

REAR ADMIRAL DASSANAYAKE
v.
CHANDRANANDA DE SILVA, SECRETARY, MINISTRY OF
DEFENCE AND OTHERS

SUPREME COURT
DHEERARATNE, J.
WIJETUNGA, J. AND
BANDARANAYAKE, J.
SC APPLICATION No. 262/98(FR)
21st FEBRUARY, 2000.

Fundamental rights - Retirement of a Navy Officer - Navy Pensions and Gratuities Code - Appeal by the officer to the President for redress - Failure to make a fair consideration of the appeal - Article 12(1) of the Constitution.

According to the Navy Pensions and Gratuities Code an officer holding the rank of Rear Admiral has to retire on the expiry of three years, if he is not promoted to the next higher rank within that period. However, the Code provides that the Secretary, Ministry of Defence, in consultation with the Commander of the Navy, may retain the services of an officer in any rank beyond the period stipulated for that rank or beyond the age specified in respect of that rank if, in the opinion of the President it is essential in the interests of the Navy to do so. The past practice in the Navy shows that such retention in the Navy had been effected by adjustment of the date of appointment or seniority or extension of service in the rank. This includes the appointment or the continuance of the officer as temporary instead of confirming him.

On 23.4.1994 the former Commander of the Navy recommended that the 2nd respondent who later became the Commander and the petitioner who were both confirmed Commodores and were 47 and 44 years of age respectively, be appointed as temporary Rear Admirals with effect from 01.03.1994 and 01.04.1994 respectively, to enable them to serve beyond the period of three years prescribed for the substantive post of Rear Admiral. The Commander explained that due to the acute shortage of senior officers in the Navy, it was necessary to retain them until other officers were mature enough to assume duties in the senior appointments. Thereafter, the petitioner was promoted as temporary Rear-Admiral on 01.04.1994. However, during the petitioner's stay in

India for training, he had been confirmed in the rank of Rear Admiral without his knowledge and with effect from 01.04.1995. After his return from India in December, 1995 the petitioner sought clarification from the then Commander of the Navy regarding the same, as it would lead to premature retirement. In reply, the Commander stated, contrary to his previous recommendation, that such promotions and confirmations are made in the best interests of the organisation.

When the 2nd respondent became the Commander of the Navy the petitioner requested him too to readjust his seniority but that also was of no avail. The petitioner who was then Chief of Staff was the second in Command of the Navy. The 2nd respondent was senior to the petitioner in the rank of Rear Admiral only by one month. But the petitioner was now faced with the threat of premature retirement before reaching the age of 55 years. He, therefore, made an appeal dated 19.03.1997 to the President, through the 2nd respondent, in terms of the Navy (Redress of Grievances) Regulations. As there was no response to his appeal for about one year, he made two other communications to the President, again through the 2nd respondent on 05.02.1998 and 14.03.1998. It was only at that stage that the 2nd respondent forwarded the appeals to the 1st respondent (Secretary, Ministry of Defence) for submission to the President. This he did by letter dated 13.03.1998 addressed to the President, containing his observations, sent through the 1st respondent with a covering letter dated 14.03.1998. In that letter the 2nd respondent failed to draw attention to the Regulations and precedents relied upon by the petitioner. He opined that there was no dearth of senior officers at all for higher appointments. He thereby overlooked the recommendations made by his predecessor in 1994. He also stated that if the petitioner was to be retained in service after the date on which his retirement was due, the existing regulations will have to be amended with the approval of Parliament. This was a complete distortion of the actual legal position as set out in the Navy Pensions and Gratuities Code.

The 1st respondent concurred with the comments made by the 2nd respondent and submitted the same to the President on 18.03.1998. Consequently, by letter dated 27.03.1998 the 1st respondent informed the 2nd respondent that the President had approved the appointment of the 3rd respondent as the Chief of Staff with effect from 01.04.1998, on completion of the term of office of the petitioner on that date.

Held :

The 1st and 2nd respondents violated the fundamental rights of the petitioner guaranteed by Article 12(1) of the Constitution.

