

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

Jayasuriya Mudiyanseelage Nandana
Senaka Jayasena,
“Jayasevana”,
Nuwaraeliya Road,
Welimada.

Presently of:

No. 78/15A,
Railway Quarters,
Bastian Street,
Colombo 11.

Petitioner

CASE NO: CA/WRIT/132/2016

Vs.

1. General Manager,
Sri Lanka Railways Department,
Colombo 10.

2. K.G. Anura Premaratne,
No. 7/3/A,
Alubogaha Watta,
Anderson Road,
Dehiwala.

Respondent

Before: Mahinda Samayawardhena, J.
Counsel: Thisya Weragoda for the Petitioner.
Manohara Jayasinghe, S.C., for the 1st
Respondent.
Decided on: 10.12.2018

Samayawardhena, J.

The petitioner filed this application naming two respondents seeking to issue (a) a writ of certiorari to quash the decision in P9, (b) a writ of mandamus directing the 1st respondent to reappoint the petitioner to the post of Superintendent (Covering)-Sri Lanka Railway Security Service, and (c) a writ of mandamus directing the 1st respondent to re-evaluate the allocated marks shown in the mark sheet A6(c) utilizing the marks shown in A6(a) and A6(b) and thereafter prepare a fresh seniority list for the Sri Lanka Railway Security Service.

The petitioner and the 2nd respondent have faced the interview for the Assistant Superintendents-Sri Lanka Railway Security Service. It is common ground that the interview was to be held according to the procedure set out in A3. A6(a) is the results of the written examination. A6(b) is the results of the first interview. A6(c) is the results of the final interview. The impugned decision P9 is based on A6(c).

Until P9, the petitioner was holding the post of Superintendent (Covering) of the Sri Lanka Railway Security Service, and the 2nd

respondent was holding the post of Deputy Superintendent (Covering) of the Sri Lanka Railway Security Service. But by P9, the 2nd respondent was appointed as the Superintendent (Covering) of the Sri Lanka Railway Security Service, and the petitioner was appointed as the Deputy Superintendent (Covering) of the Sri Lanka Railway Security Service.

At the first interview, out of 10 marks, only 5 marks were given to the 2nd respondent for “attendance, performance and conduct”, and full 10 marks were given to the petitioner. At this interview the 2nd respondent was not recommended for the promotion, as the petitioner himself admits in the written submissions, due to “certain disciplinary inquiry pending against the 2nd respondent at that time.”

By the time the final interview was held, the 2nd respondent had been exonerated from the disciplinary inquiry, according to paragraph 21 of the petition, “at the instance of the then Secretary of the Ministry of Transport” (who seems to me to be the disciplinary authority according to the Establishment Code). Upon such clearance, all his salary increments have also been given. Therefore, the final interview panel has given full 10 marks for the 2nd respondent for “attendance, performance and conduct” and recommended the 2nd respondent for promotion. When 10 marks were given to the 2nd respondent as such for “attendance, performance and conduct”, the cumulative marks of the 2nd respondent exceeded those of the petitioner.

It is the submission of the learned counsel for the petitioner that *“It was not open to the 4 member structured interview panel (final interview panel) to alter or amend the marks allocated by the 3 member panel (first interview panel) without the consent of the 3*

member panel allocated with the task of awarding marks for attendance, performance and conduct”, and therefore “the said alteration of marks was illegal, unlawful and ultra vires the powers of the said 4 member structured interview panel and therefore is null and void ab initio.”

I am unable to agree with this submission. According to A3, the three-member panel is not the ultimate deciding authority to award marks for “attendance, performance and conduct”. According to A3, for “attendance, performance and conduct”, the General Manager of Railways will allocate marks upon the recommendation of the three-member panel and submit it to the board of interview. (පැමිණීම, වැඩ සහ හැසිරීම වෙනුවෙන් ලකුණු ප්‍රදානය: දුම්රිය ආරක්ෂක අධිකාරී, අතිරේක දුම්රිය සාමාන්‍යාධිකාරී (පරිපාලන) හා අතිරේක දුම්රිය සාමාන්‍යාධිකාරී (මෙහෙයුම්/කාර්මික) යන තිදෙනෙකුගෙන් සැදුම්ලත් කමිටුවක නිර්දේශ මත දුම්රිය සාමාන්‍යාධිකාරී විසින් ලකුණු ප්‍රමාණය නියම කර සම්මුඛ පරීක්ෂණ මණ්ඩලය වෙත ඉදිරිපත් කරනු ලැබේ. (උපරිම ලකුණු සංඛ්‍යාව 10 කි.)) Then it is clear that the three-member panel can only make a recommendation and not a decision. Hence, the argument that the final interview panel cannot change the marks given by three-member panel is devoid of merit.

The final interview panel comprising of the General Manager of Railways as the Chairman has done nothing wrong by giving 10 marks at the final interview to the 2nd respondent as by that time the 2nd respondent had been cleared from all the charges and granted all the increments.

It is relevant note that the General Manager of Railways who was the Chairman of the final interview panel was a member of the first interview panel as an Additional General Manager at that time.

According to R6, which consists of 4 documents, the purported allegations levelled against the 2nd respondent are baseless.

Application of the petitioner is dismissed with costs.

Judge of the Court of Appeal