

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, Prohibition, and Mandamus* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application

No: 0897/2025

Colonel D.M.V.V. Dissanayake,
No. 54/5A,
Wijerama Road,
Udahamulla.

PETITIONER

Vs.

1. Lieutenant General Lasantha Rodrigo,
Commander of the Sri Lanka Army,
Sri Lanka Army Headquarters,
Colombo 03.
2. Major General Kapila Dolage,
Chief of Staff,
Sri Lanka Army Headquarters,
Colombo 03.
3. Major General Manada Yahampath,
Deputy Chief of Staff,
Sri Lanka Army Headquarters,
Colombo 03.

4. Major General Sampath Fernando,
Military Secretary,
Sri Lanka Army,
Sri Lanka Army Headquarters,
Colombo 03.
5. Air Vice Marshal (Retd) Sampath Thuyacontha,
Secretary,
Ministry of Defence,
15/5, Baladaksha Mawatha,
Colombo 03.
6. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp Street,
Colombo 12.

RESPONDENTS

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Sanjeewa Jayawardene, PC with Rukshan Senadheera for the Petitioner
instructed by Amila Kumara.
Abigail Jayakody, S.C. for the Respondents.

Judgement on Written Submissions

Written Submission

Tendered on : 09.03.2026 by the Petitioner.
07.04.2026 by the Respondent

Decided on : 30.04.2026

Adithya Patabendige, J.

Introduction

The Petitioner, an officer of the Sri Lanka Army presently holding the rank of Colonel, has invoked the jurisdiction of this Court under Article 140 of the Constitution, seeking, *inter alia*, a mandate in the nature of a *writ of certiorari* to quash the document dated 30th June 2023, bearing No. MSB/A/ADB/53/02 marked **P11**, together with the decisions and recommendations consequent thereto.

The principal grievance of the Petitioner is that the said document has been applied retrospectively in respect of an examination-related offence that occurred in the year 2012, for which he had already been subjected to disciplinary action and subsequently cleared by an Advisory Board. It is contended that the impugned policy unlawfully deprives him of further career progression, including promotion beyond the rank of Colonel.

Relief Sought

The Petitioner seeks, *inter alia*,

- a) a mandate in the nature of *a writ of certiorari*, to quash the document dated 30th June 2023 bearing No. MSB/A/ADB/53/02, marked **P11**, in so far as it is applicable to him, together with the decisions and recommendations made by the Army Advisory Board, including the decision dated 29th May 2023, whereby his career progression has been restricted.
- b) a mandate in the nature of *a writ of prohibition* preventing the Respondents from applying or enforcing the said policy against him, and from acting in a manner that would deny him consideration for promotion, appointments, or training on the basis of the said policy.
- c) a mandate in the nature of *a writ of mandamus* directing the Respondents to consider him for promotion to the rank of Brigadier and for other appointments and training in accordance with law, without reference to the impugned policy.

Factual Background

The Petitioner joined the Sri Lanka Army on 11th July 1994 as a Cadet Officer and was commissioned as a Second Lieutenant on 15th June 1996.

Throughout his career, the Petitioner received successive promotions, culminating in his appointment as Colonel with effect from 10th October 2021. He has also completed several local and foreign training programmes and has been awarded numerous medals in recognition of his service.

The present dispute originates from an incident on 11th December 2012, when the Petitioner, while attending a logistics course selection examination, was found in possession of an unauthorised document. The Petitioner pleaded guilty to the charge and was subjected to a reprimand on 14th February 2013, as reflected in document marked **P4**.

Subsequently, the Petitioner preferred an appeal, pursuant to which an Advisory Board of the Sri Lanka Army was convened on 11th October 2014, and the Petitioner was thereafter cleared of the said allegation.

Thereafter, by a document dated 07th October 2015, the Petitioner was included in the “Selected Majors’ List” marked **P8**, and was subsequently promoted to the rank of Lieutenant Colonel with effect from 31st March 2016.

Further, the letter dated 14th January 2020, issued on behalf of the Military Secretary, marked **P10**, informed the Petitioner that, having been cleared by the Advisory Board, he would be considered for promotions, appointments, and training courses in due course.

