

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**

In the matter of an application for
writs of Certiorari and Prohibition
under Article 140 of the Constitution.

1. K.W.Karunaratne,
Provincial Surveyor General,
Provincial Survey Office,
Trincomalee.
And three (03) others

Petitioners

C.A. Writ Application No: 271/2010

Vs

1. The Secretary,
Administrative Appeals Tribunal,
No.5, Dudley Senanayake Mawatha,
Colombo 8.
And six (06) others.

Respondents.

BEFORE : **S. SRISKANDARAJAH, J (P/CA)**

COUNSEL : **A.P.Niles with S.S. Wettimuni,**
for the Petitioners,
Ms.M.N.B. Fernando DSG
for the 1st to 6th Respondents.
Ranil Samarasooriya with Pavithra Illankoon
for the 7th Respondent.

Argued on : **11.07.2011**

Decided on : **18.01.2012**

S.Sriskandarajah.I.

The Petitioners in this application is seeking a writ of certiorari to quash the decision of the Administrative Appeals Tribunal dated 10th March 2010. By this order the Administrative Appeals Tribunal has directed the PSC/the Secretary Ministry of Land and Land Development to take steps to promote the appellant (7th Respondent) on the same date along with the other officers who had been absorbed into Class I of the Sri Lanka Surveyors' Service and to take steps to amend the seniority list taking into consideration of the service of officers who are in the regular service and not on supernumerary basis.

It is common ground that the officers of the Sri Lanka Surveyors' Service were governed by the Minute of the Sri Lanka Surveyors' Service, published in the Government Gazette Extraordinary No.651/8 dated 27th February 1991. According to the Minutes the following Posts and Class were categorised:

<u>Post</u>	<u>Class</u>	
Surveyor General	Class I	Grade I
Additional Surveyor General	Class I	Grade II
Deputy Surveyor General	Class I	Grade II
Superintendent of Surveys	Class II	Grade I
Assist. Supt. of Surveys	Class II	Grade II
Surveyor	Class III	Grade I
	Class III	Grade II
	Class III	Grade III

According to the said Minutes in Minute 6 it had been provided that vacancy in Class I Grade I will be filled by the promotion of an officer in class I Grade II. Vacancies in Class I Grade II will be filled by promotions of officers from Class II Grade I of the Surveyors' Service who have qualified as stipulated in paragraph 8:1(a) and 8:1(b) of these minutes.

A promotion can only be made to a post in the approved cadre. As number of cadres in the post of Additional Surveyor General and Deputy Surveyor General are limited the officers in Superintendent of Surveys (Grade II Class I) were stagnating without promotion. They made representations and the Cabinet of Ministers decided to grant financial benefits to the officers who had served for a substantial period in Class II Grade I to be appointed to Class II Grade I on a supernumerary basis. It has to be noted that the Cabinet by its decision has not increased the cadre of Additional Surveyor General or Deputy Surveyor General but by appointing the stagnating officers of Class II Grade I on a supernumerary basis to Class I Grade II it has placed them in a higher salary point. The purpose of the supernumerary appointment is based on stagnation, the Cabinet has stipulated a service period to be completed to get this benefit. By this Cabinet Decision dated 25th June 2003, the Minutes of the Sri Lanka Surveyors' Service was amended in paragraph 6.3 of the Minutes and published in the Gazette No 1338 dated 23rd April 2004. The said amendment reads as follows:

“Officers in Grade II/I of the Sri Lanka Surveyors' Service, who have completed 8 years of satisfactory service in Class II/I and with a net total of 18 years of service, if not otherwise disqualified will be promoted to Class I of the Surveyors' Service on supernumerary basis....., without prejudice to seniority of any officer who is already in Class I “

Under this scheme eighteen (18) Superintendent of Surveys (Grade II Class I) were promoted to Class I Grade II on 21st July 2004 and Seven (07) Superintendent of Surveys were promoted on 30th August 2005 on a supernumerary basis. The 7th Respondent was not promoted under this scheme as he had gone on no-pay leave for four years taking into consideration the Establishment Code provision Chapter XII Clause 16. This clause provides:

“Where a scheme of recruitment specifies a minimum period of service as a qualification for promotion, the period of no-pay leave so granted should not be reckoned for computing the minimum period of service.”

The Government in 2006 decided to create additional posts and to increase the cadre in the Sri Lanka Surveyors' Service. The new minutes were published in the Government Gazette Extraordinary No.1434/5 dated 27th February 2006 and it has provided that this minute would come into effect retrospectively , from 1st August 2005. Under these minutes the designations and cadre are as follows:

	Designation	Cadre	Class
i.	Surveyor General	01	Selection Class
ii.	Additional Surveyor General	02	Selection Class
iii.	Senior Dep. Surv. Gen	05	Class I
iv.	Deputy Surveyor General/ Provincial Surv. Gen	13	Class I
v.	Senior Superintendent of Surveys	49	Class I
vi.	Superintendent of Surveys	139	Class II/I
vii.	Assist. Supt. of Surveys/Surveyor	850	Class II/I

It has been specifically provided under 7.4 of the Minutes that:

“Superintendent of Surveys will be absorbed to the post of Senior Superintendent of Surveys in Class I”

And in Clause 11:

“ The seniority of officers who were absorbed to various Classes under the new minutes will be decided upon the seniority they enjoyed at the previous Class and post”

The Service Minute of 2nd February 2006 has not recognised the Supernumerary position to which some of the Superintended of Surveys were

promoted. It has considered the Superintended of Surveys who were in service at the time of promulgation of the new minutes whether they were in Class II/Grade I or in the Supernumerary Service Class I/Grade II to be absorbed to the post of Senior Superintendent of Surveys Class I. When absorbing the seniority has to be determined as per Clause 11 of the minutes namely; upon the seniority they enjoyed at the previous Class and post. As supernumerary is not considered as a post the seniority in the previous post i.e Superintended of Surveys has to be considered. In absorbing to the post of Senior Superintendent of Surveys Class I there is no requirement of minimum period of service as a qualification for promotion under these minutes therefore the period of no-pay leave will not have any bearing in the determination of the seniority.

In view of the above the decision of the Administrative Appeals Tribunal to direct the PSC/the Secretary Ministry of Land and Land Development to take steps to promote the appellants (7th Respondent) on the same date along with the other officers who had been absorbed into Class I of the Sri Lanka Surveys Service and to take steps to amend the seniority list taking into consideration of the service of officers who are in the regular service and not on supernumerary basis are in all respect within the provision of the said service minutes. Therefore this Court has no reason to interfere with the order of the Administrative Appeal Tribunal dated 10.03.2010 marked P1. For the above reasons this application is dismissed without costs.

President of the Court of Appeal