

1981 March 21

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYRIAKOS TRANGARIDES AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR,

2. THE COMMANDER OF POLICE,

Respondents.

(Cases Nos. 246/79, 262/79,
265/79 and 267/79).

Natural Justice—Rules of—Police Force—Promotions—Applicants not promoted though otherwise suitable for promotion because of Central Information Service reports regarding their loyalty—No criminal or disciplinary proceedings instituted against them—
5 *And not given opportunity to be heard—Chief of Police ought not to have taken into account said reports—Rules of natural justice violated—Sub judge promotions annulled.*

Police Force—Promotions—Central Information Service reports regarding loyalty of candidates taken into consideration—Affected candidates not given chance to be heard—And no disciplinary or
10 *criminal proceedings against them—Rules of natural justice violated—Sub judge promotions annulled.*

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The applicants in these recourses were candidates for promotion to the rank of sergeant in the Police Fire Service; and though
15 they were recommended for promotion by the Chief Fire Officer and the appropriate Selection Board they were not promoted to the above rank for "reasons of loyalty". The information regarding their loyalty was supplied to the respondent Chief of Police by the Central Information Service known as KYP
20 and was to the effect that their loyalty was doubted.

Upon a recourse against the validity of the decision of the

respondent to promote the interested parties to the above rank in preference and instead of the applicants, Counsel for the applicants submitted:

That the Chief of Police was not entitled to take into consideration the adverse reports of the Central Information Service as regards the applicants, since no criminal or disciplinary proceedings were instituted against them; that even if it is assumed that the Chief of Police was entitled to take into account the aforesaid reports then again, he was bound, before taking the decision complained of, under the rules of natural justice, to give the opportunity to the applicants to be heard.

Counsel for the respondent agreed with the above last submission and stated that in his view the recourses should succeed.

Held, that the Chief of Police ought not to have taken into account the report of the Central Information Service as to the doubts that existed regarding the loyalty of the applicants; and that, therefore, the recourses must succeed and the decision complained of must be declared null and void. (See *Tzavellas and Another v. Republic* (1975) 3 C.L.R. 490 at pp. 501, 502).

Sub judice decision annulled.

Cases referred to:

Tzavellas and Another v. The Republic (1975) 3 C.L.R. 490 at pp. 501, 502.

Recourses.

Recourses against the decision of the respondents to promote the interested parties to the rank of sergeant in preference and instead of the applicants.

Sp. Spyridakis, for applicant in Case No. 246/79.

M. Christofides, for applicant in Case No. 262/79.

G. Ladas, for applicant in Case No. 265/79.

E. Odysseos, for applicant in Case No. 267/79.

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

Cur. adv. vult.

MALACHTOS J. read the following judgment. In these four Recourses, which were heard together, as they attack the same administrative act, the applicants, who are members of the Police

Force in the Fire Service, claim a declaration of the Court that the act and/or decision of the respondents and/or either of them, published in the Police Orders Part II No. 286 dated 7th May, 1979, (Supplement A), to promote the eleven interested parties, namely, 1. P. Karadjias, 2. K. Panayides, 3. G. Bisharas, 4. S. Sofocleous, 5. A. Theodorou, 6. N. Andreou, 7. Chr. Schizas, 8. N. Georghiou, 9. K. Pamboris, 10. G. Papageorghiou and 11. A. Georghiou, to the rank of sergeant instead of the applicants, is null and void and of no legal effect whatsoever.

10 The applicant in Recourse No. 246/79, Kyriakos Tsangarides, hereinafter referred to as applicant No. 1, joined the Fire Service of the Police Force on 1st April, 1972 and as from November, 1973, is serving in Nicosia town.

15 The applicant in Recourse No. 262/79, Kyriakos Tziouvanni, hereinafter referred to as applicant No. 2, joined the Fire Service of the Police Force on 1st April, 1970, and as from 1975 is serving in Nicosia as a chief fireman.

20 The applicant in Case No. 265/79, Stavros Kyprianou, hereinafter referred to as applicant No. 3, joined the Fire Service of the Police Force on 9th April, 1968 and in February, 1974 he was appointed as acting sergeant. As from 1975 he has been serving in Larnaca town.

25 The applicant in Case No. 267/79, Kyriakos Papastavrou, hereinafter referred to as applicant No. 4, joined the Fire Service of the Police Force on 1st April, 1970 and on 1st December, 1974 was appointed as an acting sergeant. As from May, 1979 he has been serving in Nicosia at the Fire Service Headquarters. This applicant attacks only the promotions of five out of the eleven interested parties, namely, interested parties Nos.-7, 8, 9, 10 and 11.

All applicants possess the required qualifications for promotion to the rank of sergeant as provided by regulation 6 of the Police (Promotion) Regulations.

