

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

In the matter of an application in the nature of
Writs of Certiorari and Mandamus under
Article 140 of the 1978 Constitution.

T.V.R. Kumara,
Ex PS 28702
Pahalawatta, Keembheeya,
Galle.

Petitioner

CA WRT 119/2020

Vs.

1. National Police Commission,
Building No.9
Bandaranayake Memorial International
Conference Hall,
Buddhaloka Mawatha,
Colombo 07.

1a. P.H. Manathunga,
Chairman,
National Police Commission,
Building No.9
Bandaranayake Memorial International
Conference Hall,
Buddhaloka Mawatha,
Colombo 07. (Ceased to hold Office)

2. Professor S.T. Hettige
(Ceased to hold Office)
3. Savithri D. Wijesekara
(Ceased to hold Office)
4. Anton Jeyanathan
(Ceased to hold Office)
5. Y.L.M. Zawahir
(Ceased to hold Office)
6. Tilak Collure
(Ceased to hold Office)
7. Dr. Frank de Silva
(2nd-7th Respondents are the Members of
the National Police Commission)
(Ceased to hold Office)
8. Nishantha Anuruddha Weerasinghe,
Secretary,
National Police Commission, Building No.9
Bandaranayake Memorial International
Conference Hall,
Buddhaloka Mawatha,
Colombo 07.
(Ceased to hold Office)
9. Hon. Justice N.E. Dissanayake,
Chairman,
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Dharmapala Place,

Rajagiriya.
(Ceased to hold Office)

10. A. Gnanathasan P.C.
Member,
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Dharmapala Place,
Rajagiriya.
(Ceased to hold Office)

11. G.P. Abeykeerthi,
Member,
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Dharmapala Place,
Rajagiriya
(Ceased to hold Office)

12. C.D. Wickremaratna,
Inspector General of Police,
Department of Police
Police Headquarters,
Colombo 01.

13. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp, Colombo 12.

14. Public Service Commission,
No.1200/9,
Rajamalwatta Road,
Battaramulla.

15. Hon. Justice Jagath Balapatabendi,
Chairman, Public Service Commission,
No.1200/9, Rajamalwatta Road,
Battaramulla.
16. M.A.B. Daya Senarath,
Secretary, Public Service Commission,
No.1200/9, Rajamalwatta Road,
Battaramulla.
17. Mrs. Indrani Sugathadasa,
Member.
18. Mr. V. Shivagnanasothy,
Member
19. Dr. T.R.C.Ruberu,
Member
20. Mr. Ahmed Lebbe Mohamed Saleem
Member
21. Mr. Leelasena Liyanagama,
Member
22. Mr. Dian Gomes,
Member
23. Mr. Dilith Jayaweera,
Member
24. Mr. W.H. Piyadasa,
Member
All of Public Service Commission,
No. 1200/9,
Rajamalwatta Road, Battaramulla

Respondents

Before: D.N. Samarakoon, J.
B. Sasi Mahendran, J.

Counsel: P.K. Prince Perera with S. Panchadsaram for the Petitioner
Manohara Jayasinghe, DSG for the Respondents

Argued On : 26.10.2022

Decided On : 02.12.2022

B. Sasi Mahendran, J.

This is an application for Writs of Certiorari to quash the Orders made by the Administrative Appeals Tribunal dated 11th March 2019 (“P3”), the National Police Commission dated 29th September 2017, and the Disciplinary Order dated 14th January 2014 (on page 10 of the application) all of which found the Petitioner guilty of five disciplinary charges and thereby dismissed the Petitioner from the Police force. The Petitioner is also seeking a Writ of Mandamus directing that he be acquitted of all charges and reinstated in service from the effective date of his dismissal.

The Petitioner joined the Police force on 2nd May 1989 as a Police Constable and thereafter rose to the rank of Sergeant on 1st January 2003. Following a formal inquiry, he was dismissed from service with effect from 14th July 2011 by the impugned Disciplinary Order issued under the hand of the Inspector General of Police. The incident that led to the Petitioner’s dismissal was his arrest on 14th July 2011 for allegedly transporting timber without a permit. He, along with three other Defendants (one of whom pleaded guilty), was charged under Section 25(2) of the Forest Ordinance in the Magistrate’s Court of Manampitiya. He was ultimately acquitted on 31st October 2016.

Initially, a preliminary investigation was held and then a formal inquiry was conducted by an Assistant Superintendent of Police after the Petitioner was served with a Charge-Sheet (dated 6th April 2012) containing five charges. These charges included “discreditable conduct”, “disobedience to orders”, “neglect of duty”, “falsehood or prevarification”, and “corrupt practices”, respectively, in violation or contravention of Section 1 of Appendix B, Section 3 of Appendix B, Section 4(c) of Appendix B, Section 5(b) of Appendix B and Section 7(e) of Appendix B of Police Departmental Orders (vide pages

6 -9 of the application). The Petitioner pleaded not guilty. At the inquiry, sixteen witnesses gave evidence on behalf of the prosecution. The Petitioner neither lead evidence himself nor called any witnesses. On the recommendation of the inquiring officer (pages 27-39 of the application), and the evidence led at the inquiry, the Inspector General of Police found the Petitioner guilty of all charges and dismissed him from service with effect from 14th July 2011. The relevant part of his Disciplinary Order reads:

