

In the Administrative Appeals Tribunal

Appeal No : AAT/100/2020 (PSC)
Date of Receipt of Appeal : 05.10.2020
Date of Order : 14.07.2021
Date of Amended Order : 22.07.2021

Ms. D. Dias Wickramasinghe
377/2, Thalawathugoda Road
Hokandara (South)



Appellant

Vs

The Public Service Commission (PSC)
Respondent

Before : Justice N.E. Dissanayake (Chairman)
Mr. A. Gnanathan P.C. (Member)
Mr. G.P. Abeykeerthi (Member)

The appellant is present. Mr. Riad Ameen, Attorney-at-Law appears for the appellant.

Mr. Srinath Rubasinghe, Assistant Secretary appears for the Public Service Commission.

After conclusion of the oral submissions of parties in this appeal, this Tribunal had only about one week to prepare and deliver this order. In view of the time constraints that were involved in making our order, it is noted that there had been some typographical and clerical errors too that needed be corrected.

In the meanwhile the PSC had by their letter dated 16.07.2021 received on 19.07.2021 had sought some clarifications of matters of vital importance, which appear to have escaped our minds.

Taking into considerations of the aforesaid matters we are of view that the order made on 14.07.2021 has to be amended considering it to be a per-incuriam order.

AMENDED ORDER

In this appeal the exercise of discretion of the PSC in the capacity of the disciplinary authority of the appellant was in issue. This Tribunal had to first satisfy itself whether this Tribunal was vested with proper jurisdiction to hear and determine this appeal.

In recent decision of the Court of Appeal bearing CA (Writ) Application No: 263/2013, (C/A Minutes of 26.07.2019) the case of D. Lakmini Delapola Vs. Justice S.I. Imam and two others of the Administrative Appeals Tribunal delivered on 26.07.2019 where His Lordship Justice Nawaz had held that an appellate body is empowered to correct errors of law and fact and that the Administrative Appeals Tribunal enjoys the competence to vary or rescind a decision of the PSC when it is tainted with an error of law and fact.

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Therefore this Tribunal is of the view that this Tribunal is vested with the power to rule on decisions of the PSC which are tainted with an error of law and fact.

The appellant who was officiating as the Solicitor-General in the Attorney General's Department had been interdicted from service by letter dated 25.09.2019 of the Attorney General. She had been interdicted sequel to a broadcast of a telephone conversation she is alleged to have made with one Nissanka Senadhipathi on 20.09.2019 being broadcast on 'You tube' and the television media on 20.09.2019.

She continued to be under interdiction without payment of salary and allowances up to 12.08.2020.

Subsequently, the PSC had ordered one half of her salary to be paid from 12.08.2020, on the basis that the preliminary investigations that had been commenced against the appellant in respect of an alleged misconduct related to a telephone conversation had not been concluded and taking into consideration the fact that the appellant had not been paid her salary for ten months.

Even after a lapse of about period of one year after the interdiction as there had been no finding made by the preliminary investigation Committee and or a charge sheet had been issued, the appellant had instituted this appeal at this Tribunal by her appeal dated 5th of October 2020 tendered to this Tribunal. The appellant had tendered amended appeals dated 07.12.2020 and 27.04.2021.

The appellant had contended in her said amended appeal that despite the fact that P.A. Circular 30/2019 had amended section 13:2 of Chapter XLVIII of the Establishment Code in terms of the said Circular preliminary investigation has to be concluded within 02 months. However in this appeal the preliminary investigations in respect of which the appellant had been interdicted had not been concluded even after lapse of a period of more than one year up to the time of filing of this appeal.

Further the appellant had contended that in terms of Clause III of the said Circular or Section 22:1:1 of Chapter XLVIII of the Establishments Code, Volume II, the formal disciplinary inquiry has to be commenced and concluded in six (06) months.




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It had been contended by the appellant in her amended appeal that despite P.A. Circular 30/2019 dated 30.09.2019 had made it imperative to conclude the preliminary investigations within 02 months, that the appellant's statement had been recorded, after 04 months.

