

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

Major J.R.S. Rupasinghe,
No. F/226,
Ranpokunugama,
2nd Stage,
Nittambuwa.
Petitioner

CA CASE NO: CA/WRIT/210/2016

Vs.

Commander of the Army,
Army Headquarters,
Colombo 3.
And Several Others
Respondents

Before: Mahinda Samayawardhena, J.
Counsel: Chrismal Warnasuriya with Jayathu
Wickramasuriya for the Petitioner.
Ganga Wakishta Arachchi, S.S.C., for the
Respondents.
Decided on: 15.11.2019

Mahinda Samayawardhena, J.

The petitioner filed this application on 07.07.2016 seeking to quash P17, P18, P19, P20, P28(c) by way of writ of certiorari; and to compel the Commander of the Army to reinstate him in the rank of Major with effect from 23.04.2015.

The petitioner did not file several material documents with the petition or anytime thereafter up to now. P17 is one such document. Hence this Court cannot obviously quash P17 by certiorari.

The petitioner was a Major of the Volunteer Force in the Sri Lanka Army when he was admittedly arrested by the Army Military Police while transporting some dry rations belonging to the Sri Lanka Army in his official vehicle on 04.04.2014.

P18 dated 30.06.2015, which the petitioner seeks to quash by certiorari is, to release the petitioner from active service without pay from 01.07.2015-30.06.2016. This is permissible under Regulation 68 of the Army Volunteer Force Regulations marked 1R2.

P19 dated 18.08.2015 is a recommendation by the Commander of the Army to take disciplinary action against the petitioner on his plea of guilt.

The petitioner seems to be stating that he did not plead guilty to the charge. According to the statement which he has made, found at pages 13-17 in 1R5, he has admitted guilt. He has signed that statement.

In the petition, the petitioner speaks of a Court of Inquiry regarding this incident where he was served with a charge sheet and found guilty. Although those proceedings have been marked P22 subject to production later, they have not been produced up to now.

The respondents have tendered the Court of Inquiry proceedings marked as 1R7. The Charge Sheet to which he has pleaded guilty, for which he has been reprimanded severely as the punishment, has been marked as 1R8.

P20 dated 16.09.2015 is to reinstate the petitioner in order to take disciplinary action and retire him from service.

The petitioner in paragraph 23 of the petition admits that he “decided to retire from Sri Lanka Army” (for whatever the reasons) and tendered retirement papers. His complaint at that time was refusal to grant unused leave prior to retirement.

Hence the petitioner cannot now, on second thought, challenge P20 by certiorari or seek to compel the Commander of the Army by mandamus to reinstate him.

There is nothing to quash by certiorari in P28(c), which is an administrative requirement, to subject to a medical examination of an officer who goes on retirement, as seen from P28(a).

The respondents have tendered 1R10-1R17 to show the petitioner’s past bad conduct as an officer of the Army where he has pleaded guilty for various offences and punished.

Writ being a discretionary remedy, this Court is entitled to take those matters also into account, when granting or refusing relief.

For the aforesaid reasons, I dismiss the application of the petitioner but without costs.

Judge of the Court of Appeal