

**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 in terms of Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

C A (Writ) Application

No. 297 / 2013

P A M G Pinnawala

No. 35 A,

Justice. Akbar Mawatha,

Colombo 02.

**PETITIONER**

-Vs-

1. Air Marshal Harsha Abeywickrama.  
Commander of the Sri Lanka Air Force,  
Air Force Headquarters,  
Colombo 02.

2. Air Commodore J S I Wijemanne  
Director Administration,  
Sri Lanka Air Force,  
Air Force Headquarters,  
Colombo 02.

3. Air Commodore D M S Karunaratne  
Director Health Services,  
Sri Lanka Air Force,  
Air Force Headquarters,  
Colombo 02.

**RESPONDENTS**

**Before: Vijith K. Malalgoda PC J (P/CA)**

**P. Padman Surasena J**

Counsel: Ranil Samarasuriya for the Petitioner.

Nayomi Kahawita for the Respondents.

Argued on: 2016-08-02

Decided on: 2016-12-05

## JUDGMENT

### **P Padman Surasena J**

The Petitioner is an officer who had served in the Sri Lanka Air Force whose right leg above the knee was amputated as a result of being shot at, by another airman at Sri Lanka Air Force unit at Bandaranaike International Air port.

The Medical Board that was convened consequent to the aforesaid amputation had decided in its proceedings as follows:

"Assess MB held today and rec. that he be unfit for the service under existing standard relating to fitness

ES: A4 G4 (P)."

This document titled "Medical Board proceedings - all ranks" is produced marked **R 1** by the Respondents. The above decision is found therein under the section "Findings of the Board" as item No. 12.

The argument advanced by the learned counsel for the Petitioner is that the Petitioner is eligible to receive compensation which should be equivalent to 120 months' salary in terms of the provisions contained in clause 3 (a) (ii) and 3 (a) (iii) of the Public Administration Circular No. 22 / 1933, dated 1993-09-21, produced marked **P 9** ( 60 months' salary referred to in that circular has subsequently been increased by 100% by the Cabinet of Ministers subsequently).

Clause 3 (a) (ii) and (iii) relied upon by the learned counsel for the Petitioner are as follows:

Clause 3 (a) (ii)

if the injury results in permanent total disablement

"60 months' salary being deemed unfit for service by the Board dealing with the payment of compensation mentioned in section 5 of this Circular. The Board will take decision on the recommendations of the Head of the Department concerned and based on the report of the Medical Board. when patients is categorized under "permanent total disablement" the Medical Board will not state any percentage of loss of earning capacity / disability. Instead it will report that the patient is not fit to perform the duties of the present post he holds and that the patient is "permanently and totally disabled".

Clause 3 (a) (iii)

if the injury results in permanent partial disablement

"Compensation payable to be determined by the Board dealing with the payment of compensation mentioned in section 5 of this Circular as a percentage of 45 months' salary based on the percentage loss of earning capacity determined by a Medical Board in accordance with the annex I of this Circular. The Medical Board will not categorize a patient who is not fit to perform the duties of the present post he holds under this category."

The argument advanced by the learned counsel for the Petitioner is twofold. They are;

- i. that the Medical Board cannot state any percentage of loss earning capacity when it recommends to categorizes a patient under clause 3(a)(ii) "permanent total disablement" category.
- ii. that the Medical Board should not categorize a patient who is not fit to perform the duties of the present post he holds under clause 3(a)(iii) when it makes a finding on the percentage loss of earning capacity of a patient as has been determined by the Board in this case.

It was his submission that the finding of the Medical Board is therefore compatible with clause 3 (a) (ii).

A4 G4 referred to in item No. 12 under the 'Findings of the Board' in the Medical Board proceedings is found in the Air Force Orders No: 680 marked and produced by the Respondents as **R 2 (a)**. It is as follows:

#### **A 4**

"Fit to fly as a passenger only ( either as a passenger in normal transport flight or as a patient in an aero medical flight)."

#### **G 4**

"Limited Ground duties of his trade in addition to limitation of service duties. Limitation is specified, i. e. Unfitness for . Night Duty, Shift Work, Standing up or at heights or an laddees or underground or in confined spaces or in the open or outdoors or with food stuffs, close work, Driving, Wearing headsets, Exposure to noise or heat or cold or water or glare or

skin irritants or fumes, Heavy lifting, Driving heavy vehicles, work kneeling down, Use of one hand ( an arm) opportunity for regular meals work under supervision only, use of fire arms etc."

It was the submission of the learned counsel for the Petitioner that the Medical Board findings contained in item No. 15 of its proceedings **R 1** is contrary to clause 3 (a) (ii) of the circular as it has stated that "when patient is categorized under permanent total disablement, the Medical Board will not state any percentage of loss or earning capacity/disability."

The question before this court therefore is, whether the Medical Board has categorized the Petitioner under limb 3 (a) (ii) or 3 (a) (iii) of the relevant Circular above referred to.

The answer to this question could and should be found from the document marked **R 1**. Air Force Order No. 608 has been produced by the Petitioner as **P 2** and by the Respondents as **R 2**. Therefore it is clear that the documents relied on by both parties are not at variance.