The appellant had contended in her amended appeal that she had in her effort to fully cooperate with the Preliminary Investigation Committee, had tendered three expert reports including an expert report issued by the Moratuwa University which she had contended had confirmed her position taken up from the inception that the alleged recording of her telephone conversation with Nissanka Senadhipathi was inauthentic, edited and distorted.

The appellant had contended that she had by several letters addressed to the PSC dated 30.09.2019, 11.05.2020, 01.07.2020 and 02.10.2020 copies of which had been produced annexed marked P8, P9, P11 and P12 along with her appeal dated 05.10.2020 had adverted to the necessity of expeditiously concluding the preliminary investigations and had referred to inordinate delay in concluding the preliminary investigation for over one year and had requested that she be reinstated in service.

Conversion of interdiction with half pay to compulsory leave with payment of salary.

While her said appeal was pending at this Tribunal the PSC had converted her interdiction into one of compulsory leave with pay by letter dated 15.10.2020. The said order had been made by the PSC sequel to an appeal made by the appellant dated 02.10.2020 requesting that the appellant be reinstated with full salary where she had adverted the attention of the PSC to the provisions of PA Circular 30/2019 dated 30.09.2019 marked P6 (C) with the original appeal. Thereafter an amended appeal dated 07.12.2020 had been tendered by the appellant to this Tribunal. The PSC had tendered their observations dated 30.11.2020. The PSC had tendered their further observations dated 20.01.2021 in response to the amended appeal dated 07.12.2020 tendered by the appellant.

Thereafter this appeal was fixed for hearing on 24.02.2021. After both the Learned Counsel who appeared for the appellant and the Assistant Secretary who represented the PSC had made their oral submissions, both parties were directed to tender their respective written submissions if they so desired.

The matter was fixed for order to be delivered on 01.04.2021.



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While this appeal had been pending the appellant had also instituted an application for Writ in the Court of Appeal bearing no:48/2021.

On the PSC bringing to the notice of this Tribunal of the fact that the appellant had instituted an application for a Writ in the Court of Appeal in respect of the very same matter, this Tribunal expressed the view that since the Court of Appeal was a superior Court that this Tribunal will not proceed to make an order and await a decision to be made by the Court of Appeal.

Thereafter Learned Counsel for the appellant moved for a postponement of this appeal as the appellant had decided to withdraw application No:48/2021 made by her to the Court of Appeal and had moved that this appeal be postponed for another date and that in the meanwhile the appellant will take action to withdraw Court of Appeal Writ No: 48/2021. Accordingly the appellant had tendered a certified copy of an order of the Court of Appeal dated 20.05.2021 allowing the appellant to withdraw CA (Writ) Application 48/2021 which had been filed of record of this Tribunal. On the appellant being placed on compulsory leave with payment of salary as circumstances have changed an amended appeal dated 27.04.2021 had been tendered by the appellant.

The appellant had contended in her amended appeal that the order of interdiction was illegal, unlawful, unreasonable, irrational and abuse of discretion and was contrary to law to the provisions of the Establishments Code and the applicable Public Administration Circulars.

The appellant had stated that for the following reasons the PSC had acted illegally, unlawfully, unreasonably, irrationally in abuse of discretion, contrary to law and contrary to the provisions of Establishments Code and or Public Administration circulars by;

- (a) Failing to pay the appellant's full salary from the date of interdiction.
- (b) Deciding to pay only ½ salary (without including the allowances due to her) with effect from 12.08.2020.
- (c) Continuing to violate the appellant's rights by failing to ensure the conclusion of the preliminary investigations within a reasonable time, and



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(d) Failing to reinstate the appellant.

The appellant had contended that the appellant had been interdicted purportedly in terms of Section 31:5:1 and 32:5:2 of Chapter XLVIII of the Establishments Code Part II.

She had contended that the said interdiction in terms of Section 31:5:1 is ex-facie illegal, unlawful and contrary to rules of natural justice.

The appellant had contended that there was no factual or legal basis whatsoever to indicate that appellant's continuance in service as the Solicitor General of the Attorney General's Department can be detrimental to the holding of a preliminary investigation by the PSC . She had stated that the preliminary investigation is not conducted by the Attorney General's Department. The appellant had contended that she does not possess any officialdom over the PSC. She had stated that she does not have any nexus either de jure or de facto with the Preliminary Investigation Committee.