Per Wijetunge, J.

“By various acts and omissions aforesaid the 2nd respondent effectively deprived the petitioner of having his appeals for redress being fairly and objectively considered by the President.”

Per Wijetunge, J.

“The 1st respondent, having readily concurred with the comments made by the 2nd respondent in forwarding the appeals to the President, himself contributed in no small measure towards the petitioner’s appeals not receiving due consideration by the President.”

APPLICATION for relief for infringement of fundamental rights.

D. S. Wijesinghe, P. C. with J. C. Weliamuna and C. Samaranyake for petitioner.

R. K. W. Goonesekera for 1st respondent.

K. Sripavan, DSG for 2nd, 3rd and 4th respondents.

Cur. adv. vult.

May 05, 2000

WIJETUNGA, J.

The petitioner, at the time of making this application, was the second in command of the Navy and held the rank of Rear Admiral. He joined the Royal Ceylon Navy as a Cadet Officer on 1.7.69 and was promoted to the rank of Midshipman on 1.7.70. Having followed the Sub-Lieutenant Technical Course with the Indian Navy, he was promoted to the rank of Acting Sub-Lieutenant and then as Sub-Lieutenant. He thereafter obtained the Ocean Navigation Certificate and the Watch Keeping Certificate and was promoted to the rank of Lieutenant of the Sri Lanka Navy on 28.4.74. He completed the Specialist Navigation Course (Long-N) in India with a First Class Honours. In 1981, having sat the selection examination for the staff course, he qualified for the same and followed the Defence Services Staff Course at the Defence Services Staff College in Wellington, India, from December 1981 - December 1982. At the same time he completed the Master’s Degree in

Defence Studies at the University of Madras with Grade A Distinction. On 1.5.81 he was promoted temporarily to the rank of Lt. Commander and was confirmed on 28.4.82. On 1.1.85 he was promoted to the rank of Commander and thereafter on 1.1.88 to the rank of temporary Captain. He was confirmed in that rank in 1989, with effect from the date of promotion as temporary Captain. On 1.11.92 he was promoted as temporary Commodore and was confirmed in that rank on 1.1.93. He was thereafter promoted as temporary Rear Admiral on 1.4.94 and was confirmed in that rank on 1.4.95. The petitioner states that he has had an unblemished record in the Navy.

The petitioner was also awarded the post-graduate Diploma in International Affairs (1983/84) by the Bandaranaike Centre for International Studies and also followed a course in Professional Diplomacy, Diplomatic Procedure and Institutions at the same Centre in 1988. He was appointed Deputy Harbour Master of the Port of Kankasanturai by the Ports Authority in 1989, with the concurrence of the Commander of the Navy.

During his tenure of Office in the Navy, the petitioner states that he had worked in almost all the ships and establishments in the Navy and earned high commendations. Since 1983 he served mainly in the operational areas. He has been the Acting Chief of Staff for about eleven months from December 1993, during the absence of the 2nd respondent who was then the Chief of Staff. The petitioner states that he and the 2nd respondent joined the Navy together and the 2nd respondent was only one month senior to the petitioner in the rank of Rear Admiral. He has served as Acting Commander of the Navy on three occasions.

In December 1994, the petitioner was sent to India to follow the National Defence College Course, the highest professional course available to a service officer, and returned to Sri Lanka in December 1995. In mid December 1995, he was appointed Commander, Eastern Naval Area.

After he returned from India, the petitioner found that he had been confirmed in the rank of Rear Admiral without his knowledge and contrary to the earlier recommendation of the then Commander of the Navy dated 23.4.94. When the then Commander of the Navy recommended to the Secretary, Ministry of Defence, the promotions of the 2nd respondent as well as of the petitioner, who were both Commodores at the time, as temporary Rear Admirals, he stated *inter alia* as follows:-

“From the past records it is noted that officers have not been promoted to the temporary rank of Rear Admiral. However at present Commodore Tissera is 47 years (date of birth - 11 March 1947) and Commodore Dassanayake is 44 years (date of birth - 14 April 1950) of age and if they are promoted to the substantive rank of Rear Admiral they will have to leave the service on completion of the maximum period in rank which is 3 years. Due to the acute shortage of senior officers in the Navy, it is necessary to retain them until other officers are senior and mature enough to assume duties in the senior appointments.

