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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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Date. }

Mr.Karunakaran Sopanan
Theerthakarai Road
Sittandy -04
Batticaloa.

Complainant

HRC Application No- HRC/BCO/297/2023

Secretary
Ministry of Public Administration, Home Affairs,
Provincial Councils and Local Government
Colombo.

Respondent

Matter: Re- instatement of Mr. K. Sopanan who was arrested under the Prevention of Terrorism Act while working as a Graduate Trainee.

Brief Synopsis of the Complaint

- The said complainant is a graduate of Peradeniya University.
- Appointed as Graduate Trainee in 2020 at the Divisional Secretariat of Eravur Pattru, Chenkalady under the scheme of providing training to unemployed graduates in government institutions by the Ministry of Public Administration and Home Affairs.
- The complainant was detained under the Prevention of Terrorism Act from 26th November 2020 to 02nd February 2022 for posting comments on Facebook to mark the birthday of the former leader of the LTTE. And he was released on bail on February 02, 2022. On May 19, 2024, he was fully discharged by the Eravur Magistrate's Court as directed by the Hon'ble Attorney General.

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The complainant claimed that:

- He was not reinstated in the post of Development Officer under the said unemployed graduate scheme despite being discharged by the Eravur Magistrate's Court on 19th May 2023 as per the instructions of the Honorable Attorney General.
- The complainant has thus sought the intervention of the Human Rights Commission of Sri Lanka (HRCSL) for the reinstatement of his position, as the period of his detention prevented him from completing his training, which is crucial for his permanent employment.

Intervention by the Regional Office

- 27.09.2023: Complaint received by HRCSL's Batticaloa Regional Office. A report was immediately requested from the respondents to clarify the circumstances surrounding Mr. Sopanan's case.
- 23.10.2023: A follow-up request was sent to the Director General of Combined Services, Ministry of Public Administration, to provide additional clarification on policies regarding the reinstatement of graduate trainees under such circumstances.
- 13.11.2023: Respondents submitted their initial report, which was then forwarded to Mr. Sopanan for his counter-response.
- 16.02.2024: A further opinion was sought from the Director General of Establishments in the Ministry of Public Administration, after the Director General of Combined Services refused to address the issue.

The respondent's reply

The respondents stated as follows in their reports:

- Director General of Combined Services, Ministry of Public Administration Home Affairs, Provincial Council and Local Government informed that the petitioner has been attached to Eravur Pattru Divisional Secretariat to complete his graduate training from 02.09.2020.
- It was stated that the complainant was detained from 26th November 2020 to 02nd February 2022 and he failed to successfully complete his graduate training. Therefore, it was stated that his appointment cannot be considered as he fails to fulfill the requirements for permanent employment.

The Batticaloa Regional Office of the HRCSL subsequently sought an opinion report from the Director General of Establishment, Public Administration Internal Affairs, Provincial Council and Ministry of Local Government, which was rejected by the Director General of Combined Services.

The Director General of Establishment, Ministry of Public Administration and Home Affairs made the following observations.

- Public Administrative Circular 12/95 dated 17th March 1995 issued under the Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979 and Emergency Law contains provisions relating to reinstatement of officers detained.
- Although the provisions relating to public officers and officers serving in corporations are indicated in the above circular, provisions relating to trainees recruited for training are not included therein. Therefore, there is no provision for granting special relief to Mr.K. Sopanan considering his arrest under the Prevention of Terrorism Act(PTA).

Observation

- In relation to the above complaint, the Commission investigated whether Articles 12, 12(1) & (2) and 14(1) (a) of the Chapter III of the Constitution of the Democratic Republic of Sri Lanka have been violated by the executive and / or administrative action.
- It has been observed that the complainant was detained on 26th November 2022 and was not able to complete his graduate training.
- The complainant was discharged vide his letter No. EER/69/2021 (Case No. – B/912/2020) by the Eravur Magistrate Court as directed by the Hon.Attorney General. It is very clear that the complainant has not been found guilty of any offence.
- Despite not being found guilty of any offence; the complainant was prevented from completing his graduate training due to circumstances beyond his control as he was held in detention during such period.
- Now that the complainant has been legally discharged, he should be provided with an opportunity to complete his graduate training to become eligible for the appointment of Development Officer.
- In the absence of any specific circulars in this regard, the respondents the complainant's case should be treated as a special category and necessary measures should be adopted to enable the complainant to complete his graduate training.
- The Commission examined possible violations under Articles 12(1), 12(2), 13(1), 13(2), 14(1)(a).
- The complainant was not found guilty of any offense and was legally discharged.
- His failure to complete training was due to circumstances beyond his control.
- He received a monthly salary of Rs. 20,000 for three months prior to arrest, indicating formal public sector engagement.
- Circular 12/95 excludes trainees; however, a humanitarian and rights-based interpretation requires special consideration.

