

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

In the matter of an Application under and in terms of Article 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka in respect of the violations of Article 12(1) and 14(1)(g) of the Constitution

CASE NO. SCFR 18/2020

1. Dola Mullage Gunarathna,
No.24, 4' Cross Road,
Walpola, Matara

2. Mallika Arachchige Lakshman
No. 2/1, Police Officers Quarters,
Jayathilaka Place,
Maligawatta, Colombo 10.

PETITIONERS

VS.

1. K. W. E. Karalliyadda,
Chairman,
National Police Commission

1 a. Hon. Justice Jagath Balapatabendi
Chairman,

Public Service Commission

2. Savithree D. Wijesekera

Member.

National Police Commission

2a. Indrani Dugathadasa

Member, Public Service Commission

3. Y.L.M. Zawahir

Member, National Police Commission

3a. V. Shivagnanasothy

Member, Public Service Commission

4. Tilak Collure

Member, National Police Commission

4a. T.R.C. Ruberu

Member, Public Service Commission

5. Gamini Navarathne,

Member National Police Commission

5a. Ahamod Lebbe Mohamed Saleem,
Member, Public Service Commission

6. Ashoka Wijethilaka
Member, National Police Commission

6a. LeelasenaLiyanagama
Member, Public Service Commission

7. J. Jeyakumar
Member, National Police Commission

7a. Dian Gomes
Member, Public Service Commission

7b. Dilith Jayaweera
Member, Public Service Commission

7c. W.H. Piyadasa
Member, Public Service Commission

8. Nishantha A. Weerasinghe

Secretary, National Police Commission

All of at Office of the National Police
Commission,
Block No.09-BMICH Premises
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8a. M.A.B.D. Senarath

Secretary, Public Service Commission

All of 1a, 2a, 3a, 4a, 5a, 6a, 7a, 7b, 7c and 8a at
office of the Public Service Commission,
No. 1200/9, Rajamalwatte Road, Battaramulla

9. C.D. Wickramarathne

Inspector General of Police
Police Head Quarters,
Colombo 01

9A. C.D. Wickramarathne

Former Acting Inspector General of Police
Police Head Quarters,
Colombo 01

10. Hon. Attorney General

Attorney Generals Department
Colombo 12.

11. M.L.D.W.K. Jayasekara
Inspector of Police,
Crime Division,
Torrington Square,
Colombo 07

RESPONDENTS

BEFORE : **PRIYANTHA JAYAWARDENA, PC, J**

P. PADMAN SURASENA, J AND

S. THURAIRAJA, PC, J.

COUNSEL : Mr. Chamith Senanayake and Mr. Ruvendra Weerasinghe Instructed
by Mr. Jagath Thalgaswattage for the Petitioners.

V. Hettige SDSG for the 1st – 10th Respondents

Ian Fernando with Sumudu Rathnayake and Chavindra Perera
instructed by Derek Fernando Associates for the 11th Respondent

WRITTEN SUBMISSIONS : Petitioners on 28th June 2021

Respondents 5th October 2021

11th Respondent on 20th July 2021

ARGUED ON: 15th November 2021.

DECIDED ON: 7th September 2022.

S. Thurairaja, PC, J

The Petitioners of this instant case filed Petition dated 29/01/2021 alleging that the 11th Respondent was promoted to the rank of an Inspector of Police contrary to the guidelines and alleged a violation of the fundamental rights of the Petitioners. On 26/03/2021 this Court granted Leave to Proceed on the alleged infringement of Article 12 (1) and 14(1) (g) of the Constitution.

Dola Mullage Gunarathna (Hereinafter referred to as the 1st Petitioner) joined the Sri Lanka Police Service as a Police Constable under the Regular Officer cadre on 20/10/1985. He was promoted to Police Sergeant on 12/12/1993. He was subsequently promoted as a Sub-Inspector (SI) on 01/01/2006 and thereafter by order of seniority and merit was promoted to Inspector of Police (IP) with effect from 31/05/2016. The 1st Petitioner is currently attached to the Police Station of Matara.

