

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

In the matter of an application for  
mandates in the nature of writs of  
certiorari and/or Mandamus and/or  
Prohibition under Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

**Case No. C.A. Writ 99/2013**

Weerakoon Mudiyanseelage Weerasekara

Bandara,

Rawa Ela,

Thalakola Wewa,

Via Kurunegalla.

**Petitioner**

Vs.

1. Capt. S.N.A.M.S.Priyashantha,  
Sri Lanka Electrical and Mechanical  
Engineering, Regiment of Sri Lanka  
Army, 5<sup>th</sup> Battalion, Saliyapura Army  
Camp, Anuradhapura.

2. Lt. A.M.M.C.Adikari  
Sri Lanka Electrical and Mechanical  
Engineering, Regiment of Sri Lanka  
Army, 5<sup>th</sup> Battalion, Saliyapura Army  
Camp, Anuradhapura.

3. Major K.M.J.N.R.K. Chandrasekara,  
Sri Lanka Electrical and Mechanical  
Engineering, Regiment of Sri Lanka  
Army, 5<sup>th</sup> Battalion, Saliyapura Army  
Camp, Anuradhapura.

4. Lt. Col. D.P. Hathurusinghe,  
Commander,  
Sri Lanka Electrical and Mechanical  
Engineering Armored Battalion,  
Saliyapura Camp, Anuradhapura.

5. Major H.P.L. de Alwis,  
Second in Command,  
Sri Lanka Electrical and Mechanical  
Engineering Armored Battalion,  
Saliyapura Camp, Anuradhapura.

6. Capt B.M.G.S. Somanatha,  
Adjutant,  
Sri Lanka Electrical and Mechanical  
Engineering Armored Battalion,  
Saliyapura Camp, Anuradhapura.

7. Major K.A.R.K. Dias,  
Regimental Executive,  
Sri Lanka Electrical and Mechanical  
Engineering Regimental Centre,  
Malay Street, Colombo 02.

8. Major J.P.P.Muthumala,  
Administrative Officer,  
Sri Lanka Electrical and Mechanical  
Engineering Regimental Centre,  
Malay Street, Colombo 02.

9. Col. M.A.A.D. Sirinaga,  
Centre Commander,  
Sri Lanka Electrical and Mechanical  
Engineering Regimental Centre,  
Malay Street, Colombo 02.

10. Major General Jagath Jayasuriya,  
Commander of Sri Lanka Army,  
Sri Lanka Army Headquarters,  
Baladaksha Mawatha, Colombo 02.

11. Gotabhaya Rajapaksha,  
Defence Secretary,  
Ministry of Defence,  
Colombo 01.

12. Hon. Attorney General,  
Attorney General's Department,  
Hulftsdorph, Colombo 12.

**Respondents**

**BEFORE**

: P.W.D.C. JAYATHILAKE, J

**COUNSEL**

: Mangala Niyanpola with  
Edward Samarasekara,

Subashini Kulatunga and

Hemalee Abhayawickrama for the

Petitioner.

Nayomi Kahawita SSC with Rizni

Firdous, S de Almeida and

Dharshini Gamlath for

Respondents.

**ARGUED ON**

: 07.05.2014, 11.06.2014

20.06.2014

Written Submissions filed on

: 11.08.2014 and 18.11.2014

**DECIDED ON**

: 25.05.2015

**P.W.D.C. Jayathilake, J**

The Petitioner was a Soldier of the regular force of Sri Lanka Army and was a senior non-commissioned officer holding a rank of sergeant. He was attached to SLEMP 5<sup>th</sup> battation, Saliyapura Army Camp by having served the army 24<sup>th</sup> June 2012 for 17 years. The Petitioner, 28 other soldiers of different ranks, two officers and one civil servant had been assigned duties at an event organized by army held at Sevanagala, Udawalawa on the said date. The Petitioner and other assignees started off from Anuradhapura, Saliyapura Camp on 22<sup>nd</sup> June 2012 and proceeded to Udawalawa in an Army truck, a distance of more than 360km. The Petitioner states that they were travelling in the rear of the truck with great difficulty due to the insufficiency of space. The Petitioner and others spent three nights in Udawalawa where they had to sleep on a pavement after the assigned duties. They reported to the Udawalawa Army Camp their return

