

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

In the matter of an application for a  
mandates in the nature of Writs of  
Certiorari and Mandamus under and in  
terms of Article 140 of the Constitution.

Piyal Kumarasiri Wadanambi  
Flight Sergeant of Sri Lanka Air Force  
Service,  
No. 6/55, Kakiriwatta  
Galthude, Panadura.

**PETITIONER**

**CA (Writ) Application No. 866/2010**

**Vs**

1. Air Commodore Wijitha Gunaratne  
Commanding Officer  
Air Force Head Quarters  
Colombo 02.
2. Air Commodore A.D. Gamachari  
Chief Legal Officer  
Air Force Head Quarters  
Colombo 032.
3. Air Chief Marshal W.D.R.M.J.  
Goonethilake  
Acting Chief of the Defense Staff and  
Commander of the Sri Lanka Air  
Force  
Air Force Head Quarters  
Colombo 02.

3A Air Marshal Harsha Duminda  
Abeywickrema  
Commander of the Sri Lanka  
Air Force  
Air Force Head Quarters  
Colombo 02.

3AA Air Marshal Kolitha Aravinda  
Gunathileke  
Commander of the Sri Lanka  
Air Force  
Air Force Head Quarters  
Colombo 02.

3AAA Air Marshal G.P. Bulathsinghala  
Commander of the Sri Lanka  
Air Force  
Air Force Head Quarters  
Colombo 02.

4. Air Commodore D.L.S. Dias  
Sri Lanka Air Force Camp  
Ratmalana.

**RESPONDENTS**

**BEFORE**

: Deepali Wijesundera J.

L.U. Jayasuriya J.

**COUNSEL**

: Saliya Pieris with Waruna De

Seram for the Petitioner.

Milinda Gunatilake D.S.G. for the  
Respondents.

**ARGUED ON**

: 07<sup>th</sup> July, 2016

**DECIDED ON**

: 30<sup>th</sup> June, 2017

**L.U. Jayasuriya J.**

The petitioner has filed this application praying for a writ of certiorari and mandamus to quash the decision of the first respondent confirmed by the third respondent (P4) and also for a writ of mandamus against the respondent to reinstate the petitioner in the rank of Flight sergeant.

At the time of the incident petitioner was attached to Sri Lanka Air Force as a Flight Sergeant. The petitioner amongst others was to receive a house in the "Ranajayapura Housing Scheme" and was called to attend a meeting by the Ministry of Defence at the said housing scheme, where he alleged have made a speech which incited the other officers against the senior officers.

He was summoned before a Court of Inquiry. Which was only a fact finding inquiry. He was summarily tried and a charge sheet was served. After recording evidence of five witnesses and after recording the statement of the petitioner he was found guilty and P4 had been served on him dismissing him from the Air Force with disgrace and imprisoned for 90 days at the Air Force camp at Ratmalana.

The learned counsel for the petitioner argued that he was not given an opportunity under *section 40 (3) of the Air Force Act* and the charge

sheet was not read over to him. He also submitted that the petitioner was not given an opportunity to cross examine the witnesses.

Counsel for the respondent argued that the petitioner was summoned before a Court of Inquiry and that the inquiry was conducted in a manner consistent with rules of natural justice. He stated that the evidence of several witnesses were lead in the presence of the petitioner who was allowed to cross examine them. At the conclusion of the inquiry the petitioner was found guilty and sentenced to three months imprisonment.

The respondents counsel argued that the petitioner accepted the sentence imposed by the summary trail by choosing to accept the punishment rather than facing a Court Martial. Subsequently the Commander of the Air Force has taken a decision to discharge the petitioner from the Air Force (R1). On a perusal of R3 we find that the Court of Inquiry has not made a note of the presence of the petitioner.

We find that the decision under attack had been made without following the rules of Natural Justice.

Writ of mandamus is exercised to resolve a party who has been denied of his right. This has been stated in **Perera vs National Housing Development Authority 2001 3 SLR 50**.

We find that the rights of the petitioner had not been denied by the respondents. For the afore stated reasons I refuse the petitioner's application.

Application dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Deepali Wijesundera J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**