

1988 October 3

[HADITSANGARIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

THEOFANIS ARISTIDOU,

Applicant,

v.
THE REPUBLIC OF CYPRUS, THROUGH

1. THE COMMITTEE FOR ALLOWANCES;
2. THE MINISTER OF FINANCE,

Respondents.

(Case No. 363/86).

Experts—Scientific matters—Judicial Control—Principles applicable.

Constitutional Law—Equality—Constitution, Art. 28—Refusal to grant disability allowance (Law 47/67) retrospectively—Application submitted out of time—The non retrospectivity does not offend the principle of equality.

5 The applicant was injured on 4.5.64 during intercommunal fights at the village of Kokkina while serving as a volunteer with the National Guard.

 In 1971 he applied twice for a disability allowance, but these applications were rejected.

10 In 1985 he applied again. This time his application resulted in a decision to approve £16 temporary disability allowance as from 12.12.85, the date of his examination by the Medical Board.

 The applicant's complaints refer to the temporariness of the allowance, the sum awarded, the percentage of the disability and the fact that the decision was not retrospective as from 1964, when he was injured.

15 Counsel for respondent argued that the recourse was abated, because there has been an increase in the monthly allowance.

Held, dismissing the recourse: (1) As the applicant challenges also the permanency of his disability and the retrospectivity of the payment this recourse has not been abated.

(2) The decision that the disability is temporary and the decision relating to its percentage is not a finding of the Committee, but the opinion of the Medical Board. The findings of the Medical Board are matters of scientific nature, which are beyond the competence of this Court. 5

(3) Law 47/67 or any regulations do not make any provision as to retrospectivity of payments and the discretion of the respondents in this respect was reasonably exercised in the circumstances. 10

(4) There is no question of discrimination. The application of the applicant, though submitted outside the time limit provided by Law 47/67, was exceptionally considered. For the Committee to have awarded to the applicant retrospective payment they would have to go into hypothetical assessment of his condition at a time that no application was pending and no material was put forward before them. 15

Recourse dismissed.

No order as to costs.

Cases referred to:

Eraclidou and Another v. Compensation Officer (1968) 3 C.L.R. 44; 20

Diosmis v. The Republic (1975) 3 C.L.R. 461.

Recourse.

Recourse against the decision of the respondents to fix applicant's temporary disability pension at £16 per month and against the refusal of the respondents to pay applicant disability allowance as from 4.5.1964. 25

A. Eftychiou, for the applicant.

A. Vassiliades, for the respondents.

Cur. adv. vult.

HADJITSANGARIS J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court to the effect that part of the decision which was communicated to him by a letter of the respondents dated 24.3.86 by means of which (a) a temporary disability of 16% was fixed by them and as a result a disability allowance of £16 per month was awarded to him from 12.12.85. (b) The respondents refused to fix a higher award of permanent disability and (c) The respondents failed to pay him disability allowance retrospectively as from 4.5.64, the date of the injury of the applicant is void and of no effect whatsoever.

The facts of this case are briefly as follows. The applicant was injured on 4.5.64 during intercommunal fights at the village of Kokkina while serving as a volunteer with the National Guard. On 31.7.71 he submitted an application to the respondents for payment of disability allowance explaining the reasons for his delay, (appendix A). The respondents after examining the said application decided to dismiss it as it was made out of time. This decision of the Committee was communicated to the applicant on 29.9.71, (appendix 3). In October 1971 the applicant again re-applied for re-examination of his case (appendix 4). The Committee after re-examining his case insisted on their previous decision and dismissed it informing accordingly the applicant by their letter dated 22.4.74 (appendix 6).

In July 1985 again the applicant pursued his claim and the Committee by their decision taking into consideration the reports of the Police, the National Guard, the Welfare Services, and the reports of the Medical Board (appendix 7) decided at their meeting of 14.3.86 to approve the payment of disability allowance to the applicant as from 12.12.85 that is the date that the Medical Board examined the applicant and allowed him £16 per month as temporary disability allowance. The percentage of the disability and the decision of the Committee was communicated to the applicant on 24.3.86 (appendix 9). This is the decision which is being challenged by the applicant.

