IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 6728 OF 2019
IN THE MATTER OF:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

IN THE MATTER OF:
Md. Harun-Ar-Rashid Hiro alias Mohammad Hero

.... Petitioner

-Versus-

Government of Bangladesh and others

.... Respondents

Mr. Rashed Ahmed Rishat, Advocate
.... For the Petitioner

Mr. Niaz Murshed, Advocate
.... For the Respondent No.3

Judgment on 08th June, 2023

Present:

Mr. Justice Mahmudul Hoque
and
Mr. Justice Md. Mahmud Hassan Talukder

Mahmudul Hoque, J:

In this application under Article 102 of the Constitution Rule Nisi was issued calling upon the respondents to show cause as to why the failure of the respondents to dispose of the appeal of the petitioner observing the provisions of Regulation 44 of "বাংলাদেশ চা বোর্ড এর কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২" so as to implement the judgment and order dated 25.11.2015 passed by the Hon'ble High Court Division of the Supreme Court of Bangladesh in Writ Petition No. 1923 of 2013 filed by the

petitioner (Annexure-‘A’) as well as the removal of the petitioner from the post of Driver as contained in Office Order being Memo No. বিটিবি/স/প্রঃস(২)-৭০/২০০৪/বিভাগীয় মামলা নং-১/২০১০/২৪১(৭) dated 12.04.2011 (Annexure-‘A-1’) issued by the respondent No. 3 on behalf of the respondent No. 2 should not be declared to be without lawful authority and of no legal effect and as to why the respondents should not be directed to reinstate the petitioner in the service, along with arrears, salaries, benefits and other entitlements and/or pass such other or further order or orders as to this Court may seem fit and proper.

The petitioner was appointed by the respondent No. 2 in the post of Driver vide Office Order dated 02.12.2004 issued by the respondent No. 3. Thereafter, the petitioner joined his service on 01.12.2004 and since then the petitioner had been discharging his duties with due diligence.

While the petitioner is in service, Sessions Case No. 29 of 2010 arising out of Sadar Dakkhin Police Station Case No. 48 dated 18.01.2010 corresponding to G.R. Case No. 45 of 2010 was initiated against the petitioner and another under Section 19(1), Serial No. 3(Kha) of the Narcotics Control Act, 1990. Upon conclusion of the trial of the aforesaid case, the petitioner was acquitted from the charges brought against him by the Judgment and Order dated 24.10.2013 passed by the learned Court of Special Sessions Judge, Cumilla in Sessions Case No. 29 of 2010.

In the meantime the respondent No. 3 issued a show cause notice dated 16.03.2010 to the petitioner informing him that he was temporarily suspended from service on 17.01.2010 because of his arrest in the

aforesaid criminal case and asking him to show cause as to why departmental action should not be taken against him. Thereafter, the respondent No. 3 issued charge sheet dated 19.08.2010 against the petitioner asking him to submit reply against the charges.

The petitioner on 05.09.2010, replied to the aforesaid charges framed against him in Departmental Case No. 01 of 2010 denying all the allegations stating that the petitioner was abducted along with the car, and he lost consciousness and thereafter, found himself in the police station, and came to know about carrying of the alleged Phensedyl. The respondent No. 3 issued a show cause notice dated 27.03.2011, enclosing the Inquiry Report dated 24.02.2011 to the petitioner asking him to show cause as to why the petitioner should not be removed from service.

Although, the charges framed against the petitioner in Departmental Case No. 01.of 2010 relating to the aforesaid criminal case, in which the petitioner was acquitted by the said Judgment and Order dated 24.10.2013 passed by the learned Court below, the petitioner was removed under Rule 36(Aa)(Cha) of the service Rules 1992 from the post of Driver as contained in Office Order dated 12.04.2011 issued by the respondent No. 2 during pendency of the aforesaid false criminal case against the petitioner.

Thereafter, on 26.06.2011, the petitioner preferred an appeal before the respondent No. 2 against the impugned removal order dated 12.04.2011 whereupon the respondent No. 3 dismissed the same without giving any cogent reasons vide Memo dated 22.03.2012.

