

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

*In the matter of an application for Mandates in
the nature of a Writ of Certiorari and a Writ of
Mandamus under and in terms of Article 140 of
the Constitution.*

H. K. R. Fernando
Assistant Superintendent of Police,
State Intelligence Service,

No 385/1/6,
Jaya Mawatha, Polpitimukalana,
Kandana.

CA/WRIT/428/2021

Petitioner

Vs.

1. Mr. C. Wickramaratne
Inspector General of Police
No 331, Olcott Mawatha,
Colombo- 01.
2. Administrative Appeals Tribunal
No. 35, Silva Lane, Dharmapala Place,
Rajagiriya.

3. Justice N. E. Dissanayake
Chairman,
Administrative Appeal Tribunal,
No. 35 Silva Lane, Dharmapala Place,
Rajagiriya.
4. Mr. G. P. Abeykeerthi
Member,
Administrative Appeal Tribunal,
No. 35 Silva Lane, Dharmapala Place,
Rajagiriya.
5. Mr. A. Gnanathan
Member,
Administrative Appeal Tribunal,
No. 35 Silva Lane, Dharmapala Place,
Rajagiriya.
6. The Hon. Attorney General
The Attorney General's Department,
Colombo- 12.

Respondents

Before :Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel :Uditha Egalahewa, PC with N. K. Ashokbharan and Hafeel Farisz for the
Petitioner.

Hashini Opatha SC for the 1st, 3rd, 4th, 5th and 6th Respondents.

Argued on : 16.01.2023

Written Submissions : Petitioner -10.01.2023

Respondents - --

Decided on : 13.02.2023

Sobhitha Rajakaruna J.

The Petitioner on 12.07.2010, was promoted to the post of Assistant Superintendent of Police ('ASP') with effect from 01.01.2008 and assumed duties immediately. He then received the letter dated 19.07.2010 cancelling the said promotion. Therefore, the Petitioner together with other similarly aggrieved officers filed a Fundamental Rights application case bearing Case No. SCFR/453/2010 ('X3'). The Supreme Court by its Order dated 21.10.2016 ('X4') observed;

"...However, this Court observes initially all 28 officers whose names are reflected in the document 'P6b' had been promoted as Assistant Superintendents of Police with effect of 01.01.2008 which was subsequently canceled and re-appointed with effect from the same date. The National Police Commission should take into consideration the date on which the other officers were promoted in considering the effective date of granting promotions to the 03 Petitioners, in the instant case.

This Court is of the view that in deciding the effective date of promotions the National Police Commission should ensure that no prejudice is caused to the Petitioners in deciding the effective date of the promotions..."

However, the National Police Commission ('NPC') informed ('X6') the Inspector General of Police that the Petitioner's application was rejected whilst the NPC has decided to antedate the appointment of W. R. A. D. A. K. Ranasinghe, ASP w.e.f. 01.01.2008. Meantime, the Petitioner was promoted to the post of ASP w.e.f. 13.01.2014 by the 1st Respondent's communication dated 03.03.2016 ('X5').

Being aggrieved by the decision of the NPC, the Petitioner preferred an appeal to the 2nd Respondent, Administrative Appeals Tribunal ('AAT') by way of an application bearing No. AAT/250/2018 (NPC) and the AAT pronounced its Order dated 07.11.2019 ('X8') directing the NPC to antedate the Petitioner's promotion to the rank of ASP w.e.f. 01.01.2008. The Petitioner submits that due to typographical errors in the said Order dated 07.11.2019, the AAT by Order dated 17.02.2020 ('X9') confirmed the decision contained in the previous Order. The NPC in compliance with the above orders then directed the 1st Respondent to antedate the Petitioner's promotion ('X10') to 01.01.2008. Despite the above, the Petitioner submits that the 1st Respondent has failed, neglected or refuse to enforce the AAT's Orders and such failure, neglect, refusal or delay is illegal, unreasonable, irrational and arbitrary.

Thus, the Petitioner seeks a writ of Mandamus directing the 1st Respondent, Inspector General of Police to implement the Orders of the AAT, dated 07.11.2019 ('X8') and 17.02.2020 ('X9').

When this matter was taken up for argument, the learned Counsel for the Petitioner brought to the attention of this Court the contents of the Respondents' motion dated 19.10.2022, which illustrates that the Attorney General has advised the 1st Respondent to grant the reliefs sought by the Petitioner in the instant Application. Further, the Respondents have filed neither a statement of objections nor written submissions.

It is pertinent at this stage to consider whether the reliefs sought by the Petitioner could be granted without assaying the issues relating to the promotion of the Petitioner.

Sriskandarajah J. in *Assembles of God of Ceylon vs. Urban Council, Anuradhapura and another (2007) 1 Sri. L.R. 89* considering Rule 3(4)(b) and Rule 3(7) of the Court of Appeal (Appellate Procedure) Rules 1990 held;

“There is no mandatory requirement in the above rules to file a statement of objections. Therefore a respondent who fails to file a statement of objection or files an objection not in compliance with the rules cannot be deprived from appearing and objecting to the application on grounds of law or to submit on infirmities of the petitioners application.”

It is to be noted that the 1st, 3rd, 4th, 5th and 6th Respondents (‘Respondents’) were represented in Court by the Attorney General and however, no objections were raised to the instant Application on grounds of law. Further, no submissions were made on infirmities of the Application of the Petitioner. It needs to be stressed that the Statement of Objections of the Respondents has not been filed not due to a default of such Respondents but by a voluntary decision which is morefully reflected in the contents of the motion dated 19.10.2022.

The AAT has delivered the Order reflected in ‘X8’ on 07.11.2019 whereas the Order ‘X9’ being an amendment to the said Order on 17.02.2020. As per the law applicable until the 20th Amendment to the Constitution was certified, any police officer aggrieved by any order relating to promotion, transfer, or any order on a disciplinary matter or dismissal made by the NPC in respect of such officer, may appeal therefrom, in terms of Article 155L of the Constitution, to the AAT established under Article 59 which shall have the power to alter, vary, rescind or confirm any order or decision made by the NPC. It is now settled law that the decisions of the AAT can be impugned under Article 140 of the Constitution as it is an appellate tribunal constituted in terms of the said Article 59(1). However, the jurisdiction of the Court of Appeal under Article 140 would be limited to a review of the decision of the AAT, and would not extend to quash the decisions of the PSC or AAT.

It is obvious that none of the parties to the matter which was before AAT has taken any steps to challenge the said decisions marked ‘X8’ and ‘X9’ of the AAT. Based on such circumstances, this Court has no option other than granting the reliefs prayed for by the

Petition of the Petitioner. In the circumstances, I proceed to issue a writ of Mandamus as prayed for in paragraph (b) of the prayer of the Petition of the Petitioner.

Application is allowed.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal