

In the Administrative Appeals Tribunal

Appeal No : AAT/276/2025 (PSC)
Date : 30.06.2026

M.H.M.S.M.Herath

Appellant

Vs

Public Service Commission (PSC)

Respondent

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

Appellant is present.

Mr.P.G.Chandrasena Retired Government Servant appears for the appellant.

Ms.N.G.S.Niluka Kumari Assistant Secretary is present representing the Public Service Commission.

Heard both parties in support of their respective cases.

Relief sought by the appellant is to obtain her promotion to Grade I in the Pharmacist Service with effect from 18.02.2022. Her promotion was not granted for the reason that there are two punishments imposed on her.

The 1st punishment is found in the document dated 13.01.2019 and it is to return the money received by her as the payment for overtime she has performed. In addition to the returning of the said sum of money, she also was ordered to pay a sum of money amounting to $\frac{1}{20}$ of the said payment that she has received for overtime. In addition to the said two punishments, she was also imposed the punishment, namely a “severe warning” for obtaining money erroneously for overtime. The punishment “severe warning” is found in the letter dated 24.11.2020 (disciplinary order) and it was imposed because the appellant was found guilty for the charge of issuing incorrect drugs to a patient.

Therefore, the issue before the Tribunal is to ascertain whether or not those punishments would affect the promotions of the appellant. We note that the 1st punishment mentioned above is to recover money that had been claimed and used by the appellant for the work alleged to have performed as overtime. The said punishment had been imposed due to the appellant been found

guilty to a charge framed upon an incident occurred on 15.03.2015. This date is important when arriving at a decision in this appeal since the Public Service Commission (PSC) has relied upon the Procedural Rules issued by the PSC.

1

In terms of Rule 186 (II) of the Procedural Rules which were in place at the time the alleged offence was committed, a period of three years should be excluded from the date of the offence, namely 15.03.2015, before counting the period of satisfactory service as far as the promotions of the appellant are concerned. In this instance, when three years are excluded from 15.03.2015, the starting point to count the satisfactory period of service would be counted from the date 15.03.2018. Furthermore, in terms of the Scheme of Recruitment, it is also necessary to have obtained seven increments as well, by a prospective candidate, to be entitled for the promotion. Admittedly, the appellant has obtained seven increments by the 15th march 2025. Therefore, when counting seven years from 15.03.2018, the appellant is entitled to the promotion after the date 15th march 2025, having obtained seven increments by then.

At this stage, appellant informs the Tribunal that if the promotion is given with effect from the said date namely, 15.03.2025 she is satisfied with such an order.

However, Ms. N.G.S.Niluka Kumari on behalf of the PSC submits that since there is another punishment imposed on the appellant by the letter dated 24.11.2020, the appellant is entitled to her promotion only with effect from 02.03.2028 in terms of the said Rule 186 (II) of the Procedural Rules. Her position is that it is necessary to take into consideration the charges framed against the appellant as well when deciding the date of promotion. Charges framed in respect of the said subsequent punishment were under the 1st Schedule in Chapter XLVIII, in Volume II of the Establishments Code. Accordingly, her submission is that it is necessary to consider the provisions under which the charges were framed when the promotions are being considered.

On behalf of the appellant, it is argued that the punishment of “severe warning” imposed by the said letter dated 24.11.2020, should not be considered as a punishment in view of Section 24.2.1 in Chapter XLVIII of the Establishments Code when it comes to the promotions. Therefore, the Counsel for the appellant basically relies upon the said section 24.2.1, in the Establishment Code in support of his contention.

Section 24.2.1 in Chapter XLVIII of the Establishments Code, specifically mentioned that “severe warning” should not be considered as a punishment. It reads thus:

24.2.1 Reprimand (A warning or a severe warning is not a punishment)

We have considered the submissions made by both parties. In Section 24.2.1 in the Establishments Code, it is clearly stated that “severe warning” should not be considered as a punishment. The argument advanced by the Public Service Commission is that the punishment should be determined with having reference to the charges as well.

AAT/276/2025(PSC)

2

It is our considered view that when the promotions to public officers are being determined, disciplinary authority should consider the punishment imposed on a particular officer and not the charges leveled against him/her.

Punishments are imposed only after considering all the circumstances relevant to the issue. Therefore, the nature of the charges will go to aside when the promotions are decided. It is also necessary to note that the Public Service Commission should have looked at the Provisions in the Establishments Code before issuing Procedural Rules, basically to avoid any contradiction with the two regulations and also to clear any ambiguity. We further note that the Establishment Code was published with the authority or sanction with the Cabinet of Ministers. In the event the Procedural Rules override the provisions in the Establishment Code, then it may amount to a violation of a Cabinet Decision. Therefore, it is our view that the PSC has no authority to override the provisions of the Establishments Code when issuing Procedural Rules.

For the reasons set out before, we are not inclined to accept the argument advanced on behalf of the Public Service Commission. Therefore, we decide that the punishment of “severe warning” imposed on the appellant for the subsequent charge which is found in the letter dated 24.11.2020 should not be considered when the promotion of the appellant is being considered.

Accordingly, the Tribunal is of the view that the appellant should have been promoted as a Pharmacist Grade I with effect from 15.03.2025.

Public Service Commission is directed to implement the aforesaid order.

For the reasons set out before and subject to the conditions mentioned above, the appeal is allowed.

Appeal allowed.

I agree

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

I agree

J. J. Rathnasiri (Member)

S. Nandasekaran (Member)

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