

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

*In the matter of an application for Orders  
in the nature of Writs of Mandamus  
under Article 140 of the Constitution of  
the Democratic Socialist Republic of Sri  
Lanka.*

CA (Writ) Application No.146/2024

H. M. K. Herath  
No.508/19,  
Gonahena Road, Ranmuthugala,  
Kadawatha.

**PETITIONER**

Vs.

1. Justice Anil Goonerathna  
Chairman, Administrative Appeal Tribunal,
- 1A. Justice K. T. Chithrasiri  
Chairman, Administrative Appeal Tribunal,
2. A. Gnanathasan PC,  
Member, Administrative Appeal Tribunal,
- 2A. Kemathi Chandrasekara  
Member, Administrative Appeal Tribunal,
3. J. J. Rathnasiri  
Member, Administrative Appeal Tribunal,  
  
The 1<sup>st</sup> to 3<sup>rd</sup> Respondents: all of the  
Administrative Appeals Tribunal,  
Silva Lane,  
Sri Jayawardanepura Kotte
4. Secretary  
Ministry of Foreign Affairs,  
Republic Building,  
Colombo 01.
5. Sanath J. Ediriweera – Chairman,
6. N. H. M. Chithrananda, Member,
7. G. S. A. de Silva PC, Member,

8. Dr. A. D. N. de Zoysa, Member,
9. Mrs. S. M. Mohamed, Member,
10. Mrs. Ranjani Nadarajapillai, Member,
11. C. Pallegama, Member,
12. M. B. R. Pushpakumara, Member,
13. Prof. N. Selvakkumaran, Member,
14. Secretary, Public Service Commission,

The 5<sup>th</sup> to 14<sup>th</sup> Respondents all of:  
The Public Service Commission,  
No. 1200/9,  
Rajamalwatta Road,  
Battaramulla.

## **RESPONDENTS**

**Before:** Mayadunne Corea, J.  
Mahen Gopallawa, J.

**Counsel:** Shantha Jayawardena with Ms. Thilini Vidanagamage for the Petitioner.

Ms. Chaya Sri Nammuni, Deputy Solicitor General with Rajika Aluwihare,  
State Counsel for the Respondents.

**Argued on:** 10.12.2025.

**Written Submissions:** Petitioner on 09.06.2025 (pre-hearing) and 19.01.2026 (post hearing)  
Respondents on 18.06.2025 (pre-hearing).

**Decided on:** 13.02.2026.

**Mahen Gopallawa, J.**

### **Introduction**

In the instant application, the Petitioner has impugned, what is characterized as “an inadvertent ambiguity” in the order of the Administrative Appeals Tribunal (AAT) dated 17.12.2020 (‘P32’), which has hindered the effective granting of relief as intended by the said order.<sup>1</sup>

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<sup>1</sup> Vide paragraph 2 of the Petitioner’s post-hearing written submissions.

The substantive reliefs sought by the Petitioner are as follows;

- (c) Grant and issue an order in the nature of a **Writ of Mandamus** directing the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to vary the portion of the Order - **P32(a)** to read as "Since it would not be possible to post-date the effective date of recruitment in Section 15.01.02 of the SLFS Minute published in Gazette Notification No. 1996/28 of 06.12.2016 at this stage I order to antedate the date of appointment of the batch of 06 officers recruited to Grade III of the SLFS for the year 1999 under Limited Competitive Stream from 05.11.2001 to **31.12.2000 or the last working day of the year 2000**, as the Limited Competitive Examination for selection of suitable officers to SLFS had been held on 27.05.2000 and 28.05.2000 and there had been an undue delay in holding the Viva Voce Test for more than six (06) months from the date of said Examination.";
- (d) Grant and issue an order in the nature of a **Writ of Mandamus** directing the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to antedate the date of appointment of the batch of 06 officers, including the Petitioner or the Petitioner, who was/were recruited to Grade III of the SLFS for the year 1999 under Limited Competitive Stream, from 05.11.2001 to 31.12.2000 or the last working day of the year 2000 forthwith;
- (e) Grant and issue an order in the nature of a **Writ of Mandamus** directing the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to vary the Order - P32 to enable the Petitioner to fall within the ambit of Section 15.1.2 (Transitional Provision) of the SLFS Minute 2016;
- (f) Grant and issue an order in the nature of a **Writ of Mandamus** directing the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to vary the Order - P32 to enable the Petitioner to fall within the ambit of Section 15.1.2 (Transitional Provision) of the SLFS Minute 2016, in the manner personal to the Petitioner;
- (g) Grant and issue an order in the nature of a **Writ of Mandamus** directing the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to vary the Order - P32 to enable the Petitioner to fall within the ambit of Section 15.1.2 (Transitional Provision) of the SLFS Minute 2016 and further specify a definite time period for the implementation of the same;
- (h) Grant and issue an order in the nature of a **Writ of Mandamus** directing the 5<sup>th</sup> to 13<sup>th</sup> Respondents to implement such varied Order within one (1) month of such variation by the Court;
- (i) Grant and issue an order in the nature of a **Writ of Mandamus** directing the 5<sup>th</sup> to 13<sup>th</sup> Respondents to antedate the date of appointment of the batch of 06 officers, including the Petitioner or the Petitioner, who was/were recruited to Grade III of the SLFS for the year 1999 under Limited Competitive Stream, from 05.11.2001 to 31.12.2000 or the last working day of the year 2000 forthwith;

At the commencement of the argument, the learned Counsel for the Petitioner informed Court that he would not proceed with the reliefs sought in paragraphs (h) and (i) of the prayer to the petition, which have been sought against the 5<sup>th</sup> to 13<sup>th</sup> Respondents, who are the Chairman and members of the Public Service Commission.

