

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

K.T.Y. R. Nishantha,
No.3/4, Sri Wijayarama Road,
Kaluwadumulla,
Ambalangoda.

Petitioner

CA Writ 262/2016

1. Lt. General AWJ Crishantha De
Silva,
Commander of the Army,
Army Headquarters,
Baladhaksha Road,
Colombo 02.

2. Colonel Commandant,
Regimental Headquarters,
Sri Lanka Corps of Military Police,
Polhengoda, .
Colombo 5.

3. Centre Commandant,
Regimental Headquarters,
Sri Lanka Corps of Military Police,
Polhengoda,
Colombo 5.

RESPONDENTS

C.A.No.262/2016 (Writ)

Before : Vijith K.Malalgoda,P.C.J.(P/CA) &
P. Padman Surasena,J.

Counsel : A.K.Chandrakantha for the Petitioner.

Argued and
Decided on : 21/09/2016

Vijith K.Malalgoda P.C.J. (P/CA)

The petitioner has come before this Court seeking a Writ of Certiorari to quash the decision reflected in documents marked P1 and P7 and Writ of Mandamus Compelling the respondents to take steps to re-instate the petitioner to the Sri Lanka Army. As revealed by the submissions of the counsel for the petitioner, the petitioner has been discharged by the Army after withdrawing his commission by His Excellency the President in the year 2009. Petitioner has challenged the said decision by way of a Writ application before this Court in the year 2009 and this Court after considering the material placed before Court has refused the said application. Thereafter the petitioner has gone before the Supreme Court against the said order

but he was not successful. By way of the present application the petitioner is trying to canvas the same decision of the Army which was taken in the year 2009. However the learned Counsel submits that the grounds for the present application are different to the grounds the petitioner had placed previously. Even though the counsel submits before us a subsequent acquittal of the petitioner in the Magistrate's Court proceedings in the year 2010, when going through the order made by their Lordships in the year 2009 we observed that their Lordships were mindful of the Criminal case pending in the Chavakachcheri Magistrate's Court . Petitioner now takes up the position that he was discharged from the said proceeding by the Magistrate in the year 2010, but he has waited until 2016 to canvas the said fact before this Court. However we observe that the decision to discharge from Army was taken initially in the year 2007 by the then Commander of Army on disciplinary grounds which was confirmed by another decision of a subsequent Commander of the Army in the year 2008. The petitioner submits that there was contrary decision in the year 2004 but all these issues had been looked into by their Lordships' when they decided to refuse notice in the said application. When considering these issues we see no reasons for this Court to issue notice once again sine this Court and the Supreme Court has once looked into this matter previously.

Therefore we are not inclined to issue notices at this stage.
Accordingly, we dismiss this application.

PRESIDENT OF THE COURT OF APPEAL

P.Padman Surasena,J.

I agree.

JUDGE OF THE COURT OF APPEAL

WC/-