

Present:

Mr. Justice Mohammad Bazlur Rahman
and

Mr. Justice Md. Ruhul Quddus

Writ Petition No.3403 of 2012

Md. Atiar Rahman and others

...Petitioners

-Versus-

The Government of the People's Republic of
Bangladesh represented by the Secretary, Ministry of
Liberation War Affairs and others

...Respondents

Mr. Md. Hosain Shaheed Quamruzzaman, Advocate

... for the petitioners

Mr. J. K. Paul, Advocate

... for respondent 2

Judgment on 2.12.2012

Md. Ruhul Quddus, J:

This Rule at the instance of eight freedom fighters was issued challenging an office order of the Ministry of Liberation War Affairs as contained in Memo No.Mu:Bi:Ma:/Pro-1/Bivid-34/2002-371 (wrongly typed as Mu:Bi:Magistrate:/Pro-1/Bivid-34/2002-371) dated 28.10.2003 so far it relates to payment of state honorarium with other benefits for 5% disabled freedom fighters including the petitioners at monthly rate of Taka 600/- with a direction to pay them honorarium at the rate of Taka 2004/- instead of Taka 600/- and give them other benefits with effect from July, 2003

It is contended in the writ petition that the petitioners are valiant Freedom Fighters who fought the war of liberation in 1971 and were injured in different battles. To be more particular petitioners 1 and 7 were injured by bomb shells on

their back, petitioner 2 sustained a bullet injury on his right leg, petitioner 3 was injured by shell, petitioner 4 became blind by an explosion, and petitioner 5 received bullet injury on his left arm while petitioners 6 and 8 received that on their left legs. The petitioners being disabled freedom fighters with 5% disability applied for state honorarium with other benefits and were getting the same from different dates, which is evident from a list and their respective pass books (annexes-B and D series). Their honorarium was reduced to Taka 600/- from 2004/- by the impugned memo dated 28.10.2003 of the Ministry of Liberation War Affairs.

It is further contended that some other freedom fighters with 5% disability having same status of the petitioners were getting honorarium at the rate of Taka 2004/-, which was suddenly stopped by the same impugned memo. They had challenged the memo in Writ Petition No.2183 of 2004 and obtained Rule. The High Court Division ultimately made the Rule absolute by judgment and order dated 27.6.2007 and the Appellate Division upheld the judgments of the High Court dismissing Civil Petition for Leave to Appeal Nos.1157-61 by judgment and order dated 23.3.2008. Since the present petitioners stand on same footing with the petitioners in the above mentioned writ petition, the respondents ought to have given them equal benefit.

Respondent 2, Bangladesh Muktijodda Kalyan Trust contests the Rule by filling an affidavit-in-opposition denying the material allegations made in the writ petition contending, *inter alia*, that the petitioners were not getting state honorarium from 1997. In medical test their injury was not proved to that extent what they claimed in paragraph 1 of the writ petition. However, their disability to the extent of 5% was admitted. They did not receive any honorarium at the

rate of Taka 2004/- at any point of time and have been getting allowance at the rate of Taka 600/- from different dates in 2004-2008. The said amount of Taka 600/- has been enhanced to Taka 3600/-by this time. Since the petitioners did not get any state honorarium earlier at the rate of Taka 2004/-, question of stopping or reduction of the same does not arise. The Rule was issued against wrong memo number of the impugned letter, which had no existence. Moreover, the impugned memo was issued on the basis of notification dated 31.3.2002. Article 2 (Ga) of the said notification provides if after medical test anybody is found to be incompetent to get state honorarium, his name would be deleted. The petitioners did not challenge the said notification and as such cannot get relief in the present case.

Mr. Md. Hosain Shaheed Quamruzzaman, learned Advocate appearing for the petitioners submits that the honorarium/allowance which is being given to the petitioners is not at all sufficient to meet their necessity, whereas they are the persons who made this Country and did not fear even to loss their life for creation of this Country. So, the allowance as fixed by the impugned letter should be enhanced. He further submits that many other freedom fighters with 5% disability are getting state honorarium at the rate of Taka 2004/-, whereas the petitioners standing on same footing are getting honorarium/allowance at lower rate of Taka 600/= only and are being discriminated thereby.

