

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

*In the matter of an application under and in terms of  
Articles 17 and 126 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.*

Hetti Arachchige Thisaru Tharinda,  
No. 694/1/A, Waduwegama,  
Malwana.

**PETITIONER**

**SC/FR Application 241/2019**

Vs.

1. Captain Gihan Perera  
General Sir John Kotelawala Defence  
Academy,  
Kandawala Road,  
Rathmalana.
2. Lt. Commander Dissanayake,  
Squadron Commander,  
General Sir John Kotelawala Defence  
University,  
Kandawala Road,  
Rathmalana.
3. Brigadier Chandra Jayaweera,  
Dean,  
Faculty of Defence and Strategic Studies,  
General Sir John Kotelawala Defence  
University,  
Kandawala Road,  
Rathmalana.
4. General Sir John Kotelawala Defence  
University,  
Kandawala Road,  
Rathmalana.
5. Air Vice Marshal Sagara Kotakadeniya,  
Vice Chancellor,  
General Sir John Kotelawala Defence  
University,

Kandawala Road,  
Rathmalana.

6. Lt. Colonel P. S. Subath Sanjeeva,  
Registrar,  
Kotelawala Defence Academy.
7. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**Before:** P. Padman Surasena J.

Sobhitha Rajakaruna J.

M. Sampath K. B. Wijeratne J.

**Counsel:** Pulasthi Hewamanne with Linuri Munasinghe for the Petitioner.

Shavindra Fernando, PC with Nimesha Wanaguru for the 1<sup>st</sup> and 2<sup>nd</sup>  
Respondents.

Ganga Wakista Arachchi, DSG for the 7<sup>th</sup> Respondent.

**Written Submissions:** Petitioner - 25.11.2021

1<sup>st</sup> Respondent - 25.05.2022

2<sup>nd</sup> Respondent - 25.05.2022

7<sup>th</sup> Respondent - 04.05.2023

**Argued on:** 14.02.2025

**Decided on:** 03.07.2025

**Sobhitha Rajakaruna J.**

The Petitioner claims that the purported assault and torture inflicted by one or more officers of the General Sir John Kotelawala Defence University ('KDU') violates his fundamental rights guaranteed under the Constitution. The Petitioner asserts that the alleged physical assault, torture and ill-treatment are violative of Article 11 and the discriminatory treatment because of such circumstances is in violation of Article 12(1) of the Constitution. Among other reliefs sought, the Petitioner seeks compensation for the injuries sustained and loss of future opportunities.

On 28.04.2021, the learned Counsel for the Petitioner informed this Court that the Petitioner is willing to confine his Application to the alleged violations under Article 11 only against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. This Court granted leave to proceed on the same date under Article 11 only against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

***Summary of the facts narrated by the Petitioner.***

At the time material to the instant Application, the Petitioner was an Officer Cadet to serve in the Sri Lanka Army and for enlistment as an Officer Cadet of the KDU. The Petitioner states that he was unemployed when he filed this Application.

On 28.07.2017, the Petitioner participated in a routine physical training ('PT') session at KDU with his troop, 'Charlie.' During the session, the Physical Training Instructor directed him to perform push-ups using one hand, which he allegedly attempted for the first time. Upon the instructions of the Troop Commander of the 'Golf' Troop, the Petitioner was ordered to continue with the exercise regardless of the Petitioner complaining of discomfort. While doing so, the Petitioner dislocated his left shoulder, leading to a seven-day hospitalization at the Military Hospital. As a result, he has been assigned to sedentary duties.

The Petitioner contends that, despite being assigned sedentary duties, he was compelled to participate in PT sessions after resuming work on 05.08.2017. He claims that Flight Lieutenant Jude Ranasinghe who is the Troop Commander of 'Charlie' Troop, ordered him from time to time to attend PT, resulting in his shoulder dislocating two or three additional times. The Petitioner further alleges that around December 2017, Jude Ranasinghe threatened to demote him to a junior batch if he failed to be reclassified as physically fit.

