed, on the 17th September, 1965, amended lists of Interested Parties which have been put in, in a bundle, as *exhibit 2*.

By means of the said lists some of the Applicants abandoned their recourses against some of the promotions they had challenged originally and to that extent such recourses should be deemed to have been withdrawn and are dismissed accordingly. The promotions that continue to be challenged by each Applicant, as per *exhibit 2*, are set out in Appendix "A" to this judgment. They are in all, now, before the Court, in these proceedings, 29 promotions of Interested Parties; nine of such Interested Parties were promoted to Sergeant on a temporary basis, pending their meeting certain conditions laid down for them.

All the Interested Parties have been notified of their right to take part separately, on their own, in these proceedings, if they wished to do so, but they all have elected not to do so.

Promotions to Sergeant are governed by the Police (Promotion) Regulations, 1958, and particularly regulation 6 thereof.

During the hearing of these proceedings, regulation 10 of the Police (General) Regulations, 1958, was, also, relied upon regarding those of the Interested Parties who were promoted on a temporary basis.

The parts of regulation 6 of the Police (Promotion) Regulations 1958, which are relevant in these Cases, read as follows:—

"6.—(1) A constable to be qualified for promotion to the rank of Sergeant must:—

(a) not have had any greater punishment than a severe reprimand imposed on him for an offence against discipline during the past two years;

- (b) have passed the qualifying examinations;
- (c) save for special reasons, to be stated in each individual case, have completed two years' service in the performance of ordinary outside police duty;
- (d) have completed four years' service, unless the Chief Constable is satisfied that he possesses special qualifications for the performance of the particular duties on which he is to be employed;
- (e) have been recommended by the Board.

(2)

(3) Notwithstanding anything in this Regulation contained the Chief Constable:—

- (a) may decide that members of the Force recommended by the Board for advancement should attend a short promotion course;
- (b) may promote any police officer who shows marked ability or exceptional aptitude for special work, irrespective of his length of service, and whether qualified by examination or not”.

The part of regulation 10 of the Police (General) Regulations, 1958, which is relevant in these Cases, reads as follows:

“10.—(1) A member of the Force who is required to perform the duties of a higher rank may be promoted temporarily to that rank by the Chief Constable:

Provided that—

- (a) a vacancy exists in the rank;
-”

It is common ground that all Applicants were qualified for promotion under regulation 6, above, and that, therefore, they have a legitimate interest to challenge by means of these recourses the promotions in question.

According to the documentary and oral evidence adduced before the Court, as well as according to the undisputed facts as explained to the Court by counsel on both sides, I find that the salient events which led to the *sub judice* promotions are as follows:—

Selection Boards, as provided for under regulation 4 of

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the Police (Promotion) Regulations 1958, met both in 1962 and in 1965 for the purpose of making recommendations for promotions to Sergeant; also, the members, of the 1965 Selection Board, met, not as the Selection Board provided for under regulation 4, but as an *ad hoc* Board, for the purpose of examining the suitability for promotion to Sergeant of persons who though they were not qualified, under regulation 6, above, for such promotion, could be considered for promotion to sergeant on special grounds.

The said Selection Boards of 1962 and 1965 prepared lists of those qualified for promotion to Sergeant, under regulation 6, classifying them into candidates "strongly recommended", "recommended", "possibles" and "unsuitables"; the names of candidates on such lists are set out in order of priority.

A list was also prepared of those who were eligible for promotion on special grounds. This list and the other lists which are relevant in these proceedings, in the sense that they contain either the names of Applicants or Interested Parties, were produced before the Court and they are as follows:—

The list of the "strongly recommended" in 1962 is *exhibit 4*. It contains, *inter alia*, the names of fourteen Interested Parties (Nos. 6, 10, 14, 2, 9, 7, 8, 17, 3, 16, 11, 4, 12, and 13 in Appendix "A" hereto); all these Interested Parties were promoted to Sergeants, permanently.

The lists of the "recommended", "possibles" and "unsuitables", as prepared in 1962, are not relevant in these proceedings, as they do not contain the names of either Applicants or Interested Parties.

The list of the "strongly recommended" in 1965 is *exhibit 5*. It contains, *inter alia*, the names of two Interested Parties (Nos. 1 and 20 in Appendix "A") and of two Applicants (those in Cases 24/65 and 25/65); both the said Interested Parties have been promoted to Sergeants, permanently. On this list the names of the two Applicants figure higher than those of the two Interested Parties.

