

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

In the matter of an application under
and in terms of Articles 17 & 126 of
the Constitution of the Republic.

N.H.Palitha Nandasiri,
Rathumalpitiya, Harangalagama,
Nalapitiya.

Petitioner

SC FR (Application) No.12/2012

1. N. A. T. Jayasinghe, Assistant Superintendent, Special Investigation Unit, Police Head Quarters Colombo 01.
2. Vidyajothi Dr. Dayasiri Fernando (Chairman)
3. Mr.Palitha Kumarasinghe P.C. (Member)
4. Mrs. Sirimavo A. Wijeratne (Member)
5. Mr. S. C. Mannapperuma (Member)
6. Mr. Ananda Seneviratne (Member)
7. Mr. N. H. Pathirana (Member)
8. Mr.S. Thillanadarajah (Member)

9. Mr. M. D. W. Ariyawansa
(Member)
10. Mr.A. Mohamed Nahiya
(Member)
The 2nd to 10th Respondents of
The Public Service Commission
177, Nawala Road,
Narahenpita.
11. Inspector General of Police, Sri
Lanka Police Head Quarters,
Colombo 01.
12. R. A. Karunasoma, Inquiring
Officer, Disciplinary Inquiry,
176A, Kadawathgama,
Hulangama, Matale.
13. Hon. Attorney General,
Attorney-General's
Department, Colombo 12.

Respondents

BEFORE: B. P. Aluwihare, PC, J
Priyantha Jayawardena, PC, J &
Upaly Abeytrathne, J.

COUNSEL: J.C.Weliamuna with Pulasthi Hewamanne for the Petitioner.
Rajiv Goonatillake, SSC, for the Respondents.

ARGUED ON: 07.03.2017

DECIDED ON: 04.08.2017

ALUWIHARE, PC, J:

In this application the Petitioner complains that the holding of a disciplinary inquiry against him and the subsequent decision to demote the Petitioner from the rank of Sergeant to the rank of Police constable by the Inspector General of Police (the 11th Respondent) is irrational and arbitrary and had resulted in the infringement of his fundamental rights.

The court granted leave to proceed for the alleged violations under Articles 12 (1) and 14 (1) (g) of the Constitution, against the 1st, 11th and 12th Respondents.

The grievances complained of appear to be twofold:-

- (1) The disciplinary inquiry was conducted contrary to Police Departmental orders.
And
- (ii) The demotion of the Petitioner was without sufficient cause and is excessive and contrary to principles of fairness and proportionality.

It is further alleged that the demotion meted out to the Petitioner was due to one Ranjith Abeysinghe prevailing upon the police and influencing the decision making process, with regard to the punishment meted out to the Petitioner.

Facts:

On the 7th of November, 2009, the Petitioner who was attached to the Traffic Branch of the Hatton Police has been on duty accompanied by Constable Wickramasinghe. Petitioner had stopped a vehicle due to the erratic manner in which it was being driven. When he approached the vehicle, he had observed that both the driver and the passengers in the vehicle were under a state of

intoxication. The driver had identified himself as Ranjith Abeysinghe and the Petitioner says the driver did not possess a valid driving license.

Having brought the vehicle concerned and the driver and the other occupants to the Police Station, when the Petitioner took steps to subject the driver Ranjith Abeysinghe to a Breathalyzer test, he had not cooperated. As a result, the Petitioner states that he had had to produce him before the medical officer Dickoya Base Hospital, who had given a report to the effect that Abeysinghe's breath was smelling of alcohol.

Having returned to the Police Station, the petitioner had got another officer to record a statement from Abeysinghe and he had been released on (police) bail with instructions to appear before the Hon. Magistrate of Hatton on 10th November, 2009. On the said date Ranjith Abeysinghe had pleaded guilty to both counts; driving after consuming liquor and driving without a valid driving license and a fine of Rs. 7,500/- had been imposed on him.

The Petitioner goes on to say that on the day of the detection referred to above, Ranjith Abeysinghe was released from Police Station within about three and half hours, after attending to the formalities in connection with the detection. The Petitioner had added that while Abeysinghe was at the Police Station several acquaintances of his had come to the police station and the two passengers had wanted the petitioner, via their mobile phones, to speak to prominent politicians, and senior police officers, but the Petitioner state that he did not accede to their requests. Further the Petitioner had wanted them to use their phones outside the area where he was attending to the duties.

About a month after the incident, somewhere in December, 2009 both the Petitioner and Constable Wickremasinghe had had to make statements to the

Police Special Investigation Unit (SIU) over a complaint made by Abeysinghe against the Petitioner.

Subsequent to the recording of the statements, a charge sheet containing 10 charges had been served on the Petitioner which was followed by an inquiry presided over by the 12th Respondent who acted as the sole inquiring officer.

Petitioner asserts that the inquiring officer (12th Respondent) was accompanied by the complainant Ranjith Abeysinghe every time he came to the inquiry as well as, when he left it.

The inquiry, the Petitioner states, had been concluded in seven days and he had been found guilty of 9 charges leveled against him and the 11th Respondent had demoted him from the rank of Sergeant to Constable as a punishment.

As referred to earlier, the Petitioner had alleged that, on one hand the disciplinary inquiry was held in a manner to please Ranjith Abeysinghe due to his connections to senior officers of the Police and politicians and further alleges that the disciplinary inquiry was held contrary to the Police Departmental Order A7 (Annex 1).