Mallika Arachchige Lakshman (Hereinafter referred to as the 2nd Petitioner) joined the Sri Lanka Police as a Police Constable under the Regular Officer cadre on 26/03/1986 and was promoted to Police Sergeant on 01/12/1993. Subsequently he was promoted as a Sub Inspector (SI) on 01/01/2006 and thereafter by order of seniority and merit was promoted as an Inspector of Police (IP) with effect from 31/05/2016. The 2nd Petitioner is currently attached to the Senior Deputy Inspector General's (Administration) Office.

The 1st – 8th Respondents are the Chairman, members, and Secretary of the National Police Commission (NPC) established in terms of the Constitution of Sri Lanka, which is empowered *inter alia* to effect/approve promotions to the Police Officers. The 9th Respondent is the Inspector General of Police (IGP) while the 10th Respondent is the Hon. Attorney General; made party to the application as a matter of the Constitution. The 11th Respondent is an Inspector of Police.

The Petitioners stated that the 11th Respondent was promoted to the rank of IP on 04/12/2019 with effect from 01/01/2019 and the promotion of the 11th Respondent as an IP was backdated to 08/02/2010 by IGP's communique dated 18/12/2019 bearing No 699 of the RTM marked as P2. The Petitioners stated that P2 is done without proper evaluation or following the guidelines laid down in the letter dated 22/01/2018 marked P9. Further, they stated that the backdating of this promotion has been done wrongfully and in an ad hoc manner.

The Petitioners states that they became aware of RTM No 699 marked P2 in the second week of January 2020 reasoning the fact that the individual promotions are given less attention in periodic meetings and in practice the RTMs are not issued to Officers in Charge of District, Stations, Headquarters and Inspectors; examples marked R9 (1) – R9 (4), P3A, P3B and P5.

The Petitioners stated that the 11th Respondent is lower in seniority and has less experience in the police department compared to the Petitioners. The Petitioners filed the instant application challenging the above promotion of the 11th Respondent amounted to a violation of the fundamental rights of the Petitioners guaranteed under Article 12 (1) and 14(1) (g) of the Constitution. Hence, the Petitioners prayed for an order to quash the said decision of backdating the promotion.

The Facts

In 2016, by IGP's communique bearing no. RTM 769 dated 20/09/2016 marked P3A, applications were called for promotions to the rank of IP from eligible SIs including the Petitioners. Subsequently upon an interview process, 539 SIs were promoted including the Petitioners to the rank of IP with effect from 31/05/2016. The 11th Respondent was not eligible to apply for the promotion of IP since he has not completed the mandatory service period of 10 years. RTM 112 (CRTM 251) dated 04/12/2019 marked P5 supports the fact that 474 SIs who had not been granted promotions for a considerable period of time were promoted to the rank of IP purely

based on service periods which took effect from 01/01/2019 and the 11th Respondent was also promoted under this scheme.

The Petitioners provided that on 20/01/2020, in response to an application made under Right to Information Act, the Petitioners received the report of the recommendations made by the then Acting IGP (9A Respondent) to the National Police Commission dated 01/10/2019 marked P8 recommending not to backdate the promotion of the 11th Respondent and furthermore recommended to quash such order. The 6th Respondent too had recommended not to backdate the promotion of 11th Respondent in the same manner.

Subsequently the 11th Respondent was promoted as an SI in 2007 and this promotion was backdated to 22/12/2001 pursuant to CRTM 1582 dated 26/07/2019 marked P6. The Petitioner states that the promotion of the 11th Respondent to the rank of SI under "special" scheme effected by P6 also is done without proper evaluation or following the guidelines laid down in the letter dated 22/01/2018 marked P9.

The Petitioners further stated that the 11th Respondent cannot backdate his promotion subsequent to the terms of the letter issued by the NPC dated 31/05/2019 marked P4 and P4A which provides six conditions to approve a promotion under '**time based promotion scheme**' and one such condition is that "*no officer shall be entitled to backdate his/her promotion granted under this time based promotion scheme.*" The Petitioners stated, claiming eligibility to backdate the promotion of SI of the 11th Respondent to 22/12/2001 on an alleged 'Special' basis cannot be granted under any time based promotion scheme.

A number of SIs who were affected by the promotions of the 11th Respondent has also filed a fundamental rights application bearing No. SC/FR 333/2019. It was further submitted to this Court in the Petition that the Petitioners preferred appeals to the NPC and also made complaints to the Human Rights Commission in Sri Lanka

(HRCSL) on 16/01/2020. The Petitioners stated in their Petition that to date, no response has been received in respect of the appeals made to the NPC and the HRCSL.

The Petitioners stated in their written submissions that they appealed to the IGP and the NPC to rectify these anomalies. They state that the IGP properly evaluated the seniority, merits and services of the Petitioners and the 11th Respondent. Thereafter, the IGP arrived at a determination to make recommendations to the NPC to backdate the IP promotions of the Petitioners to be effective from 08/02/2010 marked P10. However, to date, the recommendations of the IGP have not been implemented and the Petitioners alleged that, the failure of the Respondents to implement the said recommendation of the regular and properly evaluated promotion is equivalent to denying their legitimate expectation in respect of their career progression.

In the aforesaid circumstances, the Petitioners stated that the 11th Respondent gained an unfair advantage by the promotion backdated to 08/02/2010 that took effect from 01/01/2019. The Petitioners further state that the 11th Respondent is able to claim seniority over the Petitioners in the IP rank if the promotion becomes valid. Subsequent to filling this application, the 11th Respondent was also promoted to the rank of Chief Inspector (CI) with effect from 08/02/2020 marked P11 as a result of the promotions to the rank of IP and SI being backdated. Therefore, the Petitioners state that this will entitle the 11th Respondent to claim priority in promotions to the next ranks and the Petitioners will be placed lower in seniority as their promotion to the rank of IP was effected from 31/05/2016.

The Petitioners prayed the Court to direct any order or judgment on the recruitment and promotions of Police Officers In view of the 20th Amendment to the Constitution and in terms of the Police Ordinance read with the Constitutional provisions in relation to the NPC and now the Public Service Commission (PSC) that made 1a, 2a, 3a, 4a, 5a, 6a, 7a, 7b, 7c and 8a Respondents as parties to this application respectively.

This Court granted leave to proceed on the alleged infringement of Article 12 (1) and 14 (1) g of the Constitution and made an order suspending RTM 699 dated 18/12/2019 marked 'P2' from taking effect till the final determination was in order.

Objections and written submissions of the Respondents

The 11th Respondent filed his preliminary objection in relation to the petition on 09/03/2021. Written Submissions on behalf of the 1a, 2a, 3a, 4a, 5a, 6a, 7a, 7b, 7c, 9 and 10th Respondents was filed. The Respondents established their position based on two factors; the Petition is time barred and the Promotion of the 11th Respondent has not violated any fundamental rights of the Petitioners in terms of Article 12(1) and 14(1) (g) of the constitution.

In order to establish the fact that the Petition is time barred, the 11th Respondent and 1-10th Respondents stated that, pursuant to Article 126(2) of the Constitution, the fundamental rights application should have been filed by the Petitioners within the stipulated time period of one month.

The 11th Respondent stated that the 2nd Petitioner is a co-worker who works with him in the same office of S/DIG Administration since 2016 and it is unbelievable that the two Petitioners only became aware of the decision of the promotion of the 11th Respondent or the RTM No 699 marked P2 around the second week of January. The 11th Respondent further contends that the Petitioners are holding back the exact date they became aware of the P2 document is to deceitfully accommodate their Petition within the required legal time frame.

