

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

**S.C. (F/R) Application No: 276/2009**

Rajaratnampillai Seyon,  
83/2A, Hampden Lane,  
Wellawatte,  
Colombo 6.

Petitioner

Vs

1. Airport and Aviation Service (Sri Lanka) Limited.,  
Bandaranaike International Airport  
Katunayake.
2. Prasanna Wickramasooriya,  
Chairman,  
Airport and Aviation Services (Sri Lanka) Limited,  
  
Bandaranaike International Airport  
  
Katunayake.
3. Wg. Cdr.Dhammika Wijesooriya,  
Acting Deputy Head of Security  
Services and Safety Manager,  
Airport and Aviation Services (Sri Lanka) Limited,  
Bandaranayaike International Airport,  
Katunayake.

4. Kithsiri Fernando,  
Executive, Human Resources Division,  
Airport and Aviation Services  
Bandaranaike International Airport,  
Katunayake.
  
5. Mrs.Champika Mahipala,  
Head of Human Resources and Legal,  
Airport and Aviation Services (Sri Lanka)  
Limited,  
Bandaranaike International Airport,  
Katunayake.
  
6. Y.H.P.J.Karunanayake,  
Security Division,  
Airport and Aviation Services (Sri Lanka )  
Limited,  
Bandaranaike International Airport,  
Katunayake.
  
7. M.N.J.Perera,  
Security Division,  
Airport and Aviation Services (Sri Lanka)  
Limited,  
Bandaranaike International Airport,  
Katunayake.
  
8. A.G.A.Rupananade,  
Security Division,  
Airport and Aviation Services (Sri Lanka)  
Limited,  
Katunayake.
  
9. T.M.Burah  
Security Division,  
Airport and Aviation Services (Sri Lanka)  
Limited,  
Bandaranaike International Airport,  
Katunayake.

10. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

## Respondents

**Before:** J.A.N.de Silva CJ,  
N.G.Amaratunga J,  
R.K.S.Suresh Chandra J.

**Counsel:** M.A.Sumanthiran with Juanila Arulanantham for Petitioner  
Ms.S.Barrie State Counsel for 1<sup>st</sup> to 5<sup>th</sup> and 10<sup>th</sup> Respondents.

**Argued on :** 12<sup>th</sup> January 2011

**Written Submissions filed on :** 11<sup>th</sup> February 2011 by the Petitioner

15<sup>th</sup> February 2011 by the Respondents

**Decided on :** 10<sup>th</sup> May 2011

### **R.K.S.Suresh Chandra J.**

The Petitioner is at present a Security Officer employed by the 1<sup>st</sup> Respondent, the Airport and Aviation Services (Sri Lanka) Limited which is a Public Company fully owned by the Government of Sri Lanka. The Petitioner joined the Airport Authority of Sri Lanka as a Sentryman on 1<sup>st</sup> January 1981 and was confirmed in service as a Sentryman in 1983 by the Airport and Aviation Services (Sri Lanka) Limited. He was granted several promotions, salary increments without interruptions and commendations by the 1<sup>st</sup> Respondent during the past two decades. He had also been sent on many training programmes held locally by the 1<sup>st</sup> Respondent.

The Petitioner states that subsequent to his promotion to the post of Security Officer the Petitioner has been covering up the operation duties for about 5 years and that he was asked

to take over the post of Investigation Officer dealing with disciplinary inquiries of the 1<sup>st</sup> Respondent's security personnel, preparing and updating the Airport Security programme, Preparing Airport Standard Operating Procedures, preparing the Action Plan for the Security division and many other duties which the Petitioner alleges are normally duties conducted by an officer above the rank of a Deputy Security Marshal.

The Petitioner has also been an Aviation Security Instructor, a member of the quality control team and is in charge of the work improvement team of the 1<sup>st</sup> Respondent and also has the ability of working in all three languages used in Sri Lanka.

