

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

In the matter of an application for mandates  
in the nature of writs of certiorari and  
mandamus under and in terms of Article 140  
of the Constitution of Sri Lanka.

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Dinga Thanthirige Jayalath Perera  
No. 1/64, Kalalgoda Road,  
Pannipitiya.

**PETITIONER**

**C.A. (Writ) Application No.404/2009**

**Vs**

1. W.K.J. Karannagoda  
Commander of the Sri Lanka Navy  
Sri Lanka Navy Headquarters  
Colombo 01.

1A T.S.G. Samrasinghe  
Vice Admiral  
Commander of the Sri Lanka Navy  
Sri Lanka Navy Headquarters  
Colombo 01.

1B S.A.M.J. Perera  
Vice Admiral  
Commander

Sri Lanka Navy  
Sri Lanka Navy Headquarters  
Colombo 01.

2. M.R.U. Siriwardena  
Rear Admiral, Sri Lanka Navy  
Sri Lanka Navy Headquarters  
Colombo 01.

3. M. Premathilake  
Commodore, Sri Lanka Navy  
Sri Lanka Navy Headquarters  
Colombo 01.

4. M.A.J. De Costa  
Commodore, Sri Lanka Navy  
Sri Lanka Navy Headquarters  
Colombo 01.

5. N.W.W.G.W.M.G.M. Gunasekera  
Commodore, Sri Lanka Navy  
Sri Lanka Navy Headquarters  
Colombo 01.

6. D.S. Udawaththa  
Commodore, Sri Lanka Navy  
Sri Lanka Navy Headquarters  
Colombo 01.

7. A.K.M. Jinadasa  
Captain, Sri Lanka Navy  
Sri Lanka Navy Headquarters  
Colombo 01.

8. A.M.S.P. Alahakoon  
Captain, Sri Lanka Navy  
Sri Lanka Navy Headquarters  
Colombo 01.

**RESPONDENTS**

**BEFORE**

: Deepali Wijesundera J.

**COUNSEL**

: Manohara De Silva PC with  
Avindra Wijesurendra for the  
Petitioner.

Janaka De Silva DSG for the  
Respondents.

**ARGUED ON**

: 10<sup>th</sup> October, 2014

**DECIDED ON**

: 30<sup>th</sup> July, 2015

**Deepali Wijesundera J.**

The petitioner has filed this application against the respondents praying for a writ of certiorari to quash the findings and the sentences of the Court Martial dated 13/05/2009 and to quash the charge sheet dated 04/03/2009. He has also prayed for writs of certiorari to quash the Board

of Inquiry report of the sixth, seventh and eighth respondents and to quash the recommendation of the fifth respondent marked as P12.

The petitioner was issued transfer orders dated 21/08/2008 to assume duties as contingent commander Vankalai and Nannaddan with effect from 04/09/2008. The petitioner was informed that he did not have suitable accommodation for an officer of his rank in Vankalai and he was provided accommodation at SLNS Gajaba. The petitioner stated that Area Commander had given permission for him to be accommodated at SLNS Gajaba and that he was given a room at the VIP chalet at SLNS Gajaba which is usually reserved for the Area Commander. The petitioner has reported to the Area Commander and the Area Commander has instructed the petitioner to identify the best location within Vankalai to construct a suitable accommodation. The petitioner stated that the Area Commander was aware that he was given accommodation at SLNS Gajaba and that he made requests for expeditions construction of accommodation at Vankalai.

The LTTE had launched an Air attack on the Thalladi Army camp on 25/10/2008. The petitioner at that time has been at SLNS Gajaba and not at Vankalai. According to the petitioner there had been no damage caused to his area and also that he has taken immediate

precautionary measures from SLNS Gajaba before he left to Vankalal, he has described all this at great length.

On the 12/11/2008 the petitioner was ordered by the first respondent to remain in Vankalal and to transport his belongings from SLNS Gajaba to Vankalal. He has received a letter dated 17/11/2008 calling for explanation by the Area Commander for living at SLNS Gajaba which is out of his area of responsibility. The petitioner has replied to this letter. The sixth to eighth respondents were appointed to hold investigations on this issue. On 11/12/2008 the Board of Inquiry was held in Vankalal and the petitioner was allowed to cross examine the witness; the proceedings are marked as P9. The Board of Inquiry has given this report to the 1<sup>st</sup> respondent.

The petitioner was transferred out of Vankalal and was served with a charge sheet which consisted two charges. A Court Martial was held and the Court Martial found him guilty of both charges and was sentenced to severe reprimand in respect of the first charge and dismissal without disgrace from the Navy in respect of the second charge.

The learned counsel for the petitioner submitted that the findings of the Court Martial are contrary to law and against the weight of the evidence and that the Court Martial by not giving reasons for their findings violated entrenched principles of law. He also stated the Court Martial erred in failing to consider the evidence of the commanding officer Vankalal which established the fact that the Area Commander authorized and issued accommodation at SLNS Gajaba until suitable accommodation is constructed in Vankalal to the petitioner. He further stated this was confirmed by the evidence of the commanding officer of SLNS Gajaba.

The counsel for the petitioner submitted that the Court Martial failed to consider that the petitioner acted to the best of his abilities on the night of 28/10/2008 by remaining at SLNS Gajaba taking control of the Ops Room.

The learned counsel for the petitioner stated citing the judgments in ***Chandra Kumar and another Vs Captain Samarawickrama and others 2002 (2) SLR 153, Indrananda De Silva vs Lt Gem Waidyaratne and others 1998 (1) SLR and Amarasinghe vs Daluwatte and others 2001 (3) SLR 258*** that the Court Martial findings and sentencing are amendable to writ jurisdiction of this court.