The petitioner earlier filed Writ Petition No. 1923 of 2013 before the Hon'ble High Court Division impugning the said dismissal order of the appeal dated 22.03.2012 passed by the respondent No. 3 whereupon a Division Bench of the Hon'ble High Court Division by the Judgment and Order dated 25.11.2015 was pleased to dispose of the Rule with observations and further directed the respondents to dispose of the appeal of the petitioner observing the provisions of Rule 44 of the Rules 1992.

As per Rule 44(2) of the Rules 1992, the respondent No. 3 had 60 (Sixty) working days to dispose of the appeal of the petitioner for implementation of the said Judgement and order dated 25.11.2015 passed by the Hon'ble High Court Division in Writ Petition No. 1923 of 2013. The respondent No. 3 issued a notice as contained in the Memo dated 20.01.2019 to the petitioner for re-hearing of the appeal, but the respondents failed to dispose of the appeal of the petitioner observing the provisions of Rule 44 of the Rules 1992 till date and, thus, failed to implement the said Judgement and Order dated 25.11.2015 passed by the Hon'ble High Court Division in Writ Petition No. 1923 of 2013.

Respondent No. 3 contested the Rule by filing affidavit-in-opposition contending inter alia that the petitioner was a driver under Bangladesh Tea Board and Bangladesh Tea Board by office order dated 15.02.2009 transferred the petitioner to the Ministry of Commerce and while he was in official duty on 17.01.2010 without obtaining permission from the authority left his work place with the Government car and went to Cumilla where he was arrested with the car at 2.05 am on 18.01.2010

by the police for committing criminal offence and recovered 91 bottles of Phensedyl. Thereafter, a criminal case was lodged against him and in connection with the said offence the said car was remained under the custody of the law enforcing agency. Therefore, Bangladesh Tea Board by office order dated 24.01.2010 suspended the petitioner from service as per Rule 41(5) of the চা বোর্ডের কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২ and thereby initiated departmental proceeding against the petitioner. In course of the departmental proceeding, Bangladesh Tea Board issued show cause notice on 16.03.2010 as to why the departmental action should not be taken against the petitioner under Rule 2(ka) and 35(cha) of the চা বোর্ডের কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২. The petitioner by application dated 05.04.2010 prayed for time to submit reply and that was allowed but did not file any reply. Subsequently, the Secretary, Bangladesh Tea Board framed charge against the petitioner under Rule 2(Ka) and 35(Kha) (Cha) of the চা বোর্ডের কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২ by issuing 'অভিযোগনামা' and 'অভিযোগের বিবরণ' dated 19.08.2010 to the petitioner and asked him to reply within the prescribed period, accordingly, the petitioner on 05.09.2010 submitted reply to the show cause notice.

The Bangladesh Tea Board initiated Departmental Case No. 1 of 2010 and thereby formed 2(two) members inquiry committee on 31.01.2011 and the inquiry committee after completion of the inquiry proceedings submitted detailed report on 24.02.2011. Thereafter, the Secretary, Bangladesh Tea Board issued second show cause notice dated 27.03.2011 enclosing the inquiry report to the petitioner as to why he

should not be removed from service under Rule 36(আ), (Cha), of the চা বোর্ডের কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২. Thereafter, the petitioner on 03.04.2011 replied to the show cause notice, where the petitioner failed to give any satisfactory and cogent reason. The petitioner found guilty of misconduct, therefore, the Chairman, Bangladesh Tea Board by office order dated 12.04.2011 removed the petitioner from service. Subsequently, challenging the same the petitioner on 24.06.2011 preferred appeal and Bangladesh Tea Board by order dated 22.03.2012 rejected the said appeal finding no merit.