It is alleged by the petitioner that for the next promotion due for him which is the post of Deputy Security Marshal, he needs to undergo foreign training at the International Civil Aviation Organisation basic security course in Manila, Philippines which the Petitioner has not had the opportunity of undergoing to date. The Petitioner alleges that even though he had been selected to go for the said training in 2007 the management had not approved his name depriving him of the opportunity. However the Petitioner was sent on foreign training on 9<sup>th</sup> December 2008 to Singapore on a Dangerous Goods Inspector Workshop.

Applications had been called for the post of Deputy Security Marshal on or about 24<sup>th</sup> March 2008 for which the Petitioner applied for. Under the stipulated criteria for the post of Deputy Security Marshal it is required that the ICAO course in Manila must be completed but however after the Petitioner appealed to the 1<sup>st</sup> Respondent citing that promotions had been given to personnel who did not follow the course previously. His application was accepted and after inquires learnt that the qualified candidates were required to sit an examination.

The Petitioner alleges that in previous years the applicants were informed in writing to attend the examinations which were held but that when he applied the candidates were informed over the phone. He further alleges that the examination in previous years was held only in the English medium as fluency in English is a mandatory requirement specified in the advertisement calling for applications but in the present examination one part of the paper was allowed to be done either Sinhala or English medium. The Petitioner alleges that there was no provision for the candidates to have answered the part of the paper in the Tamil Language and that as far as he was aware this was the first time such a change in the rules had occurred.

The Petitioner was called for an interview by a letter dated 19<sup>th</sup> June 2008 and he was interviewed on 24<sup>th</sup> June 2007 by a panel comprising of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents and Mr. Nalaka Bamunusinghe the then, Executive director who later had passed away. The Petitioner alleges that the interview was not conducted according to the usual procedure which has been stipulated as to have questions relating to one's occupation, questions relating to the 1<sup>st</sup> Respondent's rules and regulations and a viva in English to test the fluency of the candidates conversational ability in English. The Petitioner had scored 83% for the written examination conducted prior to the interview.

There were 9 vacancies available for the post of Deputy Security Marshal and due to the retirement of two officers who served at the said post, the total number of vacancies were 11. Through the interview process the interview board selected the 6<sup>th</sup> and 7<sup>th</sup> Respondents and on or about 9<sup>th</sup> March 2009 the Petitioner had learnt that the 6<sup>th</sup> and 7<sup>th</sup> Respondents had been promoted to the post of Deputy Security Marshal over and above the Petitioner which has caused him to bring this action against the 1<sup>st</sup> Respondent Company.

The Respondent in response to the allegations made by the Petitioner states that the Petitioner's suggestions that his skills were extraordinarily sought after and that his situation was unique is misleading as most of the work that he identified as being specifically done only by him were also work that was carried out by other officers of the same rank who carried out such work in addition to the tasks assigned to them.

The Respondent also states that the only reason that the Petitioner was not sent for the training to Manila was due to unavoidable financial and time constraints which were unforeseen and that was not due to any discrimination against him. Also the Respondent states that the Petitioner was not disadvantaged at anytime due to applications being called under two categories for the post of Deputy Security Marshal as foreign training was only a pre-requisite under one category and the Petitioner's application was considered under the other category.

The Respondent states that Part A of the question paper could have been answered in either Sinhala or English language and that there was no bar to any candidate answering that part in the Tamil Language as that part was aimed at assessing the candidates decision making and problem solving ability and therefore it was appropriate to permit them to answer that part in either language.

The applicants were shortlisted for interviews on the basis of the marks obtained in the written examination. The Respondent states that the only objective of the written examination was to select suitable candidates for the interview. In the interview it is stated by the Respondent that in addition to determining the candidates English Language skills, leadership qualities, problem solving skills and security related knowledge was tested. It has been stated by the Respondent that all candidates who were interviewed were done so in English. Those selected for interview were marked in accordance with the marking scheme prepared for the interview and the two candidates, the 6<sup>th</sup> and 7<sup>th</sup> Respondents, who had obtained the highest marks at the interview were promoted to the position of Deputy Security Marshal as the Board of the 1<sup>st</sup> Respondent had decided to recruit only two internal candidates for the said post.

