

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

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

CA (Writ) Application 52/2012

K.A Sunil Premasiri,
No. 56, Baduwatugoda, Bemmulla.

Petitioner

Vs.

1. T. J. Miskin,
K 54, Sara Bhoomi Niwasa,
Madapatha, Piliyandala.

Formerly

Deputy Inspector General of Police,
(Uva Province) Office of the Deputy
Inspector General of Police – (Uva
Province) Badulla.

2. Asanga Karawita,
Superintendent of Police,
Office of the Superintendent of Police,
Mt. Lavinia.

3. A.W. Dayarathna,
37 B, Vishaka Mawatha,
Ambagasketiya, Bandarawela.

Formerly

Assistant Superintendent of Police
(District 2),
Office of the Assistant Superintendent of
Police, Bandarawela

4. B.M. Premaratne
Lake Round, Kurunegala.

Formerly

Senior Superintendent of Police
Office of the Senior Superintendent of
Police, Bandarawela.

5. W.A. Nishantha Pradeep Kumara,
Sub Inspector of Police,
Office of the Superintendent of Police
Bandarawela. (Prosecuting Officer).
6. Lewangama
Chief Inspector of Police,
Fraud Bureau of Sri Lanka Police,
Wellawatte.
7. Senior Superintendent of Police,
Office of the Senior Superintendent of
Police, Bandarawela.
8. Assistant Superintendent of Police (District 1),
Office of the Assistant Superintendent of
Police, (District 1), Bandarawela.
9. Superintendent of Police - (District 1),

Office of the Assistant Superintendent of Police, (District 1), Bandarawela.

10. Mahesh Perera,
Headquarter Inspector,
Police Station, Ambalangoda.
11. S.K. Shanker,
Senior Deputy Inspector General of Police,
(Sabaragamuwa Province),
Office of the Deputy Inspector General of Police,
(Sabaragamuwa Province), Ratnapura.
12. The Secretary,
National Police Commission,
Rotunda Tower,
No. 109, Galle Road, Colombo 3.
13. N.K. Illangakoon,
Inspector General of Police,
Police Headquarters of Sri Lanka,
Fort, Colombo 1.
14. Tyronne Ratnayake,
Inspector of Police,
Office of the Superintendent of Police
Bandarawela.
15. Hon. Justice N.E. Dissanayake,
Chairman,
Administrative Appeals Tribunal.
- 15A. Hon. Justice S.I. Imam,
Chairman,
Administrative Appeals Tribunal.

16. Hon. Justice A. Somawansa,
Member,
Administrative Appeals Tribunal.
- 16A. Edmond Jayasuriya,
Member,
Administrative Appeals Tribunal.
17. Hon. E.T.A. Balasingham,
Member,
Administrative Appeals Tribunal,
- 17A. A. Gnanathasan P.C,
Member,
Administrative Appeals Tribunal,
- All of No. 35, De Silva Lane, Dharmapala
Mawatha, Rajagiriya.
18. The Hon. Attorney General
Attorney General's Department,
Colombo 12.
19. Vajira Janakee Sudasinghe,
Polwaththa,
Dedunupitiya, Kandy.

Formerly

No. 19, Pattiyamedawatte Road,
Welimada.
20. Liliyan Dorothy Sudasinghe
No. 19, Pattiyamedawatte Road,
Welimada.

21. Ramya Sriyani Jayalath,
“Jayalath Niwasa”,
Rathamba, Ambagasdowa.
22. R.M.U. Gunatillake,
Manager,
Paboda Hotel, Welimada.
23. Ratnayake Mudiyanselage Piyatilake
“Siri Weda Medura”,
Karagaha-Ella, Keppetipola.
24. Evlin Ratnayake,
“Siri Weda Medura”,
Karagaha-Ella, Keppetipola.

Respondents

Before: Arjuna Obeyesekere, J

Counsel: Eranjan Atapattu for the Petitioner

Ms. Anusha Fernando, Deputy Solicitor General for the 1st – 18th Respondents

Written Submissions: Tendered on behalf of the Petitioner on 21st January 2019

Tendered on behalf of the 1st – 18th Respondents on 30th November 2018

Decided on: 5th April 2019

Arjuna Obeyesekere, J

When this matter was taken up for argument on 19th September 2018, the learned Counsel for all parties moved that this Court pronounce its judgment on the written submissions that would be tendered by the parties.

