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

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

C.A (Writ) Application No. 437/2017

Dissanayake Mudiyanselage Muditha Pussella,
BR G7, Manning Town Housing Scheme,
Elvitigala Mawatha, Colombo 00800.

Petitioner

Vs.

1. Justice N.E. Dissanayake,
   Chairman,
   Administrative Appeals Tribunal
   Silva Lane,
   Sri Jayawardenapura, Kotte.

2. A. Gnanathasan P.C.,
   Member,
   Administrative Appeals Tribunal,
   Silva Lane,
   Sri Jayawardenapura, Kotte.

3. G.P. Abeykeerthi
   Member,
   Administrative Appeals Tribunal
   Silva Lane,
   Sri Jayawardenapura, Kotte.

4. P.H. Manatunga,
   Chairman,
   National Police Commission,
   Block No. 9, B.M.I.C.H. Premises,
   Bauddhaloka Mawatha, Colombo 7.

5. Prof. Siri Hettige,
   Member,
   National Police Commission,
   Block No. 9, B.M.I.C.H. Premises,
   Bauddhaloka Mawatha, Colombo 7.

6. Savithree Wijesekara,
   Member,
   National Police Commission,
   Block No. 9, B.M.I.C.H. Premises,
   Bauddhaloka Mawatha, Colombo 7.

7. Y.L.M. Zawahir,
   Member,
   National Police Commission,
   Block No. 9, B.M.I.C.H. Premises,
   Bauddhaloka Mawatha, Colombo 7.

8. Anton Jeyanandan,
   Member,
   National Police Commission,
   Block No. 9, B.M.I.C.H. Premises,
   Bauddhaloka Mawatha, Colombo 7.

9. Tilak Collure,
   Member,
   National Police Commission,
   Block No. 9, B.M.I.C.H. Premises,
   Bauddhaloka Mawatha, Colombo 7.

10. Frank de Silva,
Member,
National Police Commission,
Block No. 9, B.M.I.C.H. Premises,
Bauddhaloka Mawatha, Colombo 7.

11. Inspector General of Police,
Police Headquarters,
Colombo 1.

Respondents

Before: **P. Padman Surasena, J / President of the Court of Appeal**

Arjuna Obeyesekere, J

Counsel: Viran Corea with Sarita De Fonseka and Subhashini Samaraarachchi for the Petitioners

Ms. Nayomi Kahawita, State Counsel for the Respondents

Argued on: 17th July 2018

Written Submissions of the Petitioner tendered on: 17th August 2018

Written Submissions of the Respondents tendered on: 04th October 2018

Decided on: 12th December 2018

Arjuna Obeyesekere, J

The Petitioner has filed this application seeking *inter alia* the following relief:

a) A Writ of Certiorari to quash the Order of the 1st – 3rd Respondents dated 2nd November 2017[1];

b) A Writ of Mandamus compelling the 1st – 3rd Respondents to take steps to appoint the Petitioner to the rank of Assistant Superintendant of Police with effect from 7th June 1999.

The facts of this matter very briefly are as follows.

The Petitioner had joined the Sri Lanka Police Force as a probationary Sub-Inspector in 1982. He had been promoted as an Inspector of Police in January 1990 and as a Chief Inspector of Police in October 1999. The Petitioner is presently holding the rank of Senior Superintendent of Police.

By a letter dated 20th August 1998 submitted to this Court by the Respondents marked as '**4R2**', the Ministry of Defense had submitted to the Inspector General of Police the schemes of recruitment and promotions of the Senior Gazetted Officers of the Police Department, which had been approved by the Cabinet of Ministers, at its meeting held on 5th August 1998.

[1] The Order of the 1st – 3rd Respondents (Chairman and members of the Administrative Appeals Tribunal) has been annexed to the petition marked 'P5'. By the said order, the Administrative Appeals Tribunal had dismissed the appeal of the Petitioner.