Following the detailed investigation into the complaint lodged by Mr. K. Sopanan with Human Rights Commission of Sri Lanka (HRCSL) has found sufficient grounds to conclude that his fundamental rights, as enshrined in the Constitution of Sri Lanka, have been violated.

Legal and Human Rights Implications

The complaint touches upon several key legal principles and fundamental rights as enshrined in the Constitution of Sri Lanka, particularly concerning the protection against arbitrary arrest, detention, and the right to equal treatment. The following rights are directly implicated in this case:

Article 13(1) & (2) Protection against arbitrary arrest and detention.

Mr. Sopanan's detention under the PTA for over a year, despite no proven criminal involvement, raises serious concerns about the proportionality and necessity of his detention.

Article 12(1) and (2): Equality before the law and the right to equal protection.

The denial of reinstatement to Mr. Sopanan, despite the fact that other categories of public officers are provided specific reliefs under Circular 12/95, suggests a possible violation of this right.

His detention did not result in any criminal charges or conviction, yet he was deprived of opportunities available to other government trainees.

Article 14(1)(a): The right to freedom of speech.

The detention was based on social media posts, which raises concerns regarding the restriction of free speech, especially in cases where the speech in question does not incite violence or harm national security.

Violation of Fundamental Rights

Mr. Sopanan was arrested and detained under the Prevention of Terrorism Act (PTA) on 26.11.2020 for posting a comment on Facebook commemorating the birthday of LTTE leader Velupillai Prabhakaran. The detention continued until 02.02.2022. This detention was carried out despite the lack of concrete evidence to prove any direct involvement in terrorism or acts threatening national security, as evident from the acquittal by the Eravur Magistrate Court in 2022.

Following the detailed investigation into the complaint lodged by Mr. K. Sopanan, the Human Rights Commission of Sri Lanka (HRCSL) has determined that his fundamental rights under Articles 12(1), 12(2), 13(1), 13(2), and 14(1)(a) of the Constitution of Sri Lanka have been violated due to discriminatory administrative action and the failure to provide equal treatment in public service employment following his legal discharge.

The Commission notes the following key points:

- Mr. Sopanan was appointed as a graduate trainee under the Ministry of Public Administration and Home Affairs in September 2020.
- He was detained under the Prevention of Terrorism Act (PTA) from 26th November 2020 to 2nd February 2022 and was later discharged by the Eravur Magistrate Court on 19th May 2023 based on the instructions of the Hon. Attorney General, with no charges proven or pending.
- His detention prevented him from completing the mandatory training required to become eligible for appointment as a Development Officer.
- Despite being legally discharged, he was not reinstated, nor was any opportunity granted to complete his training, primarily due to the absence of specific provisions in existing circulars such as Public Administration Circular 12/95, which does not cover graduate trainees.

The complainant's request is specifically for:

1. Reinstatement as a graduate trainee, to allow him to complete the remaining training period.
2. Assistance in securing appointment as a Development Officer, based on successful completion of the training.
3. A graduate trainee allowance during the resumed training period.
4. Compensation for the period of administrative inaction that resulted in a loss of career progression and income.

The Human Rights Commission of Sri Lanka concludes that Mr. K. Sopanan's fundamental rights under Articles 12(1) of the Constitution have been violated due to discriminatory treatment and denial of equal opportunity following his discharge.

Recommendation

Based on the findings, the Human Rights Commission makes the following recommendations:

1. Reinstatement of Graduate Training

The Commission recommends that Mr. Sopanan be reinstated to continue the remaining period of his graduate trainee appointment, recognizing that the interruption was due to detention from which he has been discharged with no conviction. This recommendation should be directed to the Ministry of Public Administration, to make necessary arrangements to facilitate his training resumption.

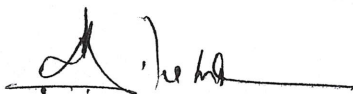
2. Facilitation to Become a Development Officer

Upon completion of the balance Graduate Trainee training period, the Commission recommends that Mr. K. Sopanan be considered for appointment as a Development Officer, similar to other trainees who successfully complete the program.

3. Policy Recommendation

The Commission recommends that the Ministry of Public Administration consider amending relevant circulars to include provisions for graduate trainees who face legal interruptions (such as detention without conviction), to ensure they are not unfairly disadvantaged in their public service career progression.

As per Section 15(7) of the HRCSL Act, the Respondent should report to the HRCSL on the action taken to implement Recommendation within the month of the date of this Recommendation.



Chairman

Human Rights Commission of Sri Lanka.

Justice L.T.B. Dehideniya

Judge of the Supreme Court (Retired)

Chairman

Human Rights Commission of Sri Lanka

Copy to:



Commissioner

Human Rights Commission of Sri Lanka.

Nimal G. Punchihewa

Senior Counsel

Commissioner

Human Rights Commission of Sri Lanka

Minister,

Ministry of Public Administration, Home Affairs, Provincial Councils and Local Government.