The list of the "recommended" in 1965 is *exhibit 6*. It contains, *inter alia*, the names of three Interested Parties (Nos. 5, 18 and 19 in Appendix "A") who were promoted to Sergeants, permanently, and of three Applicants (those in

Cases 21/65, 22/65 and 23/65). On this list the name of Applicant in Case 23/65 figures higher than that of Interested Party No.5 (in Appendix "A") and the names of the other two Applicants figure higher than those of the other two Interested Parties, but below that of Interested Party No. 5.

The list of the "possibles" in 1965 is *exhibit 7* and contains, *inter alia*, only one relevant name, that of Applicant in Case 20/65. The list of the "unsuitables" in 1965 is not relevant in these proceedings.

The list of those eligible for promotion on special grounds is *exhibit 10*. It contains, *inter alia*, the names of nine Interested Parties (Nos. 21-29 in Appendix "A") who were all promoted to Sergeants, temporarily, pending their meeting certain conditions.

The above lists together with a report drawn up by the Selection Board of 1965 were forwarded to the Commander of Police; the report is dated 18th January, 1965, and is *exhibit 8* in these proceedings.

On the basis of this report the Commander of Police wrote a letter, on the 19th January, 1965 to the Minister of Interior, putting forward his views; he attached thereto *exhibit 8* together with the lists accompanying it; this letter of the Commander to the Minister is *exhibit 9* in these proceedings.

In his letter the Commander adopted the views set out by the Selection Board in paragraphs 6 and 7 of *exhibit 8* which read as follows:—

"6. The Chairman and Members of the Board, taking into consideration the excellent material of *qualified* Constables and Ag. Sergeants interviewed by them, and the acute need of securing the services of qualified and capable Sergeants to take command of the various Stations and other posts in the Force, unanimously recommend that promotions to the rank of Sergeant should, as a general rule, be confined to those candidates who are fully qualified and have successfully stood the test before the Promotion Board.

"7. The Board further recommend that your authority under Regulation 6(3) (b) of the Police (Promotion) Regulations may only be exercised in very exceptional and most deserving cases which, in the interest of the

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service, be restricted to the minimum”.

It is not disputed that the above reference to regulation 6(3) (b) of the Police (Promotion) Regulations 1958 refers to those who, though non-qualified for promotion to Sergeant, were eligible for such promotion on special grounds.

By his letter (*exhibit 9*) the Commander requested the approval of the Minister to make promotions to the vacant posts of Sergeant, in order of priority, out of those who were mentioned in the lists “blues 2 and 3”; (“blue 2” is *exhibit 4*, the “strongly recommended” in 1962 and “blue 3” is *exhibit 5*, the “strongly recommended” in 1965; in these two lists, as already stated, were included the names of sixteen Interested Parties and of two Applicants).

The Commander proceeded to state, further, that should it become necessary to examine cases of candidates who would be promoted exceptionally, then such cases should be limited to the minimum and such promotions should be made and of those mentioned in lists “blues 4, 5 and 8”; (“blue 4” is not relevant in these proceedings, as it is common ground that it contained no names of either Interested Parties or Applicants; “blue 5” is *exhibit 6*, the “recommended” in 1965, and “blue 8” is *exhibit 10*, the list of those eligible for promotion on special grounds; as already stated, in *exhibit 6 and 10* are included the names of twelve Interested Parties and of three Applicants).

The Commander of Police pointed out, also, that those mentioned in lists “blues 6 and 7” should not be considered for promotion; (“blue 6” is not relevant in these proceedings, as it is common ground that it contained no names of either Interested Parties or Applicants and “blue 7” is *exhibit 7*, the “possibles” in 1965, where the name of only one Applicant is included).

Then in the same letter (*exhibit 9*) the Commander proceeded to deal specifically with those of the candidates mentioned in *exhibit 10*, in whose cases, in his view, there existed special grounds rendering them eligible for promotion, and he ended by saying that should any of those be promoted to Sergeant they should be promoted on a temporary basis subject to certain conditions which they would have to satisfy before receiving a permanent appointment.