Schedule 1 of '**4R2**' provided for the recruitment and/or promotion to the rank of Assistant Superintendent of Police (ASP) under three categories. The first category was recruitment through an open competitive examination where graduates of recognised universities who possessed the other qualifications set out in '**4R2**' were eligible to apply for selection as ASP's. 25% of the vacancies in the ASP cadre were to be filled under this category. The second category was by way of merit promotions where 50% of the vacancies were to be filled from among the Chief inspectors of Police who have been confirmed in that rank. The third and final category under which selection was to be done was through the results of a limited competitive examination. The balance 25% of the vacancies was to be filled under this final category, and is the subject matter of this application.

In terms of '**4R2**', in order to be eligible to apply under the third category, a candidate was required to be a Chief Inspector of Police or an Inspector of Police with 10 years in service. The selection procedure required each candidate to sit for a written examination conducted by the Commissioner General of Examinations, for which 75% of the marks would be allotted, and to face a viva voce test before a Board of Interview appointed by the Public Service Commission, for which the balance 25% of the marks were allotted.

Under this selection procedure, the following note had been made on '**4R2**':

> "The number of candidates summoned for the viva voce test will be equal to five times **the number of vacancies to be filled**, but the candidates to be so summoned will be limited to those who have obtained a minimum of 40% marks at the written examination."

This Court observes that the above ratio of 1:5 was applicable to all three categories referred to above. Thus, in terms of the promotion scheme '**4R2**', under the aforementioned final category, a candidate had to satisfy two criteria in order to be eligible to be called for the interview. The first was to obtain a minimum of 40% marks at the examination and the second was to be within the said 1:5 ratio.

By a Circular annexed to the petition marked '**P10a**' dated 3rd September 1998, the then Inspector General of Police had called for applications under the aforementioned Limited Competitive Examination category to fill the vacancies that existed in the post of ASP. Paragraph 5 of '**P10a**' specifically set out the following:

> "මෙම විභාගය කොළඹ දි විභාග කොමසාරිස් ජනරාල් විසින් පවත්වනු ලබන අතර, නිශ්චිත දිනට ඇතිව තිබූ පුරප්පාඩු සංඛ්‍යාව සඳහා ලිඛිත විභාගයෙන් ලබා ගන්නා ලකුණු අනු පිලිවෙලින් ඇබෑර්තු සංඛ්‍යාව මෙන් පස් ගුනයක් වාචිත පරීක්ෂණය සඳහා කැදවනු ඇත. ඒ සඳහා කැඳවනු ලබන්නේ ලිඛිත පරීක්ෂනයේදි යටත් පිරිසයෙන් 40% ක් වත් ලකුණු ලබාගත් අයදුම්කරුවන් පමනි. තවද, මෙම විභාගයට පැමිණීම වෙනුවෙන් ගමන් වියදම් හෝ උපවේශණ දිමනා හිමි නොවේ."

Thus, the Circular '**P10a**' reiterated the criteria laid down in the Scheme of Recruitment '**4R2**' and very specifically stated that the number of candidates that would be called for the interview would be limited to 5 times of the vacancies that existed on the said date (නිශ්චිත දිනට ඇතිව තිබූ පුරප්පාඩු සංඛ්‍යාව සඳහා).

The Petitioner, who by then was an Inspector of Police had sat for the limited competitive examination that had been held in October 1998. It is admitted

between the parties that 196 candidates had obtained the minimum 40% marks at the written examination and that the Petitioner was one of them. The Petitioner has submitted with his counter affidavit, the names of the said 196 candidates, marked '**P24**'. It is admitted that the said list had not been prepared in an ascending or descending order of the marks obtained.

By a letter dated 25th February 1999 annexed to the petition marked '**P10b**', the then Secretary, Ministry of Defence, while seeking approval for the composition of the Interview Board, had informed the Public Service Commission as follows:

> "Reference para 06 of the Notice inviting applications, the number of candidates to be called for the interview has been stipulated as five times the number of vacancies to be filled. In this instance **the number of vacancies to be filled is fourteen**. It is therefore suggested that seventy candidates in order of marks received at the written examination be called for the interview." (emphasis added)

It is admitted between the parties that although only 70 candidates were entitled to be called for the interview on the application of the 1:5 ratio, due to candidates having obtained equal marks, 72 candidates had been called for the viva voce interview. The Petitioner was not among the candidates who were eligible to face the viva voce interview as the Petitioner was not within the first 72 candidates, although he had obtained 40% or more at the examination. This Court must observe that the Petitioner did not complain about the application of the 1:5 ratio, either at the time '**4R2**' or '**P10a**' were published or when the interviews were held.

