

In the Administrative Appeals Tribunal

Appeal No: AAT/80/2024 (PSC)

M.N.W.D. de Silva

Appellant

Vs

Public Service Commission

Respondent

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

Date : **30.04.2026**

Representation of parties

Mr.M.Karaputugala Retired Government Servant appears for the appellant.

Mr.M.D.M.C.B.Dissanayake, Assistant Secretary is present representing the Public Service Commission.

Justice K T Chitrasiri Chairman – AAT

ORDER

Relief sought by the appellant is to set aside the order made pursuant to a disciplinary inquiry held against the appellant. The said disciplinary order issued against the appellant by the Commissioner General of Prisons is shown in the letter dated 06.10.2022. The said order is to defer three salary increments of the appellant.

Two charges framed against the appellant in order to issue the said disciplinary order are as follows:

- (1) ඔබට 2020.03.31 වන දින පස්වරු 7.30-8.30 අතර කාලයේදී බුස්ස බන්ධනාගාර සහකාර අධිකාරීතුමා (වැඩ ආවරණ) විසින් දුරකතනයෙන් ලබා දුන් උපදෙස් හා

නියෝග පරිදි විශේෂ සිරකරුවන් වන ම.ද.නි.ඇපිල් සිර අංක ටී 20207 ජී.ඩබ්.සමන්ත කුමාර නොහොත් වෙලේ සුදා, සිර අංක එල් 25972 මොහොමඩ් සියාම්, ම.ද.නි. සිර අංක ජේ 18604 රම්.එන්.නවුෆර් නොහොත් පොට්ටු නවුෆර් යන සිරකරුවන් තිදෙනා පො.වි.කා. බලකා නිලධාරීන්ගේ පූර්ණ සෝදිසියෙන් පසුව 2020.03.31 දින පස්වරුවේ බුස්ස බන්ධනාගාරයේ විශේෂ අංශයේ ඕ සහ එන් යන අංශවල වෙන වෙනම මැදිරිවල ඔබගේ පෞද්ගලික අධීක්ෂණය යටතේ වැසීමට ඔබට උපදෙස් ලබා දී තිබියදීත් එම සිරකරුවන් වැසීමේ කාර්ය අධීක්ෂණය නොකිරීම තුළින් ආයතන සංග්‍රහයේ XLVIII පරිච්ඡේදයේ රාජ්‍ය නිලධරයන් විසින් සිදු කළ හැකි වරදවල් සම්බන්ධව පළමුවන උපලේඛනයේ 14 වන වගන්තිය සහ බන්ධනාගාර ව්‍යවස්ථාපිත අණපනත් 155 – 11,19 සමඟ කියවන දෙපාර්තමේන්තු නිත්‍ය නියෝග 202 (iii), (iv) “ඒ” වගන්ති උල්ලංඝනය කිරීම.

