

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

In the matter of an Application for a
Mandate in the nature of a Writ of
Certiorari made in terms of Article 140
of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Kankanige Don Nihal Kodituwakku
Commanding Officer 28 Regiment
Wing, Sri Lanka Air Force,
Air Force Headquarters
Colombo.

PETITIONER

CA Application No.342/08

Vs.

1. Group Capt. P.M.S. Mudammana
Air Force Headquarters
Colombo.
2. Squadron Leader P. Ranasinghe
Air Force Headquarters
Colombo.
3. Flight Lt. U.J.B. Nissanka
SL Air Force Base
Katunayake

4. Air Chief Marshal Donald Perera
Former Commander of the Air Force
And currently Chief of Defence Staff
Defence Secretariat,
Ministr of Defence
Colombo.
5. The Commander of the Air Force
Air Force Headquarters
Colombo.

RESPONDENTS

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

COUNSEL : A.Premaratne,
for the Petitioners,
Arjuna Obeysekera
for the Respondents.

Argued on : 18.01.2011

Decided on : 18.07.2012

S.Sriskandarajah,J,

The Petitioner is presently attached to the Sri Lanka Air Force as a Wing Commander and functions as the Commanding Officer of the 1st Regiment Wing of the Sri Lanka Air Force based in Anuradhapura. The Petitioner submitted that when

he was Group Commander of the Sri Lanka Air Force based in Mankulam, on 23rd October 2003, at approximately 1313 hours, the Petitioner was travelling from Group Headquarters I towards Group Headquarters II, he met with an accident whilst trying to avoid some pot holes that were on the road. The Petitioner submitted that he was travelling with 2 Airmen of the Air Force and that when he was driving the vehicle bearing No.G3325, the vehicle ran off the road when the Petitioner tried to avoid some pot holes on the road and collided with a tree. The Petitioner submitted, as per the regulations of the Sri Lanka Air Force, an accident involving a Sri Lanka Air Force vehicle, should be informed to the Sri Lanka Air Force Police who, thereafter conduct an investigation into the accident and forward a report. When this accident was reported, an investigation was conducted and the evidence of a witness who travelled in the said vehicle was obtained and it had clearly shown that the speed of the vehicle at the time of accident was around 30 to 35 kilometers per hour and that there were pot holes on the road with an uneven surface. On this issue, a Court of Inquiry was convened consisting of the 1st to 3rd Respondents, to collect evidence and to make a finding. The Court of Inquiry, after their investigations, submitted a report to the Air Marshal G.C.A. Gunaratne who, on 20th March 2004, recommended that disciplinary action be taken against the petitioner. The Court of Inquiry finding was that the accident had occurred as a result of the Petitioner having driven the vehicle in question at an excessive speed, and the weather condition had been dry and here was nothing to support the Petitioner's position that the rain had made the road slippery and the vehicle had skidded. The road on which the vehicle had travelled just prior to the accident was a broad, straight road with a few pot holes. Out of the 3 persons who travelled in the vehicle, 2 had suffered injuries which had been classified as 'severe'. The vehicle suffered extensive damage and a high cost was estimated to repair the said vehicle. According to expert evidence led at the inquiry, it was confirmed that the Petitioner would have been travelling at a speed of over 70 kmh; this was assessed by the damage caused to the vehicle. The 4th

Respondent, after considering the circumstances of the accident, had made order to recover the cost of repair estimated at Rs.1,550,462/50, and the Petitioner was served with a letter asking him to show cause why action should not be taken against him to recover the said sum. The Petitioner had shown cause by his letter dated 4th November 2004. This letter was considered and thereafter the Petitioner was informed by letter dated 7th December 2004 that the cause shown by the Petitioner was unacceptable and required the Petitioner to make good the amount stated on or before 30th of June 2005. The said cost of repair had been re-assessed and the cost of repair was brought down to a sum of Rs.96,835/90 and a decision was made that this sum be deducted from the salary of the Petitioner.

Section 27 of the Air Force Act provides for penal deductions from the pay due to an officer, and Section 27(d) provides: "A sum required to make good such loss, damage or destruction of public or Air Force property has, after due investigation, appears to the Commander of the Air Force to have been occurred by any wrongful act or negligence of the officer."

In view of the above provision, the decision to deduct from the salary of an officer has to be made by the Commander of the Air Force after due investigation. In those circumstances, a Court of Inquiry was held and the Commander acted on the evidence led in the Court of Inquiry and, further, the above Section provides that, if it appears to the Commander of the Air Force, that the damage or loss was caused by any wrongful act or negligence of the officer, the sum required to make good of such loss or damage could be deducted from the pay due to an officer. The said Section gives authority for the Commander of the Air Force to decide whether damage or loss was caused by acts of negligence of the officer. In this instance the Commander has come to the conclusion that the accident was caused by the negligence of the Petitioner, and the loss or damage was estimate by competent persons to estimate the

loss and damage and, in those circumstances this Court cannot interfere with the decision of the Respondent to deduct the said sum from the salary of the Petitioner and, therefore, this Court dismisses the Petitioner's Application without cost.

President of the Court of Appeal