

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA

In the matter of an application in terms
of Article 140 of the Constitution of Sri
Lanka for mandates in the nature of Writ
of Certiorari and a Writ of Mandamus.

S.G.K. Anuruddhika,
No.147/10, Golden Terrace,
Pahala Kadirana,
Thimbirigaskatuwa,
Negombo.

Petitioner

C.A. (Writ) Application No.428/2011

Vs.

1. Sergeant R.M.Rathnayake
2. Captain S.C.U. Perera,
Regimental Head Quarters,
Sri Lanka Army Women's
Corps, Kinsey Road,
Borella.
3. Captain E.M.R,K.B.Ekanayake,
And ten (10) others.
14. Lieutenant General Jagath
Jayasuriya,
The Commander of Sri Lanka
Army, Army Head Quarters,
Baladaksha Mawatha,

Colombo 03.

Respondents

BEFORE : **S.SRISKANDARAJAH, J (P/ CA).**

COUNSEL : K.Asoka Fernando with A.R.R.Siriwardena
for the Petitioner.
P.Ranasinghe D.S.G with Ahika Dissanayaka, SC
for the Respondents.

Argument on : 30.05.2012

Decided on : 01.10.2012

S.Sriskandarajah, J,

The Petitioner was a Lady Cadet Officer who joined the Sri Lanka Army on the 12th March 2010, and she was released with effect from 23rd of March 2011. The Petitioner submitted that she was on the verge of being getting ready for the passing out ceremony after the conclusion of the 9th training course for Lady Cadet Officers, she was summoned by Captain S.C.U. Perera, who was Officer in-charge of the Petitioner's training course. Captain Perera accused her for bringing down Cadet Officers (Males) to the room of her Lady Cadet billet two weeks ago. This allegation was levelled against the Petitioner and one Lady Cadet Officer W.G.N.P. Samarasinghe. Both of them denied the allegation. At that time the Petitioner said that they were informed that two written statements had already been given by the said two Cadet Officers and Captain Perera requested them to give similar statements accepting the same. The Petitioner further submitted that she and the Lady Cadet Officer W.G.N.P. Samarasinghe refused to give such written statements; they were subjected to physical

and mental harassment by the said Captain S.C.U. Perera and obtained written statements to that effect forcibly.

According to the Petitioner, the only incident that took place on 6/11/2010 was, when she and Lady Cadet Samarasinghe were engaged in the preparation of the final presentation pertaining to their course in the Petitioner's room, there had been a sound soon after midnight, and when the Lady Cadet Samarasinghe and the Petitioner checked what the sound was, the Cadet Officer Akalanka who was at the time near the male cadet billet on the other side, spoke to them stating, due to an indigestion he vomited, but that conversation lasted only for a period less than one minute. She said that during the course of this incident, Lady Cadet Premachandra was sleeping in the Petitioner's room. The Petitioner submitted, this incident was used to accuse them of bringing two Cadet Officers, including Akalanaka to the Petitioner's room. The Petitioner submitted that she came to know Cadet Officer Akalanka and Cadet Officer Wanninanayake, from whom written statements had been obtained to the effect that the Petitioner and Lady Cadet Samarasinghe had requested them to come to the Petitioner's room at the Lady Cadet billet.

The Petitioner and the other two Cadet Officers referred to above were summoned before a Court of Inquiry on or around 25/11/2010. The Petitioner submitted that the Court of Inquiry was conducted in derogation of the principles of natural justice and in non-compliance with Regulation 15 of the Army Codes of Inquiry Regulation 1952. The Petitioner submitted that she and other 3 Cadet Officers were not aware of the witnesses summoned, the nature of evidence, the adduced and the witnesses were not questioned to ascertain the truth or accuracy of the evidence given as required by Regulation 10 of the said Army Code of Inquiry Regulations.

The Respondents denied the above allegations and have submitted that a Court of Inquiry under the Army Code of Inquiry Regulations 1952 comprising of three

Commissioned Officers was appointed to inquire into the above said incident involving the four Cadet Officers, including the Petitioner. The Respondent submitted that the said Court of Inquiry was conducted in accordance with regulations and in just and equitable manner adhering to all norms of natural justice. The Petitioner was afforded the opportunity of being present throughout the said Court of Inquiry and to cross-examine the witnesses and formulate her defence. The Respondents submitted that in terms of Regulation 3 of the Army Code of Inquiry, Regulation 1952, conveying the order relating to the said Court of Inquiry was issued under the signature of the Commanding Officer of the Sri Lanka Military Academy on 18/11/2010. The Respondent also submitted that the authorities of the Sri Lanka Military Academy had requested the Petitioner to be present at the Military Academy to face a summary trial on 10/05/2011 and Police message and letters from the Military Academy were sent to the Petitioner's residential address, informing the same to the Petitioner. The Petitioner, in replying, informed the Sri Lanka Army that she was not in a position to report to the Academy to face the summary trial; the reasons given by the Petitioner were not acceptable to the Academy.

The Court of Inquiry is a fact finding inquiry and, after the Court of Inquiry, the Petitioner was summoned to appear for a summary trial. The Petitioner had failed to attend the said trial. Under Section 2 of the Discipline Regulation 1950, the Commander of the Army is vested with general responsibility for discipline in the Army. The Respondent submitted that the Petitioner's scandalous conduct is unbecoming of a future Army Officer and was considered a serious breach of discipline as a Senior Cadet of the Sri Lanka Military Academy and, if condoned, such would tantamount to setting of bad precedence to Junior Officer Cadets. The Respondents, in those circumstances, are under no public duty to keep the Petitioner in the Army. The Respondents further stated, in the Army, a Cadet Officer, whose integrity is questionable, cannot be recommended to become an Officer when she is expected to lead her subordinates by example and, therefore, the retention of such ill disciplined individuals is not in the best

interests of the Army. In these circumstances the Commander of the Army, acting in terms of Regulation 2 of the Army Disciplinary Regulations, with a view to carrying out his responsibility in maintaining discipline in the Army, ordered the discharge of the Petitioner from the service. The Petitioner was discharged from Sri Lanka Army on the ground that her services were no longer required under the Soldiers Services Regulation No.1 of 1994, made by the President of the Republic under Section 155 of the Army Act, read with Article 44(2) of the Constitution of Sri Lanka. A soldier can be discharged under the Regulation XIII(a) of Table A of the Soldiers Services Regulation No.1 of 1994 provided that the person authorizing the discharging is the Commander of the Army or an Officer authorized thereto not below the rank of a Major General. In this instant case, discharge was ordered by the Army Commander himself. The discharge was made not as a punishment, but as the Petitioner's services were no longer required by the Army. In those circumstances the Petitioner was requested to refund the training expenses incurred by the State. This refund is based on the cancellation of the bond relating to the Officer Cadet under Clause 9(a) of the bond. In the above circumstances, the Petitioner's claim that no Charge Sheet was framed against her, that the Court of Inquiry was not properly conducted, have no basis. As I have observed the Court of Inquiry is a fact finding inquiry and charges are not framed at this stage. The Petitioner was given an opportunity to appear before a summary trial, but the Petitioner had failed to attend the said summary trial. The termination of the training of the Petitioner and to discharge her from the Army was meted out not as a punishment, but the Army Commander, considering that the Petitioner's services are no more required, and under the provisions of the Army Regulations, the Army Commander is empowered to discharge an Army Officer if his services are no more required. The decision of the Army Commander in these circumstances cannot be interfered with by this court by issuing a Writ of Certiorari and, therefore, this court dismisses this Application without cost.

President of the Court of Appeal