

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

In the matter of an Application for Special Leave to  
Appeal to the Supreme Court in terms of Article  
128 of the Constitution.

Mr. A.M. Ratnayake  
G 4/2, Railway Bungalow,  
Bungalow Road,  
Ratmanala  
Presently at  
No 101/2, adjoining to the temple  
Panadura

**PETITIONER-PETITIONER**

SC SPL LA No. 173/2011

CA Writ No. 277/2011

**VS**

1. Administrative Appeals Tribunal,  
No.5, Dudly Senanayake Mawatha,  
Colombo 08.

2. Justice N.E. Dissanayake,  
Chairman,  
Administrative Appeals Tribunal,  
No.5, Dudly Senanayake Mawatha,  
Colombo 08.

3. Justice Andrew Somawansa,  
Member,  
Administrative Appeals Tribunal,  
No.5, Dudly Senanayake Mawatha,  
Colombo 08.

4. Mr. E. T. A. Balasingham  
Member,  
Administrative Appeals Tribunal,  
No.5, Dudly Senanayake Mawatha,  
Colombo 08.

5. Vidyajothi Dr. Dayasiri Fernando  
Chairman,  
Public Service Commission,  
No. 177, Nawala Road,  
Narahenpita.

6. Mr. Palitha M. Kumarasinghe P.C.  
Member,  
Public Service Commission,  
No. 177, Nawala Road,  
Narahenpita.

7. Mrs. Sirimjavo A. Wijeratna  
Member,  
Public Service Commission,  
No. 177, Nawala Road,  
Narahenpita.

8. Mr. S.C. Mannapperuma,  
Member,  
Public Service Commission,  
No. 177, Nawala Road,  
Narahenpita

9. Mr. Ananda Seneviratne  
Member,  
Public Service Commission,  
No. 177, Nawala Road,  
Narahenpita

10. Mr. N.H. Pathirana,  
Member,  
Public Service Commission,  
No. 177, Nawala Road,  
Narahenpita

11. Mr. S. Thillandarajah,  
Member,  
Public Service Commission,  
No. 177, Nawala Road,  
Narahenpita

12. Mr. M.D.W. Ariyawansa,  
Member,  
Public Service Commission,  
No. 177, Nawala Road,  
Narahenpita

13. Mr. A. Mohamed Nahiya  
Member,  
Public Service Commission,  
No. 177, Nawala Road,  
Narahenpita

14. Secretary,  
Public Service Commission,  
11th Floor, West Tower,  
World Trade Centre,  
Colombo 01.

15. General Manager Railways,  
Railways Headquarters,  
Colombo 10.

16. Inquiring Officer  
Public Service Commission,  
Administrative Appeals Tribunal  
No. 5, Dudley Senanayake Mawatha  
Colombo 08.

17. Secretary,  
Ministry of Transport (Railways)  
D.R. Wijayawardena Mawatha,  
Maradana,  
Colombo 08.

18. Hon. Attorney General  
Attorney – General’s Department,  
Colombo 12.

#### **RESPONDENT-RESPONDENT**

19. Mr. Edmond Jayasooriya,  
Member,  
Administrative Appeals Tribunal  
No. 5, Dudley Senanayake Mawatha  
Colombo 08.

#### **ADDED RESPONDENT-RESPONDENT**

#### **BEFORE:**

Hon. Marsoof, PC, J,  
Hon. Ratnayake, and  
Hon. Imam J

<b>COUNSEL:</b>	S.N. Vijithsingh with B.N. Thamboo for the Petitioner
	Suren Gnanaraj, SC for the 5 <sup>th</sup> – 15 <sup>th</sup> , 17 <sup>th</sup> and 18 <sup>th</sup> Respondents
<b>ARGUED ON:</b>	20.06.2012
<b>WRITTEN SUBMISSIONS ON:</b>	18.08.2012
<b>DECIDED ON:</b>	22.02.2013

**SALEEM MARSOOF J:**

When this application for special leave to appeal filed in this Court in terms of the Article 128 of the Constitution against the decision of the Court of Appeal dated 2<sup>nd</sup> August 2011 was taken up for support on 22<sup>nd</sup> June 2012, the case had to be re-fixed for support on an application by the learned Counsel for the Petitioner-Petitioner (hereinafter referred to as the Petitioner). However, learned State Counsel who appeared for the 5<sup>th</sup> – 15<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> Respondents indicated to Court and learned Counsel for the Petitioner that he would take up a preliminary objection to the maintainability of this application for special leave to appeal on the ground that it is precluded by the provisions of Article 61A of the Constitution, and both learned Counsel moved for time to file written submissions on that question. After the filing of the written submissions, the matter was taken up for further oral submissions before this Bench. It has to be stated at the outset that the preliminary objection taken up by learned State Counsel was confined to Article 61A of the Constitution and was not based on the ouster clause contained in Section 8 (2) of the Administrative Appeals Tribunal Act No.4 of 2002.

This application for special leave to appeal has been filed against the decision of the Court of Appeal dated 2<sup>nd</sup> August 2011 by which that court refused to issue notice in an application for writs of *certiorari* and *mandamus* filed by the Petitioner in that court, with respect to an order of the Administrative Appeals Tribunal (sometimes hereafter referred to as AAT) dated 22<sup>nd</sup> February 20011 (P8). In paragraph 14 of the application filed by him in the Court of Appeal as well as in paragraph 21(i) of the application filed in this Court seeking special leave to appeal, the Petitioner has challenged the validity of the said order of AAT.

