

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

Writ Petition No. 7386 of 2022

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

SKM Mohsin Reja, Security Supervisor,  
Service ID No. P-35802, Security Department,  
Biman Bangladesh Airlines Limited

....Petitioner

Versus

Biman Bangladesh Airlines Limited,  
represented by its Managing Director and  
Chief Executive Officer (CEO), Head Office,  
Balaka Bhaban, Kurmitola, Dhaka-1229,  
Bangladesh and another

....Respondents

Mr. Sherder Abul Hossain, Advocate with  
Mr. Sanjoy Kumar Kundu, Advocate

....For the Petitioner

Mr. ABM Siddiquir Rahman Khan, Senior  
Advocate

.... For the respondents

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice S M Saiful Islam

Judgment on 08.06.2026.

Md. Iqbal Kabir, J:

This Rule Nisi was issued calling upon the respondents to show cause as to why the impugned Memo No. 30.34.0000.093.14.269.19.359 dated 18.09.2019 (Annexure-H) under the signature of the respondent No. 2 demoting the petitioner from Security Supervisor to Security Assistant and recovering Tk. 86,320/- from the salary of the petitioner should not be declared to have been issued without lawful authority and is of no legal effect and as to why they shall not be directed to consider the promotion of the petitioner vide Office Order being Memo No. 30.34.0000.068.13.001.21.141 dated 20.06.2021 (Annexure-L) as

reinstatement of the petitioner to his former grade and/or to pass such other or further order or orders as to this Court may seem fit and proper.

Short facts narrated for disposal of the Rule are that the petitioner is a law-abiding citizen and a permanent resident of Bangladesh. He was initially appointed as a Security Assistant under respondent No. 1 and, upon satisfactory service, his service was regularized. Thereafter, considering his sincerity, honesty, and dedication, the authority promoted him to the post of Security Supervisor vide Office Order dated 30.10.2008. However, while serving as Security Supervisor at Sylhet Airport, the petitioner was served with two charge sheets, both bearing Memo No. 30.24.2600.93.15.508.19.3381 dated 28.04.2019, alleging misappropriation of revenue and creation of security risks to airlines through alleged unprofessional conduct. However, no statement of allegations or supporting particulars was supplied with the said charge sheets. The petitioner thereafter submitted his written explanation on 09.05.2019, denying all allegations. Subsequently, the authority initiated departmental proceedings against the petitioner by appointing an Inquiry Officer and a Case Worker/Presenter. During the inquiry, no witness was examined on behalf of the department, and the entire proceeding was conducted solely on the basis of the submissions made by the Case Worker/Presenter. The petitioner repeatedly sought inspection of relevant documents and prayed for an opportunity to cross-examine the Case Worker/Presenter, but such requests were arbitrarily refused, thereby seriously prejudicing his defence. It is further stated that the Inquiry Officer failed to follow the prescribed procedure during the inquiry and did not record the questions and answers in their original form. Instead, he prepared notes according to his own discretion and also refused to read over or explain the recorded notes to the petitioner despite repeated requests.

Against this backdrop, challenging the legality and propriety of the impugned memo, the petitioner has brought this case under judicial review.

Mr. Sherder Abul Hossain, the learned Advocate appearing for the petitioner, upon placing the petition, submits that the departmental proceeding against the petitioner was conducted without furnishing any proper statement of allegations and without affording him adequate opportunity to defend his case. He further submits that the petitioner was denied inspection of relevant documents and was not allowed to cross-

examine the case worker/presenter, thereby violating the principles of natural justice.

He next submits that the charge sheet dated 28.04.2019 was issued by the Manager, Admin (Investigation) without any lawful authority or delegation of power. He further submits that although two separate charge sheets dated 28.04.2019 were issued by different authorities, the respondents failed to specify under which charge sheet the proceeding was conducted, causing serious prejudice to the petitioner. The learned Advocate further submits that the enquiry officer conducted the proceeding without examining any witness on behalf of the authority and relied solely upon the statement of the case worker/presenter, which is contrary to the applicable regulations and circulars. He also submits that the enquiry report dated 08.08.2019 was prepared without recording the original questions and answers and merely contained transcripts of statements.

