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 in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

CA (Writ) Application No: 288/2018

M.D.S.C.Peiris,
No. 273/1, "Kumudu", Andaragaha Road,
Kaludewala, Panadura.

PETITIONER

Vs.

1. Justice N.E. Dissanayake,
   Chairman, Administrative Appeals Tribunal.

2. A. Gnanathasan, P.C.,
   Member, Administrative Appeals Tribunal.

3. G.P. Abeykeerthi,
   Member, Administrative Appeals Tribunal.

   1st – 3rd Respondents at No. 35, Silva Lane,
   Dharmapala Place, Rajagiriya

RESPONDENTS

Before: **Mahinda Samayawardhena, J**
Arjuna Obeyesekere, J

Counsel: Pasindu Silva for the Petitioner

Parinda Ranasinghe, P.C., Additional Solicitor General with Rajin Gooneratne, State Counsel for the Respondents

Argued on: 8th September 2020

Written Submissions: Tendered on behalf of the Petitioner on 14th February 2020
Tendered on behalf of the Respondents on 22nd October 2019

Decided on: 16th November 2020

Arjuna Obeyesekere, J

The Petitioner has filed this application, seeking *inter alia* a Writ of Certiorari to quash the Order of the Administrative Appeals Tribunal which affirmed the decision of the Public Service Commission to dismiss the Petitioner from service.

The facts of this matter very briefly are as follows.

The Petitioner had joined the Department of Railways (the Department) as a Machinist on temporary basis in May 2007. By letter dated 17th December 2009 marked '**P2**', the Petitioner had been appointed as a Technical Assistant – III with effect from 1st January 2009, and had been deployed to work at Workshop No. 42 of the Department of Railways.

The Petitioner states that in October 2010, there was an incident where he was assaulted by some employees after he refused to pay them money which they had demanded from him. These persons had also threatened the Petitioner and stated that they will ensure that the Petitioner will lose his job.

On 2nd November 2010, while removing a wheel of an engine outside Workshop No. 42, the Petitioner had been asked to report to Workshop No. 42 as the Flying Squad of the Department had come in search of the Petitioner. The Petitioner admits that the Officers, having introduced themselves, had searched his trouser pockets and found one cigarette and an item rolled in a brown colour paper, which item had later been determined to be *cannabis*. The Flying Squad had thereafter searched a locker said to belong to the Petitioner and found a further two packets of *cannabis*.[1] The Officers had also found a red bag under another locker, which contained 24 packets of *cannabis*. The Petitioner had thereafter been handed over to the Excise Department, and produced before the Magistrate's Court, Mount Lavinia.

The Petitioner had been charged in the Magistrate's Court with possession of 46g of *cannabis*, an offence punishable under the Poisons, Opium and Dangerous Drugs Act. I must observe that even though the *cannabis* had been found at three different

[1] The cannabis found in the locker is said to have been rolled in a sheet of paper. For convenience, I shall refer to each lot of cannabis rolled in paper as a packet.

places, they had not been weighed separately. As a result, the prosecution had only preferred one charge for the entire quantity. The Petitioner had been acquitted after a lengthy trial where the Petitioner too had given evidence. I have examined the judgment of the learned Magistrate delivered on 15th September 2015, and find that the Petitioner had been acquitted as the prosecution had failed to establish that the two lockers were in the exclusive possession of the Petitioner and thus, failed to establish the exact quantity of *cannabis* that was said to have been found in the trouser pocket of the Petitioner.

Simultaneous with the above prosecution, the Petitioner had been issued with a charge sheet in 2012 by the Department. The charge sheet, marked '**P4**', contained the following seven charges:

1. Possession of one packet of *cannabis* (i.e. in relation to the *cannabis* said to have been found in the trouser pocket);

2. Having two packets of *cannabis* in a locker belonging to the Petitioner;

3. Discovery of twenty four packets of *cannabis* inside a red bag on information provided by the Petitioner;

4. Bringing to the premises of the Department, twenty seven packets of *cannabis*;

5. Bringing the Department to disrepute by engaging in the above acts;

6. Being a bad example to other employees of the Department by engaging in the above acts;

7. Breaching the discipline of the Department by engaging in the above acts.

The learned Additional Solicitor General has submitted that possession of narcotic drugs within Government premises is an offence under the First Schedule of Offences of Volume II of the Establishments Code and that the Petitioner is liable to be dismissed from service, if found guilty of the charges.

