

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

Writ Petition No. 7018 of 2020.

In the matter of:

An application under article 102(2) of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of:

Muhammad Shafiqur Rahman.

..... Petitioner

-Versus-

Secretary, Road Transport and Highways
Division, Ministry of Road Transport and
Bridges and others.

..... Respondents

Mr. Sharif Ahmed, Advocate

. . . . For the petitioner

Mr. Hasibul Huq, Advocate

. . . For the respondent No.2

Mr. Munirujjaman, Advocate

. . . For the respondents No. 5, 7 and 8.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard on 07.03.2024 and Judgment
on 14.03.2024.

J.B.M. Hassan, J.

The petitioner obtained the Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show
cause as to why the Gradation List of Accounts Assistants,
(Grade-1) dated 26.02.2014 signed by the respondents No. 3
and 4 prepared on the basis of joining date of the concerned
employees (Annexure-E to the writ petition) And the memo
bearing No. 35.04.0000.011.00.214.09-1865 dated 15.11.2018
so far as it relates to giving promotion to the respondents No.

5-8 on the basis of Gradation List dated 26.02.2014 (Annexure-G to the writ petition) And the memo bearing No. 35.04.0000.009.00.009.20-522 dated 17.06.2020 issued under the signature of the respondent No.2 rejecting the petitioner's application dated 04.11.2019 for cancelling promotion order dated 15.11.2018 (Annexure-J to the writ petition) should not be declared to be without lawful authority and of no legal effect And why the respondents should not be directed to restore seniority of the petitioner as per rule 14(2) of the “বাংলা-দশ সড়ক পরিবহন কর্মচারী চাকুরি প্রবিধানমালা-১৯৯০” and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Relevant facts leading to issuance of the Rule Nisi are that through a competitive recruitment process, the petitioner and the respondents No. 5-8 were appointed by the recruitment letter dated 28.06.2006 in the post of Accounts Assistant (Grade-2) under the Bangladesh Road Transport Corporation (the Corporation or the BRTC). In the competitive process, the petitioner scored 80 while respondents No.5-8 scored 79, 78, 78 and 78 respectively. In the appointment letters dated 28.06.2006 all the appointees were asked to join the service on or by 12.07.2006. Accordingly, the petitioner joined the service on 03.07.2006 while the respondents No. 5-8 joined the service on 29.06.2006.

There was no Gradation List when the petitioner was in the post of Accounts Assistant (Grade-2). However, the petitioner and the respondents No. 5-8 got promotion on the same day (10.06.2013) in the post of Accounts Assistant (Grade-1). Subsequently, a Gradation List was prepared on 24.02.2014 in order of credit score in the recruitment process and the

petitioner was placed at serial No. 11 while the respondents No. 5-8 were placed at serial No. 17-20. After 02(two) days i.e on 26.02.2014 the respondent-Corporation prepared another Gradation List on consideration of joining date of the incumbents in the same post. In the said Gradation List, the petitioner has been shown at serial No. 24 while the respondents No. 5-8 have been shown at serial No. 10-13. Thus, the petitioner has become aggrieved by the said Gradation List on the ground that it was not prepared in accordance with relevant regulation 14(2) of the “বাংলাদেশ সড়ক পরিবহন কর্পোরেশনের কর্মচারী চাকুরী প্রবিধানমালা, ১৯৯০” (the Regulations, 1990).

It is also stated in the writ petition that subsequently by the impugned memo dated 15.11.2018 the respondents No. 5-8 got promotion to the post of Assistant Accounts Officer superseding the petitioner although he is senior to them as per regulation 14(2) of the Regulations, 1990. In this backdrop, the petitioner filed this writ petition and obtained the present Rule Nisi claiming his seniority as well as for cancellation of promotion of the respondents No. 5-8.

The respondents No. 2 i.e the Corporation has filed an affidavit in opposition denying the statements of the writ petition. Contentions of this respondent, *inter alia*, are that the Corporation has followed regulation 14 (1) of the Regulations, 1990 in drawing up the Gradation List dated 26.02.2014 regarding the post of Accounts Assistant, Grade-1 (Annexure - E to writ petition). The said regulation 14 (1) provides as follows:

"এই প্রবিধানমালার অন্যান্য বিধানাবলী সাপেক্ষে, কোন পদে কোন কর্মচারীর জ্যেষ্ঠতা সেই পদে তাহার যোগদানের তারিখ হইতে গণনা করা হইবে।".