However, by the impugned document dated 30th June 2023 marked **P11**, it was indicated, *inter alia*, that certain officers, including the Petitioner, would be permitted career progression only up to the rank of Colonel. The Petitioner contends that the said policy has been applied to him in respect of the 2012 incident, thereby giving it retrospective effect.

Aggrieved by the contents of the document marked **P11**, the Petitioner submitted a Redress of Grievance (ROG) dated 28th July 2023 marked **P12**, and thereafter a further ROG dated 26th May 2025 marked **P13**, which was forwarded by the Commanding Officer by letter dated 27th May 2025 marked **P14**. The Petitioner states that no effective relief was granted in response to these representations.

The Petitioner contends that several officers junior to him were promoted to the rank of Brigadier in the year 2025, while the Petitioner was not considered for such promotion.

The Petitioner further relies on a subsequent policy dated 13th June 2025 marked **P15**, which is stated to operate prospectively, and contends that this demonstrates that the retrospective application of the earlier policy is unlawful.

The Position of the Petitioner

The case of the Petitioner, in substance, is that the disciplinary proceedings arising out of the incident in the year 2012 concluded with the imposition of a reprimand, which was duly served. Thereafter, the Petitioner was cleared of the said allegation by a duly constituted Advisory Board in the year 2014 and continued his career progression without any adverse consequence arising from the said incident. Such clearance, according to the Petitioner, was recognised by the Respondents themselves, particularly by way of the communication marked **P10**, wherein it was expressly indicated that the Petitioner would be considered for future promotions, appointments and training.

The Petitioner states that, acting upon the said representation, he continued in service and progressed in his career in the ordinary course, ultimately attaining promotion to the rank of Colonel. However, by the impugned policy dated 30th June 2023, marked **P11**, the Respondents have sought to revisit the same incident and impose an adverse consequence by restricting his future career progression.

It is the position of the Petitioner that the said policy has been applied retrospectively, thereby subjecting him to a second penalty in respect of the same incident. The Petitioner further contends that the impugned policy is *ultra vires* the provisions of the Army Act, inasmuch as the power to regulate matters relating to discipline is vested in the relevant Minister, and not in internal authorities.

The Petitioner further asserts that the retrospective application of the policy is contrary to settled principles of law, including the well-established presumption against retrospectivity. It is also his case that, in light of the representations made and the subsequent conduct of the Respondents, he had a legitimate expectation that he would be considered for further promotions in the normal course.

In these circumstances, the Petitioner contends that the refusal to consider him for promotion, particularly in a situation where officers junior to him have been promoted, is arbitrary, unreasonable, and unlawful, and is therefore liable to be set aside by this Court.

Position of the Respondents

The Respondents, in their Statement of Objections, deny the material averments of the Petition and take up the position that the impugned document dated 30th June 2023 has been introduced in order to maintain discipline within the Sri Lanka Army, particularly in relation to examination-related offences.

The Respondents state that the Petitioner was found to have committed an examination-related offence on 11th December 2012 and that disciplinary proceedings were thereafter initiated against him. It is their position that the said conduct is a relevant consideration in evaluating the Petitioner's suitability for future appointments and promotions.

The Respondents further rely on the policy decision set out in document **P11** and contend that the policy applies to officers who committed examination-related offences after 2009. In that context, it is their position that the Petitioner falls within the category of officers to whom the said policy is applicable.

The Respondents also rely on the decisions of the Army Advisory Board, including the decision dated 29th May 2023, as well as the consideration of the Petitioner's Redress of Grievance, and maintain that the Petitioner was not found entitled to the relief sought by him.

The Respondents deny that the impugned policy is unlawful, arbitrary, or unreasonable, and further deny that the same has been applied retrospectively or that it amounts to a second punishment.

The Respondents additionally raise preliminary objections, including allegations that the Petitioner has failed to disclose material facts and is guilty of delay. In the circumstances, the Respondents contend that the present application is without merit and ought to be dismissed.

The Principal Issue to be Determined

Considering the pleadings and submissions of the parties, my considered view is that the principal issue to be determined in the present application is whether the policy/circular dated 30th June 2023 marked **P11**, insofar as it is applied to the Petitioner, is unlawful on the basis that it purports to operate retrospectively in the absence of statutory authority.

Analysis

At the outset, it is necessary to examine the nature and legal effect of the document dated 30th June 2023 bearing reference No. MSB/A/ADB/53/02, marked **P11**, issued from Army Headquarters under the subject heading “**RECOMMENDATIONS OF THE BOARD APPOINTED TO EXAMINE EXAMINATION-RELATED OFFENCES COMMITTED BY OFFICERS AFTER 2009**”. The said document purports to convey the decisions and recommendations of the Army Advisory Board and sets out the consequences to be applied to officers falling within the category identified therein, including restrictions on career progression, eligibility for appointments, and training.

Although it is presented as a communication conveying “recommendations,” it is clear that **P11** is meant to be acted upon by the relevant authorities and has, in substance and effect, imposed binding restrictions on officers' service conditions and future career prospects. Therefore, the legal validity of such a measure must be assessed in light of the Army Act and the established principles governing subordinate or administrative instruments.

Retrospective Operation

A central feature of **P11** is that it seeks to attach adverse consequences to examination-related offences committed in the past, including those which had already been inquired into and disposed of under the prevailing legal and disciplinary framework. In the present case, the Petitioner's alleged misconduct occurred in or about 2012, for which he was subjected to disciplinary proceedings and penalised with a reprimand. Thereafter, an Advisory Board considered the matter in 2014, and the position taken by the Respondents is reflected in the communication marked **P10**, which indicated that he would be considered for promotions, appointments, and courses. While the Petitioner relies on the expression that he had been “cleared”, it is to be observed that **P10** is merely an administrative communication and does not disclose a formal determination amounting to a legal exoneration under the applicable disciplinary framework. However, what is material is that the Respondents themselves proceeded on the basis that the said incident would not operate as a bar to future consideration.

In these circumstances, the application of **P11** to the Petitioner, more than a decade after the alleged misconduct and after the conclusion of the disciplinary process, amounts, in

substance, to the retrospective imposition of further adverse consequences in respect of the same incident.

Although Parliament may enact laws with retrospective effect under Article 75 of the Constitution, subordinate legislation stands on a different footing. Subordinate or delegated legislation is derivative in nature and must operate strictly within the authority conferred by the enabling statute.

In the case of *Dr. K.M.L. Rathnakumara and Others v. Postgraduate Institute of Medicine and Others SC Appeal No. 16/2014, decided on 30th March 2016, Justice Priyantha Jayawardena PC*, held that subordinate legislation may have retrospective effect only where the enabling Act expressly or by necessary implication authorizes such operation. His Lordship further observed that no statute or subordinate instrument is to be construed as having retrospective operation unless such intention appears very clearly or by necessary and distinct implication.

A similar position is reflected in *Bindra on Interpretation of Statutes*, which states that a rule-making authority has no power to make rules with retrospective effect unless expressly empowered to do so (Vide Page 1384 of 9th Edition).

In this regard, Section 155(1) of the Army Act confers power upon the Minister to make regulations in respect of matters including discipline. However, there is no provision in the said Act which expressly or impliedly authorises the making of regulations, policies, or administrative instruments with retrospective effect, nor does it permit such power to be exercised by subordinate authorities such as an Advisory Board or administrative officers. No material has been placed before this Court to demonstrate that any law or regulation authorises such retrospective operation.

Accordingly, any attempt to impose adverse consequences retrospectively, through an administrative instrument such as **P11**, falls outside the scope of the powers conferred by the parent statute and is therefore *ultra vires*.

Ultra Vires and Lack of Authority

The impugned document is not a regulation made by the Minister under Section 155 of the Army Act, nor has it been published in the Gazette or placed before Parliament as required

under the said provision. Instead, it is an administrative communication issued pursuant to recommendations of an Advisory Board.

In such circumstances, the said document cannot have the force of law to alter or affect substantive rights, impose new disabilities, or reopen concluded disciplinary matters. The principle is well settled that a subordinate body exercising delegated authority cannot exceed the limits of the power conferred upon it, nor can it create new forms of punishment or disqualification not contemplated by the governing statute.

The effect of **P11** is to introduce a new category of disability, namely, the restriction of career progression and eligibility for appointments and training, based on past conduct which had already been dealt with under the law. Such a consequence is not contemplated by the Army Act or by any regulation made thereunder.

Accordingly, in the absence of any statutory provision authorising the imposition of such a disqualification, it is not open to the Respondents to introduce new criteria affecting promotion by way of an administrative instrument. **P11**, therefore, amounts to an unauthorised supplementation of the statutory framework and is ultra vires.

Double Jeopardy / Multiple Punishment

The Petitioner had already been subjected to disciplinary proceedings and penalised for the alleged misconduct by way of a reprimand. Thereafter, he was cleared by the Advisory Board and permitted to progress in his career. The impugned document now seeks to revive the same incident and impose further adverse consequences upon him.

While the strict doctrine of double jeopardy in criminal law may not apply in its technical sense, the underlying principle that a person should not be penalised more than once for the same misconduct is a recognised feature of fairness in administrative law. The imposition of additional disabilities, long after the conclusion of disciplinary proceedings, offends this principle and renders the decision arbitrary and unreasonable.

Arbitrariness and Irrationality

It is to be noted that promotion to higher ranks in the Army, particularly to the rank of Colonel and above, is by way of selection, as reflected in the governing Regulations marked “**B**”. In such a selection, the officer’s past record of service and the interests of the Army are

required to be considered. While such a process does not confer a vested right to promotion, the discretion so exercised must remain within the framework of the Regulations.

P11 is expressly confined to examination-related offences committed after the year 2009, thereby excluding similar offences committed prior to that date. No rational basis has been placed before this Court to justify such a classification.

In the absence of any reasonable classification of the object sought to be achieved, such classification is arbitrary. The selective application of adverse consequences to a defined group of officers, without any noticeable principle, renders the impugned measure irrational and violative of basic administrative law principles.

Conclusion and Order

In the foregoing circumstances, this Court holds that the document dated 30th June 2023 bearing reference No. MSB/A/ADB/53/02, marked **P11**, insofar as it applies to the Petitioner, is ultra vires the powers conferred by the Army Act and the governing Regulations, unlawful in its retrospective application, and arbitrary in its operation. The said document purports to introduce a substantive disqualification affecting the Petitioner's eligibility to be considered for promotion, which is neither authorised by the applicable statutory framework nor consistent with the criteria governing promotion within the Sri Lanka Army.

It is evident that the Respondents, being public authorities, are under a duty to consider the Petitioner for promotions, appointments, and courses in accordance with the applicable law and the governing regulatory framework. The failure to consider the Petitioner on a lawful basis, by reason of reliance on the impugned document marked **P11**, constitutes a failure to exercise such duty in accordance with law. Accordingly, it is appropriate to issue a mandate in the nature of a *writ of mandamus* directing the Respondents to consider the Petitioner in accordance with the law, without reference to the said document.

It is to be observed that the Petitioner does not possess a vested right to promotion. However, he is entitled to be considered for such promotion in accordance with the applicable law. Such consideration cannot be denied on the basis of criteria not recognised by the governing statutory or regulatory framework.

In these circumstances, the Petitioner is entitled to have his case considered afresh in accordance with the governing Regulations, free from the unlawful restriction introduced by **P11**.

Order

Accordingly, a mandate in the nature of a *Writ of Certiorari* is hereby issued quashing the document dated 30th June 2023 bearing reference No. MSB/A/ADB/53/02, marked **P11**, under the subject heading “RECOMMENDATIONS OF THE BOARD APPOINTED TO EXAMINE EXAMINATION-RELATED OFFENCES COMMITTED BY OFFICERS AFTER 2009”, insofar as it applies to the Petitioner.

A mandate in the nature of a *Writ of Prohibition* is issued restraining the Respondents from applying, enforcing, or giving effect to the said document marked **P11** against the Petitioner in any manner whatsoever.

A mandate in the nature of a *Writ of Mandamus* is issued directing the Respondents to consider the Petitioner for promotions, appointments, and courses strictly in accordance with the applicable law and without reference to, or reliance upon, the restrictions purportedly introduced by **P11**.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL