

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

**REVIEW PETITION NO. 06 OF 2022
(Arising out of W.P. No.7105 of 2018)**

In the matter of:

Md. Abdur Rahim, Line Man Grade-1, (now dismissed) Madhobdi Zonal Office Narsingdi Palli Biddyut Samiti-1, son of Md. Kashem Ali of village- Beguntal, Police Station- Tangail Sadar, District- Tangail.

... Petitioner

-Versus-

Government of Bangladesh represented by the Secretary, Ministry of Power, Energy and Mineral Resources, Bangladesh Secretariat, Ramna, Dhaka and others.

... Respondents

Mr. Md. Bodruddoza, Senior Advocate with
Mr. Mohammad Shahidul Islam and
Mr. Md. Azharul Islam Chowdhury, Advocates
...For the petitioner

Mr. Hasibul Huq, Advocate
...For the respondent nos. 2 and 3

**Heard on 28.02.2024, 10.03.2024 and
18.03.2024.**

Judgment on 18.03.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

This review petition has been referred by the Hon'ble Chief Justice of Bangladesh by his order dated 18.02.2024.

At the instance of the writ-petitioner in Writ Petition No. 7105 of 2018, this review petition is directed against the judgment and order dated 05.01.2022 passed by this court in the above writ petition discharging the rule.

The salient facts leading to filing this review petition are:

The review-petitioner initially filed the above Writ Petition challenging the Memo No. 27.12.0000.030.98.001.18.129 dated 04.04.2018 passed by the respondent no. 4, Secretary, Bangladesh Rural Electrification Board (precisely, BREB), Khilket, Dhaka-1229 dismissing the appeal and that of affirming the order dated 26.02.2018 passed by the respondent no. 5 dismissing the petitioner from the service. That the review-petitioner joined in the service as Line Man on 23.05.2010 and later he was promoted to Line Man, Grade-1 and in his such position, he has been serving for long 17 years and was lastly posted at Madhobdi Zonal Office of Narsingdi Palli Biddut Samity. All of a sudden on 06.04.2017, Bangladesh Rural Electrification Board (hereinafter referred to as "Board") undersigned by its Director (Current Charge) served a show cause notice upon the petitioner asking him to replay within 7 days, as to why a departmental proceeding will not be initiated against him. Upon receiving the said show cause notice, he replied the same to the Director, Board on 12.04.2017 denying all the allegation levelled in the show cause notice. Thereafter, the Board brought allegation against the petitioner that he setup a Meter bearing No.

861041 by manufacturing Consumer Meter Order (shortly, CMO) No. 78488 in the house of a consumer without procuring any service order of the authority concerned. After that, a formal “charge sheet” (অভিযোগনামা) was submitted against the petitioner on 16.07.2017 by forming an enquiry committee comprising two Deputy Directors of the Board. In replay to the said charge, the petitioner filed an application to the Deputy Director (Administration), a member of the enquiry committee of the Board on 13.07.2017 praying for exonerating him from the false charges. Subsequently, enquiry committee served a “final show cause notice” on 31.12.2017 finding the allegation against the petitioner true asking him to explain why he will not be dismissed from service as per ৩৯(১)(খ)(৫) of পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধি, ১৯৯২ (সংশোধিতঃ ২০১২) but fact remains, no enquiry report was prepared let alone it was supplied to the petitioner. In response to the said final notice, the petitioner replied the same on 18.01.2018 denying all the allegation so made in the said notice. However, the Senior General Manager of Narshingdi Palli Biddut Samity (respondent no. 5) without considering the papers and reply of the petitioner issued office order dated 26.02.2018 dismissing the petitioner from service. After that, the petitioner on 13.03.2018 filed an appeal before the Chairman of the Board praying for reinstating him in the service but without considering the said reply, the Board undersigned by its Secretary dismissed the appeal on 04.04.2018 and thereby affirmed the dismissal order so issued by the respondent no. 5. It is at that stage, the petitioner filed the writ petition where the respondent no. 2 entered appearance and filed an affidavit-in-opposition and this court

vide impugned judgment and order discharged the rule holding that, the point-in-issue in the writ petition is a disputed question of fact which cannot be adjudicated in a summary proceeding.

Being aggrieved by and dissatisfied with the said orders, the writ-petitioner as petitioner filed this review petition on which this court issued rule on 08.08.2022.

