

1987 April 3

[SAVIDES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ODYSSEAS GEORGAKIS AND OTHERS,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
1 THE MINISTER OF INTERIOR,
2 THE CHIEF OF POLICE,

Respondents

(Cases No 993/85, 996/85, 997/85, 998/85, 999/85, 1025/85, 1032/85, 1057/85, 5/86, 10/86, 12/86 14/86 and 15/86)

Police Force — The Police Law, Cap 285 — Section 10(2) — Section 13 (Law 29/66) — Promotions — The Police (Promotions) Regulations — Regulations made after the enactment of Law 29/66 under s 10(2) invalid — Validity of the original (1958) regulations not affected — Regulations 2, 3 and 4 of the 1958 regulations — In reconsidering matter of promotions following an annulling decision of this Court, it was found impossible to apply regs 3 and 4 — In the circumstances, they were rightly by-passed

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Administrative act — Retrospective effect — Re-examination of matter after annulment of promotions — New decision may be given retrospective effect, but not to the prejudice of other holders of a similar post, who were eligible to be considered for promotion at the time, when the original decision was taken

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Legitimate interest — Re-consideration of annulled promotions — New decision with a retrospective effect as from the date of the annulled decision — Officers promoted to the post in question after the original decision are prejudicially affected by new decision as regards their seniority — Legitimate interest to challenge the new decision

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Administrative act — Presumption of regularity

Administrative Law — Due inquiry — Promotions of Police Officers — Failure to mention who were the candidates or whether a comparison of merits was made or whether material in the respective files of each candidate were taken into account — Doubt as to whether such inquiry had been carried out — Ground of annulment

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Reasoning of an administrative act — Promotions of Police Officers — Lack of sufficient reasoning enabling the Court to exercise proper control — Ground of annulment

5 The promotions made on 1 3 80 of the interested parties, except interested parties Iendes and Mina, to the post of Chief Inspector were annulled by this Court in Recourses 126/80 and 127/80 by Iendes and Mina on the ground that the Chief of Police had taken into account irrelevant material and in particular information supplied by the Central Information Service*

10 *Having reconsidered the matter the Chief of Police arrived at the same decision, which, however, was again annulled in Recourses 559/83 and 560/83 by Iendes and Mina on the ground of departure from the Regulations in that the weight attached to the evaluation of the Advisory Selection Committee was the same as that attached to the opinion of an organ for which provision is made in Regulations 3 and 4 and on the ground that there was*
 15 *nothing to indicate that the information supplied by the Central Information Service had been ignored***

In view of the fact that the then Commanding Officers have either retired or been replaced, whilst a number of candidates were since the original decision transferred to other places of work, it was found that in reconsidering the matter, following the second annulment, strict compliance with the procedure envisaged by the Regulations was impossible and, as a result, the Chief of Police, acting on the advice of the Attorney-General, reconsidered the matter relying on his own knowledge of the candidates and decided to promote all those earlier promoted and in addition Iendes and Mina. The said promotions were made with the approval of the Minister of Interior. Their effect was retrospective as from 1 3 80, that is the day when the original promotions were made.

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Hence the present recourses. It must be noted that applicants in recourses 993/85 and 12/86 were not considered for promotion on the ground that they had been promoted to the post in question on 1 7 84.

30 *Held, annulling the sub-judice decision* (1) The effect of *Lefkatis and Others v The Republic* (1985) 3 C L R 1372, affirmed on appeal in *Stavrou and Others v The Republic* (1986) 3 C L R 361, was explained in *Yiallourou v The Republic* (1986) 3 C L R 677 at pp 683-684. The fact that amending regulations made after the enactment of Law 29/66 were found to be invalid, as having been made under s 10(2) (The Police Law, Cap 285), which had been repealed by necessary implication by Law 29/66, does not affect the validity of the original Police (Promotions) Regulations, 1958. The Regulations prescribing the procedure for promotions are Regulations 2, 3
 35 and 4 of the 1958 regulations.

