

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

WRIT PETITION NO. 4116 OF 2010

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Mohammad Solaiman

.....Petitioner

-VERSUS-

Government of the People's Republic of Bangladesh,
and others

..... Respondents

Mr. Mohammed Enamul Hoque, Advocate

..... For the Petitioner

None appears

.....For the Respondents

**Heard on 01.09.2025, 12.11.2025 and
Judgment on 23.11.2025**

Present:

Justice Md. Rezaul Hasan

&

Justice Urmee Rahman

Urmee Rahman, J:

In the instant matter a Rule Nisi has been issued on an application under Article 102 (2)(a)(i)(ii) of the Constitution of the People's Republic of Bangladesh calling upon the respondents to show cause as to why the notification under Memo No. শাখা-৫/৫ সি-২৭/২০০৮/৭৪/১(৭) dated 15.02.2010 issued by the respondent No. 1 (as contained in Annexure-H) and why sending the copy of the said notification dated 15.02.2010 to respondent

No. 6 for publication in the next additional gazette of Bangladesh shall not be declared to have been made without lawful authority and is of no legal effect and why the respondents should not be directed to clear all payment in respect of petitioner's (retirement) pension benefit which is stopped by the notification dated 15.02.2010 and/or pass such other of further order or orders as to this Court may seem fit and proper.

The facts relevant for disposal of this Rule, in short, are that, the petitioner joined as overseer (Sub-Assistant Engineer) in Public Works Department on 02.05.1973, at Chittagong Central Civil Division No. 2, now Chittagong Division No. 4. He was promoted to the post of Assistant Engineer on 15.09.2005. During the tenure of service he had served with utmost sincerity and his ACR is very satisfactory. In 2003 the PWD authority had decided to sell some M.S. rod through auction and those were stored outside the godown area of the Public Works Estate Sub-Division, Chittagong; at the time of delivery to the auction purchaser a huge shortage of rod, measuring 230.0027 metric ton, was found out and an allegation was brought against the petitioner and two others. On 14.02.2005, the respondent no. 5 issued a notice to the petitioner asking him to submit his reply to the questions made therein along with supporting documents within 7 days and he replied to that notice on 14.03.2005, however, denying the allegations made against him. Thereafter an enquiry was held by a 3 member committee and they submitted a report on 20.12.2005 recommending the initiation of a departmental proceeding against the petitioner and another.

Thereafter, on 11.06.2006 another show cause notice was issued in his name regarding unlawful removal of 25.985 metric ton iron materials from the godown on 13.06.2004. The petitioner replied to that show cause on 11.07.2006. Thereafter, a departmental proceeding was initiated and, on 15.04.2009, the petitioner was asked to appear in person and accordingly he appeared and produced oral and documentary evidence in support of his case.

Finally, by the impugned notification dated 15.02.2010 (Annexure-H) the petitioner was held liable for loss of an amount of Tk. 28,51,493.27/- (twenty eight lac fifty one thousand four hundred ninety three and twenty seven taka only) in total, with a direction to adjust an amount of Tk. 19,97,520/- (nineteen lac ninety seven thousand five hundred and twenty taka) only from his pension and retirement benefit and the Chief Engineer of PWD was directed to collect the rest Tk. 8,53,973/- (eight lac fifty three thousand nine hundred and seventy three taka only) from the petitioner in accordance with the provision of Public Demand Recovery Act, 1913. However, before issuance of this impugned order the petitioner went on retirement on 04.05.2009 on completion of 58 years of age.

Being aggrieved by the impugned notice the petitioner filed an application on 02.05.2010 before the Secretary, Ministry of Housing and Public Works for reconsideration of the decision dated 15.02.2010 and has also sent a notice demanding justice on 19.05.2010, but with no result.

As such there having no other available alternative efficacious remedy, the petitioner filed the instant writ petition before the High Court Division and obtained this Rule.

During pendency of the Rule the sole petitioner died on 30.06.2014 and his legal heirs were substituted in this writ petition by the order dated 10.11.2015.

Learned Advocate Mr. Mohammad Enamul Hoque, appearing on behalf of the Petitioner submits that, the respondent no. 1 has acted without lawful authority in issuing the impugned notification. His further contention is that the allegation of misappropriation brought against the petitioner was without any lawful basis and the opinion of the inquiry committee were not considered at the time of issuance of the impugned notification, as such the respondent no. 1 has acted without lawful authority in imposing fine upon the petitioner. Learned Advocate finally submits that the petitioner rendered his valuable service to the Republic with full satisfaction of the authority and therefore it is whimsical, arbitrary and unreasonable decision to impose such amount of fine upon him after his retirement.

None appeared on behalf of the Respondents to oppose the Rule.

Heard the learned advocate for the petitioner and perused the writ petition and the documents annexed therewith.

It appears that the petitioner joined his service in the Public Works Department of the Government of the Peoples Republic of Bangladesh in

1973 and went on retirement in 2009. Admittedly he is a government employee.

The law is now well settled that the Government servants cannot be entitled to invoke writ jurisdiction when their remedy is available in the Administrative Tribunal.

For proper understanding Section 4 of **The Administrative Tribunals Act, 1980** is reproduced below:

Section 4 (1) An Administrative Tribunal shall have exclusive jurisdiction to hear and determine applications made by any person in the service of the Republic [or of any statutory public authority] in respect of the terms and conditions of his service including pension rights, or in respect of any action taken in relation to him as a person in the service of the Republic [or of any statutory public authority].

(2) A person in the service of the Republic [or of any statutory public authority] may make an application to an Administrative Tribunal under sub-section (1), if he is aggrieved by any order or decision in respect of the terms and conditions of his service including pension rights or by any action taken in relation to him as a person in the service of the Republic [or of any statutory public authority]:

Provided that no application in respect of an order, decision or action which can be set aside, varied or modified by a higher administrative authority under any law for the time being in force relating to the terms and conditions of the service of the Republic [or of any statutory public authority] or the discipline of that service can be made to the Administrative Tribunal until

such higher authority has taken a decision on the matter:

[Provided further that, where no decision on an appeal or application for review in respect of an order, decision or action referred to in the preceding proviso has been taken by the higher administrative authority within a period of two months from the date on which the appeal or application was preferred or made, it shall, on the expiry of such period, be deemed, for the purpose of making an application to the Administrative Tribunals under this section, that such higher authority has disallowed the appeal of the application:]

Provided further that no such application shall be entertained by the Administrative Tribunal unless it is made within six months from the date of making or taking of the order, decision or action concerned or making of the decision on the matter by the higher administrative authority, as the case may be.

(3) In this section “person in the service of the Republic [or of any statutory public authority]” includes a person who is or has retired or is dismissed, removed or discharged from such service, but does not include a person in the defence services of Bangladesh [or of the Bangladesh Rifles].

In the instant case the impugned notice was issued after the petitioner went on retirement; however, as per sub section 3 of Section 4 of the Act of 1980, ‘person in the service of the Republic includes a person who is or has retired from service. As such the grievance of the petitioner, as it appears, clearly relates to his service and accordingly his redress, if any, is well within the jurisdiction of the Administrative Tribunal established under Article 117(1) of the Constitution.

In view of the principles laid down by the Appellate Division the petitioner should have agitated his grievance before the Administrative Tribunal for his redress instead he has come before this division for invoking power of judicial review under Article 102 of the Constitution and, as such, we are led to hold that the writ petition is not maintainable. For what we have stated above we are not inclined to go into the merit of the case.

At this juncture the learned Advocate for the petitioner also conceded to the view expressed by this court and accordingly submitted that, justice would be better served if this writ petition is disposed of directing the Administrative tribunal to entertain the petitioner's application upon condonation of delay as per Section 14 of the Limitation Act of 1908 since the petitioner moved before a wrong forum.

In the result, the rule is disposed of with the direction that the writ petitioner (at present the substituted heirs of the original petitioner) may approach the Administrative Tribunal for the grievance and in that case period of limitation, as mentioned in the Act of 1980, will not stand as a bar for dealing the matter before the Administrative Tribunal.

Since this is a very long pending matter, the tribunal is directed to dispose of the case expeditiously, preferably within 6 (months) from the date of filing of the case by the petitioner.

In the result, the Rule is disposed of.

However, without any order as to costs.

Communicate this judgment and order at once.

Md. Rezaul Hasan, J:

I agree.

Farida B.O