This provision allows the Corporation (BRTC) to take into consideration of the date of joining of an employee in determination of seniority of the employee in that post. The date of joining in the service in the post of Accounts Assistant, Grade 2 and then in the next higher post of Accounts Assistant, Grade 1 of the writ petitioner and writ respondents No. 5-8 are as follows:

	Date of joining in the post of Accounts Assistant, Grade-2	Date of joining in the post of Accounts Assistant, Grade-1
Writ Petitioner	03.07.2006	10.04.2013
Respondent No.5	29.06.2006	10.04.2013
Respondent No.6	29.06.2006	10.04.2013
Respondent No.7	29.06.2006	10.04.2013
Respondent No.8	29.06.2006	10.04.2013

Regulation 14 (2) of the Regulation, 1990 only applies if the date of joining is same day for all concerned employees. In the instant matter, the respondents no. 5 to 8 joined the post of Accounts Assistant, Grade 2 on 29.06.2006 while the writ petitioner joined the said post five days later on 03.07.2006. The said practice of considering date of joining in assessing seniority of officers and employees in line with regulation 14 of the Regulations, 1990 is carried out uniformly by the Corporation across all posts of the Corporation and not just in the present case.

Thus, according to regulation 14 (1) of the Regulations, 1990, the respondents No. 5-8 are senior to the petitioner because the petitioner joined the said post of Account Assistant, Grade 2 five days later on 03.07.2006. Thereafter, all of the writ petitioner and the respondents No. 5-8 joined the next higher post of Accounts Assistant, Grade I on the same day,

10.04.2013. In the circumstances, regulation 14 (4) of the said Regulations, 1990 was applied here i.e "একাধিক ব্যক্তিকে একই সময়ে পদোন্নতি দেওয়া হইলে, যে পদ হইতে পদোন্নতি দেওয়া হইয়াছে সেই পদে তাহাদের পারস্পরিক জ্যেষ্ঠতার ভিত্তিতে উচ্চতর পদে তাহাদের পারস্পরিক জ্যেষ্ঠতা স্থির করা হইবে।" Since all of the writ petitioner and the respondents No. 5 to 8 have been promoted in the post of Accounts Assistant, Grade 1 on the same day, 10.04.2013, considering above regulation, their seniority has been determined in the promoted post of Accounts Assistant (Grade- 1).

Under the Corporation, Assistant Accounts Officer is the next higher post from the post of Accounts Assistant (Grade-1). The concerned committee of the Corporation (Appointment and Promotion Committee) by a meeting held on 13.11.2018 recommended five senior persons from the said Gradation List for promotion to the post of Assistant Accounts Officer. Out of those five persons, four persons are respondents no. 5-8 of this writ petition. The said recommendations were later approved by the concerned authority of the BRTC (Corporation).

Mr. Sharif Ahmed, learned Advocate for the petitioner submits as follows:

- i. Under the same recruitment process the petitioner along with respondents No. 5-8 got appointment and that although the petitioner joined the service five days after the respondents No. 5-8 but it was within the required time line and so seniority of all the incumbents shall be determined in accordance with regulation 14(2) of the Regulations, 1990.
- ii. The petitioner scored-80 in the recruitment process which is above the scores obtained by the respondents No. 5-8. Considering this score, under regulation 14(2) of the

Regulations, 1990 a Gradation List was prepared on 24.02.2014. But all of a sudden, it was changed and on misconception of Regulations, 1990 the impugned Gradation List was prepared two days thereafter i.e on 26.02.2014.

- iii. The respondents No. 5-8 are junior to the petitioner in accordance with regulation 14(2) of the Regulations, 1990. Despite they have been promoted to the next higher post of Assistant Accounts Officer which being apparent illegal are liable to be cancelled.
- iv. Due to misconception of regulation 14 of the Regulations, 1990, the petitioner was treated as junior to respondents No. 5-8 and thereby his promotion case was not considered. Hence, he was deprived of from getting promotion and also superseded by the respondents No. 5-8.

In contrast, Mr. Hasibul Huq, learned Advocate for the Corporation (respondent No.2) has drawn our attention to the regulation 14 of the Regulations, 1990 and he contends as follows:

- (a) That the petitioner joined the service on 03.07.2006 while the respondents No. 5-8 joined the service on 29.06.2006. Thus, considering their prior joining date, the Gradation List was prepared in accordance with regulations 14(1) and 14(4) of the Regulations, 1990.
- (b) The petitioner's appointment letter itself stipulates that he will be entitled to get salary from the date of joining and so seniority was counted from the date of joining.
- (c) In the impugned Gradation List, the petitioner has been placed at serial No. 24. Although he challenges the placing of respondents No. 5-8 at serial No. 10-13 but the petitioner did not challenge the seniority of the incumbents who were placed in the said Gradation List at serial No. 14-23 and that he did not make them party in the

Rule. As such, the Rule Nisi suffers from defect of parties and so, liable to be discharged.

(d) The Gradation List was prepared in 2014. In the meantime, the respondents No. 5-8 was promoted to the next higher post and have been serving there from 2018. In such circumstances, under the belated writ petition, filed long after six years in 2020, the petitioner is not entitled to get any relief.

(e) Being promoted in 2018, respondents No. 5-8 have been continuing in the said promoted post for more than five years. In the circumstances, the Rule Nisi challenging their promotion has become infructuous.

To explain the delay in filing writ petition Mr. Sharif Ahmed, learned Advocate for the petitioner again submits that as per law the initial Gradation List was prepared on 24.02.2014. Although two days thereafter i.e on 26.02.2014 it was changed but the petitioner had no knowledge about the changed impugned Gradation List. Subsequently, in 2018 while the petitioner came to know about the impugned promotion process of respondents No. 5-8, the petitioner filed a representation on 10.06.2018 claiming his seniority. But it was not considered and so, the petitioner filed writ petition No. 180 of 2020 which was summarily disposed of directing the respondents to consider the petitioner's representation in accordance with law. Pursuant to said direction while the respondents finally declined to give seniority to the petitioner on 17.06.2020, the petitioner filed this writ petition on 11.10.2020 and as such, there was no laches on the part of the petitioner in bringing the matter before the Court.

Mr. Md. Moniruzzman, learned Advocate for the respondents No. 5-8 has adopted the submissions as advanced by the learned Advocate for the respondent No.2-Corporation.

We have gone through the writ petition, affidavit in opposition filed by the respondent No. 2-Corporation and other materials on record including the Regulations, 1990.

The crux point under the Rule Nisi is the determination of seniority of the petitioner and the respondents No. 5-8, who were appointed in the post of Accounts Assistant (Grade-2) under the BRTC (Corporation). To consider this issue, let us first examine the relevant regulation 14 of the Regulations, 1990 which runs as follows:

- “১৪। জ্যেষ্ঠতা।-(১) এই প্রবিধানের অন্যান্য বিধানাবলী সাপেক্ষে, কোন পদে কোন কর্মচারীর জ্যেষ্ঠতা সেই পদে তাহার যোগদানের তারিখ হইতে গণনা করা হইবে।
- (২) একই সময়ে একাধিক কর্মচারী নিয়োগপ্রাপ্ত হইলে, নিয়োগকারী কর্তৃপক্ষ সংশ্লিষ্ট বাছাই কমিটি কর্তৃক প্রস্তুতকৃত মেধা তালিকা ভিত্তিক সুপারিশ অনুসারে উক্ত কর্মচারীদের পারস্পরিক জ্যেষ্ঠতা স্থির করিবে।
- (৩) একই বৎসরে সরাসরি নিয়োগপ্রাপ্ত ও পদোন্নতিপ্রাপ্ত ব্যক্তিগণের মধ্যে পদোন্নতি প্রাপ্ত ব্যক্তিগণ জ্যেষ্ঠ হইবেন।
- (৪) একাধিক ব্যক্তিকে একই সময়ে পদোন্নতি দেওয়া হইলে, যে পদ হইতে পদোন্নতি দেওয়া হইয়াছে সেই পদে তাহাদের পারস্পরিক জ্যেষ্ঠতার ভিত্তিতে উচ্চতর পদে তাহাদের পারস্পরিক জ্যেষ্ঠতা স্থির করা হইবে।
- (৫) কর্পোরেশন ইহার কর্মচারীদের গ্রেড-ওয়ারী জ্যেষ্ঠতা তালিকা রক্ষণাবেক্ষণ করিবে এবং সময় সময় তাহাদের অবগতির জন্য এইরূপ তালিকা প্রকাশ করিবে।
- (৬) The Government Servants (Seniority of Freedom Fighters) Rules, 1979 এর বিধানসমূহ, উহাতে প্রয়োজনীয় অভিযোজনসহ, কর্পোরেশনের কর্মচারীদের ক্ষেত্রে প্রযোজ্য হইবে।”

(Underlined)

On a plain reading of the aforesaid provisions, it is crystal clear that seniority of an employee shall be counted from the date of his joining in the service under sub-regulation (1). Sub-regulation (2) provides that in case of recruitment of more than one candidate at a time, under same recruitment process, in that case the merit score shall be considered in counting seniority. Sub-regulation (4) provides that even after promotion and staying in the promoted post seniority of the incumbents shall be determined in accordance with seniority prevailed in their feeder posts.

