

**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 Writs of *Certiorari* and *Mandamus* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0380/2020

R. D. Aluthgamage

No. 234/7/1/1,
Police Quarters,
Sapugaskanda

Petitioner

Vs

1. **Retired Justice N.E. Dissanayake**
Chairman,
The Administrative Appeals Tribunal,
35, Silva Lane,
Dharmaraja Place,
Rajagiriya.
2. **A. Gnanathan PC**
The Administrative Appeals Tribunal,
35, Silva Lane,
Dharmaraja Place,
Rajagiriya.
3. **G.P. Abeykeerthi**
The Administrative Appeals Tribunal,
35, Silva Lane,

Dharmaraja Place,
Rajagiriya.

4. **K.W.E. Karalliyadda**
Chairman,
National Police Commission
BMICH Premises, Block 09,
Colombo 07.

- 4A. **Jagath Balapatabendi**
Chairman,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road
Battaramulla.

5. **Nishantha A. Weerasinghe**
Secretary,
National Police Commission,
BMICH Premises, Block 09,
Colombo 07.

- 5A. **Indrani Sugathadasa**
Member,
Public Service Commission,
No. 1200/09,
Rajamalwatta Road,
Battaramulla.

6. **Savithri Gunasekara**
Member,
National Police Commission,
BMICH Premises, Block 09,
Colombo 07

- 6A. **V. Sivagnanasothi**
Member,
Public Service Commission
No. 1200/09,
Rajamalwatta Road,

Battaramulla.

7. **Y.L.M. Zawahir**

Member,
National Police Commission,
BMICH Premises, Block 09,
Colombo 07.

7A. **C.R.C.Ruberu**

Member,
Public Service Commission,
No. 1200/09,
Rajamalwatta Road,
Battaramulla.

8. **Thilak Kollure**

Member,
National Police Commission,
BMICH Premises, Block 09,
Colombo 07.

8A. **A.L.M. Saleem**

Member,
Public Service Commission,
No. 1200/09,
Rajamalwatta Road,
Battaramulla.

9. **Asoka Wijethilake**

Member,
National Police Commission,
BMICH Premises, Block09
Colombo 07.

9A. **Leelasena Liyanagama**

Member,
Public Service Commission,
No. 1200/09,
Rajamalwatta Road,
Battaramulla.

10. **Gamini Navaratne**
Member,
National Police Commission,
BMICH Premises, Block 09,
Colombo 07.
- 10A. **Dian Gomes**
Member,
Public Service Commission,
No. 1200/09,
Rajamalwatta Road,
Battaramulla.
11. **G. Jayakumar**
Member,
National Police Commission,
BMICH Premises, Block 09,
Colombo 07.
- 11A. **Dilith Jayaweera**
Member,
Public Service Commission,
No. 1200/09,
Rajamalwatta Road,
Battaramulla.
12. **W.H. Piyadasa**
Member,
Public Service Commission,
No. 1200/09
Rajamalwatta Road,
Battaramulla.
13. **M.A.B. Daya Senarath**
Secretary,
Public Service Commission,
No. 177, Nawala Road,
Narahenpita,
Colombo 05.

14. **C.D. Wickramarathne**
Inspector General of Police,
Police Headquarters,
Colombo 01.
15. **Officer-in-Charge**
Kahawatte Police Station,
Kahawatte.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**
S. U. B. KARALLIYADDE, J.

Counsel: Riad Ameen, with Varana Wijenayake for the Petitioner.
V. De Abrew, ASG and Manohara Jayasinghe, DSG for the Respondents.

Argued on: 08.02.2023

Written Submissions on: 02.06.2023 by the Petitioner
Not tendered by the Respondents

Decided on: 05.09.2023

MOHAMMED LAFFAR, J.

The Petitioner is seeking, *inter-alia*, a Writ of Certiorari quashing the decision of the Administrative Appeals Tribunal (hereinafter referred to as the AAT) dated 23-10-2018 and a Writ of Mandamus directing the AAT to allow the appeal preferred by the Petitioner.

On 12-04-2010, IP Pushpalal and his team of Officers of the Kahawatte Police apprehended a lorry for the offence of transporting beef without a permit and brought the same to the Police Station. The allegation leveled against the Petitioner was that the Petitioner, without initiating any legal action against the persons who had transported beef without a valid permit, instructed IP Pushpalal to release the said vehicle, persons and beef, thereby the Petitioner had committed an offence punishable under section 4 (4) of the appendix to the Police Department Orders A 7B. Moreover, uttering the falsehood that he did not instruct IP Pushpalal to release the vehicle, persons and the beef, which is punishable under section 5 (B) of the Disciplinary Code in the appendix to Police Department Orders A 7B.

As per the preliminary investigation report of ASP Amarasingha dated 11-10-2012, marked and produced as P15, it transpired that the Petitioner had instructed the lorry to be released despite the lorry not having a license to transport cattle meat. Accordingly, the Petitioner was charge-sheeted on 30-12-2012 for neglect of duty and prevarication (P16). Thereafter, a disciplinary inquiry was held against the Petitioner. As per the disciplinary inquiry report of SSP Palitha Fernando dated 03-11-2014 marked as P19, the Petitioner was found guilty of charge N0.1, neglect of duty and found not guilty for charge N0.2, prevarication, and accordingly, the Inspector General of Police by Order dated 02-05-2015 imposed the punishment as follows (P20);

1. Deferment of Salary increment by one year.
2. To pay Rs. 30,000/- in 24 months installment.

Being aggrieved by the disciplinary Order, the Petitioner appealed to the Public Service Commission, thereupon, the same was forwarded by the

said Commission to the National Police Commission. The National Police Commission on 24-01-2017 decided to remove the Rs. 30,000/- fine imposed by the Inspector General of Police and affirmed the rest of the aforesaid punishment. Being aggrieved by the said decision, the Petitioner preferred an appeal to the AAT, whereas the AAT by Order dated 23-10-2018 dismissed the appeal and affirmed the Disciplinary Order of the IGP marked as P20. In these circumstances, the Petitioner states that the Order of the AAT is arbitrary, capricious, illegal, unreasonable, irrational and against the rules of natural justice.