The 5<sup>th</sup> to 14<sup>th</sup> Respondents have filed objections objecting to the reliefs sought by the Petitioner and have sought the dismissal of the application. Accordingly, the application was taken up for argument on 10.12.2025 and the parties have also been afforded the opportunity of filing pre and post-hearing written submissions.

**Factual Background**

In the first instance, it would be helpful to briefly set out the factual background to the instant application, as per the pleadings filed by the parties.

The Petitioner joined the public service as an officer in the General Clerical Service on 02.05.1985. Subsequently, he had applied to join the Sri Lanka Foreign Service (“the SLFS”) in Grade III of the said Service under the limited competitive stream in response to the advertisement published in the Government Gazette dated 03.02.2000 (‘P5’). The said advertisement refers to “recruitment to Grade III of the Sri Lanka Foreign Service for the year 1999.”

As at the said date of publication of the said advertisement, the SLFS was governed by the Sri Lanka Foreign Service Minute published in the Government Gazette dated 35.10.1994 (P4) (“the 1994 Service Minute”). In terms of Appendix B of the said 1994 Service Minute recruitment to Grade III was to be made under 3 streams; on the results of an open competitive examination (not more than 60% of vacancies); on the results of a limited competitive examination (not more than 20% of vacancies); and on merit (not more than 20% of vacancies). Recruitment under the limited competitive stream was to be conducted on the basis of an examination conducted by the Commissioner General of Examinations and a *viva voce* test, which both carried 100 marks each.<sup>2</sup>

It is common ground that recruitment was conducted under the open competitive and limited competitive streams in respect of the year 1999 in the following manner;

Relevant Step	Open Competitive Examination	Limited Competitive Examination
Date of Advertisement (Gazette Notification)		03.02.2000
Conduct of Competitive Examination		27.05.2000 and 28.05.2000
Conduct of Viva Voce Test		04.01.2001
Date of Recruitment	03.01.2000	05.11.2001
Number of Appointments	13	06

After the limited competitive examination was held but before appointments could be made, the Service Minute of the SLFS was amended by the Sri Lanka Foreign Service Minute published in

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<sup>2</sup> Section 3 of Appendix B of the 1994 Service Minute, which has been referred to in Clause 12 of the advertisement calling for applications (‘P5’).

the Government Gazette dated 24.01.2011 ('P6') ("the 2001 Service Minute") and the said Service Minute entered into force with effect from 01.01.2001.

The Petitioner was appointed to Grade III of the SLFS with effect from 05.11.2001 by letter dated 12.07.2004 ('P8'). The Petitioner has stated that grave injustice was caused to him by the delay in effecting the said appointment for no fault of his own<sup>3</sup> but the Respondents have pointed out that the Petitioner himself had challenged the results of the interview and that delay was "unavoidable."<sup>4</sup>

Thereafter, amendments were introduced to the 2001 Service Minute by Government Gazette dated 08.10.2007 ('P13') ("the 2007 Amendments"). A new Service Minute replacing the 2001 Service Minute, as amended in 2007, was introduced to the SLFS by Government Gazette dated 06.12.2016 ('P16') ("the 2016 Service Minute") with effect from 12.10.2015. The said 2016 Service Minute is currently in force.

It is also common ground that the Petitioner was promoted to Grade II of the SLFS initially with effect from 18.08.2014 and such was thereafter antedated to 05.11.2011 ('P14' and 'P15').

The instant application has arisen in relation to the Petitioner's entitlement to be promoted to Grade I of the SLFS. The eligibility criteria for promotion from Grade II to Grade I of the SLFS is set out in section 10.2.1 of the 2016 Service Minute ('P16') in the following manner;

## 10.2 Promotion from Grade II to Grade I

### 10.2.1 Requirements to be completed:

- (i) *Should have completed at least seven (7) years active and satisfactory service in Grade II Service category and earned seven (7) salary increments.*
- (ii) *Should have passed the second Efficiency Bar examination on the due date.*
- (iii) *Should have completed a period of satisfactory service during the preceding five (5) years from the date of gaining eligibility for promotion.*
- (iv) *Should have shown a satisfactory or a higher-level performance during the preceding seven (7) years of gaining eligibility for promotion.*
- (v) ***Should have obtained postgraduate degree in International Relations or an equivalent qualification from a university recognized by the UGC or an institution, a university recognized by the UGC as an institution of degree awarding or a foreign University recognized by the UGC, as per Appendix D.*** (emphasis added)

Admittedly, the Petitioner does not possess a "postgraduate degree in international or an equivalent qualification," as required under section 10.2.1(v) above. The Petitioner has stated that although he had enrolled for a Master's Degree Programme in International Relations at Annamalai University in India whilst he was serving at Sri Lanka's Deputy High Commission in Chennai in the year 2019, he was unable to complete the same as his request for a service

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<sup>3</sup> Paragraph 15 of the petition.

<sup>4</sup> Paragraphs 6 and 7 of the statement of objections and paragraph 4 of the Respondents' pre-hearing written submissions.

extension was refused and he was transferred back to Colombo with effect from 02.10.2019.<sup>5</sup> Although the Petitioner has alleged that the denial of such opportunity was a violation of the provisions of paragraph 2 of Appendix C of the 2016 Service Minute, it is observed that no relief has been sought on such matter in the instant application.

