

12 SCOB [2019] HCD

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 8308 of 2014

Md. Reza Kamal
.....Petitioner

-Versus-

**Secretary, Ministry of Civil Aviation,
Bangladesh Secretariat, Ramna, Dhaka
and others**

..... Respondents

Mr. Al. Mamun Advocate

..... For the petitioner

Mr. Khandaker Deliruzzaman Advocate

.....for the respondent Nos.2 and 9

Heard on 03.11.2016, 08.11.2016,
09.01.2017, 17.01.2017 and 18.01.2017.

Judgment on 30.01.2017 and 31.01.2017.

Present:

Mr. Justice Tariq ul Hakim

And

Mr. Justice Md. Faruque (M. Faruque)

Promotion solely on the basis of an interview;

It appears that there is no specific guideline as to what criteria is to be used for awarding marks in the interview so that the merit of a candidate may be assessed. Not only that the aforesaid order also provides that all persons eligible for promotion i.e. those who have completed a specified number of years in service without having any adverse remarks in this service record will be called for interview with the objective of being promoted. The said process by its nature appears to disregard an employee's performance in his service as well as his Annual Confidential Report (ACR) in the cumulative report about the performance of an employee over a number of months and put together a number of years and they are supposed to reflect an employee's performance in his job. This appears to have been falling disregarded while considering an employees promotion to the next higher post. The aforesaid Administrative Order seems to stipulate that the promotion will be given solely on the basis of an interview but there is no guideline or criteria as to how the interview is to take place and what method is to be used for assessing the merit of the incumbent .
... (Para 18)

In the instant case according to the Administrative Orders of Biman fitness of a candidate for promotion to the higher post is to be on the basis of merit cum seniority an opposed to seniority cum merit. Merit cum seniority means the candidate who has got the highest marks is to be given priority for promotion over other candidates irrespective of his seniority in relation to the other candidates. This process allows the junior most person to supersede his senior if he possesses merit. This is an extra ordinary rule and persons who have put in several years of service may be superseded by his junior colleagues. It is not for this Court to decide whether this system of

giving promotion on the basis of merit cum seniority or seniority cum merit is to be maintained. However, if merit is to get precedence over seniority then the assessment of merit of a candidate must be done most stringently and there should be no scope for arbitrary decisions of pick and choose. ... (Para 22)

JUDGMENT

Tariq ul Hakim,J:

1. This Rule Nisi was issued calling upon the respondents to show cause why the Administrative Order No.15 dated 14.10.2010 (Annexure C) issued by the respondent No.4 and the promotion of the respondent Nos. 8-10 vide Memo No. ঢাকজিএফ/পদোন্নতি/ ২০১২/১১৮৬ dated 20.06.2012 (Annexure F) issued by the respondent No.7 in violation of the Petitioner's fundamental rights guaranteed under Articles 27, 29 and 31 of the Constitution and in contravention of the express provision of Bangladesh Biman Corporation Employees (Service) Regulations, 1979 should not be declared to have been made without lawful authority and of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper .

2. The petitioner is a Ground Service Officer of Bangladesh Biman. He joined the service of Bangladesh Biman Corporation on 4.11.1984 as an Accounts Assistant in the pay group of 3(II) The petitioner performed his duties and responsibilities to the satisfaction of all concerned and was promoted to different posts from time to time and lastly he was promoted to his present post of Ground Service Officer in Pay Group VI .

3. The petitioner's service is governed by Bangladesh Biman Corporation Employees (Service) Regulations, 1979 (hereinafter referred to as the Regulations) . Pursuant to the said regulations Biman authority issues Administrative Orders from time to time and promotion of employees of Biman is governed by the said the Administrative Orders and the the aforesaid regulations . The Administrative Order No.15/2010 dated 18.10.2010 in respect of promotion of officers from Pay Group VI to Pay Group X empowers the interview board to make final selection of candidates to the next higher post . The petitioner appeared before the interview board on 30.5.2012 and was not selected for promotion to the next higher post even though he passed the said interview having attained 70% marks .