Here in this case, admittedly the petitioner and the respondents No. 5-8 were recruited in the post of Accounts Assistant (grade-2) of the BRTC by one recruitment circular dated 04.04.2006. They all participated in one recruitment process and the merit score of petitioner was 80 while merit scores of respondents No. 5-8 were 79, 78, 78 and 78 respectively. Thus, it is apparent that as per merit score the respondents No. 5-8 were below the petitioner. Since more than one incumbents i.e both the petitioner and the respondents No. 5-8 got appointment under the same recruitment process, their seniority shall be counted in accordance with regulation 14(2) of the Regulations, 1990. Regulation 14(1) is applicable when single employee is appointed under one recruitment process.

Learned Advocate for the Corporation submits that the petitioner joined after the respondents No. 5-8 which was considered for seniority. Such consideration is not acceptable because under the same recruitment process all the appointment letters were issued on the same date on 28.06.2006 giving time line to join within 12.07.2006. As such, all the

incumbents who joined within this time line shall be considered to have joined at a time to count seniority within the purview of regulation 14(2) of the Regulations, 1990. Therefore, although as per appointment letter the incumbents would be entitled to get salary from the date of joining, but it will not effect in determining seniority. Thus, irrespective of the fact that respondents No. 5-8 joined on 29.06.2006 and the petitioner joined on 03.07.2006, they all being recruited under same process and joined within the given time line, their seniority shall be determined in accordance with the regulation 14(2) of the Regulations, 1990.

We find that considering the merit score of incumbents of the Corporation for different departments in accordance with regulation 14(2) of the Regulations, 1990, a Gradation List was prepared by the Corporation as contained in Annexure-L. Mr. Hasibul Huq, learned Advocate for the Corporation could not deny this Gradation List. He, however, has drawn our attention to another Gradation List as contained in Annexure-4 to the supplementary affidavit wherein considering the joining date of employees another Gradation List was prepared for the employees of Corporation of the different department.

Be that as it may, regulation 14(2) of the Regulations, 1990 is clear for determining seniority considering merit score among the incumbents recruited under the same recruitment process. The petitioner along with the respondents No. 5-8 were recruited in the post of Accounts Assistant (Grade-2) under the same recruitment notice and so, their seniority has to be counted considering their merit score. In this regard, admittedly the

petitioner being the highest scorer, he is senior to respondents No. 5-8 in the post of Accounts Assistant (Grade-2). Thus, all of them got promotion on the same day (10.04.2013) to the next higher post of Account Assistant (Grade-1) in respect of which impugned Gradation List was prepared. As such, in this post their seniority has to be determined in accordance with the regulation 14(2) read with regulation 14(4) of the Regulations, 1990 considering seniority prevailed in the feeder post of Accounts Assistant (Grade-2). In other words, the petitioner is senior to respondents No. 5-8 in the post of Accounts Assistant (Grade-1) as per regulation 14(4) of the Regulations because he was senior in the feeder post of Accounts Assistant (Grade-2) in accordance with regulation 14(2) of the Regulations, 1990. Due to aforesaid reason, the Gradation List dated 26.02.2014 so far as it relates to the petitioner and the respondents No. 5-8 was not prepared in accordance with law.

We also accept the explanation given by the petitioner for delay in filing the writ petition who came to know about the impugned seniority in the year, 2018, during promotion process of respondents No. 5-8 to the next higher post on the basis of impugned Gradation List. Since then the petitioner has been pursuing the issue before the authority making representations one after another. It further appears that the respondents No. 5-8 were promoted by the impugned order dated 15.11.2018 (Annexure-3 to the affidavit in opposition) on the basis of the minutes by which their promotion was recommended by the Promotion Committee. Relevant

portions of consideration for promotion as reflected in the said minutes are as follows:

“১.০২. কমিটির সদস্য-সচিব জেনারেল ম্যানেজার (প্রশাঃ ও পার্সোঃ) জানান,

১। হিসাব সহকারী গ্রেড-১ পদে কর্মরত ২৯ জনের গ্রেডেশন তালিকা রয়েছে। তন্মধ্যে পদোন্নতিযোগ্য প্রথম ১০ জনের প্রয়োজনীয় বৃত্তান্ত উপস্থাপন করা হয়েছে।

২। হিসাব সহকারী গ্রেড-১ পদের ক্রমিক নং- ১ ও ২ এ বর্ণিত কর্মচারীদের পদ পরিবর্তন করা হয়েছে।

৩। অডিটর পদে ৪ জনের গ্রেডেশন তালিকা রয়েছে। পদোন্নতিযোগ্য ০৪ জনের প্রয়োজনীয় বৃত্তান্ত উপস্থাপন করা হয়েছে।

৪। সহকারী হিসাবরক্ষন কর্মকর্তার শূন্য পদের সংখ্যা ০৬ (ছয়) টি। প্রবিধানমালা অনুযায়ী এ পদের ফিডার পদ হলো- নিরীক্ষক অথবা হিসাব সহকারী-১ হিসাবে ৫ বৎসরের অভিজ্ঞতা।

৫। উপস্থাপিত কর্মচারীদের বিরুদ্ধে কোন বিভাগীয় মামলা চলমান নেই।

১.০৩. পদোন্নতিযোগ্য কর্মচারীদের মধ্যে ২০১৩ সাল হতে ২০১৭ সাল পর্যন্ত ০৫ (পাঁচ) বছরের কন্ডাক্টশীট, বিভাগীয় শাস্তি, চাকুরীর বৃত্তান্ত, পেশাগত দক্ষতা ও অভিজ্ঞতা এবং চাকুরীর শৃঙ্খলা ইত্যাদি পর্যালোচনা করা হয়। তাছাড়া তাদের বর্তমান কার্যক্রম ও আচার-আচারণ সম্পর্কে আলোচনা করা হয়। বিস্তারিত পর্যালোচনাক্রমে কমিটি নিম্নরূপ মতামত প্রদান করেন।”

On perusal of the above, it appears that the authority considered the respondents No. 5-8 as senior most incumbents and considering their service record, they were promoted to the next higher post of Assistant Accounts Officer. But the petitioner being placed in the impugned gradation list at serial No. 24 was not at all considered for promotion.

Although Mr. Hasibul Huq submits that serial No. 14-23 were not made party and they are senior to petitioner, but has not been challenged, this submission is not acceptable because the petitioner and the respondents No. 5-8 were appointed under the same recruitment process and so their seniority shall be considered in accordance with regulation 14(2) of the

Regulations, 1990 and as such, the writ petition does not suffers from any defect of parties.

We also find in paragraph 17 of the affidavit in opposition that promotion of respondents No. 5-8 were considered due to their seniority. In the circumstances, we are of the view that the petitioner was also entitled to get consideration for promotion as being senior to the respondents No. 5-8 in accordance with regulations 14 (2) and 14 (4) of the Regulations, 1990. Although in the meantime the respondents No. 5-8 have been continuing their service in the promoted post but this continuation of service and lapse of time shall not frustrate the legal right of the petitioner which was given to him under the Regulations, 1990 and the seniority of the respondents No. 5-8 being given in violation of Regulations and thereby they got the promotion. As such, their promotion has to be reconsidered again keeping the petitioner senior above them and on consideration of vacant posts available in the posts of Assistant Accounts Officer under the Corporation. In the circumstances, the promotion of respondents No. 5-8 is hereby recalled and cancelled. However, since they received salary under the promoted scale rendering service so far, they are not liable to refund the same. In view of above discussions, we find merit in this Rule Nisi.

In the result, the Rule Nisi is made absolute.

- i. The impugned Gradation List of Accounts Assistants (Grade-1) dated 26.02.2014 signed by the respondents No. 3 and 4 prepared on the basis of joining date of the employees (Annexure-E to the writ petition) so far as it relates to petitioner and the respondents No. 5-8; And

- ii. The memo bearing No. 35.04.0000.011.00.214.09-1865 dated 15.11.2018 so far as it relates to giving promotion to the respondents No. 5-8 on the basis of Gradation List dated 26.02.2014 (Annexure-G to the writ petition); And
- iii. the memo bearing No. 35.04.0000.009.00.009.20-522 dated 17.06.2020 issued under the signature of the respondent No.2 rejecting the petitioner's application dated 04.11.2019 for cancelling promotion order dated 15.11.2018 (Annexure-J to the writ petition) ———

are hereby declared to be without lawful authority and of no legal effect. However, the will be no order as to cost.

- iv. The promotion of respondents No. 5-8 to the post of Assistant Accounts Officer is hereby recalled and cancelled. However, the Corporation shall not claim the excess salary from the respondents No. 5-8 paid for the promoted post of Assistant Accounts Officer.
- v. The Corporation (BRTC) is directed to prepare a Gradation List on consideration of merit score of petitioner, the respondents No. 5-8 along with other employees under the same recruitment process as per regulation 14 (2) of the Regulations, 1990.
- vi. The respondents are further directed to consider the promotion case of petitioner along with other employees including the respondents No. 5-8 subject to available vacant posts in light of the regulation 15 of the Regulations, 1990 and other promotion rules for the employees of the BRTC.

Communicate a copy of this judgment and order to the respondents at once.

Razik Al Jalil, *J*

I agree.