The petitioner earlier filed Writ Petitioner No. 1923 of 2013 before the High Court Division challenging the order dated 22.03.2012 by which Bangladesh Tea Board rejected the appeal of the petitioner and a Division Bench of this Division by judgment and order dated 25.11.2015 disposed of the Rule by directing the respondents to dispose of the appeal of the petitioner observing the provision of Rule 44 of the চা বোর্ডের কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২. Accordingly, in compliance with the said judgment, Bangladesh Tea Board in order to dispose of the appeal initiated Departmental Appeal No. 1 of 2019 and by office order dated 16.01.2019 assigned the matter to Member (finance and commerce), Bangladesh Tea Board to take personal hearing of the petitioner. Thereafter, by letter dated 20.01.2019 requested the petitioner to appear on the due date and filed written statements and also to give his personal hearing before the appeal authority. The Member (finance and commerce) and Hearing Officer, Bangladesh Tea Board upon conducting personal hearing of the petitioner,

by letter dated 02.05.2019 submitted report to the Chairman, Bangladesh Tea Board with certain observations and recommendations. Thereafter, Bangladesh Tea Board considering all aspects under the signature of the Secretary of the Board by office order dated 13.06.2019 rejected the appeal maintaining the removal order dated 12.04.2011 passed in Departmental Case No. 1 of 2010.

The High Court Division by its judgment and order dated 25.11.2015 passed in Writ Petition No. 1923 of 2013 observed that "but in the departmental proceeding we find that he was given show cause notice and he gave a reply and the authority followed the procedure, but when the concerned authority disposed of the appeal, they did it in a very mechanical way without saying details" and thereby concluded its judgment by giving direction observing that "we are of the view that it would be wise to ask the respondents to hear the appeal again and to dispose of the same in accordance with law observing the guidelines given in the Regulation 44 of the চা বোর্ডের কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২. Thus, we hereby direct the respondents to dispose of the appeal of the petitioner observing the provisions of regulation 44 of the চা বোর্ডের কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২." Therefore, there has been left only one issue to dispose of the appeal filed by the petitioner as per provisions of regulation 44 of the চা বোর্ডের কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২ and accordingly, in compliance with the said judgment and order passed by the High Court Division in Writ Petition No. 1923 of 2013, Bangladesh Tea Board initiated Departmental Appeal No. 1 of 2019 and disposed of the same

following the provisions of regulation 44 of the চা বোর্ডের কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২.

The petitioner did not challenge the final order, that is, dismissal of appeal dated 13.06.2019 passed in Departmental Appeal No. 1 of 2019 by which maintained the order dated 12.04.2011 passed in Departmental Case No. 1 of 2010, therefore, the Rule issued in the instant writ petition is not maintainable since the issue regarding departmental proceedings initiated under Departmental Case No. 1 of 2010 was adjudicated earlier by the High Court Division in the judgment and order dated 25.11.2015 passed in Writ Petition No. 1923 of 2013.

Bangladesh Tea Board conducted the departmental proceedings in Departmental Case No. 1 of 2010 complying the provisions of regulation 39 of the চা বোর্ডের কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২. Bangladesh Tea Board forwarded the 'অভিযোগনামা' and 'অভিযোগের বিবরণ' on 19.08.2010 to the petitioner and on completion of the proceedings by order dated 12.04.2011 taken final decision of removal of the petitioner from service, that is, final decision was taken within 166 working days as prescribed in the Rule under Rule 39(8) of the উপ-বিধিমালা, ১৯৯২.

The departmental proceedings initiated against the petitioner under Rule 2(Ka) and 35(Kha) (Cha) of the চা বোর্ডের কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২ for misconduct and deception committed by the petitioner and on the other hand the criminal case was lodged against the petitioner by the law enforcing agency for criminal offence committed by the petitioner, therefore, subject matter of the departmental proceeding is totally

different from the subject matter of the criminal case and hence the result of the criminal case does not have any impact in the departmental proceeding.

The petitioner was given adequate opportunity as per Rules and procedure laid down in the চা বোর্ডের কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২ to defend himself and therefore, the allegation of misconduct against the petitioner under Rule 2(Ka) and 35(Kha) (Cha) of the চা বোর্ডের কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২ has been proved and thereby Bangladesh Tea Board has rightly removed the petitioner from service.

Mr. Rashed Ahmed Rishat, learned Advocate appearing for the petitioner submits that the respondent authority ought to have awaited till disposal of criminal case before the Sessions Court before removing the petitioner from service.

He further submits that ultimately the petitioner was discharged in criminal case by its judgment and order dated 24.10.2013 which amply proved that the petitioner was not involved in any criminal activities. As such, after acquittal the authority ought to have reinstated the petitioner in his service, but in the present case the respondent authority in one hand removed the petitioner from service before disposal of the criminal case and on the other hand after acquittal most unfortunately failed to allow the petitioner to join in the service.

He further submits that earlier the petitioner filed Writ Petition No. 1923 of 2013 wherein Rule was made absolute directing the appellate authority to dispose of the appeal observing provisions of Regulation 44

of the "বাংলাদেশ চা বোর্ড এর কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২" but the appellate authority though heard the appeal again but failed to dispose of the appeal as per direction of this Court complying provisions of Regulation 44 of the Rule 1992.

He finally submits that considering gravity of the offence the respondent authority had enough scope to impose simple punishment under Regulation 36 of the Service Rules 1992, as the petitioner had no bad record in his service career, but in imposing penalty upon the petitioner the authority seriously failed to consider the service record of the petitioner, as such, the order of removal from service is on the face of it palpably illegal and against the principle of natural justice.

Mr. Niaz Murshed, learned Advocate appearing for the respondent No. 3 submits that the departmental proceeding was initiated against the petitioner by the respondent authority for failure to discharge duty, obstruction in smooth administration, damage to the property of the authority causing financial loss of Tk. 95,000/- and also for degrading the image and good will of the ministry in the public estimation. He was not charged in any criminal case initiated by the respondent authority. As such, the authority was not required to wait until disposal of the criminal case against the petitioner.

He further submits that in the departmental proceeding the respondent authority afforded sufficient opportunity to the petitioner to depend himself in compliance with all the provisions as provided under Regulation 39 of service Regulations 1992 and removed from service in

accordance with law. The petitioner preferred appeal before the appellate authority which was also rejected maintaining order of removal passed by the authority. However, the petitioner moved another application earlier before this Court in which the appellate authority was directed to rehear the appeal and dispose of the same affording sufficient opportunity to the petitioner complying provisions of Regulation 44 of the Service Regulation 1992. Thereafter, though it was not required by law, but to ensure justice the petitioner was again afforded opportunity to defend himself by constituting another inquiry officer, wherein, he submitted written reply, deposed himself before the inquiry officer and after conclusion of further inquiry, the appellate authority found the petitioner guilty of misconduct and finally appeal was dismissed.

He argued that in the instant writ petition the petitioner has no new ground or allegation of violation of law in removing him from his service. As such, the Rule is liable to be discharged.

We have heard the learned Advocates for the parties, have gone through the writ petition, grounds setforth therein, affidavit-in-opposition all the annexures annexed to the writ petition and affidavit-in-opposition along with the impugned order.

Admittedly, the petitioner was appointed by the বাংলাদেশ চা বোর্ড as driver. His service was transferred to the Ministry of Commerce by a letter dated 15.02.2009. During his duty with Ministry of Commerce, the petitioner took away the car bearing No. চট্র-মেট্রো-খ-১১-০৬৮৭ on 17.01.2010 and 18.01.2010 to Cumilla without prior permission of the authority

wherein police arrested him recovering 91 bottles Phensedyl from his possession with the car in question and taken to custody in connection with G.R. Case No. 45 of 2010. Following the incident the car in question was taken by the police in their custody causing discomfort to the authority and the car was lying in the police custody for about three months. The authority by a letter dated 16.03.2010 issued show cause notice to the petitioner asking him to submit reply why a departmental proceeding shall not be initiated against him.

The petitioner prayed for time on 05.04.2020. The authority allowed him upto 25.04.2010, but no reply was received by the authority, consequently, the authority by Memo dated 19.08.2010 served formal charge sheet upon the petitioner alleging as follows:

> *''যেহেতু উল্লিখিত কর্মকান্ড দ্বারা আপনি*
> *(ক) বিনা অনুমতিতে সরকারী যানবাহন কর্মস্থল ঢাকার বাইরে কুমিল্লা নিয়ে গিয়ে এবং বে-আইনী কাজে ব্যবহার করে গুরুতর অসদাচরন করেছেন।*
> *(খ) কর্তব্য কাজে চরম অবহেলা করেছেন।*
> *(গ) সরকারী কাজে গুরুতর বিঘ্ন সৃষ্টি করেছেন।*
> *(ঘ) সরকারী সম্পদের ক্ষতি করেছেন।*
> *(ঙ) চা বোর্ডের প্রায় ৯৫,০০০/- টাকার আর্থিক ক্ষতি সাদন করেছেন।*
> *(চ) চা বোর্ড ও বাণিজ্য মন্ত্রনালয়ের সুনাম ক্ষুন্ন করেছেন।''*

along with details of charge against him. Thereafter by a letter dated 31.01.2011 an inquiry committee was fromed comprising two members. The inquiry committee after compliance of procedure recorded evidences submitted report on 24.02.2011 finding the petitioner liable for the offence levelled against him. After receipt of inquiry report, the authority by a letter dated 27.03.2011 asked the petitioner to show cause why he should not be removed from service within 07(seven) days from the date of receipt of the notice enclosing inquiry report. The petitioner

replied to the show cause on 03.04.2011 which was considered by the authority and finally found the same not satisfactory, resultantly, the petitioner was removed from service under Regulation 36 (আ) (চ) of the বাংলাদেশ চা বোর্ড এর কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২. Thereafter, the petitioner filed an application for review of the order on the ground that he has been acquitted by the court in criminal case. The authority considered his prayer and after consideration, by a letter dated 22.03.2012 informed the petitioner that the departmental proceeding was initiated by the authority against him not for implication in a criminal case, but it was initiated for serious misconduct failing to discharge official duty, creating obstruction in smooth function of the office and damage of the public property and there was no nexus of his removal with any criminal proceeding. The petitioner preferred appeal before the appellate authority, the appellate authority rejected the appeal maintaining order of removal of the appointing authority. Thereafter, the petitioner moved this Court by filing Writ Petition No. 1923 of 2013 in that writ petition this Court by judgment and order dated 25.11.2015 disposed of the Rule directing the appellate authority to hear the appeal again and to dispose of the same in accordance with law observing the guide line given in the Regulation 44 of the বাংলাদেশ চা বোর্ড এর কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২.

Thereafter, the appellate authority again took the appeal for rehearing and issued notice to the petitioner on 20.01.2019 fixing date on 22.01.2019 to appear before the appellate authority for personal hearing. Accordingly, departmental Appeal Case No. 01 of 2019 initiated, the

petitioner appeared on the date and time fixed, he was given sufficient opportunity to defend himself by submitting written statement and all other connected papers. The person who heard the appeal by letter dated 02.05.2019 forwarded the entire proceeding to the Chairman Bangladesh Tea Board, Dhaka for consideration and necessary action.

The appellate authority vide office order dated 13.06.2019 rejected the appeal maintaining the order of removal the petitioner. Thereafter, the petitioner moved this Court by filing this writ petition and obtained the present Rule.

The facts as stated above show that in initiating departmental proceeding against the petitioner, there was no violation of any provision of regulation which was also found by this Court in earlier writ petition observing that in the departmental proceeding we find that he was given show cause notice, given a reply and the authority followed the procedure, but the appellate authority disposed of the appeal in a very mechanical way and without saying any details. Consequently, by the judgment and order dated 25.11.2015 this Court directed the appellate authority to rehear and dispose of the appeal in compliance with the provision of regulation 44 of the বাংলাদেশ চা বোর্ড এর কর্মচারী চাকুরী উপ-বিধিমালা, ১৯৯২.

We have gone through the proceedings of appellate authority to see whether the appellate authority has complied with the provisions of Regulation 44 of the service Regulation 1992 as per direction of this Court.

From annexures-15-20, it appears that the appellate authority in disposing the appeal initiated the process afresh asking the petitioner to appear before the authority to submit explanation and to depose if he desires and after affording all the opportunities to the petitioner, the appellate authority recorded all the evidences in writing, headed by one Md. Irfan Sharif, Member, Finance and Commerce as appeal hearing officer of Bangladesh Tea Board who forwarded a report to the Chairman of the Board. The Chairman of the board as appellate authority after considering evidences recorded by the appeal hearing officer and the report thereto found the petitioner guilty of misconduct and by office order dated 13.06.2019 rejected the appeal maintaining order of removal from service.

To consider submission of the learned Advocate for the petitioner, we have gone through the cases ***Janata Bank Limited and others vs. Md. Moraduzzaman,*** reported in ***19 MLR (AD) 233,*** wherein a criminal case was initiated by the authority for the same allegation brought against the delinquent officer, but in the instant case the charge brought against the petitioner is not relating to a criminal case initiated by the authority for the self same occurrence. This is totally different from the allegation and offence in criminal case, but the proceeding initiated by the authority against the petitioner is for misconduct, obstruction in administration and damage to the property. Therefore, the cited decisions has no applicability in the instant case to substantiate the illegality of the proceeding and removal of the petitioner from service.

Learned Advocate for the respondent No. 3 referred the case of ***Government of Bangladesh vs. Md. Jalil and other*** reported in ***48 DLR (AD) 10*** and ***Khandokar Kamrul Hasna vs. Government of Bangladesh and others***, reported in ***69 DLR (HCD) 250***, wherein it has been held that the High Court Division cannot sit as a court of appeal over a departmental proceeding unless the petitioner can show that the authority had acted without jurisdiction or made any finding upon no evidence or without considering any material evidence or fact causing prejudiced to the petitioner.

In another case this Court observed that a departmental proceeding is not same as a criminal proceeding. It is not necessary in a departmental proceeding that any persons should be found guilty beyond reasonable doubt, a stand of proof required in a criminal proceeding. The preponderance of probability is enough to find a person guilty in a departmental proceeding. This difference between these two forums has to be understood and to be followed consistently. One is not barred by the findings of other, nor the procedure followed by them are of equal stringency in nature.

In the instant case we also find that admittedly the present petitioner has been acquitted from criminal case filed against him by the police, but from the facts and circumstances of the case it appears that the departmental proceeding has not been initiated by the authority for self same offence of the petitioner. That is why the respondent authority was not required to wait for result of the criminal case as the proceeding

initiated is not at all relating to the said criminal case. Here the authority brought allegation and served charge sheet against the petitioner on the ground of misconduct and damage to the government property which has been proved on evidence and nothing contrary could produce on the part of the petitioner to show the action of the authority is violative of any provisions of law. Here, as appearing from record, the petitioner without sanction of the authority or his immediate superior officer took the vehicle out of jurisdiction beyond his duty time and the vehicle used in an illegal activity. Consequently, the petitioner as well as the vehicle was taken to the police custody.

Had the petitioner obeyed the order of the authority and not violated the Rules in discharging his duty the untowards occurrence would not have taken place. Considering all the facts and circumstances pros and cons the authority decided to remove the petitioner from service finding him guilty of misconduct.

Since in conducting inquiry proceedings no violation is found, this Court has no option or scope to re-assess the evidences recorded by the inquiry committee in course of holding departmental inquiry.

In view of the above, we do not find any illegality in removing the petitioner from his service calling for interference by this Court.

Taking into consideration the above, we find no merit in the Rule Nisi as well as in the submissions of the learned Advocate for the petitioner.

In the result, the Rule Nisi is discharged, however without any order as to costs.

Communicate a copy of this judgment to the parties concerned.

Md. Mahmud Hassan Talukder, J:

I agree.

Md. Akteruzzaman Khan (B.O)