

In the Administrative Appeals Tribunal

Appeal No.	: AAT/2/2019(NPC)	A.P.N.G. Gunatillake
Appeal No.	: AAT/8/2019(NPC)	A.W.M.R.S.D. Rathwatte
Appeal No.	: AAT/9/2021(NPC)	K.S.R. Weerasinghe
Appeal No.	: AAT/69/2022(NPC)	H.U. Ranjith
Appeal No.	: AAT/66/2018(PSC)	M.K.B. Herath
Appeal No.	: AAT/5/2019(PSC)	A. Hettiarachchi
Appeal No.	: AAT/17/2019(PSC)	Ms. W.A.M.J. Rajapakse
Appeal No.	: AAT/54/2019(PSC)	M.G. Punchi Banda

Appellants

Vs.

National Police Commission
Public Service Commission

Respondents

Before :	Justice K.T. Chitrasiri	(Chairman)
	J.J. Rathnasiri	(Member)
	S. Nandasekaran	(Member)

Appearance: Rienzie Arsecularatne President's Counsel for the appellant in AAT/8/2019 (NPC).
B.M. Thamboo Attorney-at-Law for the appellant in AAT/2/2019 (NPC).
R.M.S.P. Ratnayake, Ms. Mala Basnayake Deputy Directors and Ms. T.K.R.P. Jayathunga Legal Officer for the National Police Commission.
Ms. T. Revathy, Assistant Secretary for the Public Service Commission.

Argued on: 25.09.2024, 09.10.2024, 28.01.2025 & 20.02.2025

Decided on: 26.03.2025

Order

Justice K.T. Chitrasiri

Chairman AAT

The issue to be determined in all these appeals is whether or not this Tribunal possesses the jurisdiction to make an order which is to be made effective on a date prior to the establishment of this Tribunal. The appellants in these matters have taken up the position that this Tribunal has the power and authority to make orders even though those orders are to be made effective on a date prior to the establishment of this Tribunal.

In support of the argument advanced by the appellant in the appeal bearing number AAT/8/2019 (NPC), President's Counsel Rienzie Arsecularatne has taken up the position that the date on which the impugned order had been made is the date that should be considered in deciding the issue of jurisdiction and not the date on which the order is to be made operative. B.N. Thamboo Attorney-at-Law who appeared for the appellant in AAT AAT/2/2019 (NPC) and two other appellants, among the remaining appellants, who appeared in person also have made their submissions in writing.

The appellants in the remaining 04 appeals which bear the numbers AAT/66/2018(PSC), AAT/17/2019(PSC), AAT/5/2019(PSC) and AAT/54/2019(PSC) also have made comprehensive submissions on the issue.

Public Service Commission has made submissions contrary to the appellants' submissions stating that this Tribunal does not have the power to make orders if that order is to be made effective on a date before the Tribunal was established. Arguments advanced by all the parties will be discussed in detail later in this Order.

In terms of Section 4(1) of the Administrative Appeals Tribunal Act No. 4 of 2002, (hereinafter referred to as the AAT Act) any Public Officer or Police Officer who is aggrieved by an order or a decision made by the Public Service Commission (PSC) or the National Police Commission (NPC) has a right to prefer an appeal to this Tribunal within a period of 04 weeks from the date of receipt of the order or the decision against them made by the PSC or NPC. Section 4(2) of the AAT Act empowers the Tribunal to alter, vary or rescind orders of the PSC or the NPC whilst Section 7 of the Act gives the Tribunal the power to hear and finally dispose of any appeal preferred under the said Section 4. This Tribunal was established under the aforesaid AAT Act and it was certified by the Hon. Speaker on 25.03.2002. Then the question arises whether the Tribunal is empowered to make orders that are to be made effective on a date prior to the said date, (25.03.2002) even though the decision by which the appellants are aggrieved had been made after 25.03.2002.

As mentioned before Arsecularatne PC has argued that irrespective of the effective date of the order, the Tribunal has the power to inquire into an appeal, if the impugned decision by the PSC or the NPC is made on a date after 25.03.2002.

B.N. Thamboo, Attorney-at-Law in his submissions has stated that Section 4 of the AAT Act does not prevent the Tribunal making orders irrespective of the operative date. Therefore, his argument is that any public officer aggrieved by an order or decision made by the PSC or NPC is

entitled to obtain an order that is to be made effective even before the establishment of this Tribunal provided the appellant has satisfied the requirements referred to in the said Section 4 of the AAT Act.

The appellant in the appeal AAT/9/2021 (NPC) is of the view that he is entitled to have the protection guaranteed in Article 12 of the Constitution. The appellant in AAT/69/2022 (NPC) has submitted that he was prevented from obtaining the rank of the Sub Inspector even though the same promotion had been granted to two sets of officers on the similar standing on two occasions. Therefore, it is seen that both these appellants have not made submissions in relation to the issue raised on the question of jurisdiction.