35 The promotions of the interested parties were made by the Chief of Police with the approval of the Minister of Interior under section 13 of the Police Law, Cap. 285 as amended by Law 29 of 1966. This section reads as follows:

“13. Appointments etc. of Gazetted Officers and other ranks:

- (1) Gazetted Officers shall be appointed, promoted and discharged by the Minister.
- (2) The Chief of Police shall, with the approval of the Minister, appoint, enlist, promote and discharge all members of the Force up to and including the rank of Chief Inspector. 5
- (3) The conditions of appointment, enlistment, promotion, service and discharge of members of the Force shall be provided by Regulations made by the Council of Ministers under this section and published in the official gazette of the Republic; 10

Provided that until the regulations provided in this sub-section are made, the regulations and general orders in force on the date of the coming of this law into operation shall continue to apply. 15

- (4) Regulations made under this section shall be laid before the House of Representatives. If within 15 days of such laying the House of Representatives does not by resolution amend or annul, in whole or in part, the regulations so laid, they shall then, soon after the expiry of the period hereinbefore mentioned, be published in the official gazette of the Republic and they shall come into force as from such publication. In the event of their amendment, in whole or in part, by the House of Representatives, such regulations shall be published in the official gazette of the Republic as so amended by the House and shall come into force as from such publication”. 20 25 30

As no Regulations were made under the above section the Police (Promotion) Regulations 1958, which came into force on the 1st May, 1958, are still in force.

The procedure for promotion under the said Regulations (regulations 3 and 4), is as follows: 35

“Divisional and Unit Commanders shall, when called upon, submit to the Chief of Police a list of names of qualified members of the Force recommended for promo-

tion, together with a report on each man's characteristics and capabilities on the appropriate form. The 'general observations' on the same form shall deal with such matters as health, energy, domestic state, conduct, knowledge
5 of police duties, personal reputation, sense of discipline and ability to get the best out of the men and produce results; and, whether recommended for accelerated promotion.

10 Selection for promotion up to and including the rank of Assistant Superintendent shall be made by a Selection Board appointed by the Chief of Police from time to time consisting of the Deputy Chief of Police or the Assistant Chief of Police (A) as Chairman, a Chief Superintendent (A) and two gazetted officers as members.

15 Divisional and Unit Commanders may sit with the Board as advisers. The Board meets at least once each year to interview and report to the Chief of Police upon those recommended for promotion''.

20 In the present case the Chief of Police, after receiving the recommendations of the Chief Fire Officer and the reports of the Selection Board as regards the firemen eligible for promotion, including the applicants, issued, with the approval of the Minister of Interior, the decision complained of by promoting the interested parties to the rank of sergeant. This decision was published in the Police Orders on the 7th May, 1979.

25 It is clear from the relevant documents produced that applicants No. 1 and 2 were recommended for promotion by the Chief Fire Officer and strongly recommended for promotion by the Selection Board.

30 Applicants Nos. 3 and 4 were strongly recommended for promotion by the Chief Fire Officer and recommended for immediate promotion by the Selection Board.

35 As it appears from the relevant forms under the heading "Service Elements of Applicant" the reason given for non promotion of each one of the applicants is "reasons of loyalty".

It is common ground that the information regarding the loyalty of the candidates for promotion was supplied to the Chief of Police by the Central Information Service known as KYP.

As regards the four applicants the information was that their loyalty was doubted.

It has been argued on behalf of the applicants that the only reason as to why they were not promoted were the alleged doubts as regards their loyalty, since they were all strongly recommended for promotion. It has also been submitted that the Chief of Police was not entitled to take into consideration the adverse reports of KYP as regards the applicants, since no criminal or disciplinary proceedings were instituted against them. But even if we assume that the Chief of Police was entitled to take into account the aforesaid reports then, again, he was bound, before taking the decision complained of, under the Rules of Natural Justice, to give the opportunity to the applicants to be heard.

To this last submission of counsel for applicants, counsel for the respondent authority agreed and stated that in his view the recourses should succeed.

I must say straight away that in the present case I fully agree with the submission of counsel for applicants that the Chief of Police ought not to have taken into account the report of the Central Information Service as to the doubts that existed as regards the loyalty of the applicants.

Before concluding my judgment, I consider it useful to refer to the case of *Tzavellas and Another v. The Republic* (1975) 3 C.L.R. 490 where at page 501 we read:

“Now, the only point that falls for consideration in the case of applicant No. 2 is whether the report of the investigating officer Supt. Demetriou, as well as the minute of the Attorney-General, could be taken into account by the Selection Board and the Chief of Police in considering this applicant for promotion in view of the fact that no criminal or disciplinary proceedings were taken against him. If any such proceedings were instituted against this applicant then he would be given the chance to defend himself and deny the allegations against him as he did in his statement to the investigating officer. There can be no doubt that if the aforesaid elements were not taken into account by the Chief of Police, applicant No. 2, to

say the least, stood a chance to be promoted instead of any one of the interested parties”.

And, further down at page 502 we read:

5 “It is a fundamental principle of administrative law that
when an enquiry against a public officer is carried out
but on advice no disciplinary or other proceedings are
taken against him, or when such proceedings are taken
but the officer is at the end acquitted, such facts should
10 not in case of his being considered for promotion, be
taken into account. Furthermore, the fact that disci-
plinary proceedings are pending against a public officer
without any substantial criteria as regards the basis of the
imputed accusations against him, are also not taken into
account in cases of promotion”.

15 For the reasons stated above, these Recourses succeed and
the decision complained of is declared null and void and of
no legal effect whatsoever.

On the question of costs, the respondents are adjudged to
pay to each applicant £20.- against his costs.

20 *Sub judice decision annulled. Order
for costs as above.*