As it will be seen from *exhibit 9* the Commander appears

to make therein recommendations, without stating any final decision of his; the reason for his not doing so is, no doubt, the fact that on the 10th July, 1961, the Ministry of Interior communicated to him, *inter alia*, the following directive on the subject of promotions:—

“.....
Promotions. No promotions will be sanctioned unless authorised by the Minister. Your recommendations for the promotion of deserving cases should be submitted to this Ministry for consideration provided there are vacancies in the appropriate rank”.
.....”

The directive is *exhibit 12*.

According to the Commander of Police, he regarded this *exhibit 12* as binding on him.

When the Minister of Interior received *exhibit 9*, he summoned the Commander to a meeting and they went together through the list of candidates. The Minister had before him, also, recommendations made in the cases of policemen who were attached to the Information Service, which is operating directly under the Ministry of Interior; such recommendations were made by Mr. A. Rigas, who was in charge of such Information Service.

According to the Commander of Police, whose evidence I do accept as very reliable, he and the Minister of Interior reached eventually an agreement as to those who were to be promoted to Sergeants, with the exception of two instances where he did not agree with the Minister.

Then on the 27th January, 1965, the Commander of Police received a letter from the Ministry of Interior stating that the promotion to Sergeants of the policemen whose names were set out therein had been approved. This letter is *exhibit 11*.

On the same day the Commander of Police issued an order announcing the promotion to Sergeants, with effect from the 1st February, 1965, of all those mentioned in *exhibit 11*; this is *exhibit 1* in these proceedings. The Commander has stated that he regarded the letter of the Ministry of Interior, *exhibit 11*, as an order to be obeyed.

Exhibit 1 set out, in paragraph (a) thereof, the names of,

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inter alia, Interested Parties Nos. 1-14 and 16-20 (in Appendix "A" hereto) who were all promoted to Sergeants, permanently, and, in paragraph (b) thereof, the names of Interested Parties 21-29 (in Appendix "A") who were all promoted to temporary Sergeants subject to certain specified conditions. Interested Party No. 15 (in Appendix "A") was not promoted to Sergeant by means of the order of the Commander *exhibit 1*, but later.

In *exhibit 1* were included, under paragraph (b) thereof, the promotions of two Interested Parties Nos. 24 and 28 (in Appendix "A") for whose promotions the Commander had not agreed with the Minister, as stated earlier in this Judgment.

In dealing with the fate of these six consolidated recourses I should point out at this stage that in all of them are-challenged only, by the motions for relief, the promotions made by means of *exhibit 1*, i.e. the order of the Commander of Police dated 27th January, 1965. As the promotion of Interested Party No. 15 (in Appendix "A") was not effected by means of *exhibit 1*, but later, it follows that it cannot be regarded as properly in issue in these proceedings, merely because when the amended lists of Interested Parties (*exhibit 2*) were filed by counsel for Applicants, the name of this Interested Party appears to have been included among those whose promotions are being challenged by Applicant in Case 20/65. So long as the relevant motion for relief remained unamended no particulars given in respect thereto could extend recourse 20/65 to cover also the case of Interested Party No. 15. Moreover, when the lists *exhibit 2* were filed, and Interested Party No. 15 was mentioned for the first time as being one of those whose promotions were being challenged, the relevant time-limit, under Article 146(3) of the Constitution, had lapsed long ago and Applicant in Case 20/65 was out-of-time in challenging the promotion of such Interested Party by way of recourse under Article 146. So even if the lists *exhibit 2* could be otherwise treated as amending accordingly the relevant motion for relief, such course is excluded in these proceedings because of the provisions of Article 146(3) in so far as Interested Party No. 15 is concerned.

In so far, therefore, as this proceeding, and specifically recourse 20/65, is aimed at the promotion to Sergeant of

Interested Party No. 15 (in Appendix "A")— P.S.271 G. Kasabis—it fails and is dismissed accordingly.

We pass next to the validity of the promotions of the other Interested Parties, and it is useful to deal first with the competence to make such promotions.

The competence to make promotions from police-constable to Sergeant is to be found laid down in sub-section (2) of section 13 of the Police Law, Cap. 285. Such competence is vested, most clearly, in the Chief Constable, now the Commander of Police.