4. It is further stated that the petitioner continued in service and was gradually promoted to higher posts with increase in pay scale and in the year 2001 he was in Pay Group V as Junior Ground Service Officer. In October, 2006 the petitioner attended viva voce examination for promotion to Pay Group VI and successfully passed the examination but the respondents promoted some other successful candidates to the Pay Group VI and prepared a panel for promotion for others where the petitioner's name was included . The panel was however valid for 6 months and it is stated that despite vacancies the respondents did not send the file for promotion and the petitioner was not promoted to the higher pay scale VI. On 4.6.2012 the respondents held interview for promotion and although the petitioner attended the same and 38 candidates were successful but the petitioner was unsuccessful by one mark allegedly due to the modifide of the Respondents.

5. Thereafter in 2008 the Petitioner made representation to the caretaker government who enquired into Biman's Promotion procedure and the Respondents again held interview of the

unsuccessful candidates alongwith the petitioner and he became successful in the viva voce examination and promoted to Pay Group VI as Ground Service Officer.

6. Thereafter on 30.5.2012 the respondents called the petitioner and others for interview for promotion to the post of Assistant Manager Ground Service Pay Group VII and the petitioner attended the said examination on 4.6.2012 and subsequently came to know that the respondent No.7 vide Memo No. ঢাকজিএফ/পদোন্নতি/ ২০১২/১১৮৬ dated 20.06.2012 (Annexure F) promoted three ground officers respondent Nos. 8-10 who were junior to the petitioner along with 4 others to the post of Assistant Manager Ground Services in Pay Group VII.

7. Being aggrieved, the petitioner has come to this Court and obtained the present Rule .

8. Mr. Al Mamun, the learned Advocate for the petitioner submits that the said Memo No. ঢাকজিএফ/পদোন্নতি/ ২০১২/১১৮৬ dated 20.06.2012 (Annexure F) issued by the respondent No.7 was illegal and without lawful authority as it was issued pursuant to Administrative Order No.15/2010 which is violative of Articles 27,29 and 31 of the Constitution and is in contravention of the Bangladesh Biman Corporation Employees (Service) Regulations, 1979. The learned Advocate further submits that the impugned Administrative Order No.15/2010 has given Biman unfettered power to promote their selected candidates by manipulating the result on the plea of viva voce exam . The learned Advocate further submits that the impugned Administrative Order No.15/2010 dated 14.10.2010 is contrary to the provision of Bangladesh Biman Corporation Employees (Service) Regulations, 1979 where under section 12(1) it is stated that employees of Biman would be promoted to the next higher post on the basis of requisite educational technical and other qualifications after assessing his fitness in every respect to the post which is to be promoted . The learned Advocate has drawn our attention to the case of **Bangladesh Vs Shafiuddin Ahmed 50 DLR (AD) 27** where it has been held by the Appellate Division that marks in viva voce examination should not exceed 50% of the total marks in an examination for promotion. The learned Advocate has also drawn our attention to an Indian case **Ashok Kumar Yadav Vs. State of Haryana 1985 4 SCC 417** where it has been held that marks in an interview should be set to a minimum and should not exceed 70% while considering candidates for promotion . The learned Advocate finally submits that there the petitioner is a victim of arbitrary assessments of the respondents and deprived from his legitimate right for being properly consideration for promotion. The learned Advocate therefore submits that the impugned Administrative Order No. 15/10 dated 14.10.2010 and the Administrative Order dated 20.6.2012 promoting the respondent Nos. 8-10 should be declared illegal and without lawful authority .

9. The respondent No.2 Bangladesh Biman is contesting this Rule by filing Affidavit-in-Opposition stating inter alia that promotion from Pay Group VI to Pay Group VII in Biman is given on the basis of merit rather than seniority . That rule was first incorporated in Biman by Administrative Order No. 01 if 1998 which was subsequently amended by Administrative Order No. 07 of 2000 and Administrative Order No. 15 of 2010 without changing the aforesaid rule for promotion on the basis of merit rather than seniority . The respondent Nos. 8-10 appeared before the Interview Board for promotion and since they obtained higher marks than the petitioner they were promoted. By amending Administrative Order No. 07 of 2000 by Administrative Order No. 15/10 Biman management did not change the principle of selection process i.e. promotion on the basis of merit and the rule allows all eligible candidates to appear before the Promotion Board

for interview and the candidates having highest merit would be promoted to the next higher post. The petitioner along with others appeared before the Interview Board for interview and the persons who obtained requisite marks were promoted from Pay Group VI to VII and the petitioner not being successful in the said interview he has nothing to be aggrieved and cannot complain about the interview process.