In their statement of objections, the Respondents have denied the aforementioned position taken up by the Petitioner and have pointed out that the Petitioner had been requested by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to apply for study leave, as reflected in the facsimile message dated 05.07.2019 attached to the document marked 'P24', if he was desirous of continuing his Master's Degree Programme, but had elected not to do so.<sup>6</sup> They have further stated that the fact of enrollment in such a programme demonstrated that the Petitioner was fully aware and had accepted that a postgraduate qualification was a mandatory condition precedent for promotion to Grade I.<sup>7</sup>

Whatever may be the merit or otherwise of the position taken up by the Petitioner regarding the failure to obtain a postgraduate qualification, it is not in dispute that the Petitioner has sought to rely on the transitional provisions set out in section 15.1.2 of the 2016 Service Minute. Section 1 provides that the transitional provisions would be applicable for a period of 03 years from the date of publication of the said Service Minute and section 15.1.2 provides as follows;

*15.1.2. Promotion from Grade II to Grade I*

- (i) *An officer absorbed to Grade II under the provisions of Section 14 of this Minute will be eligible for promotion to Grade I provided he/she has fulfilled the qualifications under 10.2.1 of the Service Minute. **However, the requirement for the fulfillment of qualifications under Sub section (v) of 10.2.1 will not apply regarding the promotion of officers recruited before 01.01.2001 from Grade II to Grade I during the transitional period.** (emphasis added).*

Thus, the position taken up by the Petitioner on the substantive issue of his entitlement to promotion to Grade I appears to be that the requirement of a postgraduate qualification in section 10.2.1(v) is not applicable to him as he is entitled to the exemption conferred on officers recruited before 01.01.2001 in terms of section 15.1.2(i) of the Service Minute. It is further clarified that no issues relating to other requirements for the said promotion have been presented to this Court, and, as such, I do not intend to inquire into and comment on same.

The Petitioner had submitted an appeal to the Public Service Commission dated 10.07.2017 ('P17') whereby he had requested that the provisions of section 15.2.1 of the Service Minute be extended upon the premise that his appointment to the SLFS had been made in terms of the 1994 Service Minute. However, the Public Service Commission (PSC) had rejected the said appeal by letter dated 26.06.2018 ('P19'). In the said letter, the PSC had taken up the position that the Petitioner was an officer who was recruited after 01.01.2001 and as such was not entitled to obtain the concessions conferred by the provisions of section 15.1.2 of the Service Minute.

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<sup>5</sup> Paragraph 36 of the petition.

<sup>6</sup> Paragraphs 19 and 23 of the statement of objections.

<sup>7</sup> Ibid.

The Petitioner had lodged an appeal dated 25.07.2018 against the aforementioned decision of the PSC before the Administrative Appeals Tribunal (AAT) ('P21') and the said appeal had been registered as Appeal No. AAT/59/2018. It transpires from the documents attached to the petition that the Petitioner ('P26' and 'P29') and the PSC ('P25', 'P27' and 'P30') had participated and filed observations and submissions at the inquiry held before the AAT.

The AAT, by order dated 17.12.2020 ('P32'), had allowed the Petitioner's appeal subject to the variations set out therein. The findings of the AAT and the relief granted to the Petitioner are set out in the final page of the said order as follows;<sup>8</sup>

*It is true that in the notice calling for application for recruitment to the SLFS on the Limited Competitive Stream, that the appointments will be made "on the general conditions governing the appointments in the public service and on the terms and conditions set out in the Sri Lanka Foreign Service Minute, subject to any amendments that may have been made or will be made hereafter to the Sri Lanka Foreign Service Minute." However the PSC had taken a decision knowingly that it would be an unequal treatment if a benefit enjoyed by officers who had been recruited under the Open Competitive Stream, for filling of vacancies of the same year, i.e., 1999.*

*Since it would not be possible to post-date the effective date of recruitment in Section 15.01.02 of the SLFS Minute published in Gazette Notification No. 1996/28 of 06.12.2016 at this stage, I order to antedate the date of appointment of the batch of 06 officers recruited to Grade III of the SLFS for the year 1999 under Limited Competitive Stream from 05.11.2001 to 01.01.2001, as the Limited Competitive Examination for selection of suitable officers to SLFS had been held on 27.05.2000 and 28.05.2000 and there had been an undue delay in holding the Viva Voce Test for more than six (06) months from the date of said Examination. It has also been considered that this would not result in affecting the seniority of any other SLFS Officers who had been appointed to the SLFS prior to him.*

*However, the appellant will have to fulfill all requirements [sic] Gazette Section 10.03.01(i) to 10.03.01 (v) of the New Service Minute of 06.12.2016, along with the Postgraduate qualifications for promotion to Special grade of the SLFS.*

*The appeal of the appellant is allowed subject to above variations.*

Thereafter, the PSC had requested the AAT to review its order ('P33' and 'P35'). However, the AAT has declined to do so and informed the PSC that its mandate to hear and determine appeals expired immediately upon pronouncing of its order (functus officio) and that it did not have authority to review its own orders ('P35' and 'P36').

The PSC had subsequently filed CA Writ Application No. 481/2022 ('P41') before this Court seeking a writ of *Certiorari* to set aside the aforementioned AAT order ('P32') and a writ of *Mandamus* to direct the AAT to revise its order or to rehear and determine the Petitioner's appeal. However, the PSC had informed Court that it had taken steps to execute the impugned AAT order and proceeded to withdraw the application, as reflected in the Minutes of this Court on 14.06.2023 ('P43').

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<sup>8</sup> Vide page 141 of the brief.

It is observed that the PSC has sought to give effect to the AAT order ('P32') by antedating the appointment of the Petitioner to Grade III of the SLFS from 05.11.2001 to 01.01.2001 and such decision had been communicated by letter dated 24.08.2023 ('P47'). As reflected in the said letter, the appointments of 5 others, who had been recruited under the limited competitive stream along with the Petitioner on the same date, too had been similarly antedated.

