

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

Writ Petition No. 5359 of 2021

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Md. Kamrul Hasan Kabir

....Petitioner

Versus

The Government of Bangladesh and
others

....Respondents

Ms. Shahina Tazrin, Advocate

....For the Petitioner

Mr. A.B. Siddique, Advocate

....For the Respondents

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice S. M. Masud Hossain Dolon

Heard on: 02.01.2024, 10.01.2024,
11.01.24, 29.01.2024

Judgment on: 30.01.2024

S.M. Masud Hossain Dolon, J:

On an application under article 102 of the Constitution,
the Rule Nisi has been issued in the following terms:

"Let a Rule Nisi be issued calling upon the
respondents to show cause as to why the impugned
Memo No. 27.12.2672.571.02.009.2021.746 dated
27.02.2021 (Annexure-F) issued under the signature
of the respondent No. 4 removing from service to
the petitioner and Memo No. 27.12.2672.571.

02.012.21.21.1519 dated 25.05.2021 (Annexure-H) issued by the respondent No. 4 dismissing the service appeal of the petitioner should not be declared to have been passed without lawful authority and is of no legal effect and as to why a direction should not be given upon the respondents to reinstate the petitioner in his service and /or pass such other or further order or orders as to this Court may seem fit and proper.”

Facts relevant for disposal of the Rule in short, are that the petitioner was appointed as Security guard to the Dhaka Polli Bidyut Samity-1, Dhaka. When he was performing his duties as a security guard, Respondent No. 2, Director, Directorate of Inquiry and Discipline, Bangladesh Rural Electrification Board, Dhaka served a show cause notice upon him on 31.08.2020 alleging that the petitioner received Tk. 10,000/- illegal money from Lineman Grade-1, Md. Kholilur Rahman for false assurances to transfer him from one office to another. After receiving show cause notice the petitioner submitted his explanation and denied all the allegation brought against him. Thereafter, Respondent No. 2 issued formal charge against the petitioner and appointed an Inquiry Officer and the petitioner again denied all the allegation brought against him. The respondent No. 2 served final show cause notice to the petitioner and there against he submitted his reply and again

denied all the allegation brought against him. On 27.02.2021, the respondent No. 4 finally relieving the petitioner from his service against this order petitioner preferred appeal before the President, Samity Board, Dhaka Polli Biduyt Samity-3 Genda, Dhaka who was dismissed the appeal by a non speaking order.

Thereafter, having found no other equally efficacious remedy the petitioner filed the instant writ petition and obtained the Rule.

Ms. Shahina Tazrin learned Advocate for the petitioner submits that the charge brought against the petitioner is vage, false, fabricated and concocted as such the removal of service may kindly be declared to have been issued without lawful authority and is of no legal effect. She further submits that the authority concerned violated the provision of Rules 42 and 45 of the পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধি, ১৯৯২ সংশোধিতঃ ২০১২ইং. That the petitioner was not called for cross examine the witnesses and the appeal was dismissed without assessment of the provision of law with arbitrary and malafide manner of the respondents thereafter the entire departmental proceedings and impugned punishment may kindly be declared to have been without lawful authority and is of no legal effect.

Mr. A.B. Siddique, the learned Advocate for the respondent No. 4 submits that all legal formalities of the service Rules were followed by concerned authority and imposed punishment against the petitioner and as such the Rule may be discharged for the ends of justice. He also submits that the petitioner admitted that he had been received bribe for transfer of his one colleague as such he was liable to be convicted for misconduct and corruption under section 38(1)(ka) and (Ga). He further submits that the charges of the departmental proceedings brought against the petitioner under Rule 40 of the Service Rule were specific and at any stage there was no illegality, arbitrary and malafide done against the petitioner. Mr. Siddique lastly submits that at the time of inquiry the petitioner was appeared personally before the inquiry committee wherein all procedure under Rules 41 and 42 of the Service Rule were complied with and as such the writ petition is liable to be discharged.

We have perused the writ petition and all other relevant papers submitted by the petitioner in connection with the contents of this writ petition, supplementary affidavit and also affidavit in opposition submitted by the Respondent No.4. It

appears that the petitioner was working as security guard in Dhaka Polli Biduyt Samity. The petitioner admitted by his letter dated 31.08.2020 that he had received graft from one of his colleague by false assurance for favorable transfer on 14.11.2018, Annexure-C(1). On perusal of the document we found that the petitioner in his reply of the show cause notice, Annexure E-2, admitted that he received BDT 10,000/- to his colleague for his mother treatment.