10. It is further stated that Administrative Order No. 15/10 does not in any way prejudice the right of the petitioner to appear before the Promotion Board for interview and that the employee has no right to pray for any consideration to be promoted. As per Biman Rules promotion from Pay Group III to Pay Group V is made on the basis of seniority. It is further stated that employees from Pay Group III to Pay Group V are known as staff and employees from Pay Group VI to Pay Group X are known as officers. Promotion from Pay Group VI to Pay Group X are made on the basis of merit. In the case of a tie in merit seniority is to be considered. The competent authority issued the Administrative Orders to implement the service regulations. The Administrative Order No. 15 of 2010 did not put any embargo on the right of the petitioner and it is equally applicable to all employees of Biman from Pay Group VI to Pay Group X. Biman Management did not pick and choose any candidate for promotion and that the Administrative Order No. 15/10 allows every eligible candidate to appear before the Interview Board to prove his/her merit for promotion and it is said in the instant case no illegality has been done in the case of the petitioner and the impugned order calls for no interference by this Court.

11. Mr. Khandaker Deliruzzaman the learned Advocate for the respondent Nos.2 and 9 submits that the impugned Administrative Order No. 15/10 clearly stipulates that eligible candidates have a right to attend interview for being considered for promotion which will be done on the basis of merit. The learned Advocate further submits that the process for assessing merit has been in existence since 1998 and that the petitioner having obtained a benefit from the said process earlier cannot challenge the same in the instant Rule. The learned Advocate further submits that the petitioner appeared in the viva voce examination before the interview Board and although he was successful in the viva voce examination the candidates who got higher marks were promoted next even though some of them were junior to the petitioner as it was not prohibited by the Biman Regulations. The learned Advocate further submits that the respondent No.9 was promoted in 2012 from Pay Group VI to Pay Group VII by the impugned Administrative Order No. 15 dated 20.6.2012 and subsequently on 22.11.2016 he was further promoted to Pay Group VIII. The said respondent No.9 has already acquired a vested right and it will not be proper to disturb him at this late stage since he cannot be blamed for any wrong. The learned Advocate has drawn our attention to Administrative Order No. 15/10 (Annexure C) which has been repealed by the Administrative Order No. 4 of 2016 dated 28.6.2016 and therefore submits that the instant Rule has become infructuous and is liable to be discharged.

12. We have considered the submissions of the learned Advocates, perused the Writ Petition, Affidavit-in-Opposition and impugned orders.

13. **Section 12(1) of the Bangladesh Biman Corporation Employees (Service) Regulations, 1979** states as follows :

“12. Promotion: (1) An employee of the Corporation will be eligible for promotion to a higher vacant post provided he possesses the requisite educational, technical and other qualifications required for such higher post and is considered fit for

promotion in all respects and fulfills such other conditions as may be laid down in this behalf by the competent authority from time to time.”

14. The aforesaid provision of law clearly stipulates that an employee of Bangladesh Biman may be promoted to a higher post if he possesses the requisite educational, technical and other qualifications required for the said post and is considered fit for promotion in all respects. The provision also requires the incumbent candidate to fulfill all other conditions as may be laid down in this respect by the employer from time to time.

15. It appears that Biman publishes Administrative Orders from time to time to stipulate the educational conditions required for promoting a person to the next higher post. Initially Administrative Order No. 1 of 1998 dated 01.11.1998 was published but it was amended by Administrative Order No. 07 of 2000 and thereafter in supersession of Administrative Order 2000, Administrative Order No. 15 of 2010 dated 14.10.2010 was issued so far it related to the promotion of Biman employees from Pay Group VI to Pay Group X which has been impugned in the instant Rule.

