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

WRIT PETITION NO. 12441 OF 2024.

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. Mehedi Hasan,
..... Petitioner.
-Versus-
Bangladesh and others.
..... Respondents.

Mr. Nasir Uddin Ahmed Ashim, Advocate with
Mr. Kazi Mehedi Al Amin Shuvo, Advocate
..... For the petitioner.

Mr. Mahbubur Rahman Khan, Advocate
..... For the Respondent No.3-5

Mr. Md. Raju Mia, Advocate
.....For respondent Nos. 1 - 2,

Mr.Akhtar Hossain Md. Abdul Wahab, D.A.G. with
Mr. Al Faishal Shiddique, DAG
Mr. Rakib Hossain, AAG
Mr. Golam Rajib, AAG and
Md. Fuad Hasan, AAG
..... For the Respondents.

Present:
Mr. Justice Md. Toufiq Inam
And
Mr. Justice Mahmud Hasan

Heard On: 29.10.2026, 12.11.2026 and

Judgment Delivered On: 16.11.2026.

Md. Toufiq Inam, J:

At the instance of the petitioner, the instant Rule was issued upon an application under Article 102 of the Constitution of the People's Republic of Bangladesh, calling upon the respondents to show cause as to why:

> (i) the Press Notification dated 09.04.2012, bearing Memo No. 80.200.046.00.00.016.2012-61, issued by the Bangladesh Public Service Commission (hereinafter referred to as the "PSC"), recommending 31 dependants of Freedom Fighters for appointment against vacant Bangladesh Civil Service (BCS) cadre posts without considering the petitioner, should not be declared to have been issued without lawful authority and to be of no legal effect;(ii) the Gazette Notification dated 12.08.2012, appointing 21 of the aforesaid candidates against the said vacancies without considering the petitioner, should not be declared to have been issued without lawful authority and to be of no legal effect; and(iii) the respondents should not be directed to consider the appointment of the petitioner against one of the vacant cadre posts arising from the 29th BCS Examination, preferably in the Administration Cadre, pursuant to his representation dated 02.09.2024 and/or pass such other order or orders as this court may deem fit and proper.

The petitioner's case, in brief, is that the PSC, by notification dated 11.01.2009, invited applications for the 29th BCS Examination for recruitment against 1,581 cadre posts in the general and professional/technical cadres. The petitioner participated in the said examination under Registration No**.** 55774 and claims to have successfully completed all requisite stages of the selection process.

Subsequently, by notification dated 28.02.2011, the PSC published the result of the written and viva voce examinations, declaring 5,062 candidates successful out of a total of 123,949 candidates. As the number of successful candidates exceeded the available cadre vacancies, arrangements were made to recommend eligible candidates for appointment against non-cadre posts under the Non-Cadre Post Recruitment (Special) Rules, 2010.

Thereafter, by notification dated 10.07.2011, 1,722 candidates were selected for appointment to various BCS cadre posts, but the petitioner was not included in the said list. Subsequently, on 27.10.2011, the PSC recommended 3,290 successful candidates of the 29th BCS Examination for appointment against non-cadre posts. The petitioner was among those recommended for appointment as an Examiner (Trade Marks) under the Department of Patents, Designs and Trademarks, Ministry of Industries.

In the meantime, the Government, by SRO dated 23.02.2012, published in the Gazette on 26.02.2012, amended the Bangladesh Civil Service (Age, Qualification and Examination for Direct Recruitment) Rules, 1982 (hereinafter referred to as the “1982 Rules”) by inserting Rule 16A. The newly inserted provision empowered the PSC, subject to the prescribed 30% Freedom Fighters' quota, to select and recommend successful candidates belonging to the Freedom Fighters' category for appointment against cadre vacancies arising out of non-attendance at medical examinations. The provision further stipulated that preference would be given to female and tribal Freedom Fighter candidates and was made applicable from the 28th BCS Examination onwards.