Having taken into consideration the facts enumerated above, the criteria at quoted References B and C and that of other senior Executive officers and also the ranks of officers holding such appointments in sister forces, it is proposed to promote both Commodore Tissera and Commodore Dassanayake to the rank of Temporary Rear Admiral with effect from the dates indicated against their names:

“Commodore H. C. A. C. Tissera - 1 March 1994

Commodore D. K. Dassanayake - 1 April 1994.”

According to the Navy Pensions and Gratuities Code, 1981, published in Gazette Extraordinary No. 654/10 of 20.3.91 as regulations made by the President under Section 161 of the Navy Act, as amended by Gazette Extraordinary

No. 704/7 of 3.3.92, an officer holding the substantive rank of Rear Admiral has to retire on the expiry of three years, if he is not promoted to the next higher substantive rank within that period.

However, regulation 3(2) (a) thereof provides that "notwithstanding the provisions of paragraph (1), the Secretary, Ministry of Defence in consultation with the Commander of the Navy, may retain the services of an officer in any rank beyond the period stipulated for that rank in that paragraph or beyond the age specified in respect of that rank in that paragraph if, in the opinion of the President it is essential in the interests of the Navy to do so."

The petitioner states that in the Navy, if an officer is promoted to the rank of Commander and above, it may either be a temporary promotion or a confirmed promotion. If a promotion is so made without an officer completing the period in the respective ranks, the promotion is normally given as temporary rank until such time as he completes the period in the previous rank, in order to prevent premature retirement of efficient officers. He has cited the instances of Commodore A. H. A. de Silva and Commodore H. A. Silva, who both held office as Chief of Staff, whose seniority in the ranks of Commodore and Captain were adjusted in order to serve in the Navy upto the time the then Commander completed his tenure of office and each of them thereafter became Commander of the Navy. If not for the said adjustment of seniority, the petitioner states that the aforesaid officers could not have become Commanders of the Navy and would have had to retire prematurely after they held the appointment of Chief of Staff. The petitioner further states that at no stage had a Rear Admiral of the Navy been retired prior to the age of retirement due to time in rank and he therefore had the expectation that his seniority would be adjusted in such a manner as to retain him in the Navy until his retirement at 55 years of age.

When the petitioner came to know that he had been confirmed in the rank of Rear Admiral while he was away in India for training, he sought clarification from the then Commander of the Navy regarding the same, as it would lead to premature retirement. In reply, the then Commander stated that such promotions and confirmations are made only in the best interests of the organization.

It is ironical that the self-same Commander had, just one year previously, at the stage when he recommended the promotion of the 2nd respondent and the petitioner for promotion as Temporary Rear Admirals, stated that if they were promoted to the substantive rank of Rear Admiral they would have to leave the service on completion of the maximum period in rank which is three years and had in that context adverted to the acute shortage of senior officers in the Navy and the necessity to retain them until other officers are senior and mature enough to assume duties in the senior appointments.

When the 2nd respondent became the Commander of the Navy, the petitioner requested him too to readjust his seniority but that also was of no avail. He therefore submitted an appeal dated 19.3.97 to the President, by way of redress of grievances ('ROG'), in terms of the Navy (Redress of Grievance Regulations, (in my view very properly through the appropriate channel, the 2nd respondent). Having had no response thereto for about one year, he addressed two further communications to the President, again through the 2nd respondent, on 5.2.98 and 14.3.98, respectively. He also sought an audience with the Secretary, Ministry of Defence, through the 2nd respondent, by letter dated 3.3.98, regarding this matter. He received no response to any of these communications.

On 27.3.98, the petitioner received the information copy of a letter of even date addressed to the Commander of the Navy by the Secretary, Ministry of Defence stating *inter alia* that the President, the Commander-in-Chief, has been pleased to approve the appointment of Rear Admiral D. W. Sandagiri (the 3rd respondent) as the Chief of Staff with effect from 1.4.98,

on completion of the term of office of the petitioner on that date. The petitioner states that he was shocked to receive this letter as no final decision had been made by the President on his ROG. He therefore submitted a further appeal to the President dated 29.3.98, through the 2nd respondent, requesting a very early interview, for which too he did not receive even an acknowledgement.

The petitioner states that he was 47 years of age by 1.4.98 and was the youngest and only officer in the Navy to have been retired at that age as Chief of Staff. It is also relevant to note that the President had previously appointed the petitioner as Acting Commander of the Navy on three occasions.

It is against this background that the petitioner has complained to this Court of alleged infringement of Article 12(1) of the Constitution and obtained leave to proceed.

The 2nd respondent's response to the petitioner's affidavit dated 24.4.98 is contained in his affidavit dated 30.3.99. It must however be mentioned that the petitioner had by then submitted two further affidavits to Court dated 10.6.98 and 24.7.98 respectively, with annexures, of which the 2nd respondent has responded only to part of the affidavit dated 24.7.98.

Answering paragraph 5 of the original affidavit, the 2nd respondent only admits that he is one month senior to the petitioner in the rank of Rear Admiral and that the petitioner was appointed as Acting Chief of Staff in December, 1993, during his absence for about 11 months. But he is silent as to whether they joined the Navy together.

The 2nd respondent has admitted only the documents referred to in some of the paragraphs of the petitioner's affidavit, to which I shall refer now. As he has admitted the bio-data of the petitioner contained in the document P.3, he thereby admits the entire service record of the petitioner as set out in his affidavit. So also, by his admission of P.1,

P.2, P.4, P.5, P.6, P.7, P.8 and P.9, he has admitted the qualifications obtained, appointments held, appreciations and commendations received by the petitioner as set out therein. P.10 being the document dated 23.4.94 whereby the then Commander of the Navy recommended the 2nd respondent as well as the petitioner for promotion as temporary Rear Admirals, the reasons therefor, which have been adverted to earlier in this judgment, are acknowledged.

By P.12 dated 7.3.97 addressed to and admittedly received by the 2nd respondent, the petitioner as Chief of Staff deals with the confirmation in rank *inter alia* of the 3rd respondent and thereby alerts the 2nd respondent to the ill effects of such confirmation, stating that "in case the above officers are confirmed in their present rank, without allowing them to complete their maximum time in the previous substantive rank (emphasis added), they may have to leave the service prematurely though there is enough time ahead till they reach the age of 55 years." This position being true of the petitioner's complaint too, it lends credence to the petitioner's assertion that the practice was to allow officers to complete their maximum period in the previous substantive rank, thus readjusting their seniority and preventing premature retirement.

In paragraph 12 of his affidavit, the petitioner has made specific reference to two officers who were Chiefs of Staff at the relevant time, who were retained in service after adjusting their seniority. As the 2nd respondent denies the averments contained in the said paragraph, it is necessary to deal with the matter in some detail.

As regards the first named officer, Commodore A. H. A. de Silva, it is the petitioner's position that he was Chief of Staff and his seniority in the ranks of Commodore and Captain were adjusted in order to serve in the Navy upto the time the then Commander completed his tenure of office. He thus became the Commander of the Navy, which appointment he held till his retirement at the age of 55 years.

The 2nd respondent denies the averments contained in the said paragraph and states that "Commodore A. H. A. Silva was promoted to the rank of Commodore with effect from 04.02.78 and his services were extended for a period of 2 years with effect from 4.2.82 by His Excellency the then President."

