

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

WRIT PETITION NO. 6890 OF 2013

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

S.M. Md. Abdul Baten and others

.....Petitioners

-VERSUS-

Government of the People's Republic of Bangladesh,
represented by the Senior Secretary, Ministry of
Public Administration and another

..... Respondents

Mr. Md. Saidul Alam Khan, Advocate with
Mr. Md. Dulal Sheikh, Advocate

..... For the Petitioners

Mr. Md. Rashadul Hassan, D.A.G with
Mr. Md. Abdullah Al Mamun, D.A.G with
Mr. Md. Moshir Rahman (Rahat), A.A.G with
Mr. Mosaddek Billah, A.A.G with
Mr. Bishwanath Karmaker, A.A.G

.....For the Respondents

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

Heard on 11.03.2026, 17.06.2026 and 20.07.2026

Judgment on 02.08.2026

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under Article 102 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 a mandatory direction shall not be issued to give antedated promotions to the petitioners as Deputy Secretary with effect from 08.02.1992 instead of 15.01.2001/21.04.2005 and to the Grade of Joint Secretary from 13.06.2002, Additional Secretary from 27.08.2003 and Secretary from 15.02.2005, with financial benefits and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Short facts leading to the issuance of the instant Rule are that, the petitioners entered into the service of the Republic as Circle Officer (Development and Revenue) in 1973 on the basis of the result of the Special Superior Service Examination for Freedom Fighters, 1972 held by the Bangladesh Public Service Commission. The post of Circle Officer was upgraded into class-I and was included in the B.C.S (Administration) Cadre on 14.06.1976. By the judgment and order dated 21.07.2002 in Writ Petition No. 6295 of 2001, the petitioners were declared to have been appointed in the upgraded Class-I post with effect from 14.06.1976 and entitled to seniority and other service benefits as BCS (Admin) Cadre. The Ministry of Establishment (now Public Administration) issued Notification dated 29.01.2003 partially implementing the said judgment. The names of the petitioners remained in serial No. 4, 9, 3 and 10 respectively.

In the Judgment and order dated 21.07.2002 in Writ Petition No. 6295 of 2001 it was held that, the petitioners are deemed to have been appointed in Class-I post with effect from 14.06.1976 and they should be treated as so for the purpose of seniority and other attending benefits. Against the Judgment, the Government preferred Civil Petition for Leave to Appeal No. 1559 of 2002, which was dismissed. As the petitioners were not being promoted even after the judgments of the Apex Courts, Contempt Petition No. 52 of 2003 was filed by the petitioners. By the Judgment and order dated 27.04.2004 the Rule issued in the Contempt case was made absolute and the contemnors were directed to consider the case of the petitioners under Rules of 1998 as well as in the light of the judgment passed in the corresponding writ petitions and Civil Petition for Leave to Appeal.

Against the judgment passed in the Contempt Petition the Government preferred Civil Petition for Leave to Appeal No. 958 of 2004, which was dismissed on 14.12.2004. In the backdrop of the above facts and circumstances, petitioners were given promotion in the post of Deputy Secretary by the order dated 21.04.2005 issued by the then Ministry of Establishment. As per the Rules of 1998 in order to be considered for promotion as Deputy Secretary, 5 years service in the senior scale or as Senior Assistant Secretary was required. As the promotion of the petitioners were delayed, the Government was pleased to issue notification dated 10.03.2010 giving antedated seniority to the petitioners in the senior scale to be effective from 06.05.1984.

The petitioners repeatedly submitted representations to consider them for promotion as Deputy Secretary with antedated seniority with effect from 08.02.1992, Joint Secretary from 13.06.2002, Additional Secretary from 27.08.2003 and Secretary from 15.02.2005 when they were in service. Lastly they made representation on 01.06.2011 stating that, one of their junior colleagues namely Md. Azizul Islam, bearing ID No. 3984 was appointed in the B.C.S Cadre on 20.07.1996, who was admitted to Senior Scale on 11.10.1984 and Deputy Secretary on 08.02.1992. On the parity of reasons, the petitioners being senior to that Mr. Azizul Islam, have a legitimate expectation of getting antedated promotion from 08.02.1992.