On scrutiny of inquiry report we also found that one Rafia Hasan Taheri who was the then AGM (HR) and responsible for internal transfer of employees of the Polli Biduyt Samity-3 and he transferred one Md. Khalilur Rahman, security guard, the friend of the petitioner and others vide memo No. 27.12.2672.518.01.09.17.4724 dated 13.11.2017. The inter office transfers of employees were carried out under Mr. Taheri's supervision as directed by superior and he affirmed that no one had recommended him to transfer Md. Khalilur Rahman and no one had any interfere in it. In his written statement he also stated that by official order the petitioner's colleague was transferred in Shimulthali Zonal office from Amin Bazar Zonal office but transfer of Lineman Grade-1, Mr. Md.

Khalilur Rahman had not been made any recommendation to him by anyone.

It appears from aforesaid discussion the petitioner received bribe from one of his colleague for favorable transfer after one year his colleague had been transferred and he has been admitted the same after 3 years of the alleged transfer which is absurd. On our query, we asked the Advocate of the Respondent No. 4 whether the petitioner was received bribe from his friend after one year he had been transferred in Shimulthali Zonal office from Amin Bazar Zonal office and he cannot give answer the perplex facts of this case and also he was unable to deny but he strongly argued petitioner is liable for corruption and misconduct.

The petitioner was removed from his service vide order dated 27.02.2021 (Annexure-F to the writ petition). On perusal of the same it appears that the petitioner was condemned under section 38(1) (Ka) and (Ga) and removal from his service was passed under Rules ৩৯(১)(খ)(৩) of the পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধি, ১৯৯২ সংশোধিতঃ ২০১২ইং. Admittedly, the petitioner was serving the Polli Biduyt Samity-3 and before making such type of allegation he was not held liable in any sought of activity in his

service rather he had been discharged his duties with satisfactions of the authority concerned.

The learned Advocate of the petitioner submits that by issuing impugned order, the respondents violated the section 42 of the পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধি, ১৯৯২ সংশোধিতঃ ২০১২ইং which runs as follows:

৪২। তদন্ত কর্মকর্তা কর্তৃক অনুসরণীয় কার্য পদ্ধতিঃ

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(২) সংশ্লিষ্ট অভিযুক্ত কর্মকর্তা/কর্মচারী তদন্তকারী কর্মকর্তা/তদন্ত কমিটির নিকট আগমনের পর নিজ ভাষায় একটি লিখিত হাজিরা পত্র স্বাক্ষর করিয়া তদন্তকারী কর্মকর্তা/তদন্ত কমিটির নিকট দাখিল করিবেন। তদন্তকারী কর্মকর্তা/তদন্ত কমিটি সংশ্লিষ্ট অভিযুক্ত কর্মকর্তা/কর্মচারীর উপস্থিতিতে তাহার বিরুদ্ধে আনীত অভিযোগসমূহ মৌখিকভাবে উত্থাপন করিবেন। অতঃপর উক্ত তদন্তকারী কর্মকর্তা/তদন্ত কমিটি অভিযোগ প্রমাণের জন্য সাক্ষীদের নিকট হইতে লিখিতভাবে জবাবন্দী গ্রহণ করিবেন এবং অতঃপর অভিযুক্ত কর্মকর্তা/কর্মচারী উক্ত সাক্ষীকে জেরা করার জন্য আহ্বান করিবেন। যদি অভিযুক্ত কর্মকর্তা/কর্মচারী সাক্ষীকে জেরা করিতে চান সেইক্ষেত্রে জেরার মাধ্যমে সাক্ষী যাহা প্রকাশ করিবে তাহা তদন্তকারী কর্মকর্তা লিপিবদ্ধ করিবেন। জেরা শেষ হইলে তদন্তকারী কর্মকর্তা প্রত্যেক সাক্ষীর জবাববন্দী ও জেরা যে কাগজে লিপিবদ্ধ হইবে উহাতে সাক্ষী এবং সংশ্লিষ্ট অভিযুক্ত কর্মকর্তা/কর্মচারীর স্বাক্ষর গ্রহণ করিবেন এবং তদন্তকারী কর্মকর্তা/তদন্ত কমিটির সদস্যগণ নিজেরাও স্বাক্ষর প্রদান করিবেন। তবে, উল্লেখ থাকে যে, যদি তদন্তের সময় সংশ্লিষ্ট অভিযুক্ত কর্মকর্তা/কর্মচারী উপস্থিত না থাকেন, সেইক্ষেত্রে তাহার উপস্থিতি ব্যতিরেকে তদন্তকারী কর্মকর্তা সাক্ষীদের জবাববন্দী গ্রহণ করিবেন এবং সাক্ষীদের জবাববন্দী লিখিত হওয়ার পর সাক্ষীদের স্বাক্ষর গ্রহণ করিবেন ও তদন্তকারী কর্মকর্তা/তদন্ত কমিটির সদস্যগণ নিজেরাও স্বাক্ষর করিবেন। আরও উল্লেখ থাকে যে, যদি অভিযুক্ত কর্মকর্তা/কর্মচারী উপস্থিত থাকিয়াও সাক্ষীকে জেরা করিতে অস্বীকার করেন সেইক্ষেত্রে জেরা করিতে অস্বীকার সম্বলিত একটি নোট সাক্ষীর