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

- a) A Writ of Certiorari to quash the Order of the Administrative Appeals Tribunal delivered on 11th May 2011, annexed to the petition marked 'A1';
- b) A Writ of Certiorari to quash the Order of the National Police Commission dated 2nd March 2009, annexed to the petition marked 'Z1';
- c) A Writ of Mandamus directing the 13th Respondent, the Inspector General of Police to grant the promotions that the Petitioner is entitled to.

The facts of this matter very briefly are as follows.

The Petitioner was a Police Constable attached to the Police Department and was serving at the Uva Paranagama Police Station at the time that a complaint was made by Ms. Vajira Janaki Sudasinghe, the 19th Respondent of an alleged breach of promise by the Petitioner to marry the 19th Respondent after divorcing his wife. The 4th Respondent, who at that time was the Assistant Superintendent of Police, Bandarawela, acting on the said complaint, had directed that a preliminary

investigation be carried out by the 3rd Respondent. Upon receipt of the report of the 3rd Respondent, the 4th Respondent had issued the Petitioner with a charge sheet dated 6th April 2004, containing six charges.

The disciplinary inquiry against the Petitioner had been conducted by the 2nd Respondent, who was a serving Assistant Superintendent of Police at that time. While the inquiry was proceeding, the Petitioner had been served with an amended charge sheet annexed to the petition marked 'Y1', containing six charges. This Court has examined the said amended charge sheet and observes that all charges arise from the illicit relationship that the Petitioner is said to have had with the 19th Respondent but with each charge containing the following specific accusation, as a result of which it was alleged the Petitioner had brought the Police Department into disrepute:

Charge 1 - 1999.02.25 වන දින වපිරා පානකී සුදුසිංහ සමග බදුල්ල දුන්කිද දිය ඇල්ල ඇසලදී “ලබට මම වෙන මතිහොස් එකක් යන්න දෙන්නේ නැහැ. මම ලබට වෙබි තියලා මරා දුමනව” කිය තරේපනය කිරීමෙන්, අතිසි ලෙස හෝ විනය පවත්වාගෙන යාමට හානි කරවිය හැකි අන්දමත් නැසිරීමෙන්.

Charge 2 - ඇල්ල කැප්පෙටපොල පදිංචි ආර්. එච්. පියතිලක යන අයගේ නිවසට 2000.02.25 වන දින හෝ ඊට ආසන්න දිනයක ගිය විට, එම පියතිලක යන අය ඔබ විවාහකයෙකු තේද කිය අසු වට විවාහකයෙකු බව ඇත්ත, තම බිරිද අතහැර සිටින බවත් ඇයගෙන් දික්කතාද ව මෙම නැංවා විවාහ කර ගන්නා බව පැවසීමෙන් ද එදින එම නිවයේ එක කාමරයක රාඩ්‍රූය යන කර ඇය සමග අඩු ගැමයෙන් නැසිරීමෙන්.

Charge 3 - 1999.02.25 වන දින වපිරා පානකී සුදුසිංහ සමග බදුල්ල දුන්කිද දිය ඇල්ල ඇසලදී ලබට මම වෙන මතිහොස් එකක් යන්න දෙන්නේ නැහැ. මම ලබට වෙබි තියලා මරා

දුමනවා' සිය තර්පනය කිරීමෙන්, අනිකි ලෙස හෝ විනය පවත්වාගෙන යාමට හානි කරවිය හැකි අන්දමන් හැසිරීමෙන් මහජනයාගේන් කෙනෙකුට අවශ්‍ය අන්දමන් හෝ පිඩිකාරී අන්දමන් හැසිරීමෙන්

Charge 4 - 2000.04.25 දින බණ්ඩාරවෙල සහකාර පොලිස් අධිකාරී A.W. දායාර්ත්ත මහතාට ප්‍රකාශයක් දෙමන් වපිරා පානකි සුදුසිංහ සමග අතියම සම්බන්ධතාවයක් නොපැවැත් වූ බව ප්‍රකාශ කිරීමෙන් ඔහුගේමන්ම හෝ නොසැලික්මෙන් කමන් හෝ අසහජ ප්‍රකාශ කිරීමෙන්.

