15 SCOB [2021] AD 102

APPELLATE DIVISION

Present:
Mr. Justice Syed Mahmud Hossain, *Chief Justice*
Mr. Justice Hasan Foez Siddique
Mr. Justice Md. Nuruzzaman
Mr. Justice Obaidul Hassan

CIVIL PETITION FOR LEAVE TO APPEAL NO.2844 OF 2017
(From the judgment and order dated 12.04.2017 passed by the Administrative Appellate Tribunal, Dhaka in A.A.T. Appeal No.260 of 2012)

Md. Syedul Abrar, son of late Ahmed Hossain	**:**	……..…..Petitioner
Vs.		
Government of Bangladesh, represented by the Secretary Ministry of Primary and Mass Education, Bangladesh Secretariat, Dhaka and others	**:**	…..…Respondents

For the petitioner	**:**	Mr. Sheikh Mohammad Murshed, Advocate, instructed by Mr. Md. Taherul Islam, Advocate-on-Record.
For the respondents	**:**	Not represented.
Date of hearing and judgment	:	The 10th day of December, 2020.

Editor's Note:
The petitioner was a teacher at a government primary school. A departmental proceeding was drawn against him for misconduct. An inquiry against him was conducted ex parte and second show cause notice was served to him without annexing the inquiry report for which he could not take any defense. The authority ultimately dismissed the petitioner from service.
Being aggrieved, the petitioner filed a departmental appeal before the Appellate authority, but the same was not disposed within 2 months as per the provisions of the Administrative Tribunal Act. Therefore, he filed administrative tribunal case before the Administrative Tribunal, Chittagong. Administrative Tribunal set aside the impugned order of dismissal. On appeal the decision was reversed by the Administrative Appellate Tribunal. The petitioner then filed a leave to appeal before the Appellate Division of the Supreme Court. The impugned decision of the Administrative Appellate Tribunal was set aside by the Appellate Division on the ground, among others, that the petitioner was not given opportunity to cross-examine the witnesses or to produce evidence in his

favour according to Rule 10 of the Government Servants (Discipline and Appeal) Rules 1985.

Key Words:
Administrative Tribunal; Administrative Appellate Tribunal; Departmental Inquiry Report; Natural Justice; Disciplinary Proceeding.

Government Servants (Discipline and Appeal) Rules 1985, Rule 7(5)
Requirement of Providing Inquiry Report along with the second show cause notice:
From the evidence on record, it also appears that on 01.06.2005 the second show cause notice had been issued upon the petitioner. But along with the second show cause notice, no copy of inquiry report had been attached, which is the violation of Rule 7(5) of the Government Servants (Discipline and Appeal) Rules, 1985. Rule 7(5) of the Rules, 1985 provides that the authority would communicate the accused-applicant with the copy of inquiry report with their decision thereof. But this provision has been violated in the instant case. ...(Para 12)

Government Servants (Discipline and Appeal) Rules 1985, Rule 10:
In disciplinary matters the provisions of the Government Servants (Discipline and Appeal) Rules, 1985 and the principles of natural justice are required to be followed properly:
In the instant case, the authority i.e. the respondents-opposite parties failed to follow the procedures provided in the Rules, 1985 accordingly. The petitioner was not given any opportunity to be heard. The inquiry proceeding was held ex-parte, which was not in accordance with law. At the same time the petitioner was not given opportunity to cross-examine the witnesses or to produce evidence in his favour according to Rule 10 of the Rules, 1985. Besides the respondents claimed that the date of hearing fixed on 10.04.2005 and 04.05.2005 were informed to the petitioner, but from the materials on record, it appears that the respondents had not produced any copy of notice given to the petitioner fixing the date of hearing on 10.04.2005 and 04.05.2005 respectively. ... However, in consideration of the matters discussed above, we are of the view that the Administrative Appellate Tribunal committed a serious error of law in not considering the provisions of the Government Servants (Discipline and Appeal) Rules, 1985 in toto and the principles of natural justice properly. So, we are constraint to interfere.
...(Para 13, 14 & 16)

JUDGMENT

Obaidul Hassan, J.

1. This Civil Petition for Leave to Appeal is directed against the judgment and order dated 12.04.2017 passed by the Administrative Appellate Tribunal, Dhaka (hereinafter referred to as AAT) in A.A.T. Appeal No.260 of 2012 allowing the appeal.

2. Facts necessary for the disposal of the petition are that the petitioner as applicant filed the A.T. Case No.10 of 2006 in the Administrative Tribunal, Chittagong (hereinafter referred to as AT) stating, *inter alia,* that on 08.10.1987 the applicant joined in service as an Assistant Teacher of Government Primary School. He did his job very honestly, sincerely, with devotion and entire satisfaction of the authority. While the applicant was posted at Kadalpur

Government Primary School under Upazilla–Rawjan, District-Chittagram, a departmental proceeding was drawn against him for the charge of misconduct proposing penalty of dismissal from service under Government Servants (Discipline and Appeal) Rules, 1985 (shortly, the Rules, 1985) alleging, *inter alia*, that on 18.12.2004 the applicant brought false allegation to the Deputy Director, Primary Education, Chittagram against one Md. Nuruzzaman and Md. Nurul Absir. Another allegation was that the applicant was found unauthorized absent by the Assistant Director on 19.12.2004 when he went to visit the school, and the last allegation was that on 18.09.2004 the applicant made an allegation against Md. Jahangir, an Assistant Teacher that, one of his educational certificates is forged. The applicant submitted written statement on 31.01.2005 and denied the allegations made against him save and except the last one that one of the certificates regarding date of birth of Md. Jahangir, Assistant Teacher is forged one, but the authority without considering the written statement, appointed one Mr. Anwar Hossain as Inquiry Officer, who served a notice to the applicant to appear before him on 03.04.2005. The applicant on 31.03.2005 prayed for 15 days time for collecting evidence and shifting the place of inquiry stating the reason in the application. The Inquiry Officer without considering the application on due date inquired the matter ex-parte. Thereafter, the authority without considering the materials on record served the second show cause notice without annexing the inquiry report and, as such, the applicant could not take defence in the reply of the second show cause notice. The authority without considering the materials on record illegally dismissed the petitioner from service on 10.07.2005.

3. Being aggrieved by the aforesaid decision, the applicant on 14.09.2005 filed departmental appeal before Appellate Authority. But the same was not disposed of within 2 (two) months as provided in the amended provisions of the Administrative Tribunal Act, 1997 as such the applicant filed A.T. Case before the Administrative Tribunal, Chittagong.

4. The opposite party Nos.3-5 contested the case by submitting written statement denying the allegation made in the plaint contending, *inter alia*, that the departmental proceeding was initiated against the applicant under Section 3(b) of the Government Servants (Discipline and Appeal) Rules, 1985 for the allegations of misconduct. The applicant was given all opportunity for taking his defence in the proceeding, but he did not appear before the Inquiry Officer intentionally and, as such, the authority rightly dismissed the petitioner from service by the order dated 10.07.2005. So, the case is liable to be discharged.

5. The learned Member of the Tribunal after hearing the parties and considering all materials on record allowed the case of the applicant setting aside the impugned order of dismissal from service by the judgment and order dated 10.06.2012.

6. Being aggrieved by and dissatisfied with the said judgment and order, the opposite parties filed appeal before the Administrative Appellate Tribunal, Dhaka, which was heard by the said Tribunal, subsequently the appeal was allowed by the judgment and order dated 12.04.2017.

7. Being aggrieved by and dissatisfied with the aforesaid judgment and order dated 12.04.2017, the petitioner preferred this Civil Petition for Leave to Appeal before this Division.

8. Mr. Sheikh Mohammad Murshed, the learned advocate, appearing for the petitioner, has taken us through the judgment and order dated 12.04.2017 passed by the Administrative

Appellate Tribunal, Dhaka, the relevant provisions of the Government Servants (Discipline and Appeal) Rules, 1985 and the connected materials on record and submits that the member of the Tribunal found that getting the departmental inquiry report by the applicant is a mandatory requirement as per Rule 7(5) of the Government Servants (Discipline and Appeal) Rules, 1985 for his defence. The respondent authority did not supply the inquiry report with the second show cause notice to the applicant nor filed the said report before the Member of the Tribunal with the written statements, giving opportunity to the petitioner-applicant for defence. But the Administrative Appellate Tribunal committed an error in holding a wrong presumption that since the applicant did not mention about inquiry report in the reply of the second show cause notice, so it may be presumed that he got it. This presumption is without any evidence and relying the decision reported in ***18 BLC (AD) 226***, which is not at all applicable here. He also submits that the Appellate Tribunal erred in law in holding that, "তদন্তকারী কর্মকর্তা যৌক্তিকভাবে তার আবেদন অগ্রাহ্য করেন এবং বিধিসম্মতভাবে তার অনুপস্থিতিতে একতরফা তদন্ত পরিচালনা করেন।" He next submits that the applicant filed an application before the Inquiry Officer praying for adjournment of the inquiry on the ground of adducing evidence and for shifting the place of inquiry for want of security, which was rejected and ex-parte inquiry was done and thereby the petitioner was highly prejudiced as the petitioner was dismissed from the service on the basis of the said inquiry report. He further submits that in an offence of misconduct, the authority can impose penalties minor or major as per rule 4 of the Government Servants (Discipline and Appeal) Rules, 1985 considering the gravity of the offence. But in this case, the authority without considering the long 18 years unblemished service career of the petitioner as Primary School Teacher and without considering the gravity of allegation, imposed highest penalty and dismissed him from service which was not considered by the authority as well as Appellate Tribunal while confirmed the penalty of dismissal from the service. He next submits that the Administrative Appellate Tribunal failed to consider that the petitioner was not given chance to defend him as per Rules 7 and 10 of the Government Servants (Discipline and Appeal) Rules, 1985, because he was refused to take part in inquiry and thereby he could not give evidence and cross-examine the witnesses in the departmental inquiry. He finally submits that the Administrative Appellate Tribunal committed an error of law in considering the decision in the case of ***Bikash Ranjan Das Vs. the Chairman Labour Court*** reported in ***29 DLR (SC) 280*** and in the case of ***Trading Corporation of Bangladesh Vs. Kazi Abdul Hai*** reported in ***17 BLD (AD) 156*** considering the departmental inquiry report as domestic inquiry whereas our Apex Court as well as law gave wide jurisdiction to the Tribunal to see all materials on record for proper adjudication of the matter.

9. No one appears to represent the respondents.

10. We have examined the judgment and order dated 12.04.2017 passed by the Administrative Appellate Tribunal, Dhaka, the relevant provisions of the Government Servants (Discipline and Appeal) Rules, 1985 and the connected materials on record. From the materials on record it appears that on 08.10.1987 the petitioner joined in service as an Assistant Teacher of Government Primary School. While the applicant was posted at Kadalpur Government Primary School under Upazilla–Rawjan, District-Chittagram a departmental proceeding was drawn against him for the charge of misconduct proposing penalty of dismissal from service under Government Servants (Discipline and Appeal) Rules, 1985 alleging that on 18.12.2004 the applicant brought false allegation to the Deputy Director, Primary Education, Chittagram against Md. Nuruzzaman and Md. Nurul Absir. Another allegation is unauthorized absent of the applicant found by the Assistant Director on 19.12.2004 when he went to visit the school and the last allegation was that on 18.09.2004

the petitioner made allegation against Md. Jahangir, Assistant Teacher that one of his educational certificates is forged. The petitioner submitted written statement on 31.01.2005. The authority appointed one Mr. Anwar Hossain as Inquiry Officer, who served a notice to the petitioner-applicant to appear before him on 03.04.2005. The petitioner-applicant on 31.03.2005 prayed for 15 days time for collecting evidence and also prayed for shifting the place of inquiry stating the reason in the application. The Inquiry Officer rejected the said application and heard the matter ex-parte. Thereafter, the authority without considering the materials on record served the second show cause notice, but the petitioner-applicant could not take defence in the reply of the second show cause notice. Then, the authority dismissed the petitioner from service on 10.07.2005. The petitioner-applicant preferred appeal before the Administrative Tribunal, the same was allowed. Thereafter, government preferred appeal against the judgment and order of the Administrative Tribunal, Chattogram before the Administrative Appellant Tribunal (AAT) and the AAT allowed the appeal preferred by the opposite parties dismissing the petitioner-applicant from service.

11. Now the question before us is that whether the dismissal of the petitioner from the service was legal. The Administrative Appellate Tribunal while confirming the dismissal of the petitioner held that, in case of imposing minor punishment to hear the accused applicant is mandatory but in case of imposing major punishment it is not essential to hear the applicant. The observation of AAT is true in one context. Because Rule 8(a) of the Government Servants (Discipline and Appeal) Rules, 1985 provides that if the concerned authority is satisfied that the accused would be suspended or dismissed from the service for the reasons of conviction of criminal charge, then the provision of Rules 6 and 7 shall not apply to give the opportunity to the accused-applicant, but in rule 8(b) it has been mentioned that if the concerned authority thinks that the service of the notice upon the person against proceeding has been initiated is not practicable in that case the authority must record the reasons in writing. From the evidence on record of the instant case, it is found that the authority did not record any such reason for non serving of the notice upon the applicant. The petitioner has been dismissed without getting any opportunity of being heard, which is an absolute violation of the principle of natural justice.

12. From the evidence on record, it also appears that on 01.06.2005 the second show cause notice had been issued upon the petitioner. But along with the second show cause notice, no copy of inquiry report had been attached, which is the violation of Rule 7(5) of the Government Servants (Discipline and Appeal) Rules, 1985. Rule 7(5) of the Rules, 1985 provides that the authority would communicate the accused-applicant with the copy of inquiry report with their decision thereof. But this provision has been violated in the instant case and the instant case was heard ex-parte. It was held in the case of ***Government of Bangladesh, represented by the Secretary, Ministry of Post, Telegraph and Telecommunication & others vs. Mr. Abul Khair [9 MLR (AD) 221]*** that, ***"Government servants have to be dealt with in accordance with law and the principles of natural justice in disciplinary proceedings.***

When disciplinary proceedings are not conducted in accordance with the rules of procedure and principles of natural justice, the order of punishment passed therein not sustainable in law."

13. Thus in the instant case, the authority i.e. the respondents-opposite parties failed to follow the procedures provided in the Rules, 1985 accordingly. The petitioner was not given any opportunity to be heard. The inquiry proceeding was held ex-parte, which was not in accordance with law. At the same time the petitioner was not given opportunity to cross-

examine the witnesses or to produce evidence in his favour according to Rule 10 of the Rules, 1985.

14. Besides the respondents claimed that the date of hearing fixed on 10.04.2005 and 04.05.2005 were informed to the petitioner, but from the materials on record, it appears that the respondents had not produced any copy of notice given to the petitioner fixing the date of hearing on 10.04.2005 and 04.05.2005 respectively.

15. We have gone through the decisions in the case of ***Bikash Ranjan Das vs. the Chairman Labour Court*** reported in ***29 DLR (SC) 280*** and the case of ***Trading Corporation of Bangladesh vs. Kazi Abdul Hai*** reported in ***17 BLD (AD) 156*** as cited by the respondents. The facts of the above cases do not match with the facts of the present case. Each and every case is to be considered on the basis of the fact of the case itself. The decisions as cited by the respondents do not have any manner of application in this case.

16. However, in consideration of the matters discussed above, we are of the view that the Administrative Appellate Tribunal committed a serious error of law in not considering the provisions of the Government Servants (Discipline and Appeal) Rules, 1985 in toto and the principles of natural justice properly. So, we are constraint to interfere.

17. With the above findings, the petition is **disposed of.**

18. The judgment and order of the Administrative Appellate Tribunal is hereby set aside.