

**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
Certiorari, Prohibition and Mandamus
under Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

Nalaka Indrajith Udugampola,
Former Sub-Inspector,
C/O S.A.K. Jayasinghe,
Rathmatiya Road, Rikillagaskada.

PETITIONER

CA (Writ) App. No. 420/2023

Vs.

1. Justice Anil Goonaratne,
Chairman,
Administrative Appeals Tribunal,
No. 35, Silva Lane, Rajagiriya.

Hon. Justice K.T. Chistrasiri,
Chairman,
Administrative Appeals Tribunal,
No. 35, Silva Lane, Rajagiriya.

SUBSTITUTED 1ST RESPONDENT

2. Mr. A. Gnanathan, P.C.,
Member,
Administrative Appeals Tribunal,
No. 35, Silva Lane, Rajagiriya.

Mr. J.J. Rathnasiri,
Member,
Administrative Appeals Tribunal,
No. 35 Silva Lane, Rajagiriya.

SUBSTITUTED 2nd RESPONDENT

3. Mr. G.P. Abeykeerthi,
Member,
Administrative Appeals Tribunal,
No. 35, Silva Lane, Rajagiriya.

Mrs. S. Nandasekaran,
Member,
Administrative Appeals Tribunal,
No. 35, Silva Lane, Rajagiriya.

SUBSTITUTED 3RD RESPONDENT

4. Mr. K.B.D.M.P.B. Dissanayake,
Member,
Administrative Appeals Tribunal,
No. 35, Silva Lane, Rajagiriya.

Mr. P. Waduge,
Secretary,
Administrative Appeals Tribunal,
No. 35, Silva Lane, Rajagiriya.

SUBSTITUTED 4TH RESPONDENT

5. Mr. E.W.M. Lalith Ekanayake
(Retd. High Court Judge),
Chairman,
National Police Commission,
Block 9, BMICH Premises,

Bauddhaloka Mawatha, Colombo 07.

6. Mrs. D.K. Renuka Ekanayake
(Retd. Secretary to Ministeries),
Member,
National Police Commission,
Block 9, BMICH Premises,
Bauddhaloka Mawatha, Colombo 07.
7. Mr. Kanapathipillai Karunaharan
(Retd. District Secretary),
Member,
National Police Commission,
Block 9, BMICH Premises,
Bauddhaloka Mawatha, Colombo 07.
8. Mr. G.P. Sarath Gamini De Silva
(Retd. Senior Deputy Inspector General
of Police),
Member,
National Police Commission,
Block 9, BMICH Premises,
Bauddhaloka Mawatha, Colombo 07.

Mr. Jayantha Jayasinghe
(Retd. Deputy Inspector General of
Police),
Member,
National Police Commission,
Block 9, BMICH Premises,
Bauddhaloka Mawatha, Colombo 07.

SUBSTITUTED 8TH RESPONDENT

9. Mr. Dilshan Kapila Jayasuriya
(Attorney-at-Law),
Member,
National Police Commission,
Block 9, BMICH Premises,
Bauddhaloka Mawatha, Colombo 07.

9A. Mr. A.A.M. Illiyas, P.C.,
Member,
National Police Commission,
Block 9, BMICH Premises,
Bauddhaloka Mawatha, Colombo 07.

10. Mrs. Tharmara D. Perera,
Secretary,
National Police Commission,
Block 9, BMICH Premises,
Bauddhaloka Mawatha, Colombo 07.

Mrs. Thanuja N. Fernando,
Secretary,
National Police Commission,
Block 9, BMICH Premises,
Bauddhaloka Mawatha, Colombo 07.

SUBSTITUTED 10TH RESPONDENT

11. Mr. C.D. Wickramaratne,
Inspector General of Police,
No. 517, Police Headquarters,
Colombo 01.

Mr. Priyantha Weerasooriya
(Attorney-at-Law),
Acting Inspector General of Police,
No. 517, Police Headquarters,
Colombo 01.

SUBSTITUTED 11TH RESPONDENT

12. Mr. Deshabandhu Thennakoon,
Senior Deputy Inspector General,
Western Province,
No. 517, Police Headquarters,
Colombo 01.

Mr. Sanjeewa Dharmaratne,

Senior Deputy Inspector General,
Western Province,
No. 517, Police Headquarters,
Colombo 01.

SUBSTITUTED 12TH RESPONDENT

13. Mr. P.G.R.C.A. Gamlath,
Senior Superintendent of Police,
Purported Inquiry Officer – Formal
Inquiry,
C/O No. 517, Police Headquarters,
Colombo 01.

AND/OR

No. 31, Ranawiru Gammanaya,
Palamu Patumaga,
Aluwiharaya, Mathale.

14. Mr. Pandula Weerasinghe,
Senior Superintendent of Police,
Purported Inquiry Officer – Preliminary
Inquiry
No. 517, Police Headquarters,
Colombo 01.

AND/OR

Office of the Senior Superintendent,
Matara.

15. Mr. L.G. Kularathne,
Deputy Inspector General (Rtd.),
C/O No. 517, Police Headquarters,
Colombo 01.

AND/OR

No. 70, Bandara Watta, Batuhena,
Hidellana.

RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

Dr. Saranee Gunathilaka with Nithma Fernando instructed by Tharushika Fernando for the
Petitioner.

Zuhri Zain, D.S.G. for the 5th – 15th Respondents.

Argued on: 15.09.2025

Delivered on: 19.03.2026

Dr. D. F. H. Gunawardhana, J.

Judgement

Introduction

The Petitioner is a sub-inspector who joined the Department of Police in 1990. In and around February 2002, he served attached to the Biyagama Police Station situated within the Division of Kelaniya in the range of Western Province. There had been a news item appearing in the newspaper on 27.02.2002 stating that he was involved in a robbery of two vehicles committed in the Police area of Hingurakgoda. Having initially inquired about it from the Headquarters Inspector (hereinafter referred to as “HQI”) of Hingurakgoda over the telephone, later he had surrendered himself through an Attorney-at-Law, where he was arrested and later produced before Magistrate’s Court and incarcerated. The said incidents led to two summary trials before the Magistrate Court of Hingurakgoda bearing Nos. 70096 and 70097. However, after trial, he has been exonerated from all charges.

Thereafter, although he was reinstated, a disciplinary inquiry was held against him, under which he was found guilty, and it was recommended to terminate his service. His subsequent appeal to the Police Commission, was dismissed and later further appealed to the Administrative Appeal Tribunal (hereinafter referred to as “AAT”), where Honourable Members of the AAT, having affirmed the findings of guilt of the Petitioner, set aside the said punishment and recommended to send him on compulsory retirement.

Being aggrieved by the decision of the AAT, the Petitioner has come before this Court seeking to invoke its writ jurisdiction in terms of Article 140 of the Constitution, to set aside the same.

The 1st to 3rd Respondents are the Chairman and other members of the Administrative Appeal Tribunal respectively, and the 4th Respondent is the Secretary to the said AAT. The 5th to 9th Respondents are the Chairman and other members of the National Police Commission respectively, and the 10th Respondent is the Secretary of the National Police Commission. The 11th Respondent is the Inspector General of Police, the 12th Respondent is the Senior Deputy Inspector General of Police of the Western Province, the 13th Respondent is the inquiring officer, the 14th Respondent is the officer who conducted the preliminary investigation, and the 15th Respondent is the officer who served as the Deputy Inspector General of Police (DIG) of the Western Province who ordered the preliminary investigation.

After Support, this Court had issued formal notice, and the Respondents have also filed their respective Objections and sought a dismissal of this Application.

This came up before me for Argument on 26.11.2025, and the following arguments were advanced by the counsel; hence, this judgement.

Arguments

Dr. Gunathilake, the Counsel for the Petitioner, contended that the very disciplinary inquiry was flawed as it was sanctioned by a senior officer who is not empowered to sanction, namely, that the senior DIG of that area had not sanctioned the said disciplinary inquiry.

The second contention is that not only is the inquiry itself is flawed, but the proceedings are also flawed.

The third contention of the counsel for the Petitioner is that the AAT has arrived at a finding of wrong identification with regard to the Petitioner, followed by the argument that the AAT has also made a wrong identification of the vehicle involved, which is totally irrelevant.

Further, the next contention of Dr. Gunathilake is that the standard of proof set out in Rule 14 of the Establishment Code has also been flouted by the AAT.

Finally, the last argument is that the charges framed against the Petitioner for the disciplinary inquiry are based on the very same charges from which he has already been exonerated.

On the other hand, Ms. Zain argued that the order of the AAT is justified on the facts of this case as transpired in the course of evidence adduced before the Panel of Inquiry.

Further she argued that on sympathetic grounds, the Honourable Members of the AAT have set aside the punishment and instead had permitted the Petitioner to retire from service.

Factual Matrix

On a perusal of the Petition, I found that the Petitioner had initially joined the Police Department as a Sub-Inspector of the Reserved Service with effect from 04.08.1990. Thereafter, he was absorbed into the Regular Service with effect from 14.06.1999; the relevant documents being marked as **P1(a)** and **P1(b)** annexed to the Petition. The Petitioner was also issued a letter of recommendation for his service dated 31.05.2013, which is marked as **P1(c)**.

In 2002, the Petitioner had been attached to the Biyagama Police Station as a Sub-Inspector. On or around 17.02.2002 as asserted by him, he had obtained leave from his work and visited his mother, who was living in Hingurakgoda. Upon his return, on or around 27.02.2002, he learned through the media that one Police Officer attached to the Biyagama Police Station had been involved in a vehicle robbery in the Hingurakgoda area. Accordingly, he telephoned the HQI of Hingurakgoda, and thereupon, the HQI informed him to come and make a statement.

Thereafter, he visited the Hingurakgoda Police Station with a lawyer on 15.03.2002 and surrendered himself to the Police. Subsequently, the Police arrested him on the basis of the alleged robbery of two vehicles and produced him before the Magistrate's Court, and had him incarcerated, as borne out by the document marked as **P4** annexed to the Petition. Thereafter, the Petitioner was interdicted pending the two Magistrate's Court cases.

Thereafter, the Petitioner was charged before the Magistrate's Court of Hingurakgoda in two cases of alleged robbery, bearing Nos. 70096 and 70097. After the summary trial, the Petitioner was acquitted from all charges in case bearing No. 70097 by the learned Magistrate. However, in the connected case bearing No. 70096, the Petitioner was convicted by the learned Magistrate of Hingurakgoda. Thereafter, the Petitioner appealed to the High Court of Polonnaruwa against the conviction in the case bearing No. 70096, where the learned High Court judge had acquitted him from all the charges. To establish the above, the Petitioner has marked and annexed the relevant records as **P6(a)** and **P6(b)**, and the judgment in case bearing number 70097 as **P7** to the Petition.

Thereafter, the Petitioner made an appeal through the Senior Deputy Inspector General of Police of the Western Province, as he was attached to the Biyagama Police Station at the time of his interdiction in 2002, seeking reinstatement to his service.

Accordingly, the Petitioner was reinstated by the letter marked as **P18** dated 02.07.2018. In addition to the reinstatement by the said letter, the Petitioner was attached to Seeduwa Police Station, which comes within the Police Division of Negombo.

However, after a few months, the Senior Superintendent of the Kelaniya Division requested the Director, Personnel for Human Resource Management, by letter marked as **P21(a)** and dated 09.08.2018, to ascertain whether the Petitioner's service had been terminated with effect from 19.02.2002 or whether he had only been interdicted from 15.03.2002.

Thereafter, by letter **P22(a)**, the Petitioner wrote and informed that he had only been interdicted and that his service had never been terminated.

Preliminary investigation

However, on a perusal of the record, I found that a preliminary investigation had been conducted with regard to the commission of the offences, since it was alleged to have been committed by a police officer within the Polonnaruwa Division. The said preliminary investigation had been conducted on the orders of the Senior Deputy Inspector General of Police (North-Central), Mr. Ravi Wijegunawardene, by his letter dated 12.07.2015, which is marked as **P15** annexed to the Petition.

The said letter was directed to the Deputy Inspector General of the Polonnaruwa Division. Thereafter, the Senior Superintendent of the Polonnaruwa Division, having caused a preliminary investigation, reported to the Senior DIG of Anuradhapura (North-Central Province) by the letter dated 18.11.2015 and marked as **X** annexed to the Petition that the allegations against the Petitioner were well-founded as there is sufficient evidence against him and accordingly, recommended to have a charge sheet served on him in a disciplinary inquiry.

Disciplinary inquiry

Consequently, the Petitioner had been charge-sheeted by the Senior Deputy Inspector General of Police of the Western Province by the letter dated 02.08.2016, which is marked as **P14**. The said order is challenged by the Petitioner on the basis that it is *ultra vires*, which I will deal with now.

The said inquiry had been initiated by **P14** issued by the Senior Deputy Inspector General of Police (Western Province), and at the inquiry ordered by the Senior DIG by his order contained in the letter dated 02.08.2016 (**P14**), the said inquiry was conducted by a Superintendent of Police, and several witnesses have given evidence; on their evidence, the panel of inquiry found that the Petitioner is guilty of the misconduct of his service, and therefore, recommended to take disciplinary actions against him.

***Vires* of the disciplinary inquiry**

Upon a perusal of the said charge sheet I found that the letter of appointment of the panel of inquiry is dated 08.02.2016 (P14), issued by Mr. Pujith Jayasundara, who was then the Senior Deputy Inspector General of Police of the Western Province within whose division the Petitioner had been

working at the time of the interdiction in 2002. Since the appointment is challenged on the basis of *ultra vires*, I shall now proceed to consider the relevant Gazette Notification under which the said panel of inquiry was appointed by the Senior DIG.

The said panel of inquiry had been appointed by the said letter **P14** in accordance with the Gazette Notification by which the disciplinary control applicable to Sub-Inspectors is published in the Gazette No. 1965/37 dated 06.05.2016, which is marked and annexed to the Petition as **P12(b)**.

According to the second row of the table at page 2A of the Gazette, disciplinary control with regard to a person below the rank of Chief Inspector can only be initiated or directed by the Inspector General of Police or the Senior Deputy Inspector General of Police of the Province to which he is attached. Therefore, Mr. Pujith Jayasundera, who at that time was the Senior Deputy Inspector General of Police of Western Province, ordered the said disciplinary inquiry. Therefore, it is my view that the said order dated 23.09.2019 which has not been marked by the Petitioner but is available in the file and identified as “**B**” is *intra vires*.

In addition to the above, the counsel for the Petitioner by way of her oral submissions and written submissions, has challenged the propriety of the inquiry conducted against him. The initial preliminary investigation, as stated above, had been conducted by an Assistant Superintendent of Police attached to the Polonnaruwa Division on the orders of the Senior Deputy Inspector General of Police of the North-Central Province, within whose range the alleged offence by a police officer had been committed. However, such an officer is not empowered to charge-sheet a Sub-Inspector who is not attached to a Police Station of his range, and his authority is limited to conducting a preliminary investigation because the commission of the offence was alleged to have been

committed by a police officer in whose range it is said to have been committed. In any case, it is only a fact-finding mission.

Therefore, based on the findings of the said preliminary investigation and the recommendation thereof, the Petitioner had been charged-sheeted on the orders of the Senior DIG of Police of the Western Province within whose range the Petitioner had been serving at the time of when the alleged offences had been committed and been interdicted.

At the inquiry on the said charge sheet, several witnesses have given evidence. The witnesses have identified the Petitioner as the person who went to the place where the offence of robbery of two vehicles had taken place, in police uniform with a pistol in his hand, and threatened the inmates of the two houses. Thereafter, although they made complaints, the Petitioner was never arrested. When the Petitioner came to know of the news published in newspapers, he surrendered himself through a lawyer to the Hingurakgoda Police Station. Upon his surrender, he was arrested and produced before the Magistrate, and the Magistrate ordered that he be remanded; thereafter, he was released on bail.

Acquittal not a bar to disciplinary inquiry

However, the two cases that had been instituted against him by the Police ended with the acquittal of the accused. Nevertheless, it is my view that this does not prevent, as held by the AAT, the departmental head or the disciplinary authority from taking disciplinary action against the officer concerned, since he is attached to a very respected service, in order to ascertain whether he has in fact compromised the dignity of his employment (post). In this case, as the facts transpired from

the evidence and the evidence adduced before the inquiring officer from the witnesses, it is established that the Petitioner was present in the place of the commission of the robbery in police uniform. He was later apprehended as the person in the police uniform with a firearm in possession and had to face trial, from which he was subsequently acquitted.

Having considered all of the above, initially the Acting Inspector General of Police, by his order dated **P31(b)** annexed to the Petition, recommended the termination of the Petitioner's service. Thereafter, on appeal to the Police Commission, the same order was confirmed. However, upon consideration of the appeal made by the Petitioner, the AAT, on sympathetic grounds, decided by its order to allow the Petitioner to retire with effect from the date of that order dated 06.04.2023, which is marked as **D** annexed to the Petition.

Decision of the AAT

It must also be observed that the Honourable Members of the AAT considered the entirety of the evidence given by several witnesses as per order marked and annexed to the Petition as **D**; the following witnesses were called;

- i. Witness No. 5 - Delanka Pedige Stephen, at whose residence the incident had taken place, and who identified the Petitioner as a person who was present.
- ii. Witness No. 7 - the son of Witness No. 5, D.P Sisira Chandana who had also identified the Petitioner.
- iii. Witness No. 9 – Thilakaratne, who has given evidence with regards to the instructions obtained by the Chief Inspector of Police, Kamal Karunadasa.

- iv. Witness No. 11 – Police Inspector, H.C.B. Welagedara, who arrested the suspect on surrender.
- v. Witness No. 13 - Sub-Inspector of Police, Ajith Senanayake who was in charge of the Crime Branch and who was in charge of the robbery.
- vi. Witness No. 12 – Chief Inspector of Police, N.B.R. Jayantha Dharmakeerthi, who confirmed that after the robbery the number plate has been changed.
- vii. Witness No. 10 – Chief Inspector of Police, P.R. Manawadu, who had also given evidence with regard to the duties performed when overseeing the robbery case.
- viii. Witness No. 14 - Superintendent of Police, Pandula Weerasinghe, who conducted the preliminary investigation.

The above witnesses were called by the Prosecution Officer to give evidence against the Petitioner before the Panel of Inquiry, who arrived at their determination upon such material placed before them.

Based on the evidence adduced against the Petitioner, the Panel of Inquiry found that the Petitioner is guilty of the charges levelled against him. The said finding was subsequently affirmed by the National Police Commission. Upon the Petitioner preferring an appeal to the AAT, the Honourable Members of the AAT decided to set aside the punishment imposed on the Petitioner on sympathetic grounds. Instead of terminating his services, the Petitioner was permitted to retire.

It was further observed by the AAT that, in a disciplinary inquiry conducted against the Petitioner, the standard of proof required is not that which is applicable in a criminal trial before a Magistrate's Court. Such proceedings are determined on the basis of the balance of probabilities, and the duty

of the panel of Inquirers is to determine whether it is highly probable that the Petitioner committed the offence alleged.

According to the AAT, the evidence led before the Panel of Inquiry satisfied this standard. I do not see any error in that conclusion. Accordingly, it is my view that, since the Petitioner had already reached the age of retirement, he was allowed to retire with effect from 23.02.2019, and I see no reason to interfere with that determination.

In the circumstances of this case, it is my view that, since there is strong evidence against the Petitioner regarding the commission of the offence, even though he was acquitted in the two court cases on various technical grounds, it is well established that he was present when the offence was committed. Therefore, the Petitioner has compromised his position as a police officer, which amounts to ‘discreditable conduct’ falling within Appendix B (“the Disciplinary Code”) of the Ceylon Police Departmental Orders 2012.

Conclusion

In those circumstances, I am compelled to dismiss this Application, and accordingly, dismiss this Application without costs.

JUDGE OF THE COURT OF APPEAL