By an amendment of Cap. 285 effected by the Police (Amendment) Law, 1964 (Law 21/64) the Minister of Interior has been given, by virtue of section 3A, the responsibility of the application of Cap. 285, the general supervision of the Police Force, and the right to issue such directions for the purpose of the discharge of its functions as he may deem fit; section 3A appears, to some extent, to repeat in statutory form the powers already possessed by the Minister of Interior, by virtue of Article 58 of the Constitution, in a matter falling within the domain of his Ministry, such as the Police Force.

In these proceedings the validity of the *sub judice* promotions has been attacked, *inter alia*, on the ground that they were made, in effect, by decision of the Minister of Interior, and therefore, not by the competent organ, the Commander of Police.

It is a clearly established principle of Administrative Law that a hierarchically superior organ cannot assume the statutory competence of one of its subordinate organs and exercise it itself. (*Vide Georghiades and The Republic* (reported in this part at p. 153 ante); and also Tsatsos on the Recourse for Annulment, 2nd Edition, pp. 129-131 and Kyriakopoulos on Greek Administrative Law 4th Edition, volume, 2, p. 35).

In my opinion, therefore, the Minister of Interior, in spite of his supervisory powers, under Article 58 of the Constitution and the aforesaid section 3A of the relevant legislation, could not assume upon himself the exercise of the Commander's competence under section 13(2) of Cap. 285; and this view is, also, shared by counsel for Respondent himself.

It follows, also, that the aforementioned directive of the

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Minister of Interior (*exhibit 12*) must have been based not on a correct view of the legal position, in so far as promotions within the competence of the Commander of Police, under section 13(2) of Cap. 285, are concerned.

On the basis of the foregoing I am of the opinion that the two promotions—of Interested Parties Nos. 24 and 28 (in Appendix “A”) with which, as aforesaid, the Commander of Police disagreed to the very end with the Minister, were in effect, made contrary to section 13(2) of Cap. 285.

As the Commander has stated himself in his evidence he regarded the letter of the Ministry of Interior, *exhibit 11*, in which, *inter alia*, the above two promotions were included, as an order binding on him—no doubt because of the previous directive, *exhibit 12*. As a result the Commander of Police, in including the names of Interested Parties Nos. 24 and 28 in *exhibit 1*—his *sub judice* order for promotions—has acted in compliance with the aforesaid letter of the Ministry, *exhibit 11*, having failed to exercise his own discretion and competence in the matter under section 13(2). In fact, had he done so, the Commander would not have promoted to Sergeants Interested Parties Nos. 24 and 28, because he disagreed with their promotions; he only gave effect to a decision of the Minister of Interior (per *exhibit 11*) which decision was taken in substitution of his—the Commander’s—own competence in the matter under section 13(2) of Cap. 285. Thus the two promotions concerned have to be annulled as being contrary to law.

Regarding all the remaining *sub judice* promotions I have reached the conclusion—after giving the matter a lot of thought—that they must be attributed to the exercise of the competence of the Commander under section 13(2) of Cap. 285 and that, therefore, they do not have to be annulled on the same ground as the promotions of Interested Parties Nos. 24 and 28, above.

Though, no doubt, the Commander by means of *exhibit 9* appears to have only made recommendations for the approval of the Minister of Interior, and then the said Minister by *exhibit 11* informed the Commander that a number of promotions had been approved, upon which the Commander proceeded to issue his relevant order *exhibit 1*, I think that when one looks at the substance of the matter, and when one bears in mind the statement of the Commander, that after

discussion with the Minister he agreed on all these promotions, one may properly regard the relevant promotions, which were set out as "approved" in the letter of the Ministry of Interior, *exhibit 11*, as being promotions which the Commander himself in the exercise of his relevant competence under section 13(2) of Cap. 285 had agreed and decided to make himself, and which he eventually did make by means of his order *exhibit 1*.

I take, also, the view that the relevant discretion of the Commander has not been vitiated by the fact that, in the particular circumstances of these Cases, he discussed the promotions to be made with his Minister, because, first, the Minister was cognizant of the claims to promotion of the members of the Information Service under him—and these were material considerations for the Commander, to be weighed before forming his views finally on those to be promoted—and, secondly, the Minister, in view of his supervisory powers, was a person of whose views, in general, the Commander might usefully have the benefit.