On the other hand Mr. J. K. Paul, learned Advocate appearing for respondent 2 submits that the petitioners in writ petition No.2183 of 2004 were getting state honorarium at the rate of Taka 2004/-, which was curtailed without giving them any opportunity of being heard and therefore, the High Court Division made the Rule absolute on the grounds of their vested right as well as

violation of natural justice. Since the petitioners in the present writ petition did never get any honorarium/allowance before 2004, question of vesting any right or reduction of the rate in violation of natural justice does not arise. Mr. Paul further submits that apparently the Rule was issued against wrong memo number of the impugned letter, which had no existence and therefore, it cannot proceed against a fictitious memo.

We have considered the submissions of the learned Advocates and gone through the judgment passed in the earlier writ petition including that of the Appellate Division in Civil Petition for Leave to Appeal Nos. 1157-61 [subsequently reported in 14 BLC (AD) 41].

The cause title as well as paragraph 7 of the writ petition, where the description of the impugned memo is given, refers annex-C to be the impugned order. In so describing the word 'Magistrate' has been typed in place of 'Ma'. The said mistake also appeared in the Rule issuing order. All other words, figures and date of the impugned memo are correctly typed. So, because of only this type of typographical error the Rule cannot be vitiated when the context and description of the impugned memo is clearly stated and it clearly refers to annex-C. We, therefore, do not accept the contention of Mr. Paul to that effect.

However, it appears from a report filed on 31.3.2003 by the *Juddhahata Muktijoddha Bachhai Committee* (annex-1 to the affidavit-in-opposition filed by respondent 2) that earlier (prior to 2003) the disabled freedom fighters with disability to the extent of 20% or above were classified in three categories from 1 to 3 and those who had 1-19% disability were not entitled to any state honorarium. In 2003 a fresh medical test was held for determination of the degree of disability of all injured freedom fighters, on furnishing report of which

the disabled freedom fighters were reclassified in six categories from A to F, wherein the disabled freedom fighters having 1-19% disability were placed in category “F”. In the said report it was further observed that according to the Regulations of the Trust the disabled freedom fighters with 1-19% disability were not entitled to any honorarium. However, the Government in the Ministry of Liberation War Affairs while issued the impugned memo provided a fixed allowance of Taka 600/= for them (subsequently enhanced to Taka 3600/=). The relevant portions of the said report dated 31.3.2003 are quoted below:

“ ১২। বাংলাদেশ মুক্তিযোদ্ধা কল্যাণ ট্রাস্ট কর্তৃক সম্মানী প্রদানের জন্য প্রণীত শ্রেণী বিভাজিতে তিনটি ধাপ থাকায় একই ধাপের প্রথম ও শেষ যুদ্ধাহত মুক্তিযোদ্ধার ভাতা এবং পঙ্গুত্বের পরিমাণের মধ্যে অধিক মাত্রার ব্যবধান রয়েছে। অর্থাৎ অনেক কম ও বেশী পঙ্গুত্বের মাত্রাসম্পন্ন যুদ্ধাহত মুক্তিযোদ্ধাগণ একই পরিমাণ ভাতাপ্রাপ্ত হচ্ছেন। প্রচলিত সম্মানী ভাতার ধাপ ও হার নিম্নরূপ :

ক্রমিক নং	শ্রেণী	মাসিক ভাতা	চিকিৎসা	সাহায্যকারী	খাদ্য	বিবিধ	মোট
১।	সম্পূর্ণ পঙ্গু যুদ্ধাহত মুক্তিযোদ্ধা ক। হুইল চেয়ারে চলাচলকারী খ। দুই হাত নাই ও অন্ধ	২১৭৬/-	৫০০/-	১৬০০/-	১৬০০/-	৬৪০/-	৬৫১৬/-
২।	যুদ্ধাহত মুক্তিযোদ্ধা (পঙ্গুত্ব ৬০%-৯৫%)	২১৭৬/-	৫০০/-	-			২৬৭৬/-
৩।	যুদ্ধাহত মুক্তিযোদ্ধা (আংশিক পঙ্গু)	১৫০৪/-	৫০০/-	-			২০০৪/-