Mr. Md. Bodruddoza, the learned senior counsel appearing for the petitioner upon taking us to the review petition and supplementary-affidavit at the very onset submits that, in the impugned judgment, this court has not taken into consideration of the material documents so placed before it and wrongly discharged the rule which is liable to be reviewed and the petitioner be reinstated in his service.

The learned counsel in his second leg of submission also contends that, since the service of the petitioner falls within grade- 1-10 so the departmental proceeding against him was supposed to be initiated by the Board of the Narshingdi Palli Biddut Samity (hereinafter referred to as “Board of Samity”) not by the Board of the BREB but entire departmental proceeding apart from the dismissal order was issued by the BREB even though the said dismissal order was also passed at the behest of the enquiry report so submitted at the instance of the Board.

The learned counsel next contends that, though the dismissal order was issued at the instance of the Board of the Samity but soon he preferred an appeal to the said Board but it did not receive the appeal, the petitioner then compelled to prefer appeal to the Board of BREB but since it has been clearly stipulated in the provision of sub-rule (4) of rule

45 of পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধি, ১৯৯২ (shortly, the service rules) that if the Board of the Samity ever takes different view in regard to the punishment taken by it only such appeal can be forwarded to the Board of BREB but in the instant case, the said provision of the service rules has clearly been flouted while affirming the dismissal order issued by the respondent no. 5 representing the Board of Samity.

The learned counsel by referring to the provision of sub-rule (3) of rule 40 of the service rules where the “procedure of enquiry” has been set out also contends that, though that very sub-rule (3) clearly stipulates that within the category of official as held by the petitioner, investigation or enquiry has to be conducted by the authority constituted by the Board of Samity but if it feels necessary then only the said enquiry or investigation can be conducted by the Board of the BREB but the case in hand, all the enquiry followed by the departmental proceeding has been conducted by the senior officials nominated by the Board of BREB even though there has been no straightjacket rules that the said enquiry has to be conducted by any authority of the Board of Samity but “if it is necessary” only the Board of BREB can conduct the enquiry but such “necessity” has to be explained but nothing sort of this has been found in the process of entire enquiry as to why it was so necessary to conduct the enquiry against the petitioner not by the officials of the Board of Samity but by the officials of the Board.

When we pose a question to the learned counsel for the petitioner whether the grievance so have been made in the review application as well as the supplementary-affidavit come within the ambit of the

provision of order XLVII rule 1 of the Code of Civil Procedure, the learned counsel then readily contends that, since the petitioner could not produce certain documents in the writ petition and it has subsequently been discovered by the petitioner which are the vital documents and had those documents considered while disposing of the writ petition, the result of the writ petition would have been otherwise and for that obvious reason, the said documents will be regarded as discovery of new and important matter which clearly comes within the purview of basic ingredients provided in order XLVII, rule 1 of the Code of Civil Procedure.

To back up the said submission, the learned counsel then takes us to the supplementary-affidavit in particular, Annexure-‘C’, ‘C-2’ as well as ‘D’ thereof which are “meter checking form”, “service order” as well as appeal preferred before the Chairman of the Board of the Samity. The learned counsel by taking us to Annexure-‘C’ then contends that, it is the basis on which a direction was made on 09.05.2013 to issue CMO followed by the service order date 03.08.2013 through which the meter was installed in the house of the consumer.

When we pose a another question to the learned counsel with regard to “the service order” which was filed in the writ petition then how the said document can be taken as new and important matter, the learned counsel then retorted that, since no document has at all been taken into consideration while adjudicating the writ petition so the said document will also be considered as discovery of new and important matter.

The learned counsel by referring to the ground no. 1 made in the review petition also contends that, similar allegation has been made against one Line Man named, Jahangir Alam but ultimately he has been given lesser punishment by holding up his one increment while on the self-same allegation the petitioner has been given major punishment making glaring discrimination for the self-same charges and in that event, this Hon'ble court has got every authority to rectify such prejudicial treatment done to the petitioner by reviewing the impugned judgment.

The learned counsel by referring to a decision reported in 56 DLR (AD) 41 and upon reading out paragraph 27 thereof also contends that, this Hon'ble court has also given ample authority in correcting a judgment considering the materials so produced afresh in exercising review jurisdiction.

