

***B.D.U.U. Kumara, v. Lt. General Sarath Fonseka, (CA (WRIT) Application No. 1043, 2008) (1/CA) Decided on 30/01/2012.***

*Rule 8 of Note 2 of Financial Regulation No.102 Relating to Losses of Three Armed Forces – requirement of the maximum recoverable amount will be the actual loss involved.*

S.Sriskandarajah,J,

After an investigation by the Court of Inquiry, the Commander of the Army had decided that the Petitioner had committed a wrongful act as an officer of the Sri Lankan Army by accepting bribes and being party to fraud. Under Section 27(d) of the Army Act and Rule 6 of Financial Regulation No.102, the Petitioner was required to compensate the Army the lost value for these actions. The Petitioner challenges the legality of the process that subsequently discharged him from the Sri Lankan Army in the Court of Appeal.

Held;

Under Rule 8 of Note 2 of Financial Regulation No.102 Relating to Losses of Three Armed Forces, the maximum recoverable amount will be the actual loss involved. Therefore, the sum recoverable is not considered a punitive damage, but rather is a surcharge required by the Sri Lanka Soldier's Service Regulation No.1 of 1994.

The Petitioner was submitted to a summary trial under Section 42 of the Army Act and was pleaded guilty to all charges involving bribery and fraud. There was no illegality or procedural irregularity in the Summary Trial. As both the summary trial and the surcharge was lawful, the Petitioner is not entitled to seek remedies.

It was further held that the Court of Appeal cannot interfere with the decision of the Commander of the Army as an authority empowered by law to arrive at a decision after consideration.

Appeal dismissed.