journey to Saliyapura around 7.00 a.m on 25<sup>th</sup> June, but started off on the journey to Saliyapura at about 7.50 a.m due to belated readiness of the commander on travel who is the 1<sup>st</sup> Respondent. Non of the soldiers including the Petitioner had not been provided with breakfast by Udawalawa Camp as the travel order had already been obtained on the previous day to leave Udawalawa Camp at 5.00 a.m. The Petitioner has described the hardship they underwent during their return such as the lack of space of the vehicle, non availability of food and drinks, getting wet in the rain and not stopping of the truck for their call of nature. Finally, due to the incapability of bearing the inconveniences, they had banged on the cabin glass to make the truck stop. When the truck stopped, R.S.M the Petitioner and a few others had gone to the 1<sup>st</sup> Respondent to tell about the uncomfortable situation in which they were at that time. The 1<sup>st</sup> Respondent seated on the front seat had opened the door and tried to kick the R.S.M. But after reaching Saliyapura Camp around 8.00 p.m the Petitioner and others came to know that the 1<sup>st</sup> Respondent had complained to the second in command of the Saliyapura Camp who is the 3<sup>rd</sup>



Respondent that the Petitioner had acted in a disgraceful manner by trying to assault the 1<sup>st</sup> Respondent. After that the Petitioner was subjected to various harassments and was served with a charge sheet on 4<sup>th</sup> March 2013 by the 9<sup>th</sup> Respondent. The two charges were as follows.

*Sec. 99(2)(a) - Whilst being in active service as a Soldier of the Regular Force of Sri Lanka Army, "assaulting or threatening a Senior Officer" i.e whilst on the way back to Saliyapura from Uda Walawa on 25.06.0912 after completing the organizational duties of the Walawa Super Cross meet threatening and attempting to assault the Tour Commander of the Army Truck O/66962 Capt S.N.A.M.S. Priyasantha and thereby committing an offence punishable under Sec. 99(2)(a) of the Army Act No. 17 of 1949.*

*Sec.129(1) Whilst being in active service as a Soldier of the Regular Force of Sri Lanka Army, "conducting in a manner prejudicial to military discipline" i.e whilst on the way back to Saliyapura from Uda Walawa on 25.06.0912 after completing the organizational duties of the Walawa Super*

*Cross meet acting in a manner unbecoming of a Senior non commissioned officer by threatening and attempting to assault the Tour Commander of the Army Truck O/66962 Capt S.N.A.M.S. Priyasantha and thereby committing an offence punishable under Sec.129(1) of the Army Act No.17 of 1949.*

The Petitioner states that he is not guilty of two charges and stresses that even though the witnesses called to establish the charges, including the 2<sup>nd</sup> Respondent were flabbergasted over the allegations, the 9<sup>th</sup> Respondent held him guilty of the two charges and imposed punishments on the same day, namely, 04.03.2013. The said punishments were

- (i) Demotion from the rank of Sergeant to Corporal in respect of the 1<sup>st</sup> charge
- (ii) Demotion from the rank of Corporal to Lance Corporal in respect of the 2<sup>nd</sup> charge.

However, the 9<sup>th</sup> Respondent had summoned the Petitioner on the following day, namely, 5<sup>th</sup> March 2013, and informed him that the Army Commander,

the 10<sup>th</sup> Respondent, having considered the report of the preliminary investigation court with regard to the same incident has concluded and thus ordered that the Petitioner be discharged from the Army on the basis that his service was not required by the Army. The Petitioner alleged that the 9<sup>th</sup> Respondent charge sheeted him and conducted the inquiry on 04.03.2013 while the 9<sup>th</sup> Respondent had the 10<sup>th</sup> Respondent's order in his possession. Accordingly, the Petitioner complains to this court that the 9<sup>th</sup> Respondent acting in collusion with the other Respondents had breached the provisions of the Army Act and also acted violating the principles of Natural Justice.

The Preliminary Investigation Court comprising the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents had not conducted a proper and transparent inquiry in respect of the difficulties and hardships undergone by the Petitioner due to the inhumane treatment meted out to the Petitioner had complained of same in his written statement tendered to the 3<sup>rd</sup> Respondent and also before the Preliminary Investigation Court. The Petitioner states that the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 9<sup>th</sup> Respondents have jointly and/or severally misled the 3<sup>rd</sup> Respondent by

