

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

(In the matter of an application for the grant of writ of
Mandamus & Certiorari, under the terms of Article 140 of
the Constitution)

Case No: CA/Writ/399/18

AAT No: AAT/233/2012 (PSC)

Harishchandra Pathiranalage Chandana Sumith
Kumara,
No. 29/18, Bodhipihituwala, Horampalla,
Minuwangoda.

Petitioner

01. The Administrative Appeal Tribunal (AAT)
02. Justice N.E. Dissanayake,
The Chairman, AAT
03. A. Gnanathan, PC
The Member, AAT
04. G.P. Abeykeerthi
The Member, AAT
The 1st to 4th Respondents of Administrative
Appeals Tribunal,
No.35, Silva Lane, Rajagiriya
05. The Secretary,
Public Service Commission,
No.177, Nawala Road, Colombo 05
06. The Secretary,
Ministry of Transport and Civil Aviation,
7th Floor, Sethsiripaya, Stage 2, Battaramulla
07. Nilantha Fernando,
General Manager of Sri Lanka Railways,
Railway Head office, Maradana, Colombo 10
08. The Hon. Attorney General,

Attorney General's Department,
Colombo 12.

Respondents

Before: C.P. Kirtisinghe – J

Mayadunne Corea – J

Counsel: Upali Rathnayake for the Petitioner

Dr. Charuka Ekanayake SC for the Respondents

Argued on: 24.09.2021

Decided on: 23.11.2021

C.P. Kirtisinghe - J

The Petitioner is seeking a mandate in the nature of a writ of certiorari quashing the decision of the Sri Lanka Railways dismissing the petitioner from the service, a mandate in the nature of a writ of certiorari quashing the decision of the Public Service Commission dismissing the appeal of the petitioner against the order of dismissal by the General Manager of Railways, a mandate in the nature of a writ of certiorari quashing the decision of the Administrative Appeals Tribunal in the appeal against the order of the Public Service Commission.

After a disciplinary inquiry the Acting General Manager of Railways had dismissed the petitioner from the service under section 28 (3) of chapter XLVIII, volume II of the establishment code for committing an offence and pleading guilty to same punishable under section 27, 52 (1), 78 (1) and section 78 (5) of Act No. 13 of 1984. The petitioner had appealed to the Public Service Commission against that decision and the Public Service Commission had dismissed that appeal. Thereafter the petitioner had appealed to the Administrative Appeals Tribunal against the decision of the Public Service Commission and the Administrative Appeals Tribunal had dismissed that appeal.

The facts of the case can be summarized as follows. The petitioner was an employee of the Sri Lanka Railways holding a post of a Technical Assistant. Upon the receipt of a petition or a complaint against the petitioner the General Manager of Railways had conducted an inquiry through an Inquiring Officer and come to the conclusion that the petitioner had been fined Rs.30,000.00 by the Magistrate of Hatton for an offence of possessing 4g and 280mg of Cannabis Sativa L alias "Ganja". Acting under the relevant provisions of the establishment code, the General Manager of Railways had dismissed the petitioner from the service. Petitioner appealed to the Public Service Commission against that decision and the Public Service Commission dismissed the said appeal. Thereafter the petitioner appealed to the Administrative Appeals Tribunal against the decision of the Public Service Commission and it was also dismissed.

In their statement of objections 1 to 8 respondents have taken up several objections. By way of a preliminary objection 1 to 8 respondents have taken up the position that this court lacks Jurisdiction to grant the relief prayed for by prayer "C" to the petition namely to quash the decision of the Public Service Commission and same renders this application futile. The Respondents have taken up the position that this application is misconceived in law and the petitioner had not come to court with clean hands. The petitioner had suppressed and/ or misrepresented material facts from the court. The reliefs prayed for by this application, if granted run counter to the public policy of this country.

In the appeal before the Administrative Appeals Tribunal the Petitioner had taken up the defense that a person who had stolen or found his lost identity card may have been the person who had pleaded guilty to the charge. But the Administrative Appeals Tribunal had come to the conclusion that the aforesaid contention cannot be accepted for the reason that the appellant had made that contention for the first time in the appeal before the Administrative Appeal Tribunal. The Administrative Appeal Tribunal had observed that the petitioner (Appellant) had not intimated to the General Manager of the Railways or any other officer that his lost identity card may have been used in the commission of the said offence. The Administrative Appeals Tribunal had also observed that the petitioner had not

stated this very important ground of appeal when he made his appeal to the Public Service Commission. Therefore the Commissioners in the Administrative Appeal Tribunal did not accept the aforesaid contention of the appellant.

At the inquiry before the Inquiring Officer of the Sri Lanka Railways the petitioner had denied the fact that there was a case against him in Hatton Magistrate's Court which means that he did not commit this offence. But he had stated at the inquiry that he had lost his identity card sometimes ago, a fact that the Commissioners in the Administrative Appeals Tribunal had failed to take into consideration. But the petitioner had not specifically set up a defense at the inquiry that his lost identity card may have been used by someone to commit the offence and pleaded guilty to same. His defense at the inquiry was that there was no case against him in the Magistrate's Court of Hatton.

The petitioner's appeal to the Public Service Commission and the proceedings before the Public Service Commission are not before us. But the Commissioners in the Administrative Appeal Tribunal say that the petitioner had not taken up this defense in his petition of appeal to the Public Service Commission dated 07.01.2012. The Petitioner had not produced a copy of his petition of Appeal to the P.S.C. or any other proceedings before the P.S.C. to contradict this position. Therefore I can accept the observations of the commissioners of the Administrative Appeal Tribunal that the petitioner had failed to take up this defense before the Public Service Commission. Without taking up such a defense at the inquiry before the inquiring officer of the Sri Lanka Railways and without taking up such a defense before the public service commission, the petitioner for the first time takes up this defense before the Administrative Appeal Tribunal that a person who had stolen or found his missing identity card may have used it to commit the said offence. Therefore the members of the Administrative Appeal Tribunal were justified in not accepting that contention and rejecting that defense.

There is another reason to reject this contention which the members of the Administrative Appeal Tribunal had failed to observe.

The address of the petitioner according to the caption of his own petition is no. 29/18, Bodhipihituwala, Horampalla, Minuwangoda. In his letter of appointment marked P02 the same address is mentioned and the letter had been delivered to that address. In addition the national identity card no. of the petitioner is also mentioned in P02. That means the superintendent of transport who had signed the letter of appointment or a subordinate had checked the identity card of the petitioner. Therefore in all probability the address mentioned there should be the address mentioned in the national identity card which is also the address mentioned in the caption of this case. Therefore one can come to the conclusion that the petitioner is living in Minuwangoda postal area. But in the statement to the police given by the accused in the Ganja case marked 1R5 the address is mentioned as 28/18, Bodhipihituwala, Horampalla, Divulapitiya. Divulapitiya is not the postal area where the petitioner resided. If someone else had made use of the missing identity card of the petitioner to commit this offence and plead guilty in court and produced same at the police station or before the officer who recorded his statement, that officer may not have mentioned his postal area as Divulapitiya while recording his address. Instead it should have been recorded as Minuwangoda. That shows that the missing identity card of the petitioner had not been produced at the police station. There is a photograph of the holder in an identity card and it is very unlikely that someone else would produce it to a police officer without the fear of getting detected when there is no necessity to produce an identity card. One can always say that you do not possess it at the moment. Had the police officer examined the identity card one would expect him to record the ID number in the statement. But it had not been done. Therefore when all these factors are taken into consideration it is more probable to come to the conclusion that the lost or missing identity card of the petitioner had not been produced to the police by the person who had committed that offence. The missing identity card had not been used by someone to commit this offence and plead guilty to the charge in court.

The defense of the petitioner at the inquiry conducted by the Sri Lanka Railways was that no case had been instituted against him in the Magistrate's Court of Hatton. When one applies the test of probability it is difficult to accept this

contention. Instead the test of probability leads to the opposite conclusion. The petitioner had been on leave on 21.03.2011, 22.03.2011 and 23.03.2011. On the 21st and 22nd he was on sick leave and on the 23rd he had taken his day off. According to the proceedings in the Magistrate's Court marked 1R6 the suspect Hewa Pedige Chandra Kulasooriya had been arrested and produced before the Magistrate on 22.03.2009 and remanded till 23.03.2009. The plaint was filed on 23.03.2009 and the accused had pleaded guilty to the charge and was fined Rs. 30,000.00. These two dates coincide with the dates on which the petitioner was on leave – 21,22 and 23 March. If you keep away the 21st for travelling to Mawussakale from Minuwangoda the suspect was arrested on the 22nd and fined on 23rd. The petitioner was on leave on these three days. I have come to the conclusion that the missing identity card of the petitioner was not produced at the police station by the suspect. A person who was altogether unknown to the petitioner could not have given the petitioner's previous name and the address to the police. If someone else other than the petitioner gave the aforesaid name and address to the police he should be a person known to the petitioner. If that person did not have any animosity towards the petitioner there is no reason for him give the name and the address of the petitioner implicating him. Instead he could have given a different fictitious name and an address. If that person who gave petitioner's name and address to the police bore ill will towards the petitioner and if he intended to put the petitioner in trouble he had every opportunity to give the petitioner's new name and the correct postal address. There is no necessity for him to give petitioner's previous name and a wrong postal area. On the other hand if the petitioner was the person who was arrested at Mawussakale he had a reason to give his earlier name to the police instead of giving his new name. He also had the same reason to give a different postal station – Divulapitiya instead of giving his correct postal station Minuwangoda. That is to prevent further detection and conceal the incident from all those who are concerned.

When all these factors are taken together with the fact that the petitioner was on leave on the relevant dates the balance of the evidence tilt in favour of the contention that it was the petitioner who had pleaded guilty to the aforesaid charge in the Magistrate's Court Hatton and was fined Rs. 30,000.00 and on a

balance of probability of evidence one can come to that conclusion. Therefore the inquiring officer of the Sri Lanka Railways and the Acting General Manager of Railways had come to a correct conclusion. Therefore both the public service commission and the Administrative Appeals Tribunal were justified in dismissing the appeals of the petitioner.

Under those circumstances it is unnecessary to go into the question whether this court lacks jurisdiction to grant the relief prayed for by paragraph C of the prayer to the petition.

For the afore mentioned reasons I dismiss the applications of the petitioner for a mandate in the nature of a writ of certiorari.

Judge of the Court of Appeal

Mayadunne Corea – J

I Agree

Judge of the Court of Appeal