

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.

M. M. N. Manchanayake  
PC 51425/ RPC 8518  
No. 253, G.P.S. Junction  
New Town, Medirigiriya.

Petitioner

C.A. (Writ) Application

No: 130/2020

**Vs.**

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

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

- 1b. S.C.S. Fernando  
Chairman (Present),  
National Police Commission,

Building No. 9,  
Bandaranayake Memorial International  
Conference Hall, Bauddhaloka Mawatha,  
Colombo 07.

- (Ceased to hold Office) 2. Professor S.T. Hettige
- 2a. M.P.P. Perera
- (Ceased to hold Office) 3. Savithri D. Wijesekara
- 3a. S. Liyanagama
- (Ceased to hold Office) 4. Anton Jeyanathan
- 4a. G. Wickremage
- (Ceased to hold Office) 5. Y. L. M. Zawahir
- 5a. A.S.P.S.P. Sanjeewa
- (Ceased to hold Office) 6. Tilak Collure
- 6a. T.P. Paramaswaran
- (Ceased to hold Office) 7. Dr. Frank de Silva
- 7a. N.S.M. Samsudeen  
(2a-7a Respondents are the Present  
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, Bauddhaloka Mawatha,  
Colombo 07.

8a. Thamara D. Perera  
Present Secretary,  
National Police Commission,  
Building No. 9,  
Bandaranayake Memorial International  
Conference Hall, Bauddhaloka Mawatha,  
Colombo 07.

9. Hon. Justice Anil Gunaratne  
Chairman,  
Administrative Appeals Tribunal,  
No. 35, Silva Lane, Dharmapala Place,  
Rajagiriya.

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.

11a. J.J. Rathnasiri  
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 Head Quarters, Colombo 01.

- 12a. Deshabandu Tennakoon  
Inspector General of Police,  
Department of Police,  
Police Head Quarters, 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** : Dhammika Ganepola, J.

**Counsel** : P.K. Prince Perera with S. Panchadsaram  
for the Petitioner.  
Mihiri De Alwis, S.S.C. for the  
Respondents.

**Argued On** : 28.10.2024

**Written Submissions** : Petitioner : 05.11.2024  
**tendered On** Respondents : 23.12.2024

**Decided On** : 30.01.2025

**Dhammika Ganepola, J.**

The Petitioner in this application is a Reserve Police Constable who joined the Police Department on 05<sup>th</sup> September 1985. The service of the Petitioner had been suspended on 14<sup>th</sup> July 1996 on a charge of accepting a bribe. Consequently, the Petitioner and four others had been indicted before the High Court of Colombo in the case bearing No. B 1278/96 on said bribery allegation. Following trial, all the accused, including the Petitioner, had been acquitted from all the charges.

Thereafter, the Police Department conducted a preliminary investigation and a charge sheet was served on the Petitioner. After a formal disciplinary inquiry, the Petitioner was exonerated from the charges, with a warning that the Petitioner should always ensure that the good reputation of the Police Department is maintained. It had also been decided that the Petitioner is not entitled to unpaid wages and allowances for the period he was interdicted as he was a Reserved Police Officer. It had been further decided that the Petitioner was entitled to any increments retained due to serving of the said charge sheet. Thereafter, the Petitioner had been reinstated in service with effect from 19 July 2017.

The Petitioner had appealed against said decision to the National Police Commission (NPC) seeking an order that the period during which the Petitioner was out of service be added to his active service and he be paid all arrears of salary and allowances for the said period. NPC has refused to hear the Appeal of the Petitioner stating that the aforesaid claim has been made in respect of a period he had been in service as a Reserve Police Constable.