misdirecting him of the real facts of the matter in an attempt to safeguard the 1<sup>st</sup> Respondent which has resulted in the 10<sup>th</sup> Respondent to arrive his conclusion to discharge the Petitioner from the Army. The Petitioner in his petition, has prayed for a writ in the nature of certiorari quashing the charge sheet and the finding of the 9<sup>th</sup> Respondent dated 04.03.2013 marked as P2 ; a writ in the nature of certiorari quashing the relevant conclusions arrived at by the 10<sup>th</sup> Respondent and also related orders therein relating to the Petitioner marked as P3 and a writ in the nature of certiorari quashing the order conveyed to the Petitioner by the 7<sup>th</sup> Respondent, marked as X. He has further prayed for a writ in the nature of prohibition preventing taking any action against the Petitioner as per the orders made in relation to the documents marked as P3 and X and to issue a writ, in the nature of Mandamus compelling the 3<sup>rd</sup> to 10<sup>th</sup> Respondents to act in terms of the provisions of the Army Act to hold a full and fair summary trial and/or court Martial into all allegations raised against the Petitioner by the 1<sup>st</sup> Respondent and such other and further reliefs.

The Respondents in their statement of objections stated as follows.

During the course of the return journey to Saliyapura on 25.06.2012, the Petitioner together with the Petitioners of other connected cases had threatened and attempted to assault the 1<sup>st</sup> Respondent who was a tour commander and an officer superior in rank and file to them. On 25.06.2012 the 1<sup>st</sup> Respondent and the officer in second command were ready at 6.00 a.m however, the Petitioner and other Soldiers were late and had arrived around 7.45 a.m and as a result the time of departure from Walawe was behind the initially scheduled timer by one hour and 45 minutes. At around 10.50 a.m at Palmadulla, the Petitioner and other Soldiers had asked the 1<sup>st</sup> Respondent to stop the truck to have tea and the truck was stopped at Palmadulla till 11.40 a.m and they began the return journey by 11.45 a.m. While passing Pothuhara, the driver stopped the truck to remove the water in the vacuum tank and at that time, the Petitioner together with the other Petitioners of the connected cases and another soldier had come near the 1<sup>st</sup> Respondent, and a petitioner of a connected case had pulled the 1<sup>st</sup> Respondent by his uniform and had uttered words of filth. Thereafter, there was an attempt to drag the 1<sup>st</sup>

Respondent out of the truck in order to assault him. The 1<sup>st</sup> Respondent and his subordinate shouted at the R.S.M. to take control of this situation and to disperse the gang which was eventually done and the Petitioner together with his supporters retreated to the truck. This incident was immediately communicated by the 1<sup>st</sup> Respondent to the commanding officer of the Saliyapura Camp and by the 2<sup>nd</sup> Respondent to the second-in-command over the mobile phones.

Respondents state the directions by the 3<sup>rd</sup> Respondent, the Petitioners and other Soldiers to make written statements of the events that took place was a preliminary investigative inquiry and as per the standard procedure in the Army, whenever an unusual or aggressive incident takes place, written explanations are called from those involved in such an incident and based on those statements, Army authorities decide what the appropriate course of actions to be taken. Therefore, there is no procedural irregularity or illegality in holding a Preliminary Court of inquiry into the incident according to the Respondents. The Court of inquiry was convened in terms of the Army court of

inquiry regulations 1952 and it is also followed as a standard step in the procedure leading to the investigation of the incident.

The Respondents have explained the matters of the court of inquiry as follows.

The court of inquiry was convened consequent to a convening order sent by the commanding officer of the Sri Lanka Electrical and Mechanical Engineering Regiment to which the concerned parties were attached and the court of inquiry was commenced on 27.06.2012 and concluded on 05.07.2012. The oral evidence of thirty witnesses were recorded and the Petitioners were given an opportunity to ask any questions from the 1<sup>st</sup> Respondent with regard to the incident. The court of inquiry was conducted following the rules of natural justice. There was no formal charge sheet issued to the Petitioner at the court of inquiry, since the charge sheet had to be formulated based on the findings of court of inquiry. Respondents further clarify that the charge sheet P2 was served on the Petitioner at the conclusion of the court of inquiry and the summary trial was conducted based on the said charge sheet. On the Petitioner's pleading not guilty, witnesses were summoned and evidence was

led in terms of regulation 47 of the Army Discipline Regulation of 1950 and Sec. 43 of the Army Act. At the conclusion of the summary trial after analysis of all the evidence the inquiry officer had found the Petitioner guilty of the charges according to the Respondents.

According to Respondents the discharge of the Petitioner from military service was a directive by the 10<sup>th</sup> Respondent in terms of regulation VIII (a) Table of the Soldiers Service Regulations and was not a punishment culminating from the summary trial. Therefore, Respondents move to dismiss the Application of the Petitioner.