Consequent to the holding of the viva voce interview, the 14 candidates who had obtained the highest aggregate marks at the examination and viva voce interview had been appointed to the post of ASP with effect from 7th June 1999.

There has been a series of litigation after the said 14 candidates were appointed as ASP's. This Court would now examine some of these cases and the outcome thereof, as the learned Counsel for the Petitioner relied on these cases in support of his application for the Writ of Mandamus.

Although in terms of '**P10a**', 600 marks were to be allotted for the written examination, after the conclusion of the examination, the overall mark had been adjusted to 500 marks by the Commissioner General of Examinations through a process of pro-rating the marks obtained out of 600. This adjustment had been challenged by some candidates in two fundamental rights applications filed in the Supreme Court[2]. The Supreme Court had however held that no prejudice had been caused by the change in the marks from 600 to 500, as the change had applied to all candidates.

One candidate who had faced the viva voce interview had filed Writ Application No. C.A 1164/1999 in the Court of Appeal. The petitioner in that case had claimed that the practice of pro-rating of marks was arbitrary and in excess of the powers of the Commissioner General of Examinations. While this case was pending, the Public Service Commission had appointed the petitioner in that case and two other candidates who had faced the viva voce interview,

[2] SC (FR) 607/99 and SC (FR) 608/99

to the post of ASP with effect from 7th June 1999.[3] This Court must observe that these three appointments were outside the approved cadre of ASPs prevailing at that time, as set out in '**P10b**'.

Pursuant to the said settlement and the appointment of the above three ASP's, twelve other candidates who had faced the viva voce interview had filed CA (Writ) Application No. 736/2000 while another candidate had filed CA (Writ) Application No. 907/2000. The complaint of these petitioners was that after the aforementioned fundamental rights applications were concluded, the Public Service Commission had amended the approved marking list by adjusting the marks obtained by the candidates who had faced the viva voce interview. These petitioners complained that the three officers who had been appointed pursuant to the filing of CA (Writ) Application No. 1164/1999 had less marks than them, prior to the amendment of the marks by the Public Service Commission.

This Court, while observing that, "the reason for the preparation of the amended marks sheet remains a mystery as far as this Court and these applications are concerned" [4], issued a Writ of Mandamus to appoint all the petitioners in CA (Writ) Application Nos. 736/2000 and 907/2000 as ASP's, as the petitioners in the said two cases had obtained higher marks than one of the officers who had been promoted pursuant to the filing of CA (Writ) Application No. 1164/1999, prior to the marks being adjusted by the Public Service Commission. All these appointments had been made with effect from 7th June 1999. This Court observes that when issuing the Writ of Mandamus,

[3] The manner in which the Public Service Commission had made the said appointment has been discussed in the judgment of this Court in Karawita and others vs Inspector General of Police [CA(Writ) Application Nos. 736/2000 and 907/2000], reported in 2002 (2) Sri LR 287.
[4] Ibid.

this Court had been mindful of appointing the said petitioners in the absence of vacancies and had noted that the three persons who had been appointed pursuant to CA (Writ) Application No. 1164/1999 had also been appointed to the supernumerary cadre as vacancies did not exist.

The Petitioner claims that another eight candidates who had faced the viva voce interview had subsequently been appointed to the post of ASP with effect from 7th June 1999. Details pertaining to the appointment of these 8 candidates have not been submitted by the Petitioner. This Court observes at this stage that although 24 further appointments have been made, there were no vacancies in the approved ASP cadre for these 24 appointments and thus, the said appointments could only have been made on a supernumerary basis, as they were outside the approved ASP cadre. Be that as it may, the one common feature in all these subsequent appointments was that each appointee had faced the viva voce interview, unlike the Petitioner, who admittedly did not qualify for the viva voce interview.