I will now turn to the arguments advanced by the appellants in the appeals bearing numbers AAT/66/2018(PSC), AAT/17/2019(PSC), AAT/5/2019(PSC) and AAT/54/2019(PSC). They have taken up several arguments in support of their position and I will deal with them separately.

They are of the view that the pensioners do have the right to make an appeal in terms of Rule 239 of the Procedural Rule 1589/30 dated 20.02.2009 which were made under Articles 61(b) and 58(1) of the Constitution of the Republic of Sri Lanka. Even on the face of it, it is clear that those Rules have been made in the year 2009. Therefore, those Rules are not applicable to an issue that has arisen before the year 2009 for the reason that those Rules cannot have retrospective effect. Moreover, the issue in this matter is not with regard to the right to file an appeal by pensioners but it is on the question of the effective date of the orders. Therefore, the said argument does not apply to the issue at hand. Accordingly, their argument is misconceived as far as the issue before the Tribunal is concerned.

Their next argument is that the PSC has kept silent to raise the issue for a long period of time and it was taken up only after laps of many years. If such an argument is taken into consideration and makes an order accordingly, then the Tribunal is making orders to which the Tribunal does not possess the power to make such orders. Therefore, the delay in raising such an issue cannot be taken into consideration when it comes to the present issue on jurisdiction of the Tribunal.

Their next argument is on the basis of Article 59(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka. Relying on that Article they argue that there is a matter which requires an interpretation of the Constitution. Accordingly, they have submitted that the interpretation of the Constitution is entirely with the Supreme Court and therefore, this Tribunal cannot make an order at this stage on the issue of jurisdiction.

As mentioned before in this Order, a clear provision in law is in existence giving power to this Tribunal to make orders under the AAT Act. Relying upon the said authority granted to this Tribunal, the appellants in their appeals have prayed to have the orders by the PSC set aside. Significantly, nothing is mentioned in those appeals on the question of interpreting the Constitution. The issue at hand is to determine the date of validity of the orders made by the Tribunal. Therefore, it is illogical and wrong to move simultaneously to obtain a particular relief while taking up a position that this Tribunal has no authority to do so. Accordingly, the said argument advanced by the appellants referring to the Constitutional provisions is irrelevant to the present issue. Therefore, I am of the opinion that it is not necessary to have an interpretation of the Constitutional Provisions for this Tribunal to determine the issue at hand.

In their submissions they have referred to Article 84(3) of the Constitution as well. Article 84 is on the question of determining the constitutionality of Bills. It is completely a different situation and there is no connection what so ever to the issue to be determined in this instance. Hence, I am unable to think the reason why such an irrelevant matter is brought to the attention of the Tribunal.

Those appellants also have referred to a decision made on 05.02.2022 by this Tribunal in the appeal bearing No. AAT/11/2005. The said order had been made on 04.03.2005 and by which this Tribunal dismissed an appeal stating that the said appeal had been filed outside the period allowed to file an appeal under Section 4 of the AAT Act. Section 4 requires an appellant to file

an appeal within a period of 4 weeks from the date of the order of the PSC or NPC. The last paragraph of the order in the said appeal reads thus:

“ඒ අනුව මෙම විනිශ්චය අධිකාරය වෙත ඉදිරිපත් කරන ලද ඔබේ අභියාචනය ලැබී ඇත්තේ අදාළ පනතේ නියමිත කාලසීමාවෙන් පසුව බැවින්, මෙම අභියාචනය ගැන ක්‍රියාකිරීමට නොහැක.”

Looking at the said decision of this Tribunal, it is clear that the appellants are making submissions without even understanding the issue to be determined. Making reference to such an irrelevant decision shows that the appellants are attempting to confuse or mislead the Tribunal. Such an attempt has to be considered as an unbecoming attempt on the part of the appellants.

The appellants in those 4 appeals also have stated that there had been no such objection raised before the Parliamentary Ombudsman in the applications filed in terms of the Parliamentary Commissioner for Administration Act No. 17 of 1981 which Act supposed to be similar in nature as far as the AAT Act is concerned. However, there is no evidence forthcoming to show that an objection similar to the issue to be determined in this instance has been raised before the Parliamentary Ombudsmen for him to make a ruling thereto. Moreover, it is to be noted that the aforesaid Act No. 17 of 1981 came into force on 12.03.1981 and it was enacted soon after the original Constitution was brought into operation in the year 1978. The AAT Act No. 4 of 2002 came into existent in the year 2002 under the 17th Amendment to the Constitution which was enacted only in the year 2001. Therefore, it is clear that AAT Act was enacted, more than 20 years after the Ombudsman Act was brought into operation.