The applicant bases his complaints on the following legal grounds:

(a) That the decision was taken contrary to the Law and in particular the provisions of Law 47/67 and the regulations.

(b) That the decision is not duly reasoned and was taken without due inquiry and/or in excess and/or abuse of power. 5

The respondents by their opposition deny the above and put forward a preliminary argument that this recourse was abated in view of the decision of the respondents to increase the disability allowance from £16 to £20 as from 12.12.85 to 31.12.85 and to £22 as from 1.1.86. In his written address counsel for the applicant clarifies the ground of his recourse and limits his complaints to the following: 10

(a) To the decision of the respondents to award to the applicant only temporary instead of permanent disability allowance. 15

(b) To the percentage of his disability being limited to 16%.

(c) To the payment of the disability allowance to him payable retrospectively as from 4.5.64 instead of 12.12.1985 that is from the date that the applicant became disabled.

In view of the fact that the applicant is not only challenging the award of £16 made to him but also the percentage of his disability fixed by the respondents and also the permanency of his disability and the retrospectivity of the payment I find that the objection of counsel for the Republic that this recourse has been abated is not substantiated. 20

The Court in the present recourse is invited to decide on two substantial questions. 25

(1) Whether the respondents exercised correctly their discretionary power in deciding that the disability of the applicant

was temporary and not permanent and in fixing his disability at 16%.

5 (2) Whether there is a contravention of the application of the principle of equality, emerging from the fact that the disability allowance was granted to the applicant as from 12.12.85 that is the date of his medical examination and not 4.5.64, the date of his injury. That is there was no retrospective payment to the applicant of the disability allowance as from the date of his injury but on the contrary his payment commenced from the date of his medical examination.

15 Regarding the first question that is the decision of the Committee that the applicant's disablement was temporary and not permanent and the fixing of the percentage of disability to 16% this is not a finding of the Committee but the opinion of the Medical Board which examined the applicant. The findings of the Medical Board are matters of scientific nature, which are beyond the competence of this Court. *Antigoni Eraclidou and Another v. Compensation Officer through the Ministry of Labour and Social Insurance* (1968) 3 C.L.R. p. 44, *Kyriacos Diosmis v. The Republic* (1975) 3 C.L.R. 461. In the latter case at p. 465 Triantafyllides P. had this to say:

25 "... It would, indeed be, normally, beyond the competence of this Court, in a case of this nature to examine the correctness, from the scientific aspect, of the report of the Board."

The same applies for the fixing by the Medical Board of the percentage of disability at 16%.

30 Now as regards the second question that is the question of retrospective payment, the Committee decided to pay to the applicant disability allowance as from 12.12.85 which was the date of his examination by the Medical Board. Prior to that date there was no material before the Committee to indicate the applicant's disability or to justify the enforcement of the law in his case. The applicant

due to his own fault filed his application much later than the time limit which was set by the law, Law 47/67, which was in force at the time. The applicant as already stated applied as late as 1971 and the material which was required and which finally allowed the re-examination of his case was submitted as late as 1985.

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Law 47/67 or any regulations do not make any provision as to retrospectivity of payments and the discretion of the respondents in this respect was reasonably exercised in the circumstances.

I am of the opinion that in the present case there is no question of discrimination against the applicant. The law provides for time limits within which applications should have been submitted together with supporting evidence on behalf of any applicants. The application of the applicant was exceptionally accepted at a very late time by the Committee and the Committee decided to award to the applicant disability allowance in accordance with the material that was put forward before them as in all other cases.

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In my opinion for the Committee to have awarded to the applicant retrospective payment they would have to go into hypothetical assessment of his condition at a time that no application was pending and no material was put forward before them. I am also of the opinion that the respondents' decision was reasonable and fully justified in the circumstances of this case.

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In the result the recourse is dismissed with no order as to costs.

*Recourse dismissed.
No order as to costs.*

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