Prior to the aforesaid RTM No 699 marked P2, the Acting Inspector General of Police sought the approval of the commission to promote the 11th Respondent to the rank of IP with the recommendation for the promotion to take effect from 08/02/2010 marked R1. The commission (1st to 8th Respondents) considered the contents of R1 and

approved the promotion to the rank of IP on the letter dated 05/08/2019 marked R2. The letter marked R2 received at the Police Head Quarters on 06/08/2019.

In relation to the aforementioned circumstance, the 11th Respondent stated that the Petitioners had an ample time of five months to commence a proceeding under the same course of action whereas the Petitioners had failed to do so, thus the Petitioners has deliberately avoided disclosing the acknowledged R2 in their Petition.

Moreover, the 11th Respondent states that the P2 document is a RTM (Routine Telephone Message) used for general purposes of communication, common to all officials and offices. In the abbreviation RTM, the word "Routine" indicates that such communications are done in routine basis and all such documents are accessible to all the police officers since they are generally used for administrative purposes. He further submits that the common circulation of RTMs is such that all ranks at the receiving end becomes aware of the contents particularly when it relates to a promotion or a matter of common interest of Police officers.

Secondly, the 11th Respondent states that the fundamental rights of the Petitioners in terms of Article 12(1) and 14(1) (g) of the constitution were not violated given the circumstances of the case.

The 11th Respondent stated that he was recommended for a special promotion to the Rank of SI by the Staff DIG in the year 2001 and that whilst this special promotion was pending, in 2007 he was promoted to the rank of SI under the Merit and Seniority Scheme 2007 marked P10. After this promotion was granted, the 11th Respondent stated that he made an appeal to the Senior DIG Western Province and FFHQ to backdate his promotion. Consequent to the appeal, the Senior DIG Western Province and FFHQ has recommended to backdate his promotion to the rank of SI marked R5 dated 05/07/2011 based on the special promotion scheme.

In pursuing this special recommendation for special promotion, the 11th Respondent stated that he made an appeal to the 9A Respondent to backdate his promotion in the rank of SI and to promote him from the post of SI to IP on a basis of timely promotion from the date of issuance of the promotion orders. The 9A Respondent has made his observations in favour of the 11th Respondent by the letter dated 17/07/2019 marked R3. In an attempt to rectify the position marked at P8, the report of the recommendations made by the 9A Respondent to the National Police Commission dated 01/10/2019, the 9A Respondent submitted a letter dated 07/12/2019 marked R6 seeking further instructions to restore the backdating of the promotion of the 11th Respondent to the rank of IP. The 11th Respondent contested that, in response to P8, NPC referred to the 9A Respondent to act according to the contents of R2 dated 05/08/2019. Hence, NPC approved the claim of restoration to the rank of IP by the letter marked R7 dated 13/12/2019 and he was granted the entitlement for the promotion via RTM No: 699 dated 18/12/2019.

The 11th Respondent stated that the decision made by the Commission cannot be alleged as arbitrary or ad hoc since all the seven members of the Commission are personally involved in every decision made by the Commission.

The 11th Respondent stated that the documents marked P2 and P6 by the NPC follows the due process laid down in the guidelines marked P9 dated 22/01/2018. He further submits that the documents marked P4 and P4A dated 31/05/2019 have no relevancy to the backdating of his promotion since the matter is dealt with separately outside the instructions in P4 and P4A. However, the 11th Respondents also admits that he was not eligible to apply for the promotions called for the rank of IP in the year 2016 marked P3A since he had not completed the mandatory period of 10 years of service.

Pursuant to RTM No: 252 marked R11 dated 08/02/2010, the 11th Respondent argued that the 1st and 2nd Petitioners' promotion as an IP cannot be backdated to

08/02/2010 because both the Petitioners may not have completed the required period of eight years as an SI from the date of dating. Thus, they may lack nearly four years to be eligible for the promotion of IP whereas the 11th Respondent have completed the required period by 08/02/2010. Therefore the 11th Respondent contests that both the Petitioners cannot be treated equally in terms of Article 12(1) and 14(1) (g).x

Furthermore, the 11th Respondent stated in the objections that career progression in the police force entirely depends on performance, knowledge, discipline, initiative and the commitment of every individual officer rather than seniority in service or age alone.

Time Bar objection

Article 17 and Article 126(2) of the constitution requires a fundamental rights application to be filled within one month of the alleged violation and the time limit set out in Article 126(2) is mandatory; **Edirisuriya v Navaratnam (1985 1 SLR 100 at p.105 – 106)**. This court quoted in the case of **Demuni Sriyani De Soyza and others v Dharmasena Dissanayake, Public Service Commission and others SC/FR 206/2008 (S.C.M – 9th December 2016)**, that:

“Where the time period of one month to be computed not from the date of occurrence of the alleged infringement but from the day the Petitioner becomes aware of the alleged infringement – in the decision cited by De Alwis J, namely, SIRIWARDENE V RODRIGO, Ranasinghe J, as he then was held [at p.387] “Where however, a Petitioner establishes that he became aware of such infringement, or the imminent infringement, not on the very day the act complained of was so committed, but only subsequently on a later date, then, in such a case, the said petition of one month will be computed only from the date on which such petitioner did in fact become aware of such infringement and was in a position to take effective steps to come before this court.

This principle has been reiterated time and again. It should be added here that, if the facts and circumstances of an application make it clear that, a Petitioner, by the standards of a reasonable man, should have become aware of the alleged infringement by a particular date, the time limit of one month will commence from the date on which he should have become aware of the alleged infringement”.

In the instant case, I find it pertinent to determine the date on which the Petitioners had knowledge of the alleged infringement. The Respondents stated in their objection that the approval letter backdating the promotion of the 11th Respondent received to the Police Headquarters on 06/08/2019 marked R2 and specified further that the Petitioners had knowledge of the promotion letter. When I perused the document marked R2, it was apparent that P2 was a directive order sent by the Acting IGP as then to the NPC approving the backdating of the promotions of the 11th Respondent. Thus, it makes it clear that the Petitioners may not have access to those letters and only the relevant authorities would be privy to its contents.

Further, the Petitioners stated in their Petition that they became aware of the RTM No 699 dated 18/12/2019, marked P2 around the second week of January. The Petitioners should have invoked the jurisdiction of this court within one month from the RTM No 699 dated 18/12/2019, by which the backdating of the promotion of the 11th Respondent was communicated. In this regard, I find it relevant to point out that the Petitioners ought to have had knowledge of the circulation of RTM orders since such documents are general communications between all officials and officers. Hence, by the standards of a reasonable man, the Petitioners should have become aware of the alleged infringement by a particular date.

In **Illangaratne v Kandy Municipal Council (1995) BALJ Vol.VI Part-1 p.10**, Kulatunga J held that:

"... it would not suffice for the Petitioner to merely assert that he personally had no knowledge of the discriminatory act, if on an objective assessment of the evidence he ought to have had such knowledge."

An exception to this rule, however, is found in the Human Rights Commission of Sri Lanka, Act No 21 of 1996. This Act empowers the Human Rights Commission of Sri Lanka to entertain complaints in respect of violations of fundamental rights guaranteed by the Constitution.

Section 13(1) of the Act reads as follows:

"Where a complaint is made by an aggrieved party in terms of section 14 to the Commission, within one month of the alleged infringement or imminent infringement of a fundamental right by executive or administrative action, the period within which the inquiry into such complaint is pending before the commission shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court by such person in terms of Article 126(2) of the Constitution."

In the light of this section, the Petitioners can avoid the time bar, if the application to the Human Rights Commission was made within one month of the alleged infringement. By virtue of the aforesaid provision time would not run during the pendency of proceedings before the Commission. This view was fortified in the case of **Romesh Cooray vs. Jayalath, Sub-Inspector Of Police And Others, (2008) 2 SLR 43**

Accordingly, the Petitioners have lodged a complaint to HRCSL as evidenced by the document marked P7C. Pursuant to P13 the complaints made to HRCSL have been acknowledged and HRCSL has requested the Petitioners to refer the complaint to the NPC to seek relief. However, the Petitioners have filed their petition at the Supreme Courts two days before the response received from the HRCSL.

The dates that are material to ascertain the time bar objection are follows; date of the RTM No 699 marked P2 is 18/12/2019, the date of filing the complaint before the HRCSL by the 1st Petitioner is 16/01/2020 and the date of acknowledgement by the HRCSL is 31/01/2020 and the date of fundamental rights Application to the Supreme Court is 29/01/2020. Thus, it is evident that the Petitioners have filed the complaint before the HRCSL within 30 days from the date of release of the RTM No 699 which is exactly two days to one month from the date of filing the action before the HRCSL.

The premise that the complaint was filed on the 16/01/2020, which is a date that falls within the second week of January, stipulates that the Petitioners should have become aware of the alleged infringement on that particular date. Hence, the time freezes pursuant to provision 13(1) of the Human Rights Commission Act No 21 of 1996. Therefore, I'm of the view that the Petitioners have filed the fundamental rights application before this Court within the required time frame in terms of Article 126(2) and I overrule the preliminary objection raised by the Respondents.

Backdating the Promotion of the 11th Respondent

In the objections filed before this court, the position of the 11th Respondent is that on 17/07/2019 marked R3, the 9A Respondent has recommended to backdate the promotion of the 11th Respondent to the rank of SI to 21/12/2001 and the Petitioners' contention is that on 01/10/2019, the 9A Respondent has strongly recommended not to backdate the 11th Respondent's SI promotion pursuant to the elucidations provided in P8.

On perusing the documents before me, I find it relevant to discuss the contents of R3 in relation to P8. The 9A Respondent specified in R3 that the special promotion of the 11th Respondent recommended by the Staff DIG in the year 2001 marked D4 was not approved by the then IGP Mr. Lucky Kodithuwakku due to his demise. Further, in 2011, the Senior DIG Western Province and FFHQ, Mr. Ashoka Wijetilleke,

recommended a special promotion in this respect which was also not approved by the former IGP Mr. Mahinda Balasuriya as he resigned following the death of a person during a protest at the Katunayake Free Trade Zone. Therefore further action was not taken on approving the special promotion of the 11th Respondent in the year 2011.

In consideration of all the above reasons, the 9A Respondent has backdated the promotion of the 11th Respondent to the rank of SI taking effect from 22/12/2001. Also, it is established in the enumerated facts of this case that the NPC has approved the claim of restoration of the 9A Respondent marked R7 rectifying the position stated in P8. I further validate the fact that, the NPC is the proper authority to rectify the position of the 11th Respondent as it stood before Article 55(4) of the 17th Amendment to the Constitution. The case of **Abeywickrama v Pathirana (1986) 1 Sri LR 120** stated in its judgement as following;

"Article 55(4) empowers the Cabinet of Ministers to make rules for all matters relating to public officers, without impinging upon the overriding powers of pleasure recognized under Article 55(1). Matters relating to public officers comprehends all matters relating to employment, which are incidental to employment and form part of the terms and conditions of such employment, such as provisions as to salary, increments, leave, gratuity, pension, and of superannuity, promotion and every termination of employment and removal of service."

Further, the Sri Lanka Police Orders A5 part IV of the Special Promotion of the Police Department provided in the document marked R15 defines that;

"any police officer who deserves to be promoted on the basis of special skills such as heroism, special status, honour to the country and special reputation that brings him more fame in the police service, then he should be promoted to the rank of service or skill appropriate to the matter, at the discretion of the Inspector General"

As per the 19th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka, Article 155G (1) (a) provides;

“The appointment, promotion, transfer, disciplinary control and dismissal of police officers other than the Inspector General of Police, shall be vested in the commission. The commission shall exercise its powers of promotion, transfer, disciplinary control and dismissal in consultation with the Inspector General of Police.”