After the number of appointees outside the approved cadre rose to 24, the Petitioner states that he complained to the Human Rights Commission of the 'grave injustice caused to him in being deprived of an opportunity to face the interview only on the basis of a purported number of vacancies, in circumstances where administrative relief had been granted to several others, in clear disregard of the said purported number of vacancies'.[5] Thus, the Petitioner himself concedes that the appointment of the 24 other candidates is outside the number of vacancies in the service.

[5] Paragraph 29 of the petition.

The gravamen of the Petitioner's complaint to the Human Rights Commission was that he too should have been called for the viva voce interview, as the total number of appointees had increased to 38. Thus, if the Petitioner's argument is accepted, when the ratio of 1:5 is applied to 38 appointments, 190 candidates should have been called for the viva voce interview. This argument of the Petitioner, which is relied on by the Petitioner in this application as well, is flawed for a variety of reasons.

The first is that the subsequent 24 appointments have been made outside the approved cadre[6] and not to fill any vacancies that existed in the cadre. The Circulars '**4R2**'[7] and '**P10a**'[8] only speaks of applying the ratio to the number of vacancies that are available, which in this case was only 14. Thus, only 70 could have been called for the interview[9], which is what happened.

In any event, the selection process ended with the conclusion of the viva voce interview and the appointment of the 14 successful candidates. Once the process ended, this Court is of the view that there was no provision to call any more candidates for the viva voce interview. Thus, irrespective of the reason for the appointments made thereafter, there was no provision to call the Petitioner or any other person in the list of 196 candidates who had not faced the viva voce interview, for a viva voce interview. To have done so, as argued by the Petitioner would only have turned the entire recruitment process to an absolute mockery.

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[6] As already observed by this Court in CA (Writ) Application Nos. 736/200 and 907/2000.
[7] '4R2' refers to the, 'number of vacancies to be filled'.
[8] 'P10a' refers to 'නියමිත දිනට ඇතිව තිබූ පුරප්පාඩු සංඛ්‍යාව සඳහා'.
[9] 72 candidates were in fact called, not as a deviation to the 1:5 ratio but since several candidates had obtained the identical mark.

The Human Rights Commission however had recommended that the Petitioner be promoted to the post of ASP with effect from 7th June 1999. The order of the Human Rights Commission dated 29th March 2004 has been annexed to the petition, marked '**P13**'. This Court has examined '**P13**' and observes that the Human Rights Commission appears to have agreed with the submission of the Petitioner that 190 candidates should have been called for the interview as 38 appointments had been made by then and that as the Petitioner had a good chance of obtaining the highest possible marks at the interview, the Petitioner too should be appointed as an ASP with effect from 7th June 1999. The then Inspector General of Police had also agreed with the recommendation of the Human Rights Commission, as borne out by his letter dated 17th July 2004, annexed to the petition, marked '**P14**'. It is indeed disheartening to note that the Human Rights Commission recommended the appointment to the post of ASP, a candidate who had not faced the viva voce interview, which was a mandatory requirement in the Scheme of Recruitment '**4R2**'.

The National Police Commission, having considered the said recommendation of the Human Rights Commission had informed the then Inspector General of Police, by its letter dated 30th November 2005 annexed to the petition marked '**P15**', that the Petitioner has been promoted to the rank of ASP with effect from 1st January 2003. Paragraph 3 of the said letter reads as follows:

> "He [the Petitioner] will rank junior to all officers who have already been promoted to the rank of ASP on or before 01st January 2003 and should be placed at the bottom of the ASP Seniority List and will have no right to claim for ante-dating of his promotion to 1999."

Accordingly, the Petitioner was appointed as an ASP with effect from 1st January 2003.[10] The Petitioner has not challenged the decision of the National Police Commission and had proceeded to serve in the Police Department, earning his promotion as a Superintendant of Police and Senior Superintendant of Police in the regular course. Thus, the Petitioner's appointment as an ASP ended in 2006 or at least, ought to have and should have ended there.

