

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

In the matter of an application for orders in the nature of Writ of Certiorari and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

J.C.Procter,
C/O, Police Headquarters,
Colombo 1

Petitioner

C.A. Application No. 42/2008

Vs

1. S.W.B.Wadugodapitiya
Chairman,
The Administrative Appeal Tribunal,
Dudley Senanayake Mawatha,
Colombo 8.

And nine (09) others.

Respondents

BEFORE : **S.SRISKANDARAJAH, J , (P/CA)**
COUNSEL : **Faiz Musthapha PC with I.C. Waliamuna**
for the Petitioner.
Janak de Silva, SSC
for the Respondents.
Argued on : **08.12.2011**
Decided on : **23.08.2011**

S.Sriskandarajah, J.

The Petitioner is a Senior Superintendent of Police (SP Grade I) presently holding the position of Director Police Tourist Division. The Petitioner submitted that applications were called on or about 06.12.1999 for the promotion to the rank of Superintendent of Police (SP Grade II) and he applied for the said promotion when he was holding the post of ASP, after the selection process 35 officers including the Petitioner were promoted to the rank of SP Grade II with effect from 22.05.2000. This decision was challenged by some of the unsuccessful candidates by way of fundamental rights application. The Supreme Court made order quashing the said promotions and directed to have a fresh selection board to select officers. Consequent to fresh interviews held by the Public Service Commission on or about 16.07.2002, 44 ASPs were promoted to the rank of SP Grade II, with effect from 22.05.2000 but the Petitioner was not promoted to the rank of SP Grade II. The Petitioner filed a fundamental rights application bearing No SC FR 504/2002 challenging his non -selection for promotion. This Application was settled on 15.09.2003 along with other fundamental rights application filed by the other unsuccessful officers accepting a promotional scheme that was encapsulated in case bearing No 501/2002. In this case a scheme of promotion was formulated on the direction of the Supreme Court under which scheme all the ASPs including the Petitioner were promoted to the rank of SP Grade II with effect from 22.05.2000 but they were placed immediately below the aforesaid 44 officers already promoted.

The Petitioner subsequently filed a fundamental rights application bearing No SCFR 380/2005 alleging an infringement of his fundamental rights on the basis that the seniority list prepared in view of the above settlement for promotion was wrongful and arbitrary as his name is placed after the 44 officers who were promoted on an earlier occasion after an interview. He based his claim on a reservation made in the settlement (in SC FR 501/2002)

that the question of "Seniority will be exercised as an when the need arises". The Petitioner submitted that upon perusing the objections filed by the respondents in the said Fundamental Rights Application (380/2005) he became aware that he was entitled to more marks which would have been sufficient for him to be promoted together with the 44 promoted officers who were interviewed and promoted by the Public Service Commission on or about 16.07.2002. He submitted an appeal to the National Police Commission requesting that he be promoted to the rank of SP Grade II together with the 44 promoted officers on the basis that he was entitled to 37.5 marks.

The Petitioner contended that despite his promotion to the rank of SP Grade II under the Scheme of promotion formulated on the direction of the Supreme Court he is entitled for the said promotion along with 44 other officers who were promoted before the preparation of the said scheme. If he was considered and promoted along with the said 44 officers his seniority would have been restored. In view of this position taken by the Petitioner he persuaded his appeal before the National Police Commission.

The National Police Commission has communicated its decision by its letter dated 23.11.2005 as follows:

"The National Police Commission having gone into your appeal has decided that your request for restoration of seniority in the grade of Superintendent of Police, Grade II, by treating you as having being promoted to that rank with effect from 22.05.2000 along with those who were promoted to that rank by the Public Service Commission cannot be acceded to, in view of the Judgement in SC (FR) Application No.501/2002 and the decision with regard to SC(FR) Application No.380/2005 where the supreme Court has upheld the preliminary objection and has dismissed the application with costs."

The Judgement of the Supreme Court in SCFR Application No. 380/2005 observed:

“The proceedings dated 28.07.2003 have been filed as X4 by the Respondents who claim that the exclusion of this order is a deliberate misrepresentation. In these proceedings X4, the scheme formulated begins with paragraph which states that promotions that have already been made and challenged in this application will not be disturbed. Thus the very basis on which the Petitioners received their promotions as SP Grade II is that these promotions granted to officers whose names appear from No.4 to No.44 in the seniority list will not be disturbed. This fact is categorically stated in document X7 dated 6th May 2004 sent by the Chairman of the National Police Commission.”

The Supreme Court dismissed the said application as the above fact was suppressed.

The Petitioner was in fact promoted under the settlement arrived at and the scheme formulated in SC (FR) Application No.501/2002 but the Petitioner's claim to seniority is not based on the promotion granted to him under the settlement in SC (FR) Application No.501/2002. He claims that he was not allocated the marks that he was entitled to when the promotion of the said 44 officers were considered and if he was given the correct marks that he is entitled to he would have been promoted along with the said 44 officers and hence his promotion will not form part of the settlement arrived in SC (FR) Application No.501/2002.

The Petitioner submitted an appeal to the Administrative Appeal Tribunal against the said decision of the NPC contained in the letter dated 18.09.2006. This appeal was dismissed by the Administrative Appeal Tribunal on 23.05.2007 on the basis that the complaint made by the Petitioner would have been agitated in the Fundamental Rights application filed by the

Petitioner as the Petitioner was aware that he was not given the marks that he was entitled to while the Fundamental Rights Application was pending. The Administrative Appeal Tribunal Held:

“We have considered this matter and we find that the National Police Commission in this instance acted correctly in not interfering with the matter that was sub-judice in as much as the Fundamental Rights case filed by the Petitioner was pending before the Supreme Court.”

The Administrative Appeal Tribunal erred in coming in to the above conclusion as it has failed to consider that the Petitioner's claim for promotion is not under the settlement entered in the SC (FR) Application No.501/2002 or under the claim of seniority claimed by him in SCFR Application No. 380/2005. But it is an independent claim based on the erroneous marks given to him and he came to know about this while the SCFR Application No. 380/2005 is pending. But it cannot be raised in the SCFR Application No. 380/2005 as it was filed on a different basis namely; on the promotion given to him by the settlement arrived at the said case. Therefore the finding that the said issue raised before the National Police Commission and before the Administrative Appeal Tribunal is sub-judice is erroneous. Hence I issue a writ of certiorari to quash the decision of the Administrative Appeal Tribunal dated 23.05.2007 marked P19 to facilitate the Administrative Appeal Tribunal to reconsider the appeal of the Petitioner and to make an appropriate order.

The Application of the Petitioner for a writ of certiorari is allowed without costs.

President of the Court of Appeal