

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

*An application made under and in terms of
Articles 12(1) and 14(1)(g) of the Constitution
read with Article 126 of the Constitution.*

S. B. Kaluarachchi,
86/1, Kumaragewatta Road,
Battaramulla, Pelawatta.

PETITIONER

SC/FR Application No. 361/2021

Vs.

1. Dr. P.B. Jayasundara,
Secretary to the President,
Presidential Secretariat,
Colombo 01.
2. Vice Admiral D.N.S. Ulugetenne,
Commander of the Navy,
Navy Headquarters,
PO Box 593, Chatham Street,
Colombo 01.
3. Gen (Rtd) Kamal Gunaratne,
Secretary,
Ministry of Defense,
Defense Headquarters Complex,
Sri Jayawardenapura Kotte.
4. Rear Admiral Y.N. Jayarathne,
Chief of Staff Sri Lanka Navy,
PO Box 593, Chatham Street,
Colombo 01.

5. Rear Admiral A.P.N. De Silva,
Director General Logistics,
PO Box 593, Chatham Street,
Colombo 01.
6. Rear Admiral Tilak Segera,
Director General Finance and Budget,
PO Box 593, Chatham Street,
Colombo 01.
7. Commodore T.M.A.A. Tennakoon,
Acting Director General Personal,
Naval Headquarters,
PO Box 593,
Colombo.
8. Commodore M.S.K. Mahawatte,
Director Naval Training,
Naval Headquarters,
PO Box 593,
Colombo.
9. Commodore P.S. De Silva,
Command Headquarters,
SLNS Rangala,
Port of Colombo, Colombo.
10. Commodore T.S.K. Perera,
Command Headquarters,
SLNS Uththara,
Port of KKS, Jaffna.
11. Commodore N.A. Ubayasiri,
Director Logistic Management Cell,
Naval Headquarters,

PO Box 593,
Colombo.

12. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE : P. PADMAN SURASENA, C.J.
JANAK DE SILVA, J.
K. M. G. H. KULATUNGA, J.

COUNSEL : Saliya Pieris, P.C., with Ashan Stanislos, instructed by Thushari Jayawardhana, for the Petitioner.

Ms. Nayomi Kahawita, SSC, for the Respondents.

WRITTEN SUBMISSIONS ON : 09.01.2026

ARGUED ON : 19.01.2026

DECIDED ON : 17.06.2026

JUDGMENT

K. M. G. H. KULATUNGA, J.

1. The petitioner, S. B. Kaluarachchi, is now a retired officer of the Sri Lanka Navy (SLN) from the rank of Commodore. At the time of filing this application in 2021, he was in active service and held the position of Director of Finance and Budget. By this application, the petitioner is seeking a declaration that his fundamental rights guaranteed by Articles 12(1) and 14(1)(g) of the Constitution have been violated due to his non-promotion to the rank of Rear Admiral.

2. The petitioner avers that the Commanders of the Navy have, on numerous occasions prior to the petitioner's retirement as well as thereafter, recommended several officers reaching the retirement to be promoted, and such promotions have also been made. The petitioner has listed out several of such promotions made to officers on the eve of their retirement. In these circumstances, the petitioner's grouse and complaint is that he was not similarly treated, and thereby frustrated his legitimate expectation and violated his fundamental rights guaranteed by Articles 12(1) and 14(1)(g) are violated.
3. In the course of the argument, it was also alleged that the petitioner was denied the opportunity of being promoted due to the change of the Scheme of Promotion made to the Sri Lanka Navy Order (SLNO) No. 0642. The specific change complained of is the change to the criteria of apportioning marks between merit and seniority from 60:40 to 50:50 of the total of 100 marks.
4. The petitioner had completed 34 years of service in the Sri Lanka Navy. He had joined as a Cadet Officer on 01.07.1987 and had risen to the rank of Commodore at the point of his retirement. The Scheme of Promotion in the Sri Lanka Navy in respect of officers to the rank of Commodore and above is provided for by the SLN Regulation for Officers 1950 ("P2B") and the SLNO 0642 ("P2A"). In the said Order, as it prevailed in 2000, the proportion between seniority and merit was 80:20. However, this proportion was amended to 40:60, which prevailed so until it was subsequently revisited and amended to 50:50 on a recommendation made by a Board of Study on 03.12.2020. Whilst amending the relevant proportion, it also did make certain amendments to the formula in tabulating marks for seniority.
5. The petitioner has, during the relevant period, gone before a Promotion Board on four occasions: on 01.01.2015 (Captain to Temporary Commodore promotion), 04.12.2020, 07.09.2021, and 24.09.2021. The

