

1988 April 28

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTONIS KRITIOTIS AND OTHERS,

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF DEFENCE,

Respondents.

(Cases Nos. 249/86, 257/86 and 258/86).

5 *Army of the Republic—Promotions—The Seniority and Promotion of Regular Officers and Non-commissioned Officers of the Army of the Republic Regulations, 1981—They override general principles of administrative Law—Promotions in the army are made either by selection or by seniority—By seniority alone are promoted officers up to the rank of Captain—In case of promotion by seniority the question of merit and qualifications does not arise.*

10 *Legitimate interest—Army of the Republic—Applicants and interested parties placed in the list as entitled to promotion by seniority alone—Promotion with retrospective effect of interested parties—Applicants do not possess legitimate interest to challenge the retrospectivity.*

Legitimate interest—Review of principles emerging from case law.

The facts of this case appear sufficiently from the judgment of the Court.

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*Recourse dismissed.
No order as to costs.*

*Cases referred to:**Theodossiou v. The Republic*, 2 R.S.C.C. 44;*Papassavas v. The Republic* (1967) 3 C.L.R. 111;*Panayides v The Republic* (1973) 3 C.L.R. 378,*Papaleontiou v. The Educational Service Commission* (1987) 3 C.L.R. 5
1341.**Recourses.**

Recourses against the decision of the respondent to promote the interested parties to the rank of Captain in the army of the Republic in preference and instead of the applicants. 10

Chr. Kitromilides, for the applicants.*R. Gavrielides*, Senior Counsel of the Republic, for the respondent.*Cur. adv. vult.*

STYLIANIDES J. read the following judgment. The applicants by these recourses seek the annulment of the promotion of the interested parties to the rank of Captain in the army of the Republic with effect from 1st September, 1985, published in the Official Gazette of 7th March, 1986. 15

Interested parties Yiangou and Panayi were lieutenants from 1st May, 1976, interested party Ioannou from 1st March, 1977 and interested party Ktorides from 1st May, 1978. 20

All the interested parties possessed the qualifications prescribed in Regulations 12, 13, 14 and 15 of the Seniority and Promotion of Regular Officers and Non-commissioned Officers of the Army of the Republic Regulations 1981, published in the Official Gazette on 5th June, 1981. At the ordinary annual assessment of 1985 they were assessed by the appropriate Board as remaining in the same rank, that is not to be promoted. The interested parties in pursuance of Regulations 33 and 34 challenged successfully this adverse assessment before the Board of Re-assessment. By the decision of the Board of Re-assessment they were entitled to promotion (προαχτέοι) to the rank of Captain by seniority alone. In the meantime, however, and before the completion of the process before this latter Board, the existing vacant posts in 1985 for Captains were filled. In the following year and particularly on 1st February, 1986, four vacant posts of Captain were created due to retirement. The interested parties were then promoted, not as from 1st February, 1986, but retrospectively from 1st September, 1985, the date that they would have been promoted had they been considered as suitable for promotion (προαχτέοι) by the Assessment Board. Financial promotion, however, commenced as from 1st February, 1986, the date that the vacancies actually existed.

Applicants in Cases Nos 249/86 and 257/86 were holding the rank of lieutenant as from 1st June, 1980 and applicant in Case No. 258/86 as from 1st August, 1980. They were possessed of all the qualifications required by Regulations 12, 13, 14 and 15. In the ordinary annual assessments of 1985 they were assessed as eligible for promotion (προαχτέοι) by seniority to the next rank, that of Captain. Their order of seniority, however, was very low in the list having regard to the date that they became lieutenants and, therefore, they were not promoted, as there were no available vacancies to satisfy all those assessed eligible.

Counsel for the applicants argued that the sub judge promotions must be annulled for the following grounds:

(a) The applicants were better in merit and qualifications and,

therefore, according to the criteria on which the claims for promotion of the civil servants are based the applicants should have been preferred.

(b) That the promotion of the interested parties was contrary to law, particularly to Regulation 11(3) which provides that promotions are made when there is a vacant post. 5

(c) Reference is made to Regulation 9(9) with regard to the order of seniority between certain categories of officers.

Promotions in the army are governed by the Seniority and Promotion of Regular Officers and Non-commissioned Officers of the Army of the Republic Regulations, 1981. Express statutory provision overrides the general principles applicable in other sections of the administration either under the general principles of Administrative Law or specific statutory provisions. The principles of Administrative Law expounded in *Michael Theodossiou and the Republic*, 2 R.S.C.C., 44 and other cases prior to the enactment of the Public Service Law, 1967 (Law No. 33/67) and the relevant provisions of this statute do not apply in this particular case which concerns promotion under specific regulations. The promotions in the army are made either by selection or simply by seniority. By seniority alone are promoted the officers up to the rank of Captain (Regulation 20(3)). 10 15 20

The promotions in the present cases were promotions by seniority alone. Therefore, no question of selection on the basis of qualifications and merit arose. The only criterion is the assessment of the officer as eligible for promotion (προαχτέος) and his place in the list according to seniority. The case of an officer or non-commissioned officer may be submitted for consideration by the Assessment Board if he possesses the formal qualifications set out in the Regulations 12, 13, 14 and 15 (Regulation 11(2)). Under Regulation 22(1) for an officer or non-commissioned officer to be assessed as eligible for promotion by seniority he is required to possess with grade "good" the qualifications set out in paragraph 1 of Regulation 21. 25 30

There is no complaint that the interested parties did not satisfy the requirements of Regulation 22(1). A perusal of the contents of their files produced before me leaves no doubt that the four interested parties were wrongly assessed as non-eligible for promotion by seniority by the Assessment Board and rightly the Board
5 for Re-assessment accepted their recourses.

In view of the above the first ground on which these recourses are based fails.

The third ground is the interpretation and reasonableness of
10 paragraph 9 of Regulation 9. This paragraph is irrelevant and has no bearing for the determination of these cases. Suffices to say that the wording of this paragraph is plain and unambiguous. Officers belonging to certain categories of the army are considered senior to officers belonging to other categories though they all
15 were promoted to the same rank on the same date. The seniority of the interested parties over the applicants is not in dispute in the present case.

The second point taken up by counsel for the applicants is the retrospective promotion of the interested parties with effect 1st
20 September, 1985, though the economic promotion commenced on 1st February, 1986.

Have the applicants a legitimate interest to challenge the retro-
spectivity of the sub judice promotions? The applicants to file or
pursue a recourse must be possessed of a legitimate interest exist-
25 ing at the time of the filing of the recourse and until the end of the case. For this Court to have competence to inquire and determine the validity of the sub judice decision there must be a legal relationship of the applicant with the challenged act. The Court must be satisfied that the legitimate interest of the applicant is adversely
30 and directly affected by the challenged act. The decision of the Administrative Court regarding the issue of legitimate interest has to be reached in the light of the circumstances of the particular case.

Legitimate interest exists if the Court is satisfied that the existing interest of an applicant, though not yet adversely and directly affected, is inevitably bound to be affected eventually. Useful reference may be made to *Papasavvas v. The Republic* (1967) 3 C.L.R., 111; *Petrakis Panayides v. The Republic* (1973) 3 C.L.R., 378 and the recent Judgment of the Bull Bench in *Papal-eontiou v. The Educational Service Commission* (1987) 3 C.L.R. 1341.) A general interest of a public officer in connection and in compliance with provisions applicable to the branch of the public service to which he belongs does not suffice to vest in him a personal legitimate interest enabling him to make a recourse against promotions of colleagues of his.

The present case is distinguishable from the aforesaid judgment of the Supreme Court. The retrospective effect given to the promotion of the interested parties could not adversely affect the applicants' seniority. It must be further said that the applicants were again in 1987 assessed as eligible for promotion (προακτέοι) by seniority in 1987 and they were actually promoted to the rank of Captain. The applicants have no legitimate interest to contest the retrospectivity of the promotions.

For all the foregoing reasons, these recourses fail. They are hereby dismissed and the acts challenged are confirmed.

Let there be no order as to costs.

Recourses dismissed.
No order as to costs.