(বাংলাদেশ মুক্তিযোদ্ধা কল্যাণ ট্রাস্ট প্রবিধান মোতাবেক সর্বনিম্ন ২০% পঙ্গুত্বসম্পন্নদের যুদ্ধাহত মুক্তিযোদ্ধা হিসাবে রাষ্ট্রীয় সম্মানী ভাতা প্রদান করা হয় এবং ২০% এর কম আর্থিক ১% হতে ১৯% পঙ্গুত্বের জন্য কোন সম্মানী ভাতা প্রদান করা হয় না।)

“১৩। এ ভারতম্য দূরীকরণের উদ্দেশ্যে মুক্তিযুদ্ধ বিষয়ক মন্ত্রণালয় প্রজ্ঞাপণ অনুযায়ী যুদ্ধাহত মুক্তিযোদ্ধাদের শারীরিকভাবে পরীক্ষা-নিরীক্ষা করে নতুনভাবে বর্তমান পঙ্গুত্বের গুরুত্ব বিবেচনায় মোট ৬ (ছয়) শ্রেণীতে পুনর্বিণ্যাস করা হয়। ০১% হতে ১৯% পঙ্গুত্বের জন্য মুক্তিযোদ্ধা কল্যাণ ট্রাস্ট প্রবিধান অনুযায়ী কোন সম্মানী ভাতা প্রাপ্য হবেন না বলে ভাতার সুপারিশ করা হয়নি।

“১৪। পঙ্গুত্বের শ্রেণীবিণ্যাস ও মাত্রা। আন্তর্জাতিকভাবে স্বীকৃত পস্থা অবলম্বনে বর্তমানে সশস্ত্র বাহিনীতে বিভিন্ন পঙ্গুত্বের জন্য নিম্নলিখিত বিভিন্ন শ্রেণীর শ্রেণী বিণ্যাস চালু আছেঃ

শ্রেণী বিভাগ	পঙ্গুত্বের হার	যাহার জন্য প্রযোজ্য
“এ”(Class A)	৯৬%-১০০%	এই শ্রেণীতে এমন যুদ্ধাহত মুক্তিযোদ্ধা অন্তর্ভুক্ত হয়েছেন যারা শয্যাগত (Bed ridden), নিজে চলাফেরা করতে অক্ষম এবং অন্যের সাহায্য ছাড়া চলতে পারে না। যেমন: ক। দুই চোখ অন্ধ খ। পক্ষাঘাতে শয্যাগত (Quadriplegic) গ। পাগল (মানসিক রোগে স্বাভাবিক বুদ্ধি বিবেচনা রহিত)
“বি”(Class B)	৮১%-৯৫%	এদের পঙ্গুত্বের মাত্রা “এ” শ্রেণী হতে কিছুটা কম কিন্তু এদেরও চলাফেরার জন্য সাহায্যকারী প্রয়োজন। যেমন: ক। দুই হাত বা দুই পা নাই। খ। এক হাত ও এক পা নাই। গ। এক হাত বা এক পা নাই এবং এক চক্ষু অন্ধ।
“সি”(Class C)	৬১%-৮০%	এদের উল্লেখযোগ্য পঙ্গুত্ব আছে কিন্তু এগ্যচ বা কৃত্রিম পায়ের সাহায্যে নিজেই চলাফেরা করতে পারেন। এই শ্রেণীতে নিম্নলিখিত পঙ্গুত্বসম্পন্ন ব্যক্তিগণ অন্তর্ভুক্ত। যেমনঃ ক। বোবা খ। সম্পূর্ণ বধির গ। এক পা কাটা (Amputation of thigh, leg or foot) ঘ। এক হাত কাটা (Amputation of arm, forearm or hand) ঙ। নার্ত বা হাড়ি আহত হয়ে এক পা বা হাত পঙ্গু
“ডি”(Class D)	৪১%-৬০%	এদের পঙ্গুত্বের মাত্রা “সি” থেকে কম কিন্তু আহত হয়ে উল্লেখযোগ্য অক্ষমতা হয়েছে। যেমন: ক। আঘাতের ফলে হাত বা পায়ের হাড়ি ভেঙ্গে কর্মক্ষমতা হ্রাস পেয়েছে খ। এক চোখ অন্ধ গ। এক কান বধির ঘ। মুখমণ্ডলে উল্লেখযোগ্য ক্ষত/গতীর দাগ
“ই”(Class E)	২০%-৪০%	এদের পঙ্গুত্ব সাধারণ মানের। অনেকেরই গুলি বা Splinter এর গতীর আঘাত হয়েছিল তবে বর্তমানে পঙ্গুত্বের মাত্রা কম। এরা সাধারণ ভাবে চলাচল করতে সক্ষম। শরীরে আঘাতের গতীর চিহ্ন বর্তমান। কোন কোন ক্ষেত্রে হাত বা পায়ের আঙ্গুলে আঘাত বা কাটা গিয়াছে।
“এফ”(Class F)	০১%-১৯%	এদের পঙ্গুত্বের মাত্রা কম। বেশির ভাগ ক্ষেত্রে শরীরের চামড়ায় ছোট দাগ বা অল্প আঘাতের চিহ্ন বর্তমান। এদের কোন পঙ্গুত্ব নাই।