*See *Iendes and Another v Republic* (1983) 3 C L R 1028

**See *Iendes and Another v Republic* (1985) 3 C L R 2078

(2) As the original recommendations of the commanding officers and the procedure before the selection boards could not be adopted in reconsidering the matter, Regulations 3 and 4 had to be bypassed and the only possible course was the one followed, namely to make the promotions on the basis of selection by the Chief of Police, who did so on the basis of his personal knowledge of the candidates (*Yiallouris v. The Republic*, supra, adopted).

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(3) The applicants in recourses 993/85 and 12/86 have a legitimate interest to challenge the sub judge promotions, as such promotions are prejudicial to their interests in that the retrospectivity of such promotions places the interested parties in an advantageous position as regards seniority over the two said applicants

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(4) An administrative decision taken in the course of reconsidering of a case, as a result of an annulling decision of this Court, may be given retrospective effect, but not to the detriment of others already holding a similar post and who were eligible for consideration as candidates as at the date of the annulled decision. It follows that the two applicants in recourses 993/85 and 12/86 succeed on this ground.

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(5) In the absence of any proof to the contrary and in view of the presumption of regularity, it must be assumed that the Minister gave his approval of the promotions in question after considering all material aspects.

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(6) As regards the sub judge selection of candidates the sub judge decision extends to about two lines as follows:

•The Chief of Police proceeded to evaluate all the then candidates relying on his personal knowledge and evaluation of each one of them.....•

Nothing is mentioned as to who were such candidates or whether any comparison of their respective merits was made or whether the Chief of Police relied on material in their personal files (excluding irrelevant material such as the reports of the Central Information Service). In the light of the above there arises a doubt as to whether a due inquiry was carried out. Furthermore the sub judge decision lacks sufficient reasoning to enable the Court to exercise proper control. For these reasons it has to be annulled.

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Sub judge decision annulled.

No order as to costs.

Cases referred to:

Ierides and Another v. The Republic (1983) 3 C.L.R. 1028;

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Ierides and Another v. The Republic (1985) 3 C.L.R. 2078;

Michael and Others v. The Republic (1984) 3 C.L.R. 1364;

Stavrou and Others v. The Republic (1986) 3 C.L.R. 361;

Yiallourous v. The Republic (1986) 3 C.L.R. 677;

Lefkatis and Others v. The Republic (1985) 3 C.L.R. 1372;

Republic v. Ekkeshis (1975) 3 C.L.R. 548;

- 5** *Michael (No.2) v. The Republic* (1975) 3 C.L.R. 432.

Recourses.

Recourses, against the decision of the respondents to promote the interested parties to the post of Chief Inspector in the Police Force in preference and instead of the applicants.

- 10** *G. Triantafyllides*, for applicant in Case No. 993/85.
- A. Papacharalambous*, for applicants in Cases Nos. 996/85, 997/85, 998/85, 999/85 and 1025/85.
- A. S. Angelides*, for applicant in Case No. 1032/85.
- A. Magos*, for applicant in Case No. 10/86.
- 15** *E. Vrahimi (Mrs.)*, for applicant in Case No.12/86.
- G. Charalambides*, for applicants in Cases Nos. 14/86 and 15/86.
- M. Florentzos, Senior Counsel of the Republic*, for the respondents.
- 20** *D. Papachrysostomou*, for interested party A. Stefanou.

Cur. adv. vult.

- SAVIDES J.** read the following judgment. The promotions of twelve police officers to the post of Chief Inspector in the Police Force, as from 1st March, 1980, which was published in the Police
- 25** Weekly Orders, Part 2, dated 28th October, 1985, is challenged by

the applicants in these recourses which were heard together as presenting common questions of law and fact.

After the hearing was concluded the applicants filed a notice that their claim for the annulment of the promotion of one of the interested parties, namely, P Frydhas, was withdrawn as such party had, in the meantime, died. Therefore, the recourse concerning the promotion of the said officer is hereby dismissed.