Therefore, it is not incorrect to state that there had not been a single instance similar to the issue before this Tribunal being considered under the provisions of the Parliamentary Commissioner for Administration Act. Neither the appellants have referred to any decision made by the Parliamentary Ombudsman on the issue at hand though they have advanced an argument to have a comparison with the two situations. Therefore, there is no basis at all to refer to the Parliamentary Commissioner for Administration Act No.17 of 1981 in order to determine the present issue.

Those appellants also have referred to the case of **Sudharman de Silva & Another Vs AG** [CA 57/81 - HC Colombo Case No. 583/78 decided on 04th and 7th March 1985]. It is necessary to mention that the appellants have cited an incorrect reference as SC Appeal No. 45/85 in their submissions and thereby wasted time of the Tribunal unnecessarily to search for the correct reference. However, the decision therein is to ensure the right of appeal given to a person aggrieved by a judicial order and definitely not on the question of jurisdiction of this Tribunal.

In that case it was held as follows:

“An accused person who absconds and is unrepresented at the trial and does not participate in it cannot exercise the right of appeal granted to an accused person under s. 14(b) of the Judicature Act. Rights cannot exist in a watertight compartment independently of duties which are enjoined by law.”

In that same decision Siva Selliah, J. held thus:

“In construing rights this court cannot throw into jeopardy the entire fabric and administration of law and justice, nor can it condone or encourage accused persons who choose to be fugitives from justice seeking to invoke the law only when it suits their advantage. Fundamental concepts and duties must be preserved at all costs and one such fundamental concept is that the appellant must submit to the law and the courts and not abscond from them. Rights cannot be separated from duties enjoined by the law as to do so would lead to a disruption of the Rule of Law and the Administration of justice.”

Accordingly, it is clear that the above decision is directly on the right of appeal from an original judgment. In this instant the question is not the right to appeal but it is the operative date of a decision made by this Tribunal. Therefore, the aforesaid argument by these 4 appellants is completely irrelevant. As mentioned even before, those appellants are making such submissions to confuse the mind of the Tribunal. However, it is my view that the said submissions cannot be considered to determine the issue at hand.

The PSC in their submissions has stated that it is under the 17th Amendment to the Constitution, the Parliament decided to establish the Administrative Appeals Tribunal. Having submitted so, they have stated that some of the appellants have prayed that the reliefs sought by them be made effective on a date even before the enactment of the 17th Amendment to the Constitution. Accordingly, their submission is that if the relief sought by the appellants is to have it effected on a date before the enactment of the 17th Amendment to the Constitution then the Tribunal lacks jurisdiction to make such orders. Therefore, the argument advanced by the PSC is that this Tribunal cannot make a decision as prayed for in the appeals when there is not even a Constitutional Provision to set up this Tribunal.

The PSC also has referred to an earlier decision made by this Tribunal and it is in the appeal bearing No. AAT/132/2019(PSC). Therefore, the argument of the PSC is that it is necessary to follow the opinion expressed by an earlier panel of this Tribunal.

Having dealt with the submissions and the arguments raised by the appellants and the PSC, I will now turn to consider the law and the facts connected therewith to determine the issue that is being raised before the Tribunal. The question is whether or not this Tribunal possesses the jurisdiction to make an order which is to be made effective on a date prior to the establishment of this Tribunal namely, before 25th March 2002.

As pointed out by the PSC, a different Panel of this same Tribunal has decided that the Tribunal does not possess the power to make orders that are to be made effective on a date before this tribunal was established. In the appeal bearing number AAT/132/2019(PSC), His Lordship Justice N.E. Dissanayake held thus:

“It is interesting to note that the appellant is seeking relief from this Tribunal in respect of an issue that has arisen in 1993 long before this tribunal has been established by the 17th Amendment to the Constitution passed in 2001. Therefore, in any event this Tribunal lacks jurisdiction to determine on the said issue.”

In addition to the aforesaid decision, same view has been taken by this Tribunal in the appeal bearing No. AAT/190/2019 (PSC) as well. In that decision His Lordship Justice Anil Gunaratne has held thus:

“This Tribunal was established by the Administrative Appeals Tribunal act No. 4 of 2002. The said law was certified on 25.03.2002. As such this Tribunal does not have jurisdiction to grant the relief as prayed for by the appellant in Para 34 of the Petition of Appeal, due to the fact that the relief sought refer to dates prior to establishing the Administrative Appeals Tribunal, by Act No. 4 of 2002. ”

The present Panel Members too is inclined to follow the same view that was taken up by the previous panels of this Tribunal though we are not bound to do so.