Charge 5 – 1997.06.07 දින ඉඩම ආරචුවලක් මත වපිරා පානකි සුදුසිංහ ගේ නංගිගේ පුරුෂය පහර දිමෙන් පසු ඇය වැළුම්බ රෝහලේ නැවති ප්‍රතිකාර ගනිමන් සිටියදී එදින සවස 4ව පමණ ඇය බැළුමට වැළුම්බ රෝහලට ගොස් ඇය සමග කට්‍රා කිරීමෙන් පසු “එම ප්‍රශ්නය අදම දෙපක්ෂය සමාදාන කරනවා” යැයි පැවසීමෙන් පොලිස් නිලධාරීයෙකු තම තත්ත්වය පොදුගැලික ප්‍රයෝගනය සඳහා යොදුවා ගැනීමෙන්

Charge 6 - 1996.11.28 සහ 2000.03.29 දින කාලය අතර තුළදී තමා වෙත බාරදී තිබුණු පොලිස් නිලධාරීන්ගේ නිල අදුම සඳහා යොදාගන්නා කාකිරේදී, බැංකියම 1 ක් යනාදිය වපිරා පානකි සුදුසිංහ නැමැත්තියගේ පුද්ගලික වැඩි කටයුතු සඳහා පාවච්ච කිරීමට දිමෙන් තමන්ට බාරදී තිබුණු හාන්ත් වලට හානි කිරීමෙන්.

After the recording of the evidence for the prosecution was concluded and having afforded the Petitioner an opportunity of leading evidence on his behalf, the Inquiry Officer had found the Petitioner not guilty of all charges except charge No. 4. This Court has examined the report of the Inquiry Officer, annexed to the petition marked 'Y2' and observes that the Petitioner has been found not guilty of five charges for the reason that the prosecution had failed to prove the specific accusation contained in each of the said charges, and not because of a failure by the prosecution to establish the main allegation against the Petitioner that the Petitioner had an illicit relationship with the 19th Respondent and that he had

breached his promise of marriage. This is borne out by the following two paragraphs from the report 'Y2':

"මෙම වේදනා පත්‍රය වහාගයේද මුලික විමර්ශනයේ පැවති දුර්වලතාවයන් කිහිපයක් මත වුදිත නිලධාරී වෙන වේදනාවෙන් ගැලවියාමට අවස්ථාවක් උදාව ඇත. සෑම වේදනාවක්ම වේදනාවේ පැමෙනිලිකාරියගේ මුළු පැමෙනිල්ලේ කුඩා කුඩා කොටස් වෙන වෙනම දැන්වා ඇති හෙයින් සාක්ෂි මගින් එය ඔප්පු කිරීමට පැමෙනිල්ල මෙහෙයුවන නිලධාරියා අපොහොසත් ව ඇති අතර, සිදුව්ම සිදුව් අවුරුදු 04කට 5කට පසු සාක්ෂිදීම තුළන් කුඩා කුඩා තිරණාත්මක වූ කොටස් සාක්ෂිකරවන්ට මතකයෙන් ඇත් ව ගෞස් තිබුණි.

වුදිත වරදකරු වූ ඇත්ත සහවා කරා කිරීම නැමති වූ වේදනාව සම්බන්ධව දැඩුවම නියම කිරීමේද සැලකිල්ලට ගත යුතු විශේෂ කරනු ලෙසේය. මුලික විමර්ශනය වේදනාපත් ලබාදීමේද පැවති අවුපත් මත වුදිත නිලධාරියා වේදනා පත්‍රයේ සඳහන් අනෙක් වේදනා වලින් නිවැරදි කරු වුවත්, ඔහු ඇත්ත වගයෙන් පැමෙනිලිකාරිය සමග අනියම සම්බන්ධතාවයක් පවත්වා ඇයට තර්පනය කරන ලද අවස්ථා ඇත. එසේ හෙයින් වුදිත පොලිස් දෙපාර්තමේන්තුවේ වනය සංග්‍රහය ප්‍රකාරව දැඩුවම ලබාය යුතු නිලධාරියෙකු වේ. වුදිත වැරදිකරු වූ මෙම වේදනාව සම්බන්ධයෙන් තිරයෝගින් දැඩුවම වන්නේ වැටුප් වරදක 4ක් වලම්බනය කළ යුතු බවත්ය."

