

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

In the matter of an application under  
Article 126 of the Constitution

**S.C. (F/R) No. 458/2007**

C.A. Premashantha,  
“Sirisara”,  
Punchi Palama,  
Nattandiya.

**Petitioner**

Vs.

1. Neville Piyadigama, Chairman
2. Nihal Jayamanne, Member
3. R. Sivaraman, Member
4. Ven. Elle Gunawansa Thero, Member
5. M.M.M. Mowjood, Member
6. Chandradasa Nanayakkara, Member
7. Charmaine Madurusinghe, Member

All of the National Police Commission,  
Rotunda Gardens, Colombo 3.

8. Victor Perera,  
Inspector General of Police,  
Police Headquarters,  
Colombo 1.
9. Justice Ameer Ismail, Chairman
10. Justice P. Edussuriya, Member
11. Indra De Silva, Member  
All of the Commission to Investigate Allegations of  
Bribery and Corruption,  
No. 36, Malalasekara Mawatha, Colombo 7.
12. Piyasena Ranasinghe,  
Director General,  
Commission to Investigate Allegations of Bribery and  
Corruption,  
No. 36, Malalasekera Mawatha, Colombo 7.
12. Hon. Attorney General,  
Attorney General's Department, Colombo12.

**Respondents**

**BEFORE**

**: Ms. S. TILAKAWARDANE.J  
MARSOOF.J &  
RATNAYAKE.J**

COUNSEL : J.C. Weliamuna with Pasindu Silva for the Petitioner.  
K.A.P. Ranasinghe, S.S.C., for the 1<sup>st</sup> to 8<sup>th</sup> and 13<sup>th</sup> Respondents.  
Saliya Peiris for the 10<sup>th</sup> and 11<sup>th</sup> Respondents.

ARGUED ON : 05.10.2009

DECIDED ON : 06.05.2010

**Ms. S. TILAKAWARDANE.J**

The petitioner has been granted leave to proceed on 19.2.2008 on an alleged violation of Article 12(1) of the Constitution. The petitioner was appointed to the police force originally on 20.01.1985. At the time of his appointment, he was admittedly informed that it was a transferable post.

The petitioner claimed, that whilst he was functioning as the Officer-in-Charge of the Assets Investigation Division of the Commission to Investigate Allegations of Bribery and Corruption (hereinafter referred to as the Bribery Commission) he was transferred to the Ampara Division and demoted in rank, by document dated 15.11.2007 (marked P4).

Though the petitioner adverts to the fact that he was an Assistant Superintendent of Police (hereinafter referred to as ASP) at the time of his transfer on 15.11.2007, it was conceded during arguments, that he had signed his letters dated 27.11.2007 (marked P7) and 27.11.2007 (marked

P8) as a Chief Inspector of Police. Documents reveal that the petitioner had in fact been promoted to the rank of Assistant Superintendent of Police by letter dated 26.12.2007 though with effect from 29.03.2007. Therefore at the relevant time of his transfer the petitioner had not been informed of his promotion to the rank of ASP. The said promotion is a subsequent event with no relevance or bearing on the incident, except to support the contention of Counsel for the 10<sup>th</sup> and 11<sup>th</sup> respondents, that there was no malice or bias against the petitioner as in the same year, he had admittedly received his promotions referred to above without any hindrance by the respondents.

The petitioner claims that at the time of his transfer, he was in charge of the overall administration and supervision of the Investigation Division and that his duties included investigations into the assets of senior public officers. The petitioner contends, albeit belatedly, that his transfer from the Bribery Commission to an unspecified post in the Ampara Division had been made with the collateral purpose of halting his investigations into highly sensitive cases involving senior Police Officers and with a view to preventing the said cases being properly investigated.

The documents filed by the petitioner disclose that shortly after the aforesaid transfer, he sent a letter dated 20.11.2007 (marked P5) through the Chairman of the Bribery Commission. This letter does not make any prompt or contemporaneous allegation of any unreasonableness in the transfer, but merely seeks a deferment of the transfer for a period of 2 months. Indeed, two days later by his letter dated 22.11.2007 (marked P6), the Chairman of the Bribery Commission referred

only to the adverse effect of any sudden transfer on the work of the division and recommended the appeal for deferment.

Subsequently, by his letter to the Secretary of the Police Commission signed on 27.11.2007 (marked as P8), the petitioner again sets out substantively the same matters that he had urged previously in P5. This letter P8 contains the first reference to any allegation by the petitioner that his transfer 'may' have taken place due to an undue influence. The petitioner has based his assumption of undue influence on the fact that he was in charge of several ongoing investigations involving high ranking government officials and that his was the first instance where such a transfer had been made without the consent of the Bribery Commission. The petitioner claims also that the petitioner and his family have been subject to social disrepute and ridicule because of the sudden transfer for which reasons have not been given. On all the aforementioned grounds, the petitioner requested that his transfer be cancelled by the Police Commission.