Therefore she had contended that interdiction of the appellant under Section 31:5:1 with no salary from 25.09.2019 to 12.08.2020 and a purported award of half salary thereafter until 15.10.2020 is perverse, illegal, unlawful and contrary to basic tenets of public law and natural justice.

The appellant had contended that she was also interdicted in terms of Section 31:5:2 of Part II of the Establishments Code. She contends that interdiction in terms of Section 31:5:2 is also ex facie, illegal, unlawful and contrary to rules of natural justice.

In terms of Section 31:5:2 permits interdiction prior to a preliminary investigation where the "first information itself on the suspected acts of misconduct committed by the officer is sufficient to established the relevant matters."

The appellant had contended that such an interdiction can be under Section 31:5:2 of the Establishments Code, only if there is clear and compelling evidence in the nature of having committed an offence that is tantamount to the immediate framing of charges.



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The appellant states that before the decision to interdict was made on 24.09.2019, by the PSC, the appellant had by her letter dated 23.09.2019 that she was in possession of a preliminary expert report confirming that the purported recording had been edited, doctored, and the contents have been distorted. Copies of her said letters have been produced marked P5 (a) and P5(b).

The appellant had contended that in the aforesaid circumstances where there were expert reports to establish the inauthenticity of the purported recording the PSC did not have a legal or factual basis to warrant the invocation of Section 31:5:2 of the Establishments Code.

The PSC had tendered their observations dated 20.05.2021 which had been received by this Tribunal on 21.06.2021.

The PSC had tendered to this Tribunal the following three (03) observations along with documents:-

1. Observations dated 20.01.2021 along with 03 annexures
2. Written Submissions of the PSC dated 15.03.2021 along with 20 annexures
3. Observations dated 20.05.2021 along with 09 annexures.

The PSC in their observations dated 20.05.2021 which had been tendered on 21.06.2021 had in summary had stated the following facts :

1. That the appellant had been appointed Senior Additional Solicitor General by letter dated 01.05.2018 and Solicitor General by PSC letter dated 17.06.2019.
2. That as the PSC was the appellant's disciplinary authority and that the PSC had in terms of Section 13:1 of Chapter XLVIII of the Establishment's Code Volume II appointed three officers to a Preliminary Investigation Committee. The said Preliminary Investigation Committee had conducted a preliminary investigation and had submitted their report to the PSC office on 08.03.2021 (Annexure 03)

The PSC had stated further that Clause III of P.A. Circular 30/2019 applies only to a formal disciplinary inquiry and not to a preliminary investigation.



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3. Based on facts, observations and recommendations of the said preliminary investigation report the appellant had engaged in a telephone conversation on or about 20.03.2019 and had brought the post she had held into disrepute and brought disrepute to public service in general and charge sheet dated 23.03.2021 had been issued .
(Annexure – 04)
4. The appellant had replied to the said charges by letter dated 01.04.2021, a copy of her letter had been forwarded to the Secretary, Ministry of Justice calling for his observations. The decision whether to conduct a disciplinary inquiry or not will be taken upon receipt of the said observations of the Secretary, Ministry of Justice.
(Annexure 5)
5. The appellant had been provided with copies of all documents listed in the Charge Sheet dated 23.03.2021 had been issued to the appellant on 29.03.2021.
6.
 - (i) In terms of Section 31:5 of Chapter XLVIII of the Establishments Code the disciplinary authority is empowered to interdict an officer even without conducting a preliminary investigation.
 - (ii) There was no violation of rules of natural justice as the misconduct committed by her taking into consideration the nature of the duties vested in the post of Solicitor General had been observed to be established by the 1st information had been the basis on which the appellant had been interdicted.
 - (iii) Further since the appellant had declared that she had been engaged in a telephone conversation too had been reason for her being subject to interdiction in terms of Section 31:5:2 of Chapter XLVII of Volume II of the Establishments Code.
 - (iv) Taking the gravity of the charges the decision to not to pay salary or to pay half of the salary had been taken by the appellant's disciplinary authority. The PSC had stated that in terms of Section 31:10 and 31:12 of Chapter XLVIII of the Establishments Code sending an officer on compulsory leave and payment of salary and allowances is a decision that has to be made by the Administrative Authority in terms of Section 20:1 of Chapter XII of the Establishments Code.



