

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

PRESENT:

**Mr. Justice Hasan Foez Siddique, Chief Justice**

**Mr. Justice M. Enayetur Rahim**

**Mr. Justice Md. Ashfaquul Islam**

**CIVIL APPEAL NO. 547 OF 2009**

(Arising out of Civil Petition No. 1724 of 2008)

The Government of Bangladesh : .... Appellant  
represented by the secretary,  
Ministry of Home Affairs, Bangladesh  
Secretariat, Ramana, Dhaka

**-Versus-**

Md. Abdul Mannan and others : .... Respondents

For the Appellants : Mr. Sk. Md. Morshed, Adl. AG with  
Mr. Mohammad Saiful Alam, AAG  
instructed by Mrs. Sufia Khatun,  
Advocate-On-Record

For Respondent No. 1 : Mr. Sarwar Ahmed, Senior Advocate  
instructed by Mr. Mohammad Ali  
Azam, Advocate-on-record

For Respondent Nos. Not represented  
2-4

Date of hearing and : **23.08.2023**  
judgment

**JUDGMENT**

**Md. Ashfaquul Islam, J:** This civil appeal by leave is directed  
against the judgment and order dated 15.04.2007 passed by  
the High Court Division in Writ Petition No. 5282 of 2004  
discharging the Rule with a direction to pay financial  
benefit to the writ-petitioner.

Facts, in short, are that the respondent No. 1 herein as petitioner filed the aforesaid writ petition challenging the order of removal from his service dated 07.07.2004 contending inter-alia that while he was working at Teknaf, Cox's Bazar loading Point Nos.1 and 2 with four B.D.R. personnel under the leadership of Habilder Md. Amirul Islam on 11.07.2003 he was deputed for loading fish truck and accordingly he loaded a fish truck partially under the direct supervision of the Commander of the Group Habilder Md. Amirul Islam. Finding disharmony with the loading of the truck containing Guernsey, Umbrella, torch light etc. the higher authority called him at B.N. Head Quarter Office, 23 Rifles Battalion, Taknaf, Cox's Bazar on 16.07.2003 wherein his statement was recorded as witness. On the same date some questions were asked by the authority and he replied to the questions mentioning his innocence. Without holding any inquiry over the matter and without giving any opportunity of being heard and having violated the mandatory provisions of Section 6 of the Bangladesh Rifles (Special Provisions), Ordinance, 1976 the writ petitioner was terminated from his service on 07.07.2004

under Section 8 of the Bangladesh Rifles (Special Provision) Ordinance, 1976. In the said office order the Bengali words "চাকুরী হইতে বহিস্কার করা হইল" has been used but the penalty under Section 5(b) of the said Ordinance is removal from service whereas the penalty under Section 5(c) is discharge from service. On perusal of the removal certificate, it appears that there is no memo number and the writ petitioner was removed from service by an order of an individual officer and not by a Court or a Tribunal established under law relating to such force.

Being aggrieved by and dissatisfied with the said order of removal dated 07.07.2004, the respondent No. 1 moved before the High Court Division and obtained Rule. The High Court Division upon hearing the parties discharged the Rule with a direction to pay all financial benefit to him. Having dissatisfied with that direction the Government filed civil petition for leave to appeal and obtained leave giving rise to this appeal.

Mr. Sk Md. Morshed, the learned Additional Attorney General, appearing for the appellants, submits that the High Court Division erred in law in directing the respective authority of Bangladesh Rifles to provide the

respondent No.1 with financial benefits in not considering that the provisions of Section 8 of the Bangladesh Rifles (Special Provision) Ordinance, 1976 under which the respondent No.1 was awarded major penalty of discharge from service does not authorize of having such financial benefits.

He also submits that the High Court Division erred in law in not considering that the respondent No.1 being a member of a disciplinary forces having been found guilty of dereliction of duty and was discharged from service is not entitled to any mercy by providing him any financial benefit which tantamount to reward him for his wrongdoing.

On the other hand Mr. Sarwar Ahmed, the learned Senior Advocate for the respondent No. 1 supporting the impugned Judgment and order passed by the High Court Division contends that High Court Division rightly and lawfully allowed the respondent No.1 to have service benefit as per section 8 of the Bangladesh Rifles (Special provisions) Ordinance, 1976. Rather, without holding any inquiry over the matter and without giving any opportunity of being heard and in violation of the

mandatory provisions of Section 6 of the Bangladesh Rifles (Special Provisions), Ordinance, 1976 the respondent No.1 was removed from service on 07.07.2004 under Section 8 of the Bangladesh Rifles (Special Provision) Ordinance, 1976 which was not legally done and as such the appeal should be dismissed.