The actions that the Disciplinary Authority may take on receipt of the report of the Inquiry Officer have been set out in Chapter XLVIII Section 22.5 of the Establishments Code and reads as follows:

"A Disciplinary Authority may, after careful study of the report of a formal disciplinary inquiry forwarded to him by the Tribunal, arrive at the following decisions:

- 1) Convict the officer of one or some or all of the charges.

- 2) Acquit the accused officer of one or some or all of the charges.
- 3) Quash the proceedings of the formal disciplinary inquiry and order a fresh disciplinary inquiry."

Having considered the report of the Inquiry Officer marked 'Y2', the 1st Respondent, Deputy Inspector General of Police, Uva Province who was the disciplinary authority of the Petitioner had issued the disciplinary order annexed to the petition marked 'Y3', agreeing with the findings of the Inquiry Officer. The 1st Respondent, while holding that the Petitioner is guilty of charge No. 4, had acquitted the Petitioner of charge Nos. 1-3, 5 and 6. The punishment imposed on the Petitioner by the Disciplinary Authority was the deferment of four salary increments.

Being dissatisfied with the said Order of the 1st Respondent, the Petitioner filed an appeal with the National Police Commission.¹ The primary complaint of the Petitioner was that the Inquiry Officer had acted on the sole testimony of the 19th Respondent and that the evidence of the 19th Respondent had not been corroborated. The Petitioner had also stated that in terms of Sections 10.3 and 10.4 of Chapter VII of the Establishments Code, an increment can only be deferred upto a maximum of one year and therefore, the punishment imposed on the Petitioner is illegal. The National Police Commission, having considered the

¹ The National Police Commission has been established in terms of Chapter XVIIIA of the Constitution. The powers of the National Police Commission have been set out in Article 155G and in terms of Article 155G(1)(a), "the appointment, promotion, transfer, disciplinary control and dismissal of police officers other than the Inspector-General of Police, shall be vested in the Commission." Article 155K(2) provides that, "a police officer aggrieved by any order relating to promotion, transfer or any order on a disciplinary matter or dismissal made by the Inspector-General of Police or a Committee or a Police Officer referred to in Article 155H and 155J in respect of such officer may, appeal to the Commission against such order..."

said grounds of appeal, had dismissed the appeal subject to a reduction of the punishment to the deferment of two salary increments.² This Court must observe at this stage that the argument of the Petitioner on the provisions of Sections 10.3 and 10.4 of Chapter VII of the Establishments Code is misconceived for the reason that the deferment in Chapter VII is done where the quality and output of an officer's work has been below standard or inadequate, whereas the deferment of four salary increments of the Petitioner has been imposed by the Disciplinary Authority by way of a punishment, as provided in Chapter XLVIII Section 24.3.10 of the Establishments Code.

The Petitioner filed an appeal against the said decision of the National Police Commission with the Administrative Appeals Tribunal. Having heard the Petitioner and the National Police Commission, the Administrative Appeals Tribunal by its Order marked 'A1' held as follows:

"It appears that the prosecution had led sufficient material to establish Count No. 1 – 6. Therefore, this Tribunal vacates the order of the Disciplinary Tribunal exonerating the appellant from count Nos. 1, 2, 3 and 5 and finding him guilty of only count Nos. 4 and 6. The Tribunal finds the accused officer guilty of Count Nos. 1, 2, 3, 4, 5 and 6."³

² The Order of the National Police Commission has been annexed to the petition marked 'Z1'.

³ This Court must observe at the outset that the above order of the Administrative Appeals Tribunal contains a typographical error in that the reference to the Petitioner having been found guilty of charge Nos. 4 and 6 is incorrect.

The Petitioner thereafter filed this application, invoking the Writ jurisdiction of this Court to quash the said Order of the Administrative Appeals Tribunal marked 'A1' as well as the Order of the National Police Commission marked 'Z1'.

Although in his petition to this Court, the Petitioner had challenged the aforementioned Orders of the Disciplinary Authority, the National Police Commission and the Administrative Appeals Tribunal on three grounds, in his written submissions, the Petitioner has only addressed Court with regard to the legality of the order of the Administrative Appeals Tribunal. However, as the Petitioner has not specifically indicated in the written submissions that he has abandoned the other grounds, and for the sake of completeness, this Court would consider all three grounds pleaded in the petition.

In considering the three grounds urged by the Petitioner, it would be apt to keep in mind the following passage of Lord Diplock in Council of Civil Service Unions vs Minister for the Civil Service⁴:

"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'.

⁴ 1985 AC 374

The grounds urged on behalf of the Petitioner falls within ‘illegality’ which has been summed up by Lord Diplock in the following manner:

“By ‘illegality’ as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it. Whether he has or not is *par excellence* a justiciable question to be decided in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.”

The first ground urged by the Petitioner is that a Superintendent of Police does not have the authority to issue a charge sheet to the Petitioner and that a disciplinary order cannot be issued by an officer other than a Deputy Inspector General of Police.

The Chairman of the National Police Commission has issued the following Order published in the Gazette Notification No. 1299/9 dated 30th July 2003, annexed to the petition marked ‘C’, which reads as follows:

“මි ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ආණ්ඩුකුම ව්‍යවස්ථා කංගුහයේ 155 (ල) (1) (අ) ව්‍යවස්ථාව යටතේ පාතික පොලිස් කොමිෂන් සභාව වෙත පැවරි නිබෙන බලතල ප්‍රකාරව එකි කොමිෂන් සභාව විසින් 155 ව (1) ව්‍යවස්ථාවේ සඳහන් වන නියමයන්ට අනුව පොලිස්පතිවරයා වමසිමෙන් පසුව පොලිස්පතිවරයාට හා මේ යටතේ නමකරනු ලැබ සිටන සෙසු පොලිස් නලධාරීන්ට, මෙහි පහත දැක්වෙන බලතල මෙහින සිට ක්‍රියාත්මක වන පරිදි පවතන ලද බව මෙයින් දැනුම දෙනු ලැබේ.

(අ) වනය පාලනය සහ සේවයෙන් නෙරපිම - පොලිස් පරීක්ෂක නිලයේ හා ඉත් පහළ නිලවල නියුක්ත නිලධාරීන්ගේ වනය පාලනය හා වැඩ තහනම සිරීම ද ඔවුන් සේවයෙන්

නෙරපිම ද පිළිබඳ බලතල මත දැක්වෙන 'අ' උපලේඛනයේහි නියම කොට දැක්වා ඇති පරිදි සහකාර පොලිස් අධිකාරී නිලයේහි හා ඉන් ඉහළ නිලවල කියුත්ත නිලධාරීන්ට පවත් දෙනු ලැබේ."

'අ' උපලේඛනය

	බලය / දූෂ්‍යවම	කොස්තාපල්/ කොස්තාපල්/ රියදුරු
02	වෝදුනා සැකසම	පොලිස්පති පේෂණ්ධ නියෝජන පොලිස්පති නියෝජන පොලිස්පති පේෂණ්ධ පොලිස් අධිකාරී පොලිස් අධිකාරී සහකාර පොලිස් අධිකාරී
04	පේෂණ්ධත්වයෙන් පහත දැමීම, තරා තිරම පහත දැමීම, වැටුප් අවශ කිරීම, වැටුප් වර්ධ ව්‍යුහවනය, නියමන කාලයට උසස් විම ව්‍යුහවනය	පොලිස්පති පේෂණ්ධ නියෝජන පොලිස්පති නියෝජන පොලිස්පති

In terms of the said Order 'C', an officer not below the rank of an Assistant Superintendent of Police is empowered to issue a charge sheet to a Police Constable. The charge sheet as well as the amended charge sheet have been served on the Petitioner by an Assistant Superintendent of Police and a Superintendent of Police, respectively. Thus, there is no merit in the argument of the Petitioner.

Furthermore, in terms of the said Order 'C', an Officer not below the rank of Deputy Inspector General of Police has the power to defer salary increments of a

Police Constable by way of a punishment. Accordingly, the 1st Respondent who was a Deputy Inspector General of Police at that time was empowered to impose the disciplinary order 'Y3' on the Petitioner. Therefore, this Court does not see any merit in the first ground urged by the Petitioner.

The next ground urged on behalf of the Petitioner is that in terms of Chapter VII - Sections 10.3 and 10.4 of the Establishments Code, a salary increment cannot be deferred for more than one year. This Court has already held that this argument of the Petitioner is misconceived in law and that the punishment imposed on the Petitioner is within the provisions of the Establishments Code

This Court would now deal with the final ground urged by the learned Counsel for the Petitioner, which is that the Administrative Appeals Tribunal did not have the power to find the Petitioner guilty of all charges.

The 17th amendment to the Constitution enacted in 2001 introduced provisions with regard to the Administrative Appeals Tribunal. While Article 59(1) of the Constitution specifies that, "There shall be an Administrative Appeals Tribunal appointed by the Judicial Service Commission", Article 59(2) confers the Administrative Appeals Tribunal with "the power to alter, vary or rescind any order or decision made by the Commission".⁵

Article 155L of the Constitution further provides as follows:

⁵ The reference in Article 59(2) is to the Public Service Commission.

"Any Police Officer aggrieved by any order relating to promotion, transfer, or any order on a disciplinary matter or dismissal made by the (National Police) Commission, in respect of such officer, may appeal therefrom to the Administrative Appeals Tribunal established under Article 59, which shall have the power to alter, vary, rescind or confirm any order or decision made by the Commission."

A plain reading of the above provision indicates that while the Administrative Appeals Tribunal has the power to alter, vary or rescind or confirm any order or decision, that power is limited to any orders or decisions made by the National Police Commission.

In this regard, this Court would like to consider the Administrative Appeals Tribunal Act No. 4 of 2002, which contains provisions relating to the filing of appeals and the powers of the Administrative Appeals Tribunal to determine such appeals.

Section 4 of the Act provides as follows:

"(1) Any police officer aggrieved by an order or decision made by the National Police Commission, 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 police officer,

.... 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."

Section 3(b) of the Act reads as follows:

"The Tribunal shall have the power to hear and determine any appeal preferred to it from any order or decision made by the National Police Commission in the exercise of its powers under Chapter XVIII A of the Constitution."

The question that this Court must consider is whether the power of the Administrative Appeals Tribunal when determining the appeal is limited to a consideration whether the decision of the National Police Commission that the Petitioner is guilty of Charge No. 4 is right or wrong, or whether the Administrative Appeals Tribunal can consider the facts and circumstances relating to Charge Nos. 1-3, 5 and 6 and make a determination of guilt, although the said charges did not form part of the subject matter of the appeal that was considered by the National Police Commission and hence, did not form part of the order or decision of the National Police Commission. In other words, whether the Administrative Appeals Tribunal can only make a determination on Charge 4, which formed the decision of the National Police Commission, or whether the Administrative Appeals Tribunal is also entitled to make a determination in relation to Charge Nos. 1-3, 5 and 6, although the said charges did not form part of the order or decision of the National Police Commission.

The cumulative effect of the above provisions of the Constitution and the Administrative Appeals Tribunal Act can be summarized as follows. A police officer who is aggrieved by the findings of an Inquiry Officer or the Disciplinary Authority may lodge an appeal with the National Police Commission.⁶ That appeal would necessarily be limited to a challenge on the finding of guilt and adverse conclusions reached by the Inquiry Officer and/or the punishment imposed by the Disciplinary Authority. Thus, the subject matter of the appeal before the National Police Commission would not cover any charges on which the said police officer had been exonerated by the Inquiry Officer, unless the Inspector General of Police, in terms of Article 155K(1) has lodged an appeal, which is not the case in this application.

The National Police Commission, in keeping with its mandate, would only consider the appeal lodged by the police officer and arrive at its decision or order which would only deal with the issue whether the finding of guilt on a specific charge is right or wrong and whether the punishment imposed is in terms of the law and if so, whether it is reasonable or not.