It is relevant to note that the findings of the Board has been entered in **R 1** under item No. 12 (b), the heading of which is "Employment Standards. Add any specific restrictions on employability". The Medical Board has clearly categorized the Petitioner under the category A4 G4 and that is the reason as to why the Medical Board has gone on to make a finding on the percentage of the loss of earning capacity of the Petitioner.

Item No. 10(a) in **R 2** explains the meanings of 'A' as indicating flying duties and 'G' as indicating ground duties.

Further it is relevant to observe that the note appearing on top of item No. 15 of the Medical Board proceedings (**R 1**) reads thus; " what is the present degree of disablement as compared with a healthy person of the same age and sex? Percentages will be expressed as NIL or in UNITS up to 20% or in MULTIPLES OF TEN from 20% to 100%. Where an artificial appliance (other than aid to hearing) has been satisfactorily fitted, this assessment will be related to the residual degree of disablement."

There appears a table below that note which comprises four separate columns.

The Petitioner in this proceeding seeks inter alia,

- I. a Writ of Certiorari to quash the decision of the 1<sup>st</sup> -3<sup>rd</sup> Respondents contained in the letter dated 2013-07-18 marked (**P13**) and in the letter dated 2013-07-25 marked (**P14**),
- II. a direction on the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to grant the Petitioner with a monetary compensation of 120 months' salary instead of the compensation that the Petitioner has presently been granted.

It is to be observed that the prayer No. (ii) above does not specify the nature of the writ that is being sought by the Petitioner. This has an importance as this application is an application made under Article 140 of the Constitution which empowers this Court to issue several types of writs.

In the case of Dayananda Vs. Thalwatta<sup>1</sup> this Court has held as follows.

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<sup>1</sup> 2001 2 SLR at page 73

".... An aggrieved person who is seeking to set aside an unfavourable decision made against him by a public authority could apply for a prerogative writ of certiorari and if the application is to compel an authority to perform a duty he would ask for a writ of mandamus and similarly if an authority is to be prevented from exceeding its jurisdiction the remedy of prohibition was available. Therefore it is necessary for the Petitioner to specify the writ he is seeking supported by specific averments why such relief is sought. Even though the Petitioner has set out in the caption that "in the matter of an application... for writ of quo warranto and prohibition" there is no supporting averment specifying the writ and there is no prayer as regards the writ that is being prayed for. The failure to specify the writ therefore renders the application bad in law .....

Admittedly the applicable Circular for payment of compensation to Public officers who suffer injury while on duty is Public Administration Circular No. 22/93 (marked **P 9**) as amended by the Circular No. 22/93 (iii) (marked **R 7 (a)**). Consideration of the provisions of the said Circular in its totality shows that the quantum of compensation payable to such injured officer will depend on the loss of that officer's earning capacity.

Clause 3 (a) (iii) specifies how a loss of earning capacity should be measured in case of a permanent partial disablement.

The disablement the Petitioner has suffered is an amputation of his leg from his right knee. It is an injury which is permanent in nature. But it cannot be categorized as a total disablement which envisages a situation



where the Petitioner 'is not fit to perform the duties of the present post he holds and that the petitioner is permanently and totally disabled' category which falls under clause 3(a)(ii).

Therefore in this case the nature of the injury which the Petitioner has sustained is a permanent partial disablement for which the Respondents are authorized to pay only 90 Months' salary as the applicable clause is clause 3(a)(iii) .

To the contrary according to Clause 3 (a) (ii), when a patient is categorized under "permanent total disablement" the Medical Board will not state any percentage of loss of earning capacity / disability. Instead it will report that the patient is not fit to perform the duties of the present post he holds and that the patient is "permanently and totally disabled".

In the instant case the lastly convened Medical Board of the Air Force had determined the percentage of disability for the Petitioner's disablement of right above knee amputation as 75%<sup>2</sup>. The composite assessment of all disability sustained by the Petitioner is also indicated to be 75%<sup>3</sup>. The "Minimum duration of this degree of disablement" of the Petitioner is mentioned as 02 years<sup>4</sup>. It is the position of the Respondents that this duration refers to the validity period of the assessment in **R 1** and that after the lapse of two years the relevant officer will have to be re-assessed to obtain his accurate fresh medical status.

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<sup>2</sup> Column 2 of the table under item No. 15 in **R 1**

<sup>3</sup> Column 3 of the table under item No. 15 in **R 1**

<sup>4</sup> Column 4 of the table under item No. 15 in **R 1**

The calculation of the loss of earning capacity of the Petitioner for the loss of his leg at or above knee to be 75% is also supported by Schedule 1 of the Circular N o 22 / 93. This Schedule is an annexure to the above circular.

In these circumstances and for the foregoing reasons we see no basis as to why the decision contained in the letter dated 2013-07-18 marked (**P13**) and in the letter dated 2013-07-25 marked (**P14**) should be quashed by a Writ of Certiorari. Therefore we decide to dismiss this application. No cost is ordered.

Application is dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**Vijith K. Malalgoda PC J**

I agree,

**PRESIDENT OF THE COURT OF APPEAL**