Pursuant to the said Rule 16A, the PSC issued the impugned Press Notification dated 09.04.2012, recommending 31 dependants of Freedom Fighters against the aforesaid vacant cadre posts. The vacancies comprised 7 posts in the Administration Cadre, 2 in the Ansar Cadre, 4 in the Customs Cadre, 5 in the Economic Cadre, 5 in the Family Planning Cadre, 1 in the Food Cadre, 1 in the Foreign Affairs Cadre, 2 in the Police Cadre and 3 in the Taxation Cadre. Subsequently, by Gazette Notification dated 12.08.2012, 21 of the recommended candidates were appointed against those vacancies.

Mr. Nasir Uddin Ahmed Ashim, learned Advocate appearing for the petitioner, submits that notwithstanding his successful participation in the 29th BCS Examination and subsequent recommendation for appointment against a non-cadre post, the petitioner was not considered for appointment against the aforesaid vacant cadre posts. He contends that the petitioner's father was a duly certified Freedom Fighter and, as such, the petitioner was entitled to consideration under the applicable Freedom Fighters' quota. He further submits that the petitioner's aggregate marks in the 29th BCS Examination were higher than those obtained by the last candidate recommended under the impugned notification and that he was, therefore, more meritorious than at least some of the candidates subsequently recommended and appointed.

He further submits that the petitioner repeatedly approached the PSC seeking consideration of his claim but was discouraged from pursuing the matter, as he apprehended that taking further steps might jeopardise his existing non-cadre appointment. Eventually, on 02.09.2024, he submitted a formal representation to the concerned authority seeking consideration of his candidature for appointment against a cadre vacancy arising from the 29th BCS

Examination. As no decision was communicated to him, the petitioner was constrained to invoke the constitutional jurisdiction of this Court under Article 102 of the Constitution.

He principally argues that the petitioner's exclusion from consideration, despite his alleged eligibility under Rule 16A and his comparatively higher merit position, while candidates obtaining lower marks were recommended and appointed, was arbitrary, discriminatory and violative of Articles 27 and 31 of the Constitution. He accordingly submits that the petitioner is entitled to consideration for appointment against one of the cadre vacancies arising from the 29th BCS Examination, preferably in the Administration Cadre.

Per contra, Mr. Mahbubur Rahman Khan, learned Advocate appearing for respondent Nos. 3–5, opposes the Rule and submits that although the petitioner participated in the 29th BCS Examination, he was not recommended for appointment against any cadre post pursuant to the selection process conducted by the PSC. Rather, he was subsequently recommended for appointment against a non-cadre post and, according to the respondents, was appointed as an Examiner (Trade Marks) under the Ministry of Industries.

He further submits that Rule 16A was inserted into the 1982 Rules by SRO dated 23.02.2012, empowering the PSC to recommend eligible Freedom Fighter candidates against cadre vacancies arising from non-attendance at medical examinations. The provision also stipulated preference for female and tribal Freedom Fighter candidates and was made applicable from the 28th BCS Examination onwards.He further submits that, at its fifth special meeting held on 03.04.2012, the PSC considered the applicability

of Rule 16A in the context of the Non-Cadre Post Recruitment (Special) Rules, 2010. Having regard to the fact that candidates from the 28th and 29th BCS Examinations had already been considered and recommended for non-cadre posts, and that the result of the 30th BCS Examination had also been published, the PSC decided not to reconsider candidates who had already been recommended for non-cadre posts. Accordingly, other eligible dependants of Freedom Fighters, who had not been recommended for either cadre or non-cadre posts, were considered for recommendation against the vacancies in question.

He also refers to Writ Petition No. 5433 of 2012, filed by Delwar Hossain, challenging the SRO dated 23.02.2012 and the recommendations made pursuant thereto. He submits that the Rule issued in the said writ petition was made absolute by this Division by judgment and order dated 21.07.2013. The said judgment was subsequently challenged before the Appellate Division in Civil Appeal Nos. 57, 58, 59, 60 and 61 of 2014. By judgment and order dated 22.08.2017, the Appellate Division allowed Civil Appeal No. 58 of 2014, preferred by the Government, and dismissed the remaining appeals as not being pressed.Relying upon the observations made by the Appellate Division in the said judgment, he submits, inter alia, that a candidate who has accepted and joined a first-class non-cadre service cannot claim appointment to a cadre service as a matter of right; that appointment against the relevant cadre vacancies involved an element of Government policy; and that the insertion of Rule 16A through an amendment to the statutory recruitment rules could not be invalidated.

Mr. Md. Raju Mia, learned Advocate appearing for respondent Nos. 1 and 2, adopts the submissions advanced by Mr. Mahbubur

Rahman Khan and adds that the petitioner, having already been recommended for appointment against a non-cadre post pursuant to the 29th BCS Examination, cannot subsequently seek consideration for another appointment arising from the same examination. In this regard, he places reliance upon Rule 6(d) of the Non-Cadre Post Recruitment (Special) Rules, 2010, which, according to him, prohibits the recommendation of a candidate for more than one post or appointment.He lastly submits that the petitioner does not fall within the categories of candidates entitled to preference under Rule 16A, as he is neither a female candidate nor a dependant of a tribal Freedom Fighter. He accordingly contends that the petitioner has no enforceable legal right to claim appointment against any of the cadre vacancies in question and that the Rule is liable to be discharged.

We have heard the learned Advocates for the respective parties, perused the writ petition, the affidavits-in-opposition, the relevant statutory provisions and the materials available on record.

The principal question that falls for our consideration is whether the petitioner, having successfully participated in the 29th BCS Examination and subsequently been recommended for appointment against a non-cadre post, could lawfully be excluded from consideration for appointment against the vacant cadre posts pursuant to Rule 16A of the Bangladesh Civil Service (Age, Qualification and Examination for Direct Recruitment) Rules, 1982, as inserted by the SRO dated 23.02.2012.

The petitioner's specific case is that, although he fulfilled the prescribed eligibility requirements as a dependant of a Freedom Fighter and secured marks higher than those obtained by some of

the candidates subsequently recommended and appointed against the vacant cadre posts, the PSC excluded him from consideration solely because he had previously been recommended for a non-cadre post. The respondents, on the other hand, seek to justify such exclusion by relying upon Rule 6(d) of the Non-Cadre Post Recruitment (Special) Rules, 2010, the policy decision taken by the PSC at its fifth special meeting and the judgment of the Appellate Division in the connected Civil Appeals.

Upon careful consideration of the rival submissions, we find that the controversy principally turns upon the proper interpretation of Rule 16A, the extent of the discretion conferred upon the PSC thereunder and, more particularly, whether an administrative decision could lawfully introduce a disqualification which is not contemplated by the governing statutory provision.

Interpretation and scope of Rule 16A

It appears from the record that Rule 16A was inserted into the 1982 Rules by the SRO dated 23.02.2012. The said provision empowered the PSC, subject to the prescribed 30% Freedom Fighters' quota, to select and recommend successful Freedom Fighter candidates for appointment against cadre vacancies arising out of non-attendance at medical examinations. It further stipulated that preference would be given to female and tribal Freedom Fighter candidates and that the provision would apply from the 28th BCS Examination onwards.

A plain reading of the provision does not disclose any express disqualification against a successful candidate merely because he had previously been recommended for appointment against a non-cadre post. Nor does the provision restrict consideration exclusively

to those candidates who had not received any previous recommendation for appointment. It is a settled principle of statutory interpretation that an authority exercising statutory power must act within the limits and parameters prescribed by the governing law. An administrative authority cannot, by an internal decision, administrative practice or policy, introduce an additional condition of eligibility or disqualification which the rule-making authority has not incorporated into the relevant statutory provision.

In the present case, had the rule-making authority intended to exclude candidates previously recommended for non-cadre posts, such exclusion could have been expressly incorporated into Rule 16A. In the absence of any such restriction, the PSC could not, through an administrative decision, narrow the class of otherwise eligible candidates contemplated by the statutory provision. The distinction between statutory eligibility and the exercise of discretion in making a recommendation is fundamental. While the PSC undoubtedly retains the authority to assess candidates in accordance with the prescribed selection criteria, such discretion must be exercised within the statutory framework and cannot be used to exclude an otherwise eligible candidate on a ground which has no foundation in the governing rules. We are, therefore, unable to accept the respondents' contention that the petitioner's previous recommendation for a non-cadre post, by itself, rendered him ineligible for consideration under Rule 16A.

Applicability of Rule 6(d) of the Non-Cadre Post Recruitment (Special) Rules, 2010

The respondents have placed considerable reliance upon Rule 6(d) of the Non-Cadre Post Recruitment (Special) Rules, 2010, contending that a candidate cannot be recommended for more than

one post or appointment. We find that this submission overlooks the distinct statutory purposes and fields of operation of the two sets of recruitment provisions.

The Non-Cadre Post Recruitment (Special) Rules, 2010, regulate the recommendation and appointment of successful BCS candidates against non-cadre posts, whereas Rule 16A was subsequently inserted into the 1982 Rules to provide a specific mechanism for filling certain vacant BCS cadre posts arising from non-attendance at medical examinations. Although both provisions relate to recruitment from among successful BCS candidates, they operate in different statutory contexts. A restriction governing recommendation under the non-cadre recruitment framework cannot automatically be extended to a separate statutory mechanism for appointment against cadre vacancies unless such restriction is expressly incorporated or necessarily follows from the language and scheme of the latter provision.

We find no material before us demonstrating that Rule 6(d) was incorporated into Rule 16A or that the latter provision categorically excluded candidates previously recommended for non-cadre posts. To accept the respondents' contention would amount to importing a disqualification from one statutory framework into another, thereby creating a restriction which the rule-making authority did not prescribe. It is also pertinent to observe that the petitioner's claim is not founded upon any right to retain two simultaneous appointments. Rather, his grievance concerns his exclusion from consideration for a cadre appointment under a separate statutory provision, merely because he had earlier been recommended for a non-cadre post. Accordingly, we hold that Rule 6(d) of the Non-Cadre Post Recruitment (Special) Rules, 2010, did not, by itself,

furnish a lawful basis for excluding the petitioner from consideration under Rule 16A.

Meaning and effect of preference under Rule 16A

The respondents have further contended that the petitioner was neither a female candidate nor a dependant of a tribal Freedom Fighter and, therefore, was not entitled to consideration under Rule 16A. We find this contention misconceived. The relevant provision stipulates that preference shall be given to female and tribal Freedom Fighter candidates. The expression 'preference' cannot be equated with exclusive eligibility. Where a statutory provision confers preference upon a particular category, such preference must undoubtedly be respected in the selection process. It does not, however, follow that all other candidates who otherwise fulfil the prescribed eligibility requirements are automatically excluded.

Had the rule-making authority intended to restrict eligibility exclusively to female and tribal Freedom Fighter candidates, it could have employed appropriate language to that effect. Instead, the expression 'preference' was deliberately used, indicating preferential consideration within the broader class of eligible candidates. An interpretation which converts a statutory preference into an absolute disqualification against other eligible candidates would not only be contrary to the ordinary meaning of the expression but would also unduly restrict the scope of the provision. We, therefore, find that the petitioner's inability to claim preferential status as a female or tribal Freedom Fighter candidate did not, by itself, render him ineligible for consideration under Rule 16A.

Comparative merit and constitutional guarantee of equality

The petitioner has specifically asserted that he was a successful and recommended candidate in the 29th BCS Examination, whereas the last candidates recommended against the vacant cadre posts under the impugned notification had not even appeared at the medical examination stage of the recruitment process. Despite his eligibility under the Freedom Fighters' quota, candidates securing comparatively lower marks were considered and recommended for appointment, while his candidature was excluded solely on the ground that he had previously been recommended for a non-cadre post.

