

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain,
Chief Justice
Mr. Justice Muhammad Imman Ali
Mr. Justice Hasan Foez Siddique
Ms. Justice Zinat Ara
Mr. Justice Md. Nuruzzaman

CIVIL REVIEW PETITION NO.659 OF 2017.

(From the judgment and order dated 01.09.2016 passed by the Appellate Division in Civil Petition for Leave to Appeal No.1690 of 2014.)

The Government of Bangladesh, Petitioners.
represented by the Secretary, Ministry
of Law, Justice and Parliamentary,
Bangladesh Secretariat, Dhaka & others:

=Versus=

S.M. Abdur Rauf and another : Respondents.

For the Petitioners : Mr. Mahbubey Alam, Attorney
General (with Mr. Biswajit
Debnath, Deputy Attorney
General), instructed by Mrs.
Shirin Afroz, Advocate-on-
Record.

For the Respondents : Mr. Rokanuddin Mahmud,
Senior Advocate (with Mr.
Syed Mamun Mahbub,
Advocate) instructed by Mr.
Md. Nurul Islam Bhuiyan,
Advocate-on-Record.

Date of hearing & judgment on: 24-01-2019

J U D G M E N T

Hasan Foez Siddique, J: Delay is condoned.

This civil review petition is directed against the judgment and order dated 01.09.2016 passed by this Division in Civil Petition for Leave to Appeal No.1690 of 2014.

The respondent, while serving as an Additional District Judge, was dismissed from

service by an order dated 23.08.2004. He filed a review petition before the Hon'ble President of the Republic against the said order of dismissal which was rejected on 07.02.2011. Thereafter, he filed Administrative Tribunal Case No.50 of 2011 before the Administrative Tribunal, Bogra which was allowed on 20.02.2012. Appeal before the Administrative Appellate Tribunal preferred by the Government was dismissed on 11.04.2012 as being time barred. The Government then filed Civil Petition for Leave to Appeal No.1690 of 2014 in this Division which was also dismissed as being time barred. Then the Government has filed this review petition.

Mr. Mahbubey Alam, learned Attorney General appearing for the review petitioner, at the outset, drawing our attention to the date of the order of dismissal and date of filing the case before the Administrative Tribunal, submits that the instant Administrative Tribunal case was hopelessly barred by limitation which was not properly addressed in the Administrative Tribunal, thereby, it erroneously entertained the Administrative Tribunal Case. He submits that it is a fit case to exercise jurisdiction of this Division vested under article 104 of the Constitution otherwise an act without

jurisdiction would get seal of validation. He further submits that the Inquiry Officer, finding the charge Nos.3,4 and 5 brought against the delinquent officer proved, submitted his report and the Ministry of Law, Justice and Parliamentary Affairs, taking the approval of the Supreme Court, dismissed him from the service. He submits that Full Court of the Supreme Court approved the proposal of dismissal of the delinquent officer and the learned Chief Justice of Bangladesh presided over the meeting of the Full Court, in which, Supreme Court approved the decision of dismissal, the Administrative Tribunal ignored decision of the Full Court of the Supreme Court although there was no finding about any malafide or the decision taken by the Full Court was coram non-judice.

Mr. Rakanuddin Mahmud, learned Senior Counsel appearing for the respondent, submits that the appeal before the Administrative Appellate Tribunal was time barred and it, finding the appeal as being time barred, dismissed the same. He submits that limitation to prefer appeal is a special limitation provided in the Administrative Tribunal Act, the Administrative Appellate Tribunal did not commit any error of law in dismissing the appeal. He further submits that

the Civil Petition for Leave to Appeal as well as review petition were also time barred, in such view of the matter, the review petition should be dismissed.

It appears from the materials on record that the respondent was dismissed from service on 23.08.2004. He filed review petition before the Hon'ble President of the Republic on 25.04.2004 which was rejected on 07.02.2011 and the petitioner filed the instant Administrative Tribunal Case before the Administrative Tribunal on 28.04.2011, that is, about 7 years after passing the order of dismissal.

To examine the point of limitation, decision of this Division in the case of Md. Sirajul Islam Khan Vs. Bangladesh Bank, Dhaka and others reported in XIII ADC 289 is relevant here. In the cited case, 8(eight) members bench of this Division has observed,

"It appears that a new second proviso has been inserted after proviso No.I in Sub-Section (2) of Section 4 by the Administrative Tribunals (Amendment) Act 1997 (Act No.24 of 1997). According to the said amended provision of Section 4(2) of the Administrative Tribunals Act the appeal pending before the Higher

Administrative Authority shall be deemed to have been disallowed by the authority after the expiry of two months from the date of submissions of the departmental appeal and accordingly the appellant ought to have filed the A.T. Case within six months after the expiry of said two months before the Administrative Tribunal but he did not do so and as such the case before the Administrative Tribunal was barred by limitation.