“විධිමත් විනය පරීක්ෂණයේදී ඉදිරිපත් වූ සාක්ෂිකරුවන්ගේ සාක්ෂි, මූලික විමර්ශන ගොනුව, විධිමත් විනය පරීක්ෂණ ගොනුව හා පරීක්ෂණ නිලධාරියාගේ අවසන් වාර්තාව මා විසින් අධ්‍යයනය කරන ලද අතර ඉහත සිදුවීම්ම අදාළව ඔබට නිකුත් කර ඇති චෝදනා පත්‍රයේ චෝදනා සියල්ලන්ටම ඔබ වැරදිකරු බව මා විසින් නිගමනය කරමි.”

He appealed the decision to the Public Service Commission, which referred it to the then-newly re-constituted National Police Commission. It rejected the appeal. This was appealed to the Administrative Appeals Tribunal. The Petitioner claimed in appeal, and claims in the present application, that his request for an outside party to conduct the disciplinary inquiry was denied. He denied being in the lorry at the time he was arrested. The Petitioner also pleaded that in the light of the Order of acquittal made by the learned Magistrate dated 31st October 2016 (pages 14 -18 of the application) that there was no case against him. The Administrative Appeals Tribunal dismissed the appeal (“P3”).

Aggrieved by the Order of the Administrative Appeals Tribunal (“P3”), the Petitioner is now before this Court. He seeks to impugn that Order on the basis that the Administrative Appeals Tribunal did not consider the fact that his request for an outside party to conduct the disciplinary inquiry was denied and that the Administrative Appeals Tribunal did not consider the contradictory evidence surrounding his arrest. This Order, as alleged by the Petitioner, frustrated his legitimate expectations and is unreasonable.

On a perusal of the Order of the Administrative Appeals Tribunal, the Tribunal has observed that the witnesses had confirmed that the Petitioner was in the vehicle at the time of arrest and that there was no permit to transport timber, and on this basis found that there was no merit to the appeal. Further, the Tribunal observed that the Petitioner had been acquitted from a criminal case due to certain contradictions as to the time and manner of arrest, and the difference of statements on the material apprehended. However, it concluded that the acquittal was due to the higher standard of proof in a criminal case, which was not the same standard to prove disciplinary charges framed in the charge sheet. There was, in their opinion, sufficient proof “on a balance of probabilities”.

We are of the view that there is no merit to the present application. This is primarily because the Petitioner has not proffered any reason as to what he was doing at the relevant time or what his involvement was in this whole saga. We do not wish to speculate what the reason may have been, although his involvement continues to be shrouded in secrecy. When that is the case, it only adds to the speculation. Nevertheless, the Petitioner had opted not to explain this at the disciplinary inquiry. It was only before the Administrative Appeals Tribunal, and now before this Court that he claims that “he had not been in the lorry when he was arrested” (vide paragraph 7(e) of the Petition).

There is no denying that he was arrested. The acquittal as identified by the Administrative Appeals Tribunal appears to be based on the contradictions in the witness testimonies, especially in relation to the place and manner of the arrest. There was nothing to suggest that the Petitioner was wrongly arrested or that he was not at the scene. It is not for this Court sitting in judicial review to assess such evidence and to examine the correctness of the decision as that is an exercise for a Court exercising its appellate jurisdiction. This Court exercising review must examine the lawfulness of the order of the Tribunal on the grounds of judicial review, none of which have been made out in the instant application.

The fact of the matter is the Petitioner has tarnished the good repute and unimpeachable conduct that is expected of a Police Officer because of his dealing. An opportunity to defend himself and explain matters that were known only to him was not taken advantage of and it is not possible now for this Court to undertake an appellate exercise. We are reminded of the proverb, “Caesar’s wife must be above suspicion”. It is conduct such as that which the Petitioner is accused of which brings the entire police force into disrepute. It is conduct unbecoming of an officer expected to enforce the law.

Further, his allegation that his request for an outsider to conduct the disciplinary inquiry was denied, and that the Administrative Appeals Tribunal did not consider it, is without merit. This is because there is no material to substantiate his position that he did make such a request at the initial inquiry itself.

In Dharmasena v. Shanker [2006] 3 SLR 169, his Lordship Sriskandarajah J. in response to the Petitioner’s submission that the inquirer was biased observed on page 171: *“without raising this objection before the inquirer the Petitioner cannot raise this objection in this Court for the first time.”*

Her Ladyship Shiranee Tilakawardane J. in Rajakaruna v. University of Ruhuna [2004] 3 SLR 141 at page 143 observed:

“As to the question of whether the Petitioners were entitled to a legitimate expectation that their requests sought, for the postponement of the inquiry, would be granted, but the Petitioners have failed to submit those written requests nor any materials to support their contention that they acted in accord with the request made by them.”

For the aforesaid reasons, we are of the view that this application must be dismissed without costs.

JUDGE OF THE COURT OF APPEAL

D.N. SAMARAKOON, J.

I AGREE

JUDGE OF THE COURT OF APPEAL