

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.

K.M.C.D. Akalanka,
No.118/71, Godaparagahawatta,
Halpita,
Polgasovita.

Petitioner

C.A. (Writ) Application No.429/2011

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 Cadet Officer who joined the Sri Lanka Army on the 16th of January 2009, and he was released with effect from 23/03/2011 from service. The Petitioner submitted that he was on the verge of being getting ready for the passing out ceremony after the conclusion of the training course for Cadet Officers. Captain E.M.R.K.D. Ekanayake who is the Officer in-Charge of the training course summoned the Petitioner and Cadet Officer W.U.M.D.S. Wanninayake, who is another Cadet Officer, and accused them of visiting the room of Lady Cadet Anuruddhika two weeks ago, where Lady Cadet Samarasinghe was also present in the said room. The Petitioner and the other Cadet Officer, Wanninayake, strongly denied the authenticity of such accusation, but they were forced to accept the said allegations. As the Petitioner and the other Cadet Officer, Wanninayake, refused to accept the accusation, they were subject to physical and mental harassment by the said Captain E.M.R.K.D. Ekanayake, and written statements were obtained from them that the two Lady Officers, viz. Anuruddhika and Samarasinghe have requested them to call over at the room of Lady

Cadet Anuruddhika and, as such, they visited them at the said room two weeks ago, and in the said written statements, the Petitioner has stated, on physical and mental harassment, that they have visited the Lady Cadet billet, as requested by Lady Cadets Anuruddhika and Samarasinghe.

The Petitioner further submitted that he came to know from the two Lady Cadets, Anuruddhika and Samarasinghe, that they were informed of the written statements obtained from the Petitioner and the other Cadet Officer, Wanninayake, and demanded the two Lady Cadets to accept responsibility that they requested the Petitioner and the other Cadet Officer to visit them at the Lady Cadet billet. The Petitioner submitted that when those Lady Cadet Officers refused to give such written statements, they were also subjected to physical and mental harassment, and statements were obtained from them. The Petitioner submitted that the only incident he can think of is, that soon after midnight of 6/11/2010, as a result of an indigestion, he came out of the Cadet Officers' billet and near the tree in front of their billet, he vomited and, having heard the sound the window of the room at the Lady Cadet billet was opened and the Lady Cadets Anuruddhika and Samarasinghe spoke to him and that conversation lasted only less than one minute.

The Petitioner and the other Cadet Officer, Wanninayake, were summoned before a Court of Inquiry on or about the 25th of November 2010. He submitted that the Lady Cadets who were involved in the said incident, and the male cadets were not summoned together, but only on one occasion they were summoned to come to cross-examine the witness relegated, lady Cadet Premachandra, but they were not given an opportunity to cross-examine other witnesses. The Petitioner contended 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 also submitted that the Court of Inquiry did not pay any attention to

ascertain the truth of the accusation against him and the other Cadet Officers, but merely recorded the evidence.

The Respondent submitted that the said Court of Inquiry was conducted in accordance with regulations and in a just and equitable manner, adhering to all norms of natural justice. The Petitioner was afforded an opportunity of being present throughout the said Court of Inquiry and cross-examines the witnesses and formulate his defence. The Respondent further submitted that in terms of Regulation 3 of the Army Code of Inquiry, Regulation 1952, conveying the order relating to the said Code 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.

The Court of Inquiry is a fact finding inquiry and, therefore, the charges need not be framed against the officers who are summoned before the Court of Inquiry.

The Respondent submitted that the Petitioner's scandalous conduct is unbecoming of a future Army Officer, and was considered as a serious breach of discipline, as a Senior Cadet of Sri Lanka Military Academy and, if condoned, such would tantamount to setting a 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 he is expected to lead his subordinates by example and, therefore, the retention of such ill disciplined individuals is not in the best interests of the Army. In those 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 the Sri Lanka Army on the ground that his 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 person authorizing the discharge is the Commander of the Army or an officer authorizing thereto, not below the rank of a Major General. In this instant case the 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. The Petitioner was informed vide document dated 23/03/2011, the decision to release him from service with effect from 23/03/2011. The decision to terminate the training of the Petitioner and to discharge him 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 costs.

President of the Court of Appeal