He further submits that the enquiry report was based on oral statements allegedly collected by the case worker from other employees and staff who were never produced before the inquiry officer as witnesses for cross-examination by the petitioner. He also submits that the inquiry officer illegally relied upon CCTV footage which was never supplied to the petitioner for inspection and which cannot legally be treated as admissible evidence under Regulation 57(2) of the Regulation, 1979. The learned Advocate next submits that although separate proceedings and hearings were conducted against the petitioner, the inquiry officer illegally submitted a combined inquiry report against the petitioner and another employee. He further submits that the findings made in the inquiry report are vague in nature and do not conclusively establish the petitioner's guilt.

He also submits that although the charge against the petitioner related to the realization and misappropriation of fees, the petitioner was ultimately punished on the allegation of failure to properly perform security duties, which was beyond the scope of the charge sheet and in violation of Regulation 57(14) of the Regulation, 1979. In elaboration, it has stated the charges framed under Regulation 55(1)(b)(c) and 55(2)(b)(d) of the Bangladesh Biman Corporation Employees (Service) Regulations, 1979, alleged misconduct, corruption, theft, fraud, dishonesty, and acceptance or giving of bribes or illegal gratification. Although Regulation 55(2)(zc) relating to "conviction in any court of law for any criminal offence involving moral turpitude" was never included in the charge-sheet, a penalty was

nevertheless imposed under that provision, which is illegal and without lawful authority.

Mr. Hossain submits that penalties were imposed by Memo dated 18.09.2019 (Annexure-H) under Regulation 56(1)(c)(d), though Regulation 56(2) expressly mandates that no penalty can be imposed without proper disciplinary proceedings, and it has to be communicated in writing to the employee concerned. Drawing attention to Regulation 57(1)(a), it was argued that the competent authority is required to frame definite charges together with a statement of allegations and all relevant circumstances proposed to be relied upon. However, in the instant case, neither before framing the charges nor during the inquiry proceeding was any statement of allegations supplied to the petitioner, thereby seriously prejudicing his defence and violating the mandatory provisions of the Regulations and principles of natural justice.

Lastly, he submits that the petitioner was demoted without any specified period, and subsequently, the punishment was withdrawn vide memo dated 20.06.2021. As such, the respondents are under a legal obligation to restore the petitioner to his former grade in accordance with Regulation 14 of the Regulation, 1979.

Mr. ABM Siddiqur Rahman Khan, learned Senior Advocate on behalf of the respondents, Biman Bangladesh Airlines, entered his appearance by filing an affidavit-in-opposition, denying the material assertions made in the application. According to him, the petitioner joined Biman as a Security Assistant on 27.04.1995 and, from the very beginning of his service career, he had been negligent and indifferent towards his official duties and responsibilities. Despite repeated opportunities given by the management to rectify himself and discharge his duties properly, he continuously committed various acts of misconduct, thereby proving himself to be a habitual offender who was careless and indifferent regarding his responsibilities.

Mr. Khan further submits that the departmental investigation found four persons guilty, including the petitioner and another permanent employee of Biman, while the remaining two were casual traffic helpers. As departmental proceedings could only be initiated against permanent employees, both permanent employees were subjected to disciplinary action and awarded the same punishment. The petitioner, however, challenged the punishment by filing the present writ petition in 2022.

According to the respondent, the conduct of the petitioner clearly demonstrates that the petitioner's service record was not unblemished and management had repeatedly given him opportunities to improve himself, which he failed to utilize. Therefore, the authority rightly punished him by strictly following the procedures prescribed under the Bangladesh Biman Corporation Employees (Service) Regulations, 1979.

He further contended that, notwithstanding the petitioner's misconduct, the Biman management acted leniently and promoted him to the post of Security Supervisor on 20.06.2021. The petitioner joined the promotional post and has since been enjoying the salary and other benefits attached thereto. According to him, after accepting the promotion and joining the post of Security Supervisor, the petitioner subsequently filed the instant writ petition challenging the punishment. As such, the writ petition is barred by the doctrine of approbate and reprobate, since the petitioner cannot simultaneously accept the benefits arising out of the impugned action and as such, the writ petition is not maintainable.

