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இலங்கை மனித உரிமைகள் ஆணைக்குழு  
HUMAN RIGHTS COMMISSION OF SRI LANKA

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Your No. }

දිනය } 9<sup>th</sup> March 2021  
திகதி }  
Date }

Mr. W.P. Nilantha  
No: 54, Amilagama  
Soragune  
Haldhummulla.

Complainant/s

Complaint No : HRC/2011/12/L-19

Vs.

Army Commander  
Sri Lanka Army Headquarters  
P.O. Box 553, Colombo.

Respondent/s

**The Complainant**

The Complainant was a member of the volunteer force and he was arbitrarily removed from service on 01.04.2007.

The Respondent stated that the Complainant was to be removed without prior warning, due to an office error and that the order to dismiss the Complainant was never conveyed when it was issued.

The Complainant states that his fundamental rights are infringed by the Respondent as he served the army from 08.05.1985 and was arbitrarily dismissed without prior warning.

## **Relevant Facts**

The Complainant was allegedly received approval for discharge from 01.04.2007 which was never conveyed to him until five years later in 2012. The Respondent has recommended to remove the Complainant on disciplinary grounds, stating ten offences which he had committed.

However, even after the order of removal was issued, the Complainant was deployed to serve in the Kankasanthure camp from 01.04.2007 with the approval of the Commanding Officer Major Priyathna and the Chief Peon, the Complainant attended Unibuffel courses. Thereafter, he served as a Unibuffel driver and attended other training programs as well. The Complainant states that even after the order of removal was issued, he engaged in several programs and training which indicated that he continued to serve the army. Furthermore, when engaging in programs that received authorization from high ranking officer, the Complainant states that it should have been brought to the attention of the Respondent that the Complainant was still serving the army.

Moreover, the Complainant received a promotion to the rank of Lance Corporal on 10.12.2008. The Commanding officer in his letter dated 15.04.2015 has accepted that the Complainant received a promotion after the recommendation for discharge was issued.

The Respondent states that the Complainant was to be removed on disciplinary grounds. There was an Initial Court of inquiry which was set up on 12.05.2012 to probe into why the Complainant was not removed in a timely manner in 2007.

The Court of inquiry concluded on 18.09.2014 that the Commanding Officer at the time, K. Piyathna is responsible in this regard. However, no disciplinary action could be taken against the Commanding officer as he had retired at that time. The Respondent had also held responsible the Captain Dayarantha who was the Unit Executive Authority who had committed suicide at that time.

## **Observations**

The Complainant was removed on disciplinary grounds for offence, which he was tried by a disciplinary authority previously. The fact that the order of discharge was not brought to the notice of officers who were supposed to take action in this regard raises suspicion especially since the Complainant was promoted to Lance Corporal a year later.

The Complainant stated that when a promotion is made, all officers including the high ranking officers are notified. Therefore, the fact that an officer who was supposed to be discharged but continues in service should have been brought to the notice of the Respondent immediately.

Furthermore, the Complainant had participated in training programs with the consent of the Respondent.

The Respondent has discharged the Complainant immediately in 2012 as the Complainant was to be discharged for disciplinary reasons in 2007. However, the Respondent who uphold discipline in high regard failed to provide reasons as to why an officer alleged to have committed several offences was allowed to serve the army for 5 years.

The Complainant had a legitimate expectation that he would serve the army in future and had received promotions and further trainings. The Respondent did not indicate that the Complainant would be dismissed on a future date.

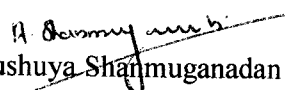
Therefore, it can be concluded that the decision to discharge the Complainant five years after a recommendation for discharge was issued is arbitrary and contravenes Article 12(1) of the Constitution.

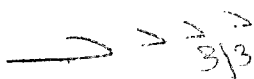
### Recommendations

As per the conclusion/s above, the Commission recommends the following :

In terms of the provisions in section 15(4) of the HRC Act, the Commission recommends the Respondent either to reinstate the Complainant to the service of Sri Lanka Army backdating to the date of discharge duly with retrospective effects or if the Complainant has already attained his age of retirement, pay him the pension with all the allowances he is entitled from 01-04-2007.

In terms of the provisions in Section 15(3) (c) of the HRC Act, the Commission recommends the Respondent to take suitable action to remedy the wrongful procedure that gave rise of the Fundamental Rights violation in this case **within three months** and report to the Commission about such action taken.

  
Anushuya Shanmuganadan  
Commissioner  
Human Rights Commission of Sri Lanka.

  
M.H. Nimal Karunasiri  
Commissioner  
Human Rights Commission of Sri Lanka.

Ms. Anusuya Shanmuganathan  
Commissioner  
Human Rights Commissioner of Sri Lanka