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(v) The appellant had been informed by letter of PSC dated 19.10.2020 that the appellant's interdiction had been converted into compulsory leave from-

15.10.2020, and had intimated to her that after receipt of the preliminary investigation report that a final decision will be arrived at.

On receipt of the preliminary investigation report the PSC had decided to keep the appellant under compulsory leave until the disciplinary process is concluded. The PSC had intimated its aforesaid decision to the Secretary, Ministry of Justice by letter dated 06.04.2021. (Annexure – 08)

(i) (a) The basis on which it was decided to keep her on compulsory leave are the following facts contained in the statement made by the Attorney-General at the Preliminary Investigations dated 06.02.2020 (Annexure –(09)

- ❖ The following words that are contained in the tape recording “ I know how to make the law and break the law both”, is a very serious statement which causes damage to the office of the Solicitor General and is a serious question by which causes questions to her honesty and integrity.
- ❖ The message given to the general public by such a statement is serious and thereby the confidence of the general public is eroded and causes a direct impact on the reputation of the Attorney General's Department.
- ❖ Having made such a statement can she function in the said capacity is a question which has an effect like a thunderbolt.
- ❖ That there is an unwritten code of ethics in the Attorney General's Department.
- ❖ That officers of Attorney General's Department cannot talk to parties in a criminal case.



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- ❖ That the accused party, their relatives and friends cannot come to the Attorney General's Department.
 - ❖ The said unwritten code of ethics had been safeguarded for the last 135 years.
 - ❖ That conversing with an accused person is a violation of the unwritten code of ethics which is 135 years old.
 - ❖ Engaging in a telephone conversation with an accused person whose case was pending in courts is a serious misconduct which falls within section 31:1:10 of Chapter XLVIII of the Establishments Code.
- (b) The PSC considers the reinstatement of a Solicitor General who had been charged with such serious act of misconduct will adversely affect the conduct of a formal disciplinary inquiry in the future.
- (vi) If the appellant states that the contents of the impugned telephone conversation had been subjected to alteration or editing then the onus is on her to discharge it.
- (vii) The disciplinary proceedings of senior State Counsel Zain in comparison to the appellant's disciplinary proceedings are different to each other.

It is interesting to note that after a careful analysis of the appeal, the amended appeal tendered by the appellant and the observations tendered by the PSC it is clear that the issue that has to be decided by this Tribunal is not the question whether the appellant is guilty or not guilty of the 04 charges depicted in the charge sheet dated 23.03.2021 issued by the PSC, but whether the PSC has exercised its discretion judicially in initially interdicting her without pay, subsequently paying half pay and continuing to keep her under interdiction, and eventually to convert the interdiction into compulsory leave with payment of salary.



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By PA Circular No: 30/2019 dated 30.09.2019 Section 13:2 of Chapter XLVIII of the Establishment Code had been amended to read as that the preliminary investigation in respect of an alleged misconduct has to be concluded within a period of two months.

It is also provided that if the officer or the Committee conducting the preliminary investigations on forwarding sufficient acceptable reasons extra time may be granted. However, the preliminary investigation has to be concluded without delay.

The appellant had contended that in terms of the provisions in P.A. Circular No: 30/2019 there was a necessity to conclude the preliminary investigations within 2 months and as expeditiously as possible.

It has been contended that the appellant's statement had been recorded after about 04 months after the commencement of the preliminary investigations.

The appellant had contended that she had extended her fullest co-operation. She had stated in an effort to fully assist the Preliminary Investigations Committee to expeditiously conclude the said preliminary investigations she had tendered three expert reports to the Preliminary Investigations Committee including a report from the Moratuwa University confirming that the alleged purported recording in question was substantially edited, doctored and fundamentally distorted. The appellant had stated that the said expert reports clearly establish that the purported conversation in question which was broadcast by the said Nissanka Senadhipathi is inauthentic, edited and distorted.

