

1981 October 14

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LOUCAS HAVIARAS,

Applicant.

v.

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

Respondent.

(Case No. 458/80).

5 *Natural Justice—Rules of—Police Force—Promotions—Applicant not promoted though, suitable for promotion, because of information about his loyalty and his activities during the Coup d’etat—No disciplinary or criminal proceedings instituted against him—And not given opportunity to defend himself—Said information ought not to be taken into account—Rules of natural justice violated—Sub judice promotion annulled.*

10 *Administrative Law—Public or Police Officers—Promotions—Information about their loyalty—Whether it can be taken into consideration in considering them for promotion in the absence of criminal or disciplinary proceedings against them.*

15 The applicant was a candidate for promotion to the post of Chief Superintendent in the Police Force and was recommended for promotion by the Chief of Police. The respondent Minister, however, has not approved his promotion to the said post “in view of reservations about his loyalty and his activities during the Coup d’etat”, and proceeded to promote two other Police Officers in preference and instead of the applicant.

20 Upon a recourse against the validity of these promotions counsel for the applicant mainly contended that in considering the applicant as a candidate for promotion the respondent Minister was not entitled to take into account the accusations

based on information as to his loyalty and activities during the Coup d'etat since no disciplinary or criminal proceedings were ever instituted against him to substantiate such accusations; and that by acting as he did the Minister acted contrary to the general principles of administrative law and the rules of natural justice. 5

Held, that since no criminal or disciplinary proceedings were instituted against the applicant in order to be given the chance to defend himself the respondent Minister ought not to have taken into account any information regarding his loyalty and his activities during the Coup d'etat; accordingly the recourse should succeed and the *sub judice* decision should be declared null and void (*Tsangarides and Others v. Republic* (1981) 3 C.L.R. 117 and *Tzavellas and Another v. Republic* (1975) 3 C.L.R. 490 at pp. 501 and 502 followed). 10 15

Sub judice decision annulled.

Cases referred to:

Tsangarides and Others v. Republic (1981) 3 C.L.R. 117;
Tzavellas and Another v. Republic (1975) 3 C.L.R. 490 at pp. 501, 502. 20

Recourse.

Recourse against the decision of the respondent to appoint and/or promote the interested parties to the rank of Chief Superintendent in the Police Force.

K. Koushios with *A. Haviaras*, for the applicant. 25
R. Gavrielides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant in this recourse claims a declaration of the Court that the act and/or decision of the respondent to appoint and/or promote to the rank of Chief Superintendent the two interested parties, namely, Charalambos Spyrou and Stelios Menelaou, in preference and instead of the applicant, which was published in the Weekly Police Orders of 29/9/80, under No. 39/80, is null and void and of no legal effect whatsoever. 30 35

The relevant facts of the case shortly put are the following:

The applicant and the two interested parties were at the

material time gazetted Officers in the Police Force holding the rank of Superintendent. Under section 13(1) of the Police Law, Cap. 285, as amended by Law 29 of 1966, Gazetted Officers are appointed, promoted and discharged by the Minister of Interior.

In the present case the relevant recommendations for promotion were made by the Chief of Police in his letter dated 19th August, 1980 addressed to the Minister of Interior. This letter reads as follows:

10 "1. Promotion to Chief Superintendent.

In this rank there exist today four (4) vacant posts i.e. two (2) regular and two (2) consequential. The last are held by those two who are on leave prior to retirement, C. Orphanopoulos (Nicosia) and Ch. Panayiotou (Larnaca), and they can be filled according to the existing regulations.

2. For the filling of these four vacant posts there have been already submitted the relevant recommendations—see E/16/6 dated 29/10/79, which have been approved, except that of L. Haviaras who has filed a recourse in the Supreme Court. Recommendation has been submitted subsequently for Mr. H. Spyrou see E/16/6 of 22/1/1980 which was also not approved—see P(P) 210 of 26/1/1980.

Please reconsider these two cases and, particularly, the second one, for which, as I believe, no obstacle exists

25 For the filling of the other two vacant posts in this rank they are recommended:

(1) St. Menelaou (Police Headquarters) who is about to retire shortly and,

xxx

xxx

xxx”

It is clear from the above letter of the Chief of Police that the applicant in this recourse was recommended for promotion prior to the recommendation of the interested parties. It is further not disputed that the applicant, who is by five years senior to the interested parties, was, on the whole, the best candidate. The reason for which he was not promoted appears in paragraph 3 of the opposition and is as follows:

“The Minister did not approve the promotion of the

applicant in view of reservations about his loyalty and his activities during the Coup d'etat".

The main argument of counsel for applicant is that the Minister in considering the applicant as a candidate for promotion, was not entitled to take into account the accusations based on information as to his loyalty and activities during the Coup d'Etat since no disciplinary or criminal proceedings were ever instituted against him to substantiate such accusations. He submitted that mere rumours are not sufficient and that the Minister in acting in the way he did, he acted contrary to the general rules of administrative law and the rules of natural justice.

In a recent case, namely, *Kyriakos Tsangarides and Others v. The Republic* (1981) 3 C.L.R. 117, I had the opportunity to deal with a similar matter. That was a case for promotion to the rank of Sergeant in the Police Fire Service; and though 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 and was to the effect that their loyalty was doubted.

It was 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 recourse must succeed and the decision complained of must be declared null and void.

Reference is also made in the above case to the case of *Tzavellas and Another v. The Republic* (1975) 3 C.L.R. 490 at pp. 501 and 502. 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 the interested parties”.

And further down at page 502 we read:

“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 not in case of his being considered for promotion, be taken into account. Furthermore, the fact that disciplinary 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”.

Needless to say that I still maintain the views expressed in the above two cases and for these reasons this recourse succeeds and the decision complained of is declared null and and void and of no legal effect whatsoever.

On the question of costs, the respondent authority is adjudged to pay to the applicant £25.—against his costs.

Sub judice decision annulled.

Order for costs as above.