

1955

Present : Swan J.

HEENBANDA, Appellant, and COMMISSIONER OF
MOTOR TRAFFIC *et al.*, Respondents

*S. C. 364—Appeal under Section 212 of the Motor Traffic Act from
a decision of the Transport Appeals Tribunal, No. 385*

*Motor Traffic Act, No. 14 of 1951—Refusal of public carrier's permit—Discretion of
Commissioner—Right of appeal to Supreme Court—"Question of law"—
Sections 90 and 212.*

The Commissioner of Motor Traffic, acting on the report of the Divisional Road Transport Officer, refused an application for a public carrier's permit on the ground that the area in question was well served. The Transport Appeals Tribunal dismissed the applicant's appeal for the same reason. The applicant thereupon appealed to the Supreme Court on the ground that the Commissioner acted contrary to the principles of natural justice in acting on the report of the Divisional Road Transport Officer without affording the applicant an opportunity of disproving the statements in the report.

Held, that the ground of appeal was not a question of law within the meaning of section 212 of the Motor Traffic Act.

APPPEAL under section 212 of the Motor Traffic Act.

N. M. de Silva, with *C. de S. Siriwardene*, for the appellant.

Mervyn Fernando, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

March 25, 1955. SWAN J.—

In or about September 1953 the appellant made on application to the 1st respondent above named for a Public Carrier's Permit authorizing the use of a two ton lorry for an area of operation in the Central Province. After inquiry the 1st respondent refused the application on the ground that the area was well served. Thereafter the appellant restricted his application to the Kandy District only. This application was also refused on the same ground. From this refusal the appellant appealed to the Transport Appeals Tribunal which made order dismissing the appeal. The appellant now asks this Court to set aside the order of the Transport Appeals Tribunal and of the 1st respondent, and direct the 1st respondent to issue to the appellant a Public Carrier's Permit as applied for.

Section 212 of the Motor Traffic Act gives a right of appeal to the Supreme Court against the decision of the Tribunal only on a question of law. The point of law relied on in the petition of appeal is that the 1st respondent acted contrary to the principles of natural justice in acting on the report of the Divisional Road Transport Officer without affording the appellant an opportunity of meeting or disproving the statements in the report. Conceding however that the Commissioner was entitled to act on the report it is submitted that he acted wrongly in not allowing the appellant an opportunity of meeting the same.

Section 90 of the Motor Traffic Act gives the Commissioner "full power and discretion to make a determination either to grant or refuse an application". It would render that discretion nugatory if it could be canvassed by the pretence of an appeal on a point of law.

The Commissioner refused the application on the ground that the area was well served. The Transport Appeals Tribunal dismissed the appellant's appeal for the same reason. I can see no point of law on which the appellant can appeal to this Court.

The appeal is dismissed with costs.

Appeal dismissed.