It appears that the appointment of the Petitioner, who admittedly had not faced the viva voce interview triggered another series of litigation, both by candidates who had faced the viva voce interview as well as by candidates who had not faced the viva voce interview and were therefore similarly circumstanced as the Petitioner.

The Petitioner states that 9 more candidates who had sat the examination in 1999 and faced the viva voce interview, had, through the intervention of the Supreme Court or by way of administrative relief, procured appointments as ASPs, with effect from March 2007. These 9 persons had been placed below the Petitioner in the seniority list of ASPs. The resultant position was that the said 9 ASP's who had faced the viva voce interview, were junior to an officer who had not qualified to face the viva voce interview. These 9 ASPs, being dissatisfied by the date of their appointment as ASPs, had continued to agitate that matter.

The issue that gives rise to this application is the subsequent backdating of the date of appointment of these 9 ASPs to 7th June 1999, pursuant to orders made by the Administrative Appeals Tribunal. The backdating had been effected in

[10] The Police Department Circular dated 24th February 2006 relating to the appointment of the Petitioner has been produced with the petition, marked 'P6c'.

2015 and 2016 and is evidenced by the Police Messages issued by the Inspector General of Police, annexed to the petition, marked '**P12a**' – '**P12g**'. With the backdating of their appointments as ASPs, the said 9 ASP's had been eligible for the back dating of their appointment as Superintendants of Police and Senior Superintendants of Police and were placed higher than the Petitioner in the seniority list.

The Petitioner, who claims to have been aggrieved by the said course of events, had written to the National Police Commission by his letter dated 19th October 2016, annexed to the petition marked '**P19**', and once again requested that the Petitioner's appointment as an ASP be backdated to 7th June 1999. This Court has examined '**P19**' and observe that the basis of this request is that since 45 persons had been appointed as ASP's on the strength of the 1999 examination, the Petitioner would have been entitled to be called for the interview and therefore, that the Petitioner is entitled to the backdating of his appointment with effect from 7th June 1999. This was the same basis on which the Petitioner's complaint to the Human Rights Commission in 2003 was based.

This Court has already held that it does not see any merit in this argument of the Petitioner. This Court must observe two other matters. The first is that the Petitioner had not faced the viva voce interview whereas each and every person appointed as ASP on the results of the examination held in 1998, including the 9 whose appointments had been backdated in 2015 and 2016, had faced the viva voce interview conducted in 1999. It appears that the Petitioner is the only person who had not participated at the viva voce interview but who nonetheless was appointed as an ASP on the strength of the

results of the examination alone. The second is that the appointment of the Petitioner as an ASP had been conclusively dealt with by the National Police Commission in 2005 and the Petitioner had not challenged the said decision, at that time.

By his letter dated 2nd February 2017 annexed to the petition marked '**P20**', the 11th Respondent Inspector General of Police had recommended the appeal of the Petitioner to the National Police Commission. By its letter dated 20th April 2017 annexed to the petition marked '**P21**', the National Police Commission had decided that the date of promotion had already been decided in 2003 and that it cannot be reconsidered. The relevant paragraph in '**P21**' is re-produced below:

> "ඔහුට 2003.01.01 දිනට ලබාදෙන ලද සහකාර පොලිස් අධිකාරී තනතුර 1999.06.07 දිනට පෙරදාතම කරන ලෙස ඉල්ලීම පොලිස්පති විසින් නිර්දේශ කර තිබුනද, එවකට පැවති ජාතික පොලිස් කොමිෂන් සභාව මගින් ලබාදෙන ලද නියෝගයක් නැවත සමාලෝචනය කිරීමට නෛතික හැකියාවක් මෙම කොමිෂන් සභාවට නොමැති බැවින් 1999.06.07 දිනට සහකාර පොලිස් අධිකාරී තනතුරේ පෙරදාතම කරන ලෙස කරන ලද ඉල්ලීම සලකා බැලිය නොහැකි බව 2017.03.16 දින රුස්වූ ජාතික පොලිස් කොමිෂන් සභාව තීරණය කරන ලද බව කාරුණිකව දන්වම්."