The Petitioner affirms in his affidavit annexed to his Petition that the 1<sup>st</sup> Respondent on 21.02.2019 flapped his beret and questioned him as to how he met the Dean of the Faculty of Management without keeping the 1<sup>st</sup> Respondent informed. Thereafter, on 22.02.2019, the 1<sup>st</sup> Respondent asked the Petitioner to give a written explanation for failing to follow the chain of command. Later that same day, the 1<sup>st</sup> Respondent ordered the Petitioner to lie down and stay in a dip position using the injured hand, during which the 1<sup>st</sup> Respondent allegedly struck the Petitioner's thigh area several times with what is believed to be a pace stick. The Petitioner states that due to severe pain, he collapsed and his shoulder painfully subluxated again.

On 23.02.2019, the Petitioner reportedly experienced a blackout and collapsed onto the road leading to the parade grounds. The Petitioner states that following a referral from the Army Hospital, he was taken to the Judicial Medical Officer on 26.02.2019. In the meantime, on 27.02.2019, the Petitioner has made a complaint to the Human Rights Commission. As a subsequent development, the Petitioner has been served with a letter, marked 'P10', notifying him of his discharge from the KDU and service with effect from 07.05.2019. The Petitioner contends that his discharge was arbitrary, capricious and malicious, noting that other Cadet Officers who sustained injuries during the course were permitted to continue their degree programs.

***Statements of Objection of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.***

The 1<sup>st</sup> Respondent, who was the Petitioner's Troop Commander, acknowledges that he was informed of the Petitioner's medical condition and was aware of the Medical Boards the Petitioner had attended. Despite knowing that the Petitioner was medically unfit and classified under the 'Sedentary Duties' category, the 1<sup>st</sup> Respondent admits he did not exempt the Petitioner from participating in parades, which were mandatory for all Officer Cadets.

The 1<sup>st</sup> Respondent refutes allegations that the Petitioner was forced to participate in PT, emphasizing that Officer Cadets at KDU, including those engaged in academic activities, are subject to strict military discipline standards. The 1<sup>st</sup> Respondent states that the Petitioner consistently disregarded the rules and regulations of KDU, acting disobediently despite repeated warnings. The 1<sup>st</sup> Respondent contends that the Petitioner's disobedient

behavior and breaches of discipline occurred on multiple occasions and that the Petitioner is now attempting to portray clean hands upon an injury caused to him.

Three affidavits affirmed by T. Viraj Madumal Fernando, D. Prabath Dilhara Alwis and T. M. A. Dilshan Kumara Rathnayake, are annexed to his Statement of Objections. The 1<sup>st</sup> Respondent asserts that these affidavits corroborate the facts he presented to this Court. T. Viraj Madumal Fernando, an Officer Cadet, was receiving treatment at the Army Hospital (from 07.02.2019 to 28.02.2019), during the period the Petitioner was an in-house patient. He affirms in his affidavit that the Petitioner threatened to seek revenge against the 1<sup>st</sup> Respondent. Additionally, T. M. A. Dilshan Kumara Rathnayake, another inpatient during a similar period, stated in his affidavit that the Petitioner asked him to apply force to his thigh to create marks, purportedly to display to those investigating the Petitioner's health condition.

The 2<sup>nd</sup> Respondent claims to have acted responsibly and provided appropriate care and attention to the Petitioner's needs whenever necessary. The 2<sup>nd</sup> Respondent alleges that the Petitioner consistently disregarded the chain of command and violated the rules and regulations governing Officer Cadets. He further asserts that the Petitioner overlooked his duty to follow the command of superior officers, which is an obligation after enlisting in the Military to maintain impeccable disciplinary standards.

In addition to the above, it is noted that both the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have stated that neither Officers nor Cadet Officers carry 'pace sticks,' which are used for measuring distances and similar purposes, except for drill instructors who hold ranks below that of an officer

***Motion filed on behalf of the 4th Respondent- KDU***

The 4<sup>th</sup> Respondent, filing the motion dated 05.08.2019, informs this Court that;

- i. the Petitioner, by letter marked '4R2', sought permission to discharge himself from the service based on his medical unfitness.
- ii. subsequently, the Petitioner was presented before a medical board by which his disability was assessed as 20% (Medical Board Proceedings marked '4R1' is annexed thereto).