petitioner submits that the first of these Boards created an anomaly by deviating from the SLNO 0642. As per the usual practice to fill the existing 3 vacancies, 9 candidates would have been called for interviews, out of which 3 candidates would be promoted. The petitioner submits that contrastingly, 6 officers were promoted. This, in effect, created a 36-month seniority gap with the petitioner's immediate senior officer (Commodore M. T. Sigera) and prevented the petitioner from receiving a timely promotion, which the petitioner alleges also delayed him from being promoted to Rear Admiral. The petitioner had been promoted to the rank of Commodore on 01.04.2018. This had, if at all, occurred in April 2018 or before and remains unchallenged.

6. Thus, the petitioner's principal complaints and grievances are:
 - i. not being recommended for the promotion pending his retirement; and
 - ii. the change of the scheme of promotion by amending the seniority to merit ratio to 50:50 and implementing the same without sufficient time,which frustrated his legitimate expectation.

Non-Promotion Pending Retirement.

7. The petitioner alleges that, being a senior officer, he had a legitimate expectation that on reaching his retirement, he would have been promoted to the rank of Rear Admiral. It is his contention that it is a practice in the Sri Lanka Navy that senior officers, on the eve of reaching retirement, are recommended for promotions. It was argued that the petitioner had a legitimate expectation to be recommended for the promotion to the next rank of Rear Admiral, at least on reaching his retirement. This expectation is on the alleged practice that is claimed to have prevailed in recommending officers on the eve of their retirement for the next senior rank.

8. According to the petitioner's written submissions it is alleged that Commanders of the Navy in the exercise of their discretion have, at various times, recommended officers who have completed 20 years to be promoted to the next rank just prior to retirement. This discretion, according to the petitioner, is referable to the Board of Study recommendation 2R2. Since the petitioner makes reference to 2R2, I have perused the said recommendation and find that the recommendations are contained in paragraph 14 thereof, which contains 16 recommendations, of which the item (*n*) reads as follows:

“(n) To consider officers who have completed over 20 years and eligible in all aspects to be promoted to the next rank on retirement with the discretion of the C of N.”

9. These recommendations were then considered by the Board of Management at the meeting held on 27.03.2021 (*vide* 2R3). The petitioner himself has tendered a part of the minutes of the said meeting, along with a further affidavit dated 07.12.2021, annexing and tendering additional documents. Document A-8 so annexed contains pages 5 and 6 of the said minutes. The respondents, with their Objections, have tendered pages 1 – 6 of the said minutes as 2R3. The consideration of the Board of Study recommendations appears at item 6. According to the said minutes, appearing at paragraphs 16 and 17, there is a decision to incorporate the proposals to the existing SLNO 0642 and to accordingly promulgate a new SLNO 0642. The said amended and newly promulgated SLNO 0642 is tendered and produced as 2R1D. I made a careful perusal of this Order; the aforesaid recommendation (*n*), in respect of promoting Officers on retirement, has not been adopted and incorporated into SLNO 0642. The said Order, at 2R1D, is dated 01.10.2022. Thus, the said recommendation has not been incorporated into SLNO 0642. The end result is that the said recommendation (*n*) has not been adopted and is not included in the Scheme of Promotion.

10. In this context and backdrop, some promotions so recommended and granted on the eve of retirement of such officers, if at all, are *ad hoc* recommendations made on a case-by-case basis at the sole discretion of the 2nd respondent Commander of the Navy. As I observe, such promotions have generally been in the circumstances of officers reaching the maximum in the rank or reaching the age of retirement and there being a vacancy in the higher rank and such retiring officer not being the senior-most eligible officer.