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The remaining interested parties are:

A. Ierides,

A. Mina,

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G. Kasapis,

A. Seymenis,

N. Solomonides,

A. Christofides,

N. Kazafaniotis,

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A. Kokkinos,

M. Pahitis,

A. S. Demetriades,

A. Stefanou.

The applicants and the interested parties are members of the Police Force. On 1st March, 1980 the interested parties, with the exception of Andreas Ierides and Andreas Mina were promoted to the rank of Chief Inspector and their promotions were published in the Police Orders, Part II No. 10/80 date 10.3.1980.

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The said promotions were challenged by Andreas Ierides and Andreas Mina by recourses Nos 126/80 and 127/80 and were subsequently annulled by the Court on the ground that the Chief of Police in reaching his decision had taken into consideration irrelevant material and in particular information concerning the candidates, supplied to him by the Central Information Service, (KYP). (See *Ierides & Another v. Republic* (1983) 3 C.L.R. 1028).

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Immediately after such annulment the Chief of Police reconsidered the promotions and came to the decision to promote the same officers to the said vacant posts. In arriving at his decision he took into consideration «all material which existed in the candidates' personal files at the time of the annulled decision» and the

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evaluation of the candidates made by a committee of selection previously appointed by him under the Police (Promotions) Regulations

5 The same interested parties Iendes and Mina challenged again the promotions of the same officers by Recourses Nos 559/83 and 560/83 which came up for hearing before me By my judgment which was delivered on the 3rd October 1985 (*Iendes and Another v The Republic* (1985) 3 C L R 2078) I annulled such promotions on the following grounds

10 (a) The evaluation of the candidates by the Committee of Selection appointed by the Chief of Police amounted to «a departure from the Regulations, in that the weight attached to the evaluation of the Advisory Selection Committee was the same as that attached to the organs for which provisions is made in Regulations 3 and 4
15 and, therefore the function of such Advisory Committee was not of an advisory character » (p 2090) I adopted in this respect the following dictum in the case of *Michael and Others v The Republic* (1984) 3 C L R 1364 at p 1378

20 «It is clear from the above that the weight attached to the evaluation of the advisory selection committees is the same as that attached to the organs for which provision is made in regulations 3 and 4 and that their functions is by no means of an advisory character as submitted The departure from the provisions of the above regulations, in my view, renders the
25 evaluation and selection of the candidates promoted defective and invalid and the decision based thereon void and, therefore, a ground for annulment »

(b) In the reasons given by the Chief of Police for making the promotions it was stated that he took into consideration «all material which existed in their personal files at the time of the annulled
30 decisions» There was nothing indicating that he had ignored the information supplied by the Central Information Service (KYP) which was a ground for annulling the promotions of the same interested parties in the previous recourse (*Iendes and Another v The Republic* (1983) 3 C L R 1028)
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Soon after the annulment of the said promotions the Chief of Police reconsidered the promotions and came to the decision to

promote to the rank of Chief Inspector the same officers (the interested parties) whose promotions had been previously annulled and also the two interested parties on the application of which the previous promotions were annulled. His decision was communicated to the Minister of Interior for the latter's approval under section 13(2) of the Police Law, Cap. 285 and after such approval was obtained, it was published in the Police Orders Part II No. 43/85 dated the 28th October, 1985. The material part of his decision as contained in the said Orders reads as follows:

«Annulment of Promotions by the Supreme Court. 10

The Supreme Court in a recent decision (3.10.85) allowed the recourses of Sub-Inspector Andreas Ierides and Andreas Mina and annulled for the second time the promotions of ten Inspectors to Chief Inspectors which were effected on 1st March, 1980. Automatically the said promotions ceased to be valid. The contents of the judgment of the Court were studied carefully. In view of the fact that the evaluation of the then candidates by the committee of evaluation which is not provided by the regulations preceded the recommendations of the District Commanding Officers, it is natural that both the recommendations of the latter, as well as the order of classification of the candidates by the Selection Board, have become void as a result of the decision of the Supreme Court. Given that the then Commanding Officers have either retired or been replaced whilst a number of the candidates were since then transferred from their original places of work it has become impossible in the course of events to repeat the procedure contemplated by the regulations. For this reason, on the basis of an advice by the Attorney-General, the Chief of Police proceeded to evaluate all the then candidates relying on his personal knowledge and evaluation of each one of them on the basis of the situation prevailing at the time and reached the decision to promote those Sub-Inspectors whose promotion was annulled by the Supreme Court and also the two applicants whose recourses were allowed by the same Court. 35

With the approval of the Honourable Minister of Interior in accordance with section 13(2) the following are promoted to

the rank of Chief Inspector, retrospectively as from 1.3.1980:.....»

(And then the names of the officers promoted, the interested parties in this recourse, are mentioned).

5 The advice referred to in the sub judice decision is that of Deputy Attorney-General of the Republic (Annex C to the opposition) the material part of which reads as follows:

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10 5. In the circumstances I believe that the only possible procedure is the evaluation of the candidates by the superior authority which is in a position to know the performance and merit of the candidates at the time of the annulled promotions and provides thus the relevant safeguards of a correct evaluation. I understand that the only superior authority satisfying 15 the above prerequisites is the Chief of Police. The Chief of Police may therefore make evaluation of the candidates for promotion at that time on the basis of the position existing then, ignoring the procedure for evaluation by the Commanding Officers. (and obviously the evaluation by those officers 20 at that time which is legally defective since it was prejudiced by the recommendations of the Evaluation Committee which was found by the Court to be incompetent).

25 6. I must also add that the procedure for classification of the candidates by the Selection Board has again become in fact impossible since its functioning presupposes the recommendation of the Commanding Officers, which, as I said earlier, are no longer possible. This procedure may also, therefore, be disregarded on the basis of the above case law.»

30 As a result, the applicants filed the present recourses challenging the said promotions. Applicants in cases Nos 993/85 and 12/86 namely, Odysseas Georgakis and Michalis Komodikis challenge the promotions only on the ground of retrospectivity, which affected their position in view of the fact that both of them had already been holding a similar post since the 1st July, 1984.

35 The main arguments advanced by counsel in support of their

grounds of law raised in these recourses are the following

(a) In view fo the fact that the Police Regulations had been declared null and void by the Supreme Court in the case of *Stavrou and Others v Republic* (1986) 3 C L R 361, the Police Regulations 1958 were the only ones in force, and that the promotions which were made with retrospective effect as from 1st March, 1980 on the basis of the situation prevailing at the nateral time should have been made in accordance with the Police Regulations, 1958, the only valid regulations under section 13(3) of Cap. 285

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(b) The Commander of Police by following a procedure not contemplated by such regulations and which is entirely foreign to them, has acted in excess and/or in abuse of powers

(c) The approval of the Minister which is a prerequisite for the finalization of the decision was given as a matter of routine without any inquiry into the legality of the decision of the Chief of Police

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(d) Assuming that the procedure followed was correct, the sub judge decision has to be annulled, as there had been lack of due reasoning, and lack of due inquiry on the merits and qualifications of the candidates Nothing is mentioned in the sub judge decision as to who of the candidates were considered as eligible for promotion and whether any comparison was made between the interested parties and the applicants in the process of selection of the best candidates for promotion

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(e) The alleged evaluation of the Chief of Police was based on his alleged personal knowledge of the candidates without any reference to the criteria taken into consideration by him in his evaluation and nothing is recorded to enable the court to exercise a proper control over his decision

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Counsel for applicants in Cases 993/85 and 12/86 further argued that the respondent Chief of Police acting under a misconception considered that once the two applicants had already been promoted to the post of Chief Inspector as from 1st July, 1984 they need not be considered amongst the candidates for promotion as from the 1st March, 1980 By ignoring them and promoting