One of the main irregularities alleged by the Petitioner is serving the charge sheet, conducting the summary trial and imposing the punishment on the same day. The Petitioner has marked the charge sheet which includes the conviction and the punishment as P2. P2 deals with two charges. The 1<sup>st</sup> is under Sec. 299(2) (a) of the Army Act. The charge no.II is under Sec.129 (1) of the said act. The learned counsel for the Petitioner contended that both charges are to be tried by the court martial and not by summary trial.



Therefore, he alleged that the Respondents have applied the Sec. 43,99 and 129 of the Act wrongfully. Yet, another complaint is that as per Sec. 129(2) of the Act, no person shall be charged for any offence under Sec. 129(1) if any special provision is made in any other section of the Act for such offence. The learned counsel submitted that alleged offences framed against the Petitioner as per the charge sheet marked as P2 clearly amounts to acting arbitrarily and in ultra vires by the Respondents.

The learned Senior State Counsel who appeared for the Respondents submitted that it is evident from the letter P1 that the charge sheet had been served on the Petitioner prior to the date of P1 which is dated 03.03.2013 (a Sunday). She further submits that however, the Petitioner has not made any objection at the summary trial that the charge sheet was not served 24 hours before the commencement of the summary trial. If such an objection had been raised, the inquiry officer would have taken such into consideration and accorded further time for the Petitioner to prepare for the inquiry submits the learned Senior State Counsel.

The learned Senior State Counsel made the following submissions as against the allegation made by the Petitioner with regard to the charge sheet and the summary inquiry. Sec.40 of the Army Act as amended by Act No.38 of 1990 refers to any offence that a person below the rank of a lieutenant colonel or is a soldier is charged with to be dealt with summarily by the authority mentioned to in subparagraphs (b) (II) or (III) of Sec.40 (2) 1 of the Army Act. The Petitioner of the instant case being a non commissioned soldier of the army was tried summarily for the military offences charged against him under Sec.40 (I) (b) (III) read together with Sec.42 of the Army Act as amended by Act No. 38 of 1990.

Sec.40 (I) (iii) (b) substituted by the Act No.38 of 1990 is as follows.

- (iii) Where that person is a soldier other than a warrant officer, either deal with the case summarily, or refer the case to be dealt with summarily by the commander of the army or by such officer not below the rank of Colonel as may thereto be authorized by the

commander of the army. Sec.42 which deals with punishments has

been amended by said Act by substitution the following sub Sec.(d)

where the accused is of a rank of sergeant or below, inflict on him all or any of the following punishments:-

- (i) Order him to be reverted to the rank of corporal if the accused is a sergeant or to the rank of lance corporal if the accused is a corporal or to the rank of private if the accused is a lance corporal.

It has been held in Mendis Vs Commander of the Army (2001 3 SLR 360) that in the case of a non warrant officer it is not necessary to hold a formal inquiry under the Army Act or to hold a court martial, since there is a clear discretion granted by statute to hold summary trial and punish a soldier by reverting him to the lower rank.

When considering the story of the Petitioner as a whole although there are instances of great inconveniences and discomforts during the journey and the situations thereafter, it appears that provisions of the Army Act have been

observed within the disciplinary procedure. Therefore, the court finds it difficult to agree with the allegations of wrongful application of the provisions of Army Act and of Respondents having acted arbitrarily and in ultra vires.

The other matter to be taken into consideration is the discharge of the Petitioner from military service on a directive issued by the 10<sup>th</sup> Respondent. It appears that there is no direct connection between the disciplinary inquiry and the Petitioner's being discharged from military service. But, this court had previously decided that the discharge of a soldier from the military service is not a punishment arising from the court of inquiry or summary trial, but the discharge based on Sri Lanka Soldiers' Service Regulation No.1 of 1994 on the basis that his service is no longer required by the Sri Lanka Army. (S. Sri Skandaraja J in CA/Writ/APP/1043/2008) It has been accepted that discharge from Sri Lanka Army takes place in terms of clause (viii) (a) of Table A of Soldier Service Regulation I of 1994 (2001 3 SLR 260).

Therefore, this court decides that there is no merit in the petition and as such dismisses the petition without cost.

The parties in the applications bearing case numbers C.A. Writ 100/2013, C.A. Writ 101/2013 are to abide by this order as this order is to be applicable in all those applications. The Registrar of this court is directed to file a copy of this order in all those applications.

*Petition dismissed.*

**JUDGE OF THE COURT OF APPEAL**