

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 Writ of
Certiorari and Writ of Mandamus under
Article 140 of the Constitution of Sri
Lanka.

C.A. Application No.679/2008

Basnayake Kariyapperumalage Nihal
Rupasinghe
Sinharagama, Kumbukwewa,
Mahawa.

Petitioner

Vs.

1. The Air Force Commander,
Air Force Headquarters,
P.O. Box 594,
Colombo.

2. M.H. Karannagoda
Air Vice Marshall
Director of Administration,
Air Force Headquarters,
Colombo.

Respondents

Before: S. Sriskandarajah, J. P (C/A)
Counsel: W.Dayarathne P.C with Mrs.R. Jayawardane
For the Petitioner
M.M.B.Fernando DSG
For the Respondent
Argued on: 10.05.2011
Decided on: 27.07.2011

S.Sriskandarajah J

The Petitioner of this Application was a regular Airman of Sri Lanka Air Force from the year 1996. After serving 2 years, the Petitioner claimed, that as a result of a terrorist attack on 25/08/1998 at the base of Mankulam, he became disabled.

The Respondents submitted that the 1st information of the Petitioner's injury was by way of a signal issued by the parent station which states that the injury was caused due to misfire of the Petitioner's own weapon. The statement of Airman 18640 A.C. Wijeratne, who was on duty on the date of the incident along with the Petitioner when describing the said incident has not mentioned a terrorist attack on the said Airman. The Respondents claim that the petitioner has received the said injury by a misfire of his own weapon. The Petitioner in support of his position relied on a statement made by the Commanding Officer in Form 551 that the injury was caused by a terrorist attack. But the said statement made by the Commanding Officer was thereafter rectified by the same Commanding Officer by his letter dated 17th December 2003 stating that the initial casualty signal and the incidental report sent had confirmed that the injury has been sustained due to misfire of his own weapon. However the Form551 indicated same as Gun short injury due to enemy fire due to oversight and the document (F115) cannot be

used as evidence. As such here by confirm that the injury sustained by the airman is due to misfire of his own weapon.

The Petitioner was directed by document dated 25/9/1998 to be present before a Medical Board and several Medical Boards were held to review his status with regard to his fitness. The 1st Medical Board test was on 27/10/98 and the final report was on 20/10/2003. The Medical Board recommended the invalidation of the Petitioner after considering the said reports. In consideration of the nature of the injuries, the Petitioner has been placed on a lowered permanent medical category under the provisions of paragraph 10 of Chapter 2 of the Air Force Order No. 680, commonly referred to as the Air Force Health Policy and Assigned Light Duties.

Thereafter a final decision was taken for invalidation of the Petitioner after one year of rehabilitation with effect from 20th March 2003. The Respondents submitted that this is the procedure in regard to all personnel placed on a lowered permanent medical category. In keeping with this decision, the petitioner was invalidated with effect from 20th May 2004. The Petitioner made a complaint to the Human Rights Commission and the Human Rights Commission in its recommendation dated 7/11/2006, after considering the facts and circumstances of the Petitioner's application, has not made any observations on the cause of the injury caused to the Petitioner but recommended that the Petitioner be paid a permanent pension. The Respondents submitted that the said recommendation cannot be implemented due to the provisions of the Air Force Pension Scheme. The said Pension Scheme provides in section 19(1)(b) that, a person to be entitled for pension has to complete a period of 12 years. In the case of the Petitioner, he has only completed 7 years in service; therefore the Petitioner is not entitled to the benefit of pension. As there is a specific provision in the Air Force Pension Scheme in relation to the award of pension; that a person has to complete a given period, and as this Petitioner has not fulfilled that requirement, the Petitioner cannot claim it as of right that he be paid a pension.

The Petitioner has also claimed that the decision for not to grant him "combat casualty status" was wrong as the injury he sustained is from a terrorist attack and therefore he has sought in this application that the said decision should be quashed by a Writ of Certiorari. The Petitioner's main claim that the injury was caused by a terrorist attack is only supported by a statement in Form 551 issued on 8/10/1998. That is a standard form in which certain questions are raised and the answers to these questions are left blank, to be filled by the Commanding Officer. One of the questions raised was: "Was the injury due to his own fault, i.e., did it arise from negligence or misconduct or any blameworthy cause within his own control?" This question was answered in the negative "No". The other question posed was, "If so, state what way?" This question was answered as "Due to terrorist gunshot attack."

The Respondents' position is that the aforesaid document was filled and issued subsequent to the incident report which was the 1st information with regard to the incident and that report clearly stated, the injury was due to misfire of his own weapon. The Commander who has filled the aforesaid Form 551 has, by his subsequent letter dated 17th December 2003, rectified his error and has stated that the Form 551, which has stated gunshot injury due to enemy fire was due to oversight and the document F551 cannot be used as evidence, and he has confirmed that the injury caused to the Airman was sustained due to misfire of his own weapon.

Whether the injury of the Airman was caused by a misfire of his own weapon or by a terrorist attack is a question of fact and it has to be decided on consideration of material evidence and the circumstances. The relevant officers after careful consideration of the facts have come to the conclusion that the injury caused to the Petitioner was due to the misfire of the Petitioner's own weapon. The application before me is a judicial review application and this Court, in judicial review proceedings considers on the legality of the decision and not on questions of fact, whether the decision by the relevant officers

are right or wrong, but in considering the facts and circumstances, the decision that the injury was caused due to misfire of the Airman's own weapon cannot be considered as unreasonable. In these circumstances this Court is not inclined to interfere in the decisions made by the Respondents and hence this Court dismisses this application without costs.

President of the Court of Appeal