

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

In the matter of:

WRIT PETITION NO. 7443 of 2020

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. Khalid Ahammed Khan and others
..... Petitioners

Versus-

The Government of Bangladesh and
others

..... Respondents

Mr. Shaheen Ahmed, Advocate
..... For the petitioners

Mr. Md. Oziullah with
Mrs. Afroza Sultana, Advocate(s)
..... For the respondent No. 3

Mr. Md. Ibrahim Khalil, Advocate
(Amicus Curiae)

**Heard on 04.11.2021, 08.11.2021 and
Judgment on 15.11.2021**

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 01.11.2020, was in the following terms:

*“Let a Rule Nisi be issued calling upon the respondents to
show cause as to why they should not be directed to cancel*

the existing Gradation list of Bangladesh Petroleum Exploration and Production Company Limited (BAPEX) prepared on the basis of the date of joining and to prepare a fresh gradation list as per merit list prepared by the concerned Selection Committee at the time of appointment and also why the respondents should not be directed to give promotion to the petitioners and also to give retrospective effect to the belated promotion of the petitioners and restoration of their seniority from the date when their juniors were promoted with all arrears of pay and other benefits by fixation of salary and/or such other or further order or orders passed as to this court may seem fit and proper.”

Background leading to the Rule in short is that the petitioners were appointed by Bangladesh Petroleum Exploration and Production Company Limited (hereinafter referred to as BAPEX) after qualifying in the examination both written and viva voce. Thereafter, they joined their respective posts as per direction of the respondents and since then they have been serving with utmost sincerity and to the full satisfaction of the authority.

It has been stated that the petitioner No. 1, Md. Khalid Ahammed Khan was appointed as Assistant Manager (Geology) on 25.10.2007 and joined on 30.10.2007. The petitioner No. 2, Mohammad Moinuddin Ahammed was appointed as Assistant Officer (Finance and Accounts) on 18.09.2004 and joined on 22.09.2004, the petitioner No. 3, Md. Aminul Islam Mojumder was appointed as Sub-Assistant Engineer (Civil) on 18.09.2004 and joined on 23.09.2004, the petitioner No. 4, Most. Shahnaj Hossain was appointed as Assistant Manager (Geology) on 22.09.2004 and joined on 28.09.2004 and the petitioner No. 5, Ummey Khair Jannatul Humira was appointed as Assistant Manager (Electronics) on 22.09.2004 and joined on 28.09.2004 (Annexure- 'A', 'A-1', 'A-2,' 'A-3' and 'A-4').

Thereafter, the petitioner No. 1 has been promoted as Deputy Manager and the Manager on 01.01.2012 and 22.04.2015 respectively. The petitioner No. 2 has been promoted as Deputy Manager and the Manager on 01.01.2013 and 02.01.2020. The petitioner No. 3 has been promoted as Assistant Manager and the Deputy Manager on 23.01.2011 and 01.01.2016, the petitioner No. 4 has been promoted as Deputy Manager and the Manager on 23.01.2011 and 01.01.2015, and the petitioner No. 5 has been promoted as Deputy Manager and the Manager

on 23.06.2011 and 01.01.2015 respectively (Annexure-‘B’, ‘B-1’, ‘B-2’, ‘B-3’ and ‘B-4’).

It has been stated in paragraph 6 of the petition that for the purpose of seniority, promotion and other benefits to the petitioners and their colleagues of the same batch, the provisions of the Regulations-13(2) of the Employees’ Service Regulations of ‘BAPEX’, 2002 (amended- 2010) are followed which has been reproduced for better understanding:

“১৩(২) একই সময়ে একাধিক কর্মচারী নিয়োত্রাণ্ড হইয়া কাজে যোগদান করিলে নিয়োগকারী কর্তৃপক্ষ, সংশ্লিষ্ট বাছাই কমিটি কর্তৃক প্রস্তুকৃত মেধা তালিকা ভিত্তিক সুপারিশ অনুসারে উক্ত কর্মচারীদেও পারস্পারিক জ্যেষ্ঠতা স্থির হইবে।”

Be it mentioned that similar Rules are also followed in the other companies of Petrobangla so far it relates to seniority, promotion and other benefits.

It has been stated in paragraph 7 and 8 of the petition that the petitioner No. 1 and four others filed writ petition No. 3892 of 2014 before this Division and by judgment dated 14.11.2017 this Division disposed of the said writ petition with a direction upon the respondents to prepare and publish a gradation list as per the BAPEX Regulations and also to give promotion to the petitioners.

Long thereafter the respondents prepared a gradation list in flagrant violation of Regulations-13(2) of the BAPEX Regulations inasmuch as the same has been prepared on the basis of date of joining instead of merit list prepared by the concerned selection committee at the time of appointment.

It is at this stage, the petitioners moved this petition and obtained the present Rule.

Mr. Shaheen Ahmed, the learned Advocate for the petitioner upon placing the petition and supplementary affidavit has drawn our notice to the following facts:-

- a. The petitioner No. 1 stood first on merit in his batch and the respondents put his position in the existing gradation list as serial No. 14 while his juniors, namely Md. Abdul Batin, Md. Shafiqul Islam, Md. Jashim Uddin Sheikh, Begum Merin Akter, Kazi Fayeze Alam and S.M. Nafifun Arham, were put above the petitioner No. 1 as serial Nos. 8 to 13 respectively. Moreover, it is apparent from pages 25-26 of the existing gradation list that those (serial Nos. 8-12) who are juniors to the petitioner No. 1 were promoted to the post of Manager on 01.01.2015 while the petitioner No. 1 was promoted as Manager later on 22.04.2015 (Annexure-‘F’).

- b. The petitioner No. 2 stood second on merit in his batch and the respondents put his position in the existing gradation as serial No. 2 while his junior, namely, Al Amin was put above the petitioner No. 2 as serial No. 1. Moreover, it is apparent from pages 20-21 of the existing gradation list that Md. Muzammel Haque and Mohammad Shah Alam Khan, who are juniors to the petitioner No. 2 on merit, were promoted to the post of Manager on 01.01.2016 and 17.07.2017 respectively while the petitioner No. 2 was promoted as Manager long after on 02.01.2020 (Annexure-‘F-1’).
- c. The petitioner No. 3 stood first on merit in his batch the respondents put his position in the existing gradation list as serial No. 3 while his juniors, namely, Md. Altaf Hossain and Golam Sarwar Bhuiyan, were put above the petitioner No. 3 as serial Nos. 1 and 2 which apparent from page-51 of the existing gradation list (Annexure-‘F-2’).
- d. The petitioner No. 4 stood first on merit in her batch and the respondents put her position in the existing gradation list as serial No. 5 while her juniors, namely, Begum Jebun Nahar, Dr. Md. Ashique Hossain, Behum Sabiha Chowhdury and Mohammad Mozammel Haque, were put above the petitioner

No. 4 as serial Nos. 1-4 respectively. Moreover, it is apparent from pages 24-25 of the existing gradation list that Begum Jebun Nahar who is junior to the petitioner No. 4 on merit was promoted to the post of Deputy General Manager on 02.01.2020 superseding the petitioner No. 4 (Annexure-‘F-3’).

- e. The petitioner No. 5 stood first on merit in her batch and the respondents put her position in the existing gradation list as serial No. 2 while M.A Sabur Jamil Bhuiyan, who is junior to the petitioner No. 5 on merit, was put above the petitioner No. 5 as serial No. 1. Moreover, it is apparent from pages 27-28 of the existing gradation list that M.A. Sabur Jamil Bhuiyna and Tariqul Islam, who are juniors to the petitioner No. 5 on merit were promoted to the post of Deputy General Manager on 02.01.2020 superseding the petitioner No. 5 (Annexure-‘F-4’ and ‘F-5’).