If the 2nd respondent chose to deny the petitioner's averments in paragraph 12 of his petition, he should equally have dealt with the petitioner's averments in paragraph 2(a) of his affidavit dated 24.7.98 where he stated *inter alia* that "all previous Chiefs of Staff who were below the age of 55 years and who were to complete maximum time in Rank were retained in the Navy after adjusting their respective seniority as well as granting extensions in rank. I annex hereto marked P. 33 a schedule prepared by me giving the details of all the Chiefs of Staff who served the Navy after 1971." In this schedule, the petitioner has clearly brought out the following particulars - that A. H. A. de Silva was initially promoted Commodore on 5.5.78, then was back dated to 4.2.78, again the seniority as Commodore was post dated to 4.2.79, appointed Chief of Staff on 1.6.79, given an extension of time in rank of one year with effect from 4.2.83 and retired at the age of 55 years as Commander of the Navy.

The truth of these averments is to a great extent borne out by the 2nd respondent's own averments aforementioned where he concedes that this officer was promoted Commodore on 4.2.78 and his services were extended for a period of two years with effect from 4.2.82. Even on his own admission, it is the extension granted that enabled him to be in service until 4.2.84. As the petitioner states that this officer was born in 1931, he still had time to be the Commander of the Navy before reaching the age of retirement - 55 years. But, the 2nd respondent has remained silent in regard to the petitioner's claim that Commodore A. H. A. de Silva retired as Commander of the Navy. Surely, as the incumbent Commander of the Navy, it was his bounden duty to candidly inform the Court whether or not Commodore de Silva retired as Commander of the Navy;

more so as the petitioner had displayed a high degree of candour and professionalism in submitting this material to Court. As the 2nd respondent had dealt with some of the averments in the petitioner's affidavit dated 24.7.98, he had no excuse whatsoever for withholding this information from Court. The irresistible inference therefore is that the 2nd respondent attempted to mislead the Court by presenting a garbled version of what actually took place. In any event, he has conceded that an extension was in fact granted to this officer.

As regards the petitioner's averment in paragraph 12 of his affidavit dated 24.4.98 that Commodore H. A. Silva too was Chief of Staff and his seniority in the ranks of Commodore and Captain were adjusted in order to serve in the Navy upto the time the then Commander completed his tenure of office and he thus became the Commander of the Navy, which appointment he held till his retirement in November, 1991, even beyond the age of 55 years, the 2nd respondent has responded as follows:

"Commodore H. A. Silva was promoted to the substantive rank of Commodore on 1.6.80. However, the substantive rank of Commodore had been converted as temporary from the same date and confirmed in the substantive rank with effect from 1.1.83. Commodore H. A. Silva functioned as the Commander of the Navy for a period of 04 years 11 months and 30 days."

This is precisely what the petitioner stated in P. 33, the schedule annexed to his affidavit dated 24.7.98, where he dealt more fully with the adjustments of seniority of Commodore H. A. Silva. His original assertion in paragraph 12 of the first affidavit too is borne out by the 2nd respondent's response quoted above. Yet, the 2nd respondent chose to deny paragraph 12 of the petitioner's affidavit dated 24.4.98. This was indeed a puerile attempt on his part to cloud the issue and perhaps bury his head, ostrich like, in the sand. The Court must in no uncertain terms condemn the manner in which the

2nd respondent dealt with these matters in his affidavit, particularly as he holds the very responsible position of head of the Sri Lanka Navy.

The 2nd respondent's affidavit is replete with this type of vague, evasive and misleading averments, which are too numerous to be dealt with in detail. For instance, in paragraph 9 of his affidavit, the petitioner states that -

"according to the aforesaid Code, in terms of clause 3(2) thereof, the Secretary, Defence in consultation with the Commander of the Navy, may retain the services of an officer in any rank beyond the period stipulated for that rank above, if in the opinion of the President it is essential in the interests of the Navy to do so."

This is almost a verbatim reproduction of Regulation 3(2) (a) of the Navy Pensions and Gratuities Code, 1981. But, for reasons best known to him, the 2nd respondent denies this paragraph and goes on to state that -

"in terms of Clause 3(2) of P. 11, the Secretary, Ministry of Defence, in consultation with the Commander of the Navy, may retain the services of an officer in any rank beyond the period stipulated for that rank, if in the opinion of Her Excellency the President, it is essential in the interest of the Navy to do so."