The Petitioner avers that the selection process was illegal due to the violations by the 1<sup>st</sup> Respondent of the Public Administration Circular 15/90 dated 9<sup>th</sup> March 1990 which states that Recruitment should be on merit and merit should be determined either by a written examination or a written test or a trade test and a viva voce should be only for the purpose of scrutinizing the qualifications, certificates and relevant physical fitness. The position in relation

to public companies being bound by Government Circulars has been dealt with in the case of *Amadoruge Nanda Malani Perera and others v Building Materials Corporation Ltd* (unreported) 2005 S.C.(FR) where Bandaranayake J held that the moment a public authority converts itself to a limited liability company whether or not it is a public company, it ceases to become a statutory authority and only should be considered as a commercial entity that falls under the Companies Act. Accordingly Government circulars had no automatic application to such a commercial entity although if the said Public company required for such circular to be applicable they had the authority for the Board of Directors of the said company to adopt such circular acting in terms of the Companies Act. Considering the analogous position in the present case to that of the Building Materials Corporation case unless the Petitioner could provide that there had been a resolution passed by the Board of Directors of the 1<sup>st</sup> Respondent Company for the application of the Public Administration circular it would not have automatic application and accordingly the 1<sup>st</sup> Respondent Company was within their rights and duties to have its own approved recruitment system.

The Petitioner also avers that the interview was flawed due to the lack of objective, fair marking and due to the interview not been designed to assess the candidate according to the guidelines and established practice of the 1<sup>st</sup> Respondent Company. Considering the situation of the 1st Respondent in the light of the Building Materials Corporation case it has to be considered that the written examination was held for the sole purpose of finding suitable candidates to be interviewed. The interview was itself held for all the candidates in English due to the proficiency of English being an important criterion considered at the interview. Furthermore apart from the language ability, specific questions had been put to the candidates to test leadership qualities, problem solving skills, verbal communication skills and security related knowledge which had been the relevant criteria that were assessed in the interview. Considering the above circumstances it cannot be stated that the interview process was flawed as the 1<sup>st</sup> Respondent had carried out its interview process according to set criteria which would be reasonable for such a Public Company to do so.

The interview was held on 24<sup>th</sup> June 2008 but his application to Court was made on 3<sup>rd</sup> April 2009 after the 6<sup>th</sup> and 7<sup>th</sup> Respondents were selected which was very much belated. It the Petitioner as he has done in this application was not satisfied with the interview process, he should have challenged same within the appropriate time frame rather than waiting till the 6<sup>th</sup> and 7<sup>th</sup> Respondents were appointed.

The Petitioner further avers that unsuitable and less experienced officers than him had been promoted to the position of Deputy Security Marshal. The process of recruitment for the position of Deputy Security Marshal was through firstly a written examination to find suitable candidates for interview and then by an interview which was held to test the criteria stipulated as necessary to perform the functions of the position. It is evident that the Petitioner scored more marks in the written examination and for his ability to speak English but these are not the sole criteria which were considered for the above position. The Petitioner had scored less

marks overall in the interview than the 6<sup>th</sup> and 7<sup>th</sup> Respondent who were chosen for the post of Deputy Security Marshal. In fact two other candidates Rupananda de Silva received 84 marks (which was the highest) and T.M.Burah received 83 marks at the written examination but they too were not selected although they had got more marks in the written examination than the 6<sup>th</sup> and 7<sup>th</sup> Respondents. Therefore the allegation of the Petitioner that he was singled out for discrimination on the basis of racial grounds is untenable.

In the above circumstances of the case, there has been no violation of the Petitioner's fundamental rights as alleged and the application of the Petitioner is dismissed. There will be no costs.

**JUDGE OF THE SUPREME COURT**

**J.A.N.DE SILVA CJ,**

I agree.

**CHIEF JUSTICE OF THE SUPREME COURT**

**N.G.AMARATUNGA J,**

I agree.

**JUDGE OF THE SUPREME COURT**