The constitutional guarantee of equality before law and equal protection of law under Article 27 of the Constitution, read together with the guarantee of protection of law under Article 31, requires every public authority exercising statutory recruitment powers to act fairly, consistently and in accordance with law. Equality in public employment demands that persons similarly situated be treated according to the same lawful standards. An authority cannot apply the prescribed eligibility criteria to one group of candidates while imposing an additional disqualification upon another group without any statutory justification. Administrative discretion, however wide it may be, is necessarily circumscribed by the governing law and cannot be exercised in a manner that defeats the very purpose of the statutory provision.

In the present case, the respondents have not been able to identify any express provision of Rule 16A, or any other applicable statutory provision, which renders the petitioner ineligible for consideration merely because he had previously been recommended for a non-cadre post. If his exclusion was founded solely upon such

previous recommendation, without any statutory authority for imposing that restriction, the decision cannot be sustained by merely describing it as an exercise of administrative discretion by the Public Service Commission. An administrative authority cannot, by an internal policy, administrative practice or executive interpretation, introduce an additional condition of ineligibility which the law itself does not contemplate.

We are mindful of the settled principle that this Court, in exercising judicial review, does not ordinarily sit in appeal over the assessment of merit made by a competent recruiting authority, nor does it substitute its own evaluation for that of the authority entrusted by law with the selection process. Nevertheless, judicial restraint in matters of recruitment does not extend to legitimising an arbitrary or unauthorised exclusion. Where the complaint is that an otherwise eligible candidate has been denied consideration by applying a criterion not sanctioned by the governing law, the legality of that decision squarely falls within the scope of judicial review. The Court's intervention in such circumstances is not an exercise in reassessing comparative merit, but rather an enforcement of the statutory framework and the constitutional requirement of non-arbitrariness.

Effect of the judgment of the Appellate Division

We have also carefully considered the submissions advanced on behalf of the respondents with reference to the judgment and order dated 22.08.2017 passed by the Appellate Division in Civil Appeal Nos. 57, 58, 59, 60 and 61 of 2014. We are fully conscious of the constitutional obligation of this Division to follow the law declared by the Appellate Division. Any pronouncement of the Appellate

Division governing the controversy must, therefore, be given effect to in its true meaning and proper context.

However, in appreciating the effect of the said judgment upon the controversy before us, a distinction needs to be maintained between a claim to automatic appointment merely on the basis of participation in a competitive examination or inclusion in a recommendation list and a claim to lawful consideration under a subsequent statutory provision. The proposition that a candidate who has accepted and joined a non-cadre post does not thereby acquire an enforceable right to appointment to a cadre post cannot, without more, be construed to mean that such a candidate is altogether disentitled from being considered under a subsequent statutory provision which independently permits such consideration. The absence of an automatic right to appointment and the existence of a statutory right to be considered are two distinct legal concepts and ought not to be conflated.

In the present case, the petitioner does not assert an indefeasible right to appointment merely because he participated in the 29th BCS Examination or secured marks higher than some of the candidates subsequently recommended. His principal grievance is that, notwithstanding his alleged fulfilment of the prescribed eligibility requirements, his candidature was excluded from consideration on a ground which, according to him, finds no support in the language of Rule 16A. The issue before us, therefore, is whether the respondents were legally justified in treating his previous recommendation for a non-cadre post as an independent disqualification under the said Rule.

In our view, the judgment of the Appellate Division cannot be extended beyond the legal principles actually decided therein so as to sustain an administrative restriction which is otherwise unsupported by the applicable statutory provision. The binding force of a judicial precedent lies in the ratio decidendi and not in an interpretation divorced from the statutory context and the precise controversy adjudicated. Accordingly, the petitioner's claim must be examined by applying the ratio of the said judgment to the particular statutory provision governing the present controversy. Our consideration of the petitioner's grievance neither questions nor departs from any binding determination of the Appellate Division. Rather, we proceed on the basis that the law declared by the Appellate Division is binding upon us, while the distinct question requiring determination in the present proceeding is whether the respondents have lawfully applied Rule 16A to the petitioner.