Dissatisfied with the said decision '**P21**', the Petitioner had appealed to the Administrative Appeals Tribunal, which, after a full hearing, held by its order dated 2nd November 2017 marked '**P5**' that it 'has no basis to interfere with the decision of the NPC communicated to the appellant by their letter dated 20th April 2017.' The Petitioner has thereafter invoked the writ jurisdiction of this Court to quash by a Writ of Certiorari, the said decision '**P5**'.

This Court must be mindful when considering an application for a writ that the function of this Court is to look at the legality of the decision and not whether it is right or wrong. As Lord Brightman stated in the House of Lords in **Chief Constable of North Wales Police v Evans**[11], applications for judicial review are often misconceived: "Judicial review is concerned, not with the decision, but with the decision making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power..... Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.."

When considering this application, this Court would also bear in mind the following passage of Lord Diplock in **Council of Civil Service Unions vs Minister for the Civil Service**[12] regarding the grounds on which Certiorari would issue.

> "Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.

The Petitioner is not complaining that the Administrative Appeals Tribunal did not have the jurisdiction or the power to make the decision '**P5**', or that the correct procedure has not been followed. The grounds urged on behalf of the Petitioner appear to come under the heading of irrationality or the failure by

[11] [1982] 1 WLR 1155 at 1174
[12] 1985 AC 374

the Administrative Appeals Tribunal to consider the matters before them, which has been described by Lord Diplock as follows:

> "By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness'[13]. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

In considering the relief sought by the Petitioner in this application, it would be important to consider the nature of the complaint the Petitioner made to the National Police Commission in 2016. According to the Petitioner himself, the present dispute was triggered by the backdating of the date of appointment of 9 ASP's to 7th June 1999, which resulted in those officers becoming senior to the Petitioner. In the written submissions filed on behalf of the Petitioner, it has been submitted that the Petitioner brought the said development to the notice of the National Police Commission and sought its intervention to 'backdate the Petitioner's appointment too with effect from 7th June 1999, also keeping with the recommendations of the Human Rights Commission (vide 'P13') and the then Inspector General of Police (vide 'P14').' This complaint is borne out by the penultimate paragraph of the letter '**P19**' written by the Petitioner to the National Police Commission and reads as follows:

> "ඉහත තරඟ විභාගයට අදාලව මැතකදි ලබාදුන් උසස්වීම් සමඟ වර්තමානය වන විට 45 දෙනෙකුට 1999.06.07 වන දින බලපවත්වන පරිදි උසස්වීම් ලබා දි ඇත. ඉහත කරුණු සැලකිල්ලට ගෙන මා හට 1999.06.07 වන දින සිට බලපැවැත්වෙන පරිදි ස.පො.අ තනතුර ලබා දි සියළුම උසස්වීම් පෙරදාතම කර දෙන මෙන් කාරුණිකව ඉල්ලා සිටිමි."

[13] Associated Provincial Picture Houses Ltd v Wednesbury Corporation 1948(1) KB 223

The Petitioner has requested the National Police Commission to take cognisance of the fact that the Petitioner too ought to have been called for the viva voce interview in 1999, upon an application of the 1:5 ratio and the recommendation of the Human Rights Commission. This Court has already dealt with the said argument of the Petitioner and held that the said argument is devoid of any merit.

The decision of the National Police Commission, as set out in the final paragraph of '**P21**' was that the date of promotion had already been decided by the National Police Commission in 2005 and that it cannot be reconsidered.

The decision of the AAT on the appeal submitted by the Petitioner is at '**P5**'. The AAT has stated that the promotion of the Petitioner to the rank of an ASP had taken place in 2005[14] and the Petitioner had been informed of his promotion through the Police Circular marked '**P6c**' dated 24th February 2006. The AAT had taken the view that if the Petitioner was dissatisfied with the decision made by the National Police Commission in 2005, he ought to have appealed against the said decision to the AAT at that time. The AAT infact notes that until '**P19**' was written in October 2016, the Petitioner had not appealed to any forum against his promotion not being backdated to 7th June 1999.