It is pertinent to be noted that this is not an appeal and this is a judicial review. How does one differentiate between an appeal and a judicial review? In a judicial review proceeding we challenge the way in which the decision was made, rather than whether the decision or the conclusion reached is correct. In this way, judicial review is not really concerned with the conclusion; it focuses more so on the procedures that have been followed. A review is not a statutory right of the people and is at the discretion of the court, which can reject the request. A review is based on procedural irregularity, impropriety, irrationality, and illegality. In judicial review the Court will not analyze the evidence adduced and whether the decision was in accordance with the evidence adduced, which has to be considered in an appeal.

With an Appeal, you can challenge the court's decision by appealing it at a higher court than the one that passed the verdict. An appeal is a plea for the matter to be judged again. An appeal is requested to ask the higher court to change the decision of the lower court. The decision of the lower court can stay the same or the Higher Court can change it.

It was argued by the learned Counsel for the Petitioner that even though the National Police Commission had removed the punishment No. 2, imposing a fine of Rs. 30,000/-, by the IGP, the AAT has reimposed the same which is totally illegal, irrational and unreasonable.

It is evident from the report marked as P19, a disciplinary inquiry was properly conducted by SSP Palitha Fernando, and accordingly, having considered the oral and documentary evidence adduced, the Petitioner was found guilty of charge No.1 and observed that charge No.2 was not established. Having scrutinized the report marked P19, the IGP issued a Disciplinary Order against the Petitioner, namely Deferment of Salary Increment by one year and a fine of Rs. 30,000/-to be paid in 24 months installments.

It is to be noted that the National Police Commission, without adducing any reasons, had removed the fine of Rs. 30,000/- imposed by the IGP in his well-considered Order based on Report P19. Hence the decision of the National Police Commission is arbitrary, illegal and unreasonable. Even the Petitioner, in paragraph 37 of the Petition conceded to the fact that the National Police Commission has not furnished any reasons for its determination.

In **Choolanie Vs. Peoples Bank**¹ the Supreme Court observed that;

“Satisfactory reasons should be given for administrative decisions. A decision not supported by adequate reasons is liable to be quashed by Court.

Per Dr. Shirani Bandaranayake, J.

¹ 2008 (2) SLR 93

"..... giving reasons to an administrative decision is an important feature in today's context, which cannot be lightly disregarded. Furthermore, in a situation, where giving reasons have been ignored, such a body would run the risk of having acted arbitrarily in coming to their conclusion."

In light of the above determination of the Supreme Court, it is the view of this Court that the decision of the National Police Commission to vary the punishment imposed by the IGP without any reasons is arbitrary and therefore liable to be set aside *in-limine*. In this context, the decision of the AAT, without adhering to the decision of the National Police Commission and reaffirming the Disciplinary Order of the IGP is reasonable and justifiable in law.

Having scrutinized the Order of the AAT marked as P23, it is manifestly clear that the AAT has properly considered the evidence adduced at the Disciplinary inquiry before making its Order. IP Pushpalal in his evidence categorically stated that he was ordered by the Petitioner to release the vehicle, persons and the beef, and accordingly, he did so. At this point, the Petitioner had an opportunity to contradict and disprove the evidence of Pushpala. It is to be noted that the Petitioner opted not to give evidence and not to call witnesses to establish his case. Under section 114 (f) of the Evidence Ordinance, the Court may presume that evidence that could be and is not produced would if produced, be unfavorable to the person who withholds it. In the case of **Rodrigo Vs. St. Anthony's Ltd**² the Supreme Court enunciated that;

² 1995 (1SLR) 07

“the first defendant did not give evidence and the Court is entitled to draw the presumption that, had he given evidence, such evidence would have been unfavorable to the case of the defendant.”

The Supreme Court of India in the Case of **the Registrar of Delhi University vs Ashok Kumar Chopra, on 9 October, 1967-ILR 1968 Delhi 364**, observed that; *“Where there is an inherent duty of one person to inform the other person of accurate facts and circumstances but remains silent, his failure to discharge this duty will work as estoppels against him.”*

Moreover, the AAT has rightly observed that the preliminary investigation had been conducted by a Gazetted Officer on the Order of the SSP Ratnapura Division and the Charge sheet was issued by the IGP. As such, the investigation and the inquiry into the allegations against the Petitioner have been conducted in accordance with the law. The AAT rightly further observed that in commensurate with the serious nature of the charges, the finding of guilt of the Petitioner on charges No. I and II and the punishment imposed on the Petitioner are correct.

In the case of **Jayaweera Vs. Assistant Commissioner of Agrarian Services**³ it was held that;

“There is a presumption that official and legal Acts are regularly and correctly performed.”

Per Jayasuriya, J.

“ A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has the discretion to deny him relief having regard to his

³ 1996 (2) SLR 70.

conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief."

For the above reasons, I am of the view that there is no basis to interfere with the Order of the AAT dated 23-10-2018. Thus, the Application is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL