

**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. 229/2016

Jalisge Asiri Jayalath Wickramasinghe
No.69, Janaudanagama, Morakewa,
Horowpothana.

Petitioner

Vs.

1. Deputy Inspector General of Police (DIG)
J. K. R. A. Perera, Commandant, Special
Task Force, No. 223, Bauddhaloka
Mawatha, Colombo 07.

1A. Deputy Inspector General of Police
(DIG) Waruna Jayasundara,
Commandant, Special Task Force, No.
223, Bauddhaloka Mawatha, Colombo
07.

1B. Deputy Inspector General of Police
(DIG) D.G.S. De Silva, Commandant,
Special Task Force, No. 223,
Bauddhaloka Mawatha, Colombo 07.

2. Inspector General of Police (IGP) Pujitha
Jayasundara, Police Head Quarters,
Colombo.

2A. Senior DIG C. D Wickramaratne,
Acting IGP, Police Head Quarters,
Colombo.

2B. C. D Wickramaratne, Inspector
General of Police (IGP) Police Head
Quarters, Colombo.

2C. T. M. W. Deshabandu Thennakoon,
Inspector General of Police (Acting) Police
Head Quarters, Colombo 01.

2D. Senior DIG Priyantha Weerasooriya,
Inspector General of Police (Acting) Police
Head Quarters, Colombo 01.

3. Prof. Siri Hettige, The Chairman

3A. Mr. K. W. E Karalliyadda, Chairman,

3B. Mr. S. C. S.Fernando, Chairman,

3C. Mr. E. W. M Lalith Ekanayake
Chairman

4. Mr. P.H. Manatunga, Member

4A. Mr. Gamini Nawaratne, Member,

4B. Mr. M. P. P. Perera. Member,

4C. Mr. D. Kapila Jayasuriya, Member

5. Mrs. Savithree Wijesekara, Member,

5A. Mr. S.Liyanagama ,Member,

5B. Mrs. D. K. Renuka Ekanayake,

6. Mrs. Y. L. M. Zawahir, Member,

6A. Mr. G. Wickramage, Member

6B. Mr. A. A. M. Illiyas, Member

7. Mr. Anton Jeyanadan. Member,

7A. Mr. Asoka Wijetilleka

7B. Mr. A. S. P. S. P. Sanjeewa, Member

7C. Mr. K. Karunaharan, Member

8. Mr. Tilak Collure, Member,

8A. Mr. T. P. Paramaswaran, Member

8B. Mr. Jayantha Jayasinghe, Member

9. Mr. Frank de Silva, Member,

9A. Mr. G. Jeyakumar

9B. Mr. N. S. M. Smasudeen, Member

9C. Mr. P. G. S. Gamini De Silva, Member

(The 3C Respondent is the Chairman and the 4C-9C Respondents are the Members of the National Police Commission) All of National Police Commission, Block No. 9, B.M.I.C.H. Premises, Baudhaloka Mawatha, Colombo 07,

10. Rana viru Seva Authority, No 499, Galle Road, Colombo 03.

11. Assistant Superintendent of Police (ASP) Vidura Dissanayaka, Regional Commanding Officer Special Task Force, Arugambay, Potuvil.

12. Mr. Karunasena Hettiarachchi, Secretary to the Ministry of Defense, 15/5, Baladaksha Mawatha, Colombo 03

12A. Mr. Kapila Waidyarathne PC, Secretary to the Ministry of Defense, 15/5, Baladaksha Mawatha, Colombo 03

12B. Major. General (Retd) G D H Kamal WW RWP RSP USP ndc psc Mphil, Secretary of Defence, No. 15/5, Baladaksha Mawatha, Colombo 03

12C. Air Vice Marshal Sampath Thuyacontha WWW RWP RSP, Secretary of Defence No. 15/5, Baladaksha Mawatha, Colombo 03

13. Mr. Jagath P. Wijeweera Secretary to the Ministry of Law and Order and Southern Development Floor - 13, 'Sethsiripaya' (Stage II), Battaramulla

13A. Ms Wasantha Perera, Secretary to the Ministry of Justice, Prison Affairs and Constitutional Reforms No. 19, Sri Sangarajamawatha, Colombo 10

13B. Ms Wasantha Perera, Secretary to the Ministry of Justice, Prison Affairs and Constitutional Reforms. No 19, Sri Sangarajamawatha, Colombo 10

13C. Mr. M. N. Ranasinghe, Secretary, Ministry of Justice, Prison Affairs and Constitutional Reforms, No 19, Sri Sangaraja Mawatha, Colombo 10.

13D. Mr. P.V. Gunathilake, Secretary,
Ministry of Public Security, 18th Floor,
'Suhurupaya', Battaramulla.

13E. Mr. D. W. R. B. Seneviratne,
Secretary, Ministry of Public Security
Parliamentary Affairs, 18th Floor,
'Suhurupaya', Battaramulla.

14. Hon Attorney General Attorney Generals
Department - Hulftsdorp, Colombo 12.

15. Mrs. Thamara D. Perera, Secretary,
National Police Commission, Block No. 9,
B.M.I.C.H. Premises, Baudhaloka
Mawatha, Colombo 07.

Respondents

Before : A. H. M. D. Nawaz, J.
Janak De Silva, J.
Menaka Wijesundera, J.

Counsel : Asthika Devendra with Milindu Sarachchandra
instructed by Manjula Balasooriya for the Petitioner.
Sabrina Ahmed, S.S.C for the Respondents.

Written
Submissions : Written submissions on behalf of the Petitioner on 2nd
of May, 2019
Written submissions on behalf of the Respondents on
7th May, 2021.
Further written submissions on behalf of the

Respondents on 17th February 2025.

Further written submissions on behalf of the Petitioner
on 05th March, 2025

Argued on : 05.02.2025

Decided on : 16.07.2025

MENAKA WIJESUNDERA J.

In the instant matter, the petitioner had been attached to the Vavunathivu camp in the capacity of a police constable, attached to the Special Task Force of the Sri Lanka Police.

The petitioner has complained of irrational and arbitrary decision of the respondents to retire the petitioner under a wrong category, for example, General Medical grounds other than medical reasons which is attributable to terrorist attacks.

This court had granted leave under Article 12(1) of the Constitution.

According to the facts of the case, on 27.02.2007, as stated above, the petitioner had been attached to the Vavunathivu camp. On that day, he had been assigned with a special duty of being called upon to join the 11th respondent to provide security at Webber ground Batticaloa due to the arrival of former minister Mahinda Samarasinghe.

At the time of the arrival of the minister, Liberation Tigers of Tamil Eelam (LTTE) had launched an attack on the ground with mortars and artillery. At this point, the petitioner claims that he had sustained a certain impact on to his left hand, which had caused him physical pain but the petitioner claims that he has not been identified as an injured officer at that time but had nevertheless informed the 11th respondent.

The respondents had stated in their written submissions that 17 other officers had sustained injuries but the petitioner was not among them.

The petitioner further claims that the 11th respondent had informed him to take some medical treatment, which he had done so. Thereafter, the petitioner had served uninterruptedly till the 1st of April, 2007, when the petitioner had taken leave to go home.

Thereafter, the petitioner had reported back to work only on the 25th of September 2007, to the Maha Oya STF camp. The petitioner claims that he, during this time, had taken medical treatment from Huruluwewa Government hospital where he had taken an x-ray, according to which he was recommended surgery.

Although the petitioner had taken leave and gone home, the respondents have stated that he had failed to obtain medical leave, as a result of which, he had been referred before a medical board to approve medical leave and to assess the petitioner's physical fitness to continue in service. The medical board had declared on the 27th of June, 2007, that he was unfit for service and that he be retired. Therefore, he had been retired with effect from 22nd of June, 2010, on general medical grounds. It is submitted by the respondents that he could not be granted with any other relief because the injuries sustained by him had not been on record officially.

Thereafter, the petitioner had made several appeals and the Special Task Force had appointed a special committee on the 26th of September, 2011, which concluded that the petitioner had not sustained the injury on the 27th of February, 2009, but in April, 2007, while he had been on leave at home. Therefore, the committee had unanimously agreed with the decision formerly made by the medical board.

The petitioner had cited Police Administration Circular bearing no. 21/88, which had been issued in respect of officers, who had sustained injuries, as a result of terrorist attacks.

The petitioner further alleges that, due to the conclusion of the Medical board, he is unable to obtain any relief under the above circular. But the respondents have stated that the petitioner had not forwarded any medical reports to substantiate the fact that he sustained the impugned injury during the terrorist attack on 27th February 2007. Therefore, the Medical board and the committee appointed, rightfully concluded that his retirement should not be on medical grounds, which deprives him of obtaining any relief under the above-mentioned circular.

The respondents have alleged that the decision of the medical board dated 11th October 2010, had not been challenged by the petitioner in terms of Article 126 of the constitution, which states the timeline as one month from the alleged incident. Therefore, the respondents further stated that the petition is estopped from seeking relief under the provisions of the constitution.

Article 126(2) of the constitution states that a fundamental rights application should be presented to the Supreme Court within one month of such violation,

According to **S.C F.R 206/2008**, decided on 9th of December, 2016 by **Justice Prasanna Jayawardena PC, J.** it has been held that,

“In this regard, as stated earlier, the general rule is clearly that, this Court will regard compliance with the “one-month limit” stipulated by Article 126 (2) of the Constitution as being mandatory and refuse to entertain or further proceed with an application under Article 126 (1) of the Constitution, which has been filed after the expiry of one month from the occurrence of the alleged infringement or imminent infringement. However, this Court has consistently recognized the fact that, the duty entrusted to this Court by the Constitution to give relief to and protect a person whose Fundamental Rights have been infringed by executive or administrative action, requires Article 126 (2) of the Constitution to be interpreted and applied in a manner which takes into account the reality of the facts and circumstances which found the application. This Court has recognized that it would fail to fulfill its guardianship if the time limit of one month is applied by rote and the Court remains blind to facts and circumstances which have denied a Petitioner of an opportunity to invoke the jurisdiction of Court earlier.”

In the instant matter, the impugned incident occurred on 27th of February, 2007, in which the petitioner alleges he sustained injuries. But the respondents have drawn the attention of the court to the daily record book marked as P2, according to which, the incident had occurred on the 6th of February, 2007. Upon perusal of P2, the description of the incident is legible in the note and it further states that he would be receiving medical treatment. But his further correspondence to his superiors has stated the date to be 27th February, 2007. His statement made to the Police welfare unit has also stated the date as 27th February, 2007. But as alleged by the respondents, he is unable to substantiate his injuries with contemporaneous medical reports.

In this instance, the petitioner brings this courts attention to the documents marked P4, P4A and P4B. P4 is the x-ray, which was allegedly taken on the 9th of March, 2007, which the radiographer of the Batticaloa teaching hospital had certified to be true by stating so in a note containing the hospital’s official seal (P4A). Furthermore, the document marked P4B, includes a note by an orthopaedic surgeon, who confirms that a fracture is visible in the x-ray marked P4. The doctor had also certified the reply with his official seal. The

petitioner states that the evidence placed, contradicts the time period put forth by the respondents as to when the injury took place, as the respondents allege the injury occurred while he was on leave from the 1st of April, 2007. But whether the injury occurred on the 27th of February, 2007 is still in question, however, it does align with the time period of the injury occurring, according to the petitioner. It also backs the claim of the petitioner that the injury took place while the officer was on duty.

Despite the radiographer's note validating what the petitioner claims, I am not inclined, in the circumstances of the case, to take the facts at face value, as it is a vaguely worded note stating that the x-ray was taken on 09.03.2007.

Therefore, even if the time bar objection is overruled, the lack of medical evidence to substantiate the grounds urged by the petitioner makes this court to conclude that the fundamental rights of the petitioner under Article 12(1) has not been violated.

As such, this Court is compelled to dismiss the instant application, with no costs.

JUDGE OF THE SUPREME COURT

A. H. M. D Nawaz, J.

I agree.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree.

JUDGE OF THE SUPREME COURT