“১৫। উপরোক্ত বিভিন্ন শ্রেণীর পঙ্গুত্বের শ্রেণীবিণ্যাস অনুযায়ী বাংলাদেশ সশস্ত্র বাহিনী কর্তৃক প্রচলিত অসামর্থতার

নিয়মাবলীর আলোকে, শারীরিক অসামর্থতার মাত্রা পর্যালোচনা এবং বর্তমান জীবন যাত্রার ব্যয়ের মান পর্যালোচনা

পূর্বক যুদ্ধাহত মুক্তিযোদ্ধাদের দৈহিকভাবে পরীক্ষা নিরীক্ষা করে কমিটি কর্তৃক যুদ্ধাহত মুক্তিযোদ্ধাদের পঙ্গুত্বের

পুনঃশ্রেণীবিণ্যাস পূর্বক সম্মানী বৃদ্ধির সুপারিশ করা হয়, যা নিম্নে প্রদত্ত হলোঃ

প্রস্তাবিত পঙ্গুত্বের শ্রেণীবিণ্যাস ও সম্মানীর হার

শ্রেণী	পঙ্গুত্বের পরিমাণ	সম্মানী ভাতার হার
“এ”	৯৬% - ১০০%	৮০০০.০০
“বি”	৮১% - ৯৫%	৫৫০০.০০
“সি”	৬১% - ৮০%	৩৫০০.০০
“ডি”	৪১% - ৬০%	৩০০০.০০
“ই”	২০% - ৪০%	২৫০০.০০
“এফ”	১% - ১৯%	মুক্তিযোদ্ধা কল্যান ট্রাস্টের প্রবিধান অনুযায়ী ভাতা প্রযোজ্য নয়। ”

We have also gone through the judgment and order of the Appellate Division passed in Civil Petition for Leave to Appeal Nos.1157-61 of 2007 [subsequently reported in 14 BLC (AD) 41 (Chairman, Bangladesh Freedom Fighters Welfare Trust and others Vs. Mominul Haque Bhuiyan and others)]. By the said judgment the Appellate Division dismissed all the civil petitions and thereby affirmed the judgment and orders passed by the High Court Division in Writ Petition Nos.955 of 2005, and Writ Petition Nos.3186, 2183, 3362 and 4339 of 2004 making the Rules absolute. In doing so the Appellate Division quoted some passages from the impugned judgment of the High Court Division, which are as follows:

“It is a matter of surprise, that after long lapse of 32 years the degree of disability of the petitioner was again determined by the Committee and pursuant to the report dated 31.3.2003 (annexure-X-3), the State Honorarium of the petitioner was stopped.

“Admittedly, before taking the impugned action, the petitioner was not served any notice of show cause, against the proposed action. He was not given any opportunity to be heard. Natural justice requires that before a person is punished an opportunity to show cause against the proposed punishment should be afforded to him” (in Writ Petition No. 955 of 2005)”

“Admittedly, the petitioners are the Freedom Fighters and seriously wounded in the War of liberation in 1971. They were granted ‘Rastrio Sammani Bhata’ under which they were allowed to receive a sum of Taka 2004 each, on monthly basis, effective from 1-1-1999. The case of the petitioners are that they accrued the vested right to receive “Rastrio Sammani Bhata” which cannot be taken away”. (paragraph 9)

