

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

In the matter of:

WRIT PETITION NO. 3842 of 2019

In the matter of:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of :

Md. Afzal Hossain and others

..... Petitioners

Versus-

The Government of Bangladesh and
others

..... Respondents

Mohammad Hedayet Hossain, Advocate

..... For the petitioners

Mr. Mejbahur Rahman with

Mrs. Samia Afroz Khan with

Mrs. Saida Sharmin Esha, Advocate(s)

..... For the respondent No. 3

Mr. Mohammad Humaun Kabir,
Advocate

..... For the respondent No. 7

Mr. Abul Nashar Azad, Advocate

..... For the respondent No. 8-19

Heard on 14.11.2021 and
Judgment on 16.11.2021

Present:

Mr. Justice Md. Ashfaqu Islam

And

Mr. Justice Md. Iqbal Kabir

Md. Ashfaqu Islam, J:

This Rule under adjudication, at the instance of the petitioners,
issued on 29.04.2019, was in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned Gradation List, May, 2018 (Annexure-‘K-2’) [seniority serial Nos. 98 to 111 of the Respondent Nos. 07 to 19] issued under the Signature of the Respondent No. 5, General Manager (Admin), Gas Transmission Company Limited (GTCL) containing the final Seniority List of the service of Deputy Managers (Technical Cadre) of GTCL, should not be declared to have been made without any lawful authority and is of no legal effect and as to why the impugned Memo, dated 04.01.2018 issued under the signature of the Respondent No. 6, Deputy General Manager (Admin) GTCL (Annexure-‘I-1’) following the circular dated 09.12.2012 of the Petrobangla rectifying the date of giving effect of Promotion of the Respondent Nos. 7 to 19, contained in office order No. 96/2016, dated 11.07.2016 (serial Nos. 1.2 to 1.16) (Annexure-‘F-1), to the post of Deputy Manager from 01.01.2016 instead of 11.07.2016, should not be declared to have been made without lawful authority and is of no legal effect and as to why the inaction of the Respondent Nos. 4 to 6 to rectify the Gradation List-May-2018 restoring and maintaining the

Seniority of the petitioners over the Respondent Nos. 7 to 19 as before 01.01.2016 keeping in consonance with the Gradation List-May 2016 (Annexure-‘F’) by considering promotion of the petitioners to the post of Deputy Manager (Technical Cadre) from the Post of Assistant Engineer giving effect from 01.01.2016 instead of 01.01.2017, should not be declared to have been made without lawful authority and is of no legal effect and as to why the Respondent Nos. 4 to 6 shall not be directed to rectify the Gradation List-May 2018 restoring and maintaining the Seniority of the petitioners over the Respondent Nos. 7 to 19 as before 01.01.2016 keeping in consonance with the Gradation List May 2016 (Annexure-‘F’) by considering the promotion of the petitioners to the post of Deputy Manager (Technical Cadre) from the post of Assistant Engineer giving effect from 01.01.2016 instead of 01.01.2017 and/or such other or further order or orders passed as to this court may seem fit and proper.”

Three petitioners are before us. Mainly they are challenging the inaction/omission of respondent Nos. 4-6 to rectify the gradation list May, 2018 restoring and maintaining the seniority of the petitioners over

the respondent Nos. 7-19 as before 01.01.2016 keeping in consonance with a gradation list May, 2016 (Annexure-‘F’) by considering promotion of the petitioners to the post of Deputy Manager (Technical Cadre) from the post of Assistant Engineer giving effect from 01.01.2016 instead of 01.01.2017. Further a direction has been sought upon the respondents Nos. 4-6 to rectify the gradation list May, 2018 restoring and maintaining the seniority as aforesaid.

The petitioners Nos. 1, 2 and 3 admittedly joined in the service of Gas Transmission Company Limited (hereinafter referred to as GTCL) and sought permission of the esteem company to pursue B.Sc Engineering Degree and accordingly got permission respectively, on 13.04.2005, 13.10.2010 and 21.01.2009 under the signature of the respondent No. 5, the General Manager, GTCL. Thereafter the petitioners successfully completed their course and obtained the B.Sc Engineering degree in different point of time that is June-2005, September-2014 and December-2012 respectively.