I cannot see any reason in logic or in law for this type of denial of an averment in an affidavit, and worse still, for a meaningless attempt to paraphrase such averments. Rather than resorting to verbal acrobatics and wasting the time of Court, the 2nd respondent could well have gracefully admitted such of the averments in the petitioner's affidavit as should have been admitted and dealt with the others which had to be denied.

With the aforementioned provision staring him in the face, the 2nd respondent responds to paragraph 15 of the petitioner's

affidavit by stating that "there is no provision in law to readjust seniority of the Petitioner in order to facilitate him to serve in the Navy." The complaint of the petitioner was that by reason of being confirmed in the rank of Rear Admiral in 1995, he was to retire from the Navy prematurely, before reaching the age of 55 years. The 2nd respondent was well aware that, under Clause 3(2) (a) of the Navy Pensions and Gratuities Code, the petitioner's services could have been retained beyond the period stipulated for that rank or even beyond the age specified in respect of that rank. He was equally aware, as shown by his own admission referred to earlier, that there were instances where such readjustments had been made to retain senior officers beyond the stipulated periods.

In his appeal to the President dated 5.2.98, submitted by the petitioner through the 2nd respondent, he had specifically referred to the case of former Chief of Staff, Commodore H. A. Silva as being similar to his, where seniority had been readjusted thus enabling Commodore Silva to remain in service until the then Commander of the Navy relinquished duties on 1.11.96, citing the same as a precedent. Viewed in this light, the above averment of the 2nd respondent is not merely incorrect, but false to his knowledge.

I shall now turn to the fate of the appeals made by the petitioner to the President, through the 2nd respondent, by way of redress of grievances. The first such appeal was submitted on 19.3.97. Regulation 2 of the Navy (Redress of Grievances) Regulations provides *inter alia* that "where an officer is..... aggrieved by any action of the Commander of the Navy, either in respect of his appeal or in respect of any other matter, he may make a written appeal to His Excellency the President". This, therefore, is a right conferred on officers such as the petitioner. Accordingly, on such an appeal being submitted to the 2nd respondent for onward transmission to the President, the 2nd respondent was duty bound to forward the same without undue delay. But, the 2nd respondent held on to the petitioner's appeal for almost one full year without making his observations and submitting the same to the President.

In the meantime, the petitioner had made a further appeal to the President dated 3.2.98, through the 2nd respondent, requesting that redress be granted to him in a reasonable and fair manner. This was followed by a similarly addressed further communication dated 14.3.98 drawing attention to the fact that he would be denied the opportunity of serving the Navy after 1.4.98, at the age of 47 years, while being the Chief of Staff, unless a very early decision is made regarding this matter. He further stated there that "as this is an official matter of grave concern with regard to my career, and as the time is running short, I am sure that Your Excellency would agree that the best way to represent matters in this regard, under the present circumstances, would be by Your Excellency giving me an audience".

It is only at this stage that the 2nd respondent thought it fit to forward the petitioner's several appeals to the 1st respondent, for submission to the President. This he did by letter dated 13.3.98 addressed to the President, containing his observations, sent through the 1st respondent with a covering letter dated 14.3.98.

In paragraph 7 of that letter, the 2nd respondent made the following observations:-

"In consideration of the totality of the material it is my view that back dating of the date of confirmation to suit individuals and to circumvent provisions of law is a wholly unacceptable practice in any institution. If Rear Admiral Dassanayake is to be retained in service after the date on which his retirement is due, the existing Regulations will have to be amended with the approval of Parliament. Embarking on such a course of action would not be advisable as it would affect all ranks in the Army, Navy and Air Force and would be contrary to procedure that has been accepted and followed in all three Services for over four decades and other countries."

Though the 2nd respondent was undoubtedly entitled to express his views in this regard, he was equally obliged to present the facts to the President in a fair and objective manner. There was no question whatsoever of *circumventing provisions of law*, as alleged by him. Nor was there a need to *amend the existing Regulations with the approval of Parliament*. On the contrary, there was a total failure on the 2nd respondent's part to draw the attention of the President to the provisions of Regulation 3(2) (a) of the Navy Pensions and Gratuities Code, 1981, (already quoted earlier in this judgment), which would enable the 1st respondent, in consultation with the 2nd respondent, to retain the services of the petitioner not only beyond the period stipulated for the rank of Rear Admiral, but even beyond the age specified in respect of that rank, if in the opinion of the President it was essential in the interests of the Navy to do so.

