

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

**CA (Writ) Application No.
530/25**

In the matter of an application for
mandates in the nature of Writs of
Certiorari, *Mandamus* and
Prohibition in terms of Article 140
of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

**LIEUTENANT COLONEL DON
LALANTHA KUMARA
KOLLURAGE,**
No.119/23 B,
Katuwawala Road,
Godigamuwa,
Maharagama.

PETITIONER

Vs.

**1. BRIGADIER W. K. S. P. M. R. A.
B. DODANWELA,**
Centre Commandant,
Regiment Centre Sri Lanka Light
Infantry,
Army Cantonment,
Panagoda,

Homagama.

2. MAJOR GENERAL Y. A. B. M.

YAHAMPATH,

Colonel of the Regiment,
Regiment Centre Sri Lanka Light
Infantry,

Army Cantonment,
Panagoda,
Homagama.

3. LIEUTENANT GENERAL

LASANTHA RODIRIGO,

Army Commander,
Sri Lanka Army Headquarters,
Defence Headquarters Complex,
Akuregoda Road,
Battaramulla.

4. AIR VICE MARSHAL SAMPATH

THUYACONTHA (RETD.),

Secretary,
Ministry of Defence,
Defence Headquarters Complex,
Akuregoda Road,
Battaramulla.

5. THE CHAIRMAN,

Army Board No.02 (constituted for the
purpose of selecting Officers for Rank

Confirmation and Career Management
on 2nd May 2024),

Sri Lanka Army Headquarters,
Defence Headquarters Complex,
Akuregoda Road,
Battaramulla.

6. MEMBER

Army Board No.02 (constituted for the
purpose of selecting Officers for Rank
Confirmation and Career Management
on 2nd May 2024),

Sri Lanka Army Headquarters,
Defence Headquarters Complex,
Akuregoda Road,
Battaramulla.

7. MEMBER

Army Board No.02 (constituted for the
purpose of selecting Officers for Rank
Confirmation and Career Management
on 2nd May 2024),

Sri Lanka Army Headquarters,
Defence Headquarters Complex,
Akuregoda Road,
Battaramulla.

8. MEMBER

Army Board No.02 (constituted for the
purpose of selecting Officers for Rank

Confirmation and Career Management
on 2nd May 2024),

Sri Lanka Army Headquarters,
Defence Headquarters Complex,
Akuregoda Road,
Battaramulla.

9. MEMBER

Army Board No.02 (constituted for the
purpose of selecting Officers for Rank
Confirmation and Career Management
on 2nd May 2024),

Sri Lanka Army Headquarters,
Defence Headquarters Complex,
Akuregoda Road,
Battaramulla.

10. MEMBER

Army Board No.02 (constituted for the
purpose of selecting Officers for Rank
Confirmation and Career Management
on 2nd May 2024),

Sri Lanka Army Headquarters,
Defence Headquarters Complex,
Akuregoda Road,
Battaramulla.

11. MEMBER

Army Board No.02 (constituted for the
purpose of selecting Officers for Rank

Confirmation and Career Management
on 2nd May 2024),

Sri Lanka Army Headquarters,
Defence Headquarters Complex,
Akuregoda Road,
Battaramulla.

12. MEMBER

Army Board No.02 (constituted for the
purpose of selecting Officers for Rank
Confirmation and Career Management
on 2nd May 2024),

Sri Lanka Army Headquarters,
Defence Headquarters Complex,
Akuregoda Road,
Battaramulla.

13. MEMBER

Army Board No.02 (constituted for the
purpose of selecting Officers for Rank
Confirmation and Career Management
on 2nd May 2024),

Sri Lanka Army Headquarters,
Defence Headquarters Complex,
Akuregoda Road,
Battaramulla.

14. HON. ATTORNEY GENERAL,

Attorney General's Department,
Colombo 12.

RESPONDENTS

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**
: **Hon. K. Priyantha Fernando, J. (CA)**
Counsel : Krishan Fernandopulle with Tharika Ruvanpura,
AAL instructed by Gaminda Karunasena, AAL
for the Petitioner.
Rajika Aluwihare, S.C. for the Respondents.

Written Submissions on : 25.09.2025 for the Petitioner
25.09.2025 for the Respondent

Supported on : 04.09.2025

Decided on : 10.12.2025

K. Priyantha Fernando, J.

According to the Petition dated 14.05.2025, the Petitioner, a Lieutenant Colonel with 23-year career in the Sri Lanka Army, sought a Writ of *Certiorari* to quash the decision of the Army Board No. 02, dated May 2, 2024, and the resulting Notice of Dismissal, dated November 26, 2024.

It was alleged that this act arbitrarily denied the Petitioner's confirmation to the rank of Lieutenant Colonel and mandated his compulsory retirement, effective June 1, 2025, five years before the statutory age. The Petitioner, a decorated war hero with multiple gallantry awards who had sustained critical injuries in combat and underwent double vessel heart surgery in 2021, challenged this dismissal as illegal, arbitrary, and a fundamental violation of the principles of natural justice and legitimate expectation.

THE POSITION OF THE PETITIONER:

The kernel of the Petitioner's claim lay in the Respondents' use of specious grounds effecting his early retirement. While the dismissal notice had cited a period in a low medical category following heart surgery and a single failed physical fitness test (which he had subsequently passed), the principal and most prejudicial reason cited had been "possessing a poor disciplinary record amounting to offences of a severe nature." The Petitioner contended that this "poor disciplinary record" referred to a solitary disciplinary incident that had occurred in March 2007, for which he was already charged and punished, and for which he had subsequently been promoted multiple times, culminating in his appointment as the Senior Security Coordinator to the then-Prime Minister in 2022.

The Petitioner asserted that using this single, historical, and already-punished transgression as the basis for compulsory retirement constituted an unlawful re-punishment for the same offence. This assertion of arbitrary action was reinforced by the internal inconsistency within the Respondents' own actions: the Regimental Council had recommended his rank confirmation, and more critically, the Centre Commandant issued a Service Certificate on January 12, 2025 after the purported dismissal notice which affirmed the Petitioner as a "disciplined, loyal and hardworking Senior Officer" whose due retirement age was 55 in 2030. The Petition underscored that the decision by the Army Board, which disregarded the recommendations of the Regimental Council and the Petitioner's proven service record, had been patently ill-founded and irrational.

Given the Petitioner's precarious financial position, which included substantial outstanding loans obtained on the expectation of a full-service tenure, and his responsibility for two young children and elderly, ailing dependents, the Petition had pleaded exceptional circumstances.

The Petitioner therefore prayed for the intervention of this Court to quash the arbitrary decision of dismissal and mandate his promotion and confirmation,

thereby restraining the Respondents from unlawfully compelling his retirement until he attained the statutory age.

The Army Board No. 02's decision in May 2024 to deny the Petitioner's rank confirmation and mandate his compulsory retirement, effective from June 1, 2025. This decision, issued via a Notice of Dismissal on November 26, 2024, came despite the Petitioner having met all required prerequisites, including passing the Annual Physical Efficiency Test in November 2023 and securing the necessary recommendations from his Regimental Council and Superior Officer. The Board's rationale for denial was a "poor disciplinary record amounting to offences of a severe nature," thus compelling his retirement five years before the statutory age.

The Petitioner contended that this reasoning was fundamentally flawed and arbitrary. The submissions established that the "poor disciplinary record" referred exclusively to a solitary disciplinary incident from March 2007, for which the Petitioner had already admitted guilt under Section 120 of the Army Act and received a minor punishment. This was the only disciplinary order recorded in his 23-year career. The Petitioner argued that utilizing this single, historical, and already-punished transgression as the basis for compulsory retirement constituted an unlawful re-punishment for the same offence, violating the principle of fairness.

Further procedural and statutory violations were highlighted in the submissions. It was argued that the Respondents failed to produce any formal guidelines or parameters classifying the 2007 offence as one of "severe nature," thereby rendering the decision arbitrary and a breach of legitimate expectations. This disregard for justifiable grounds was submitted to be an improper exercise of discretionary power, citing the principle laid down in the case of Roberts v. Hopwood [1925]AC 578 at 613.

A statutory violation was also argued to have occurred under the Army Officers Service Regulations (Regular Force) 1992. The Petitioner asserted that the power

to withdraw an officer's commission was vested solely in the President, as stipulated under Section 10 of the Army Act. Therefore, the decision by the Commander of the Army or any Army Board to discharge the commission was *ultra vires*.

Furthermore, it was submitted that the Army Board's decision was subject to Judicial Review, and by creating a new, unsubstantiated ground for dismissal after previously permitting his service to continue, the Board acted illegally by failing to understand and give correct effect to the law regulating its decision-making power, referencing *Council of Civil Service Unions v. Minister for the Civil Service* (1985) AC 374.

Finally, the Petitioner argued he was constructively forced to appear before a Medical Board to secure potential future benefits, as failure to do so before the effective date of dismissal would have resulted in the forfeiture of entitlements due to a wounded officer. The Petitioner therefore prayed for the intervention of the Court to quash the arbitrary decision of dismissal and mandate his rank confirmation, restraining the Respondents from unlawfully compelling his retirement.

THE POSITION OF THE RESPONDENTS;

By limited objections filed on 25.09.2025, the Respondents challenged the Petitioner's application, asserting that the decision to retire him was lawful and reasonable, resting on the strict regulatory requirements of the Sri Lanka Army. The Petitioner, confirmed as a Major on June 1, 2012, was required under applicable regulations to be confirmed as a Lieutenant Colonel within ten years, by June 1, 2022, after which failure would result in reaching the maximum permissible service in rank and lead to compulsory retirement. Having been appointed as a temporary Lieutenant Colonel in November 2021, the Petitioner was granted three opportunities for confirmation by Army Board No. 2. He was found unfit on the first occasion in September 2022 due to being in a low medical

category, and again in May 2023 due to his failure to pass the Annual Physical Efficiency Test. When the Petitioner was finally considered for the third and final time in May 2024, the Board declined confirmation on account of his poor disciplinary record, recommending compulsory retirement with pension and gratuity, having exhausted all opportunities and reached the maximum service period in his current rank.

The central submission of the Respondents was that officers of the Sri Lanka Army enjoyed no right to promotion, particularly at senior ranks where competition was intense and selection processes were comprehensive. It was argued that factors not decisive at junior ranks became critical at higher ranks; therefore, the Board's decision to consider the Petitioner's past misconduct, where he pleaded guilty to giving false evidence under Section 120 of the Army Act, was both lawful and reasonable.

This position was defended by judicial precedent emphasizing the paramount importance of discipline within the armed forces, citing *CA Writ 322/2010, The Zamora (1916) AC 77*, and *Wikramaratne vs Commander of the Army and others - CA (Writ) 800/2006*, which instructed the Court to refrain from interfering with the Army's internal administrative and disciplinary decisions unless they were *ex facie* arbitrary or unlawful.

The argument that considering the disciplinary record only on the third attempt was countered by explaining that in the first two instances, the Board never proceeded to secondary evaluations because the Petitioner failed to meet the essential preliminary criteria of physical fitness.

Finally, the Respondents submitted that the Petitioner's entire application was rendered futile by his own actions. The Petitioner had voluntarily requested to appear before a Medical Board to seek retirement on medical grounds, a process that entitled him to greater benefits as a wounded officer. Following this request, the Medical Board formally recommended that he be retired on medical grounds. The Respondents argued that even if the Court were to quash the compulsory

retirement decision, the Petitioner would nonetheless be compelled to retire based on his own request and the Medical Board's subsequent recommendation. This principle of futility, where the granting of relief would have no practical effect, was supported by precedents including *P.S. Bus Company Ltd V Member and Secretary of the Ceylon Transport Board* 61 NLR 491, *Siddeek v. Jacolyn Seneviratne and others* 1984 1SLR 93, and *Ratnasiri and Others V Ellawala and Others* 2004 2SLR 180. Accordingly, the Respondents prayed that the Court refuse the issuance of notice and dismiss the Petitioner's application *in limine*.

CONCLUSION:

Although it was revealed that there is no offence termed as “offences of severe nature” in the Army Act which could be applied to the Petitioner, he has admitted to a charge under Section 120 of the Army Act and has been given a punishment where he has lost 4 ranks of superiority in year 2007. (vide P20). Thereafter, he has been selected for foreign training, commanding positions, in charge of foreign delegations and dignitaries and was chosen to be the security coordinator to the Hon. Prime Minister of Sri Lanka. It was submitted that clearance and appointment to such positions are never given to persons who have severe disciplinary issues. According to several reports on the disciplinary performance of the petitioner produced marked as P12, P13(a) and P13(b) issued by Superior officers and the commanding officers of the petitioner, none of them have mentioned any disciplinary issue or any alleged “poor disciplinary records amounting to severe nature”.

The petitioner's grievance requests from November 2024 itself (vide P21a, P21b, P22b and P23) ROG requests (Redress of Grievance) have been rejected. (vide reply to the ROG dated 20th May 2025 marked as X6 to the motion dated 06.08.2025) stating that,

“However, having meticulously scrutinized his request in depth, it was observed that the Army Board Number 2, which assembled on 09 May 2024,

*had not recommended the Senior Officer for the confirmation in the rank of Lieutenant Colonel, due to his poor past disciplinary record. Further, the Senior Officer is in his third service extension, and it was directed that he be retired from the Army on medical grounds, as provided in Army Routine Order (ARO) 12/86, or with pension and gratuity, upon completion of the present service extension with effective from 01 June 2025. Hence, the Commander of the Army declined the Senior Officer's request, as it has no merit. Moreover, due to his eligibility for retirement on medical grounds, he was granted approval to appear before a Medical Board, in association with ARO 12/86. **Further, in the event he is unable to undergo the Medical Board proceedings prior to 01 June 2025, his retirement will be carried out based on exceed of maximum permissible period of substantive rank**, in terms of section 3(1)(b) of Pensions and Gratuities Code 1981.”*

The petitioner has received the letter marked P24 dated 16.04.2025 requesting him to appear before a Medical Board. It was submitted that the petitioner is entitled to medical benefits as a wounded officer and can request a Medical Board inquiry to estimate the medical benefits owed to him and thereafter request to be dismissed from service; this voluntary process can be withdrawn prior to the decision of the Inquiry Panel being formally handed over to the President, who has the power to take such a decision. It was contended that having no reply to the ROG requests, the petitioner was constructively forced to appear before the medical panel due to the fact that, after dismissal, no army officer/Soldier is allowed to present before such a board; faced with an untenable predicament, failure to comply would have resulted in the forfeiture of both the petitioner's position and entitlement to medical benefits.

In Roberts v. Hopwood [1925] AC 578 at 615, it is held that,

“A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he

likes merely because he is minded to do so-he must, in the exercise of his discretion, do not what he likes but what he ought. In other words, he must, by the use of his reason, ascertain and follow the course which reason directs. He must act reasonably.”

Section 10 of the Army Act No. 17 of 1949 (as amended) reads as follows: “*Every officer shall hold his appointment during the President’s pleasure*”. In terms of Regulation 37 of the Army Officers Service Regulations (Regular Force) 1992, other than His Excellency the President, no authority could persuade, require or induce an Officer to retire resign his commission.

Furthermore, under Regulation 39, an Officer who may be called upon to retire or resign his commission for misconduct or in any circumstances which, in the opinion of the President, can request an interview with the Secretary before any action is taken. Neither the Commander of the Army nor any Board appointed by him has authority to withdraw the petitioner’s commission and the power to withdraw the commission is vested with the President.

Regulation 40 stipulates that a retirement or dismissal of an officer based on medical grounds shall be done once a medical board is appointed and the examination is done, the Army Commander is satisfied with the findings of the medical board, and then the Commander requests from the President that the person be retired on medical grounds. At the time of support, no document has been placed before this Court to show that the approval of the President has been granted in respect of the withdrawal of the petitioner’s commission.