Delay and laches

The respondents have also raised the question of delay, pointing out that the impugned notifications were issued in 2012, whereas the petitioner's formal representation was submitted on 02.09.2024. We acknowledge that delay and laches are relevant considerations in the exercise of extraordinary jurisdiction under Article 102 of the Constitution. A person seeking constitutional relief must ordinarily approach the Court within a reasonable time, particularly in service matters where appointments have already been made and third-party rights have intervened. However, delay is not an inflexible bar in every case. Its effect must be considered in the context of the nature of the alleged illegality, the explanation offered and, importantly, the nature of the relief sought.

The petitioner has stated that he repeatedly approached the concerned authorities of the PSC after publication of the impugned notifications but was discouraged from pursuing the matter due to his apprehension that further steps might jeopardise his existing non-cadre appointment. Eventually, after change of the government, on 02.09.2024, he submitted a formal representation seeking consideration of his claim. Although mere submission of a representation cannot revive a cause of action which has otherwise become stale, the petitioner's explanation, the nature of the alleged statutory violation and the circumstances in which he continued in non-cadre service are relevant considerations in determining the appropriate relief.

More importantly, the petitioner is not seeking to unsettle the appointments already made in favour of other candidates. Nor do we propose to disturb the service positions or accrued rights of those appointed pursuant to the impugned Gazette Notification. The relief considered appropriate in the present case is directed towards correcting the unlawful exclusion of the petitioner without disturbing the appointments already made. In these particular circumstances, we are not inclined to reject the petitioner's claim solely on the ground of delay.

Legitimate expectation and fairness in public employment

The petitioner has also invoked the doctrine of legitimate expectation. We find that the doctrine of legitimate expectation does not, by itself, create a substantive right to appointment. Nevertheless, it reinforces the obligation of public authorities to act fairly and consistently with the applicable statutory framework. Where a statutory provision authorises consideration of a defined class of eligible candidates, a candidate falling within that class is

entitled to expect that his candidature will be considered in accordance with the prescribed criteria and without the imposition of unauthorised restrictions. Such expectation does not guarantee a favourable outcome; it does, however, require the competent authority to undertake a lawful, objective and non-discriminatory exercise.

In the present case, the petitioner had successfully participated in the 29th BCS Examination, had been recommended for a non-cadre post and claims to have fulfilled the eligibility requirements under Rule 16A. His previous recommendation for a non-cadre post could not lawfully be converted into a disqualification under the said Rule. We are, therefore, of the view that the respondents failed to discharge their obligation to exercise the statutory power fairly and in accordance with law.

Nature of relief and consequential service benefits

Having found that the petitioner's exclusion was founded upon an unauthorised disqualification, the question that remains is the nature of relief to which he is entitled. Ordinarily, where an eligible candidate has been unlawfully excluded from a selection process, a direction for lawful consideration may constitute an appropriate remedy. However, the Court is not required to confine itself to a formal direction for reconsideration where the relevant circumstances and materials on record sufficiently establish the petitioner's entitlement and the nature of the illegality committed by the authority.

In the present case, the petitioner had already successfully participated in the selection process of the 29th BCS Examination and had been recommended for appointment against a non-cadre

post. The subsequent insertion of Rule 16A provided a statutory avenue for consideration of eligible Freedom Fighter candidates against the specified vacant cadre posts. The petitioner could not be deprived of the benefit of that provision merely because he had accepted and joined the non-cadre post.