Be it mentioned that on previous occasion as it has been stated in paragraph 7 of the petition a number of employees including Assistant Engineers, who completed B.Sc Engineering Degree in service taking permission from the authority concerned of ‘GTCL’ and got promotion to the next higher post on consideration of completion of B.Sc

Engineering Degree in service. As for example, Ashikur Rahman, became Deputy Manager, (Office ID No. 00260), by dint of achieving B.Sc Engineering in service following the permission of authority concerned of 'GTCL' for pursuing B.Sc Engineering Degree on 24.03.2009 he was serving as Sub-Assistant Engineer therein; secondly- Md. Tofazzel Hossain Bhuiyan, was promoted Manager (Office ID No. 00253) by dint of achieving B.Sc Engineering in service following the permission of authority concerned of 'GTCL' for pursuing B.Sc Engineering Degree on 13.11.2013 while he was serving as Sub-Assistant Engineer; thirdly- Sumon Mollick, was promoted to the post of Manager (Office ID No. 00255) by dint of achieving B.Sc Engineering Degree in service following the permission of the authority concerned of 'GTCL' for pursuing B.Sc Engineering Degree on 25.02.2010 while he was serving as Sub-Assistant Engineer therein and all three of them successfully completed B.Sc Engineering Degree in service (while in the post of Assistant Engineer) and accordingly they were promoted to the next higher post. Likewise Mohammad Shahajahan, is now Manager (Office ID No. 00218) by dint of achieving B.Sc Engineering Degree in service following the permission of authority concerned of 'GTCL' on 11.12.2006 for pursuing B.Sc Engineering Degree while he was serving as Sub-Assistant Engineer in 'GTCL' and then he successfully

completed his B.Sc Engineering Degree in service while he was serving as an Assistant Engineer. Accordingly he was promoted to the post of Deputy Manager from the post of Assistant Engineer by the Officer Order No. 77/2013, dated 08.07.2013 issued under the signature of the respondent No. 5. Thereafter he was promoted to the post of Manager on 07.07.2014 (Annexure-‘D-series’).

All of a sudden the Board of Directors of Petrobangla issued Memo No. 21.27.93 (Voli-3)/203 dated 23.06.2016 under the signature of respondent No. 3 changing the requisite qualification of its employees for promotion to the next higher post introducing clause Nos. 1.5, 1.2 (serial No. 2 and 5) in contravention of the service condition of the petitioners for promotion to the next higher posts (Annexure-‘E’ and ‘E-1’). The provisions change the requisite qualification of promotion of the petitioners. The present petitioners along with other 5 colleagues of these petitioners filed writ petition No. 8770 of 2016 before this Division challenging clause 1.5 and 1.2 of the memo dated 30.06.2016 (Annexure-‘E-1’ to this writ petition). A division Bench of this Division comprising of their lordships Mr. Justice Zubayer Rhaman Chowdhury and Mr. Justice Md. Khasruzzaman issued the Rule and thereafter the Division Bench (where one of us was a party) took up the matter together with other writ petitions for disposal and by the single judgment

and order dated 23.11.2017 disposed of the writ petition in the light of the principle enunciated by the Hon'ble Appellate Division in the judgment and order dated 26.09.2013 in the Civil Petition for Leave to Appeal No. 1923 of 2012 holding that any subsequent amended disadvantageous provisions shall apply prospectively only and this Division was further pleased to issue direction upon the writ respondents to follow the said principle while the case of the promotion of the writ petitioners will be dealt with. It has been stated that this Division was silent to resolve the issue relating the promotion order 96/2016, dated 11.07.2016 (serial No. 1.2 to 1.16) (Annexure-'F-1') giving promotion favouring the junior colleagues of the writ petitioners that is respondent Nos. 7 to 19 (Annexure-'H').

It has been further stated that the Managing authority of the GTCL gave promotion to the respondent Nos. 7 to 19 to the posts of Deputy Manager (Technical Cadre) by issuing an office order dated 11.07.2016 applying clause No. 4 of the circular, dated 30.06.2016 of GTCL. However, surprisingly the Managing authority of GTCL issued another Memo, dated 04.01.2018 following the circular dated 09.12.2012 of the Petrobangla rectifying the date of giving effect of promotion of the respondent Nos. 7 to 19 to the post of Deputy Manager from 01.01.2016 instead of 11.07.2016. The petitioners were promoted to the Deputy

Manager (Technical Cadre) from the post of Assistant Engineer by issuing an office order dated 27.12.2017 giving effect from 01.01.2017. But despite the repeated verbal representations of the petitioners the Managing authority of the 'GTCL' did not restore the seniority of the petitioners keeping consistency in the line of the seniority contained in the gradation list May, 2016 wherein the position of the seniority of the petitioners stood as serial Nos. 105, 106, 109, on the other hand positions of the respondent Nos. 7 to 19 were placed being serial Nos. 111 to 126. Right thereafter, they served notice demanding Justice on 05.11.2018. And at this stage the petitioners moved this petition and obtained the present Rule.

Mr. Mohammad Hedayet Hossain, the learned Advocate for the petitioners upon placing the petition and other materials on record submits that the circular dated 23.06.2016 Annexure-'E' and the memo dated 30.06.2016 (Annexure-'I') are not applicable for considering the promotion of the petitioners to the post of Deputy Manager from the post of Assistant Engineer pursuant to the judgment and order dated 23.11.2017 passed by the High Court Division in writ petition No. 8770 of 2016.

Next he submits that the applicable law for considering case of the petitioners is the Service Regulation, 1996 (amended 2005) of the GTCL

under which these petitioners Nos. 1 to 3, holding the seniority position being serial No. 105, 106 and 109 respectively of the gradation list May-2016 (Annexure-‘F’), were fully eligible in the year 2016 to be promoted to the post of Deputy Manager (Technical Cadre) from the post of Assistant Engineer.

Further he submits that unfortunately the Managing authority of the company wrongly applying the circular dated 23.06.2016 (Annexure-‘E’) and the Memo dated 30.06.2016 (Annexure-‘E-1’) did not consider the promotion to the post of Deputy Manager (Technical Cadre) from the post of Assistant Engineer of these writ petitioners who were senior to the respondent Nos. 7 to 19, on the other hand respondent Nos. 7 to 19, holding the seniority position 111 to 126 of the gradation list May, 2016 (Annexure-‘F’) were promoted on 11.07.2016 (Annexure-‘F-1’) to the post of Deputy Manger (Technical Cadre) and later the effective date of such promotion was given from 01.01.2016 by issuing an order, dated 04.01.2018 (Annexure-‘I-1’), whereas these petitioners were promoted to the post of Deputy Manger on 27.12.2017 giving effect from 01.01.2017 (Annexure-‘J’) and as such these petitioners have been junior to the respondent Nos. 7 to 19 which is reflected in the impugned gradation list May, 2018, (Annexure-‘K-2’) wherein the seniority position of the petitioners referred being serial No. 112 to 114 and

respondent Nos. 7 to 19 are shown being serial No. 98 to 111 and in the premises the justice shall be ensured if the effective date of promotion of these petitioners (to the post of Deputy Manager) is given from 01.01.2016 restoring their (petitioners) seniority and accordingly the gradation list May, 2018 being modified as before 01.01.2016 so far as the position of the seniority of the petitioners and the respondent Nos. 7 to 19 are concerned.

On the other hand the Rule is opposed by filing affidavit-in-oppositions on behalf of the respondent No. 3, GTCL and respondent No. 7, Mohammad Moidul Islam, Deputy Manager and In-charge, CGS Ashulia, Transmission Dhaka, Gas Transmission Company Limited.

Mr. Mejbahur Rahman, the learned Advocate appearing for the respondent No. 3, Chairman of the Board of Directors of Gas Transmission Company Limited and Mohammad Humaun Kabir, the learned Advocate appearing for the respondent No. 7.