Referring to the letter of displeasure issued to the petitioner marked **R1** the petitioner stated that he did not received information from the commander of the area.

The petitioner denied the allegations contained in **R1** and said it has been issued to haress and humiliates him as disclosed by **R5** and **R8** and subsequent use against the petitioner. The petitioner has appealed to the President against the Court Martial under *Sec. 122 of the Navy Act*. The petitioner further stated that the President by **P6** had approved the sentencing against the petitioner on the perverted recommendation made by the first respondent.

The learned Deputy Solicitor General in his submission stated that under the Navy (Board of Inquiry) Regulations referring to regulation 5, 7 and 10 a Board of Inquiry has no power to issue any orders which has the effect of affecting the rights of any party therefore a writ of certiorari which can only be issued where the decision makers have determined questions affecting the rights of parties, can not be issued in the instant application. He cited the judgment in ***Dissanayake Vs Rajitha Senaratne, Minister of Lands and others (2006) 1 SLR 7*** where it is stated;

*“.....the order sought to be quashed by certiorari is the notice exhibited under section 2 of the Land Acquisition Act. It is clearly not a decision or order which has force proprio vigore”*

He also cited the judgment in ***Air Vice Marshall Elmore Perera vs Liyanage and others 2003 1 SLR 331*** where it was stated “ *The essential requirement for the grant of certiorari is that rights of subjects should be affected*”.

The respondents stated that the petitioner was given an opportunity to be present and cross examine the witness at the Board of Inquiry held by sixth to eighth respondents which can be seen on perusal of P9. He also stated the same rule apply to the summary of evidence.

The respondents referring to the charge sheet given to the petitioner stated, that no objections were raised by the petitioner at the Court Martial when the charges were read out to him and that he only pleaded not guilty. He cited the case of ***Lt. Commander Ruwan Pathirana vs Commodore Dharmasiriwardena and others 2007 1 SLR 24*** where it has been said the petitioner is precluded from raising



any objections to the charge sheet since such objection was not raised before the Court Martial.

The learned counsel for the respondents stated that a Court Martial has no statutory duty to give reasons for its findings or the sentence as it is akin to a trial by Jury where a Jury only gives its verdict without giving any reasons for doing so. He referred to *Sec. 33 to 53 of the Navy Act* where the procedure to be followed by a Court Martial is contained. The respondents cited the judgment in ***G.S.C. Fonseka vs Lt. Gen. J. Jayasuriya and five others C.A. Writ no. 679/2010 CA Minister 16/12/2011*** where three judges of the Court of appeal rejected the argument made on behalf of the petitioner that a Court Martial should give reasons for its decision.

The respondents argued that the petitioner has appealed to the President under *Sec. 122 of the Navy Act* which shows that the petitioner has invoked the alternative remedy available to him and it was rejected. He cited the judgment in ***Cap. K..C Titus vs Secretary Ministry of Defense and others C.A. Writ 641/2009 C.A. Ministers 11/06/2014*** where it was held that *Sec. 32 of the Army Act* provided an alternative remedy and therefore refused the writ of certiorari sought in that case.

The respondents further stated that on evaluation of evidence the petitioner is guilty of staying away from Tactical Area of Responsibility without proper approval denying operational leadership to men under his command. Citing the judgment in ***Suriyaratchi vs Seneviratne and others 2001 3 SLR 370*** stated the Court of Appeal held that a Court dealing with an application for certiorari is ill – adapted to deal with or consider and choose between disputed questions of fact. In proceeding for judicial review the Court cannot undertake such an exercise as such, where there is a conflict of evidence in regard to a fact upon which a point of law arises. Although the Court will, in the generality of cases, refrain from interfering in cases of conflict of evidence, yet the court will seek to ascertain whether *“there was evidence before the tribunal which would justify a reasonable tribunal reaching the same conclusion.”* In this case there was.

The respondents stated under *Sec. 10 of the Navy Act* every commissioned officer shall hold his appointment during the pleasure of the President and that His Excellency the President has refused the petitioner's appeal and the President's decision was conveyed to the first respondent. (R6, R7 and R8)

One the day of the air attack by the LTTE the petitioner has remained in SLNS Gajaba without preceding to Vankalal the reason given by him was that he was attempting to track down the LTTE aircraft from the Ops Room at SLNS Gajaba.

The Board of Inquiry as pointed out by the respondents according to the Navy Regulation is not a body which has powers to issue orders to affect the rights of any party therefore a writ of certiorari will not lie.

A charge sheet per se does not affect the rights of a person. It is not a decision or order which has force *proprio vigore*. The petitioner had the right and the opportunity to defend himself at the Court Martial held on the charge sheet. Therefore the petitioner's rights were not affected by the charge sheet.

The next issue is the Court Martial. The petitioner argued that no reasons were given by the Court Martial for its findings. The code of Criminal Procedure does not require the Jury to give reasons for its verdict nor does the Navy Act require a Court Martial to give reasons for its findings.

In the case of *G.S.C. Fonseka vs Lt. Gen. J. Jayusuriya and five others* it was held by three Judges of the Court of Appeal that a Court Martial need not give reasons.

Petitioner has sought an alternative remedy under *Sec. 122 of the Navy Act*; he has made an appeal to the President. Where there is an alternative remedy a writ of certiorari will not lie.

Petitioner's application under *Sec. 122* was refused by His Excellency the President. Under *Sec. 10 of the Navy Act* he holds office at the pleasure of the President and his dismissal has been approved by His Excellency the President.

For the afore stated reasons I see no reason to grant relief sought by the petitioner. The application of the petitioner is dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**