

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

**CA. (Writ) No: 350/2012**

V.P.M.G.R.Shantha Kumara,  
No: 354/26, Muhandiram,  
Samarakoone Mawatha,  
Gonewella, Kalaniya

**Petitioner**

**Vs.**

Chairman,  
Public Service Commission,  
No: 177, Nawala Road,  
Narahenpita, Colombo 05.

9A. Kanthi Wijethunga, Member,  
Public Service Commission,  
No: 177, Nawala Road,  
Narahenpita, Colombo 05.

Sunil S. Siarisena Member  
Public Service Commission,  
No: 177, Nawala Road,  
Narahenpita, Colombo 05.

I.N.Zoysa Gunasekara, Member,  
Public Service Commission,  
No: 177, Nawala Road,  
Narahenpita, Colombo 05.

**Respondents**

**CA Writ No.350/2012**

**Before** : K.T.Chitrasiri, J &  
L.T.B.Dehipeniya, J

**Counsel** : L.M.K. Arulanandan P.C. with  
S.S.Wettamuni for the Petitioner.

Shaheeda Bareie, SSC for the  
Respondents.

**Decided on** : 16.06.2015.

**K.T.Chitrasiri, J**

Admittedly, the inquiry before the Administrative Appeals Board had been considered before three members of the Tribunal namely Justices N.E.Dissanayake, Andrew Somawansa and Mr.Edmond Jayasuriya on the 22.05.2012. On that date, both parties have made their submissions orally in support of their respective cases. Thereafter it was fixed for order to be delivered on 28.08.2012. In the meantime, Andrew Somawansa, J has ceased to hold office and he was replaced by Mr.E. Jindasa as a member of the Tribunal.

The above circumstances show that the inquiry as to the application by the Petitioner had been held before 3 members of the Commission comprising Justices N.E. Dissanayake, Andrew

Somawansa and Mr.Edmond Jayasuriya. Section 2 of the Administrative Appeals Tribunal Act No.4 of 2002 stipulates that the Administrative Appeals Tribunal shall consist of three members.

The circumstances of this case show that when the order in respect of this application was pronounced, one of the members who heard the application has ceased to hold office. Moreover, in the final decision of the Tribunal which had been signed by the Chairman of the Tribunal (A5), it is stated that the order had been pronounced only by two members namely, N.E. Dissanayake, J and Mr.Edmond Jayasuriya. Therefore it is apparent that the Tribunal did not consist of three members at the time the order was made and pronounced since Andrew Somawansa J before whom the matter was argued had ceased to function as a member by then.

Considering the above circumstances, it is clear that the Tribunal did not consist of three members as required by Section 2 of the Act No.4 of 2002 at the time the order was made. Those matters are not being disputed by either party.

Having considered those matters, learned President's Counsel for the Petitioner moves that this matter be sent back for re-trial. Learned State Counsel has no objection to this application. Accordingly, we make order to have this matter referred back to the Administrative Appeals Tribunal to conduct a fresh inquiry on the original appeal made to the tribunal by the document dated 13.01.2012 marked as A2 filed with the petition.

In the circumstances, we set aside the impugned order dated 28.08.2012. Administrative Appeals Tribunal is directed to hold a fresh inquiry on the appeal dated 13.01.2012. Accordingly, this appeal is allowed subject to the above conditions.

*Appeal allowed.*

JUDGE OF THE COURT OF APPEAL

**L.T.B.Dehideniya, J**

I agree.

JUDGE OF THE COURT OF APPEAL

LWM/-