

**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.

S.C. (FR) No. 108/2020

Godallage Priyantha Kumara,
Leading Air Crafter,
No. 527/A, Henagoda, Aluthwala.

Petitioners

Vs.

1. Sumangala Dias,
Air Marshal,
Commander of Sri Lanka Air Force,
Headquarters Sri Lanka Air Force,
P.O. Box 594, Colombo 2.

1A. Sudarshana Pathirana,
Air Marshal,
Commander of Sri Lanka Air Force,
Headquarters Sri Lanka Air Force,
P.O. Box 594, Colombo 2.
(1A substituted Respondent)

1AA. Rajapaksa Appuhamillage Udeni
Priyadarshana Rajapaksa
Air Marshal,
Commander of Sri Lanka Air Force,
Headquarters Sri Lanka Air Force,
P.O. Box 594, Colombo 2.
(1AA substituted Respondent)

2. A.J. Amerasinghe,
Air Commodore, Commanding Officer,
Sri Lanka Air Force Camp,
Bandaranaiake International Air Port,
Katunayake.
3. N.S. Nagodawithana,
Wing Commander, Commanding Officer,
Sri Lanka Air Force Camp, Koggala.
4. D.R.A.B. Warakanga,
Air Commodore, Commanding Officer
Sri Lanka Volunteer Air Force,
Sri Lanka Air Force Headquarters,
P.O. Box 594, Colombo 2.
5. L.R. Jayaweera,
Air Vice Marshal
Director Health Services,
Sri Lanka Air Force Headquarters,
P.O. Box 594,
Colombo 2.
6. Dr. Mrs. N.D.B. Abeysekara,
Air Commodore,
Chairperson of Medical Board,
Commanding Officer,
Hospital, Sri Lanka Air Force,
Katunayake.
7. Dr. A.R. Gunawardane,
Squadron Leader
Member of Medical Board,
Hospital, Sri Lanka Air Force,
Katunayake.
8. A.G.T.N.H. Jeewarachchi,
Flight Sergeant,
Sri Lanka Air Force, Koggala.

9. Kamal Gunaratne,
Major General, Secretary,
Ministry of Defence,
No. 15/5 Baladaksha Mawatha, Colombo.

10. W.L.R.P. Rodrigo,
Air Vice Marshall
Director Ground Operations,
Sri Lanka Air Force,
Sri Lanka Air Force Headquarters,
P.O. Box 594, Colombo 02.

11. Dissanayaka, Flight Sergeant,
Executive Office,
Sri Lanka Air Force, Koggala.

12. Honourable Attorney General,
Department of the Attorney General,
Colombo 12.

Respondents

Before : Achala Wengappuli, J.
Menaka Wijesundera, J.
Sampath B. Abayakoon, J.

Counsel : Migara Kodituwakku instructed by Nalin Jayaweera for
the Petitioner.
Rajitha Perera, DSG instructed by Nimna Perera, ASA for
the 2nd, 3rd, 7th and 12th Respondents.

Written
Submissions : Written submissions on behalf of the respondents filed
on 05th October, 2021.
Further written submissions on behalf of the
Petitioner on 11th of December 2025.

Argued on : 12.11.2025

Decided on : 20.02.2026

MENAKA WIJESUNDERA J.

The Petitioner in the instant matter has been a leading Air Craftsman bearing service No. 018888 of the Sri Lanka Volunteer Air Force (SLVAF) attached to the Sri Lanka Air Force.

The Petitioner had commenced his training in the Ampara Air Force camp on 17.12.2008 and successfully completed the same on 13.06.2009.

The Petitioner further states that he entered in to a service contract of five years with the Sri Lanka Air Force which he had not annexed to the petitioner.

The Petitioner had stated that he had served in the Air Force camps of Diyathalawa, Vanni, Mullativu, Batticaloa, and many other Air force camps in the country.

The Petitioner has further stated that he had drawn Rs. 59, 956 per month before his discharge from the Air Force.

The Petitioner also states that in 2016 while being in service, he had been admitted to the Karapitiya government hospital and he had been diagnosed with Tuberculosis. Thereafter, he had taken continued treatment for the disease. According to the material submitted, his condition had deteriorated as a result of which he had continuously fallen sick and was unable to perform his duties. He had attached all the medical reports pertaining to his condition.

Due to his medical condition, after the expiration of his contract duration, his time had not been extended. Thereafter, on 05.08.2019 he had been informed by letter marked (P-11), by the 5th Respondent that due to his ill health the commander of the Sri Lankan Air Force had asked he be relieved from duty on 16.12.2019. Thereafter, the petitioner alleges to have been examined by a medical board and they had recommended light duty on him.

Thereafter, by a letter dated 19.12.2019 (P 13) the Petitioner had been informed to face another medical board to assess the illness of prior to discharge but nevertheless that medical board had not been convened and he says that he was discharged due to his illness. Thereafter, he had finally appeared before another medical board on 31.12.2019, and no physical medical check-up was done on the Petitioner. Yet he had not been re-engaged in services. As per the Pension

Circular No. 01/2019, the Petitioner had applied for the disabled officer's pension because he claims that he had served the Air Force in the Volunteer Forces for 11 years. Therefore, he has claimed his Fundamental rights under Article 12(1) had been violated and he claims that relief be granted under Prayer D to the petition.

At the time of argument, the Counsel for the Petitioner wanted relief only under Prayer D to the petition.

The Respondents, upon filing their statement of objections, have firstly taken up the objection of this case being time-barred and therefore urging its dismissal as the Petitioners have failed to comply with the mandatory time limit requirement prescribed in Article 126(2) of the constitution.

Article 126(2) of the Constitution reads as follows:

“Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an attorney-at-law on his behalf, within one month thereof, in accordance with such rules of Court as may be in force, apply to the Supreme Court by way of a petition in writing addressed to such Court...”

The effect of Article 126(2) is that a petition alleging the infringement or imminent infringement of a fundamental right must be instituted within one month from the date of such infringement or threatened infringement. Non-compliance with this mandatory time limit renders the petition time-barred and consequently not maintainable. This Court has consistently held that the time limitation prescribed under Article 126(2) is mandatory in nature.

In the case of **Demuni Sriyani de Zoysa and others v. Dharmasena Dissanayake and others** [SC (FR) 206/2008, SC Minutes of 09.12.2016], Prasanna Jayawardena, PC., J. observed that;

“The rule that, an application under Article 126 which has not been filed within one month of the occurrence of the alleged infringement will make that application unmaintainable, has been enunciated time and again from the time this Court exercised the Fundamental Rights jurisdiction conferred upon it by the 1978 Constitution. Thus, in EDIRISURIYA Vs. NAVARATNAM [1985 1 SLR 100 at p.105- 106], Ranasinghe J, as he then was, stated “This Court has consistently proceeded on the basis that the time limit of one month set out in Article 126 (2) of the Constitution is mandatory.”

However, while the time limit prescribed by Article 126(2) is mandatory, this Court has recognised that, in exceptional circumstances, it retains a limited discretion to entertain an application filed out of time, where a strict application of the time bar would defeat the ends of justice. One of the first Judicial authorities to elucidate this view was Justice Mark Fernando in the case of **Gamaethige v. Siriwardena [1988] 1 SLR 344**, where he held that,

*“While the time limit is mandatory, in exceptional cases on the application of the principle *lex non cogit ad impossibilia*, if there is no lapse, fault or delay on the part of the petitioner, this Court has a discretion to entertain an application made out of time.”*

Similarly in the case **SC/FR/46/2021, Mahinda Samayawardhena, J, has extensively articulated what constitutes a violation of Article 126(2) and the relevant extract is set out below,**

*“The strict literal interpretation of this Article is that the time limit of one month set out in Article 126(2) is not open to interpretation and non-compliance warrants automatic dismissal of the application in limine without going into the merits of the complaint. In exercising the extraordinary and exclusive jurisdiction conferred upon this Court to protect the fundamental rights of the people, this Court, whilst emphatically emphasizing that the time limit of one month is mandatory and shall be complied with, has nevertheless relaxed the rigidity of the time tag in appropriate cases by adopting a liberal as opposed to a literal interpretation of Article 126(2). This is predominantly done by the adoption of the maxim *lex non cogit ad impossibilia*: the law does not expect a man to do the impossible. Hence, it is accepted that the period of one month begins to run not from the date of violation of the right but from the date of becoming aware of the violation of the right or from the time of being in a position to take effective steps to come before the Supreme Court. The test to be applied is objective, not subjective.”*

Upon considering the objection of time-bar, the petitioner in the instant case has been filed the application at hand on 26.03.2020, but, according to the contents of the petition, the Petitioner’s discharge of duty had taken place on 16.12.2019. The discharge from duty is the cause for the instant application before this court.

The discharge from duty took place on the 16th of December 2019 but the petition has been filed in March of 2020, therefore, it has exceeded the one-month period. However, having regard to the nature of the application, it is to be noted that, notwithstanding the Petitioner having been informed by letter dated 5th August

2019 that his services would be terminated with effect from 16th December 2019, he alleges that he was subsequently interviewed by the 10th Respondent and was verbally offered a three-year extension of service. The Petitioner was thereafter informed by letter dated 19th December 2019 (P-13) that he was required to appear before a Medical Board on 16th December 2019 to assess his alleged ill health prior to his discharge. A glaring defect in this communication is that it was dispatched after the effective date of the Petitioner's discharge. Further, the Medical Board did not convene on the said date, and the Petitioner was instead required to appear before a Medical Board on 31st December 2019, the outcome of which was not communicated to him. Thereafter, the Petitioner alleges that he was informed orally in early February 2020 that he had been discharged from service by the 1st Respondent, and the present application was filed in March 2020. In considering the objection raised by the Respondents that the application is time-barred under Article 126(2) of the Constitution, this Court is required to have due regard to the circumstances in which the Petitioner found himself. In the light of the uncertainty surrounding the termination of his service and the procedural irregularities apparent on the part of the Respondents, I am unable to accept the contention of the Respondents that the instant application is barred by time.

Having addressed the preliminary issue relating to the alleged violation and the invocation of this Court's jurisdiction under Article 126(2), it is now necessary to turn to the substantive complaint advanced by the petitioner, namely, the alleged infringement of Article 12(1) of the Constitution, which states that,

“All persons are equal before the law and are entitled to the equal protection of the law”.

The Respondents in their objections have stated that the Petitioner has been discharged from duty due to ill health, which had not taken place due to the constraints of his service.

The Petitioner has claimed the disabled person pension under the relevant Act. According to the submissions of the Respondents, under Section 25 (1) (a) of the Army and Air Force Pensions and Gratuities Code 1981, a person is entitled to a pension only if death or disease is attributable to the Air Force service or to the performance of duties under Section 23 (a) of the Air Force Act.

Therefore, the Respondents claim that infections and diseases which are not attributed to the Air Force service do not fall under section 25 (1) (a) of the above Act. They had also claimed that there were no records of any other officers contracting tuberculosis during this period. They have further submitted that all

infections which have been reported during this period have been placed as non-attributable to the Air Force service or to the performance of their duties.

Hence, the medical board, which the petitioner had faced, have concluded that the Petitioner's condition cannot be attributed to the service and thus cannot come within the purview of the Act.

The Respondents' stance is that the Petitioner's condition (Tuberculosis) was determined by a Medical Board to be non-attributable to Air Force service or the performance of duties, thereby precluding him from receiving a pension. The principle underlying Article 12(1) permits reasonable classification. A classification that distinguishes between officers whose disability is service-attributable and those whose is not, for the purpose of granting a specific pension, bears a just and reasonable relation to the object of the pension scheme.

In the case of ***Wasantha Disanayake and others v Secretary, Ministry of Public Administration and Home Affairs and others (SC (FR) 611/2012***, SC Minutes of 10.09.2015), K. Sripavan, Former CJ. held that it is necessary to show unequal treatment and discriminatory action against the Petitioners in pleading a violation of right to equality;

“Article 12(1) of the Constitution contemplates the right to equality and states that, ‘All persons are equal before the law and are entitled to the equal protection of the law’. What is meant here is that equals should be treated equally and similar laws and regulations should be applicable to persons who are similarly circumstanced. In reference to Article 12(1) of the Constitution, it would be necessary to show that there had been unequal treatment, and therefore, there exist discriminatory action against the Petitioners.”

The Petitioner has failed to demonstrate that he has been treated unequally compared to other officers similarly circumstanced. Furthermore, the Respondents' submission's state that there were no records of other officers contracting Tuberculosis during this period, thereby strengthening the argument that the decision was based on the medical assessment rather than arbitrary discrimination.

As such, upon the material submitted by both parties, I am of the view that the case of the petitioner does not establish a violation of the Petitioner's fundamental right guaranteed under Article 12(1) of the Constitution.

Hence the instant application is dismissed without costs.

JUDGE OF THE SUPREME COURT

Achala Wengappuli, J.

I agree.

JUDGE OF THE SUPREME COURT

Sampath B. Abayakoon, J.

I agree.

JUDGE OF THE SUPREME COURT