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the interested parties retrospectively as from 1st March, 1980, he acted to the prejudice of the two said applicants in view of the fact that by such retrospective promotion the interested parties acquired automatically seniority over them

- 5 Counsel for the respondents, on the other hand, argued that the Chief of Police decided the promotions on the basis of the position existing in 1980, at the time of the annulled promotions and followed a procedure which was not in strict compliance with the regulations as it was no longer possible, for the reasons stated
- 10 in the advice by the Attorney-General's office and the sub judice decision, to follow the procedure contemplated by the Regulations. In support of this contention he sought to rely on the judgment of this Court in *Yiallouros v The Republic* (1986) 3 C L R 677, in which it was found that similar procedure followed
- 15 by the Chief of Police in effecting promotions to the rank of Inspector was in the circumstances the only one available to him

- The effect of the case of *Lefkatis and Others v The Republic* (1985) 3 C L R 1372 which was affirmed on appeal (reported as *Stavrou and Others v The Republic* (1986) 3 C L R 361), was
- 20 explained by me in the case of *Yiallouros v Republic* (supra) as follows at pp 683 - 684 —

- 25 «Section 13(3) as set out in Law 29/66, amended by necessary implication, section 10(2) as far as the vesting of the power to make regulations is concerned. That is, after the enactment of Law 29/66, the power to make regulations regarding the promotions of Police Officers vests in the Council of Ministers. The result is that all amendments to the regulations made after the enactment of the above law are ultra vires the Law, since they were made under section 10(2)
- 30 The Regulations affected are, as far as the present case is concerned, the amending regulations under Nos 943/66, 111/72 and 347/80,

- 35 .Under the proviso to section 13(3) the Regulations existing at the time of the enactment of Law 29/66 will continue to be in force until the enactment of the new Regulations. No new Regulations were made under section 13, but only certain amending regulations to the existing ones of 1958. The

fact that such amending regulations were found to be invalid, does not effect the validity of the original Regulations which are saved by the proviso to section 13(3) of the Law, as amended by Law 29/86.

The Regulations of 1958 prescribing the procedure to be followed for promotions in the Police Force are Regulations 2, 3 and 4. Regulation 2 is a general one, setting down the criteria for promotion. 5

Regulation 3 provides for the recommendations of the Commanding Officers and the matters to be mentioned therein. 10

Regulation 4 regulates the constitution and setting up of Selection Boards and provides that selection for promotion up to and including the rank of Assistant Superintendent shall be made by such Boards. 15

In the same case I had the opportunity of considering the question as to whether a similar procedure followed by the Chief of Police was irregular in circumstances similar to the present one and I found as follows (at pp. 684, 685):-

«It is, however, a fact that such procedure was not followed in the case of the sub judge promotions because the recommendations of the commanding officers and the procedure before the selection boards could not be adopted, for the reasons which appear in the advice of the Attorney-General of the Republic to which reference has already been made. Thus Regulations 3 and 4 had to be bypassed and the only possible course was to proceed to the sub judge promotions on the basis of a selection made by the Chief of Police who, as stated in his letter of 20.12.1984 to the Minister (cited earlier), did so on the basis of his personal knowledge of the candidates and the evaluation made by him, also based on such knowledge, bearing in mind the criteria set out in Regulation 2. I, therefore, find that the sub judge decision was not taken under any invalid regulations and that for the reasons mentioned, the procedure followed by the Chief of Police was, in the circumstances, the only one available to him.» 20 25 30 35

Support for such view may be found in Odent, Contentieux

Administratif at pp. 1497, 1499 where it is stated that the administration is not bound to follow the procedure which, in the circumstances, has become impossible (not due to any fault on the part of the administration). In such circumstances, it has to follow
5 a procedure analogous to that, which, however, should afford similar safeguards.