It is also observed that the Petitioner has sought promotion to Grade I of the SLFS on the basis of the said AAT order ('P32'), as reflected in the correspondence marked 'P44' and 'P50'. It further transpires that the 4<sup>th</sup> Respondent had recommended the promotion of the Petitioner to Grade I with effect from 01.01.2018, by its letter dated 13.10.2023 ('P49').

The PSC had communicated its decision on the Petitioner's entitlement to promotion to Grade I to the 4<sup>th</sup> Respondent by its letter dated 11.01.2024 ('P52'), which, *inter alia* states as follows;

*02. By perusing the facts, the Public Service Commission decided that there is no possibility to promote Mr. H. M. K. Herath to Grade I of Sri Lanka Foreign Service in terms of the interim provisions of the Service Minute as his appointment antedated to 01.01.2001 as per the AAT Order.*

Whilst the instant application was pending and upon an inquiry made by this Court, the Petitioner had applied to the AAT by motion dated 17.01.2025 ('5R4') to "rectify" the AAT order ('P32'). In the said motion, the Petitioner has, *inter alia*, stated that, "antedating the appointment to 01<sup>st</sup> January 2001 does not remedy the issue of the Appellant inasmuch as the Petitioner would not come under the transitional provision of the 2016 Service Minute, unless the appointment was antedated by one more day to 31<sup>st</sup> December 2000 or the previous working day, instead of 01<sup>st</sup> January 2001."<sup>9</sup> The Petitioner has also ascribed the reasons for such a situation as "clerical error or "oversight" on the part of the Tribunal.<sup>10</sup> It transpires from the proceedings before the AAT dated 11.02.2025 ('5R5'), that the presently constituted Tribunal had rejected the said application to have the order ('P32') amended for "inadequacy of material to make an appropriate order."

The aforementioned narrative reflects the factual position as at the date the instant application was taken up for argument.

### **Constitutional and Statutory Mandate of the Administrative Appeals Tribunal (AAT)**

The AAT has been established under Article 59 of the Constitution, which provides as follows;

*59. (1) There shall be an Administrative Appeals Tribunal appointed by the Judicial Service Commission.*

*(2) The Administrative Appeals Tribunal shall have the power to alter, vary or rescind any order or decision made by the Commission.*

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<sup>9</sup> vide paragraph 3 of the motion.

<sup>10</sup> Vide paragraphs 4,5 and 7 of the motion.

*(3) The constitution, powers and procedure of such Tribunal, including the time limits for the preferring of appeals, shall be provided for by law.*

The Administrative Appeals Tribunal Act No. 4 of 2002 (“the AAT Act”) has been enacted consequently to provide for the constitution of the AAT, to specify the powers of the Tribunal and the procedure to be adhered in respect of appeals and to provide for matters connected therewith or incidental thereto.<sup>11</sup>

The powers of the AAT and the procedure to be followed in the consideration of appeals are principally set out in sections 6, 7 and 8 of the AAT Act, and are reproduced herewith;

*6. The Tribunal may, upon a consideration of the grounds set out in an appeal preferred to it and on being satisfied that, there exists a prima facie grievance—*

*(a) entertain such appeal;*

*(b) call for a report from the Public Service Commission or the National Police Commission, as the case may be;*

*(c) require the Public Service Commission or the National Police Commission, as the case may be, to produce any document or other material, which in the opinion of the Tribunal relates to the grounds set out in the appeal;*

*(d) notify any other public officer or police officer, as the case may be, of the same category whom the Tribunal considers likely to have been affected by the order or decision of the Public Service Commission, or the National Police Commission, and require such officer to produce before the Tribunal any material such officer may wish to place before the Tribunal in connection with such appeal, within a period of two weeks from the date of receipt by him, of such notice.*

*7. The Tribunal shall hear and finally dispose of any appeal preferred to it under this Act, within a period of two months from the date of receipt of such appeal.*

*8. (1) The decision of the Tribunal shall be under the hand of the Chairman and shall be communicated in writing to the Public Service Commission or to the National Police Commission, as the case may be, to the public officer or the police officer who preferred the appeal and to any other public officer or police officer who was notified by the Tribunal under*

*paragraph (d) of section 6. The decision of the Tribunal shall, be the decision of the majority.*

*(2) A decision made by the Tribunal shall be final and conclusive and shall not be called in question in any suit or proceedings in a court of law.*

It is observed from the foregoing that there is no power expressly conferred upon the AAT either by the Constitution or the AAT to review or revise its own orders.

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<sup>11</sup> Long Title of the Act.

It is also well established that a decision of the AAT in respect of an appeal from a decision of the PSC is amenable to the writ jurisdiction of this Court under Article 140 of the Constitution, vide **Ratnayake v. Administrative Appeals Tribunal and others**<sup>12</sup> and **Delapolage Lakmini Delapola v. Justice Imam and others**.<sup>13</sup>

### **Grounds of Review and the Position of the Respondents**

Grounds of review relied upon by the Petitioner in the instant application have been set out in the petition in the following paragraphs;

59. *The Petitioner states that due to the inadvertent ambiguity in the AAT Order-P32 and/or the absence of clear provisions to remedy the injustice caused to the Petitioner, although such injustice was duly identified in the AAT Order-P32, the said AAT Order -P32 is required to be varied to enable the Petitioner to fall within the ambit of Section 15.1.2 (Transitional Provision) of the SLFS Minute 2016.*
60. *The Petitioner further states that it would be unreasonable and irrational if the AAT Order is not duly varied to give effect to the intention of the AAT to allow the Appeal of the Petitioner.*
61. *The Petitioner is advised and further states that the findings of the Honourable AAT are well within the powers given to them. However, there is a necessity to vary the said Order to unambiguously stipulate provisions in the said Order-P32 to direct the Public Service Commission to duly rectify the prejudice caused to the Petitioner as intended by the Honourable AAT.*
62. *The Petitioner states that due to deprivation of his lawful entitlements, he is placed in a gravely unfair predicament by the action(s) and/or failure(s) of one or more Respondents contrary to the law. Given the circumstances that the Petitioner is due to retire on 17<sup>th</sup> April 2026, the expeditious implementation of such varied Order by the PSC is required without a prolonged delay. Thus, the Petitioner is praying for an appropriate Order from Your Lordships' Court to stipulate a time period for implementation of the said Order.*

The Respondents have denied any entitlement to have the AAT order ('P32') varied, as sought by the Petitioner, and the essence of their objection is captured in paragraph 15 of their written submissions as follows;

15. *It is also respectfully submitted that he is seeking to partially quash an order (of the AAT), which cannot be done. The petitioner cannot argue that the AAT was correct to backdate the petitioner and then state that the date is wrong [sic]. There is no evidence to state that the date is erroneously or mistakenly stated. Further, the AAT cannot now review this order as it is now functus.*

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<sup>12</sup> [2013] 1 Sri L.R 331.

<sup>13</sup> CA Writ Application No. 263/2013, decided on 26.07.2019.

I intend to examine the aforementioned positions of the parties in greater detail during the analysis of the grounds of review.

## **Analysis of the Grounds of Review**

### *Scope of Review*

At the outset, it would be necessary to identify the parameters or scope of the judicial review that the Petitioner has sought in the instant application. In paragraph 61 of the petition, the Petitioner has specifically acknowledged and admitted that the findings of the AAT in the order ('P32') have been made well within or *intra vires* the powers conferred upon the Tribunal and has only sought to vary the effective date of his appointment to Grade III of the SLFS ordered by the AAT therein, namely, 01.01.2001.

As stated in paragraph 59 of the petition, the said specification of the Petitioner's date of appointment had caused an "inadvertent ambiguity" in the AAT order ('P32'), which has prevented the Petitioner from obtaining the concession granted in section 15.1.2 (Transitional Provision) of the 2016 Service Minute for purposes of his promotion to Grade I of the SLFS.

### *Is there an "inadvertent ambiguity" in the AAT Order (P32)?*

Thus, the first issue to be considered is whether the specification of 01.01.2001 as the effective date of the antedating of the Petitioner's appointment to Grade III of the SLFS been made by the AAT "inadvertently" or "by oversight" as claimed by the Petitioner. As set out in paragraph 21 of their objections and paragraph 15 of their written submissions, the Respondents have taken up the position that there is no evidence to indicate that such date is erroneously or mistakenly stated.

Therefore, ascertaining the manner in which the AAT itself perceived and proceeded with the Petitioner's complaint becomes of utmost importance. In this regard, I am of the view that the best evidence to determine the intention of the Tribunal is the contents of the order ('P32') and, to a lesser degree, the inquiry proceedings.

In this context, it is extremely significant to note that in its order ('P32'), the Tribunal itself has described the relief sought by the Petitioner in the first paragraph in page 1 of the order ('P32') itself in the following terms;

***The appeal of the appellant submitted on 25.07.2018 to the Chairman of this Tribunal is to appoint him to Grade III of the SLFS with effect from 01.01.2001 and to exempt him from completing the requirement of obtaining Post graduate qualifications as stated in paragraph 09 of his appeal.<sup>14</sup>***

The AAT has proceeded to grant such exact relief sought by the Petitioner, and for purposes of convenience, such portion of the order ('P32') is reproduced herewith;

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<sup>14</sup> Page 133 of the brief.

*Since it would not be possible to post-date the effective date of recruitment in Section 15.01.02 of the SLFS Minute published in Gazette Notification No. 1996/28 of 06.12.2016 at this stage I order to antedate the date of appointment of the batch of 06 officers recruited to Grade III of the SLFS for the year 1999 under Limited Competitive Stream from 05.11.2001 to 01.01.2001, as the Limited Competitive Examination for selection of suitable officers to SLFS had been held on 27.05.2000 and 28.05.2000 and there had been an undue delay in holding the Viva Voce Test for more than six (06) months from the date of said Examination.*

It is observed that the Petitioner has not taken up the position either in the pleadings or in his submissions before this Court that such characterization by the AAT of the relief sought in his complaint was erroneous or inaccurate. It is further observed that, whilst the entirety of the inquiry proceedings has not been submitted to this Court, the only proceedings submitted to this Court dated 03.09.2020 ('P28') too do not address the issue.

In the aforementioned circumstances, I am inclined to the view that the AAT has consciously proceeded with the Petitioner's appeal upon the premise and understanding that the relief sought by the Petitioner was to have his appointment antedated to 01.01.2001, and as such, the specification of 01.01.2001 as the date of appointment of the Petitioner to Grade III of the SLFS was a conscious and deliberate act of the AAT. I am unable to agree with the Petitioner's contention that such specification of the date has been done "inadvertently" or "by oversight." I am further of the view that such an interpretation is rational and reasonable since the AAT had proceeded to grant the exact relief sought by the Petitioner, as per their understanding of the Petitioner's complaint.

#### *Availability of Judicial Review in the instant application*

I also wish to address certain implications arising out of the aforementioned findings to the maintainability of the instant application. In paragraph 61 of the petition, the Petitioner has specifically acknowledged that the findings in the order ('P32') have been made well within the powers vested in the AAT and had confined his challenge to the "inadvertent ambiguity" concerning the date of antedating. Since his argument on the "inadvertent ambiguity" has been rejected as aforesaid, one consequence of the representation made in paragraph 61 of the petition is that the Petitioner would be bound by the findings and the reliefs granted by the AAT in its order ('P32').

It is observed that the substantive relief sought by the Petitioner in paragraphs (c) and (d) of the prayer to the petition in the instant application is to have his appointment to Grade III of the SLFS antedated to a date prior to 01.01.2001. In paragraphs (d), (e), and (f) of the prayer to the petition, he has sought directions from this Court on the AAT enabling the Petitioner to receive the concessions granted under section 15.1.2 of the 2016 Service Minute. However, in the absence of an express and unequivocal challenge being made by the Petitioner to the findings and the reliefs granted in the AAT order ('P32'), I am not convinced that the Petitioner is entitled to seek such reliefs from this Court.

The fact that the Petitioner has sought to vary a part of the AAT order ('P32') (the specification of the effective date of the antedating of his appointment) implies that the said part of the order is distinct and severable from the rest of the order. However, the Respondents have denied such

possibility.<sup>15</sup> As manifested in the findings made in the portion of the order ('P32') marked 'P32(a)', it is observed that the antedating of the Petitioner's appointment to Grade III of the FLFS had been intended by the AAT as a solution to offset any adverse impact caused by section 15.1.2 of the 2016 Service Minute and as the Tribunal was of the view that the effective date of the said clause could not be postdated. Thus, I am of the view that the AAT order has to be considered in its entirety and is not divisible.

In this context, it is also observed that a partial challenge to an order implies that one part of the order is valid and the other part is invalid. In the instant application, the Petitioner has sought to impugn the part of the order marked 'P32(a)' upon the basis that there was an "inadvertent ambiguity." However, as set out above, the Petitioner has failed to establish such position. Hence, the resultant position is that there is no valid challenge to the *vires* or validity of the AAT order ('P32') remaining.

The scope of judicial review has been succinctly set out by the Supreme Court in *In Attorney General v. Sandresh Ravindra Karunanayake and others*,<sup>16</sup> in the following terms (per Samayawardhena, J.):

*Judicial review may be sought through prerogative remedies such as certiorari, prohibition, procedendo, mandamus, and quo warranto, on several grounds conveniently summarised by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service [1985] AC 374 at 410 (commonly referred to as the GCHQ case), namely: illegality, irrationality, and procedural impropriety. As Lord Diplock himself observed, this categorisation is not exhaustive but was intended as a framework of convenience. He further noted that he had in mind, in particular, the potential future recognition of the principle of proportionality as an additional ground of judicial review.*

*Lord Diplock sought to explain the meaning he attributed to those terms. Briefly put, illegality refers to decisions made ultra vires or in breach of legal requirements or mala fide; irrationality concerns decisions so arbitrary and unreasonable that no reasonable decision-maker, properly directing his mind to the relevant matters, could have arrived at them; and procedural impropriety encompasses failures to comply with mandatory procedural requirements or breaches of the principles of natural justice.*

The parameters of this Court exercising judicial review in respect of orders of the AAT were considered in *W. Deepthi De Silva v. Justice Nimal Dissananyake, Chairman, Administrative Appeals Tribunal and others*.<sup>17</sup> Citing the decisions in *Kalamazoo Industries Limited v. Ministry of Labour and Vocational Training*,<sup>18</sup> *Reg. v. Lord Chancellor, Ex p. Maxwell (D.C)*<sup>19</sup> and *Reg. v. Ministry of Defence, Ex p. Smith*,<sup>20</sup> this Court has enunciated the following principles (per Rajakaruna, J.):

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<sup>15</sup> vide paragraph 15 of the Respondents' written submissions.

<sup>16</sup> SC Appeal No. 104/2024, SC Minutes dated 03.06.2025.

<sup>17</sup> CA Writ Application No. 614/2021, decided on 26.05.2022.

<sup>18</sup> [1998] 1 Sri L.R 235.

<sup>19</sup> [1997] 1 W.L.R. 104 at 109.

<sup>20</sup> [1996] Q.B. 517 at 554.

*In the circumstances, in an application for judicial review against a decision of the AAT, this Court exercises a limited jurisdiction and it is distinct from the exercise of Appellate jurisdiction. This Court will review the decision of the AAT under the circumstances, (a) where the members of the AAT who made the impugned decision did not have legal authority to make such decision, or (b) if the AAT has acted contrary to principles of natural justice, or (c) issue an order which is eminently irrational or unreasonable or tainted with illegality. As I have observed earlier, the jurisdiction of the Court of Appeal under Article 140 would be limited to a review of a decision of the AAT and would not extend to quash the decisions of the PSC or of a Committee or public official to whom the powers of the PSC have been delegated.<sup>21</sup>*

I am in full agreement with the approach adopted in the above case in regarding the exercise of judicial review over decisions of the AAT. When such principles are applied to the facts and circumstances of the instant application, I am compelled to conclude that “inadvertence” or “oversight” relied upon by the Petitioner does not meet the threshold for review set out by this case in the aforementioned case ***W. Deepthi De Silva v. Justice Nimal Dissananyake (supra)***.

*Petitioner’s entitlement to further antedating of his appointment to a date prior to 01.01.2001*

Without, prejudice to my aforementioned findings, I now wish to consider the ground taken up by the Petitioner regarding his entitlement to further antedating of his appointment to Grade III of the FSFS to a date prior to 01.01.2001. In paragraph 60 of the petition and in his written submissions, the Petitioner has contended that it would be “unreasonable and irrational” if the AAT order is not duly varied to give effect to the intention of the AAT to allow the Appeal of the Petitioner. Elaborating further, the learned Counsel for the Petitioner submitted that the AAT in its order had acknowledged that the Petitioners and others recruited under the limited competitive stream in respect of vacancies in the year 1999 had been subject to unequal treatment vis-à-vis officers recruited under the open competitive stream in respect of the same year. He further submitted that, although the clear intention of the AAT was to grant relief to the Petitioner by exempting him from the requirement of postgraduate qualifications for promotion to Grade I, such intention was defeated by the specification of the date of appointment to Grade III as 01.01.2001, since the Petitioner was only entitled to receive the benefit of the concessions granted under section 15.1.2 of the 2016 Service Minute 2016 if he was appointed to the SLFS before 01.01.2001.

In their objections, the Respondents have rejected the contention that the Petitioner is entitled to have his appointment backdated to a date prior to 01.01.2001 or to obtain the benefit of the transitional provisions in section 15.1.2 of the 2016 Service Minute. It is their position that the AAT had clearly and unambiguously antedated the Petitioner’s appointment only to 01.01.2001 and, thereby, the Tribunal had not antedated such appointment to a date beyond the period of applicability of the 2001 Service Minute, which is the Service Minute applicable to the Petitioner.<sup>22</sup>

The Respondents have further submitted that, Rule 31 of the Procedural Rules of the Public Service Commission, 2009 (“the PSC Procedural Rules 2009”), which were in effect at the time the AAT order (‘P32’) was made expressly provided that “no appointment, for whatever reason, shall be antedated.” On this specific issue, the learned Counsel for the Petitioner responded that, at the time the

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<sup>21</sup> See n 15, at pp 5-6.

<sup>22</sup> Vide paragraph 21 of the statement of objections.

Petitioner was recruited to the SLFS, antedating of appointments was governed by the Establishments Code and that clause 1:10 of Chapter II thereof permitted antedating with the authority of the Director General of Establishments. He further submitted that the blanket restriction on antedating of appointments has been removed in the PSC Procedural Rules 2022, which are currently in effect.

With regard to the Petitioner's entitlement to a further antedating of his appointment as aforesaid, I wish to make the following observations. It is seen that one of the grounds upon which the Petitioner has sought to further antedate his appointment to a date prior to 01.01.2001 is that he was recruited for a vacancy that arose in the year 1999 and as the recruitment process had commenced prior to the introduction of the 2001 Service Minute. The fact that officers who were recruited for vacancies in the year 1999 under the open competitive stream were recruited in the year 2000 prior to the introduction of the 2001 Service Minute is the other ground upon which the Petitioner has sought to justify the further antedating of his appointment.

In relation to the entitlement of an appointing authority to change a scheme of recruitment or a service minute, in ***Wasantha Dissanayake and others v. Secretary, Ministry of Public Administration and others***,<sup>23</sup> the Supreme Court has opined as follows (per Sripavan, C.J.);

*A scheme of recruitment once formulated is not good for ever; it is perfectly within the competence of the appropriate authority to change it, rechange it, adjust it and re-adjust it according to the compulsions of changing circumstances. The Court cannot give directions as to how the Public Service Commission should function except to state the obligation not to act arbitrarily and to treat employees who are similarly situated equally.*

The above decision was also cited with approval by the Supreme Court in ***Jayasinghe Arachchilage Samantha Bandara Mangala Jayasinghe v. Pujith Jayasundara, Inspector General of Police and others***.<sup>24</sup>

In the instant case, the grievance of the Petitioner relates to the introduction of the requirement to obtain a postgraduate degree in International Relations or an equivalent qualification as a condition for promotion to Grade I under section 10.2.1(v) of the 2016 Service Minute. Considering the critical importance of the duties and functions performed by officers of the SLFS, it can be reasonably expected that the introduction of such a requirement as a condition for promotion to higher grades of the Service would have a beneficial effect in enhancing the knowledge and capabilities of officers. Hence, in my view, the introduction of such a requirement cannot be considered as being illegal, arbitrary or irrational.

The possibility of changes to an existing service minute or scheme of recruitment has been expressly provided for in clause 3 of the advertisement calling for applications for recruitment to Grade III of the SLFS, 1999 ('P5'), pursuant to which the Petitioner applied, and clause 3 of the Petitioner's Letter of Appointment ('P8'). Thus, I am of view that the Petitioner cannot claim as of right to be insulated from any changes in the Service Minute of the SLFS, at this stage of his career. It is further observed that there was no evidence placed before Court that changes to the service minutes of the SLFS were applied selectively.

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<sup>23</sup> SCFR Application No. 611/2012, SC Minutes dated 10.09.2015.

<sup>24</sup> SCFR Application No. 427/2018, SC Minutes dated 05.05.2022.

In this context, it is observed that, although the Petitioner and the AAT had taken up the position that the possession of postgraduate qualifications was a totally new requirement under the 2016 Service Minute, the Respondents have pointed out that the acquisition of a postgraduate qualification as the 3<sup>rd</sup> efficiency bar was already in place under the 2007 amendment to the 2001 Service Minute. Thus, the Respondent contested the fact that it was a new requirement and that all those who had been appointed after 01.01.2001 were aware of such requirement.

Upon consideration of the entirety of the aforementioned circumstances, I am of the view that the Petitioner is not entitled to have his date of appointment antedated to a date prior to 01.01.2001 merely on the basis that recruitment process had commenced prior to the introduction of the 2001 Service Minute and as the officers who had applied under the open competitive stream had been appointed prior to the introduction of the said Service Minute. A consequence of such a finding is that the Petitioner would not be entitled to the concessions provided under clause 15.1.2 of the 2016 Service Minute in so far as promotion to Grade I is concerned.

### **Legal Objections**

In their written submissions, the Respondents have further raised several legal objections, and, I wish to consider the following;

#### *(a) Laches*

The Respondents have alleged that the Petitioner is guilty of laches inasmuch as the he has filed the instant application only on 01.03.2024, which after a period of over 04 years after the AAT order ('P32') was delivered on 17.12.2020.

In support of their position, the Respondents have sought to rely on the decision in ***Dahanayake and others v. Sri Lanka Insurance Corporation Ltd. and others***,<sup>25</sup> wherein an objection on *laches* was upheld, this Court observed as follows (per Marsoof, J. P/CA (as he then was)):

*It is well settled law that inordinate delay in invoking the jurisdiction of the Court does not entitle the Petitioners to any relief under writ jurisdiction, Learned Counsel for the 1<sup>st</sup> Respondent has referred to the decisions of our courts in **President - Malagoda Co-operative Society v. Arbitrator of Co-operative Society**,<sup>26</sup> **Biso Menika v. Cyril de Alwis**,<sup>27</sup> **Shums v. People's Bank**,<sup>28</sup> **Hulangamuwa v. Siriwardena, Principal Visaka Vidyalaya and others**<sup>29</sup> and **Issadeen v. The Commissioner of National Housing and Others**<sup>30</sup> for the proposition that unexplained delay in making an application for a prerogative remedy disentitles a Petitioner to relief.*

*In **Biso Menika v. C. R. de Alwis**, (Supra) Sharvananda, J (as he then was) observed that- "A Writ of Certiorari is issued at the discretion of the Court. It cannot be held to be a writ*

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<sup>25</sup> [2005] 1 Sri L.R 67.

<sup>26</sup> 51 NLR 167.

<sup>27</sup> [1982] 1 Sri L.R 368.

<sup>28</sup> [1985] 1 Sri L.R 197.

<sup>29</sup> [1986] 1 Sri L.R 275.

<sup>30</sup> [2003] 2 Sri L.R 10.

*of right or one issued as a matter of course. But exercise of this discretion by Court is governed by certain well accepted principles, The Court is bound to issue a writ at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to the discretionary relief by reason of his own conduct, like submitting to jurisdiction, laches, undue delay or waiver. The proposition that the application for Writ must be sought as soon as injury is caused is merely an application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse the chances of his success in a Writ application dwindle and the Court may reject a Writ application on the ground of unexplained delay. An application for a Writ of Certiorari should be filed within a reasonable time from the date of the order; which the applicant seeks to have quashed (pages 377 to 379 of the judgement).*

*It is noteworthy that in **Senerviratne v. Tissa Dias Bandaranayake and another**,<sup>31</sup> Amerasinghe, J. adverting to the question of long delay, commented that-*

*"If a person were negligent for a long and unreasonable time, the law refused afterwards to lend him any assistance to enforce his rights; the law both to punish his neglect, nam leges vigilantibus, non dormientibus, subveniunt, and for other reasons refuses to assist those who sleep over their rights and are not vigilant."*

The Respondents have also cited the decision of this Court in **Jayaweera v Assistant Commissioner of Agrarian Services, Ratnapura and another**,<sup>32</sup> wherein it was held as follows (per F.N.D. Jayasuriya J);

*There is a presumption that official and legal acts are regularly and correctly performed. It is not open to the Petitioner to file a convenient and self serving affidavit for the first time before the Court of Appeal and thereby seek to contradict either a quasi judicial act or judicial record.*

*I hold that the Petitioner who is seeking relief in an application for the issue of a writ of certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the court has discretion to deny him relief having regard to his conduct; delay, laches, waiver, submission to jurisdiction are all valid impediments which stand against the grant of relief. Applying these principles, I hold that this court is not disposed to grant the Petitioner discretionary relief upon this application in view of inordinate delay and laches in filing the application in Court.*

It is observed that, although there were legal proceedings instituted by the PSC, the Petitioner was not precluded in any manner from assailing the AAT order ('P32'), if he was not satisfied with the relief granted therein. There were also no changes to the Service Minute or any other action that may have compelled the Petitioner to stay his hand. In any event, no explanation has been offered by the Petitioner for his delay, although such matter was raised in the Respondent's pre-hearing objections and the Petitioner had an opportunity to respond. In such circumstances, I am inclined to uphold the legal objection raised by the Respondents that the Petitioner is guilty of *laches*.

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<sup>31</sup> [1992] 2 Sri L.R 341 at 351.

<sup>32</sup> [1996] 2 Sri L.R 70.

(b) *Functus Officio*

The Respondents have taken up the position that, after the AAT delivered its order ('P32'), it lacked the power to review or re-examine such decision. The AAT too appears to have maintained such position in dealing with the applications made by the PSC to review such decision. It is further observed that neither the Constitution nor the AAT Act too has conferred any power upon the AAT to review or re-examine its own decisions. In such circumstances, subject to the power to correct any clerical errors which courts and adjudicatory tribunals usually enjoy, I am of the view that the AAT becomes *functus officio* upon delivery of the final decision in respect of an appeal. In such light, the writs of *Mandamus* sought from this Court directing the AAT to vary its own order (P32) appear to be misconceived.

**Conclusion and Orders of Court**

For the reasons set out above, I hold that the Petitioner has failed to establish his entitlement to the reliefs prayed for in the petition, on the merits. The legal objections raised by the Respondents, as determined by me above, too, militate against the grant of prerogative relief to the Petitioner. Accordingly, I proceed to dismiss the Petitioner's application. No costs.

*Application dismissed.*

**Judge of the Court of Appeal**

**Mayadunne Corea, J.**

I agree.

**Judge of the Court of Appeal**