Ms. W.G.D.L. Goonathilleke, Assistant Government Analyst who had made a statement to the Preliminary Investigation Committee had forwarded a report marked X1, she had stated that the impugned tape recording had been subjected to editing at 10 places. Further she had stated that it was not the original tape recording and it was not possible to scientifically compare as to find the author of the tape recording.

The appellant had contended that up to 15th March 2021, even after a lapse of one year and 04 months, the preliminary investigations had not been concluded.



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The PSC in their amended observations dated 20.05.2021 had stated that the preliminary investigation had been concluded and a charge sheet dated 23.03.2021 had been issued on the appellant.

The PSC had tendered a copy of the preliminary investigation Committee report dated 08.03.2021.

It is interesting to note that among other things in paragraph 18 of the Preliminary Investigations Report it is stated that Nissanka Senadhipathi had himself admitted in his statement to the Preliminary Investigations Committee that the purported tape recording had been subjected to editing by him. However, despite the said Nissanka Senadhipathi undertaking to produce the unedited tape. However, he had been submitted a tape recording in a A.M.R. format, despite time being granted to him he had failed to produce same to the Preliminary Investigations Committee.

It is of significance to note that out of the 10 points of observations made by the Preliminary Investigations Committee the 1st observation is that the tape recording X 1 is an edited tape recording.

Observations No: II is that the dialog as found in the tape recording cannot be perceived as to have happened in the manner it is made out to be.

Observations No: III is in view of Point II above it cannot be concluded that the appellant had committed a misconduct.

Further it is observed that X2, and X3 which are copies of the tape recording that it cannot be over ruled the fact that the tape of X2 and X3 had not been edited.

Observations NO: IV , V and VI is that it cannot be concluded that the appellant had committed acts of misconduct in respect of tape recordings X2 and X3.

In Point VII the Preliminary Investigation Committee had stated that because of the fact that the appellant had admitted that she had engaged in a telephone conversation with Nissanka Senadhipathi also had been a reason for issue of the charge sheet.

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Despite the above observations of the PI Committee strangely in Observation VIII it is stated that therefore it could be concluded that she had committed an offence under Clause 10 of the 1st Schedule of Chapter XLVIII of the Establishments Code, Volume II.

Further it is observed that the Attorney General's Department had not made any circular or issued a written code of Ethics in respect of officers of the Attorney General's Department.

It is included in the final observations that however in terms of the Unwritten Code of Ethics Attorney General's Department an officer who engages in a telephone conversation with an accused person in a case that is proceeding is a misconduct under Section 31:1:10 of the Establishments Code Volume II.

Based on the aforesaid observations of the Preliminary Investigations Committee they have recommended to issue a charge sheet containing offences under Section XLVIII of the Establishments Code and had forwarded a draft charge sheet. Accordingly the PSC had issued charge sheet dated 23.03.2021 containing 04 charges on the appellant.

At the hearing of this appeal it was revealed by Learned Counsel for the appellant that the former Hon. Attorney General Mr. Dappula de Livera had initially listened to the edited, distorted, unauthentic version of the purported tape recording. He had made his above statement in ignorance of the fact that the said tape recording had been edited and tampered with.

It has been contended that his statement made at the preliminary investigations have been made in his said frame of mind.

Subsequently after several months later when the former Hon. Attorney General had realized that the said recording was a distorted, edited version he had issued letter dated 08.10.2020 which has been marked P13 and tendered with the appellant's appeal dated 09.11.2020 addressed to the Chairman, PSC and had stated that he has no objection to the appellant being granted the request contained in her appeal to the PSC as a considerable period had lapsed to conclude the preliminary investigation.



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Learned Counsel had contended further that the PSC had become aware as far back as in March 2020 that the Assistant Government Analyst Ms. Gunatilake had issued a report bearing No: HD/91/20 dated 24.02.2020 stating that the said audio recording had been edited in 10 places and that the audio recording is not an original recording and that it was not scientifically possible to conclude by way of comparison as to whose voice is contained there.