জবানবন্দী লিপিবদ্ধ করার কাগজে লিপিবদ্ধ করিয়া সাক্ষী এবং সংশ্লিষ্ট অভিযুক্ত কর্মকর্তা/কর্মচারীর স্বাক্ষর গ্রহণ করিবেন। যদি কোন কারণে অভিযুক্ত কর্মকর্তা/কর্মচারী উক্ত স্বাক্ষর করিতে অস্বীকার করেন সেইক্ষেত্রে তদন্তকারী কর্মকর্তা/তদন্ত কমিটি প্রয়োজনীয় নোট লিপিবদ্ধ করিয়া সাক্ষীর জবানবন্দী নথিতে লিপিবদ্ধ করিবেন এবং জবানবন্দী লিপিবদ্ধ করার কাগজে সাক্ষীর স্বাক্ষর গ্রহণ করিবেন এবং তদন্তকারী কর্মকর্তা/তদন্ত কমিটির সদস্যগণ নিজেরাও স্বাক্ষর করিবেন।

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On plain reading of the Rules 42(2) of the পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধি, ১৯৯২ সংশোধিতঃ ২০১২ইং provides that the inquire committee will have take written statements from the witnesses to prove allegations then the delinquent employee shall call for cross examination of the said witnesses. On our query, the learned Advocate of the Respondent No. 4 failed to produce any written examination of the witnesses and he also failed to produce any document that the petitioner was called for cross examine the witnesses or he cross examined the witnesses. He then candidly admitted the inquiry committee was not codified any witnesses statements and also petitioner was not called for cross examination of the witnesses. The inquire committee relied upon their decision of written statement of the petitioner where he admitted that he had been received bribe to transfer of his colleague, Md. Khalilur

Rahman. The appellate authority failed to examine the petitioner admitted that he received bribe one after year he had transfer Shimultholi Zonal office and he was not transferred thereafter. The appeal was dismissed by non-speaking order as of the provision of Rule 45 of the Service Rules. We found that the inquire committee was not examined any witness and was not called for cross examined of the witness as such inquire committee is violated section 42 of the পল্লী বিদ্যুৎ সমিতি কর্মচারী চাকুরী বিধি, ১৯৯২ সংশোধিতঃ ২০১২ইং. and appellate authority violated Rule 45 of the Service Rules.

In view of the above facts and circumstances coupled with the provision of law quoted above, we find substances in the submission of the learned Advocate for the petitioner.

Thus, we find merit in this Rule.

Accordingly, the Rule is made absolute. Hence memo No. 27.12.2672.571.02.009.2021.746 dated 27.02.2021 convicted the petitioner and removed him from service, Annexure-F and memo No. 27.12.2672.571.02.012.21.1519 dated 25.05.2021, Annexure-H dismissed the appeal by non-speaking order is without lawful authority and is of no legal effect and are hereby set-aside. The Respondents are directed to re-instate the

petitioner in his Job within 60(sixty) days from the date of the receipt of this judgment.

However, there would be no order as to costs.

Md. Jahangir Hossain, J:

I agree.