11. There are only isolated instances of such promotion being made, as referred to in the petition. In the absence of an express provision in SLNO 0642 to that effect, it is no more than an *ad hoc* exercise of the discretion of the Commander of the Navy. It is also relevant to note that in the Navy, promotions are regulated by specific procedure and rules. To that extent, recommending for promotions to the higher rank on the eve of retirement is not provided for and is not in accordance with the Scheme of Promotion stipulated by the SLNO 0642. As such, promotions so recommended on an *ad hoc* basis are not consistent or in accordance with the procedure adopted and laid down. That being so, the mere fact of such *ad hoc* promotions being recommended on an isolated basis cannot create a legitimate expectation as claimed. No doubt, such circumstances may give some form of hope or expectation to such officer who is due to retire. However, such hope or expectation would not be “legitimate”, as such promotions are not consistent with the established procedure and are *ad hoc* and not regular.

12. The petitioner submits that it is the current practice in the military that when an officer’s seniority is affected after the completion of the mandatory “*time period required in a particular rank for promotions*” due to the non-availability of vacancies, such officers’ promotions will be backdated to the date on which he completed the aforesaid time period. The petitioner, although having requested such a promotion in view of

his retirement, has been refused the same by the 2nd respondent Commander of the Navy, in exercising his discretion.

13. The petitioner refers to certain isolated instances in the petition of such promotion being made by the 2nd respondent; however there is no absolute right or entitlement for such persons on the eve of retirement to expect or demand the recommendation to the next rank. If at all, it is in the circumstances of reaching the maximum in the rank or there being a vacancy in the higher rank that such recommendations may have been so made. The petitioner had not established any of these facts. In any event, if the argument of the petitioner is accepted in its totality, it will create an absurd circumstance where every officer of whatever seniority retiring will expect a promotion to the next rank, be there a vacancy or otherwise. This, as I see, may be the reason for not adopting and including the recommendation (*n*) to SLNO 0642.

14. The petitioner bases his expectation of his pre-retirement promotion on the past promotions of such officers being recommended by the Commander of the Navy. To that extent, the claim of legitimate expectation is “substantive”. The petitioner’s expectation then is based on an irregular and an *ad hoc* practice, as opposed to an established, regular practice, capable of giving rise to a legally enforceable “legitimate” expectation. In administrative law, the doctrine of legitimate expectation does not arise merely because a public authority has, on an *ad hoc* basis or isolated occasions, exercised a discretion in favour of certain individuals. Of course, such a practice may give some hope or expectation to another; however, it will not amount to or elevate it to a legitimate expectation. What is required in the current context is the existence of a clear, settled and regular practice upon which an individual could reasonably form an expectation.

15. In ***Council of Civil Service Unions v. Minister for the Civil Service*** (1984) UKHL 9 (“the GCHQ case”), Lord Fraser, considering the then-emerging doctrine of legitimate expectation, observed as follows:

*“This subject has been fully explained by my noble and learned friend, Lord Diplock, in **O’Reilly v. Mackman** [1983] 2 A.C. 237, and I need not repeat what he has so recently said. Legitimate, or reasonable, expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue.”*

16. I observe that Indian jurisprudence has followed a similar approach. In **Union of India and others v. Hindustan Development Corporation and others** (1994 AIR 988, decided on 15.04.1993), K. Jayachandra Reddy, J., observed as follows:

“For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be, and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation.

The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.”

17. Further, a practice contrary or inconsistent with the established Scheme of Promotion cannot generate a legitimate expectation. Promotions within the Sri Lanka Navy are regulated by SLNO 0642 and related regulations. The alleged practice of granting promotions in view of retirement outside the ordinary promotional framework was admittedly discretionary and *ad hoc*. A discretionary deviation from that which is inconsistent with the governing procedure cannot by itself create an expectation which is legitimate and enforceable. To hold

otherwise would permit irregular or inconsistent administrative acts, or such acts inconsistent with the established procedure, to ossify into enforceable norms, undermining the very scheme regulating and governing promotions. To that end, I find the following exposition by Wade & Forsyth in ‘Administrative Law’ (Eleventh Edition, Oxford University Press) at pages 452 – 453 relevant:

“When is an Expectation Legitimate?”

