

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

Writ Petition No. 173 of 2021

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. Masudul Hasan

..... Petitioner.

-Versus-

Biman Bangladesh Airlines Limited,
represented by its Managing Director and
Chief Executive Officer(CEO), Balaka
Bhaban, Kurmitola, Dhaka and others,

... Respondents.

Mr. Sherder Abul Hossain, Advocate with
Mr. Sanjoy Kumar Kundu, Advocate,

...For the petitioner.

Mr. Bepul Bagmar, DAG

Mr. Md. Ekramul Hoque, Advocate,

...For the Respondent No.1.

Judgment on: 21.03.2024

Present:

Mr. Justice Md. Khasruzzaman

and

Mr. Justice K M Zahid Sarwar

Md. Khasruzzaman, J:

In an application under article 102 of the Constitution, on 15.07.2021 *Rule Nisi* under adjudication was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the inaction/omission of the respondents to consider promotion of the petitioner to the post of Deputy Manager (Security-Operation) (Pay Group-VII) with effect from 24.08.2016 and also to the post of Manager (Security-Operation) (Pay Group-VIII) with effect from 17.11.2019 should not be declared to have been done without lawful authority and is of no legal effect and to show cause as to why the respondents should not be directed to consider the promotion of the petitioner to the post of Deputy Manager (Security-Operation) (Pay Group-VII) with effect from 24.08.2016 and also to the post of Manager (Security-Operation) (Pay Group-VIII) with effect from 17.11.2019 under the Bangladesh Biman Corporation Employees (Service) Regulations, 1979 and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Facts necessary for disposal of the Rule Nisi in short are that on 10.09.1988 the petitioner was appointed in the post of Security Assistant in the service of Biman Bangladesh Airlines under Bangladesh Biman Corporation Employees (Service) Regulations, 1979. Thereafter, he was promoted to the post of Security Supervisor on 08.05.2000 and afterwards he was promoted to the post of Junior Security Officer on 15.12.2005. Subsequently, the petitioner was again promoted to the post of Security Officer under Pay Group-VI vide Memo dated 31.12.2008. Now, the petitioner is serving as an Assistant Manager since in the Organogram rearranged by the Biman Bangladesh Airlines the post of Security Officer and Assistant Manager has been equivalent i.e. Pay Grade-VI. On the other hand,

the respondent No.7 was appointed in the post of Security Officer (now Assistant Manager) with Pay Group-VI vide appointment letter No. Employment/ 023/2009/54 dated 19.02.2009. So, it is evidently clear that the petitioner is senior to the respondent No.7. It is stated that the respondent No.1 Biman prepared a list of all eligible candidates as per seniority for giving promotion to the post of Assistant Manager (Now Deputy Manager) in Pay Group-VII. In the said list the petitioner was shown at serial No.3 whereas the respondent No.7 was shown at serial No.4. Ultimately, the respondent No.7 has been promoted to the post of Assistant Manager (Now Deputy Manager) in Pay Group-VII vide order dated 24.08.2016. Thereafter, on 17.11.2019 respondent No.7 was again promoted to the post of Manager from the post of Deputy Manager (previously it was Assistant Manager in Pay Group-VIII). Although the petitioner was fit and senior to the respondent No.7, he was not promoted and as such he has been deprived from getting equal protection of law.

In the circumstances as stated hereinabove, the petitioner challenged the inaction of the respondents in not considering his promotion to the post of Deputy Manager and Manager and obtained the *Rule Nisi* in the manner as quoted above.

On the contrary, respondent No. 1 filed an *affidavit-in-opposition* denying all material allegations made in the writ petition stating *inter-alia* that promotion proceeding was completed as per the Rules and

Regulations of Biman Bangladesh Airlines. The petitioner has participated in the exam but failed and he has filed the writ petition with malafide intention and consequently, the Rule Nisi is liable to be discharged.

Mr. Sherder Abul Hossain alongwith Mr. Sanjoy Kumar Kundu, the learned Advocates appearing on behalf of the petitioner submits that in case of promotion of the petitioner, he was not dealt with in accordance with law despite he was senior to respondent No.7. The petitioner was dealt with by the so-called administrative Order No.4 of 2016 and thereby the respondent No.7 was promoted superseding the petitioner. He further submits that earlier on similar point Writ Petition Nos. 6786 of 2017, 11521 of 2017 and 1074 of 2018 were filed by some other employees of Biman Bangladesh Airlines. The High Court Division disposed of the said writ petitions by judgment and order dated 19.02.2020 and directed the respondents to promote the petitioners of those writ petitions maintaining their position in the gradation list. The petitioner stands on better footing and he is senior to respondent No.7 and as such, he is entitled to get promotion to the post of Deputy Manager and Manager respectively with retrospective effect from the date on which the respondent No.7 was promoted to those two posts in accordance with law. Hence he prays for making the *Rule Nisi* absolute.

