

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

WRIT PETITION NO. 323 OF 2023

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Md. Kamruzzaman

.....Petitioner

-VERSUS-

Government of the People's Republic of Bangladesh,
represented by the Secretary, Ministry of Power,
Energy and Mineral Recourses and others

..... Respondents

Mr. Syed Mamun Mahbub, Advocate with
Mr. Md. Abdul Bari, Advocate

..... For the Petitioner

Mr. Md. Farhad Bin Hossain, Advocate

.....For the Respondent No. 2

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

Heard on 15.06.2026 and 14.07.2026

Judgment on 28.07.2026

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under
Article 102 (2) (a) (ii) of the Constitution of the People's Republic of
Bangladesh in the following terms:

*“Let a Rule Nisi be issued calling upon the
respondents to show cause as to why the Memo No.*

২৭.১১.০০০০.২১৩.০১.০০৩.২২-১৮৮ dated 06.12.2022 issued by respondent No. 1 purported to have been signed by the respondent No. 2 by which the post of the petitioner was reduced from the Executive Engineer, sale and distribution Department-2, PDB, Brahmanbaria to the much lower post Sub-Divisional Engineer (Annexure-I) should not be declared to have been passed without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this court may seem fit and proper.”

Subsequently by an order dated 09.05.2023 a supplementary Rule Nisi was issued upon an application filed by the petitioner, in the following terms:

"Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why office order vide Memo No.27.11.0000.213.01.006.21-45 dated 28.02.2023 (Annexure-M) issued by the respondent No.6 should not be declared to have been issued without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this court may seem fit and proper".

Thereafter on 13.02.2025 a second supplementary Rule Nisi was issued, upon an application filed by the petitioner, in the following terms:

"Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why Office Order contained in Memo No.২৭.১১.০০০০.২১৩.০১.০০৬.২১-২২০ dated 28.11.2023 issued by the Office of the Respondent No. 2 signed by the Respondent No. 6 by which imposing forced Retirement and fine amount of Tk. 12,39,511.25 upon the

petitioner(Annexure-Q) should not be declared to have been issued mala fide, illegal and without lawful authority and is of no legal effect and/or further order or orders be passed as to this Court may seem fit and proper”.

Necessary facts for disposal of the instant Rule, as has been narrated in the writ petition, in short, are that, the petitioner was appointed as an Assistant Engineer on temporary basis vide office order contained in Memo No. ১২১-বিউরো (কর্ম)/২/বিবিধ-৬৮/৫৭ dated 24.06.1999 issued by the Office of the Respondent No. 2 under the signature of the then Deputy Director, Employee Department, Bangladesh Power Development Board (hereinafter referred to as BPDB). His job was made permanent on 29.01.2002. On 04.08.2005 he was promoted to the post of Sub Divisional Engineer and joined that post in the BPDB, Dhaka. On 18.06.2015 he was again promoted as an Executive Engineer and joined the post of BPDB, Brahmanbaria. On 02.02.2022 he received a show cause notice, (কৈফিয়তনামা) issued by the office of the Respondent No. 2 under the signature of the Respondent No. 6, as to why a Departmental proceeding shall not be initiated against him for misappropriation of tk. 9,35,500/-. The petitioner replied to that notice on 20.02.2022 categorically denying all the allegations made against him. By the order dated 06.03.2022 a charge was framed against him on the allegations of negligence, misconduct and corruption as per Rule 138 (a), (c) and (d) of the BPDB (Employee) Service Rules, 1982 and an inquiry Officer was appointed to inquire into this matter. The charge was communicated to the petitioner

on the same date and he was asked to reply within 14 days as to why appropriate punishment shall not be imposed upon him. The petitioner replied to that notice on 23.03.2022 and also sought for personal hearing. The inquiry officer submitted the report on 08.05.2022, in the meantime the petitioner was attached to the Chattogram Office. The respondent authority issued the second show cause notice on 07.06.2022 asking as to why major punishment of dismissal shall not be imposed upon him and to make a reply within 14 days. The petitioner replied on 07.07.2022 again categorically denying all the allegations made against him. On 08.10.2022 the petitioner filed an application for appointing a neutral investigating officer with the allegation that the inquiry was not held in accordance with law. The application was made to the member of Administration, BPDB, Dhaka but the Deputy Direction-1 of Inquiry and Discipline Division by the order dated 24.10.2022 refused the same. Finally, by the impugned order dated 06.12.2022 issued by the Office of the respondent No. 2 under the signature of the respondent No. 6 the petitioner was imposed with the punishment by downgrading him to the lower post of Sub-Divisional Engineer from Executive Engineer.