Thereafter, the Petitioner appealed to the Administrative Appeals Tribunal (AAT) against the said decision of the NPC. The AAT has decided that the Petitioner is not entitled in law to appeal to the NPC as the disciplinary powers of the Reserve Police Officers had not been vested with the NPC in view of the Supreme Court decision in *Tuan Ishan Raban & Others V. Members of the Police Commission & Pradeep Priyadarshana V. Members of the police Commission & Others (2007) 2 SLR 351* (marked as P5). Accordingly, the AAT has concluded that the Petitioner is not entitled in law to forward an appeal in respect of his period of service in the Reserve Police. The Petitioner states that the 1<sup>st</sup> to 12<sup>th</sup> Respondents have breached a public and legal duty by not granting the Petitioner's arrears

of salary and increments and that the decision of the AAT is erroneous in law on the grounds pleaded in the Petition. Accordingly, the Petitioner had sought *inter alia*,

(b) a mandate in the nature of Writ of Certiorari to quash the:

(i) judgement of the AAT;

(ii) decision of the NPC regarding the non-granting of salary and increments for the 28.04.1996 - 17.07.2017.

(c) a mandate in the nature of Writ of Mandamus directing the 1<sup>st</sup> Respondents to pay the Petitioner's arrears of salary for the period from 28.04.1996 - 2017

When this application was mentioned on the 10<sup>th</sup> May 2023 to fix a date for arguments the learned State Counsel for the 9<sup>th</sup> to 24<sup>th</sup> Respondents took up a jurisdictional objection based on Article 155C of the Constitution stating that this Court is precluded from hearing and determining this application. This Court by its Order dated 03.08.2023 held that the Petitioner can maintain this application in respect of the above reliefs, (b)(i) and (c) prayed for in the prayer of the Petition.

The AAT has based its impugned decision on the point of law whether the Petitioner as a Reserved Police Constable could lodge and maintain an appeal to the NPC in respect of an issue which arose during his period of service as a Reserve Police Constable. Further, AAT has also considered the matter as to whether the Petitioner has a right of audience to canvass a decision made by the NPC in respect of an issue which arose during his period of service as a Reserve Police Constable, before AAT by way of an appeal.

The AAT has come to a conclusion that the Petitioner is not entitled in law to forward an appeal in respect of an issue which arose during his period of service in the Reserve Police wholly based on the principle laid down in the case of ***Tuan Ishan Raban & Others*** (*Supra*), where Supreme Court held that the officers of the Regular Force and the Reserve Force of the Police belong to two different categories. In the said case her Ladyship Dr. Sirani Bandaranayake J. observed that:

*“Accordingly, it is obvious that the Regular Force and the Reserve Force still remain as two different entities. This factor is further*

*established on a consideration of the provisions which came in along with the 17<sup>th</sup> Amendment to the Constitution. Prior to the 17<sup>th</sup> Amendment, the Public Service Commission was empowered to appoint and promote the Police Officers. However, the Public Service Commission had no authority regarding such appointments and/or promotions of the Reserve Force and the mobilization and de-mobilization of the Reserve Force was carried out by the Inspector General of Police in terms of the Police Ordinance. Since the introduction of the 17th Amendment to the Constitution, the powers and functions regarding the appointments and transfers of the Regular Police Force was given to the National Police Commission in terms of Article 155(G)I(a) of the Constitution. However, this did not include the Reserve Force and Reservists are still subject to the provisions contained in section 26B(i) of the Police Ordinance, which includes mobilization and de-mobilization and section 26(H), which deals with the recruitment, conditions of service and matters with regard to discipline.*

In light of the above decision of the Supreme Court, the AAT has decided that the Petitioner is not entitled to prefer an appeal to the NPC in respect of disciplinary orders or otherwise made by the Inspector General of Police.

It is on the common ground that the Petitioner was recruited to the Department of Police as a Reserve Police Constable on 05<sup>th</sup> May 1985, interdicted on 14<sup>th</sup> July 1996, acquitted by the High Court of Colombo on 30<sup>th</sup> January 2015 and reinstated with effect from 19<sup>th</sup> July 2017. Further, it is stated that the Petitioner was absorbed into the Regular Service on 21<sup>st</sup> October 2018 by the letter dated 09<sup>th</sup> April 2016. The Petitioner claims that he is entitled to be paid arrears of salary for the period from 28<sup>th</sup> April 1996 to 17<sup>th</sup> July 2017. However, it is abundantly clear that during such time the Petitioner was a Reservist of the Police Reserve Service. The powers and functions regarding the appointments, transfers and disciplinary matters of the Police Reserve Service have not been vested with the NPC during such time.