Mr. Md. Ekramul Hoque, the learned Advocate appearing on behalf of the respondent No. 1 submits that as per regulation 12 of the Bangladesh Biman Corporation Employees (Service) Regulations, 1979 the authority has power to issue administrative order containing the condition with regard to the promotion of the employees of Biman, there is no illegality in the administrative order No.4 of 2016. However, the authority in compliance of the judgment and order dated 19.02.2020 passed in those three writ petitions amended the provision of the said administrative order. The promotion proceeding of the petitioner was completed as per the rules and regulations of Biman Bangladesh Airlines Limited but the petitioner could not succeed in the exam and as such no question of inaction or omission happened on the part of the respondent authority for not promoting him. Moreover, nobody can challenge the promotion as of right and as such, the *Rule Nisi* is liable to be discharged.

We have considered the submissions advanced by the learned Advocates for both the parties, perused the writ petition, all other connected papers annexed thereto, the Service Regulations as well as the judgment and order passed earlier by this Court and relied upon by the learned Advocate for the writ petitioner.

Admittedly, on 10.09.1988 the petitioner was initially appointed in the post of Security Assistant. Subsequently, he was promoted to

the post of Security Supervisor, Junior Security Officer and thereafter, to the post of Security Officer on 31.12.2008, whereas the respondent No.7 was appointed to the post of Security Officer on 19.02.2009. So, it is evidently clear to us that the petitioner is senior to respondent No.7 in the post of Security Officer. It is stated in the writ petition that the organogram of Biman was rearranged and thereby, the post of Security Officer has been renamed as Assistant Manager under Pay Grade-VI. The authority for the purpose of promotion prepared a list wherein the name of the petitioner was shown at serial No.3 and that of respondent No.7 was shown at serial No.4. But the petitioner was superseded and the respondent No.7 was promoted twice on 24.08.2016 and 17.11.2019 in pay group-VII and VIII. Under such circumstances the petitioner filed the writ petition for redress.

It appears that on similar situation some other employees of Biman Bangladesh Airlines Limited filed Writ Petition Nos. 6786 of 2017, 11521 of 2017 and 1074 of 2018. Another Bench of this Division vide judgment and order dated 19.02.2020 disposed of all the three writ petitions with directions. The High Court Division in the said judgment directed the respondents to immediately promote the petitioners of those writ petitions to Pay Group VI from Pay Group V with retrospective effect from the same date as the respondent Nos. 12 to 26 were promoted and maintain their positions in the gradation list alongwith the aforesaid respondents for all purposes and in all

respects as per their respective positions in the gradation list in Group V prior to the impugned promotions. In the said judgment the respondents were also directed to formulate new rules and fix specific criteria and guidelines for promoting officers from Pay Group V upwards in Biman by taking into consideration of their performances and service records including their ACRs but they were refrained from giving promotion solely on the basis of interview and viva voce examinations. In the said judgment, with regard to article 2Ka(1) of Administrative Order No.4 of 2016, this Court found that as per the said article there is no guideline or rule as to how an interview is to be conducted in assessing the merit of a candidate leaving considerable scope for the Interview Board to pick and choose and thereby to defeat the very purpose of ascertaining the actual meritorious candidates. The facts and circumstances of the case in hand are similar to those of cases stated above. In the present case, though the petitioner had all eligibility criteria as required for promotion, he was not dealt with in accordance with law on the face of Administrative Order No.4 of 2016. As such, we are inclined to give similar treatment to the petitioner with regard to his promotion as the respondent No.7 was promoted to Deputy Manager and Manager respectively.

Accordingly, we find merit in the *Rule Nisi* as well as substance in the submissions of the learned Advocate for the petitioner. As such, the *Rule Nisi* is liable to be made absolute.

In the result, the *Rule Nisi* is made absolute.

Hence, it is declared that the inaction/omission of the respondents to consider promotion of the petitioner to the post of Deputy Manager (Security-Operation) (Pay Group-VII) with effect from 24.08.2016 and also to the post of Manager (Security-Operation) (Pay Group-VIII) with effect from 17.11.2019 is without lawful authority and is of no legal effect.

The respondents are directed to consider the promotion of the petitioner to the post of Deputy Manager (Security-Operation) (Pay Group-VII) with effect from 24.08.2016 and also to the post of Manager (Security-Operation) (Pay Group-VIII) with effect from 17.11.2019 under the Bangladesh Biman Corporation Employees (Service) Regulations, 1979.

There will be no order as to costs.

Communicate the order.

K M Zahid Sarwar, J:

I agree.