- (2) ඔබට 2020.03.31 දින පස්වරු 7.30 – 8.30 අතර කාලයේදී බුස්ස බන්ධනාගාර සහකාර අධිකාරීතුමා (වැඩ ආවරණ) විසින් දුරකථනයෙන් ලබා දුන් උපදෙස් හා නියෝග පරිදි විශේෂ සිරකරුවන් වන ම.ද.නි.ඇපිල් සිර අංක ටී 20707 ජී.ඩබ්.සමන්ත කුමාර නොහොත් වෙලේ සුදා, සිර අංක එල් 25972 මොහොමඩ් සියාම්, ම.ද.නි. සිර අංක ජේ 18604 එම්.එන්.නවුෆර් නොහොත් පොට්ටු නවුෆර් යන සිරකරුවන් තිදෙනා ඔබගේ පෞද්ගලික අධීක්ෂණය යටතේ බුස්ස බන්ධනාගාරයේ විශේෂ අංශයේ ඔවුන් පෙර රඳවා සිටි අංශවලට මොනම හේතුවකටවත් ඇතුළුවීමට ඉඩ ලබා නොදී ඕ සහ එන් යන අංශවල වෙන වෙනම වැසීමට උපදෙස් ලබා දී තිබියදීත් ම.ද.නි.ඇපිල් සිර අංක ටී 20707 ජී.ඩබ්.සමන්ත කුමාර නොහොත් වෙලේ සුදා, සිර අංක එල් 25972 මොහොමඩ් සියාම් යන දෙදෙනාට ඔවුන් පෙර රඳවා සිටි විශේෂ සි අංශයට 2020.03.31 දින ප.ව. 11.03 – 11.05 අතර ආසන්න වේලාවකදී ඇතුළුවීමට ඉඩ හැරීම තුළින් ආයතන සංග්‍රහයේ XLV iii පරිච්ඡේදයේ රාජ්‍ය නිලධරයන් විසින් සිදු කළ හැකි වරදවල් සම්බන්ධ පළමුවන උපලේඛනයේ 14 වන වගන්තිය සහ බන්ධනාගාර ව්‍යවස්ථාපිත අණපනත් 155 – 11,14,19 සමඟ කියවන දෙපාර්තමේන්තු නිත්‍ය නියෝග 202 (iii), (iv) “ඒ” වගන්ති උල්ලංඝනය කිරීම.

I will now consider the evidence recorded at the formal disciplinary inquiry to ascertain whether or not the appellant could be made liable for the two charges framed. Basically, two charges levelled against the appellant are on the basis that he has failed to supervise the prisoners in accordance with the rules and regulations issued by the authorities time to time and; that he did not follow the instructions given by the Superintendent of Prisons and; that he did not supervise the prisoners accordingly.

Evidence reveal that the prisoners subjected to this incident were directly under the custody or care of the prison guard Buddhika Silva who was acting under the instructions of Jailor M.L.Gunarathne and not directly under the physical custody of the appellant. It is important to note that there is no material to ascertain whether the said Buddhika Silva was issued with a charge sheet and if so the outcome of such a disciplinary inquiry.

There is evidence to show that the prisoners who were ordered to occupy the cells “O” and “N” were not being put into those cells; instead they were hanging around outside the cells. Therefore, there is evidence forthcoming to show that the appellant had taken the prisoners out from the cells where they were occupying and had attempted to put them into the cells “O” and “N”. Also, there is evidence to show that the prisoners were objecting to go into those two cells. Therefore, it is clear that the appellant had attempted to carry out the instructions given by his supervisors to the best of his abilities but was not successful in completing the act of putting the prisoners in to the cells. It was due to the protest being made by the prisoners.

Those circumstances are established through the CCTV footages as well. This CCTV footage was made available in writing to the Tribunal by the representative of the appellant who was watched by the interpreter of the Tribunal.

Those circumstances had not been taken in to consideration when the appellant was found guilty. Therefore it is incorrect to decide that the appellant had failed to supervise the prisoners as directed by the Superintendent of Prisons.

Moreover, the evidence clearly demonstrates that the appellant had carried out the instructions given to him. He has taken the prisoners out from the cells “O” and “N” and had tried his best, to put them into the cells “O” and “N”. The failure to execute the instruction fully was basically due to resistance from to the prisoners. Those circumstances are beyond the control of the appellant. The appellant has demonstrated that he took all reasonable steps to comply with the instructions issued to him.

Therefore, there is no material to establish that the appellant has failed to carry out his duties or wilfully disregarded the instructions issued by his superiors. Accordingly, it is our view that the charges framed against the appellant have not been established on a balance of probabilities.

For the reasons set out before Tribunal decides to set aside the decision dated 20.02.2024 and the disciplinary order dated 06.10.2022 issued on him.

Accordingly, Tribunal decides to allow this appeal.

Appeal is allowed.

I agree.

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

I agree.

**J J Ratnasiri
(Member)**

**S Nandasekaran
(Member)**

MD/