Article 61A of the Constitution, which was introduced by the Seventeenth Amendment to the Constitution of Sri Lanka, provides as follows:-

*Subject to the provisions of paragraphs (I), (2), (3), (4) and (5) of Article 126, no court or tribunal shall have power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by the Commission, a Committee, or*

*any public officer, in pursuance of any power or duty conferred or imposed on such Commission, or delegated to a Committee or public officer, under this Chapter or under any other law.*

On the face of it, the above quoted provision of the Constitution, which constitutes a Constitutional ouster of jurisdiction, does not apply to the impugned decision of AAT, it being specifically confined in its application to the orders or decisions of the Public Services Commission, a Committee or any public officer made in pursuance of any power or duty conferred or imposed on such Commission, or delegated to such Committee or public officer under the relevant Chapter of the Constitution. There is no corresponding provision in the Constitution, which seeks to oust the jurisdiction of the Court of Appeal under Article 140 of the Constitution in regard to a decision of AAT. The Administrative Appeals Tribunal (AAT) was established in terms of Article 59 (1) of the Constitution, and its powers and procedures have been further elaborated in the Administrative Appeals Tribunal Act No.4 of 2002, which contained in Section 8 (2) thereof an ouster clause which is quoted below:-

*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.*

Learned State Counsel has contended strenuously that since AAT has been constituted as contemplated by Article 59 (1) of the Constitution, the Constitutional ouster of jurisdiction contained in Article 61A of the Constitution will apply to AAT as well. He has further submitted that one cannot do indirectly what he cannot do directly, and that a challenge to any order or decision of AAT would amount to indirectly putting in question an order or decision of PSC. Learned Counsel for the Petitioner has submitted equally strenuously that what was sought to be challenged in the Court of Appeal was a decision of AAT on an appeal from PSC, and therefore a decision of AAT can by no stretch of imagination be construed to be a direct or indirect challenge of a decision of the PSC. He submitted that since the *vires* of AAT has been challenged by the Petitioner both in his application to the Court of Appeal as well as to this Court, and as the preclusive clause contained in Section 8 (2) of the Administrative Appeals Tribunal Act does not amount to a constitutional ouster of jurisdiction, the Court of Appeal was possessed of jurisdiction to hear and determine the application of the Petitioner, and this Court is not bereft of jurisdiction to consider this application for special leave to appeal.

This Court is mindful of the facts and circumstances of this case as set out in the application seeking special leave to appeal. The Petitioner was served with a charge sheet on or about 15th April 2003, and after a disciplinary inquiry, was found guilty of all charges. Accordingly, the Public Service Commission (PSC) by its order dated 12<sup>th</sup> January 2007, proceeded to dismiss the Petitioner from service. Being aggrieved by the said order of the PSC, the Petitioner appealed against the said decision to AAT, which affirmed the PSC decision to terminate the services of the Petitioner, and accordingly dismissed the Petitioner's appeal on 17<sup>th</sup> March 2009. However, in view of AAT not being properly constituted at the time it made this purported order, the parties agreed in the Court of Appeal in a previous application filed by the Petitioner in that

court, to refer the matter back to AAT for its determination. Thereafter, AAT after re-hearing the Petitioner's appeal, by its order dated 22<sup>nd</sup> February 2011 (P8) found no basis to interfere with the decision of the PSC dated 12<sup>th</sup> January 2007, and accordingly dismissed the Petitioner's appeal. It is against this order of AAT that the Petitioner invoked the jurisdiction of the Court of Appeal under Article 140 of the Constitution.

We have carefully examined the submissions of learned Counsel for the Petitioner as well as the learned State Counsel, and we are of the view that in all the circumstances of this case, the Court of Appeal did possess jurisdiction to hear and determine the application filed before it. AAT is not a body exercising any power delegated to it by PSC, and is an appellate tribunal constituted in terms of Article 59 (1) of the Constitution having the power, where appropriate, to alter, vary or rescind any order or decision of the PSC. When refusing notice, the Court of Appeal has not held that it has no jurisdiction to hear and determine the matter in view of Article 61A of the Constitution, and probably had other reasons for refusing notice.

In these circumstances, the preliminary objection has to be overruled, as we are of the opinion that the application of the Petitioner seeking special leave to appeal from the impugned decision of the Court of Appeal has to be considered on its merits. In arriving at this decision this Court has not given its mind fully to the legal effect of Section 8 (2) of the Administrative Appeals Tribunal Act No. 4 of 2002, and in particular to the effect of the provisions of Section 22 of the Interpretation Ordinance No. 21 of 1901, as subsequently amended, as the preliminary objection raised by learned State Counsel was confined to Article 61A of the Constitution.

Accordingly, the preliminary objection is overruled, and the application will be fixed for support on a date convenient to Court. There shall be no order for costs in all the circumstances of this case.

**JUDGE OF THE SUPREME COURT**

**RATNAYAKE J**

**JUDGE OF THE SUPREME COURT**

**IMAM J**

**JUDGE OF THE SUPREME COURT**