Professor Wade in Wade & Forsyth, Administrative Law (10th Edition, OUP 2009) at page 514 has described ‘action of acting judicially’ in the following manner:

“Whatever the justice has had to do has soon become the exercise of a jurisdiction, whether he was refusing a license or sentencing a thief, this was the exercise of jurisdiction, an application of the law to a particular case. Even if a discretionary power was allowed him, it was nonetheless to be exercised with a ‘judicial discretion.’

It was contended that in defiance of the legitimate expectations of the petitioner, the Army Board in 2024 has come up with an allegation and with an excuse as if to say that the decisions of the previous two Army Boards were half baked decisions.

As held by Lord Diplock in *Council of Civil Service Union vs. Minister for the Civil Service* (1985) AC 374 (HL), a decision of the Army Board is not excluded from Judicial Review.

“By ‘illegality’ as a ground for judicial review, I mean that the decision-maker must understand correctly the law that regulate his decision-making power and must give effect to it. Whether he has or not is par excellence a justifiable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.”

From the respondents' perspective, as it was contended by the learned State Counsel, during the first two attempts, the Army Board was never required to examine secondary issues such as discipline as the petitioner had failed to meet the preliminary eligibility criteria, namely, he did not pass the physical tests and was not in a fit physical condition for promotion; on the third occasion, since the petitioner satisfied the preliminary criteria, the Board was enabled to assess additional aspects including disciplinary record which was found to be unsatisfactory.

The proceedings of the Board of Officers assembled at Army Headquarters, Colombo on 14.09.2022 which reads as follows:

*“T/Lt Col D.L.K. Kollurage RWP RSP SLI (O/65385) The Senior Officer is from SC 11. The Board observes that the officer concerned has **not been recommended for promotion to the rank of Temporary Lieutenant Colonel by two (02) consecutive Army Boards No. 02 held on 02.07.2020 and 27.01.2021 due to Officer’s poor disciplinary records** and recommended to be promoted to the rank of Temporary Lieutenant Colonel by the Army Board No. 2 held on 06.05.2021. Therefore,*

the Officer was promoted to the rank of Temporary Lieutenant Colonel after two (02) attempts along with the intake 48 (the intake immediately junior to the original intake of the Officer concerned). However, Board observes that the Officer has not fulfilled prerequisites to confirm in the rank of Lieutenant Colonel since he is under low medical category. (from 21.02.2022 to 21.08.2022 and from 12.09.2022 to 26.09.2022) and not being recommended by Regimental Council (owing to he is under low medical category). Therefore, the Board does not recommend that the Officer be confirmed in the rank of Lieutenant Colonel at this juncture. The Officer is to be determined by future Boards. The Officer will exceed the first service extension on 31.05.2023 and his career progression is to be determined by future Boards. Accordingly, the Officer will be temporarily superseded.” (the emphasis was added)

The Petitioner has not been recommended for promotion to the rank of Temporary Lieutenant Colonel by previous two (02) consecutive Army Boards No. 02 held on **02.07.2020** and **27.01.2021** due to Officer's poor disciplinary records and recommended to be promoted to the rank of Temporary Lieutenant Colonel by the Army Board No. 2 held on 06.05.2021. Therefore, the Officer was promoted to the rank of Temporary Lieutenant Colonel after two (02) attempts along with the intake 48 (the intake immediately junior to the original intake of the Officer concerned).

The contention of the petitioner that two previous Boards did not consider disciplinary record is untenable in view of the above observations. By P19 dated 26.11 2024, the above decision has been informed to the Petitioner. Nevertheless, the present application only filed on 15.05.2025. Therefore, the Petitioner is guilty of laches.

Moreover, discipline being fundamental to the effective functioning of the armed forces, this Court has consistently exercised caution and refrained from interfering in administrative or disciplinary decisions taken by the Army.