It is not enough that an expectation should exist; it must in addition be legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area since an expectation reasonably entertained by a person may not be found to be legitimate because of some countervailing consideration of policy or law. A crucial requirement is that the assurance must itself be clear, unequivocal and unambiguous. Many claimants fail at this hurdle after close analysis of the assurance. The test is ‘how on a fair reading of the promise it would have been reasonably understood by those to whom it was made.’”

18. In the present case, no such clear or unequivocal assurance or regular or lawful practice has been established. If at all, it may amount to an *ad hoc* exercise of the discretion of the 2nd respondent Commander of the Navy, in exceptional circumstances. As I see, such isolated and *ad hoc* exercise of discretion may, no doubt, give hope or create an expectation, but it does not crystallise into a legitimate expectation recognised and protected by law. In these circumstances, I am left with no option but to find that there is no legal basis for the petitioner to have entertained a legitimate expectation for such a recommendation for a promotion on the eve of his retirement.

The Scheme of Promotion.

19. The selection procedure for promotions is provided for by the Sri Lanka Navy Order (SLNO) 0642, dated 01.10.2022 (annexed as “2R1D”). Paragraph 9, under the subhead of “Seniority” provides that seniority is allocated a maximum of 50 marks. Paragraph 3 of the said Order provides that the eligible officers will be evaluated out of 100 marks, and

50 marks will be allocated for record of service (merit) and 50 marks will be allocated for seniority. Paragraph 3 reads as follows:

“3. Accordingly, eligible officers will be evaluated out of 100 marks where 50 marks will be allocated for record of service (merit) and 50 marks will be allocated for seniority (50:50, seniority : merit). Further, the merit list to call for the Viva Voce, is to be prepared as per the order of command (seniority). Also the minimum number of officers to be considered when preparing the merit list should be at least three (03) times of the number of vacancies. In the meantime, when there is only one (01) vacancy available, minimum five (05) officers should be considered when preparing the merit list. Further, same ratio should be taken in to consideration when officers are called for the Viva Voce. Subsequently, the most suitable officer/officers will be selected for the respective promotion in respect to their order of command (seniority) and merit in accordance with paragraph ‘2’ above.”

20. The 50 marks in the Scheme of Evaluation reserved for the relevant officer’s “Record of Merit and Demerit” are divided into the following subheads and allocated marks: (1) Merit; (2) Demerit; (3) Achievements; and (4) General suitability. Under ‘Merit’, marks are allocated under each subhead of NAV 206, Staff Course, Gallantry Medals, Sea Command, Sports, and LOCs; and for ‘Demerit’, under subheads Court Martial, Summary Trials, and LODs. Up until the amendment of the said Order 0642, on the recommendation made by a Board of Study on 03.12.2020 (2R2), the allocation of marks between seniority and merit was 40:60. This was provided for by the previous Orders under the same number, dated 24.06.2019 (“2R1C”); 15.02.2014 (“2R1B”); and the initial memorandum containing the procedure dated 09.08.2004 (“2R1A”). The amended SLN Order 0642 dated 01.10.2022 is produced by the petitioner also as P-10.

21. The complaint is that the change was made without sufficient advance notice, and there was a frustration of the legitimate expectation of the petitioner. It is common ground that the said scheme was amended and the seniority to merit proportion was changed from 40:60 to 50:50. The

effect of this change is that seniority and merit are considered on equal proportion in the selection procedure for promotions. This change would ensure that an officer who is senior would now have an advantage when compared with the previous scheme.

