

1981 May 26

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS CONSTANTINOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF INTERIOR,

Respondent.

(Case No. 454/79).

5 *Natural Justice—Disciplinary proceedings—Police constable—Conviction and sentence of fine—Varied into sentence of “requirement to resign” by Deputy Chief of Police on appeal by Assistant Chief of Police—Applicant afforded every opportunity to present his case throughout the proceedings—Rules of natural justice not violated.*

10 *Administrative Law—Misconception of fact—Abuse of power—Police constable—Disciplinary conviction and sentence—Increase of sentence by Deputy Chief of Police on appeal by Assistant Chief of Police—No misconception of fact or abuse of power.*

15 The applicant, who joined the Cyprus Police Force on the 15th September, 1966, was tried disciplinarily and was convicted on two counts, of having participated in the coup d’etat of July 15, 1974 and of firing in the air in order to terrorize lawful citizens. He was sentenced to pay a fine of £15 and £10 on each count, respectively. The Divisional Police Commander, in the exercise of his revisional jurisdiction under regulation 18(4) of the Police (Discipline) Regulations 1958 to 1977, increased the fine to £60 and £40, respectively.

20 The Assistant Chief of Police in charge of administration, exercising the powers vested in him under regulation 20(3)(c) of the aforesaid Regulations appealed against the sentences imposed on the applicant to the Chief of Police. The appeal was heard by the Deputy Chief of Police who, after hearing the

prosecuting officer and the applicant and after studying the records of the disciplinary Court and the decision of the Divisional Police Commander came to the conclusion that the sentences imposed on the applicant were insufficient and imposed on him the sentence of "requirement to resign". Hence this recourse. 5

Counsel for the applicant contended:

- (a) That there has been abuse of power and misconception of fact with regard to the appreciation of the disciplinary offences committed by the applicant and the facts constituting same, as well as the assessment of the disciplinary sentence imposed upon him by the Deputy Chief of Police; 10
- (b) that there has been a violation of the rules of natural justice inasmuch as the applicant was not given the opportunity to speak in mitigation of sentence. 15

Held, that a perusal of the record does not reveal either a misconception of fact or any abuse of power in the circumstances (vide p. 219 post); accordingly contention (a) must fail.

(b) That though the rules of natural justice apply to disciplinary proceedings there is nothing to suggest that there has been any violation of same in the present case; that, on the contrary, throughout these proceedings the applicant was afforded every opportunity to present his case; accordingly contention (b) must, also, fail. 20

Application dismissed. 25

Cases referred to:

- Haros v. The Republic*, 4 R.S.C.C. 39 at p. 44;
Fisentzides v. Republic (1971) 3 C.L.R. 85;
Kyprianou v. The Republic (1973) 3 C.L.R. 223;
Orphanides v. The Republic (1968) 3 C.L.R. 392; 30
Republic v. Georghiades (1972) 3 C.L.R. 574.

Recourse.

Recourse against the decision of the respondent to impose on applicant the sentence of "requirement to resignation" provided under regulation 20(4)(ii) of the Police (Discipline) Regulations 1958/1977. 35

St. Yiordamlis, for the applicant.

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

Cur. adv. vult.

5 A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration that the disciplinary sentence of requiring him to resign, imposed on him by the Deputy Chief of Police, is null and void and of no effect whatsoever.

10 The applicant joined the Cyprus Police Force on the 15th September 1966 and served in the Reserve Force at Police Headquarters and in Paphos and Limassol districts. On the 23rd May 1970, he was arrested for the offence of armed raid against the Police Station of Limassol and having pleaded
15 guilty to the offences of (a) carrying arms and ammunition and (b) being a member of unlawful organization, he was convicted on the 10th December 1970 and sentenced to four years' imprisonment. This imprisonment was suspended by decision of the then President of the Republic dated 19th
20 January 1971, which suspension, however, was terminated on the 16th March 1971, on grounds of public interest upon his arrest for carrying once more arms and ammunition, for which offence he was convicted, and sentenced by the Assize Court of Limassol to five years' imprisonment. With the
25 Coup d'etat the applicant was released from prison and resumed duties in the Police Force on the 16th July 1974.

The Chief of Police by virtue of the powers vested in him under Regulation 17(6)(a) of the Police (General) Regulations 1958, placed the applicant on compulsory leave from the 26th
30 March 1976 and remained so until the 30th July 1976 when his leave was exhausted.

When the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law 1977 (Law No. 3 of 1977) was enacted the applicant was reported in writing to the Minister
35 of Justice that he had committed disciplinary offences as defined by section 2 thereof. The Council of Ministers by virtue of section 4 of the aforesaid Law and the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978 (Suspension of Proceedings) Law 1978,

(Law No. 57 of 1978) referred the case to the Chief of Police for further investigation and trial under the provisions of the appropriate Laws and Regulations.

In the light of the evidence secured the applicant was charged with having committed seven offences and under the provisions of regulation 14 of the Police (Discipline) Regulations 1958 to 1977, the Divisional Police Commander of Limassol appointed Chief Inspector Kuali as presiding officer for the trial of the case. The applicant was then found guilty of the sixth and seventh counts and was sentenced to £15.—fine and £10.—fine respectively. The offence charged by the sixth count was that, contrary to sections 26(1)(b) and 27 of the Police Law, Cap. 285 and regulations 7 and 18(1)(b) of the Police (Discipline) Regulations 1958 to 1977, the applicant between the 16th July 1974 and 17th July 1974 participated in the Coup d'etat. The offence charged by the seventh count was that, contrary to section 2 of Law No. 3 of 1977 and regulations 7 and 18(1)(b) and paragraph 19 of the First Schedule of the aforesaid Regulations, the applicant on the 15th July 1974, being armed fired in the air in order to terrorize lawful citizens.

The Divisional Police Commander in the exercise of his revisional jurisdiction under regulation 18(4) after having given the opportunity to the applicant to put forward any grounds of defence found that the sentences imposed, considered in the light of the seriousness of the offences for which he was found guilty were insufficient and disproportionate and increased them to £60.—fine on the sixth count and £40.—fine on the seventh count.

The Assistant Chief of Police in charge of administration exercising the powers vested in him under regulation 20(3)(c) of the aforesaid Regulations appealed against the sentences imposed on the applicant to the Chief of Police. The appeal was heard by the Deputy Chief of Police, who was authorised for that purpose by the Chief of Police. The Deputy Chief of Police acting under regulation 21 heard on the 26th September, 1979, the appeal and after hearing the prosecuting officer representing the Assistant Chief of Police in charge of administration as well as the applicant and after studying the records of the Disciplinary Court as well as the decision of its

presiding officer and the decision of the Divisional Police commander who reviewed same, came to the conclusion that the sentences imposed on the applicant in respect of both counts, were insufficient and imposed on him the sentence of "requirement to resignation" provided for under regulation 20(4)(ii).
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It has been argued on behalf of the applicant that there has been abuse of power and misconception of fact with regard to the appreciation of the disciplinary offences committed by the applicant and the facts constituting same, as well as the assessment of the disciplinary sentence imposed upon him by the Deputy Chief of Police. A perusal of the record before me does not reveal either a misconception of fact or any abuse of power in the circumstances. On the contrary, it is clear that the insufficiency of the sentence imposed led in the first instance to a review of the case by the Divisional Police Commander in the exercise of his revisional jurisdiction under regulation 18(4) after giving the opportunity to the applicant to put forward any grounds of defence and the appeal of the Assistant Chief of Police in charge of the administration made under regulation 20(3)(c) was heard by the Deputy Chief of Police who afforded the opportunity to both sides to present their respective cases and after perusing the records of the previous proceedings he came to the conclusion that the sentence imposed on the applicant by the Divisional Police Commander was insufficient and substituted same with that of "requirement of resignation".
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What remains to consider is the contention that there has been a violation of the rules of natural justice inasmuch as the applicant was not given the opportunity to speak in mitigation of sentence. In that respect I was referred to the cases of *Haros v. The Republic*, 4 R.S.C.C. p. 39, p. 44; *Fisentzides v. The Republic* (1971) 3 C.L.R. p. 85; *Kypros Kyprianou v. The Republic* (1973) 3 C.L.R. p. 223; and *Orphanides v. The Republic* (1968) 3 C.L.R. p. 392, to the effect that the rules of natural justice apply to the instances of disciplinary prosecutions. Reference may also be made to the case of *The Republic v. Lefkos Georghiades* (1972) 3 C.L.R. p. 574, where the question of disciplinary proceedings and the necessity to comply therein with the rules of natural justice and the applicability of the principles pertaining to same are extensively dealt with.
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There can be no disagreement with the principle that the rules of natural justice apply in disciplinary proceedings. There is nothing, however, to suggest that there has been any violation of same in the present case. On the contrary, throughout these proceedings the applicant was afforded every opportunity to present his case and therefore this ground also fails. 5

For all the above reasons this recourse is dismissed, but in the circumstances I make no order as to costs.

*Application dismissed. No order
as to costs.* 10