He lastly submitted that the Rule Nisi, issued like mandamus, reveals that the petitioner prayed for a direction upon the respondents to treat his promotion as reinstatement to his former grade. However, since the petitioner had already accepted the promotion and joined the promotional post before filing the writ petition, such a prayer is misconceived, not maintainable in law, and therefore liable to be rejected.

In reply to the submission, Mr. Sherder Abul Hossain submitted that the petitioner is a law-abiding citizen and also an obedient service holder. The petitioner did not waive the decision of the authority, but being constrained for his livelihood contributed his service where the authority placed him, and being aggrieved with the punishment, he accordingly filed this writ petition taking the shelter under law, which is a proper course for an employee. Moreover, the Service Regulations, namely, 'the Bangladesh Biman Corporation Employees (Service) Regulation 1979,' do not provide any provision restraining the petitioner from challenging any impugned decision holding his service. In other words, there is no provision for an employee that if any employee is aggrieved with the decision of the authority and decides to take legal recourse, he has to be abstained from service. Therefore, the submission made by the learned Advocate for the respondents is misconceived.

We have heard the learned Advocate appearing on behalf of the petitioner as well as the respondent, perused the writ petition and other materials on record, and also the decisions as referred by the parties.

However, on perusal of the materials on record, it appears that the charge sheet dated 28.04.2019 was submitted by the Manager, Admin (Investigation) without any lawful delegation of authority. The record shows that, as two separate charge sheets were submitted by different authorities, the respondents failed to clarify under which charge sheet the proceeding was actually conducted, and such failure on the part of the authority caused serious prejudice to the petitioner. The inquiry officer conducted the inquiry without examining any witnesses on behalf of the authority and relied solely upon the statements submitted by the case worker/presenter. Further, the inquiry report was prepared without recording the original questions and answers and instead contained only transcripts of statements. The inquiry officer relied upon oral statements of persons who were never produced before the inquiry for cross-examination by the petitioner. The records further reveal that the inquiry officer relied upon CCTV footage, which was never supplied to the petitioner for inspection and which cannot legally be treated as evidence under Regulation 57(2) of the Regulation, 1979. Under Regulation 57(2) of the Bangladesh Biman Corporation Employees (Service) Regulations, 1979, the Inquiry Officer is authorized to arrive at findings only based on legally admissible oral and documentary evidence adduced during the inquiry proceeding. However, in the instant case, the findings were based on alleged statements collected and presented by the Case Worker/Presenter from certain employees, including another delinquent employee, the in-charge officer, and a traffic helper, none of whom were examined as witnesses before the Inquiry Officer in the presence of the petitioner, nor were they tendered for cross-examination. As such, the alleged statements relied upon in the inquiry report are inadmissible in the eyes of the law and could not legally form the basis of any finding against the petitioner. Although separate proceedings were initiated against the petitioner and a hearing was conducted separately on 28.07.2019, the Inquiry Officer submitted a combined inquiry report against the petitioner and another employee, which is not permitted in law.

It appears that the inquiry report travelled beyond the scope of the original charge sheet, and the petitioner was ultimately punished on allegations different from those initially framed, in violation of Regulation

57(14) of the Regulations, 1979. Although the charge sheet alleged misappropriation of revenue by realizing money from passengers without issuing receipts, no evidence was produced to prove such an allegation, and the petitioner's duties as Security Supervisor did not include revenue collection. Moreover, the Inquiry Officer failed to record any definite finding proving the charges beyond a reasonable doubt and instead returned findings relating to negligence in security duties and conduct prejudicial to airport security and the reputation of the organization. Thus, the petitioner was ultimately punished on allegations wholly foreign to and beyond the scope and ambit of the original charge sheet, in clear violation of Regulation 57(14) of the Regulations, 1979, and in breach of the principles of natural justice.

In the context, it was contended that the departmental proceeding against the petitioner was conducted without furnishing a proper statement of allegations and without affording him adequate opportunity to defend his case. Nevertheless, based on the perverse inquiry report, the respondent authority imposed the penalties of demotion and a fine without issuing any second show cause notice.

