

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

**CA Writ 61/2009**

Lieutenant (QM)  
R.M. Koralagamage  
No: 67,  
Ambagahawela, Road,  
Ranala.

**Appellant**

**Vs.**

Lt. General Sarath Fonseka  
Army Commander,  
Army Head Quarters,  
Colombo 02.

**Respondent**

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**CA Writ Application No. 61/09**

Before : **Rohini Marasinghe, J.**

Counsel : Rohana Jayawardena for the Petitioner  
Milinda Gunatilake, SSC for Respondents

Argued &

Decided on : 15.06.2012

**Rohini Marasinghe, J.**

The petitioner in this case has sought inter-alia for a Writ of Certiorari to quash the decision of the Court of inquiry held on 10.06.2006. The petitioner also seeks for a Writ of Mandamus to compel the 1<sup>st</sup> Respondent to release his pension from February, 2008. The main contention of the petitioner was that the Court of inquiry violated the rules of natural justice. The petitioner submitted that under Section 15 of the Army Court of inquiry regulations, he should be afforded an opportunity of being present throughout the inquiry, he should be allowed to make a statement, to give evidence and to cross examine. (Vide Regulation 15 of Army Courts of inquiry 1952).

I shall address that fact first. 1R2 had been filed by the Respondents as court of inquiry proceedings. The court of inquiry proceedings have commenced on 10.06.2006, the petitioner had been present. Throughout the proceedings the petitioner had been present when the witnesses were examined. Petitioner had not taken any steps to cross examine the witnesses. And the petitioner had not made any application to call any witnesses on his behalf. The petitioner had the opportunity to be present at the inquiry and had opportunity to cross examine and call for evidence. But the petitioner has not made the use of that opportunity. Therefore, the petitioner is now estopped from pleading that the inquiring officer had breached the rules of natural justice.

The 2<sup>nd</sup> relief claimed by the Petitioner was for Writ of Mandamus to compel the respondent to pay the pension. Pursuant to the Court of inquiry proceedings the petitioner had been found guilty. He had been charged for selling empty cartridges belonging to the Army. Therefore, as a right, petitioner cannot compel the Army to pay the pension. As mentioned in the Army Pensions & Gratuities Code, the petitioner is not entitled to claim as of right. It is stated in that code as follows;

*"Where for misconduct not involving moral turpitude, an officer, including a quartermaster is compulsorily, retired*

or is dismissed or cashiered, he may, if he has a least twenty years reckonable service and if, in the case of retirement, his record of service is satisfactory or in the case of dismissal or cashiering his record of service is distinguished be granted a pension of an amount determined by the Minister in accordance with the provisions of regulation 35 such amount being not more than ninety per centum of the pension for which such offer would have been eligible had he been permitted to retire at his own request."

I am of the view that there is substantial compliance with Section 15 of the Army Regulations 1952. And consequently I hold that the rules of natural justice have not been breached by the officers who held the Court of inquiry.

Based on these reasons, I dismissed the application of the Petitioner.

Application is dismissed.

JUDGE OF THE COURT OF APPEAL

LA/-