He further submits that in the judgment and order of the Writ Petition No.5282 of 2004 the High Court Division noted the submissions of the learned Assistant Attorney General Mr. Md. Jafor Imam in the language, **অপর পক্ষে জনাব মোঃ জাফর ইমাম, সহকারী এ্যাটর্নী জেনারেল মহোদয় তাহার এফিডেভিট ইন অপজিশান এর বিভিন্ন অনুচ্ছেদের প্রতি দৃষ্টি আকর্ষন পূর্বক নিবেদন করেন যে বাংলাদেশ রাইফেলস এর কর্মচারী ও কর্মকর্তাগণ disciplined অন্তর্ভুক্ত। তাহাদের বিরুদ্ধে শৃঙ্খলাজনিত কোন পদক্ষেপ বাংলাদেশ forces এর রাইফেলস এর বিশেষ বিধান আইন অধ্যাদেশ ১৯৭৬ ইং সনে প্রণিত বিধি বিধান অনুসারে আনয়ন করা হইয়া থাকে। বর্তমান ক্ষেত্রেও কর্তৃপক্ষ দরখাস্তকারী সম্বন্ধে বিচার ও বিবেচনা করিয়া উক্ত অধ্যাদেশের ৮ ধারা অনুসারে 'discharge' যাহা বাংলায় 'বহিস্কার' হিসাবে অনুবাদ করা হইয়াছে সেই আদেশটি প্রদান করেন। তিনি আরও নিবেদন করেন যে, যেহেতু দরখাস্তকারীর বিরুদ্ধে 'discharge' বা 'বহিস্কার' করণ আদেশে কোনরূপ দোষরূপ stigma প্রদান করা হয় নাই। সেইহেতু তদন্তের বা আত্মপক্ষ সমর্থনের কোন আইনানুগ সুযোগ ছিলনা এবং যেহেতু দরখাস্তকারীর উপর কোন দোষরূপ অর্পণ করা হয় নাই। সেইহেতু তিনি চাকুরী বিধি অনুসারে তাহার চাকুরী সংক্রান্ত সকল আর্থিক সুবিধাদি যথাযথ ভাবে পাইবেন।”**

and on scrutiny of the said submissions it is crystal clear that the government admitted in their affidavit in opposition that respondent No.1 was entitled to get

service benefit according to the service rules and as such the government had no reason to be aggrieved to prefer appeal against the verdict of the High Court Division and hence, the appeal is liable to be dismissed.

We have heard the learned Advocate of both sides. We have also perused the impugned judgment and order passed by the High Court Division and other materials on record.

For better understating let us first see what has been prescribed in section 8 of the Bangladesh Rifles (Special provisions) Ordinance, 1976 under which the respondent No. 1 was terminated from his service. It states:

"If the authority specified in column 2 of the Second Schedule is of the opinion that continuance in service of a member mentioned in column 1 is inexpedient or not in the interest of the Bangladesh Rifles, he may, without assigning any reason, either discharge or may make order for premature retirement with such service benefits to which such member may be entitled under this Ordinance or any rules applicable to him."

For further clarification, the Sections 4, 5 and 6 of the Ordinance, 1976 are quoted below in verbatim:

4. Where a member is guilty of -

- (i) misconduct;
- (ii) dereliction of duty;
- (iii) act of cowardice and moral turpitude;
- (iv) corruption; and
- (v) inefficiency,

the authority concerned specified in column 2 of the First Schedule may impose on such member any of the penalties mentioned in section 5.

5. The following shall be the penalties which may be imposed upon a member under this Ordinance, namely:-

- (a) dismissal from service;
- (b) removal from service;
- (c) discharge from service;
- (d) compulsory retirement; and
- (e) reduction to lower rank.

6. (1) When a member is to be proceeded against any of the offences mentioned in section 4, the authority concerned specified in column 2 of the First Schedule shall frame a charge and specify therein the penalty proposed to be imposed and communicate it to the member, hereinafter called the accused, requiring him to show cause within a specified time which shall not be less than seven days and not more than ten days from the date the charge has been communicated to him why the penalty proposed to be imposed on him shall

not be imposed and also state whether he desires to be heard in person.

(2) If, after consideration of the cause shown by the accused, if any, and hearing him in person, if the accused so desires, the authority concerned finds the accused guilty of the charge, he shall, within twenty days of the receipt of the explanation, impose upon the accused the proposed penalty or any other lesser penalty under section 5."

Notably, in section 4 and 5 of the Ordinance, 1976 the various offenses and the provisions of punishment have been spelt out chronologically. According to section 6, if Bangladesh Rifle's any member commits any criminal offense, then after holding an inquiry and giving him opportunity for self-defense any penalty prescribed in Section 5 can be imposed. Against the said penalty appeal can also be filed before the appropriate authority as per Section 7 of the Ordinance, 1976. But according to the provision of Section 8, it appears that if any member of Bangladesh Rifles is inconvenient to be retained in service or contrary to the interests of Bangladesh Rifles, the appropriate authority without assigning any



reason can discharge him from his service or send him for premature retirement with service benefits.

The question has been raised by the learned Advocate for the respondent No. 1 that since the term "বহিস্কার" has been used in the impugned office order which is tantamount to removal or removal from service as punishment under Section 5 of the Ordinance, 1976 but no procedure has been followed as contemplated under section 6 before inflicting such punishment, the impugned office order for that reason is illegal and cannot be sustained.

In the case in hand, since the order of termination has been passed under section 8 of the Ordinance, 1976 it would be not punitive and it must be assumed that the respondent No. 1 has been discharged from the service of Bangladesh Rifles though the Bengali term "বহিস্কার" has been used there for the word 'discharge' inappropriately. So, whatever submissions in this regard of the learned Advocate for the respondent does not hold good being falacious one. But the respondent No. 1 could be entitled to get the financial benefits following the above provisions of law. However, we would like to note that in future, Bangladesh Rifles authorities will try to use the

correct Bengali synonym of 'discharge' to resolve this doubt.

We, therefore, hold that the High Court Division has rightly discharged the Rule directing to pay financial benefits to the respondent No. 1 as per section 8 of the Ordinance, 1976. We do not find any legal infirmity in the impugned judgment and order passed by the High Court Division.

Accordingly, this civil appeal is dismissed without any order as to costs.

**C.J.**

**J.**

**J.**