

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

Wadunaithalage Udara Lakshita
Karunaratne,
School Road,
Polpitiya,
Mati Kumbura,
Polgahawela.
Petitioner

CASE NO: CA/WRIT/7/2016

Vs.

1. Air Marshal Kapila Jayampathy,
Commander of the Sri Lanka Air
Force,
Air Force Head Quarters,
Colombo 2.
2. Air Vice Marshall Chandana
Prabath Welikala,
Director Administration,
Air Force Head Quarters,
Colombo 2.
3. Kapila Waidyaratne,
Secretary,
Ministry of Defence,
15/5, Baladaksha Mawatha,
Colombo 3.

Respondents

Before: Mahinda Samayawardhena, J.
Counsel: J.C. Weliamuna, P.C., with Pulasthi Hewamanna for
the Petitioner.
Manohara Jayasinghe, S.S.C., for the Respondents.
(No written submissions were filed on behalf of the
Respondents)

Decided on: 10.07.2019

Mahinda Samayawardhena, J.

The petitioner, who was a Leading Aircraftman attached to the Sri Lanka Air Force, filed this application making the Commander of the Sri Lanka Air Force and two others as respondents for non-extension of his services until 12 years. By that time the petitioner has served 7 years in service. The respondents state that it was not extended on medical grounds. The petitioner sought to quash the decisions contained in P6(a), P6(d), P8(b), P10 and P11 by writ of certiorari, and to compel the respondents to permit the petitioner to continue in service until the completion of 12 years by writ of mandamus.

P6(a) and (d) refer to the same, and by them, it has been informed that the request of the petitioner for extension of service has not been approved by the AFHO and therefore the petitioner's engagement would expire on 31.07.2014. "AFHO", I assume, stands for Air Force Head Quarters.

The learned President's Counsel for the petitioner submits that the decision in P6(a) and (d) shall necessarily be quashed as no reasons have been given for non-extension of the petitioner's service. There is no dispute that no reasons are given in P6(a) and (d) for non-extension of services of the petitioner.

P8(b) is the Medical Board decision dated 31.07.2014 which says "*Assess disability medical board held today and recommended that he be unfit for the service under existing medical standards relating to fitness.*"

By P10 and P11 it has been informed to the petitioner that his services were terminated because he is medically unfit for active service as found by the Medical Board convened on 31.07.2014.

It is the contention of the learned President's Counsel for the petitioner that the decision not to extend the services of the petitioner contained in P6(a) and (d) is not based on P8(b). That is correct as P6(a) and (d) are antedated to P8(b). Hence what has been conveyed to the petitioner by P10 and P11 that his services were terminated because he was medically unfit for active service as found by the Medical Board convened on 31.07.2014 is not correct.

This is further fortified by the averments in paragraph 28 of the statement of objections of the respondents that Assess Disability Medical Board is convened only "*to assess the extent of his impairment for the purpose of computing the compensation payable to him upon the termination of his services.*"

It is the submission of the learned Senior State Counsel for the respondents that the decision not to extend the services of the petitioner was taken strictly on medical grounds.

Due to a motor traffic accident when returning from a funeral house of a service colleague, the petitioner has suffered severe injuries to his left leg with a tibial spine fracture and an injury to the left eye which has left him totally blind in the left eye. The petitioner had been on duty at that time and he met with the accident during the course of his employment.

The petitioner has been presented before several Review Medical Boards before the aforesaid Disability Medical Board convened on 31.07.2014, which date was the last day of the 7-year contract of service.

By the said previous Review Medical Boards, it was not decided that the petitioner was unfit for duties, but, as the respondents in paragraph 27 of the statement of objections admit, that he was fit only to perform sedentary duties.

In P10 it has also been stated that the accident occurred when the petitioner was on leave, but the respondents in paragraph 22 of their statement of objections admit that there was an initial confusion whether the petitioner was on duty or not at the time of the accident and now it is confirmed that he was on duty.

It appears to me that the minds of the decision-making officers were prejudiced by the incorrect assumption that the petitioner was not on duty when he met with the accident as reflected in

P10. The decision not to extend the services has been taken on that wrong assumption.

It is not clear on what basis the request of the petitioner to extend his service was refused. No reasons have been given in P6(a) and (d).

The decision of the Assess Disability Medical Board convened on 31.07.2014 that the petitioner is unfit for service cannot, according to the own version of the respondents, be acted upon as the task of that Board was to assess the extent of impairment in order to compute the compensation payable, and the Review Medical Boards did not state that the petitioner is unfit for service and what they stated was that the petitioner is fit for sedentary duties.

The explanation of the respondents that the petitioner was recruited as a gunner and he cannot now perform that duty with one eye seems to me to have found as a lame excuse after the filing of the case and did not form the basis of the decision.

If no reasons are given, there is no decision in the eyes of the law.

I quash the decisions as reflected in P6(a) and (d) not to extend the services of the petitioner by certiorari and compel the 1st respondent to reconsider the request of the petitioner for the extension of his services. The 1st respondent is free to take any decision by giving reasons.

Application is partly allowed. No costs.

Judge of the Court of Appeal