In Civil Petition for leave to appeal No.1454 of 2008, Bangladesh Supreme Court Digest -2009, Volume-XII, Page.10 the fact was that the petitioner was dismissed from service on 24.01.1995. He preferred departmental appeal on 08.02.1995 and it was rejected on 14.01.2001. In the meantime the Administrative Tribunals (Amendment) Act, 1997 (Act No.XXIV of 1997) came into force on 19.11.1997 whereby new 2nd proviso to section 4(2) of the Act was introduced. This Division approved the view taken by the Administrative Appellate Tribunal that as the amending Act came into force on 19.11.1997 the

appeal to the higher authority by the petitioner deemed to have been rejected on 19.01.1998 i.e. before 19.07.1998 but he filed the A.T. Case on 04.06.2001 long after the statutory period of limitation. Therefore, the Administrative Tribunal Case was hopelessly barred by limitation under section 4(2) of the A.T. Act, 1980.

In Abul Bashar Vs. Investment Corporation of Bangladesh and another, 20 BLD(AD)294 the fact was that the petitioner was an Assistant General Manager of the Investment Corporation of Bangladesh. In exercise of powers under Regulation 56(2) the Investment Corporation of Bangladesh (Officers and Employees) Service Regulations, 1993 the Investment Corporation of Bangladesh terminated the service of the petitioner, as Assistant General Manager of the Corporation on 23 April 1995. The petitioner challenged the order of termination in Writ Petition No.921 of 1995. The petition was summarily rejected on 3 May 1995. The petitioner, thereafter, made a civil petition for leave to Appeal before the Appellate

Division which was also summarily rejected on 13 December 1995. Being unsuccessful, the petitioner filed case No.242 of 1995 before the Administrative Tribunal, Dhaka, on 31 December 1995. being unsuccessful, the petitioner filed case No.242 of 1995 before the Administrative Tribunal, Dhaka, on 31 December 1995, which was beyond time. He, however, sought to have the benefit of section 14 of the Limitation Act on the ground that the time spent for prosecution of the writ petition and the civil petition for leave to appeal should be excluded in computation of the period of limitation prescribed under the Administrative Tribunals Act, 1980. This Division held that it is clear from the wording of the second proviso (Now that is third after the amendment of 1997) to subsection (2) of section 4 of the Administrative Tribunals Act that the legislative intendment behind this provision is to exclude the proceedings governed by the Administrative Tribunals Act from the operation of the benefit conferred by sub-section(2) of section 29

of the Limitation Act, 1908 and while computing the period of limitation in filing an application before the Administrative Tribunal a person can not have the benefit of section 14 of the Limitation Act, 1908. This judgment justifies that limitation in regard to cases under Administrative Tribunals Act, 1980 has to be calculated applying the procedures described in the Act itself and there is very little scope, if not no scope. To deviate from the strict rule of limitation embodied in the Act while dealing with Administrative Tribunals cases.

From the above discussions and findings we are of the view that both the Tribunals below having considered the materials on record rightly arrived at a correct decision in the matter. Accordingly, we do not find any illegality in the impugned judgment and order passed by the Administrative Appellate Tribunal in affirming those passed by the Administrative Tribunals."

In view of the decision referred above, it is apparent on the face of the record that the

instant Administrative Case was hopelessly barred by limitation since the respondent filed the instant case before the Administrative Tribunal after about 7 years of arising its cause of action inasmuch as he was entitled to get 2 months+6 months time to file A.T. Case in view of the second proviso as added in Section 4 of the Administrative Tribunal Act by the Administrative Tribunals (Amendment) Act, 1997 and the interpretation of this Division quoted above. The Administrative Tribunal relied upon the case of Jahangir Kabir (Md.) V. Bangladesh reported in 48DLR(AD)156 but the said A.T. case was instituted in 1987 and Appeal was preferred in 1991 and C.A. was preferred and disposed of in 1995, that is, the same was decided by this Division before amendment of Section 4(2) of the Act by Act XXIV of 1997. This A.T. Case has been filed in 2011, that is, long after the said amendment. The Administrative Tribunal, ignoring the aforesaid facts, most unfortunately, entertained the A.T. case referring Jahangir Kabir's case.