At the disciplinary inquiry that followed, the prosecution had led the evidence of several Officers of the Flying Squad who had participated in the detection. The Petitioner too had given evidence and had been cross examined. At the end of the Inquiry, the Petitioner had been found guilty of all seven charges preferred against him – vide the report of the Inquiry Officer dated 27th June 2014, marked '**P7**'.

By letter dated 19th March 2015 marked '**P9**', the General Manager, Sri Lanka Railways had informed the Petitioner that he has been found guilty of all charges and that his services have been terminated with immediate effect. The appeal of the Petitioner to the Public Service Commission, marked '**P11**' had been rejected and the decision of the Public Service Commission had been conveyed to the Petitioner by letter dated 26th August 2016, marked '**P12**'.

The Petitioner had thereafter appealed to the Administrative Appeals Tribunal by his letter dated 23rd September 2016, marked '**P13**'. By letter dated 10th October 2016, marked '**P14**', the Public Service Commission had informed the Administrative Appeals Tribunal that the Petitioner had been found guilty **only** of Charge Nos. I, II, V, VI and VII, which was not the decision that was conveyed to the Petitioner by '**P12**'.

By a further letter dated 16th March 2017 marked '**P16**', the Public Service Commission had elaborated on the reasons for its findings. I have examined '**P16**' and observe that the Petitioner had been exonerated of Charge No. III as the *cannabis* found in the red bag was not in the exclusive possession of the Petitioner and also due to the contradictions in the evidence between the witnesses for the prosecution.

While '**P16**' does not contain any reasons for exonerating the Petitioner from Charge No. IV, the Public Service Commission, by a further letter dated 18th May 2017 marked '**P18**' had informed the Administrative Appeals Tribunal that the Petitioner was exonerated from Charge No. IV - i.e. bringing 24 packets of *cannabis* to the workshop premises – as the Petitioner has been found '*not guilty*' of Charge No. 3. This is not entirely correct as Charge No. IV related to all 27 packets of *cannabis* that formed the subject matter of all three charges, and was not limited to the 24 packets that were found in the red bag.

By its Order dated 7th June 2018 marked '**P22**', the Administrative Appeals Tribunal had dismissed the appeal of the Petitioner. Aggrieved by the said decision, the Petitioner filed this application, seeking *inter alia* a Writ of Certiorari to quash the said Order of the Administrative Appeals Tribunal.

The learned Counsel for the Petitioner has challenged the decision of the Administrative Appeals Tribunal on three grounds. The first is that the Petitioner cannot be found guilty of Charge Nos. I and II – i.e. possession of one and two packets, respectively, of *cannabis* - as the Petitioner has been exonerated of Charge No. IV, namely bringing *cannabis* to the Department premises. While there is some merit in this submission, it appears from '**P18**' that the Public Service Commission has proceeded on the basis that Charge No. IV relates only to Charge No. III. While this is a factual mistake, it has in fact inured to the benefit of the Petitioner. Thus, I see no merit in the first submission of the learned Counsel for the Petitioner.

The second ground urged by the learned Counsel for the Petitioner is that the Administrative Appeals Tribunal has failed to evaluate the evidence of the prosecution witnesses and the evidence of the Petitioner with regard to the first two charges. It was the submission of the learned Counsel for the Petitioner that even though in its Order, the Administrative Appeals Tribunal has narrated the evidence for the prosecution and the evidence of the Petitioner, it has failed to analyse the evidence and/or consider the weaknesses in the evidence of the prosecution, but had arrived at the conclusion that the Petitioner has rightly been found guilty of *all* five charges. The third ground of the learned Counsel for the Petitioner is that the Administrative Appeals Tribunal has not given reasons for its decision. These two grounds are connected and therefore I shall consider them together.

In terms of Section 4(1) of the Administrative Appeals Tribunal Act No. 4 of 2002, "*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*."

Section 4(2) provides that, "*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."

The fact that the Public Officer must set out the specific grounds on which he seeks to have the order rescinded is a clear indication that the legislature required the Administrative Appeals Tribunal to consider the said grounds in the light of the findings of the Inquiry Officer and arrive at a finding based on the material that is available to the members of the Administrative Appeals Tribunal. What this means is that the Administrative Appeals Tribunal must pronounce a reasoned order or in other words, give reasons for its decision.

In **Karunadasa vs Unique Gem Stones Limited**[2] Mark Fernando, J held as follows**:**

> "*To say that Natural Justice entitles a party to a hearing does not mean merely that his evidence and submissions must be heard and recorded; it necessarily means that he is entitled to a* ***reasoned*** *consideration of the case which he presents. And whether or not the parties are also entitled to be told the reasons for the decision, if they are withheld, once judicial review commences, the decision "may be condemned as arbitrary and unreasonable"; certainly, the Court cannot be asked to presume that they were valid reasons, for that would be to surrender its discretion*."