Being aggrieved by the said order of punishment and there having no other alternative and efficacious remedy the petitioner filed the instant writ petition and obtained the present Rule. At the time of issuance of the Rule no ad-interim order staying the order of punishment was given by this Division.

During pendency of this Rule the petitioner filed an application for issuance of supplementary Rule stating that the petitioner went through the administrative trial and got punishment as per the service Rules. Though the punishment is under challenge in this writ petition, the respondent No. 2 has issued a second show cause notice dated 28.02.2023 in complete defiance of the same. Hence, prayed for issuance of a supplementary Rule and this Division by the order dated 09.05.2023 issued a supplementary Rule and was further pleased to stay operation of the impugned show cause memo dated 28.02.2023 for a period of 6(six) months. Challenging this order the respondent No. 2 moved before the Appellate Division by filing Civil Petition for leave to Appeal No. 1952 of 2023 and by the order dated 16.07.2023 Appellate Division was pleased to stay the interim order passed by this Division at the time of issuance of first supplementary Rule.

Thereafter, the petitioner filed another application for issuance of second supplementary Rule stating that, though the matter is still in seisin of the Appellate Division, the Respondent No. 2 by the memo dated 28.11.2023 imposed punishment of forced determined with a fine of Tk. 12,39,511.25/- upon the petitioner. On hearing the application this Division by the order dated 13.02.2025 was pleased to issue second supplementary Rule as to why the impugned memo imposing punishment of forced retirement shall not be declared to have been passed without any lawful authority. However, no ad-interim order staying the said

punishment was issued at the time of issuance of the second supplementary Rule.

Learned Advocate Mr. Syed Mamun Mahbub with learned Advocate Mr. Md. Abdul Bari, appeared on behalf of the petitioner and submitted that, in the impugned order dated 06.12.2022 there was a reference of Rule 139(1)(d) of Bidhimala, 1982 and under this Rule the penalty of 'reduction to a lower stage in a timescale of pay, or to a lower post' may be imposed but in the instant case the authority most arbitrarily imposed three separate penalties upon the petitioner under this Rule. Therefore, the impugned order dated 06.12.2022 is ex facie illegal, mala fide and has been passed without any lawful authority.

Learned Advocate next submitted that, the respondent authority did not follow the service Rules as contained in Rules 143(2) of the Bidhimala, 1982 while imposing punishment upon the petitioner inasmuch as the petitioner time and again claimed personal hearing during the inquiry proceeding but that was always denied hence the inquiry and the subsequent order on the basis of that illegal inquiry report cannot sustain as per law.

He forcefully submitted that it is the constitutional right of the petitioner to get protection of law and to be treated in accordance with law. However, the respondent authority imposed punishment upon him without following due process and with a mala fide intention and therefore, the impugned order is liable to be set aside for ends of justice.

In the application for issuance of first supplementary Rule challenging the memo dated 20.08.2023 the learned advocate for the petitioner submitted that it is evident that the petitioner went through an administrative trial once and got punishment as per the Service Rules. Though the punishment is under challenge in this writ petition, the respondent authority in defiance of the same issued a second show cause notice on the self-same allegations, which does not reveal any new cause and therefore, it is apparent that this show cause notice has been issued with mala fide intention. His strong submission is that, mala fide vitiates everything and is a nullity. In the instant case petitioner's case was adjudicated earlier and imposed punishment and for the same offence after a long time another notice dated 28.02.2023 has been issued which is palpably illegal and therefore is liable to be declared to have been issued without any lawful authority.

Regarding the memo dated 28.11.2023, which has been challenged in the second supplementary Rule, the learned advocate for the petitioner submitted that, though a supplementary Rule was issued against the second show cause notice but the respondent authority in clear disregard to the same issued this memo imposing a punishment of forced retirement upon the petitioner. He was not only given forced retirement but also a fine of TK. 12,39,511.25 was imposed upon him which will be curtailed from his pension benefit. This memo has been issued with an ulterior motive of the respondents and therefore, the same is liable to be set aside for ends of justice.

Learned Advocate for the petitioner categorically submitted that the petitioner was given forced retirement on the allegation that he constructed a prayer room and a place of ablution (নামাজ পড়ার স্থান ও অভ্যুত্থানা) in violation of the design approved by the higher authority. The facts remains that, the petitioner constructed the prayer room out of his religious belief and he had no intention to violate the Service Rules of 1982.

On the other hand, Learned Advocate Md. Farhad Bin Hossain, entered appearance on behalf of Respondent No. 2 and strongly contested the Rule by filing affidavit in opposition.

The learned advocate for the Respondent No. 2 submitted that, in the first charge there are three types of serious allegations against the petitioner, which are: negligence in duty, misconduct and misappropriation of money. Misappropriation was committed by way of : (i) opening SND bank account with his own signature only without approval of concerned authority violating the provision of বিউবোর আর্থিক ক্ষমতা অর্পন (অনুল্লয়ন) ২০১৮ (ii) not receiving advance payment from the consumers for temporary connection of electricity line, (iii) providing connection of electricity line to the Company without following process of depositing amount and finally (iv) placing of cheque furnished by the Company in the bank account opened by him in the name of Executive Engineer, S&D, PDB Brahmanbaria and withdrawing said cheque amount of Tk. 9,35,500.00 therefrom in order to misappropriate it. These allegations were brought against the petitioner while he was functioning

as the key responsible person in Brahmanbaria Zone, BPDB. Consequently a show cause notice was issued asking him to give a reply within 07 days and thereafter, following the Rules an inquiry officer was appointed who conducted the inquiry upon giving the petitioner a chance of personal hearing. Finally by the impugned order dated 06.12.2022 punishment was imposed upon him by duly following the procedure as mentioned in the BPDB (Employees) Service Rules of 1982, and no illegality or irregularities have been committed by the respondents.

It is the contention of the learned advocate for the respondent No. 2 that, the second show cause notice, which has been challenged in the first Supplementary Rule, was issued in relation to completely separate allegations of negligence in duty, misconduct and corruption for, amongst other, constructing of (i) guard rooms and ladder shed in violation of the approved design, (ii) one tin shed made canopies instead of two sheds, (iii) prayer house and ablution room violating the approved design and (iv) installing the deep tube-well without the approved design and thereby causing a loss of Tk. 2,99,812/- to the respondent by paying the same amount to the contractor. These allegations were brought against the petitioner under rule 138(a), (c) and (d) of the Service Rules, 1982. In this case also show cause notice was issued upon the petitioner by giving him opportunity to make reply thereto and upon conducting an inquiry he was finally imposed with the punishment by the impugned order dated 28.11.2023, which has been challenged in the second Supplementary Rule.

The next submission of the learned Advocate for the respondent no. 2 is that, the petitioner was well aware about all the disciplinary actions pending against him. Apart from the two abovementioned departmental proceedings, a third departmental proceeding was initiated against him for his wilful absence in the official duty but the petitioner did not challenge that.

Learned Advocate also submitted that, the impugned punishments vide office orders dated 06.12.2022 and 28.11.2023 were given upon the petitioner in relation to completely two separate departmental proceedings arising out of separate cause of actions and the petitioner wilfully suppressing this material fact obtained the supplementary Rules and therefore, those are not tenable in the eye of law and accordingly all the Rules are liable to be discharged.

The further contention of the learned Advocate that there is a forum of preferring a review application before the authority against the impugned order. However, the petitioner intentionally did not avail that statutory forum and has come before this Division straight way by filling this writ petition, which he cannot do and therefore, the Rule is liable to be discharged for not being maintainable.

Heard the learned Advocates for the respective parties and perused the writ petition, supplementary affidavits thereto, the affidavit in opposition and all the documents annexed therewith.

Since the learned Advocate for the respondent no. 2 agitated the question of maintainability of the writ petition because of existence of an alternative forum of appeal/review in the Service Rules, we would like to discuss the issue of maintainability first.

It appears from The Bangladesh Power Development Board (Employees) Service Rules, 1982 that Rule 146 provides for a forum of Appeal only against an order imposing any penalty specified in Rule 139, except censure, to the authority next superior to the authority imposing the penalty, and where the penalty is imposed by order of the Board there shall ordinarily lie no appeal but the Board may review its own order suo moto or on receipt of representation from the employee concerned. In the instant case the penalty has been imposed by the decision of the Board. As such the alternative remedy available to the petitioner was to file a review petition before the Board to reconsider its decision, which the petitioner failed to avail before filing this writ petition.

On this issue it has been already settled in a number of decisions of both the Divisions that, the availability of a review before the very authority which imposed the punishment does not, by itself constitute an equally efficacious alternative remedy so as to render a writ petition under Article 102 (2) (a) automatically non-maintainable. The Court must examine the nature and scope of the review jurisdiction and the circumstances in which judicial review is sought. A review application is optional not compulsory and cannot be considered as an equally

efficacious remedy. In the given facts and circumstances of the instant case we find the writ petition as maintainable.

The substantive Rule was issued on 16.01.2023 in which the order dated 06.12.2022 imposing penalty of downgrading the petitioner to a lower post was challenged. From perusal of this impugned memo we find that this punishment was imposed upon him on the allegation of misappropriation of an amount by the petitioner. From the inquiry report and the reply made by the petitioner we also find that, the petitioner admitted himself committing the alleged act but stated that he had done it by mistake and after realizing he had deposited the alleged amount which was withdrawn by him earlier. It is the allegation of the petitioner that this vital aspect was not taken into consideration by the inquiry officer nor by the authority while imposing punishment upon him. But from the inquiry report as well as the earlier show cause notice, the charge and the impugned decisions, we find that initially show cause notice was issued upon the petitioner as to why he shall not be dismissed from service and the charge was also framed stating the same. However, taking into consideration of the statements made by the petitioner and on the basis of the opinion of the inquiry officer, the petitioner was given only a lower punishment by downgrading his post from the post of Executive Engineer to Sub-Divisional Engineer. Therefore, it cannot be said that the authority did not take into consideration of the relevant facts.

It is the petitioner's claim that, though the service Rules allow to impose only one punishment for one offence but in this impugned memo

as many as three punishments were imposed upon him in complete violation of law.

In reply the learned advocate for the Respondent No. 2 argued that, the penalty imposed by the memo dated 06.12.2022 is not three separate punishments rather it is a single punishment of downgrading to a lower post and other two punishments mentioned therewith are ancillary to the original punishment.

The first penalty imposed by the impugned order dated 06.12.2022 was given under Rule 139(1)(d) of the BPDB Service Rules, 1982 which provides the penalty of “reduction to a lower stage in a time-scale of pay or to a lower post”. The penalties imposed upon the petitioner by this memo are: (a) demotion to the lower post of Sub-Divisional Engineer for 3 years; (b) during that period he shall get the starting salary of 6th grade, which is the pay scale for the post of Sub-Divisional Engineer and, (c) this period of three years shall not be considered as a service period for the purpose of promotion or for increasing salary. Considering the relevant provision as well as the penalty imposed upon the petitioner we find that, the last two penalties mentioned therein are not substantive penalties, those are in fact explanation as to how the salary and benefits to be calculated during the period of three years in the demoted post. Hence, we find substance in the submission made by the learned advocate for the Respondent No. 2.

On examination of all the documents on record we also find that when this writ petition was filed challenging the memo dated 06.12.2022

regarding a penalty imposed in a departmental proceeding, another departmental proceeding with different allegations of construction in violation of the approved design by the higher authority was already pending against the petitioner. The petitioner filed the instant writ petition without disclosing the departmental proceeding already pending against him. The petitioner did not disclose this at the time of obtaining two supplementary Rules. In those applications for issuance of the supplementary Rule it has been categorically stated by the petitioner that, though a punishment has been imposed upon him as per the service Rules, on the self-same cause of action another show cause notice has been issued and a punishment of forced retirement has been given in complete violation of the service Rule and in absolute defiance of the pendency of the writ petition before the High Court Division.

We find the statements made by the petitioner in those applications to be absolutely misleading and complete suppression of facts inasmuch as the 2nd show cause notice dated 28.02.2023 and the punishment of forced retirement by the order dated 28.11.2023 were given in relation to a completely different departmental proceeding, which has no nexus with the penalty challenged originally by the petitioner.

Learned advocate for the petitioner has made a submission that punishment of forced retirement is too harsh given the offence committed by the petitioner and that the petitioner constructed a prayer room and ablution place out of his religious believe for which he cannot be given this major punishment of forced retirement. On perusal of the documents

on record we find that, the issue is not about constructing the prayer room or ablution place, rather the issue is that he violated the higher authority's instruction in complying with the approved design while constructing the guard rooms, shed, prayer room, ablution place and deep tube well, which is completely against the terms and conditions of his service. Hence the submission of the learned Advocate for the petitioner does not hold any substance.

It has also been contended by the learned advocate for the petitioner that other two officials, who were also found to be involved with this incident, were not given any punishment and only the petitioner has been held liable for this. In reply, the learned advocate for the Respondent No. 2, referring to Annexures-S, T and T-1 submitted that, the petitioner was the main responsible person at the relevant time when the alleged work was done and for that reason, he was given higher penalty than those two officials who were newly appointed and very junior to him and were following the instruction of their superior authority. However, they were also given warning by the authority. Therefore, it cannot be said that those two other officials have not been brought under the punishment.

From the affidavit in opposition we further find that, prior to the issuance of the two supplementary Rules, another departmental proceeding was initiated against the petitioner for wilful absence in the office, in which a show cause notice was issued upon him and by the reply dated 09.11.2023, as has been annexed as Annexure-15 to the affidavit in opposition, the petitioner stated that, he did not join the post

because on 16.05.2023 the High Court Division issued an order staying the penalties imposed upon him and this order was communicated to the higher authority. That he submitted an application on 28.05.2023 for joining as per the direction of the High Court Division but nothing was informed to him in this regard. On meticulous perusal of the record we find that, no such order was issued on 16.05.2023 or on any other date by this Division staying the penalties and directing the petitioner to join his post. Besides, this proceeding has not been challenged by the petitioner. It is pertinent to notice that, in that departmental proceeding second show cause notice was issued on 09.10.2023 as to why he should not be dismissed from service. However, since he was given the penalty of forced retirement by the order dated 28.11.2023 in another departmental proceeding, no further penalty was imposed in this case.

We are of the view that the supplementary Rules were obtained by the petitioner suppressing the material fact that the subsequent show cause notice and the punishment order dated 28.11.2023 arose from a distinct and independent departmental proceeding. The plea of the petitioner that he was sought to be punished twice for the same conduct, is wholly misconceived. Learned Advocate for the petitioner submitted that the latest punishment of forced retirement is too harsh given the gravity of offence. The foundation on which the supplementary Rules were issued having already served out, the petitioner cannot now be permitted to assail the subsequent order of forced retirement on an altogether different ground, namely, that the punishment is disproportionate. This argument

has never been made either in the application for supplementary rule or by the petitioner at the time of hearing. Such a course would amount to allowing the petitioner to travel beyond the case pleaded and the Rule issued. Moreover, a litigant who approaches this jurisdiction without clean hands, is not entitled to any discretionary relief. We are constrained to observe that the supplementary Rule was obtained by misleading the court on a material aspect of the matter. Such conduct is wholly unacceptable and amounts to an abuse of the process of the court.

Moreover, it has been held by the Appellate Division in a case reported in **73 DLR (AD) 46** that if the termination of service of an employee is found to be within four corners of law, the Court cannot nullify it on the ground that it is harsh. In the instant case in both the proceedings show cause notices were issued as well as charges were framed against the petitioner as to why he should not be dismissed from service but considering the facts and circumstances of the case the authority was pleased to reduce it to the punishment of demotion for three years and of forced retirement respectively. No deviation to the procedure as mentioned in the Service Rules of 1982 has been made by the authority while imposing the impugned punishments. The petitioner has been given ample opportunity to defend himself in due course all along.

In view of the facts and circumstances of the case and with the discussions made hereinabove, we find that the instant Rule as well as the supplementary Rules are devoid of any substance and therefore, we find no merit in any of these Rules.

In the result, the Rule and both the supplementary Rules are discharged.

The order of status-quo granted at the time of issuance of the Rule is hereby re-called and vacated.

However, there will be no order as to costs.

Let a copy of this judgment and order be communicated to the concerned authorities at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.