

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

In the matter of an application for  
Mandates in the nature of a Writ of  
Certiorari and a Writ of Mandamus in  
terms of Article 140 of the Constitution.

**Emmanuel Godfrey Anton**  
No.40, 27<sup>th</sup> Lane  
Colombo 3.

**Petitioner**

Case No.CA (WRIT) 857/08

**Vs.**

1. **Administrative Appeals Tribunal**  
No.5, Dudley Senanayake Mawatha  
Colombo 8.
2. **Secretary**  
Administrative Appeals Tribunal  
No.5, Dudley Senanayake Mawatha  
Colombo 8.
3. **Hon. Justice N. Dissanayake**  
Chairman, Administrative Appeals  
Tribunal  
No.5, Dudley Senanayake Mawatha  
Colombo 8.
4. **Mr. S.C. Manapperuma**  
Member, Administrative Appeals  
Tribunal  
No.5, Dudley Senanayake Mawatha  
Colombo 8.
5. **Public Service Commission**  
356, Galle Road, Colombo 3.
6. **Secretary**  
Public Service Commission  
356, Galle Road, Colombo 3.

**RESPONDENTS**

7. **Hon. Justice Andrew Somawansa**  
Member, Administrative Appeals  
Tribunal  
No.5, Dudley Senanayake Mawatha  
Colombo 8.

8. **Mr. A. Balasingham**  
Member, Administrative Appeals  
Tribunal  
No.5, Dudley Senanayake Mawatha  
Colombo 8.

9. **Secretary,**  
Ministry of Public Administration and  
Home Affairs, Independence Square  
Colombo 7.

**ADDED RESPONDENTS**

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

COUNSEL : Sanjeewa Jayawardena with Kamran Aziz  
for the Petitioner.  
Deepthi Thilakawardana SC  
for the Respondent.

Argued on : 26.04.2011 & 04.05.2011

Decided on : 15.05.2012

**S.Sriskandarajah, J,**

The Petitioner joined the Sri Lanka Customs as an Assistant Superintendent of Customs (Class II) on 1<sup>st</sup> August 1989, and thereafter confirmed in this post on 21<sup>st</sup>

October 1992. The scheme of recruitment for the post of Assistant Superintendent of Customs (Class I) is as follows:-

- (i) A minimum period of 10 years service in Class II is necessary for him to be qualified for the promotion to Class I and each qualified applicant would be awarded 5 marks for each year of service up to a maximum of 80 marks;
- (ii) 10 marks for merit;
- (iii) 10 marks for apparels.

The Customs Department called for applications for promotion from Assistant Superintendents of Customs (Class II) to Assistant Superintendents of Customs (Class I) on or about 21<sup>st</sup> July 2004. The Petitioner applied for this promotion, and he was called for an interview by letter dated 10<sup>th</sup> September 2005. The Petitioner submitted that he became aware, in or about August 2006, that he was not one of the 65 officers selected for promotion from Assistant Superintendants of Customs Class II to Class I. The Petitioner made a complaint to the Director-General of Customs. The Director-General of Customs replied by his letter of 26<sup>th</sup> October 2006, informing the Petitioner that on account of the fact that the Petitioner having obtained no-pay leave from 26/08/2001 to 15/05/2002 (8½ months) for the purpose of employment in Canada, that he had obtained lesser marks at the interview for active service than other officers who had not obtained no-pay leave. He had been further informed that for this reason his name has come down in the list of seniority of officers of his grade. Due to this reason he had not been successful at the said interview.

The Petitioner submitted an appeal to the Public Service Commission against the said order on the 16<sup>th</sup> January 2007, and the Public Service Commission, by its letter dated 28<sup>th</sup> December 2007, rejected the Petitioner's appeal. The Petitioner, being aggrieved by the said decision of the Public Service Commission, preferred an appeal to the Administrative Appeals Tribunal on the 24<sup>th</sup> January 2008. The Administrative Appeals Tribunal, by its order dated 1/09/2008 dismissed the appeal of the Petitioner.

In this application the Petitioner is seeking a Writ of Certiorari to quash the order of the Administrative Appeals Tribunal (1<sup>st</sup> Respondent) dated 1<sup>st</sup> September 2008 and a Writ of Mandamus, directing the 5<sup>th</sup> Respondent (The Public Service Commission), to

promote the Petitioner to the grade of Assistant Superintendent of Customs (Class I) with effect from 2004.

The contention of the Petitioner that he should have been awarded the full 80 marks as he was similarly circumstanced as all the other officers who were promoted, as he commenced his employment in 1989 and at 2005 he has completed 16 years of service and, therefore, he could have been awarded 80 marks as in the case of all the other officers who obtained promotion, but, at the interview he was awarded only 78 marks for his service. The Petitioner also submitted that he was on no-pay leave which was approved under and in terms of Section 16 of Chapter XII of the Establishments Code, and he was on no-pay leave from 26<sup>th</sup> August 2001 and had reported to work in May 2002, and he was only on 8 ½ months no-pay leave, and he resumed work on 15<sup>th</sup> May 2002.