The respondents have not demonstrated any lawful basis for excluding him from the relevant process. His claim of comparative merit, together with his eligibility under Rule 16A and the applicable quota requirements, assumes particular significance. In such circumstances, relegating the petitioner to another round of administrative reconsideration, particularly after the lapse of considerable time, would not afford an effective remedy against the established unlawful exclusion. We are, therefore, of the considered view that appropriate consequential relief is warranted by directing the competent respondents to take necessary steps for the petitioner's appointment against a suitable vacant BCS cadre post, commensurate with his merit position and eligibility under Rule 16A, preferably in the Administration Cadre.

We are further of the view that the petitioner's service in the non-cadre post pursuant to the 29th BCS Examination deserves due consideration in determining his consequential service entitlements. His exclusion from consideration for a cadre appointment having been found unlawful, the period of his service in the non-cadre post and the date of his initial joining therein are relevant matters which the competent authority must take into account while determining his seniority and other consequential service benefits. It would, therefore, be appropriate to direct the respondents to determine the petitioner's seniority in the cadre service, together with all other consequential service benefits, in accordance with the applicable

service rules, taking into consideration the date of his initial joining in the non-cadre post, without disturbing the accrued seniority and vested rights of the existing cadre officers. Such determination must be made fairly, objectively and in conformity with the governing service rules.

Conclusion

Upon consideration of the facts and circumstances of the case, the relevant provisions of the 1982 Rules and the submissions advanced by the learned Advocates for the parties, we find that the petitioner's previous recommendation for a non-cadre post did not, by itself, constitute a statutory disqualification under Rule 16A. The respondents have failed to identify any express provision in the said Rule which rendered a candidate ineligible for consideration merely because he had previously been recommended for a non-cadre post. Nor can a restriction contained in the Non-Cadre Post Recruitment (Special) Rules, 2010, be imported into Rule 16A so as to create a disqualification which the latter provision does not prescribe. We are also unable to accept the contention that the preference stipulated in Rule 16A for female and tribal Freedom Fighter candidates operated as an absolute exclusion of other otherwise eligible dependants of Freedom Fighters.

The PSC, being a constitutional body entrusted with the responsibility of recommending candidates for appointment to public service, was under an obligation to exercise its statutory discretion fairly, objectively and in accordance with the governing recruitment rules. While the petitioner could not claim appointment merely on the basis of his participation in the 29th BCS Examination or his alleged higher marks, he was nevertheless entitled to consideration in accordance with the prescribed statutory

criteria. In the facts and circumstances of the present case, we find that the petitioner's exclusion solely on the ground of his previous recommendation for a non-cadre post was without lawful basis and offended the statutory scheme as well as the constitutional guarantee of equality. Appropriate consequential relief, including appointment against a suitable cadre post and determination of his seniority and other consequential service benefits in accordance with law, is therefore warranted, subject to the protection of the accrued rights of the existing appointees.

In view of the foregoing discussions and findings, we find merit in the Rule.
Accordingly, **the Rule is made absolute in part.**

The exclusion of the petitioner from consideration for appointment against the vacant BCS cadre posts pursuant to Rule 16A of the Bangladesh Civil Service (Age, Qualification and Examination for Direct Recruitment) Rules, 1982, solely on the ground that he had already been recommended for appointment to a non-cadre post, is hereby declared to have been made without lawful authority and to be of no legal effect.

The respondents, particularly the Bangladesh Public Service Commission and the concerned Ministry, are directed to take necessary steps for appointment of the petitioner to a suitable cadre post for which he is eligible under the applicable recruitment rules, preferably in the Administration Cadre, against an available vacancy, in accordance with his merit position and the relevant quota provisions, within 60 (sixty) days from the date of receipt of a certified copy of this judgment.

Upon such appointment, the competent authority shall consider and determine the petitioner's seniority and other consequential service benefits in accordance with the applicable laws and service rules, taking into consideration the date on which he initially joined the non-cadre post pursuant to the 29th BCS Examination.

It is further clarified that this judgment shall not affect the appointments already made pursuant to the impugned Gazette Notification dated 12.08.2012.

There shall be no order as to costs.

(Md. Toufiq Inam)

Mahmud Hasan, J:

I agree.

(Mahmud Hasan)