

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

In the matter of an Application for Writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No:
WRT-0492-19**

Kavindra Kumara Bodhipakse,
St. Clare Estate,
Thalawakale.

PETITIONER

Vs.

1. National Police Commission,
Building No. 9,
Bandaranayake Memorial, International
Conference Hall, Bauddhaloka Mawatha,
Colombo 07.
2. P.H. Manathunga,
Chairman, National Police Commission.
3. Professor S.T. Hettige.
4. Savithri D. Wijesekara.
5. Anton Jeyanathan.
6. Y.L.M. Zawahir.
7. Tilak Collure.
8. Dr. Frank de Silva
(3rd-8th Respondents are the Member
of the National Police Commission)
- 8(a). Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

- 8(b). Hon. Justice Jagath Balapatabandi,
Chairman.
- 8(c). Mrs. Indrani Sugathadasa,
Member.
- 8(d). V. Shivagnanasothy,
Member.
- 8(e). Dr. T.R.C. Ruberu,
Member.
- 8(f). Ahamed Lebbe Mohamed Saleem,
Member.
- 8(g). Leelasena Liyanagama,
Member.
- 8(h). Dian Gomes,
Member.
- 8(i). Dilith Jayaweera,
Member.
- 8(j). W.H. Priyadasa,
Member.
- 8(k). M.A.B. Dayasenarathna,
Secretary,
All of the Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
9. D.M. Samansiri,
Secretary, National Police Commission,
Building No. 9, Bandaranayake Memorial
International Conference Hall, Bauddhaloka
Mawatha, Colombo 07.

10. Hon. Justice N.E. Dissanayake,
Chairman, Administrative Appeals
Tribunal, No. 35, Silva Lane,
Dharmapala Place, Rajagiriya.
11. A. Gnanathan P.C.
Member, Administrative Appeals
Tribunal, No. 35, Silva Lane, Dharmapala
Place, Rajagiriya.
12. G.P. Abeykeerthi,
Member, Administrative Appeals
Tribunal, No. 35, Silva Lane,
Dharmapala Place, Rajagiriya.
13. C.D. Wickremaratna,
Acting Inspector General of Police,
Department of Police, Police Head
Quarters, Colombo 01.
14. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp, Colombo 12.

RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

P.K. Prince Perera for the Petitioner.

Ms. Shilome David, SC for the 1st and 3rd - 14th Respondents.

Written submissions tendered on:

24.08.2022 by the Petitioner.

15.08.2022 by the Respondents.

Argued on: 28.07.2022

Decided on: 13.10.2022

S.U.B. Karalliyadde, J.

The Petitioner to this Writ Application joined the Police Department as a Reserve Police Constable on 13.11.1989 and on 24.09.1997 absorbed into the regular service. A domestic inquiry was held against him based on an allegation that while he was serving at the Talawakele Police Station he had claimed the reward money in respect of raids that he had not participated in the years 2009 to 2011 (brief of the domestic inquiry is marked as A6). At the inquiry, the Petitioner admitted that he had committed the wrongful acts alleged against him. Thereafter, on 09.03.2012, the Petitioner had been issued with a charge sheet (marked as Annexure I to the document marked as A-1) containing five charges based on the alleged acts of misconduct and accordingly a formal disciplinary inquiry was held. At the formal disciplinary inquiry, on behalf of the prosecution, four witnesses and 10 documents were led in evidence. For the defence, neither the Petitioner gave evidence nor any other evidence led. At the end of the formal disciplinary inquiry, the Petitioner was found guilty to 4 charges, namely (i) disreputable conduct, (ii) disobedience of orders, (iii) falsehood or pre-verification, (iv) being an accessory to a search of discipline. He was exonerated of the 5th charge. Consequent to that, by the Disciplinary Order dated 01.12.2012 of the Inspector General of Police (13th Respondent) (marked as Annexure II to the document marked as A-1)

the Petitioner was dismissed from the service. Being aggrieved by the aforesaid Disciplinary Order, the Petitioner forwarded an appeal to the Public Service Commission (hereinafter referred to as the PSC) and by the Order dated 14.05.2015 (marked as Annexure III to the document marked as A-1) the PSC dismissed his appeal. From there the Petitioner preferred an appeal to the Administrative Appeal Tribunal (hereinafter referred to as the AAT). By its Order dated 28.05.2019, the AAT dismissed that appeal on the basis that the punishment imposed by the 13th Respondent (marked as Annexure II to the document marked as A-1) is incommensurate with the serious nature of the offences which the Petitioner was found guilty.