Section 16:10 of Chapter XII of the Establishments Code reads as follows:-

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

The Petitioner joined in service in 1989, and in 1999, he completes his 10<sup>th</sup> year. According to the scheme of recruitment, he is entitled to be considered for promotion from Class II to Class I of the Assistant Superintendents of Customs. It has to be noted that he was not on no-pay leave at any time within this period and, therefore, the above provisions of the Establishment Code, viz., section 16:10 of Chapter XII will not have any application to the Petitioner. It is also in evidence that the Petitioner was paid his increments continuously without any interruption during the period of year 2000 to 2005, even though he was on no-pay leave for 8½ months from August 2001 to May 2002. It appears that the Interview Panel had applied a marking scheme at the interview by giving 5 marks for each year of active service of officers at the said interview, and the Petitioner's period of active service had been calculated as 15 years and 6 months. In calculating the said period, the Interview Panel has deducted the period of 8 ½ months of no-pay leave that he had obtained. The Interview Panel has considered the active service of the Petitioner i.e. 15 years and 6 months and had given marks as 5 marks for each year, totaling 78 marks for his period of service.

The contention of the Petitioner is that the period of 8½ months no-pay leave should not have been deducted from his service in giving marks in the interview. As I have observed above, the Establishment Code provides for deduction of no-pay leave if the no-pay leave falls within the minimum period of service when a minimum period is required for promotion as per section 16:10 of Chapter XII of the Establishments Code, but in the Petitioner's case, that he has completed the minimum period of service without any interruption, and he became qualified for promotion in the year 1999, and when considering his promotion after the qualifying period of service according to the scheme of recruitment, he is entitled to get the 5 marks for each year of service, and as he has completed 16 years at the time of interview he should have got 80 marks for service. But the Interview Panel and the Public Service Commission have not taken into consideration the 8 ½ months of no-pay leave as part of past service, in that event he should not have been considered for increment for that period, but it appears that he was given full increment during his service. In addition, the scheme of recruitment also says, 5 marks per each year of service. Therefore, if they give 5 marks for each year of service, it has to be 5 marks for a full year and there cannot be any fraction, and marks cannot be given for ½ year of service. In that event the petitioner should have been given marks only for 15 years of service. That is, he should have got only 75 marks, but there is no rationale to give 78 marks for the petitioner. For this reason alone the award of the marks is not in accordance with law, but as the petitioner was given increment during the period that he was on no-pay leave itself shows that the said period was considered as part of his service. Further the scheme of recruitment has not given any distinction between the period of service and the period of active service. After considering his service in the years 2000, 2001, and 2002, the increments for the respective years was paid to the Petitioner and, therefore, there cannot be any justification in considering 8½ months between 26<sup>th</sup> August 2001 and 15<sup>th</sup> May 2002, as he was not in service. The promotions are considered according to the scheme of recruitment, and the leave and other entitlements of public servants are provided in the Establishments Code. The Establishments Code relating to the public officers acquires by virtue of the Constitutional organs statutory force : *Abeywickrama v Pathirana and others* [1986] 1 Sri L.R Page 120 at 138. Any action taken in view of the provisions of the Establishments Code and in view of the a scheme of recruitment, have to be in strict compliance of the provisions of the scheme of recruitment and the Establishments Code and there cannot be a just and equitable decision in complying with these provisions. As such, the Petitioner is entitled to get 5 marks for each year of service for his full period of service i.e 16 years. The Administrative Appeals Tribunal in its order dated 1<sup>st</sup> September 2008 has observed: "However, it has to be observed that in terms of

scheme of promotion (Annexure CI), candidates have to be selected on the basis of seniority and merit. Therefore, the Interview Panel may have had to devise a basis to give marks for seniority in service. As revealed in the observations of the Public Service Commission, the Panel has given 5 marks for each year of active service for the candidate they cannot be faulted for this. In calculating the period of active service, deducting the period of no pay leave is quite logical.

Therefore, this Tribunal is of the view that giving 5 marks for each year of active service and deducting the period of no-pay leave in calculating the period of no-pay leave by the Panel is justified.

The Administrative Appeals Tribunal has observed, in calculating the period of active service, deducting the period of no-pay leave is quite logical. As I have observed, in applying the Establishments Code provisions and the scheme of recruitment, that an authority has to interpret the provisions strictly, and the authority cannot use its discretion in arriving at a decision. If the authority is of doubt, it should have got clarification from the Director Establishments before interpreting any of the provisions, but if strict interpretation is applied, the Petitioner should have got 5 marks for each year of service inclusive of the period on which he was in no-pay leave as that period falls outside the qualifying period of 10 years. Even on the other hand if we apply a logical approach of the authority, it can only give 5 marks for each year of service and, in that event, the Petitioner should have got 75 marks as he has got 15 completed years of service at the time of interview. In either way, the decision of the Interview Panel is illegal and hence, the decision holding that the decision of the Interview Panel upholding of the Public Service Commission is logical by the Administrative Appeals Tribunal cannot be considered as legal and, therefore, this Court issues a Writ of Certiorari to quash the said order of the Administrative Appeals Tribunal dated 1<sup>st</sup> September 2008.

The Petitioner has sought a Writ of Mandamus from this Court directing the 5<sup>th</sup> Respondent to promote the Petitioner to Assistant Superintendent of Customs (Class I). As this Court has no jurisdiction to revise an order of the Public Service Commission, this Court directs the Administrative Appeals Tribunal to re-consider its decision according to law and pronounce a reconsidered decision according to law. The application of the Petitioner is allowed without cost.

President of the Court of Appeal