

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

Writ Petition No. 3655 of 2023

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. Sheab Uddin (Sobuz) ... Petitioner.
 - Vs. -

Govt. of Bangladesh and others
 ... Respondents.

Ms. Syeda Nasrin, Advocate
 ... For the petitioner.

None appears ... For respondent No.4.

Mr. Mahfuz Bin Yousuf, DAG with
 Mr. Md. Shafiqur Rahman, DAG with
 Mr. Md. Esa, AAG with
 Mr. Eakramul Kabir, AAG with
 Mr. Mohiuddin Md. Hanif, AAG
 ... For the respondents.

Heard on: 20.02.2025.

Judgment on the 06th March, 2025

Present:

**Justice Fahmida Quader
 And
 Justice Mubina Asaf**

Mubina Asaf, J:

In this application filed by the petitioner under Article 102 of the Constitution, Rule Nisi was issued calling upon respondents to show cause as to why the impugned inaction and failure of the respondents to appoint the petitioner under the pensioner quota (পোষ্য কোটা) pursuant to the

recommendation dated 06.12.2020 (Annexure 'B'), decision dated 20.09.2021 (Annexure 'C') and circular being যোগ/রেপ্র/বিবিধ-৮৯/২০০৩-৯১৪ তারিখ ৩০/১০/২০০৮ issued by the then Ministry of concern (Annexure 'E') should not be declared to have been done without lawful authority and is of no legal effect and why the respondents should not be directed to give appointment to the petitioner under the pensioner quota (পোষ্য কোটা) pursuant to the recommendation dated 06.12.2020 (Annexure 'B') decision dated 20.09.2021 (Annexure 'C') and circular being যোগ/রেপ্র/বিবিধ-৮৯/২০০৩-৯১৪ তারিখ ৩০/১০/২০০৮ issued by the then Ministry of concern (Annexure 'E') and/or such other or further order or orders as to this Court may seem fit and proper.

The background facts leading to the Rule in a nutshell is that, the petitioner is the son of an ex employee of Bangladesh Railways, Chattogram, Station, who died on 26.04.2020 while he was on duty. Hence, the petitioner applied on 30.04.2020 for a job before the respondents under the pensioner quota (পোষ্য কোটা). No other member of his family has applied for the job than the petitioner. The petitioner with all the requisite qualifications applied for the job. Based on the application the concerned office of the respondents held an investigation and prepared a report strongly recommending in favour of the petitioner. Moreover, on 20.09.2021 respondent No.3 issued a notice recommending in favour of appointing the petitioner in the vacant post of the Railway under the pensioner quota.

Rule 2(Cha) of the Bangladesh Railway Non-Cadre Employees Appointment Rules, 2020 provides that “পোষ্য অর্থ বাংলাদেশ রেলওয়ের স্থায়ী পদে অনুন্য ২০ (বিশ) বছর চাকরি সম্পন্ন হইয়াছে এইরূপ কর্মরত বা অবসরপ্রাপ্ত (জীবিত বা মৃত)

কর্মচারীর স্বতান্ত্র ও বিধবা স্ত্রী বুরোইবে” and in Rule 4 of the said Rules, there is provision of direct appointment but despite having passing result and recommendation of the selection committee, petitioner has not been given direct appointment as per the said law and hence he has been discriminated against in the instant case and as such the petitioner is seeking a direction for appointment in the pensioner quota as son of the former employee who died during his service on duty.

As per office circular dated 30.10.2004 if any employee died whilst he was on duty his son, unmarried daughter or widow can be given a job of 3rd-4th grade in the department directly. However, this circular has not been followed. In the instant case, the petitioner has not been given a job rather, despite having all academic qualifications the petitioner has been deprived.

Ms. Syeda Nasrin, the learned Counsel for the petitioner submits that, the respondents are under obligation of law to give appointment to the petitioner directly in the pensioner entitlement as dependent as he is a son of former employee who died on duty in the service of Bangladesh Railway and his name was scrutinized and recommended for a 3rd Class/4th Class post in the Bangladesh Railway and prays for a direction upon the respondents to give appointment to the petitioner in the pensioner entitlement as dependent without any further delay for ends of justice.

The learned Counsel further submits that though there is no confusion or objection regarding petitioner's right to have a job in the pensioner entitlement as dependent and he has been recommended to be appointed directly in the department by respondent No.4 as well as by the selection committee but due to the red-tape perplexities, he has been suffering

miserably as the job has not been given to him yet and as such the inaction of the respondents is illegal, malafide, without lawful authority and is of no legal effect. She further points out that there are notifications and recommendations for appointment of the petitioners but till date nothing has been done. She further submitted that others on the same footing have been appointed by the respondents

On the other hand, Mr. Md. Shafiqur Rahman, the learned Deputy Attorney General appearing on behalf of the respondents submits that the Rule provides for pensioner quota as well as the circular dated 30.10.2004. The recommendations are also for the respondents to consider the case at hand.

We have heard the learned Counsels for both the sides and perused the Writ Petition, supplementary affidavit and materials on record appended thereto.

The admitted facts are that the petitioner applied for job before the respondents in place of his late father who was an employee of the respondents, the “বিভাগীয় পরিবহন কর্মকর্তা, বাংলাদেশ রেলওয়ে, চট্টগ্রাম”. His father served under the respondents since 1984 till his death on 26.04.2020. Based on that the “বিভাগীয় সংস্থাপন কর্মকর্তা, পক্ষে বিভাগীয় রেলওয়ে ব্যবস্থাপক, বাংলাদেশ রেলওয়ে, চট্টগ্রাম”, prepared a report on 31.08.2020 in details, that there is no dispute that the father of the petitioner died during tenure of his service. The joint report dated 12.08.2020 prepared by the high officials of the respondents passed the decision that “প্রাপ্ত তথ্য উপরের ভিত্তিতে আমরা নিম্ন স্বাক্ষরকারীগণ এই সিদ্ধান্তে উপনীত হইলাম যে, জনাব মৃত মোঃ ফজর আলী এওয়াইএম গ্রেড-১/সিজিপিওয়াই (কর্মরত: চট্টগ্রাম স্টেশন) কর্তব্যরত অবস্থায় অসুস্থ হয়ে মৃত্যুবরণ করেন। তাই কর্তব্যরত অবস্থায়

মৃত্যুর ঘটনাটি সঠিক।” All the other successors of the petitioner's gave no claim certificate in favour of the petitioner that they have no objection if the job is given to the petitioner, which has made him the only claimant for the job in place of his father. The Director General, Bangladesh Railway himself recommended to the secretary, Ministry of Railway for considering such appointment as the dependent (পোষ্য).

It further transpires that a joint high committee by their report dated 03.12.2020 also recommended in favour of appointing the petitioner stating that “সুপারিশঃ- মৃত মোঃ ফজর আলী, প্রাক্তনঃ এওয়াইএম প্রেড-১/সিজিপিওয়াই কর্মরতঃ চট্টগ্রাম স্টেশন, অধীনে ডিটিও/চট্টগ্রাম। তার পরিবারে উপার্জনক্ষম কোন পোষ্য বাংলাদেশ রেলওয়েতে চাকুরীরত নেই বিধায় মৃত মোঃ ফজর আলী এর নির্ভরশীল পোষ্য মোঃ শিহাব উদ্দীন (সবুজ) এর আবেদন এর প্রেক্ষিতে বাংলাদেশ রেলওয়ে কর্মচারীর পোষ্য হিসেবে এবং শিক্ষাগত যোগ্যতা অনুযায়ী একজন সন্তানকে ৩য়/৪র্থ শ্রেণির যেকোন শূন্য পদের বিপরীতে নিয়োগের জন্য কমিটি কর্তৃক জোর সুপারিশ করা হলো।” Based on that the General Manager (East), Bangladesh Railway, Chottogram recommended in favour of appointment of the petitioner on 02.03.2021.

On 04.12.2012, the respondents took unanimous decision to implement their earlier notification dated 30.10.2004 stating that “কর্তব্যরত অবস্থায় মৃত্যুজনিত কারণে রেলওয়ে কর্মচারীর একজন পোষ্যকে সরাসরি নিয়োগযোগ্য ৩য়/৪র্থ শ্রেণির শূন্য পদে চাকুরী প্রদানের ক্ষেত্রে যোগাযোগ মন্ত্রণালয়ের ৩০.১০.২০০৪ তারিখে জারীকৃত যোম/রেপ্র/বিবিধ-৮৯/২০০৩-৯১৪ নম্বর পরিপত্রটি নিখুঁতভাবে অনুসরণ করতে হবে”。 Based on that, the DG Office, Railway recommended several times for appointment of the petitioner and others on the same footing.

Hence, it is clear that on principle the Railway Authority had agreed and had given their recommendations time and again to give his appointment but the same has not been finalized as yet.

We would like to reproduce the Rule 4 (b) of Bangladesh Railway Non Gazetted Service Recruitment Rules 1985 :

"4 (b) All recruitments will be made by open competition and on all Bangladesh basis. 40 per cent of all vacancies will be reserved for sons/daughters and dependent brothers/sisters of permanent railway employees of not less than 15 years service and of retired railway employees dead or alive."

We would also like to reproduce the "বাংলাদেশ রেলওয়ের ক্যাডার বিহুর্ত কর্মচারী নিয়োগ বিধিমালা, ২০২০ এর বিধিমালা ২(চ)" and "বিধিমালা ৩(৩)" which run as follows:

"২(চ) 'পোষ্য' অর্থ বাংলাদেশ রেলওয়ের স্থায়ী পদে অন্তর্যান ২০ (বিশ) বৎসর চাকরি সম্পন্ন হইয়াছে এইরূপ কর্মরত বা অবসরপ্রাপ্ত (জীবিত বা মৃত) কর্মচারীর সত্তান ও বিধবা প্রাণী বুরাইবে।"

"৩(৩) উপ-বিধি (১) ও (২) এ যাহা কিছু থাকুক না কেন, সরাসরি নিয়োগযোগ্য ১৪তম গ্রেড হইতে ২০তম গ্রেডের মোট শূন্য পদের শতকরা ৪০ (চালিশ) ভাগ পদ যোগ্যতাসম্পন্ন পোষ্যদের জন্য সংরক্ষিত থাকিবে।"

Before we go into our findings, it is important to note that:

(i) Doctrine of legitimate expectation-

The doctrine of legitimate expectation ensures that where a government policy promises a benefit, an eligible person has a right to expect its fair application. Since other similarly situated individuals have been given jobs on the same footing, denying the petitioner creates discrimination and unfairness.

(ii) Right to Equal Treatment -

Article 27 of the Constitution of Bangladesh guarantees that "All citizens are equal before the law and are entitled to equal protection of the law".

Article 29(I) of the Constitution states that there shall be equality of opportunity in public employment.

If others on an equal footing have been given jobs under the pensioners quota, denying the petitioner amounts to discrimination and violates his fundamental rights.

(iii) Principle of Fairness and Natural Justice-

The rules governing the pensioners' quota create a vested right for the petitioner if he meets the eligibility criteria.

Denying him employment without any valid reason violates the principles of natural justice. The respondents have not provided any reasonable justification for their inaction, making their stance unlawful and against the principles of good governance.

This prolonged delay not only reflects administrative inefficiency but also constitutes a denial of rightful employment opportunities. Such inaction undermines public trust and violates the principles of fairness and justice that the system is meant to uphold.

This prolonged inaction has further caused financial distress and deprived these families of the stability and opportunities they are entitled to. Many children of these affected families must have suffered a setback in their education due to this economic hardship as well as their overall health and wellbeing must have been compromised. It is unacceptable that the very system meant to safeguard citizens' rights have instead subjected them to unnecessary struggles.

The state bears the fundamental responsibility of ensuring justice and fairness in governance. For years eligible candidates under the pensioners quota have been unjustly denied their rightful employment despite clear Rules

and strong recommendations in their favour. This failure is not just an administrative failure but a grave injustice that has directly affected the families and children of these individuals.

In light of the applicable rules providing for recruitment of sons/daughters and dependent brothers/sisters of permanent railway employee of not less than 15 years service and of retired railway employee dead or alive, the refusal by the authorities to grant such an appointment despite the applicant fulfilling all eligibility criteria amounts to an arbitrary and unjust denial of a legitimate right. Such action is in violation of the principles of fairness, equity and good governance.

Accordingly, we find substance in the Rule.

In the result, the Rule is made absolute.

The respondents are hereby directed to give appointment to the petitioner in accordance with the relevant Rules within 30 (thirty) days from the date of receipt of this order, without fail.

Fahmida Quader, J:

I agree.