On our query that whether the petitioners satisfied the first part of the Regulations 13(2) of BAPEX “একই সময়ে একাধিক কর্মচারী নিয়োগ প্রাপ্ত হইয়া যোগদান করিলে।” The petitioner by filing supplementary affidavit dated 14.11.2021 distinctly clear the same stating the position of petitioner No.1 along with his batchmates, the petitioner No. 2 along with his batchmates, the petitioner No. 3 along with his batchmates, the petitioner

No. 4 along with her batchmates and the petitioner No. 5 along with her batchmates mentioning their appointment dates to be 25.10.2007, 18.09.2004, 18.09.2004, 22.09.2004 and 22.09.2004 respectively. With that the first part of the Regulations has been satisfied in terms of the query of ours to the full extent.

By filing affidavit in opposition on behalf of the respondent No. 3, the Managing Director, Bangladesh Petroleum Exploration and Production Company Limited has opposed this Rule. Mr. Md. Oziullah, the learned Advocate for the respondent No.3 denying all the material averments made in the petition submits that the gradation list in question was prepared properly in terms of the Regulation 13 of the BAPEX Employees Service Regulations, 2002 (amended in 2010). In paragraph 9 it has been stated that gradation list of BAPEX employees has been prepared flawlessly and no direction is required to cancel the existing gradation list and to prepare a fresh gradation list because the present gradation list has been made following the concern Rules.

We have heard the learned Counsel appearing on behalf of the parties at length and considering their submissions carefully. We have perused the petition, supplementary affidavit, affidavit in opposition and other materials on record meticulously with precision. The situation that has been contemplated and brought before us in the instant petition has

been well attended and decided by both the Division in clear terms. Proposition of law in this regard as it stand is that if at a time several employees are appointed, the appointing authority shall fix the date of their seniority according to the merit list prepared by the selection committee. This proposition of law has been reflected in writ petition Nos. 8467 of 2017 (Engineer Mohammad Mamunur Rahman and others vs. Bangladesh and others), 5913 of 2010 (Md. Mosleuddin and others vs. Bangladesh and others), 3892 of 2014 (Omar Faruque and others vs. Bangladesh and others) and so on.

Harping on the same tune as envisaged in Annexure-‘G’ to the petition our Hon’ble Appellate Division came down heavily in the case of Jibon Bima Corporation and others vs. Mohammad Abu Kawser Jalil and others in Civil Appeal No. 281 of 2010.

For our understanding we want to quote an observation made by Hon’ble Appellate Division:

“Now it is to be resolved whether the office order dated 29.05.2006 fixing inter-se seniority of the respondents and others was issued in accordance with law. In order to resolve the issue it is necessary to quote sub-regulations (1) and (2) of Regulation, 12 which are as under:

“১২। জ্যেষ্ঠতা-(১) এই প্রবিধানের অন্যান্য বিধানাবলী সাপেক্ষে কোন পদে কোন কর্মচারীর জ্যেষ্ঠতা সেই পদে তাহার যোগদানের তারিখ হইতে গণনা করা হইবে।

(২) একই সময়ে একাধিক কর্মচারী নিয়োগপ্রাপ্ত হইলে, নিয়োগকারী কর্তৃপক্ষ সংশ্লিষ্ট বাছাই কমিটি কর্তৃক প্রস্তুতকৃত মেধা তালিকা ভিত্তিক সুপারিশ অনুসারে উক্ত কর্মচারীদের পারস্পারিক জ্যেষ্ঠতা স্থির করিবে।”

Sub-regulation (1) provides that the seniority of any officer or employee would be counted from the date of their joining the post subject to others provisions of the Regulations.

Sub-regulation (2) provides that if at a time several employees are appointed, the appointing authority shall fix the date of their seniority according to the merit list prepared by the selection committee.”

That being admitted position one and only inference on the basis of the consistent decisions of the both Divisions regarding the interpretation of regulation in question we are of the view that Regulation 13 of the BAPLEX would also be interpreted accordingly.

Accordingly, the Rule is disposed of. The respondents are directed to amend/modify the seniority list and fix seniority of the service of the petitioners in view of Regulation 13(2) of the BAPLEX employees service

Regulations, 2002 with all its trappings seniority, arrear of pay and other benefits forthwith so far as it relates to the petitioners only.

Communicate at once.

Md. Iqbal Kabir, J:

I agree.