In CA Writ 322/2010 decided on 16.01.2012, Sri Skandarajah J. has held as follows:

“The Commander of the Volunteer Force is responsible to the Commander of the Army for the maintenance of discipline and administration of the Volunteer Force in accordance with the Army Headquarters Police set out in Army orders and instructions issued from time to time by the Commander of the Army. In accordance with these policies and instructions when considering for promotions, the officer’s past record which includes his discipline record is relevant”

In the case of CA Writ 114/2005 decided on 22.10.2007, Sri Skandarajah J. cited with approval case of the Zamora (1916) AC 77 at 107, where Lord Parker of Waddington observed as follows:

“Those who are responsible for the national security must be the sole judges of what the national security requires”

In Wickramaratne vs Commander of the Army and others-CA (Writ) 800/2006, CA Minutes of 07.01.2008, this Court has set out the role of Court when considering issues relating to the non-promotion of Officers in the Armed Forces and held that:

*“In service matters, the 1st Respondent should be left with a free hand to make decisions with regard to the internal administration of the Army in the interest of efficiency, discipline, exigency of service etc. The **Court cannot interfere with the appointment or promotion unless the first respondent has acted unlawfully, arbitrarily or guided by ulterior considerations which are discriminatory or unfair.**”* (the emphasis was added)

When considered objectively, it cannot be decided that the Army Board was unreasonable to consider petitioner’s disciplinary record as the discipline of the Army is considered as of paramount importance and shall be best left to the

Commander and not to the Court to deal with as it is held in CA (Writ) 354/2015 decided on 25.03.2019, by Samayawardena J. as follows:

“The discipline of the Army is paramount importance, and shall be best left to the Commander and not to the Court to deal with. If there is no discipline, there is no Army. The Court in the exercise of writ jurisdiction will not interfere with the internal administration of the Army, which includes taking disciplinary decisions, unless there are compelling cogent reasons such as decisions are ex facie ultra vires, unlawful and arbitrary-to do so.”

In totality, it is the considered view of this Court that the Army Board taking into consideration disciplinary matter in the third occasion is reasonable and justified in the circumstances of this case. The impugned decision is neither ex facie ultra vires nor arbitrary.

With regard to the approval of His Excellency the President, following case law has to be taken into account:

As per Justice Vijith K. Malalgoda PC, in the case of Major K.D.S. Weerasinghe vs Colonel G.K.B. Dissanayake and others (SC minutes dated 31.10.2017),

“the Commander of the Army shall be vested with general responsibility for discipline in the Army and in the case in hand the Commander acting under the above position had sought a direction from His Excellency the President regarding the further retention of the Petitioner. As revealed before us, the above conduct of the Commander of the army when seeking a directive from His Excellency the President was an independent act and was done for the best interest of the Army, in order to maintain the discipline of the Army”.

It is further stated in the said judgement that:

“This is further supported by the Extraordinary Gazette bearing No. 780/7-1993 dated 17th August 1993 which reads as follows: 38. In forwarding an application from an officer to retire or resign his commission, a commanding officer shall, when such application, is the result of misconduct or anything affecting the officer’s honour or character as gentleman, state all circumstances and particulars of the case, the Commander of the Army shall ensure that the statement contains a complete account of the case before forwarding it to the Secretary. 39. An officer may be called upon to retire or resign his commission for misconduct or in any circumstances which in the opinion of the President, require such action. **An officer so called upon to retire or to resign his commission may request an interview with the Secretary, in order that he may be given an opportunity of stating his case.**” (the emphasis was added)

Accordingly, the Respondents are empowered to forward their recommendations to withdraw the Petitioner's commission to the President. It seems that such a stage has not been reached yet. However, when the Petitioner is called upon to retire or to resign his commission, he may request an interview with the Secretary in order that he may be given an opportunity of stating his grievance.

Furthermore, even if the Court were to quash the compulsory retirement decision, the Petitioner would nonetheless be compelled to retire based on his own request and the Medical Board's subsequent recommendation. This principle of futility, where the granting of relief would have no practical effect, was supported by precedents including P.S. Bus Company Ltd V Member and Secretary of the Ceylon Transport Board 61 NLR 491, Siddeek v. Jacolyn Seneviratne and others 1984 1SLR 93, and Ratnasiri and Others V Ellawala and Others 2004 2SLR 180.

In view of the aforesaid circumstances, I am not inclined to issue formal notice and the Application of the Petitioner is dismissed without costs.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal