

1981 December 19

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LOUCAS HAVIARAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE
MINISTRY OF INTERIOR AND DEFENCE,

Respondent.

(Case No. 12/81).

Administrative law—Misconception of fact—Exists when influence thereof is material—Leads to a contravention of the Law and constitutes a ground of annulment—Promotions in the Police Force—Based on mistake of fact as to seniority of candidates—Seniority a material consideration that influences a promotion—Sub judge promotion annulled as taken under a misconception of fact. 5

Administrative law—Administrative acts or decisions—Reasoning—Promotions in the Police Force—Sub judge decision merely approving recommendation of Chief of Police—Not reasoned—And not supplemented from material in the file—Annulled. 10

The applicant, a Superintendent "A" in the Cyprus Police Force, challenged the validity of the decision of the respondent to promote the interested party Panayiotis Votsis to the Post of Chief Superintendent. 15

The *sub judge* promotion was made by the Minister of Interior; and there had preceded a letter of the Chief of Police to the Minister dated 16th October 1980 which read as follows:

"After the last two promotions of H. Spyrou, S. Menelaou to the rank of Chief Superintendent and the going on leave prior to retirement of the second, the existing vacant posts at this moment in this rank are three. 20

For that purpose for the filling of these vacant posts there are recommended the following three Superintendents "A", who are leading in order of seniority and are at the same time considered from every point of view to be sufficient and suitable, namely:

- (1) I. Charalambous, Assistant Commander, Police Training School,
- (2) P. Votsis, since many years in charge of the Central Police Work-Shop—he retires beginning of next December,
- (3) A. Shailos, Officer at Headquarters".

In reply to the above letter the Minister wrote the following minute in the relevant file. "The promotion of Mr. Votsis to the rank of Chief Superintendent is approved".

In fact applicant was senior to the interested party by almost five years.

Held, that since applicant was senior to the interested party by almost five years the statement of the Chief of Police in his letter dated 16th October 1980 that the three officers mentioned therein were recommended for promotion, as they were leading in order of Seniority was a mistake of fact and at that a material one as in matters relating to promotions the seniority is a relevant and material consideration that cannot but influence a decision to be taken thereon; that a misconception of fact leads to a contravention of the law and constitutes a ground of annulment and that a misconception of fact exists whenever the influence thereof is material; and that, therefore, the *sub judice* decision must be annulled.

Held, further, that there is still a further reason for which the *sub judice* decision must be annulled as it is not reasoned and this omission cannot be supplemented from the material in the file; that the *sub judice* decision must, therefore, be annulled on this ground too, namely, for lack of due reasoning which renders it contrary to the well established principles of administrative law and thus contrary to Law in the sense of Article 146.1 of the Constitution.

Sub judice decision annulled.

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Chief Superintendent in preference and instead of the applicant.

K. Koushios with *A. Haviaras*, for the applicant. 5

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

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration that the act and/or decision of the respondents to appoint and/or to promote to the post of Chief Superintendent Panayiotis Votsis, (hereinafter to be referred to as the interested party), in preference and instead of the applicant published in the Weekly Orders of the Police of the 10th November 1980, Volume XXI No. 49, is null and void and of no legal effect. 10 15

The applicant joined the Police Force on the 8th February 1944 and climbed up the ladder as per the details appearing in Appendix (A) to the application and became Superintendent "A" on the 1st September 1972. He is a graduate of the English School Morphou, passed the examinations in English Language, ordinary and distinction, and attended a course for senior officers at Hendon Police College in the U.K. between the 19th January and 6th June 1959. He served in various branches of the Police Force and as from the 7th September 1977 he was appointed Commander of the Police Training School. 20 25

The interested party Panayiotis Votsis, joined the Police Force on the 1st July 1947 climbed up the ladder of the police hierarchy as per the particulars appearing in Appendix (B) attached to the application, became Superintendent "B" on the 1st September 1972 and Superintendent "A" on the 1st July 1977. He attended for three years a secondary school and followed a course of lessons for vehicle driving at the U.K. from the 17th June 1957 to the 21st July 1957. In addition he attended short courses of motor-car engineering organized by the Productivity Centre of Cyprus during the years 1968, 1970, 1979. He served for ten years in various branches of the Police and ever since the 1st September 1960, he is the officer- 30 35

in-charge of the Central Police Work-Shop. As from the 10th December 1980, he is on leave prior to his retirement.

On the 16th October 1980, the Chief of Police wrote to the Minister of Interior about promotions to the post of Superintendent "A" the following letter. (Appendix C).

"After the last two promotions of H. Spyrou, S. Menelaou to the rank of Chief Superintendent and the going on leave prior to retirement of the second, the existing vacant posts at this moment in this rank are three.

10 For that purpose for the filling of these vacant posts there are recommended the following three Superintendents "A", who are leading in order of seniority and are at the same time considered from every point of view to be sufficient and suitable, namely:

- 15 1) I. Charalambous, Assistant Commander, Police Training School,
- 2) P. Votsis, since many years in charge of the Central Police Work-Shop—he retires beginning of next December,
- 20 3) A. Shailos, Officer at Headquarters".

In reply to this letter the Minister of Interior wrote the following minute in the relevant file. "The promotion of Mr. Votsis to the rank of Chief Superintendent is approved as from 1st November 1980".

25 It is obvious from Appendices (A) and (B) which have been summarized hereinabove that the applicant is senior to the interested party having been promoted to the rank of Superintendent "A" almost five years before the interested party. When therefore it is stated in Appendix (C) the letter of the
 30 16th October, 1980, that the three officers mentioned therein are recommended for promotion, as they are leading in order of seniority this is a mistake of fact and at that a material one as in matters relating to promotions the seniority is a relevant and material consideration that cannot but influence a decision
 35 to be taken thereon. The very fact that the seniority of the

three officers is emphasized in the letter of the Chief of Police (Appendix 'C') leaves no doubt about it.

It is well known that a misconception of fact leads to a contravention of the law and constitutes a ground of annulment and that a misconception of fact exists whenever the influence thereof is material. The *sub judice* decision must, therefore, be annulled on this ground. 5

There is still a further reason for which the *sub judice* decision must be annulled as it is not reasoned and this omission cannot be supplemented from the material in the file. The *sub judice* decision must, therefore, be annulled on this ground too, namely, for lack of due reasoning which renders it contrary to the well established principles of administrative law and thus contrary to law in the sense of Article 146.1 of the Constitution. 10

In the result this recourse succeeds, the *sub judice* decision is annulled, but in the circumstances there will be no order as to costs. 15

Sub judice decision annulled. No order as to costs.