16. The said Administrative Order No. 15 of 2010 dated 14.10.2010 is reproduced below:

জ্বিমান বাংলাদেশ এয়ারলাইন্স লিমিটেড
প্রশাসন পরিদপ্তর

তারিখ-১৪ অক্টোবর ২০১০

প্রশাসনিক আদেশ নং- ১৫/২০১০

বিষয়ঃ পদোন্নতি নীতিমালা সংক্রান্ত প্রশাসনিক আদেশ নং- ০৭/২০০০ সংশোধন।

- ১) পদোন্নতি নীতিমালা সংক্রান্ত প্রশাসনিক আদেশ নং- ০৭/২০০০ তারিখ ১০-০৫-২০০০ উল্লেখ্য।
- ২) কর্তৃপক্ষের সিদ্ধান্তক্রমে প্রশাসনিক আদেশ নং- ০৭/২০০০ তারিখ ১০-০৫-২০০০ এর অনুচ্ছেদ ০১ ক (১) নিম্নরূপভাবে সংশোধন করা হইল-
ক. (১) বেতনক্রম-৬ হইতে ১০ এবং সমপদমর্যাদার পদে পদোন্নতি সাক্ষাৎকার পর্যদের মাধ্যমে পদোন্নতি বিবেচনা করা হইবে। পদোন্নতি সাক্ষাৎকার কৃতকার্যতার গড় নম্বর হইবে শতকরা ৭০ (সত্তর)। উক্ত পদোন্নতি কঠোরভাবে মেধার ভিত্তিতে প্রদান করা হইবে অথ্যাৎ যে প্রার্থী সাক্ষাৎকারে সর্বোচ্চ নম্বর প্রাপ্য হইবেন তিনিই প্রথম পদোন্নতি প্রাপ্ত হইবেন। তবে দুই বা ততোধিক প্রার্থী একই নম্বর প্রাপ্ত হইলে জেষ্ঠ্যতার ভিত্তিতে পদোন্নতি নির্ধারন করা হইবে। অনুমোদিত / ফলস্বরূপ লব্ধ গুণ্য পদের সংখ্যা যাই হোক না কেন পদোন্নতির শর্ত/ যোগ্যতা অর্জনকারী সকল প্রার্থীকে পদোন্নতির জন্য সাক্ষাৎকারে ডাকা হইবে এবং পদোন্নতি পর্যদের সুপারিশের ভিত্তিতে যথাযথ কর্তৃপক্ষের অনুমোদনক্রমে কার্যকর করা হইবে।
০৩) প্রশাসনিক আদেশ নং- ০৭/২০০০ তারিখ ১০-০৫-২০০০ সংশোধনক্রমে এই আদেশ জারী করা হইল যা অবিলম্বে কার্যকর হইবে।

স্বাক্ষর অস্পষ্ট

১৪.১০.১০

(রাজপতি সরকার)

পরিচালক প্রশাসন (এ্যাঙ্টিং)

বিতরণঃ

- ০১। সকল পরিচালক।
- ০২। সকল মহাব্যবস্থাপক/ অধ্যক্ষ, বিএটিসি/ হিসাব নিয়ন্ত্রক/ চীফ অব ট্রেনিং/ চীফ অব টেকনিক্যাল / চীফ অব ফ্লাইট সেফটি/ চীফ অব সিডিউল এন্ড প্লানিং/ চীফ ফ্লাইট ইঞ্জিনিয়ার/ প্রধান চিকিৎসক সেক্রেটারী।
- ০৩। সকল উপ-মহাব্যবস্থাপক/ প্রধান প্রশিক্ষক/ উপ-প্রধান প্রকৌশলী।

- ০৪। ব্যবস্থাপনা পরিচালক ও সিইউ মহোদয়ের ব্যবস্থাপক সমন্বয়-ব্যবস্থাপনা পরিচালক ও সিইও মহোদয়ের সদয় অবগতির জন্য।
- ০৫। সকল ব্যবস্থাপক/ জেলা ব্যবস্থাপক/ স্টেশন ব্যবস্থাপক।
- ০৬। সকল এন্ট্রি ম্যানেজার ডিফ্রিক ম্যানেজার/ রিজিওনাল ম্যানেজার/ এরিয়া ম্যানেজার/ স্টেশন ম্যানেজার/ ম্যানেজার অপারেশন্স/ ম্যানেজার ফাইন্যান্স।
- ০৭। সকল সহকারী ব্যবস্থাপক/ স্টেশন হিসাব রক্ষক/ ভারপ্রাপ্ত শাখা প্রধান।
- ০৮। সকল প্রশাসনিক সেল। ”

১৭. According to the aforesaid Administrative Order promotion to a higher post in Pay Group VI to Pay Group X will be given solely on the basis of an interview and that the pass marks for the interview will be 70%. In the interview the merit of the incumbent will be assessed and the person getting the highest marks will be given priority in respect of promotion. The said order further provides that all persons eligible for being promoted to the higher post will be called for interview. Thus the aforesaid method of giving promotion gives considerable discretion to the person taking the interview.