In consideration of the documents presented by both the counsels in this regard, it is clear that the 11th Respondent has obtained the approval of backdating the promotion of the rank of SI through a special promotion at the discretion of the IGP (9A Respondent) and the commission has exercised its powers in consultation with the IGP pursuant to Article 155G (1) (a). The decision of the commission was based on the commendations given to the 11th Respondent and the special promotion was granted by the Inspector General pursuant to the Sri Lanka Police Orders A5 part IV.

Furthermore, I find that the backdating of the promotion of the 11th Respondent to the rank of SI does not fall within the ambit of P4 and P4A. Subsequently to address the contention made by the Petitioners in relation to CRTM 1582 marked P6, paragraph 07 of R3 is corresponding to the principle 02(I) of P9 which provides that the 11th Respondent has earned two special increments in special IGP compliments in five occasions during his 27 years of service as a police officer. P6 abides by Paragraphs 02 (III) and 02 (IV) of P9 as already established in the aforementioned analysis.

Further, the principle stated in paragraph 02 (II) of P9 is provided in section 30 and 31 of the procedural rules promulgated by the Public Service Commission. It states as follows;

'the date of the letter of appointment or the date on which the officer assumes duties, whichever comes later, shall be the effective date of the appointment. No appointment, for whatever reason, shall be ante-dated.'

However, section 188 of chapter XVII provides that,

'Notwithstanding the provision contain in Section 31 , in the case of the grade to grade promotion in service is made belatedly owing to some unavoidable circumstances and where it appears to the Appointing Authority that the Public Officer is in no way responsible for such delay and on perusal of eligibility it is proved that the officer has qualified himself for promotion in all respects, the Appointing Authority shall promote the officer with effect from the due date despite the fact that the officer may no longer in service or is retired or dead.'

On perusing the facts stated by the 9A Respondent in the contents of R3, it is evident that the 11th Respondent's special promotion was belated due to plausible reasons and therefore the NPC had to promote the 11th Respondent to the rank of SI with effect from the due date pursuant to the above-mentioned section 188. Thus, in totality I agree that the special promotion of the 11th Respondent is being granted following the clear and definite criteria pursuant to 02 (V) of P9. Hence, backdating of the SI promotion of the 11th Respondent on an alleged special scheme is valid.

I would now turn to examine the backdating of the promotion of the 11th Respondent to the rank of IP. The 11th Respondent's stance is that, his promotion to the post of SI was granted on 22/12/2001 and therefore his promotion to the post of IP was backdated to 08/02/2010 granted under time-based promotion scheme. In these circumstances, I find it pertinent to discuss the main issue, when backdating the promotion of the 11th Respondent to the rank of IP, the service performed by the 11th Respondent as an SI is appreciated twice under two promotion schemes; the special promotion scheme and the Merit and seniority scheme.

The question that arises before this court is that whether a police officer can benefit under two promotion schemes for the same position in the first place. In the case of **The Public Services United Nurses Union v Montague Jayawickrama, Minister of Public Administration and others (1988) 1 Sri LR 229**, the decision of Cabinet of Ministers to award two increments to the nurses who were members of the rival trade union was challenged by the Petitioner under Article 12 (1) of the constitution. Wanasundara J was of the view that, an increment in the public service has to be earned by a public officer by satisfactory work and conduct during a specified period of time and any stoppage, postponement or deprivation of an increment has to be a penalty consequent to the disciplinary action taken against the public officer; and held awarding a particular public officer with two increments, places the other officers at a disadvantage and goes against the legitimate expectation of the public servants whose expectations are based on the principles of the Administrative Regulations.

The Supreme Court of India in the case of **Govind Dattatray Kelkar v Chief Controller of Imports [1967] 2 S.C.R. 29** held that;

"There can be cases where the differences between the two groups of recruits may not be sufficient to give any preferential treatment to one against the other in the matter of promotions, and in that event a Court may hold that there is no reasonable nexus between the differences and the recruitment."