- iii. thus, a decision was taken to discharge the Petitioner from the Army with effect from 07.05.2019 and also to pay an amount of compensation, subject to the submission of the required documents by the Petitioner.
- iv. the Petitioner failed 07/10 modules in semester one, 06/11 in the second semester and all modules in the third semester (Documents marked '4R3A' to '4R3D' are annexed thereto).

***The stand taken by the Attorney General***

Written submissions have been submitted on behalf of the Attorney General in addition to the oral submissions presented by the learned Deputy Solicitor General ('DSG') during the hearing of the instant Application. The Attorney General, based on the circumstances of this case, has taken the view that the Petitioner's application is misconceived in law and there is no basis on which the Petitioner can seek redress in terms of a violation of Article 11 against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

It is stated that the Petitioner had failed to submit the detailed medical report pursuant to the Medico-Legal Examination Form marked 'P8'. A query has been raised regarding how the Petitioner, still an Officer Cadet as of 23.02.2019, came into contact with the Chief Judicial Medical Officer of the National Hospital of Colombo to contrive the said 'P8'. Further, it is claimed that neither the Petition nor the Counter Affidavit contains any evidence disputing the medical findings related to the Petitioner's 'recurrent left shoulder dislocation,' which led to his discharge. The 1<sup>st</sup> Respondent, as per the document marked '1R3', has assumed duties at the KDU only on 02.02.2018 and this was after the Petitioner suffered the injuries of the dislocation of the shoulder, on 28.07.2017.

The learned DSG submits that the Petitioner is bound to follow the required chain of command and the relevant code of conduct as described in the document marked 'P2'. However, the Petitioner was found to have violated the chain of command and has disobeyed the code of conduct on several occasions. Moreover, it is argued that the Petitioner intentionally orchestrated the incident to initiate this legal action, aiming to secure a position as a day scholar, fully aware that he faced discharge from the Army on

medical grounds. The Attorney General has emphasized the following provisions of Clause 8 in the Agreement marked 'P2' to support his submissions:

*“That the Republic or any of its Officers or employees or the University or any of its Officers or employees shall not be liable to pay any damages or compensation whatsoever to the Officer Cadet/ Officer or to the Parent/Guardian or to any other person whomsoever for himself/herself for and on behalf of the Officer Cadet/Officer or for and on behalf of the Parent/Guardian in consequence of, the death of or any injury to, the Officer Cadet/ Officer caused in the course, and within the scope, of his/her training at the University or of his/her service training.”*

### ***Alleged Violation of Article 11 of the Constitution***

The Supreme Court has constantly observed that the burden of proof in infringement of fundamental rights under Article 11 of the Constitution is on the Petitioner. In the case of ***Channa Pieris and Others v. Attorney General and Others (Ratawesi Peramuna Case) (1994) 1 Sri L. R. 1***, Amerasinghe J. has held that ‘having regard to the nature and gravity of the issue, a high degree of certainty is required before the balance of probability might be said to tilt in favour of a Petitioner endeavouring to discharge his burden of proving that he was subjected to torture or to cruel, inhuman or degrading treatment’. Giving due reference even to the said case of ***Channa Peiris, Shirani Bandaranayake J. in Nandasena vs. Chandradasa, O.I.C. Police Station, Hiniduma and Others (2006) 1 Sri L. R. 207*** decided that ‘when there is an allegation based on violation of fundamental rights guaranteed in terms of Article 11 of the Constitution, it would be necessary for the Petitioner to prove his position by way of medical evidence and/or by way of affidavits and for such purpose it would be essential for the Petitioner to bring forward such documents with a high degree of certainty for the purpose of discharging his burden’. Shiranee Thilakawardane J., in ***Herath Mudiyanseelage Yohan Indika Herath v. Ajith, Police Constable, Police Station, Dummalasuriya SC/ FR/ 555/2009 SC Minutes of 18.02.2014*** referencing the Torture Act No. 22 of 1994, which aligns with Article 1 of the Torture Convention and citing the precedent set by the two aforementioned cases, stressed the need for cogent and strong evidence in order to establish the alleged torture that constitutes a breach of fundamental rights.

The purported forensic evidence for torture submitted by the Petitioner is only a ‘Police Copy’ of a Medico-Legal Examination form marked ‘P8’ signed by the Chief Judicial

Medical Officer of the Institute of Forensic Medicine and Toxicology, Colombo. In the cage to describe the internal injuries, it is written - *“left shoulder dislocation with swollen left upper arm”* whereas in the cage under ‘others’ it is stated that - *“evidence of torture and intentional violence pro....”*. In the clinical notes annexed to the said form, the Chief Judicial Medical Officer has set down:

*“Physical torture by one senior army officer called Cpt.Perera on several occasions. There is evidence of physical injuries. The patient is psychologically disturbed and referred to forensic psychiatrist at 2 pm today at IFMJ. He was referred to police post of NHSL and MLEF No. 1372/19 issued. I will attend to medico legal issues.”*

Upon a careful perusal of the said document, marked ‘P8’ dated (26.02.2019), and its accompanying annexure, it appears that the said Chief Judicial Medical Officer (at 8.20 am) or the officers of the Police post have recorded in the said clinical notes the information solely conveyed to him by the Petitioner. Additionally, it is noted that no evidence has been provided to demonstrate that the Chief Judicial Medical Officer or any other medical officer from the National Hospital of Colombo issued a report based on a physical examination of the Petitioner. Additionally, as pointed out by the learned DSG, a reasonable doubt arises as to how the Petitioner was sent to the National Hospital of Colombo while he was warded in ward 5 of the Army Hospital. No adequate material is available to dispel such doubt.

The ‘internal injury’ listed in the said Medico-Legal Examination Form (‘P8’) issued on 26.02.2019 is *“left shoulder dislocation with swollen left upper arm.”* Anyhow, according to the ‘Medical Board Proceedings- All Ranks’ (‘4R1’), the date of the origin of the ‘recurrent left shoulder dislocation’ was on 28.07.2017. Even the Petitioner's own document, marked ‘P4’, reveals that the recommendations were made to arrange a sedentary duty category for the Petitioner on 04.08.2017 due to such dislocation. Lt. Meemamaduma, was reportedly the Troop Commander during that time and against him, only the Petitioner alleges that continued physical training was ordered despite his dislocation of the left shoulder. It is noted that the said Lt. Meemamaduma has not been made a party in the instant Application. Similarly, the Troop Commander (Charlie), Flt. Lt. Jude Ranasinghe, whom the Petitioner claims harassed and ill-treated him until around December 2017, has also not been named as a Respondent by the Petitioner. Significantly, the Petitioner has filed the instant Application on 07.06.2019.



The Petitioners' contention is that he filed a complaint with the Human Rights Commission on 27.02.2019. Since the recurrent dislocation was first documented in 2017, it can be assumed that the Petitioner has made an application to the Human Rights Commission prior to filing the instant Case, on the alleged assault by the 1<sup>st</sup> Respondent using a pace stick or on the blackout claimed by the Petitioner. However, no medical reasoning was given for such a blackout for this Court to assess that. In the affidavit, under a specific sub-heading, the Petitioner has affirmed that the 1<sup>st</sup> Respondent repeatedly struck his thigh area with what he believes was a pace stick. The website<sup>1</sup> of The Army of Australia (another Commonwealth country) illustrates that the pace stick is used to measure the correct length of pace, and that the correct pace length is necessary not only for ceremonial purposes, but also to reduce fatigue on long marches and set the standard of accuracy required of soldiers.

Based on the foregoing, I take the view that no sufficient forensic evidence with a high level of certainty has been submitted by the Petitioner to meet the required burden of proof as mentioned in the aforesaid judgements upon the alleged violation of fundamental rights under Article 11 of the Constitution.

It seems that the alleged assault occurred in the coffee room, located adjacent to the Dean's office. The Respondents state that the coffee room, part of the Faculty of Defence and Strategic Studies office, is a communal space open to all and situated next to the Dean's office. The Petitioner relies on the following judgements to establish the purported torture; 1. *Kandwalage Don Samantha Perera v. Officer-in-Charge, Police Station, Hettipola, SC FR 296/2014 SC Minutes 16th June 2020*; 2. *Pitakandalage Gamini Jayasinghe v. P.C. Samarawickrama SC Application 157/91 SC Minutes 12.01.1994*; 3. *Sudath Silva v Kodituwakku (1987) 2 Sri LR 119*; 4. *Deshapriya v. Captain Weerakoon. Commanding Officer, Sri Lanka Navy Ship "Gemunu" and Others (2003) 2 Sri LR 99*; 5. *Ratnasiri and Another v. Devesurendran Inspector of Police Slave Island and Others (1994) 3 Sri LR 127* and 6. *Sriyani Silva v. Iddamalgodha, Officer-in-Charge, Police Station Paiyagala and Others (2003) 2 Sri LR 6*. The violations of rights under Article 11 discussed in those cases were allegedly committed by State law enforcement officers, including personnel of defence services. After carefully reviewing the precedents cited by the Petitioner in the above cases, I conclude that those opinions do not hinder the perspective I have adopted in this

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<sup>1</sup> <<https://www.army.gov.au/about-us/history-and-research/traditions/pace-stick>>

Judgement. These cases all centred on complaints of physical violence by the respective officers who were engaged in law enforcement, defence services or prison services, including duties upon suspects under arrest.

In contrast, the instant Application concerns allegations of torture during PT which can be assumed as part of military training. This does not imply that the fundamental rights cannot be infringed through torture during PT conducted for officer cadets of the Army or any other military forces. The prohibition of torture and other forms of ill-treatment derives from the Geneva Conventions of 1949, their Additional Protocols of 1977, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and other international instruments. The term ‘torture’ referred to in Article 1 of the said Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Adopted on 10.12.1984) could be structured as follows;

1. Any act by which severe pain or suffering, whether physical or mental, is inflicted on a person;
2. The act must be intentionally inflicted;
3. The act must be instrumental for such purposes as:
  - a) obtaining from the individual or a third person information or a confession, or
  - (b) punishing him/her for an act he/she or a third person has committed or is suspected of having committed, or
  - (c) intimidating him/her or a third person, or
  - (d) coercing him/her or a third person, or
  - (e) for any reason based on discrimination of any kind.

What distinguishes torture from other forms of ill-treatment, which include other cruel, inhuman or degrading treatment and outrages upon personal dignity, is the third–purposive – aspect.

It is widely recognized that the persons undergoing military training would invariably have to face rigorous training which would require them to bear-up any physical or mental pain under difficult conditions. That is normal and a pre-requisite of such training. If such rigorous training is to be caught up under torture or other cruel or inhuman or degrading treatment or punishment, no such rigorous military training could ever be given to the members of the armed forces. However, the circumstances of this Case, in my view, do

not permit me to classify the alleged assault with a pace stick on or around 22.02.2019 as an act of torture within the scope of the aforementioned Convention and our domestic law. Additionally, based on the special circumstances of this Case the recurrent dislocation of the Petitioner's left shoulder cannot be linked with the alleged acts leading to a violation under Article 11. Moreover, the Petitioner has failed to provide compelling evidence demonstrating that severe pain or suffering, whether physical or mental, was deliberately inflicted by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for the purposes outlined in Article 1 of the referenced Convention

In light of the above, I am not convinced that Petitioner's fundamental rights under Article 11 have been infringed due to the alleged conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, and accordingly, I proceed to dismiss the instant Application without cost.

**Judge of the Supreme Court**

**P. Padman Surasena J.**

I agree.

**Judge of the Supreme Court**

**M. Sampath K. B. Wijeratne J.**

I agree.

**Judge of the Supreme Court**