22. This is a change of policy. This change was not *ad hoc*. It was made upon the consideration and the recommendation of a Board of Study appointed for the specific purpose of limiting and reducing the seniority gap of late promotions and superseded promotions. The said recommendation is produced by the Respondents marked “2R2”. The Board of Study, consisting of 11 members, upon deliberating, made the following observations:

“2. The present mechanism of calculating marks for the promotion to the ranks of Commander and above is governed by the provisions stipulated in SLNO 0642. Further, 60% of the marks are allocated for the merits and 40% of the marks are allocated for the seniority. Awarding a higher percentage of marks for merit and a lower percentage of marks for the seniority has led to a situation where the junior officers get promoted to their next higher ranks over the senior officers purely based on the merit leading to several administrative impediments and exercising command and control within the Navy. In addition, when generating vacancies in other branches, opportunity is created for the junior officer to get their promotion and to become senior over the others.”

23. Having so observed, it was then found by the Board that there is no comparable or similar ratio of seniority and merit followed in the Sri Lanka Army and the Sri Lanka Air Force. It is observed that, *“they go purely by the seniority unless a senior officer has committed an offence, which deprives him of being promoted to the next higher rank with his batchmates.”* The Board also observed that the evaluation criteria of 40:60 (seniority to merit) has resulted in junior officers superseding senior officers. This has also led to officers junior by several batches obtaining promotions with seniors on the same dates. Upon considering in detail, the said Board of Study has recommended that the evaluation criteria of 40:60 (seniority to merit) be amended to 50:50 and also

recommended that the formula for calculating marks for seniority be amended accordingly.

24. Is this change rational and reasonable? As evident from P2C, the Sri Lanka Navy Order 0639, the shift from seniority to merit had taken place between 1994 and 1996. To start with, the seniority to merit proportion was 80:20 in 1994, 60:40 in 1995, and has been 40:60 since 1996. This shift to give weightage to merit had now been reversed. In my thinking, the military is an organisation with a structured hierarchy strictly based on seniority. In the military subculture, seniority is the basis and the mode of maintaining discipline, command and control in its operations and interrelations of officers and soldiers alike. Therefore, in the military subculture, giving greater weightage to seniority is desirable and required. That is what has been brought about by the change of criteria, by 2R14.

25. Schemes of Recruitment and Promotion cannot remain static; with the passage of time and the change of circumstances and considerations, such Schemes of Recruitment and Promotion require to be periodically realigned and reconsidered to meet the demands of such services. As I see, the consideration of seniority and giving greater weightage to seniority in the context of the military subculture is desirable. In the military subculture, maintaining discipline as well as command and control is certainly of primary importance. As opposed to any other service, the military consists of trained and armed personnel. In this subculture, seniority is of critical importance to ensure the effective control of the chain of command and the command structure. To that extent, seniority is of importance in considering promotions, as opposed to merit. It is just that the amendment to the Scheme of Promotion endeavoured to achieve.

26. In any event, considering the dynamics of the military structure, a balance between seniority and merit should be maintained in

formulating Schemes of Promotion. Seniority, which is usually pegged to a fixed and determinate date or placement or promotion, is predictable. Thus, the shift to seniority would make a prospect more predictable and tangible, so to say. Thus, the shift from a 60:40 to a 50:50 merit-to-seniority ratio is not unreasonable and, in the context of the military, is desirable and necessary. In context, it strikes the right balance between seniority and merit, so to say.

27. In ***Balachandra Arachchige Don Nuwan Chathuranga Padmasiri and others v. C. D. Wickramaratne, Inspector General of Police and others*** (SC/FR/46/2021, decided on 23.11.2022), Mahinda Samayawardhena, J., considering the above issue of seniority and merit, opined as follows:

“Promotion is an important part of any institution. No institution can run effectively and efficiently if seniority is the sole criterion for promotion, disregarding merit. This is not undervaluing seniority. Seniority should be given due recognition but it should not be the only criterion because seniority and competency do not always go hand in hand. If the principles of meritocracy are given due place, there will be a sense of accomplishment and fulfilment. It will encourage innovations and increase productivity, which will in turn positively affect the steady growth of the institution. But favouritism should not play a role in promotion. There shall be a promotion policy. The weightage given to seniority vis-à-vis merit may vary. A right balance should be struck when considering merit and seniority.”

28. The complaint of the petitioner is that a person who happens to be senior will, on this new formula and weightage, gain an advantage which would not be easily abridged by merit of a junior officer. On a careful consideration and perusal of 2R1D, the Navy Order 0642, I see that there is a specific provision for the retention of seniority and suppression by clause 08 of the said Scheme which is as follows:

“Retention of Seniority and Supersession

8. Once an officer is promoted to the rank of Commander, unless superseded, officers will not change their order of seniority by virtue of marks obtained as per the promotion procedure. i.e. Two

officers, A and B if promoted to the rank of Commander where A is senior to B, at the time of evaluation for promotion to Captain, B will not become senior to A unless there is only one vacancy available and B has obtained higher marks than A. If there are two vacancies and B has better marks than A, both A and B will be promoted, but A will retain his/ her senior position despite his/ her marks being lower than that of B. In an organization like the Navy, it is not possible to permit flip-flopping of seniority at different periods, unless superseded by another.”

This recognises the importance of seniority when two officers are competing with each other. This provision was there in all previous Schemes of Promotion. Therefore, it is apparent that successive Schemes of Promotion have always recognised seniority in some form, whatever the proportion may have been. Thus, seniority in rank and position amongst recruits of the same intake was a relevant and important consideration. The petitioner cannot claim a legitimate expectation of having merit being afforded greater weightage over seniority. As said before, it is especially so in the military hierarchy and subculture, where seniority is an overriding consideration. It is a fact that every military officer ought to know, anticipate, and expect. That being so, when seniority is given greater or equal weightage, a member of the military generally cannot complain of the frustration of his/her legitimate expectation.

29. Though the petitioner alleges that the change from 40:60 to 50:50 was implemented without due notice and was rushed through, I find that the said change had been well-considered with due notice. The starting point is that the Sri Lanka Navy has convened a Board of Study to consider the change, and the said Board has provided a detailed report dated 03.12.2020 (*vide* 2R2). This Board had been specifically convened for the purpose of considering the limiting/reducing of the seniority gap of late promotions and superseding promotions and consisted of 12 senior officers of the Sri Lanka Navy. Upon considering various aspects and effects, the said Board of Study has recommended the change of the

proportion to 50:50 (seniority to merit). The Sri Lanka Navy has presented and placed the recommendations of the Board of Study before the Board of Management and Area Authorities Meeting held at the Naval Headquarters on 19.03.2021. A portion of the minutes, including pages 1–6, is produced as 2R3. Item No. 6 in the said minutes is the consideration of this recommendation on this issue in respect of which a presentation and a briefing had been made to those who were present. This consisted of 56 officers of the ranks of Vice Admiral to Captain, including the Commander of the Sri Lanka Navy. I observe that the petitioner, S. B. Kaluarachchi, who was a Commodore, was also present at the said meeting.

30. Upon considering the recommendations, all have agreed with the proposals except for two items, namely the marks allocated to NDC and equivalent courses. The substantive proposal to change the proportion between merit and seniority to 50:50 has been unanimously approved and directed that the existing SLNO 0642 be amended and the new SLNO 0642 be promulgated accordingly, considering the effective date to be the date of the new SLNO. Therefore, a fair and transparent procedure has been followed upon a study, and it is only thereafter that the change to the proportion has been incorporated and given effect to. Accordingly, the assertion that it was arbitrary and without notice cannot stand.

31. What is significant and critical is that the petitioner himself had been a member of and a participant at the said meeting of the board of management and area authorities, which adopted and recommended the said amendments. The petitioner, being a party and an active member who scrutinised and approved the same and also made a collective directive to give effect and implement, cannot now claim a legitimate expectation to be considered for promotions on the previous scheme. To my mind, the conduct of the petitioner is not rational or in consonance with any reason. The petitioner, having participated in the process of

amending the scheme, cannot now be heard to claim a legitimate expectation or, to that matter, the frustration of such expectation.

32. In the above circumstances, I find that the petitioner has failed to establish any violation as alleged. Accordingly, this application is dismissed. However, we make no order as to costs.

JUDGE OF THE SUPREME COURT

P. PADMAN SURASENA, C.J.

I agree.

CHIEF JUSTICE

JANAK DE SILVA, J.

I agree.

JUDGE OF THE SUPREME COURT