The question that the AAT was then required to consider was whether the Petitioner can re-agitate all over again in 2016, the decision of the National Police Commission in 2005 to backdate his promotion as an ASP only to 1st January 2003. The AAT, having noted that it does not possess any material to

[14] Vide letter dated 30th November 2005, marked 'P15'.

consider the back dating of the promotion of the Petitioner as an ASP to 1999, had taken the view that there is no basis to interfere with the decision of the National Police Commission.

As set out before, the Petitioner's case is that the backdating of the date of appointment of 9 ASP's in 2015 and 2016 prompted him to complain to the National Police Commission in 2016. This Court observes that the Petitioner does not set out in '**P19**' as to why he too should be promoted as an ASP with effect from 7th June 1999 nor does the Petitioner state the reasons why he too should be placed on par with the said appointees. If one examines '**P19**' closely, it appears that the Petitioner has made use of the said promotions in 2015 and 2016 to re-agitate his purported grievance, based on the 1:5 ratio.

This Court observes that the date on which the Petitioner should be promoted as an ASP had been considered by the National Police Commission in 2005 and a decision taken in 2005. As the AAT had observed, if the Petitioner was dissatisfied with the said decision of the National Police Commission, the Petitioner ought to have appealed at that stage, which the Petitioner admittedly did not do.

This Court is in agreement with the view of the National Police Commission that what the Petitioner is effectively seeking to do is to challenge the decision taken by the National Police Commission in 2005 and that the National Police Commission cannot re-consider decisions made by it. This Court too cannot consider in this application, the merits of the decision taken by the National Police Commission in 2005, suffice to say that this Court is of the view that the basis of the Petitioner's complaint to the Human Rights Commission and the

subsequent appeal to the National Police Commission is without merit. In these circumstances, this Court is of the view that the decision of the AAT to reject the appeal of the Petitioner cannot be considered as being unreasonable or irrational. The decision of the AAT is certainly not outrageous and is a decision which a sensible person considering the facts as pleaded by the Petitioner would have arrived at.

It has also been urged on behalf of the Petitioner that the 4th – 10th Respondents, who are the current members of the National Police Commission maintained the position that 'even though prejudice has been caused to the Petitioner by the failure to amend the date of his promotion to the rank of ASP with effect from 7th June 1999, they lack the authority to revise a decision made by their predecessors.' This Court observes that this statement is incorrect and that what the National Police Commission has done in its report to the AAT in 2017 is to set out the Petitioner's case, as claimed by him. This cannot be taken as an admission that the present members of the National Police Commission has conceded that the Petitioner has been prejudiced by his promotion not being back dated to 7th June 1999.

The Petitioner has also claimed that the Inspector General of Police had recommended his promotion being backdated to 7th June 1999, not only in 2003 but in 2017, as well and is therefore estopped from objecting to this application. This Court observes that while the National Police Commission can call for the observations of the Inspector General of Police, it is not bound by the said recommendations and the final decision must be taken by the National Police Commission. The Inspector General of Police must thereafter abide by the decision of the National Police Commission.

The Inspector General of Police in his Statement of Objections has categorically stated that the Petitioner was not qualified to face the viva voce test as he was not amongst the 72 candidates who scored the highest marks at the limited competitive examination and that the 9 ASP's whose promotions were subsequently backdated were amongst the 72 officers who faced the viva voce interview. Thus, a clear distinction has been drawn by the Inspector General of Police between the Petitioner and the others whose promotions have been backdated with effect from 7th June 1999.

For the reasons set out in this judgment, this Court does not see any legal basis to grant the Writs of Certiorari and Mandamus sought by the Petitioner. Accordingly, this application is dismissed, without costs.

Judge of the Court of Appeal

P. Padman Surasena, J/ President of the Court of Appeal

I agree.

President of the Court of Appeal