With regard to the first aspect of the complaint of the Petitioner, it would be pertinent to consider the position taken up by Ranjith Abeysinghe at the inquiry. In his statement (to the S.P. Ganeshanadan) he had said that he holds the post of General Manager (Sales) at C.I.C Agro Industries and had admitted that he was at the wheel of the vehicle, in question. He had also admitted that he was driving the vehicle after consuming liquor and that he was not in possession of a driving license at the time. He also had stated that he got various individuals, including Senior Police Officers, Secretaries to various Ministries and Judicial Officers to

speak to the Police to resolve this issue without proceeding with the matter any further. Abeysinghe says the Petitioner did not heed to any of them, but informed him that he would be prosecuted.

Although the conduct of Abeysinghe is not in issue in these proceedings, it must be noted that Abeysinghe's conduct cannot be condoned and certainly unbecoming of one purportedly holding such a position in a prestigious organisation like C.I.C. Abeysinghe had a moral obligation to assist the Petitioner in the conduct of his investigation when he was found driving a vehicle without his license and having consumed alcohol to the detriment of the other road users. Not only had he committed a serious misdeed by attempting to interfere with the course of justice, but had also refused to take the Breathalyzer test which all law abiding citizens are required to undertake when requested by the law enforcement.

The Petitioner alleges that Abeysinghe was motivated by his refusal to drop the prosecution, without causing an embarrassment. He alleges further that the decision to demote him was also due to Ranjith Abeysinghe's influence.

At the inquiry, Abeysinghe and some others who gave evidence had referred to the foul language the Petitioner is alleged to have used in addressing Abeysinghe. The words are too offensive to be quoted in a judgment.

Abeysinghe had a duty to assist a police officer in the discharge of the duties in view of the fact that not only were the charges serious, he had also admitted them and pleaded guilty in court. Instead, he not only refused to take the Breathalyzer test, but attempted to prevail upon the Petitioner not to perform his duty. Further, he had aggravated the matter of getting others who were in authority

and who he thought could influence the Petitioner in the performance of his duties, to speak to him. Abeysinghe in his statement to the Inquiry Officer (R1) had said even after he came to Colombo he phoned the Petitioner and asked whether the case could be dropped.

Given the nature of the human mind, it is quite possible that the conduct of Abeysinghe and his acquaintances would have irked the Petitioner.

The Petitioner being a police officer, however, is required to act without getting ruffled even in the face of such reactions by the public and is expected to perform his duties in a dignified manner and cannot under any circumstances afford to use disparaging language. It had been pointed out by the 11th Respondent that the Petitioner had been previously found guilty of such misconduct and had been dealt with disciplinary (R4). Perusal of R4, however, reveals it had been an incident subsequent to the one referred to in these proceedings. Thus, it appears that there had been no similar complaints against the Petitioner up to the date of the impugned incident which was the 7th November, 2009.

The Petitioner in this application had sought, among other reliefs, to have, the charge sheet and the findings of the disciplinary held against him declared null and void on the basis that the inquiry had been conducted contrary to the Police Departmental Order A7 (P15b)

The Petitioner had subjected himself to the jurisdiction of the inquiry and if he was of the opinion that the constitution of the inquiry was not in conformity with the applicable rules, it was up to him to raise the issue as a preliminary matter.

In Rathnayake vs. Attorney General 1997 2 SLR pg. 98 Chief Justice G.P.S. De Silva held that every wrongful act is not sufficient grounds to complaint of an

infringement of fundamental rights. The Petitioner must establish unequal or discriminatory treatment.

It was also the contention of the learned counsel for the Petitioner that the Disciplinary Order, by which the Petitioner was demoted to the rank of constable, was excessive under the circumstances of the case and contrary to the principles of fairness and proportionality.

It was further submitted that the Deputy Inspector General of Nuwara Eliya, upon receiving the disciplinary findings against the Petitioner, recommended that one increment of the Petitioner's salary be deferred. The Respondents have not denied this assertion, although there is no document before us, to that effect.

The 11th Respondent in his Disciplinary order (P13) had taken into account the importance of maintaining discipline within the Police Department and that the manner in which the Petitioner has conducted himself is not a conduct that is expected of, by the public. The 11th Respondent, however, does not appear to have taken into account the mitigatory factors in favour of the Petitioner referred to above, which the 11th Respondent ought to have considered prior to deciding on the punishment that was to be meted out to the Petitioner. In that context, I am of the view the Petitioner had been denied the protection of the law envisaged in article 12 (1) of the Constitution.

Accordingly, I hold that the Petitioners' fundamental right enshrined in article 12 (1) of the Constitution has been violated by the 11th Respondent.

Accordingly the Disciplinary Order P13 is quashed and this court directs the Inspector General of Police to impose a punishment that is commensurate with the disciplinary breaches, the Petitioner had been found guilty of after considering the aggravating factors as well as mitigatory factors favourable to the Petitioner.

In all circumstances of the case I order no costs

JUDGE OF THE SUPREME COURT

JUSTICE PRIYANTHA JAYAWARDENA PC
I agree

JUDGE OF THE SUPREME COURT

JUSTICE UPALY ABEYRATHNE
I agree

JUDGE OF THE SUPREME COURT