The learned Attorney General submits that the Administrative Tribunal had no jurisdiction to entertain the instant case since the same was hopelessly barred by limitation and that Tribunal

was not authorized to condone the delay. The jurisdiction means the authority by which the a Court/tribunal has to decide the matter that litigated before it, or to take cognizance of matters presented in a formal way for its decision. It is the authority to hear and determine cause, to adjudicate and exercise any judicial power in relation to it. The jurisdiction of the Court/Tribunal may be qualified as restricted by variety of circumstances. The power of the tribunal may be exercised within the limitation provided by the statute. Such limitation of exercising power has been imposed by the Administrative Tribunal Act itself. The essence of the matter was whether the tribunal had power to entertain time barred case and to grant relief. Since the Tribunal was not authorised to entertain time barred case, the decision given by the tribunal was a nullity. The Administrative Tribunal cannot ignore the law declared by the highest Court of the Country and initiate proceeding ignoring the law so declared. The Administrative Tribunal also ignored the decision of 5 members Bench of this Division, that is, case of Abul Basher Vs. Investment Corporation of Bangladesh reported in 20 BLD(AD)294 as quoted earlier.

The Administrative Appellate Tribunal had no opportunity to entertain the time barred appeal in view of the Special Limitation provided in the Act to prefer appeal. In view of peculiar circumstances, question arises as to whether this Court would shut its eyes or not.

In the case of National Board of Revenue Vs. Nasrin Banu reported in 48DLR(AD)171 this Division observed that the words 'complete justice' do not yield to a precise definition. Cases vary, situations vary and the scale and parameter of complete justice also vary. Sometimes it may be justice according to law, sometimes it may be justice according to fairness, equity and good conscience, sometimes it may be in the nature of arbitration, sometimes it may be justice tempered with mercy, sometimes it may be pure commonsense, sometimes it may be the inference of an ordinary reasonable man and so on. It can invoke such jurisdiction whenever it is of the opinion that such power requires to be activated in a given situation that comes to its notice.

The power conferred under Article 104 of the Constitution to this Court is under special circumstances and for special reason having the concept of justice being predominate factor being

the inclusion of such an article in the Constitution. Here in this case it appears to us that the Administrative Tribunal has committed a grave and patent error which cannot be otherwise remedied and that the decision of the Tribunal so far the same relates to limitation of filing A.T. case is concerned is based on total misconception and misapplication of the law which touches the exercise of its jurisdiction. In view of such circumstances, this Court may interfere the same in exercise of its extraordinary power.

We are of the view that in order to resolve the peculiar circumstances it is a fit case for exercise our power vested under article 104 of the Constitution.

In the recent case of Md. Aynul Haque Vs. Government of Bangladesh passed in Civil Petition for Leave to Appeal No.64 of 2010, this Division observed that the facts revealed serious scandal of corruption in connection with his judicial functions. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of an officer and gain notoriety must faster than the smoke. Sometimes there may not be concrete or material evidence to establish the same beyond all reasonable doubt. Judicial service is not a service in the sense of an

employment as is commonly understood. Members of the judicial service, exercising judicial functions, are distinct from the members of other services. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their judicial functions and their over all reputations. There is no manner of doubt that nature of Judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity. Dishonesty is the stark antitheses of judicial polity. We do not make any comment regarding charges as found by the Inquiry Officer proved but to say that the same is unfortunate for the judiciary.

In Md. Aynal Haque's Case (supra) we have already given our observation regarding the authority of the Tribunal to examine the decision of the Full Court which runs as follows:

"Submission of Mr. Farooque that whether the decision of Full Court is amenable or not it is to say that in the very nature of things it would be difficult, nearing almost an impossibility to subject such exercise undertaken by the Full Court except in an extra ordinary case when the Court is convinced that some real injustice, which ought not to have taken

place, has really happened and not merely because there could be another possible view or someone has some grievance about the exercise undertaken by the Full Court. If the authority bonafide forms an opinion relying upon some materials that over all integrity of a judicial officer is doubtful, the correctness of such opinion cannot be challenged in the court unless any violation of law or gross injustice is done. Mr. Farooque failed to show that opinion formed by the Full Court was arbitrary or capricious or said to be irrational so as to shock the conscience of the Court to warrant or justify any interference."

Since we are of the view that the Administrative Tribunal case was not maintainable as being hopelessly time barred the question as to whether the charges brought against the respondent have been proved or not does not deserve any consideration. But it is to be narrated clearly that cancerous cells of corruption constantly keep creeping into the vital veins of the judiciary and need to stem it out by judicial surgery for keeping the stream of justice delivery system unpolluted.

Considering the facts and circumstances, we are of the view that the Administrative Tribunal cannot pass an ex hypothesi decision and, as such, interference over the matter is called for.

Accordingly, the order dated 01.09.2016 passed by this Division is reviewed and set aside. The decisions of the Administrative Tribunal and the Administrative Appellate Tribunal are set aside.

Thus, the review petition is disposed of.

C. J.

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The 24th January, 2019.
M.N.S./words-2666/