The bone of contention of the learned Counsel for the respondent No. 3, company has been categorized in the different paragraphs of affidavit in opposition. And he has drawn our notice to the relevant circular which states: “পেট্রোবাংলা এবং এর অধীনস্থ কোম্পানীসমূহে পঞ্জিকা বছরের যে তারিখেই পদোন্নতি দেয়া হোক না কেন, জ্যেষ্ঠতা সংরক্ষণের স্বার্থে তা ঐ বছরের ১লা জানুয়ারী থেকে কোনরূপ আর্থিক সংশ্লিষ্টতা ব্যতিরেকে কার্যকর হবে।”

Therefore, with all the vehemence he submits that the promotion of the respondent Nos. 7 to 19 from 01.01.2016 instead 11.07.2016 was legal and lawful. In paragraph 10 of the affidavit-in-opposition he has admitted that after the Judgment passed by this Division in writ petition No. 8770 of 2016 with other similar writ petitions on 23.11.2017 (Annexure-‘E’ of the petition), the employees of GTCL were not considered for promotion and for that reason Superior, Senior and Junior selection committee is required to be formed considering the service period 31.12.2015 and also 31.12.2016.

Affidavit-in-opposition filed by respondent No. 7 bluntly expresses the respondent’s apprehension of the unnecessary interference on the promotion which they have already achieved contending some provisions and giving their explanations and also the safe guard mandated in the Constitution under Article 27, 29, 31 and 40 of the Constitution.

We have heard the learned Counsels appearing for the petitioners and the answering respondent No. 3 GTCL and the respondent No. 7 at length. In our anxiety we have cross-check the provisions as laid down in the impugned Nitimala together with the judgment passed by both the divisions. Let us first see what embargo was brought in the Nitimala by introducing clause 1.5 and 1.12 of the same? Clause 1.5 of the Nitimala

বা পরিপত্র dated 23.06.2016 states: “চাকুরিরত অবস্থায় কোন কর্মকর্তা বা কর্মচারির অনুমোদিত ও অর্জিত শিক্ষাগত যোগ্যতা উচ্চতর পদে পদোন্নতির ক্ষেত্রে ন্যূনতম শিক্ষাগত যোগ্যতা হিসেবে বিবেচ্য নয়। এরূপ অর্জিত শিক্ষাগত যোগ্যতা অর্জনকারী পরবর্তী উচ্চতর পদে সরাসরি নিয়োগের ক্ষেত্রে নিয়োগ বিজ্ঞপ্তির শর্তানুযায়ী আবেদন করতে পারেন।”

Both the divisions harped on this point straight and without ambiguity. The Hon’ble Appellate Division made it very clear that an employee shall definitely be entitled to the new service benefits given or created by the new Rule, but no Rule can be framed to his disadvantage or detriment or to the denial of his accrued/vested rights to be taken away, the new Rules adding new terms and conditions including the one as to the promotion for the next higher post shall be effective and applicable to the employees, who will be appointed after coming into effect or force of the same.

And the high Court Division in writ petition No. 8770 of 2016 holding the same view directed the পরিপত্র therein should be treated as legal but prospectively only and also directed the respondents to follow same principle while dealing with cases of promotion of the employees. This principle as laid down by both Divisions in its true spirit and purport has been deviated expressly in the case of three petitioners before us. Admittedly after obtaining permissions from the respondent

No. 3, company the writ petitioners completed their higher degrees and the same absolutely fitted in the light of the decision with positive approach by the authority in consonance with regulation 14 of the চাকুরী প্রবিধানমালা, ১৯৯৬। There we have found a flagrant violation and deviation of the principle of direction of the Hon'ble Appellate Division as well as this Division.

We don't find any earthly reason while the things have been done wrongly in the manner as it has been handled by the authority knowing fully well the decision of the Highest Court of the Country. Lord Denning a legal stalwart once said 'silence is not an option when things are ill done'. The right that has been nourished by the consistent view of both the divisions cannot be taken lightly. The employees are not asking for any charity from the company, what they are thriving for is the proper implementation of the decision of the Highest Court of the Country.

That being the position, we are constrained to hold that this writ petition merit substance which should be made absolute with positive direction.

In the result the Rule is made absolute. The respondents are directed to consider the promotion, seniority and other connected matters

of the petitioners in the light of the decision of the Hon'ble Appellate Division and this Division without further delay.

Communicate at once.

Md. Iqbal Kabir, J:

I agree.