It is correct that the Commander of Police was acting under the shadow of the aforesaid directive of the Ministry of Interior (*exhibit 12*), to the effect that promotions were to be authorized by the Minister; so, had I come to the conclusion that the Commander had regarded himself as bound to agree with the Minister, or had I had any doubts on this score, I would not have treated the Commander's agreement with the *sub judice* promotions as sufficient to establish the existence of his own decision in the matter, as required for the exercise of his own competence under section 13(2) of Cap. 285; but the impression I derived from the testimony of the Commander while giving evidence, plus, *inter alia*, the fact that he did not agree all along the line with the Minister, but he disagreed when he felt that it was proper to do so (as in the cases of the promotions of Interested Parties Nos. 24 and 28, above) plus the fact that all those, to the promotion of which he eventually agreed, were persons who were eligible for promotion on the basis of his own recommendations in *exhibit 9*, have led me to the conclusion that the existence of *exhibit 12* did not prevent the Commander of Police from deciding himself in the matter and that he agreed to such promotions as he deemed himself proper, and to no more.

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I have also taken into account on this issue the fact that the Commander of Police proceeded on his own initiative to effect some of the promotions in question on a temporary basis only, and subject to conditions, though nothing of the sort was stated in the relevant letter to him of the Ministry of Interior, *exhibit 11*.

For all the above reasons I find that the promotions concerned were, in the last analysis, made through the exercise of the competence of the Commander under section 13(2) of Cap. 285.

The next matter to be dealt with in this Judgment is the contention of counsel for Applicants that Applicants' seniority, merits and qualifications were so superior to those of the Interested Parties, or at any rate of most of them, that to disregard Applicants in favour of such Interested Parties, when making the promotions in question, amounted to abuse of powers.

Bearing in mind, *inter alia*,—

- (i) that regulation 2(2) of the Police (Promotion) Regulations 1958, provides expressly that "Seniority shall be taken into account, but shall not be allowed to govern promotion, and greater importance shall be attached to professional ability and personal qualities of leadership, loyalty, initiative, excellence of character, zeal and a true appreciation of the objects of the Police";
- (ii) that an Administrative Court, such as this, in deciding on the validity of promotions, and particularly in the Police, cannot substitute its own evaluation of the substantive personal merits of candidates for that of the appropriate for the making of promotions authority's—such as the Commander of Police (see also in this respect Decisions of the Council of State in Greece Nos. 238/57, 874/57); and
- (iii) the evidence given by the Commander of Police and Mr. A. Rigas regarding the merits of specific cases, which evidence I accept and I need not repeat herein in detail;

I have reached the conclusion that the Applicants have not discharged the onus cast upon them of satisfying the Court

that the promotions in question have been made in abuse of powers.

In the above respect I have duly borne in mind that some of the Applicants appear rated higher than some of the Interested Parties in the relevant lists attached to *exhibits 8 and 9*, and, also, that some of the Interested Parties were not qualified for promotion under regulation 6(1), and have been promoted under regulation 6(3) (b), but these considerations have not been found by me sufficient to warrant the conclusion that abuse of powers has been established in relation to the making of the promotions in question, because on the basis of the evidence of the Commander of Police—which as I said I do accept—I am satisfied that irrespective of the initial priority of each candidate on the specific lists, the eventual selection of candidates was made on proper criteria, in the light of the needs of the service.

It has, also, been alleged that in the cases of the promotions of Interested Parties Nos. 22, 23 and 28 (in Appendix "A") there existed personal relationships of the said Interested Parties with the Minister of Interior, which led to favouritism on his part, resulting in the improper promotions of such three persons. As regards Interested Party No. 28 his promotion has already been annulled on another ground, and I need not deal with it under this heading. As regards the other two Interested Parties involved in this contention, I have reached the conclusion that no abuse of powers has been established, on the basis of favouritism by the Minister of Interior, because though it is not disputed that Interested Party No. 22 was at a time the personal driver of the Minister of Interior, and Interested Party No. 23 had given refuge to the Minister during the Liberation Struggle of 1955-1959, it has not been established to my satisfaction that it is on these grounds that the Commander of Police agreed on their promotions and decided accordingly; on the contrary both of them were put forward as eligible for promotion, on special grounds, by the Commander himself, in *exhibit 9*, before he had been to see the Minister and discuss the matter of promotions with him, and the existence of special grounds has been affirmed, also, on oath by the Commander in his evidence before the Court.

Regarding the promotions of Interested Parties Nos. 21-29 (in Appendix "A") it has been argued that they were made

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contrary to law, and particularly contrary to regulation 6(1) of the Police (Promotion) Regulations 1958, in that they did not possess the necessary qualifications.

But in my opinion the provisions of regulation 6(3) (b) of the said Regulations, which have been set out earlier in this judgment, provide sufficient legal basis for promotion without the necessary qualifications laid down in regulation 6(1), and I am satisfied on the evidence before me that in the cases of Interested Parties Nos. 21-23, 25-27 and 29 (the promotions of Interested Parties Nos. 24 and 28 having been annulled, otherwise, already) there existed sufficient material making it open to the Commander of Police to effect promotions under regulation 6(3) (b). It is correct that the Commander has made the said promotions temporary, in the first instance, and subject to conditions, but I think that such a course was open to him under regulation 6(3) (b), once it was open to him under such regulation to make the said promotions permanent and without conditions; the greater includes the lesser. Moreover, it was open to the Commander in making the said promotions temporary to rely for the purpose on his relevant powers under regulation 10 of the Police (General) Regulations, 1958.

For all the above reasons these recourses succeed, all of them, as against the promotions to Sergeant of Interested Parties Nos. 24 and 28 in Appendix "A", (P.S. 88 I. Ierides and P.S. 334 S. Sofocleous) which are declared as *null and void* and of no effect whatsoever, and they fail as regards all the other *sub judice* promotions.

The two resulting vacancies will have to be considered again by the Commander, after taking into account *all* eligible candidates, as existing in January, 1965.

In such new examination of the matter the claims of Applicants to promotion will, no doubt, be duly considered; though the Court at this stage is expressing no opinion as to who should be promoted to the two vacancies in question, it must be pointed out that when there are persons who do possess very old standing in the Police Force, and are "strongly recommended" or "recommended" for promotion, the longer they remain without a promotion, and others are preferred to them, the harder it will be for the appropriate authorities to justify their being overlooked.

Regarding costs I have reached the conclusion that Applicants are entitled to part of their costs, which I assess at £45.

Recourses succeed as against the promotions of Interested Parties Nos. 24 and 28 in Appendix "A"; and fail as regards all the other sub judice promotions. Order for costs as aforesaid.

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APPENDIX "A"

<i>Interested Parties</i>		<i>Applicants challenging promotion</i>			
<i>Sergeants (Permanent)</i>		<i>(reference by Case No.)</i>			
1)	P.S. 792 A. Milidonis	20/65			
2)	P.S. 150 L. Patsalides	20/65			
3)	P.S. 1044 A. Zorbas	20/65		23/65	
4)	P.S. 1093 L. Theophilou	20/65		23/65	
5)	P.S. 1096 A. Yiannakou	20/65		23/65	24/65
6)	P.S. 899 K. Christoforou	20/65	22/65	23/65	25/65
7)	P.S. 736 A. Mettas	20/65	21/65	23/65	
8)	P.S. 20 P. Leonida	20/65			
9)	P.S. 1159 A. Karamanis	20/65		23/65	1
10)	P.S. 384 C. Chimonas	20/65	21/65	23/65	1
11)	P.S. 1208 M. Michaelides	20/65	21/65	23/65	24/65
12)	P.S. 1245 T. Kyprianou	20/65	21/65	22/65	23/65 24/65
13)	P.S. 1262 A. Artimatas	20/65	21/65	22/65	23/65 24/65
14)	P.S. 1292 A. Mustakas	20/65	21/65	22/65	23/65
15)	P.S. 271 G. Kasabis	20/65			
16)	P.S. 631 H. Leonida	- All Applicants -			
17)	P.S. 215 N. Onisiforou	20/65			
18)	P.S. 148 S. HjiLouca	- All Applicants -			
19)	P.S. 155 A. Georghiou	-do-			
20)	P.S. 604 A. Papacharalambous	-do-			

Sergeants (Temporary)

21)	P.S. 1005 G. Constantinou	- All Applicants -
22)	P.S. 772 V. Christofi	-do-
23)	P.S. 1339 Chr. Antoniou	-do-
24)	P.S. 88 I. Ierides	-do-
25)	P.S. 314 H. Demetriou	-do-
26)	P.S. 353 P. Avraam	-do-
27)	P.S. 783 Th. Thoukidides	-do-
28)	P.S. 334 S. Sofokleous	-do-
29)	P.S. 995 Th. Papaiacovou	-do-