Mr. Sherder Abul Hossain submits that the second show-cause notice is a formal communication in a departmental proceeding. According to him, it has to be issued to the delinquent employee after completion of the departmental inquiry and submission of the inquiry report by the Inquiry Officer. By such notice, the Disciplinary Authority calls upon the employee to explain why the proposed penalty or punishment should not be imposed upon him based on the findings recorded in the inquiry report. According to him, it is a settled principle of service jurisprudence that before imposing any penalty, the delinquent employee must be furnished with a copy of the inquiry report and afforded a reasonable opportunity to submit his explanation, objection, or representation against the findings and the proposed punishment, and such opportunity is ordinarily provided through a second show-cause notice. Although the petitioner preferred departmental appeal and subsequent representation, the same were rejected mechanically without proper consideration.

It is pertinent to note that in the case of Bangladesh Agricultural Development Corporation vs. Saidul Huq Bhuiyan, 8 BLC (AD) 49, the applicability of the second show cause notice was also extended and approved in the case of an employee of the corporation. It has been found

that though the Service Regulations do not provide for supplying the inquiry report along with 2<sup>nd</sup> show cause notice, the authority is required to supply a copy of the inquiry report while the corporation has asked the respondent No.1 to reply to the 2<sup>nd</sup> show cause notice served based on the finding of the inquiry report which was made the basis for punishing the respondent No.1 and thereby the opportunity of giving effective representation has been denied. The concept of administrative fairness requires that an authority, while taking a decision which affects a person's right prejudicially, must act fairly and in accordance with the law.

Failure to supply the inquiry report and to issue a second show-cause notice before passing the final order of punishment renders the disciplinary proceeding procedurally defective. In support of his contention cited a decision reported in 28 BLC 707, on which one of us is a party. However, he claims that the above decision has relied upon the principle settled in the decision reported in 3 BLT (AD) 90, 52 DLR 299, 25 BLC (AD) 131, 9 MLR (AD) 221, 56 DLR (AD) 183 and 1989 BLD 383 and 41 DLR 138.

Further, in the case of Nazma Akhtar vs. GM, Rural Electrification Board, reported in 10 BLC 669, it has been held as under:

"In the light of the above, this Court holds that the entire proceedings of inquiry and investigation as initiated against the petitioner have been vitiated for want of supply of a copy of the inquiry report along with the second show cause notice dated 19.06.1997(Annexure-G). This Court holds further that the petitioner being seriously prejudiced by such inquiry report not being furnished her, the punishment meted out in the form of removal from service (Annexure-K) and order for refund of Taka 6,14,084.20 (Annexure-I) cannot be deemed to have been passed legally in the facts and circumstances of the case and therefore, the impugned orders as hereby declared to have been passed without any legal authority and to be of no legal effect."

In the case of Mostafa Miah vs. Chairman, First Labour Court, Dhaka, and others reported in 46 DLR 373, it has been held as under:

"Enquiry report of the enquiry officer having not been furnished along with the second show cause notice to the petitioner and his previous record of service having not been taken into consideration before awarding the punishment of dismissal from service, the punishment is illegal."

In the case of Bangladesh Muktijoddha Kalyan Trust and another vs. Md. Arshad Ali and others, reported in 14 BLC (AD) 181, it has been held as under:

“Since the respondent No. 1 was removed from the service without serving a second show cause notice accompanying the inquiry report, the High Court Division was not in error in considering that fact while making the Rule absolute and thereupon in setting aside the order of removal passed in respect of the respondent No. 1.”

Relying upon the decision referred to above, it appears that nowadays issuance of a second show-cause is a mandatory legal requirement and an essential component of the principles of natural justice. The cited decisions consistently hold that failure to provide the inquiry report deprives the accused employee of a fair opportunity to defend against the proposed punishment. The relevant rules or regulations expressly provide for furnishing a copy of the inquiry report to the employee or not, the principles of natural justice mandate that such a report has to be supplied to the delinquent employee along with the second show-cause notice. Failure to do so would amount to a denial of a reasonable opportunity to defend himself against the findings recorded in the inquiry report.

According to Annexure-H dated 18.09.2019, penalties were imposed upon the petitioner under Regulation 56(1)(c) and (d) of the Bangladesh Biman Corporation Employees (Service) Regulations, 1979. Regulation 56(2) expressly provides that no penalty shall be imposed on an employee without proper disciplinary proceedings. It further mandates that the penalty must be imposed in writing and that the signature of the concerned employee shall be obtained in token of receipt thereof. Furthermore, Regulation 57 prescribes the procedure for conducting a disciplinary enquiry. In particular, Regulation 57(1)(a) stipulates that the competent authority shall frame the charge, specify therein the penalty proposed to be imposed, and communicate the same to the employee concerned, together with a statement of allegations on which the charge is founded and any other circumstances that the authority intends to take into consideration while passing its decision.

In the present case, however, the respondents failed to comply with the mandatory requirements of the aforesaid Regulations. Neither at the time of framing the charge nor during the course of the inquiry was any statement of allegations supplied to the petitioner. As a result, the

petitioner was deprived of a fair opportunity to know the precise allegations against him and to effectively defend himself. The impugned disciplinary proceedings, therefore, suffer from a fundamental procedural irregularity and are vitiated by non-compliance with the mandatory provisions of Regulations 56 and 57 of the Bangladesh Biman Corporation Employees (Service) Regulations, 1979.

The Courts observed that disciplinary proceedings must strictly follow procedural rules and natural justice, especially before imposing major penalties. The second show-cause notice represents the employee's final opportunity to persuade the appointing authority against the proposed punishment, which can only be meaningful if accompanied by the inquiry report. At this juncture, the records show that the impugned Office Order dated 18.09.2019 was issued without serving any second show cause notice and by an authority whose lawful delegation of power has not been established. The findings recorded in the inquiry report are vague in nature and do not conclusively establish the petitioner's guilt.

In view of the facts and circumstances stated above, this Court finds that the departmental proceeding and the consequential Office Order dated 18.09.2019 were passed without lawful authority and in violation of the principles of natural justice, fundamental rights, as well as the relevant provisions of the Regulations, 1979.

Having regard to the foregoing discussions, it is pertinent to note that a person/petitioner is entitled to seek redress of his grievance whenever it becomes necessary to establish a legal right. In the present case, the mandatory procedure was not adhered to; the legal position of the case in hand is identical to the case referred to above and is fully applicable to the case in hand. Against which the learned counsel for the respondent cited cases, but those cases could not attract either of the principles as laid down in the aforesaid decisions, nor find substance. Thus, at this stage, this Court is unable to consider the submissions made by the respondent.

Referring to the inquiry report dated 08.08.2019 (Annexure-E), the learned Advocate contended that in column No. 11(kha), the inquiry officer merely observed that the petitioner was allegedly involved in the occurrence, but in column No. 12, no specific finding was made that the charges were proved beyond a reasonable doubt. In the context stated above, it is said that there are long line decisions of our Apex Court that

the principle of natural justice must be complied with before taking any action/awarding punishment upon any person.

In light of the given fact and reason stated above, we find substance in the submissions made by the petitioner. The impugned order passed by the respondent cannot be sustained as the impugned decision was taken in violation of the principle of natural justice and provisions of applicable law and Rules.

It is pertinent to note that the findings recorded in the inquiry report are vague in nature and do not conclusively establish the petitioner's guilt. Though the petitioner was demoted without any specified period, and subsequently, the punishment was withdrawn vide memo dated 20.06.2021, the authority restored the petitioner to his former post, i.e., to the post of Security Supervisor, by substantially withdrawing the earlier punishment of demotion. Therefore, we are of the view that justice would be best served if this Court directed the respondents to consider restoration of the petitioner to his former grade in accordance with Regulation 14 of the Regulation, 1979.

Based on the discussion and reasons stated above, we find merit in the Rule.

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

The impugned memo dated 18.09.2019 (Annexure-H), issued by respondent No. 2, demoting the petitioner and directing the recovery of Tk. 86,320/- from his salary is declared to have been issued without lawful authority and, therefore, is of no legal effect.

The respondents are directed to consider the subsequent promotion of the petitioner dated 20.06.2021 (Annexure-L) as reinstatement or restoration to his former post, position, and grade, i.e., Security Supervisor.

However, the petitioner is hereby restrained from claiming, receiving, or otherwise withdrawing the deposited sum of Tk. 86,320/- from the respondents as he deposited the alleged amount.

Communicate the order.

S M Saiful Islam, J:  
I agree.