On the review of the above, it is evident that even awarding satisfactory work with two increments to a specific individual goes against the legitimate expectation of another. Similarly, the 11th Respondent satisfying the requirements under two different promotion schemes cannot be extended to gain the advantages of a particular promotion twice when the majority of the candidates received such benefits only once in a lifetime. In **Surendran v University Grants Commission and Another [1993] 1 SLR 344** it was observed that when two sources are clubbed together, the courts have

considered such a source to be as one source of medium leading to the ultimate objective. Herein the instant case, the purpose of both the schemes under which the 11th Respondent was promoted leads to one nature of work and therefore the differences between the two sources cannot be justified by the facts and circumstances of this case.

The case of **Weligodapola v Secretary, Minister of Women Affairs and teaching hospital and others 1989 2 SLR 63**, held that

"The law recognizes that the principles of equality does not mean that every law must have universal application' for all persons who are not, by nature, attainment or circumstances in the same position. What is required is that persons who by nature, attainment or circumstances are similar are treated alike. If there is a classification which deals alike with those who are similarly situated, someone who is different cannot be allowed to complain that he has not been treated equally; for being different, he must necessarily expect to be treated differently.

The Petitioners right to equality must be protected in all stages of service and it is noteworthy that several channels can serve as a medium for a promotion to a position and any candidate can be eligible for a promotion under two different schemes but cannot compete through two mediums, to be promoted twice for the same position. Allowing such an opportunity to one individual may create disparities among the others' individual rights.

The case of **Ganga Ram v Union of India [1970] 1 S.C.C. 377** emphasized that;

"The equality of opportunity takes within its fold all stages of service from initial appointment to its termination including promotion but it does not prohibit the prescription of reasonable rules for selection and promotion, applicable to all members of a classified group."

Our courts in **Perera and Another v Cyril Ranathunga, Secretary Defence and others (1993) 1 SLR 39** cited the case of **Jaisinghani v Union of India 1967 AIR (SC) 427** in which it was held;

“the concept of equality in the matter of promotions can be predict only when the promotes are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources, and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of valid classification.”

The court upheld the scheme for recruitment from two sources and stated that the objective of such classification is to fill the posts with officers with first rate experience and those who possess a high degree of ability to serve in the Income Tax Service. Herein the instant case before our court, I emphasize the fact that even such officers referred in the case of **Jaisinghani v Union of India** would not be given the opportunity to be promoted twice from two different sources to the same position although both the sources have a reasonable connection to the nature of the office.

The right to equality of opportunity in matters of public employment expressly provided by Article 16(1) of the Indian Constitution is implicit in Article 12 of the Sri Lankan Constitution that is in par with the concept of the rule of law. Hence, on the survey of all the decisions of the above judgments, I’m of the opinion that the Petitioners can have a legitimate grievance in that aspect.

Determination

The objection of the Respondents providing the fact that that the Petition is time barred is overruled. However, the special promotion is cumbersome because such sudden backdating of positions allows persons who do not have adequate training and expertise to hold posts whereby the police services will suffer. Therefore, the procedure of the NPC is not up to satisfaction and is detrimental to the police service.

If inexperienced officers are promoted on technical grounds, the expectation of the public is not fulfilled. Therefore, under this situation the backdating of the 11th Respondent of the promotion to the rank of IP in 01/01/2019 to 08/02/2010 is invalid.

Considering all, I hold that the Fundamental Rights of the Petitioners enshrined under Article 12(1) and Article 14(1)(g) have been violated. Accordingly, I quash the communication dated 18/12/2019 bearing RTM No.699 marked as P2.

Application Allowed.

JUDGE OF THE SUPREME COURT

PRIYANTHA JAYAWARDENA, PC, J

I agree.

JUDGE OF THE SUPREME COURT

P. PADMAN SURASENA, J

I agree.

JUDGE OF THE SUPREME COURT