The Petitioner contends that as per the interpretation clause of the Police Ordinance, a Police Officer is defined as a member of the Regular Force and includes all persons enlisted under the Ordinance. The Petitioner being enlisted as a Reserve Police Officer had a right of appeal in terms of



Section 4(2) of the Administrative Appeals Tribunal Act. Section 4 of the Administrative Appeals Tribunal Act is as follows;

*4(1) Any public officer or police officer as the case may be, aggrieved by an order or decision made by the Public Service Commission or the National Police Commission, as the case may be, may prefer an appeal in writing to the Tribunal within four weeks from the date of receipt of such order or decision.*

*(2) An appeal preferred to the Tribunal under subsection (1), shall set out concisely and precisely the grounds on which the aggrieved public officer or police officer, as the case may be, seeks to have the order or decision against which such appeal is being preferred altered, varied or rescinded and shall be signed by such officer.*

In the instant application, the Petitioner appealed to the NPC against the disciplinary order dated 27<sup>th</sup> September 2018. The NPC rejected the said appeal on the premise that the NPC cannot allow the request of the Petitioner as the said request had been made in respect of an issue that arose during the period while he had been serving as a Reserve Police Constable. The NPC has not been given powers related to the above functions during this time.

As per Section 4 of the Administrative Appeals Tribunal Act, any Public Officer or Police Officer as the case may be, aggrieved by an order or decision made by the Public Service Commission or the National Police Commission, as the case may be, have the right to prefer an appeal against such an order or decision. Accordingly, there is no argument about such jurisdiction of the AAT to entertain an appeal in respect of the decision of the NPC. For AAT to assume such jurisdiction to hear and determine such appeal, NPC should in the first place have jurisdiction to hear and determine such application. However, as held in the case of ***Tuan Ishan Raban & Others***, NPC has no jurisdiction to hear and determine a matter concerning the Petitioner that arose during the period the Petitioner served in the Reserve Police Service. The aforementioned Supreme Court ruling indicates that the NPC does not have authority over the recruitment, service conditions, and disciplinary

matters concerning Reservists in the Police Reserve Service. This limitation was established with the introduction of the 17<sup>th</sup> Amendment to the Constitution, which means that Reserve Police Officers are not entitled to appeal to NPC as such claims are concerned with a period while serving as a Reserve Police Service. Consequently, in terms of Section 4 of the Administrative Appeals Tribunal Act, AAT shall have no jurisdiction to entertain the impugned appeal preferred by the Petitioner.

In the given circumstances, the AAT has considered the appeal of the Petitioner and had determined that the NPC, *ab initio*, lacked jurisdiction to hear and determine the appeal of the Petitioner in respect of a matter that has arisen during his service as a Reserve Police Officer because, unlike the Regular Police Force, the disciplinary matters of whom are governed by the National Police Commission, the disciplinary matters of the Reserve Force and Reservists are still subject to the provisions contained in section 26B(i) and 26(H) of the Police Ordinance.

As per Section 04 of the Administrative Appeals Tribunals Act, the Petitioner has correctly pointed out that the correct forum to prefer an appeal against a determination of the NPC is the AAT. However, where the NPC has made a determination regarding a matter, in respect of which, it has no jurisdiction, the AAT will be forced to abstain from exercising its appellate powers in respect of the same *coram non judice* order. Therefore, the AAT could not have assumed jurisdiction to hear and determine the instant appeal.

As such, I am of the view that the AAT was correct in issuing its determination that the Petitioner is not entitled to forward an appeal in respect of his period of service in the Reserve Police and his remedy lies elsewhere and not with the NPC. Hence, I view that said decision is not contrary or barred by the provisions of Section 4 of the Administrative Appeals Tribunal Act. Accordingly, the application is dismissed.

**Judge of the Court of Appeal**