In the event of the National Police Commission upholding the decision of the Inquiry Officer and the Disciplinary Authority, the police officer who is aggrieved by the order or decision made by the National Police Commission may prefer an appeal to the Administrative Appeals Tribunal. The petition of appeal should 'set out concisely and precisely the grounds on which the aggrieved police officer seeks to have the order or decision against which such appeal is being preferred

⁶ Article 155K(2) of the Constitution; supra.

altered, varied or rescinded'. Upon receipt of an appeal, the Tribunal shall notify the National Police Commission of the filing of such appeal, and shall forthwith forward a copy of such appeal to the National Police Commission,⁷ who shall thereupon have the power to place before the Administrative Appeals Tribunal for its consideration, objections if any, to or against such appeal.⁸

In terms of Section 3(b) of the Act, the Administrative Appeals Tribunal has the power to hear and determine the appeal preferred to it by the police officer and in doing so, take into consideration the grounds urged in the petition of appeal. In other words, the matters that the Administrative Appeals Tribunal can consider are the matters set out in the appeal relating to the decision of the National Police Commission. In the context of this application, the findings of the Inquiry Officer and the Disciplinary Authority relating to Charge No. 4 was the subject matter of the appeal before the National Police Commission and hence, the order of the National Police Commission relating to the said charge and all matters connected therewith, could be examined by the Administrative Appeals Tribunal. However, as the findings of the Inquiry Officer and the Disciplinary Authority relating to Charge Nos. 1-3, 5 and 6 were not the subject matter of the appeal to the National Police Commission, were not the subject matter of the decision or order of the National Police Commission, and hence did not form the subject matter of the appeal to the Administrative Appeals Tribunal, the Administrative Appeals Tribunal cannot consider the findings of the Inquiry Officer and the Disciplinary Authority relating to Charge Nos. 1-3, 5 and 6.

⁷ Section 5(1) of the Act.

⁸ Section 5(2) of the Act.

This Court is of the view that the power that has been conferred on the Administrative Appeals Tribunal by Article 155L of the Constitution is to alter, vary, rescind or confirm any order or decision of the National Police Commission and does not extend to considering the legality of the decisions of the Inquiry Officer and the Disciplinary Authority which were not the subject matter of the inquiry before the National Police Commission and the decision of the National Police Commission.

In these circumstances, this Court is of the view that as the finding by the Inquiry Officer that the Petitioner is not guilty of Charges 1-3, 5 & 6 was not challenged before the National Police Commission and was therefore never the subject matter of an order or decision of the National Police Commission, the findings of the Inquiry Officer on the said charges cannot be reviewed by the Administrative Appeals Tribunal in the exercise of the powers conferred on it by law.

The Petitioner has not been able to establish any illegality or procedural impropriety committed by the Administrative Appeals Tribunal in relation to Charge No. 4. The decision of the Administrative Appeals Tribunal to confirm the decision of the National Police Commission and thereby the finding of the Inquiry Officer in relation to Charge No. 4 is rational as the finding of the Inquiry Officer is supported by the evidence that was led before him. Furthermore, the punishment imposed on the Petitioner by the National Police Commission and confirmed by the Administrative Appeals Tribunal is neither excessive nor unreasonable. The said decision of the Administrative Appeals Tribunal on Charge No. 4 is a decision

that a sensible person who had applied his mind to the facts led at the inquiry would have arrived at and is a reasonable decision.

In the above circumstances, this Court issues a Writ of Certiorari quashing that part of the Order of the Administrative Appeals Tribunal 'A1' where it has found the Petitioner guilty of Charge Nos. 1-3, 5 and 6. The confirmation by the Administrative Appeals Tribunal of the findings of the Inquiry Officer, the Disciplinary Authority and the decision of the National Police Commission with regard to Charge No. 4 and the confirmation by the Administrative Appeals Tribunal of the punishment imposed on the Petitioner by the National Police Commission shall stand. This Court has not considered the Writ of Mandamus that has been prayed for as the Petitioner has not placed any material before this Court in this regard.

This Court makes no order with regard to costs.

Judge of the Court of Appeal