

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

Lieutenant Colonel Ratnayaka
Mudiyanselage Upali Ratnayaka,
No. 172,
Kotabogoda,
Kadugannawa.
Petitioner

CASE NO: CA/WRIT/240/2016

Vs.

Lieutenant General Krishantha
De Silva,
Commander of the Sri Lanka
Army,
Sri Lanka Army Headquarters,
No. 553,
Colombo 3.
And 9 Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Nayantha Wijesundara for the Petitioner.
Maithrie Amarasinghe, S.C., for the
Respondents.

Decided on: 14.03.2019

Samayawardhena, J.

The petitioner filed this application basically seeking to challenge the Army Board decision not to recommend the petitioner for the confirmation in the rank of Lieutenant Colonel, and rejection of the appeal made therefrom to the Commander of the Army. He seeks to quash those decisions by way of certiorari. He also seeks a writ of prohibition prohibiting the Secretary to the Defence Ministry from recommending the retirement of him from the Army effective from 18.08.2016, and a writ of mandamus compelling the Commander of the Army and the Secretary to the Defence Ministry to recommend to HE the President to confirm him in the rank of Lieutenant Colonel effective from 10.02.2010.

As seen from R12, HE the President, before this application was filed, has approved the recommendation of the Commander of the Army to retire the petitioner effective from 18.08.2016 as the petitioner by that date has completed the maximum period of service in his rank as a major, and to promote the petitioner to the next rank of Lieutenant Colonel from the said date of retirement. To that extent, this application is futile, and, at least, writs of prohibition and mandamus are redundant.

However the learned counsel for the petitioner says that it does not prevent this Court to consider issuance of certiorari quashing the Army Board decision not to recommend the petitioner for the confirmation in the rank of Lieutenant Colonel, and subsequent rejection of the appeal made to the Commander of the Army because if they are quashed, HE the President might reconsider his decision.

Had the Army Board recommended the promotion, the petitioner would not have reached the maximum permissible period of service in the substantive rank of Major, and would not have retired by 18.08.2016.

The objections of the respondents have been tendered with the affidavit of the Commander of the Army supported by documents R1-R12. There is no necessity to make a detailed analysis of the said documents as they are self-explanatory. This Court cannot by exercising writ jurisdiction sit as the final interview board for the promotion and substitute the decision of this Court for that of the Army Board. That is not the task of this Court.

However when I carefully go through the documents marked R1-R8(b), I am fully convinced that the decision of the Army Board not to recommend the petitioner to the next promotion in the rank of Lieutenant Colonel is not unreasonable according to the standard of unreasonableness as set out in *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* [1948] 1 KB 223, which is commonly known as “Wednesbury unreasonableness”. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. (*Council of Civil Service Unions v. Minister for the Civil Service* [1984] 3 All ER 935) The impugned decisions definitely do not fall into that category.

There are several adverse reports against the petitioner. It is significant to note that they are not from one officer but from different officers. If I may advert to a few, for the purpose of record, by R1, the Commandant of the Military Academy, Brigadier Perera, has complained to the Centre Commandant in

2009 against the petitioner for serious dereliction of duties. By R2, in 2013, Colonel Gunasoma has made a detailed adverse report against him and given a final warning and kept him under observation for 60 days to show improvement. By R3, his successor, Colonel Sirishantha, has reported that the petitioner has not shown any improvement. Thereafter by R4 he has been removed from command as the commanding officer of the 23rd battalion of the Sinha Regiment Unit by the Colonel of the Regiment, Major General Perera (not the same Perera who issued R1). R5 shows his poor disciplinary record. R7 adverse report is from Brigadier Dharmasiri. R8(b) from Lieutenant Colonel Weeraratne. Another allegation is that the petitioner was absent without leave from 07.02.2014-15.02.2014, which the petitioner denies. Eight-day salary deduction has been made for this, and the petitioner is finding fault with the Director Legal on that matter.

The main allegation against the petitioner seems to be his lack of commitment towards his official duties and giving priority to his personal affairs over official work.

It is not the petitioner's position that, even if that allegation is correct, he should have been given the promotion. His position is that the said allegation is not correct. Those are disputed matters, which cannot be decided in a writ application. And also those decisions are subjective. There is no violation of the procedure and the decisions are not *ultra vires*. The petitioner has been allowed to tell his grievances even to the Commander of the Army.

This Court cannot decide promotions in the Army. It shall be best left to the Commander of the Army. Court will interfere

with it if the decision is perverse, or, put differently, if there is an error of law on the face of the record. I see no such error in the facts and circumstances of this case.

Promotions cannot be based purely on seniority. Promotions are not automatic. One must earn it. Merits shall be the decisive factor. The Board has refused to recommend the promotion and the Commander of the Army has confirmed it on that basis.

Application of the petitioner is dismissed.

Judge of the Court of Appeal