It is interesting to note that the Preliminary Investigation Committee had not recorded a second statement from the former Attorney General. They had failed to obtain the audio recording from Nissanka Senadhipathi on the same format that it had been recorded despite the fact that the Preliminary Investigation Committee had made several attempts to record a second statement from him.

It is of significance to note that despite the fact that the preliminary investigation team tendering their report expressing that the said audio recording had been edited, distorted and tampered with and further when they had expressed doubts as to its authenticity and authorship, still the PSC had issued a charge sheet dated 23.03.2021 consisting of 04 charges.

It appears that the PSC had relied solely on the statement of the former Hon. Attorney General Mr. Dappula de Livera, who had made his first statement based on the distorted, edited audio tape recording he may have heard which had been aired in the social media and television media on 20.09.2019, in issuing the charge sheet dated 23.03.2021 on the appellant.

Learned Counsel who had appeared for the appellant had contended that the initial interdiction of the appellant without salary and the subsequent orders in respect of the appellant stated earlier and the failure to reinstate the appellant at least from March 2020 when the PSC had received a copy of the Government Analyst report No: HD/91/20 dated 24.02.2020 issued by Ms. W.G.D.C. Gunatilake confirming the appellant's contention that the purported audio recording had been subject to editing at 10 places and that it is not an original audio recording and that it is not scientifically possible to conclude by way of comparison as to whose voice is in there, the aforesaid actions taken by the PSC amounts to abuse of discretionary powers vested in the PSC.



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Learned Counsel had cited the decisions of the Supreme Court case SC Appeal No:76/92 De Silva Vs. Atukorale Minister of Lands, Irrigation and Mahaweli Development reported in (1993) 1 SLR P 283 at page 293, CA Writ Application No: 263/2013 the case of D. Lakmini Delapola vs. Justice S.I. Imam and two others (CA Minutes of 26.07.2019), CA (Writ) Application No: 351/2016, the case of Professor A.M. Gamini Adikari vs the University Grants Commission and others decided on 29.07.2019 (C/A Minutes of 29.07.2019), Court of Appeal CA/457/95, Gunatileka vs Weerasena reported in (2000 2SLR page 2, SCFR 67/08 Hapuarchchi and others vs Commissioner of Elections and another which had been reported in (2009) 1 SLR page 01, SC Appeal No: 27/96 Karunadasa vs Unique Gem Stones and others reported in (1997) 1 SLR page 256, SC Appeal No: 28/96 Yaseen Omar vs Pakistan International Airlines Corporation and others reported in (1999) 2 SLR 375 and the SC Judgment of Kamil Hassan vs Fairline Garments (International) Ltd and two others reported in (1990) 1 SLR 394 in support of his contention with regard to the development of law in regard to the use and exercise of discretion and further on the law with regard to the necessity to give reasons by officials and public bodies .

On an analysis of matters that had been elicited from the statements made by the witness made at the Preliminary Investigations and the matters that had elicited at the hearing of this appeal the following facts go the support the appellant's case:-

1. The fact that the appellant had taken up the position from the beginning that the said tape recording had been doctored, edited and distorted.
2. That there is no written code of conduct of law in respect of officers of the Attorney General's Department.
3. The appellant did not initiate the impugned telephone call using her telephone.
4. The appellant who had been invited as a guest to attend a dinner, in the company of former Minister Mr. Wajira Abeywardene who is known to the appellant's husband who is an engineer by profession and who hails from the same area as the former Minister was from.



5. At the residence of the former Minister, a request made by the former Minister to invite Nissanka Senadhipathi to his residence was vehemently opposed by the appellant.
6. Subsequently after they had proceeded to the hotel and while they were having dinner, a telephone call had been received by the former Minister and thereafter the former minister had thrust his telephone onto the appellant's ear and had stated that it was Nissanka Senadhipathi and had wanted her to speak to him.
7. The conversation by Senadhipathi related to a legal question of a procurement.
8. The above facts are indicative that the said Nissanka Senadhipathi had set a trap and had been waiting in readiness to record any telephone conversation with her in earnest and had promptly recorded the telephone conversation to be made use of by him, as and when it was necessary for his purposes.
9. It is interesting to note that neither Mr. Wajira Abeywardane's statement had been recorded nor his telephone had been examined by the experts at the preliminary investigation.
10. The question whether it is possible to sustain charges in respect of an unwritten law or a Code of Conduct also has to be answered.
11. In the aforesaid circumstances this Tribunal has to decide whether the decision to not to reinstate the appellant subject to having a formal disciplinary inquiry is an erroneous exercise of discretion which is an error of law.