The learned counsel also placed a decision passed by this court in a Writ Petition being No. 765 of 2020 and tried to impress us that, on similar circumstance since the prosecuting authority as well as the appellate authority were found to be same, this court can thus interfere with the departmental proceeding that ended in the impugned dismissal order passed against the petitioner on the cited decision and made the rule absolute on setting aside the dismissal order and since similar situation has been there in the cited judgment of the writ petition as well as in the instant review petition so the said judgment is equally applicable in the facts and circumstances of the instant case and finally prays for making the rule absolute by setting aside the impugned judgment and order re-instating the petitioner in the service.

On the contrary, Mr. Hasibul Huq, the learned counsel appearing for the respondent nos. 2 and 3 vehemently opposes the contention taken by the learned counsel for the petitioner and contends that, the review petition itself is not maintainable within the purview of the order XLVII, rule 1 of the Code of Civil Procedure. By placing the said provision, the learned counsel at the very outset submits that, there have been three ingredients on which an aggrieved party can file a review petition but none of any of the three ingredients is present in the instant review petition and therefore, the rule is liable to be discharged.

Insofar as regards to issuing forged CMO, the learned counsel then referred the enquiry report appeared in Annexure-‘F’ to the writ petition and then contends that, in the observation (পর্যবেক্ষণ) of the report, it has been found by the enquiry committee that, in spite of not issuing any CMO, the petitioner upon manufacturing it installed the meter even without any service order and since the petitioner was given opportunity to defend his case before the enquiry committee, so there has been no legal loopholes in the impugned order of dismissal as well as the appeal which is based on materials on record.

In reference to the “service order” which has been annexed as of Annexure-‘C’ to the review petition, the learned counsel next contends that, though that very document has been annexed in the writ petition by filing supplementary-affidavit and since in the impugned judgment this Hon’ble court made clear observation that, upon perusing all the material document, the judgment has been passed so it construes that, the alleged “service order” has also been taken into consideration by this Hon’ble

court while passing the impugned judgment and order and therefore, the alleged service order cannot be termed as any discovery of new and important matter within the meaning of order XLVII, rule 1 of the Code of Civil Procedure.

The learned counsel also contends that, since in the four corners of the writ petition, there has been no assertion that, this petitioner had preferred appeal before the “Board of the Samity” so the contention of the petitioner that initially they had filed an appeal before the ‘Board of the Samity’ cannot be sustained in law and it cannot be taken as any discovery of new and important matter.

By refuting the argument taken by the petitioner that, on similar circumstances a Line Man was also given lesser punishment by holding up one increment, but the fact and nature of allegation so levelled against that delinquent staff is totally distinguishable with that of the petitioner because in that referred case, CMO has not been manufactured but in the instant case, it has been found that the CMO has been forged by the petitioner so the petitioner deserves highest punishment which has correctly been issued by the respondents having no scope to interfere with the said order in a review jurisdiction.

The learned counsel by referring to the decisions reported in 48 DLR (AD) 178, 54 DLR (AD) 69 and many others finally contends that, the grievance of the petitioner does not attract the provision of order XLVII, rule 1 of the Code of Civil Procedure and the legal requirements so enshrined therein is clearly absent in the review petition as well as supplementary-affidavit so there has been no scope to take into account

of any loopholes or shortcomings in the departmental proceeding in a review petition.

Insofar as regards to our query whether the petitioner had been given any opportunity to defend his case by cross-examining the prosecution, the learned counsel has then referred the decision reported in 4 BLT (AD) 25 and submits that, in that decision, it has been settled that in a departmental proceeding, there has been no necessity to cross-examine the prosecution and therefore, there has been no lacuna in the departmental proceeding initiated against the petitioner.

On those scores, the learned counsel finally prays for discharging the rule.

We have considered the submission so advanced by the learned counsel for the petitioner and that of the respondent nos. 2 and 3 and perused the review petition, supplementary-affidavit and counter-affidavit filed thereagainst by the respondent nos. 2 and 3.

We have also very meticulously gone through the provision so laid down in order XLVII, rule 1 of the Code of Civil Procedure basing on which the instant review petition was filed. However, we feel it expedient to reproduce the provision of order XLVII, rule 1 of the Code of Civil Procedure which runs as under:

“Order XLVII

1.(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.”

On going through the said provision, we find that on three diverse circumstances, a review can be entertained. **Firstly**, “discovery of a new and important matter or evidence which after the exercise of due diligence, was not within the knowledge or could not be produced by the review-petitioner at the time when the order was made. **Secondly**, on

account of some mistake or error apparent on the face of the record and **lastly**, for any other sufficient reason, desires to obtain a review of the order made against the review petitioner.