The Appellate Division in dismissing the civil petitions also observed:

“ We called upon the learned Counsel representing the leave petitioners to address the Court as regard the finding of the High Court Division that the writ petitioners were paid Honorarium/Rastrio Sammani Bhata for 32 years in the light of the list prepared and published in the official gazette and that before taking the impugned action i.e. canceling, curtailing, reducing or stopping payment of Honorarium/Rastrio Sammani Bhata whether the writ petitioners were heard or that they were given opportunity to establish the fact that they were and are the Freedom Fighters and to establish that earlier they were listed as Freedom Fighters since they established that fact, i.e., Freedom Fighters, by reliable materials.

“The learned Counsel for the petitioners could not refer to any materials or in other words from the materials as are in the paper books of the respective Petitions for Leave to Appeal nor could produce any materials to establish that before taking the action in respect of the writ petitioners, who established their right to receive Honorarium/Rastrio Sammani Bhata as Freedom Fighters after being listed in the list of Freedom Fighters published in the official gazette and enjoyed the said right for the last 32 years without interruption or question from any corner. In the afore state of the matter we are of the view the High Court Division was not in error in making the Rules absolute upon arriving at the finding that the writ petitioners of the respective writ petitions were deprived of their established right of receiving the Honorarium/Rastrio Sammani Bhata in an whimsical and capricious manner and that action impugned i.e., cancellation/curtailment/reduction/stoppage/non-payment of the Honorarium was a malafide action of the Writ Respondents and same manifest from the nature and kind of action complained of and is evident from materials

on record. The materials in the paper books clearly demonstrate that the action was anything but not fair since the writ petitioners were deprived of the benefits, which they acquired upon establishment of the fact of their being freedom fighters and they were paid for the 32 years, of receiving Honorarium/Rastrio Sammani Bhata in total disregard of the universally accepted principle of natural justice or in others words without hearing them or affording an opportunity to place their case, and the action impugned was taken to their prejudice keeping them in the dark.”

The petitioners in those cases were getting state honorarium from long before at a higher rate, which was subsequently stopped/curtailed/reduced without service of show cause notice. As the subsequent classification was made to their disadvantage, the new category ‘F’ was, therefore, held not applicable for them. The Appellate Division dismissed all the civil petitions on the ground of natural justice as well as their vested rights.

In the present case no document has been annexed to prove the petitioners’ injury as stated in paragraph 1 of the writ petition or their enlistment as disabled freedom fighters prior to 2004. It rather appears from annexes-B and D series that all of them had 5% disability and were enlisted as disabled freedom fighters with the Trust for the first time on 18.9.2004, 18.11.2004, 3.11.2004, 9.10.2005, 3.8.2004, 13.7.2008, 13.8.2005 and 8.12.2005 respectively. Therefore, the question of curtailment or reduction of their honorarium/allowance by a memo dated 28.10.2003 does not arise and no question of serving any show cause notice or claiming the previous higher rate on “vested right” on their part arises. Thus the facts and circumstances of the present case are quite distinguishable from the case of 14 BLC (AD), 41.

Since the present petitioners are disabled freedom fighters with 5% disability and were enlisted with the Trust for the first time in 2004-2008, they cannot claim themselves in any manner to stand on same footing with the disabled freedom fighters who were initially disabled with disability to the extent of 20% or above and getting honorarium at higher rate from 1999.

P. O. 94 of 1972 or any regulations/notification/instruction made thereunder did not provide state honorarium/allowance at the rate of Taka 2004/- for 5% disabled freedom fighters at the relevant time. Whether the respondents would enhance the honorarium/allowance and other financial benefits for them, is a matter of policy decision to be taken by the Government and the Trust. This Court cannot direct them to frame any particular policy or take any decision to that effect. However, we strongly feel that the Ministry of Liberation War Affairs as well as Bangladesh Muktiyodda Kalyan Trust should take necessary step towards enhancement of state honorarium/allowance and other benefits for all freedom fighters with special focus on the disabled freedom fighters.

In view of the above, except making the observations, it is not possible for this Court to grant the relief sought for in this writ petition. Accordingly, the Rule is discharged with the above observations.

Mohammad Bazlur Rahman, J:

I agree.