The duty to give reasons for a decision has been exhaustively dealt with by the Supreme Court in **Hapuarachchi and others v. Commissioner of Elections and another**[3] where it was held as follows:

> "*Accordingly, an analysis of the attitude of the Courts since the beginning of the 20th century clearly indicates that despite the fact that there is no general duty to give reasons for administrative decisions, the Courts have regarded the issue in question as a matter affecting the concept of procedural fairness. Reasons for an administrative decision are essential to correct any errors and thereby to ensure that a person, who had suffered due to an unfair decision, is treated*

[2] [1997] 1 Sri L.R. 256.
[3] [2009] 1 Sri L.R. 1.

according to the standard of fairness. In such a situation without a statement from the person, who gave the impugned decision or the order, the decision process would be flawed and the decision would create doubts in the minds of the aggrieved person as well of the others, who would try to assess the validity of the decision. Considering the present process in procedural fairness vis-a-vis, right of the people, there is no doubt that a statement of reasons for an administrative decision is a necessary requirement."

I must state that once reasons are given for a decision, it is not the function of this Court, in exercising its writ jurisdiction to examine if the reasons are right or wrong. Instead, the function of this Court would be to examine the legality and the reasonableness of the decision, and ensure that the decision is supported by the material that was available to the decision maker. As Lord Brightman stated in the House of Lords in **Chief Constable of North Wales Police v Evans**[4]:

"*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.*"

I am of the view that this Court can consider the factual circumstances and the evidence that was considered by the decision maker where an argument is presented, as in this application, that the decision is unreasonable or irrational, or where an argument is taken that there was no material at all to arrive at a decision, resulting in an error on the face of the record.

Even in such cases, the Courts will only consider the factual circumstances to the extent of determining whether the decision maker took into account relevant considerations from the evidence placed before him, in making a decision. If a decision has been influenced by considerations which either expressly or implicitly cannot lawfully be taken into account, a Court may hold that such discretionary power has not been exercised validly. The reasons provided for a decision would

[4] [1982] 1 WLR 1155 at 1174.

therefore allow Courts to effectively scrutinize the decision and detect what factors have influenced the decision maker.

As was said in **Huang v Secretary of State for the Home Department**,[5] although the public authority may be better placed to investigate the facts and test the evidence, the Court cannot abdicate its responsibility of ensuring that the facts are properly explored*, 'and summarised in the decision, with care, since they will always be important and often decisive'.*[6]

A consideration of the second and third grounds urged by the learned Counsel for the Petitioner requires me to consider whether the evidence that was led before the Inquiry Officer, marked '**P6**' in relation to Charge Nos. I and II was given due consideration by the Administrative Appeals Tribunal.

As observed earlier, the prosecution had led the evidence of the Officers of the flying squad who participated in the detection, namely Susil Chandrapala, Lanny Titus, Ganepola and Jayasiri Silva. According to Chandrapala, the Flying Squad had received information on 2nd November 2010 that an employee at Workshop No. 42 by the name of Peiris is selling narcotic tablets to those who come for training from the German Technical School. He had been directed to proceed to Workshop No. 42, and carry out a search of the said person. He had accordingly proceeded to Workshop No. 42 with the other three Officers.

Having gone there, Chandrapala had instructed the Foreman to summon the Petitioner to his office. Once the Petitioner came to the office, either Chandrapala, Titus or Silva had searched the Petitioner and found in the right side pocket of the trouser worn by the Petitioner, a cigarette and a substance which was later determined to be *cannabis* wrapped inside a sheet of paper. Chandrapala has admitted in cross examination that the Petitioner was dressed in the working attire of a light blue T-shirt and a gray or brown colour trouser. The *cannabis* that was said to have been found from his trouser pocket formed the basis for Charge No. I at the Disciplinary Inquiry.

[5] [2007] UKHL 11

[6] See Harry Woolf, Jeffery Jowell, Catherine Donnelly, Ivan Hare, *De Smith's Judicial Review* (8th Edition, Sweet & Maxwell 2018), page 649.

According to Chandrapala, they had thereafter proceeded to examine the locker of the Petitioner. He states that the locker was opened by the Petitioner with a key that was in the possession of the Petitioner, and that he found two packets of *cannabis* inside the said locker.[7] The position of Chandrapala that they found two packets of *cannabis* in a locker to which the Petitioner had the key has been confirmed by Titus.[8] The two packets of *cannabis* found in the locker formed the basis for Charge No. II.