Now we would like to examine as to whether any of those three ingredients is present in the instant review petition. As we find from the submission so advanced by the learned counsel for the petitioner that, several documents were not produced or annexed in the writ petition for which the petitioner has fulfilled the first ingredient as Annexure-‘C’ to the supplementary-affidavit which relates to the “meter checking form” as well as the application for appeal submitted before the President of Board of the Samity of Narshingdi Palli Biddut Samity (Annexure-‘D’) are all discovery of new and important matter. On going through Annexure-‘C’, we find that, it is a report in which it has been recommended for changing the meter by issuing a new CMO and following that report dated 16.04.2013, a CMO was issued being no. 78488 on 09.05.2013 and accordingly, a new meter was installed in the house of the consumer on 03.08.2013 by virtue of a service order which has been annexed as of Annexure-‘C-2’ to the supplementary-affidavit. So, the objective of changing the meter has been rooted in Annexure-‘C’.

Though the opposite-parties in the instant review petition in course of the departmental proceeding asserted that, that very CMO was forged but in support of their such assertion, no document has been produced to prove that the signature appeared in the CMO has been obtained by the petitioner by any fraudulent manner rather in a very slipshod manner the enquiry officers came to a finding that, the CMO

was forged even then the petitioner had not been given any opportunity to defend his position who asserts that he has got no authority to obtain that CMO.

Furthermore, it has also been asserted in the enquiry report that the service order has not been issued by the office of the respective Palli Biddut Samity but how that service order was obtained by the petitioner for installing the meter in the consumer's house has not been unearthed by the enquiry committee nor it has been revealed whether the petitioner has got any authority to issue such service order.

All in all, what benefit the petitioner has derived by installing the meter by forging CMO and without any service order could not be found out though fact remains, after installing the new meter through the CMO, the consumer has paid electric bill for consecutive three months. So all those factums clearly show that, the petitioner had not been given any opportunity to defend himself in regard to the allegation levelled against him neither in the departmental proceeding nor it has at all been considered in the appeal. But irony is that, while discharging the rule this court had not taken into consideration of those vital facts let alone considered the documents annexed with the supplementary-affidavit yet passed a very slipshod judgment in a very half-hearted manner as the learned counsel for the petitioner has shown us from the impugned judgment where this court mentioned the meter number as 78488 which is actually CMO number. We are not at one that, any departmental shortcomings cannot come within the purview of the writ jurisdiction as the petitioner had no other alternative efficacious remedy against the

dismissal order followed by appellate order. Further, since there has been clear provision in the service rules that it is only the respective Palli Biddut Samity who is authorized to initiate a departmental proceeding as well as to pass any punishment but the case in hand, we find that, from the very inception of issuing show cause notice till the issuance of the dismissal order all process has been accomplished at the instance of the Board (BREB) though they have got the authority to do so but how and why it was so required for them to exert the authority to conduct enquiry against the petitioner has not been explained though in rule 40(3) of the service rules, the authority was given by inserting phrase “if necessary” (প্রয়োজন বোধে) but why the first option was avoided has not been found in the entire departmental proceeding.

Moreover, it is well-settled proposition that the prosecuting authority cannot act as an appellate authority since the dismissal order was passed at the behest of the Board of BREB so same authority cannot act any appellate authority and surely enough, by that, the petitioner has severely been prejudiced and in view of the third ingredients postulated in order XLVII, rule 1 of the Code of Civil Procedure that speaks “*or for any other sufficient reason, desires to obtain a review of the order made against review-petitioner*”, this court is quite competent to review the impugned judgment as from the above, we clearly find that, the petitioner has utterly failed to get proper remedy from the respondents.

Furthermore, on going through the impugned judgment, we don't find any discussion or observation with regard to the assertion so made by the review petitioner in the writ petition though on going through the

writ petition, we find that, a slew of documents have been annexed so did in the supplementary-affidavit therein. In the above backdrop, we don't find, the impugned judgment can be sustained at all.

Accordingly, the rule is made absolute however without any order as to costs.

Resultantly, the impugned judgment and order so passed in the Writ Petition No. 7105 of 2018 dated 05.01.2022 is hereby set aside.

The respondent nos. 2 and 3 are hereby directed to reinstate the petitioner in his service with all arrear service benefits within a period of 2(two) months from the date of receipt of the copy of the judgment.

Let a copy of this judgment be communicated to the respondents forthwith.

Md. Bashir Ullah, J.

I agree.