

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

K.T.S.S. Gunawardena,
No. 82/A,
Galaha Road,
Hindagala.
Petitioner

CASE NO: CA/WRIT/288/2015

Vs.

Lt. Gen. A.W.J.C. De Silva,
Commander of the Sri Lanka
Army,
Army Head Quarters,
Colombo 3.
And 3 Others.
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: J.C. Weliamuna with Thilini Vidanagamage for
the Petitioner.
Manohara Jayasinghe, S.C.C., for the
Respondents.

Decided on: 06.03.2019

Samayawardhena, J.

The petitioner filed this application seeking several reliefs in the nature of writs of certiorari, mandamus and prohibition basically preventing the respondents from retiring the petitioner from the Sri Lanka Army without promoting him to the rank of Brigadier with effect from 21.03.2013.

The petitioner's last substantive promotion was on 21.03.2008 to the rank of Colonel. The next promotion was to the rank of Brigadier. Promotion is not automatic. The officer shall earn the promotion on merits. The respondents in paragraph 24(i) of their statement of objections have stated that the promotions in the Sri Lanka Army are given on the criteria laid down under the Army Officers Service Regulations (Regular Force), 1992 as made by the President in his capacity as the Commander in Chief—vide P13(a). This has not been denied by the petitioner.

In terms of Regulation 3(1)(b) of the Army Pension and Gratuities Code, 1981, the petitioner ought to have been retired on 21.03.2013, having served the maximum period in the rank of Colonel without being promoted to the next rank.

In paragraph 11 of the petition, the petitioner says that the Promotion Board convened in October 2009 to promote officers to the rank of Brigadier did not promote him to the rank of Brigadier.

The respondents in paragraph 24(iv) of their statement of objections state that the Army Promotion Board No.2 which assembled on 27.02.2013 had upheld the previous Promotion Board recommendations not to promote the petitioner to the rank of Brigadier due to *inter alia* poor disciplinary record, but

having regard to the full period of service, had recommended to grant one-year extension upon the petitioner reaching the maximum period in the substantive rank of Colonel, i.e. from 21.03.2013 to 20.03.2014. This extension has not been divulged in detail by the petitioner in the petition.

The petitioner in paragraph 2.5(b) of the written submissions seems to be stating that in view of Regulation 3(2)(b) of the Army Pension and Gratuity Code, 1981, this extension is illegal as this has not happened with the concurrence of the President.

According to paragraphs 20-22 of the petition, the petitioner has met the new Army Commander on 24.12.2013 to tell his grievances regarding denial of promotion, and thereafter he has been summoned before the Army Advisory Board on 02.04.2014.

It seems to me that when he was summoned before the Advisory Board on 02.04.2014, his term has already expired as his extension was only up to 20.03.2014.

Be that as it may, the Advisory Board has recommended another one year of extension of service from 20.03.2014 to 20.03.2015 and further recommended to promote the petitioner to the rank of Brigadier at his retirement in order to award him the post-retirement benefits. This extension is also may be illegal according to the petitioner's argument.

According to paragraph 24(vi) of the statement of objections, upon further request made to the Commander of the Army, the petitioner has been given another extension of six months from 20.03.2015 to 19.09.2015.

As seen from R4 and R5, His Excellency the President has approved the promotion of the petitioner to the rank of Brigadier with effect from 19.09.2015 and his retirement with effect from 20.09.2015. This has happened whilst the case was in progress. The matter shall end there.

As seen from R2, R2(a)-(d), the past record of the petitioner is not exemplary. He has been found guilty for some offences and dealt with.

R3 certified by an Attorney-at-Law serving in the Legal Directorate of the Army gives a description on the basis for extensions given, promotion denied and later granted to be effective from the date of retirement.

According R3, even the Advisory Board, which was convened particularly to consider his grievances favourably, has come to the conclusion that *“although the petitioner’s performances at his early stage of career was praiseworthy, he has not maintained the same consistency in the latter part and thereby has failed in meeting standards in the required criteria to become eligible for the next promotion.”* Nevertheless, the Advisory Board has granted yet another one-year extension and the promotion to the next rank of Brigadier at the time of retirement.

The petitioner himself has tendered P7(a) and P7(b) containing allegations against him. The petitioner has given his explanation in respect of P7(a) by P7(c). Even though this is not the forum to look into that matter, for me, that explanation is not very convincing. There is no explanation in respect of P7(b).

Unless there is a grave injustice or irregularity on the face of the record, this Court in the exercise of writ jurisdiction will not

interfere with the promotions of the Army. I find no such injustice or irregularity. The petitioner's grievances have been adequately heard by different fora at different times and granted reliefs, sometimes, going out of the way, according to the petitioner's own showing.

Application of the petitioner is dismissed. No costs.

Judge of the Court of Appeal