18. It appears that there is no specific guideline as to what criteria is to be used for awarding marks in the interview so that the merit of a candidate may be assessed. Not only that the aforesaid order also provides that all persons eligible for promotion i.e. those who have completed a specified number of years in service without having any adverse remarks in this service record will be called for interview with the objective of being promoted. The said process by its nature appears to disregard an employee's performance in his service as well as his Annual Confidential Report (ACR) in the cumulative report about the performance of an employee over a number of months and put together a number of years and they are supposed to reflect an employee's performance in his job. This appears to have been to falling disregarded while considering an employees promoion to the next higher post. The aforesaid Administrative Order seems to stipulate that the promotion will be given solely on the basis of an interview but there is no guideline or criteria as to how the interview is to take place and what method is to be used for assessing the merit of the incumbent.

19. In *Bangladesh Vs. Shafiuddin Ahmed reported in 50 DLR (AD) 27* it has been held

“In the present cases Commander Pilots working in a commercially oriented Airlines are not being selected for promotion to the Selected post of Deputy Operations Manager. Deputy Secretaries are being considered for promotion to the Selected Posts of Joint Secretary. Additional Deputy Commissioners and the like are being considered for promotion to the Selected Posts of Deputy Secretary. They have already put in a number of years in Government service which is basically different from working as a Pilot in a Commercial Airline. Evaluation of their efficiency, conduct, discipline, comprehension, initiative, zeal to work, honesty, personality and various other requirements of service have been recorded each year in their respective ACRs. That ought to be the most dominant and persuasive document for the purpose of evaluating the candidates' eligibility for the promotion post. The marks fixed for interview should be minimum so as not to upset the accumulated credits achieved by the candidates over the years in their respective ACRs by a momentary impression created in the minds of the Interview Board before which the candidates cannot possibly appear for more than a few minutes. There is a strong need to protect the public servant from the propensity of politicization of administration by a party Government by keeping the marks for interview as

minimum as possible so that the scope of arbitrariness and the possibility of pick and choose are absolutely minimized. We would therefore agree with the ultimate decision of the learned majority Judges of the Special Bench that allocation of 40% marks for interview in the context of the situation obtaining in our country and in the context of the finding that the guidelines were arbitrarily departed from, was lopsided and was capable of being used arbitrarily and that 15% marks for interview under the circumstances would be a safe marking system for protecting the neutral character of public service”

20. In the aforesaid decision it has been clearly stated that marks fixed for interview should be kept to a minimum so that the accumulated credits achieved by the candidates over the years in their respective ACRs should not be disregarded by a momentary impression created in the minds of the Interview Board.

21. In the case of *Ashok Kumar Yadav Vs. State of Haryana (1985) 4 SCC 417* the Indian Supreme Court following the recommendations of Public Service Commission reduced the percentage marks to 12.2% from 17.11% of the total marks in an examination for suitability of a person for promotion to the next higher post.

22. In the instant case according to the Administrative Orders of Biman fitness of a candidate for promotion to the higher post is to be on the basis of merit cum seniority an opposed to seniority cum merit. Merit cum seniority means the candidate who has got the highest marks is to be given priority for promotion over other candidates irrespective of his seniority in relation to the other candidates. This process allows the junior most person to supersede his senior if he possesses merit. This is an extra ordinary rule and persons who have put in several years of service may be superseded by his junior colleagues. It is not for this Court to decide whether this system of giving promotion on the basis of merit cum seniority or seniority cum merit is to be maintained. However, if merit is to get precedence over seniority then the assessment of merit of a candidate must be done most stringently and there should be no scope for arbitrary decisions of pick and choose. In the case of giving promotion on the criteria of seniority cum merit persons who are senior but less meritorious get priority for promotion . In the case of ‘merit cum seniority’ persons meritorious persons get priority for promotion even if they are junior.

23. According to Administrative Order No. 15 of 2010 the criteria for promotion is the candidates performance in the interview. 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 employer to act arbitrarily and defeat the scope of ascertaining the actual meritorious candidates. We are therefore of the opinion that the Administrative Order No. 15 of 2010 dated 14.10.2010 (Annexure C) stipulating promotion to the higher post will be given solely on the basis of interview is not sustainable in law .

