

A **DALAM MAHKAMAH RAYUAN MALAYSIA**  
**BIDANGKUASA RAYUAN**  
**RAYUAN SIVIL NO. W-01-99-99**

**ANTARA**

**ABDUL SALAM BIN HUSIN ... PERAYU**

**DAN**

- B **1. MAJLIS ANGKATAN TENTERA**  
**2. KERAJAAN MALAYSIA ... RESPONDEN**

**(Dalam Mahkamah Tinggi Malaya Kuala Lumpur**  
**Guaman Sivil No. S6-21-218-1989**

**Antara**

**Abdul Salam bin Husin ... Plaintiff**

**Dan**

- C **1. Majlis Angkatan Tentera ... Defendan-**  
**2. Kerajaan Malaysia Defendan)**

**CORUM : ZALEHA ZAHARI, JCA**  
**AHMAD HAJI MAAROP, JCA**  
**SULAIMAN DAUD, JCA**

D **JUDGMENT OF ZALEHA ZAHARI, JCA**

I have read the judgment of my brother, Sulaiman bin Daud JCA, in draft and agree with the said judgment. In addition I would like to add the following.

E This appeal raises an important question, whether an officer in the armed forces is entitled to a right to be heard before a decision is made to cancel his commission as a member of the armed forces?

A It is common ground that the Appellant, as an officer in the armed forces, is governed by the Armed Forces Act 1972 (“the Act”). The fact that the Appellant was not given an opportunity of being heard by the Armed Forces Council (“the Council”) prior to making their decision to recommend to the Yang di-Pertuan Agong to make a decision under section 9 of the Act, B is an admitted fact. It is also common ground that, on the facts of this case, the Appellant was not put to notice as to the grounds upon which the Council’s recommendation to the Yang di-Pertuan Agong was based.

It was argued on behalf of the Appellant that it was C incumbent upon the Council to issue a notice to the Appellant stating the grounds upon which the Council would be making a recommendation to the Yang di-Pertuan Agong to make a decision under section 9 of the Act and the Appellant be given an opportunity to be heard at that stage of the proceedings. The Appellant’s Counsel submitted that as the Council had failed D to issue such a notice, and the Appellant accordingly denied the opportunity of being heard at the pre-recommendation stage, the decision of the Yang di-Pertuan Agong based on such a recommendation was accordingly null and void.

It is important to get our perspective right on this issue. E The rule of natural justice vary in content and ambit according to the circumstances and context. On the facts of this case the following constitutional provisions applies. Article 132 (1) and 135

A Federal Constitution states :

"132. (1) For the purposes of this Constitution, the public services are –

- B
- (a) the armed forces;
  - (b) the judicial and legal service;
  - (c) the general public service of the Federation;
  - (d) the public force;
  - (e) (repealed);
  - (f) the joint public services mentioned in Article 133;
  - (g) the public service of each State; and
  - (h) the education service."

...  
...

C

135. (1) No member of any of the services mentioned in paragraph (b) to (h) of clause (1) of Article 132 shall be dismissed or reduced in rank by any authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank;

D

(2) No member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard.

E

The High Court Judge ruled that the omission of the public service of the *“armed forces”* in Article 135(1) for the purpose of conferring a right of being heard to members of services specified in Article 132 (1), means only members of the public services specified in paragraphs (b) to (h) is to be accorded with the right of the opportunity of being heard. The High Court Judge was certainly right in arriving at such a

A conclusion. It was clearly not for the Court to engraft such a right to officers of the armed forces in view of the clear legislative intent to exclude the officers from such a service from enjoying such a right.

B The fact that an officer in the armed forces is not entitled to a right of being heard is fortified by the provisions of section 9 of the Act which the Appellant, as an officer of the armed forces, is also subject to. Section 9 states-

C “ The Yang di Petuan Agong may on the recommendation of the Armed Forces Council at any time without assigning any reason therefor cancel any commission granted under the provisions of this Part.”  
(Emphasis added)

D This power to cancel an officer’s commission “*at any time without assigning any reasons*” (which power was exercisable not necessarily in relation to cases of misconduct) is in accord with the constitutional provisions. As far as the discipline of the armed forces, the legislative intent is clear and unambiguous. An officer in the armed forces holds office at the will and pleasure of the Yang di-Pertuan Agong. The cancellation of the commission of an officer of the armed forces is at the will and pleasure of the Yang di-Pertuan Agong. In such a situation the Court clearly has no  
E jurisdiction to inquire into circumstances under which the Appellant ceased to hold office.

A           The fact that the Appellant had not been given an opportunity of being heard was, in the circumstances of this case, consistent with the tenure and terms of his service. The High Court Judge was right in finding that the cancellation of the Appellant's commission by the Yang di-Pertuan Agong to be valid and of full legal effect and in dismissing the Appellant's claim with  
B costs.

ZALEHA ZAHARI  
Judge  
Court of Appeal  
Malaysia

Dated: 8 July 2009

---

C

Note:

For the Appellant           ...   Mr. Karpal Singh  
(Ms Sangeet Kaur with him)  
Tetuan Karpal Singh & Company  
Peguambela & Peguamcara  
No. 67, Jalan Pudu Lama  
50200 Kuala Lumpur

D

For the Respondents       ...   Ms Nurkumavathy Sundaresan  
Peguam Kanan Persekutuan  
Peguam Negara  
Jabatan Peguam Negara  
Tingkat 5, 11-20  
Bangunan Bank Rakyat  
Jalan Tangsi  
50512 Kuala Lumpur

E