Even though, in the Petition to this writ Application dated 11.11.2019, the Petitioner has sought mandates in the nature of Writs of Certiorari to quash the disciplinary order, the decision of the PSC, the decision of the National Police Commission, the Order of the AAT and mandates of writ of Mandamus directing the Respondents to acquit the Petitioner from the charges against him and reinstate him in the service with all entitlements, when the matter was mentioned before the Court on 09.02.2021 to support for notices on the Respondents, it has been stated by the learned Counsel appeared for the Petitioner that the Petitioner wishes to proceed only with the Application for a writ of Certiorari to quash the decision of the AAT. On that basis the notices have been issued by the Court on the Respondents.

The learned Counsel appearing for the Petitioner submitted to Court that, even though, the Petitioner has not given evidence at the formal disciplinary inquiry admitting his statement made at the domestic inquiry that he had committed the wrongful acts alleged

against him, taking into consideration the said admission the AAT has decided that the Petitioner is guilty to the charges against him. The learned Counsel argued that in terms of Section 21.13 of the Chapter XLVIII of the Establishment Code Volume II, only if a witness accepts that a written statement made by him at a preliminary investigation is true, the matters contained in such statement could be accepted as evidence led at the formal disciplinary inquiry.

When coming to the conclusion the AAT has considered the evidence led at the formal disciplinary inquiry in addition to the statement made by the Petitioner at the domestic inquiry admitting the liability to the charges against him. Therefore, this Court can be satisfied that the AAT has considered not only aforesaid admission, but also the evidence of the witnesses and the documents produced at the formal disciplinary inquiry before coming to its conclusion. The finding of facts by a tribunal could be set aside by way of writs if it is found that there was no evidence at all to base such findings.¹ The Petitioner therefore, is not entitled to the writs prayed for in the Petition to set aside the decision of the AAT since, it has considered the evidence at the formal disciplinary inquiry.

A person exercising quasi-judicial functions must base his decision upon material which tends logically to show the existence of facts relevant to the issue to be decided. Lord Justice Diplock in *R v Deputy Industrial Injuries Commissioner; Ex parte Moore*² remarked:

¹ *Culasubadhra Vs. The University of Colombo* (1985) 1 Sri LR 244 at 257.

² (1965) 1 QB 456, 488.

“The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than it must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that he must not spin a coin or consult an astrologer, but he may take into account any material which, as a matter of reason, has some probative value in the sense mentioned above. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue.”

Furthermore, in the case of *State of Haryana v. Rattan Singh*³ the Indian Supreme Court held that *“It is well settled that in a domestic inquiry the stringent and sophisticated rules of evidence under the Indian Evidence Act, 1872 may not apply. All the materials which are rationally probative or evidential for a reasonable mind are admissible. There is no aversion to hearsay evidence provided it has reasonable nexus and reliability. The quintessence of the judicial approach is objectivity, preclusion of the impertinent materials or deliberations and compliance of rules/ principle of natural justice.”*

Accordingly, if the AAT could satisfy on the material before it that the Petitioner is guilty to the charges against him, in terms of the principles and the rules of the administrative law, the AAT has power to dismiss the appeal of the Petitioner even

³ AIR (1977) SC 1512.

without taking into consideration the evidence in strictly sense. The impugned Order of the AAT therefore, is according to the law.

Under the above stated circumstances, this Court can be satisfied that the decision of the AAT to dismiss the appeal is according to law and a necessity does not arise for this Court to interfere with the impugned Order dated 28.05.2019 of the AAT dismissing the appeal. Therefore, the Court refuses to issue a writ of Certiorari to quash the Order of the AAT. Application for the Writ of Certiorari is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL