

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

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

Nuwarapakshage Sumith Nilantha Jayadewa,  
Poojapitiya,  
Metikumbura,  
Polgahawela.

**PETITIONER**

C.A. APPLICATION NO.(WRIT) 644/2011

Vs.

1. Air Marshal Harsha Abeywickrama,  
Commander of the Sri Lanka Air Force,  
Air Force Headquarters,  
Colombo 02.
2. Air Vice Marshal K.R.A. Ranasinghe,  
Director Administration,  
Air Force Headquarters,  
Colombo 02.

**RESPONDENTS**

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

COUNSEL : Ranil Samarasooriya,  
for the Petitioner.

Milinda Gunnathilake DSG  
for Respondent

Argued on : 07.05.2013

Decided on : 16.07.2013

**S.Sriskandarajah,J**

The Petitioner joined the Sri Lanka Air Force as a Cadet Officer on the 8<sup>th</sup> of December 1994 and he was commissioned as a Pilot Officer on the 8<sup>th</sup> of June 1996. Subsequently the Petitioner was promoted to different ranks and he was confirmed in the rank of Squadron Leader with effect from 8<sup>th</sup> of December 2008. The Petitioner submitted that on or about February 2009, a summary trial against the Petitioner was conducted and the Petitioner pleaded guilty to the charges and he was found guilty on his plea. The charge against the Petitioner was that he had committed an offence of assistance of and/or connivance at desertion. The Petitioner was punished with 2 years loss of seniority in the Air Force and this punishment was awarded from 5<sup>th</sup> of March 2009 and was confirmed by the Commander of the Sri Lanka Air Force on the 22<sup>nd</sup> April 2009. In view of this punishment with effect from 6<sup>th</sup> October 2009, the Petitioner was reversed from the rank of Temporary Squadron Leader to the immediate junior rank of Flight Lieutenant.

It is the submission of the Petitioner that the Petitioner was confirmed in the rank of Squadron Leader with effect from 8<sup>th</sup> December 2008 and, therefore, the Petitioner could not have been demoted from the said rank, and the Petitioner further contended that every officer in the Sri Lanka Air Force holds his appointment during His Excellency the President's pleasure and, therefore, it is only His Excellency the President could demote the Petitioner from the rank of Squadron Leader. The Petitioner further contended that the Petitioner could not have been reversed from the rank of Temporary Squadron Leader to the immediate junior rank of Flight Lieutenant, as it is not a 2 year loss of seniority in the Air Force, but a demotion from one rank

to the immediate junior rank, which was not the punishment that was awarded to the Petitioner and, therefore, the Petitioner submitted that the said decision is bad in law, illegal and ultra vires to the powers of the Respondents. In these circumstances the Petitioner has sought a Writ of Certiorari to quash the decision of the 1<sup>st</sup> Respondent to revert the Petitioner from the rank of temporary Squadron Leader to the immediate junior rank of substantive Flight Lieutenant.

It is the submission of the Respondents that His Excellency the President has approved the reduction in the rank of the Petitioner to the rank of Flight Lieutenant in terms of the powers vested in His Excellency the President in terms of Regulation 3 of the Air Force Regulation. In these circumstances the Respondents submit that the decision of His Excellency cannot be challenged in these proceedings as His Excellency's decisions are immune from challenge in a Court of Law.

The Respondents also submitted that even though the Petitioner was promoted to the rank of temporary Squadron Leader on 8<sup>th</sup> December 2005, his promotion had not been confirmed in the position of substantive Squadron Leader. Before the Petitioner was promoted to the substantive rank of Squadron Leader, the Petitioner was found to have breached the Air Force discipline and, after a summary trial, a punishment was imposed, and in view of that punishment, the Petitioner's promotion to the substantive rank of Squadron Leader had not taken effect. Due to the disciplinary order, the Commander of Air Force had written to the Secretary, Ministry of Defence by his letter dated 31<sup>st</sup> January 2009, requesting the cancellation of the promotion of the Petitioner to the post of substantive Squadron Leader with effect from 8/12/2008. Thereafter, the Commander of the Air Force had written to His Excellency the President, through the Secretary, Ministry of Defence, by his letter dated 22<sup>nd</sup> April 2009, recommending the reduction of the Petitioner's rank from temporary Squadron Leader to immediate junior substantive rank of Flight Lieutenant, based on the finding of guilt of the Petitioner in the summary trial. In these circumstances the Petitioner's promotion to the rank of substantive Squadron Leader had not taken effect from 8/12/2008, and the Petitioner's reduction of the Petitioner's rank from temporary Squadron Leader to the rank of Flight Lieutenant was approved by His Excellency the President. The Petitioner's relief sought in this application to quash the decision of the 1<sup>st</sup> Respondent to revert the Petitioner from the rank of

temporary Squadron Leader to the immediate junior rank of substantive Flight Lieutenant is misconceived in law. As the 1<sup>st</sup> Respondent's order was subsequently approved by His Excellency the President and, as such, the final order was made by His Excellency the President, and the said order is immune by the provisions of the Constitution and, in these circumstances this Court cannot entertain the Petitioner's application and grant relief. As such, this Court dismisses this application without cost.

President of the Court of Appeal