Mr. Rubasinghe, Assistant Secretary, PSC in his submissions in reply had submitted that it was open for the appellant to take up the aforesaid matters by way of her defence and establish them at the formal disciplinary inquiry.

Then again the question arises as to whether is it fair and justifiable for the PSC to issue a charge sheet in the absence of material evidence as to the authorship of the impugned tape recording and as to its contents.



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Taking the aforesaid matters into consideration this Tribunal is of the view that the PSC decision to not to pay the appellant's full salary from the date of interdiction deciding to pay only ½ salary (without including the allowances due to her) with effect from 12.08.2020, failing to ensure the conclusion of the preliminary investigation within a reasonable time and failing to reinstate the appellant subject to holding of the formal disciplinary inquiry, the PSC had failed to exercise their discretion in an objective and reasonable manner, which amounts to an error of law.

His Lordship Justice J.A.N. de Silva, who later became Chief Justice had held in *Gunatilake vs Weerasena* in CA 457/95 in CA Minutes of 10.01.2000 .

1. In modern administrative law the concept of absolute discretion is unacceptable. Arbitrary power and unfettered discretion are what courts refuse to countenance.
2. As the law developed certiorari and prohibition have become general remedies which may be granted in respect of any exercise of discretionary power.
3. Initialing officer is a person who commences action resulting in seizure on information or observation personal to him. The 2nd Respondent does not come under this category. More so his application to the Director General of Customs that he be treated as an initialing officer was made nearly one and half years after the detection.

It is necessary to refer to the following observation of Lord Dennig in the case of *Breen vs. Amalgamated Engineering Union and others* 1971- AER 1148, Court of Appeal (England).

(At page 1153) Lord Dennig had stated

"The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law that means this: The statutory body must be guided by relevant considerations and not by irrelevant if its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand, no matter that the statutory body may have acted in good faith; nevertheless."

This Tribunal is also of the view that with regard to interpretation of PA Circular 30/2019 dated 30.09.2019 it is necessary to apply the Purposive Approach.

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At page 96 of the book titled “ Understanding Statutes” by Professor V.C.R.A.C. Crabbe under the heading ‘the Modern Approach’ it is stated as follows :-

“The modern approach to the interpretation of an Act of Parliament is what is termed the Purposive Approach. As Lord Griffith put it in *Pepper vs Hart* (1993) 1 AER 42 at P.50.”

“The days have long passed when the Courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The Courts must adopt a purposive approach which seeks to give effect to the true purpose of legislation”.

At this stage it is necessary to mention that the initial interdiction of the appellant without salary w.e.f. 26.09.2019, and thereafter order to pay ½ salary to the appellant and subsequently the order to place the appellant on compulsory leave with effect from 15.10.2020 had been made by the former Public Service Commission headed by Mr. D. Dissanayake (ex-SLAS).

In fairness to the present PSC the only compliant made by the appellant as against the present PSC is their failure to take steps to conclude the Preliminary Investigation without undue delay and the failure to reinstate the appellant.

For the reasons stated above this Tribunal is of the view that the PSC had failed to exercise their discretion in a justifiable, reasonable and an objective manner.

Therefore this Tribunal orders as follows :

- a) Rescind the PSC order made on 06.04.2021 to continue to keep her under compulsory leave until the Formal Disciplinary Inquiry is completed;
- b) Direct the PSC to revoke the order made on 19.10.2020 sending the appellant on compulsory leave and allow her to resume duties in the post of Solicitor General with immediate effect;
- c) Retire the appellant on 30.07.2021 on her reaching the compulsory age of retirement. The Section of the Minutes on Pensions on which the appellant is to be retired to be decided, by the relevant authority; and



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