The letter P8 contradicts the position taken by the petitioner in a separate letter signed on the same date 27.11.2007 (marked as P9), wherein he seeks to have his transfer deferred by 2 months – no request is made for the transfer to be cancelled in its entirety. Accordingly, the Senior Deputy Inspector General of Police (Range III) STF had recommended the deferment of the petitioner's transfer by two months, while stating that no extensions should be given after that date.

Counsel for the petitioner argued that in terms of Section 16 (3) of Act No.19 of 1994 under which the Bribery Commission was established, police officers who are attached to the Bribery

Commission are appointed as authorized officers and function under a delegated authority to investigate complaints under the direction of the Commission. Counsel for the petitioner submit that in terms of this Section, such authorized officers, who also continue as police officers, would function under the overall authority of the Bribery Commission and would no longer be subject to the control of the Police Commission. Therefore, he contended that the petitioner, who is an authorized officer of the Bribery Commission, could not be transferred, unless such transfer was directed or requested by the Chairman of the Bribery Commission.

This argument presupposes that in order for a valid transfer to be made, a request or direction to this effect must first be submitted, by the Bribery Commission to the Inspector General of Police and/or the National Police Commission (established in terms of Article 155(a) of the 17<sup>th</sup> Amendment to the Constitution). This is not tenable under the Law, as in terms of Article 155(g) of the Constitution, the appointments, promotions, transfers and all other matters of disciplinary dismissal except of the Inspector General of Police are vested in the National Police Commission which is only required to consult the Inspector General of Police.

No doubt, the Bribery Commission, in terms of Act No. 19 of 1994, is expected to act in an independent manner without any undue influence from any organ of the state, in the conduct of investigations into allegations of bribery and corruption. However the argument that the Bribery Commission possesses powers over and above the National Police Commission or the Inspector General of Police with respect to the transfer of police officers would directly contradict the express provision of Article 155(g) of the Constitution referred to above.

When considering the contention that the petitioner's transfer was based on undue influence, with a view to prevent the proper investigation of cases involving high ranking public officers, it is important to consider the response of the Chairman, Bribery Commission to the petitioner's transfer and also the limited objections raised by the 10<sup>th</sup> and 11<sup>th</sup> respondents who were members of the Bribery Commission.

By his letter dated 22.11.2007 (marked P6) the Chairman, Bribery Commission does not question the propriety of the transfer but merely requests that it be deferred in order to counter any adverse effect on the work of that particular division.

By their objections dated 25.06.2008 and 16.06.2008, the 10<sup>th</sup> and 11<sup>th</sup> respondents have indeed categorically denied any adverse effects the transfer may have on the independence of the Bribery Commission. According to their submission, the transfer would also not affect the quality of investigations carried out by the Bribery Commission as there are other investigating officers attached to the Commission who are fully capable of attending to the work done by the petitioner.

The Court understands the necessity to scrutinize the appointments of officers who are transferred to the Bribery Commission in order to ensure that the caliber of such officers is not adverse to the particular nature of the work carried out by the Bribery Commission. However, the Court finds no basis to support the averments of the petitioner that his transfer was due to an undue influence linked with his ongoing investigations. It is probably in this context that the

petitioner had in P7 dated 27.11.2007 contradicted his error in his application dated 27.11.2007 and merely sought to have his transfer deferred.

It is also relevant in this case to consider the letter dated 27.11.2007 (marked P9) sent by the then Director General of the Bribery Commission to the Secretary to the National Police Commission with a copy to the Inspector General of Police. A copy of this letter appears to have been handed over to the petitioner as well. It is significant that despite the Chairman, Bribery Commission having acceded to the transfer and merely sought deferment of the same on 22.11.2007 (Vide, P6), the Director General in P9 dated 27.11.2002 seeks the immediate cancellation of the transfer. The letter P9 coincides with the petitioner's letter P8 seeking cancellation of the transfer. Unlike the petitioner's letter P5 which was in terms of the regular procedure forwarded through the Chairman of the Bribery Commission, the letter P9 appears to have been written directly to the Police Commission, bypassing the Chairman, who is the administrative Head of the Bribery Commission.

The argument that once a police officer is transferred to the Bribery Commission, the Inspector General of Police and the National Police Commission cease to have powers of transfer, is inimical to the interest of the police officer as well as being untenable in terms of Article 155 (a) and (g) of the Constitution. In the circumstances, the post of the police officer continues with his transfer. Given the fact that there is no evidence to substantiate a claim of undue influence or bias linked to the transfer and the fact that the petitioner himself has only in his correspondence finally sought



to defer his transfer, this Court finds no merit in the claim that the petitioner’s fundamental rights have been violated by the impugned transfer. Accordingly, the application is dismissed. No costs.

**JUDGE OF THE SUPREME COURT**

**MARSOOF.J**

I agree.

**JUDGE OF THE SUPREME COURT**

**RATNAYAKE.J**

I agree.

**JUDGE OF THE SUPREME COURT**