24. The submission of the learned Advocate for the respondents that the said Administrative Order has been repealed by the Administrative Order No. 04 of 2016 dated 28.06.2016 and the Rule issued on the said basis has become infructuous is totally misconceived. Steps taken by an administrative authority regarding a matter before a Court for adjudication in which the administrative authority is a party to a judicial proceeding is an attempt to preempt a judgment and cannot be condoned. This finds support from a judgment of the Appellate Division in the case of *Syed Mohammad Salem Azam Vs. Bangladesh reported in 47 DLR (AD) (1995) 38* simply because the said Administrative

Order has been repealed by a subsequent Administrative Order by maintaining similar provision will not help the respondents.

25. The impugned orders being Memo No. ঢাকজিএফ/পদোন্নতি/ ২০১২/১১৮৬ dated 20.06.2012 (Annexure F) promoting other officers of Biman including the respondent Nos. 8-10 are tainted with malafide and cannot be condoned. However, in view of the fact that almost 5(five) years has elapsed since issuing of the said impugned Memo we refrain from interfering with the same as the said persons have also acquired a vested right to remain in their post and nothing is on record before us to show that they have committed any misrepresentation or illegalities to get their promotions. However, due to the unlawful method adopted by the respondent Biman in assessing the candidates' fitness for promotion to the higher post solely on the basis of a momentary interview the petitioner has been aggrieved and we feel that justice will be done if he is also promoted to Pay Group VII from the date of issuance of the impugned Memo i.e on 20.06.2012.

26. For the ends of justice therefore the seniority list of the promoted persons by the impugned order dated 20.6.2012 (Annexure F) should also be reviewed/reconstructed in terms of their seniority in their last post i.e. Pay Group VI excluding the respondent No.9 who has been promoted to Pay Group VIII by now.

27. It should be noted further that although the petitioner's appointment/promotion will be effective from 20.6.2012 he will be entitled to salary and other financial benefits including retirement benefits from the date of this judgment.

28. The submission by the learned Advocate for the respondent that if the petitioner is promoted to the higher post for being deprived of the same earlier due to the arbitrary character of Administrative Order No. 15 of 2010 then other officers of Biman who have been deprived from promotion due to the said Administrative Order will also come to this Court and seek orders for promotion with retrospective effect and the floodgates of litigation will be opened is totally misconceived in view of the fact that much water has already flown below the bridge and those promoted already have acquired vested rights and the aggrieved persons will have no equity due to their delay in coming to this Court and will be deemed to have waived their rights and acquiesced in the decisions of the Respondents.

29. It has been pointed out by the learned Advocate for the respondents that the Administrative Order No. 4 of 2016 came into effect on 28.06.2016 repealing the earlier Administrative Order No.15 of 2010 dated 14.10.2010. However the said provision for promoting employees from Pay Group VII to X solely on the basis of interview still remains. Since the aforesaid Administrative Order has not been challenged it is not before us for adjudication and we refrain from passing any order on that score.

30. However as stated earlier, such practice for providing promotion to the employees solely on the basis of an interview is unfair and creates sufficient scope for arbitrariness and unlawful decisions for which aggrieved persons may take the opportunity of getting redress. It is therefore hoped that the respondents Biman authority shall take appropriate measure in this regard to fill up the lacuna. In this respect it is to be pointed out that in several decisions in the Indian jurisdiction including *B.V. Sivalah V. K. Addanki Babu reported in 1998 6 SCC 720* as well as *Horigovind Yadav Vs. Rewa Sidhi Gramin Bank and others in (2006) 6 SCC 145* promotions with seniority were given to certain officers

with retrospective effect for not having been promoted earlier for the ends of justice and in the instant case we feel that the petitioner is in a similar position and has been deprived unlawfully by an unfair method of selection for promotion and deserves to be promoted along with those listed in the impugned order (Annexure F).

31. Thus in view of the aforesaid matters, we find merit in this Rule and accordingly it is made absolute.

32. Before parting with this judgment, we wish to record our appreciation for the learned Advocate Mr. Al Mamun and Mr. Khandaker Deliruzzaman for assisting this court in this matter during the several days of hearing.

33. There will be no order as to costs.