I will now turn to consider the law relevant to the issue. If the appellants’ argument is accepted then the effect of such an order will go back to a date prior to the date of the enactment of the AAT Act. Therefore, if such an order is made having accepted the argument advanced by the appellants then this Tribunal is making orders, the effect of which will be on a date prior to the establishment of this Tribunal. In other words those orders will have retrospective effect.

Article 75 of the Constitution stipulates that the Parliament shall have the power to make laws, including laws having retrospective effect. Even though such power is vested with the Parliament, it is necessary to mention so in any enactment passed by the Parliament. Therefore, my opinion is that if such power is to be vested with a Tribunal or with any other forum, such retrospective effect has to be mentioned specifically in that particular Enactment. Accordingly, if there is no provision is made in any enactment to state that it has retrospective effect then its effect would only be from the date on which the Hon. Speaker places his signature certifying that it will come into force from that date. In the AAT Act No.04 of 2002, there is no such clause to state that it will have retrospective effect.

This is a well-established principle in law and it is being supported by many legal authorities as well. Maxwell on “The Interpretation of Statutes” is one of the best authorities that are being cited in this regard.

In the 12th Edition in Maxwell’s book at page 215, reads as follows:

“Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.

(Emphasis added)

At page 217 it reads as follows:

*Finally, on this point, there is the case of Re A Solicitor’s Clerk. The clerk was convicted in 1953 on four charges of larceny but the charges did not relate to money or property of his employer or employer’s client, and so an order prohibiting solicitors from employing him could not be made under the provisions of section 16 of the Solicitors Act 1941. The Solicitors (Amendment) Act 1956, s. 11, amended section 16 so as to include convictions of larceny irrespective of ownership. The Divisional Court held that the amendment was not a true retrospective provision. “It enables an order to be made,” said Lord Goddard C.J. (at pp. 1222, 1223), “disqualifying a person from acting as a solicitor’s clerk in the future and what happened in the past is the cause or reason for the making of the order, but the order has no retrospective effect. **It would be retrospective if the Act provided that anything done before the Act came into force or before the order was made should be void or voidable or if a penalty were inflicted for having acted in this or any other capacity before This Act***

simply enables a disqualification to be imposed for the future which in no way affects anything done by the appellant in the past.”

(Emphasis added)

In the case of *Bandaranayake V Weeraratne and two others* [(1978 – 79) Sri LR 412] it was held thus:

*As a person implicate or concerned in the matter under inquiry she moved for a Writ of Prohibition on the ground that section 9 of the Special Presidential Commission of Inquiry Law does not empower the respondents to make recommendation that **the petitioner should be made subject to civic liability by reason of any act or omission or in respect of conduct during a period anterior to the said law, and the said law has not been made retrospective in its operation and hence the warrant is ultra vires the said law.***

The Special Presidential Commission Law does not contain provisions expressly stated or implying by necessary inference that it is to operate retrospectively. Nor are the surrounding circumstances sufficiently strong to rebut the presumption against retrospectively. The law is prospective only and meant to apply to future events. The Warrant empowering the Commission to inquire into a report (with recommendations) on the conduct of persons during a period prior to the date of the enactment of the Law is ultra vires the Law and a Writ of Prohibition will lie against the Commissioners.

(Emphasis added)

Also, in the case of *Liyanage v The Queen* [(1967) 1 A.C 259], the Privy Council held that retrospective laws affecting substantive rights leads to violate the principle of Rule of Law.

Accordingly, if the Statute that created the Administrative Appeals Tribunal does not grant it the power to make decisions with retrospective effect, then its decisions cannot be made effective before its establishment. At this stage, it is also necessary to mention that Sri Lankan law generally does not allow retrospective application of decisions unless there is clear legal

authority to do so. Upon considering the above authorities, it is crystal clear that this Tribunal can only act within the powers given to it by law.

As mentioned before, in the AAT Act No.04 of 2002, there is no provision or clause to state that it will have retrospective effect. Therefore, upon considering the above authorities and the wordings in the AAT Act, it is clear that the Parliament did not intend to give retrospective effect to the provisions of the AAT Act. Accordingly, this Tribunal cannot make any orders making it to have retrospective effect.

As discussed hereinbefore in this Order, it is clear that this Tribunal has no jurisdiction to make orders giving it effect on a date prior to the establishment of the Tribunal. Therefore, the Tribunal decides that any appeal in which the reliefs sought by the appellants are to have it effected on a date prior to 25th March 2002 (date the AAT Act was certified by the Hon. Speaker) cannot be entertained by this Tribunal. Accordingly, the Tribunal decides to dismiss all the appeals in which the reliefs are to be made effective on a date before establishing this Tribunal.

Appeals are dismissed.

**Justice K.T. Chitrasiri,
(Chairman)**

I agree.

**J.J. Rathnasiri,
(Member)**

I agree.

**S. Nandasekaran,
(Member)**

CS