The 2nd respondent thereby misrepresented facts with a view to misleading the President.

Furthermore, the 2nd respondent deliberately omitted to make reference to the precedents cited by the petitioner as regards previous instances where officers who held the rank of Chief of Staff were retained in service beyond the aforementioned periods.

Instead, he referred to the fact that "at present there are four Rear Admirals and six Commodores" and opined that "accordingly there is no dearth of senior officers at all and all these officers are professionally competent and have been groomed for the higher appointment of the Chief of Staff".

Never did it occur to the 2nd respondent to mention to the President that as recently as in 1994 when his predecessor in office had recommended him as well as the petitioner for promotion as temporary Rear Admirals, he made the observation that "due to the acute shortage of senior officers in the Navy, it is necessary to retain them until other officers are senior and mature enough to assume duties in the senior appointments."

He even lost sight of the fact that admittedly he was only one month senior to the petitioner in the rank of Rear Admiral (though the petitioner was more than three years his junior in age), from which rank he was elevated to that of Vice Admiral and Commander of the Navy, while the petitioner remained just one step below as Chief of Staff.

The 2nd respondent has offered no explanation whatsoever in regard to the inordinate delay of about one year in submitting the petitioner's appeal for redress to the President. By reason of such delay, the President had barely two weeks to consider the petitioner's appeal, before he was due to retire. While the Court does not wish to speculate on the motive behind the delay, suffice it to say that such delay was totally unwarranted.

The 1st respondent states in his affidavit dated 5.4.99 that the 2nd respondent did not recommend the request made by the petitioner for the reasons stated in his comments dated 13.3.98, that he concurred with the comments made by the 2nd respondent and submitted the same to the President on 18.3.98. He further states that "after careful consideration of the comments made by the 2nd respondent and the observations made by me, Her Excellency the President on 23.3.98 rejected the request made by the petitioner by P. 15" - (i. e. appeal dated 19.3.97).

As pointed out earlier in this judgment, the comments made by the 2nd respondent when submitting the appeals made by the petitioner to the President were not a fair, impartial, or accurate presentation of the facts. Furthermore, there was wilful suppression of material facts such as the precedents cited by the petitioner in support of his request for readjustment of seniority, which could well have tilted the scales in his favour. Even the relevant legal provisions were artfully withheld from the President and the impression was created that what the petitioner sought was not permitted by law and was thus an attempt to circumvent the law for his benefit. The 2nd respondent even went so far as to state that

if the petitioner is to be retained in service after the date on which his retirement is due, the existing Regulations will have to be amended with the approval of Parliament. This was a complete distortion of the actual legal position as set out in the Navy Pensions and Gratuities Code. By the various acts and omissions aforementioned, the 2nd respondent effectively deprived the petitioner of having his appeals for redress being fairly and objectively considered by the President.

The 1st respondent, having readily concurred with the comments made by the 2nd respondent in forwarding the appeals to the President, himself contributed in no small measure towards the petitioner's appeals not receiving due consideration by the President.

For the reasons aforesaid, I hold and declare that the 1st and 2nd respondents have violated the fundamental rights of the petitioner guaranteed by Article 12(1) of the Constitution.

Having regard to the unfair, unjust and discriminatory treatment meted out to the petitioner, I award the petitioner a sum of Rs. 500,000/- as compensation, to be paid by the State.

As the 2nd respondent was the prime architect of the violation of the petitioner's fundamental rights, and was largely responsible for the petitioner having to seek relief from this Court. I further direct the 2nd respondent to personally pay the petitioner a sum of Rs. 50,000/- as costs.

The compensation as well as the costs should be paid before 30.6.2000.

DHEERARATNE, J. - I agree

BANDARANAYAKE, J. - I agree

Relief granted.