I adopt what I said in the *Yiallouros* case concerning the validity of the procedure followed by the Chief of Police in the circumstances of the present case in view of the fact the procedure contemplated by Regulations 3 and 4 concerning the recommendations of the Commanding Officers and the procedure before the Selection boards could not be adopted for the reasons appearing in the advice of the Deputy Attorney-General of the Republic to which reference has already been made and I find no reason to depart
10 from my said judgment. What remains to be considered is whether in the circumstances of the present cases the Chief of Police acted in accord with the established principles for the selection of the best candidates for promotion.
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Before proceeding to consider the other grounds raised by counsel for applicants, I shall deal first with the question raised by applicants in Recourses 993/85 and 12/86 as to whether the retrospective effect given to the promotion of the interested parties has affected their seniority in the service. Nothing is mentioned in the decision of the Chief of Police that the said two candidates were
20 amongst those who were considered for promotion, as from 1st March, 1980, but from what emanates from the arguments advanced before me, the Chief of Police did not so consider them because they had already been promoted to a similar rank in April, 1984. The said two applicants have a legitimate interest to challenge the sub judice decision in view of the fact that any promotion
25 with retrospective effect prior to the date of their promotion to a similar rank, obviously is prejudicial to their interests, as the retrospectivity of the promotion of the interested parties placed them in an advantageous position over the two applicants, in that they
30 automatically acquired seniority over the applicants.
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An administrative decision taken in the course of re-examination of a case as a result of an annulling decision of the Court, may be given retrospective effect and this affords an exception to the

rule of non-retrospectivity of administrative acts. Support may be found in several Greek authors, as, for example, in Kyriacopoulos on Greek Administrative Law, 4th Edition, Volume B p. 400; Conclusions from the Case Law of the Greek Council of State, (1929-1959), p.281 and Dendias on Administrative Law, 2nd Edition, Volume C. p. 359. Such retrospective promotion, however, cannot be made to the detriment of others already holding a similar post and who were eligible for consideration as candidates as from the date of the decision annulled in case retrospective effect is to be given to such promotions. I have, therefore, come to the conclusion that the recourses of these two applicants succeed on this ground and the sub judice promotions have to be annulled.

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Having dealt with the question of retrospectivity, I come now to consider the other grounds raised by counsel for all other parties. I shall first deal briefly with the contention of counsel that the Minister in the present case acted as a rubber-stamp approving the decisions of the Chief of Police without any inquiry on his part. In accordance with the presumption of regularity (see, inter alia, the *Republic v. Ekkeshis* (1975) 3 C.L.R. 548, *Michael (No. 2) v. The Republic* (1975) 3 C.L.R. 432), and in the absence of any proof to the contrary, I must assume that the Minister of Interior did give his approval after considering all material aspects of the decision to be approved as submitted to him by the Chief of Police. Therefore, I find no merit in this argument.

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The material part in the decision of the Chief of Police appears in a very brief manner in the text of the decision as published in the monthly Police Orders.

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In the said orders after a long statement as to the reasons which led the Chief of Police to follow a procedure not contemplated by the rules, the decision goes on to refer to the selection of the candidates for promotion in a very brief manner extending to about two lines as follows:

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«The Chief of Police proceeded to evaluate all the then candidates relying on his personal knowledge and evaluation of each one of them.....»

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Nothing is mentioned either in his sub judice decision or his letter to the Minister, dated 22.10.1985, requesting his approval for

- the said promotions, or anywhere else in the material before me as to who were the candidates taken by him into consideration or whether any comparison regarding their merits was made, or whether in making his evaluation he relied on any material contained
- 5 in the personal files of the applicants concerning their career and performance in the service (excluding any irrelevant and inadmissible matter such as the reports of the Central Information Service.) From the material before me a doubt arises as to whether a proper inquiry was carried out by the Chief of Police in the
- 10 evaluation of the merits of the candidates and their performance. Furthermore I have come to the conclusion that the sub judge decision lacks sufficient reasoning enabling the Court to exercise proper control over it. For all the above reasons the sub judge decision has to be annulled.
- 15 In the result the sub judge promotions are annulled but in the circumstances I make no order for cost.

*Sub judge decision
annulled. No order
as to costs.*