However, the next witness for the prosecution, Sirisoma, who was not a member of the Flying Squad, had stated that the locker to which the Petitioner had a key and which was opened by the Petitioner, only contained the tools of the Petitioner. He had stated that the Flying Squad had examined the locker next to that locker, which had not been secured, and that the two packets of *cannabis* that formed the basis for Charge No. II was found in that locker.

Thus, there is a contradiction between the versions of the witnesses for the prosecution with regard to Charge No. II. The version of the Petitioner that the two packets of *cannabis* were not found from his locker is therefore supported by the evidence of Sirisoma. The Petitioner had specifically referred to this infirmity in his petition of appeal marked '**P13**',[9] and in the submissions that he placed before the Administrative Appeals Tribunal marked '**P17b**'.[10]

I have examined the Order of the Administrative Appeals Tribunal, and find that even though the Order contains a narration of the version of the prosecution, and the Petitioner, there has not been an evaluation of the positions of the parties with regard to Charge No. II, nor has there been a consideration of the findings of the Inquiry Officer in respect of Charge No. II. In my view, such an evaluation of the evidence ought to have been done, for two reasons. The first is, the version of the Petitioner is supported by a witness called by the prosecution. The second is, the Petitioner has specifically raised this ground in his petition of appeal. Thus, I am of the view that the Administrative Appeals Tribunal failed in its duty to evaluate the

[7] Page 8 of 'P6'.
[8] Page 15 and 18 of 'P6'.
[9] Page 7 of 'P13'.
[10] Page 5 of 'P17b'.

two different versions relating to Charge No. II, and failed to provide reasons for its decision with regard to that charge. The decision of the Administrative Appeals Tribunal with regard to Charge No. II is therefore liable to be quashed by a Writ of Certiorari.

I shall now consider the evidence placed before the Administrative Appeals Tribunal with regard to Charge No. I. In addition to the evidence of Chandrapala as to the manner in which they found *cannabis* in the trouser pocket of the Petitioner, Titus had given detailed evidence in this regard. He states that the Petitioner was attired in a light blue collarless T-shirt and a black trouser at the time they checked the trouser pockets of the Petitioner and found the cigarette and the *cannabis*. This is the clothing that the Petitioner was attired in during work. Titus had been cross examined on the clothing worn by the Petitioner and his position remained the same, although he had later stated that he was not aware if the said clothing were the working clothes of the Petitioner.

What is the position of the Petitioner with regard to Charge No. 1? The Petitioner states that when he reported for work on that day, he was attired in a blue checked long sleeve shirt and a brown colour trouser. He states further that once he reported for duty, he changed into a blue T-shirt and a black trouser, as his work involves working with machinery. According to the Petitioner, the clothes worn from home are hung in a common area, which can be accessed by any person. The Petitioner states that once he presented himself before Chandrapala, he was asked to change his clothes, which he did, and that the search of the clothes worn by him took place only thereafter. While the Petitioner admits that the Officers of the Flying Squad found a cigarette and *cannabis* wrapped in a paper inside his trouser pocket, he claims that the cigarette and the packet of *cannabis* have been introduced to his personal clothing by someone who bore a grudge against him, and refers to the incident that occurred in October of that year with other employees, which I have referred to earlier. The position of the Petitioner had been suggested to Chandrapala during cross examination, but Chandrapala had claimed that the Petitioner had been with him at all times.[11] The Petitioner has been cross examined on this aspect.

[11] Pages 10 and 11 of 'P6'.

With the version of the Petitioner being different to the version of the prosecution in relation to Charge No. I, I agree with the learned Counsel for the Petitioner that it was incumbent upon the Administrative Appeals Tribunal to consider (a) both versions, (b) the findings of the Inquiry Officer, and arrive at a finding, with reasons being provided for such finding. Unfortunately, that has not been done. The decision of the Administrative Appeals Tribunal with regard to Charge No. I is therefore liable to be quashed by a Writ of Certiorari.

In the above circumstances, I issue a Writ of Certiorari quashing the decision of the Administrative Appeals Tribunal marked '**P22**'. I direct the Administrative Appeals Tribunal to consider the grounds of appeal submitted by the Petitioner in '**P13**' and the matters raised by the Petitioner in his written submissions, in the light of the evidence led before the Inquiry Officer, the findings of the Inquiry Officer and the observations of the Public Service Commission, and thereafter arrive at a determination in terms of the law. I make no order with regard to costs.

Judge of the Court of Appeal

Mahinda Samayawardhena, J

I agree

Judge of the Court of Appeal