The Petitioner No. 1 retired from service on 19.10.2008; the petitioner No. 2 retired from service on 29.09.2007; petitioner No. 3 retired from service on 9.09.2007; and lastly petitioner No. 4 retired from service on 24.12.2007. In the meantime pursuant to the representations made by the petitioners the Ministry of Law Justice and Parliamentary Affairs opined that retired Deputy Secretary S.M. Md. Abdul Baten, i.e. the petitioner no. 1 bearing ID No. 3306 may be given antedated promotion as Deputy Secretary with effect from 08.02.1992 in implementation of the judgment in Writ Petition No. 6295 of 2001. However, the respondent authority has not taken any action as yet till date on the basis of the opinion given by the Ministry of Law.

Being aggrieved thereby and there having no other alternative and equally efficacious remedy available, the petitioners have filed the instant writ petition and obtained the present Rule.

Learned Advocate Mr. Md. Saidul Alam Khan, with learned Advocate Mr. Md. Dulal Sheikh, appearing on behalf of the petitioners submits that, the petitioners have been deprived of their legitimate expectation of promotion with all financial benefits for a long time compelling them to prefer Writ Petition No. 6295 of 2001 and to file Contempt Petition No. 52 of 2003. Although there is a long line of judicial decisions of giving antedated promotion with financial benefits the petitioners deserve similar consideration as per law and equity. Hence the Rule is liable to be made absolute.

Learned Advocate next submits that the respondents by their acts have manifested that the petitioners have been deprived attributing to the acts of the respondents to get promotion in the entitled post in due time. For their laches the petitioners were not promoted in due time which they were entitled to during their service period. The very right of the petitioners to be appointed as class-I officer in the BCS (Administration) Cadre from the date of 14.06.1976 was settled down through Writ Petition No. 6295 of 2001, CPLA No. 1549 of 2002, Contempt Petition No. 52 of 2003 and finally CPLA No. 958 of 2004, however, due to the inaction of the respondents the effectuated date was not acted upon in due time, for which the petitioners should not be suffered and therefore, the Rule is liable to be made absolute with a direction upon the respondents to grant

antedated promotion to the petitioners with all financial benefits they are entitled to.

He also submits that the Ministry of Law clearly opined that the petitioners are entitled to get promotion in the post of Deputy Secretary from 08.02.1992 by giving notional seniority even after retirement, as evident from annexure-I. Therefore, the petitioners are entitled to get promotions in the post of Deputy Secretary, by giving retrospective effect, from the date of 08.02.1992, and then they are entitled to the higher posts respectively. These significant fixed dates are also given effect in the case of promotion to one Paulin Bihari Dev (ID No. 2784); by giving retrospective effect, who is junior to these petitioners, with all attending due salary, benefits along with pensions. All these benefits were given even after he went on retirement. Basing on these, the petitioners' rights have to be settled down in the same manner in order to eliminate the discrimination between the employees standing at par.

Learned Advocate forcefully submits that, in the instant case, junior employees to the petitioners were given promotion to the post without considering their case, which is arbitrary and cannot sustain in law. Further, due to laches and negligence on the part of the respondents the promotion of the petitioners was not considered in time when they were entitled for, hence the respondents are required to be directed to give antedated promotion to the petitioners accordingly. Upon referring to the supplementary affidavit dated 23.06.2026 learned advocate submitted that very recently by the notification dated 09.02.2025 as many as 109

government officers have been given notional promotion with retrospective effect even though they went on retirement much earlier and therefore the petitioners are also entitled to get the antedated promotion as has been claimed in this writ petition.

In support of his submission learned Advocate relied upon the decisions in the case of *Md. Nurul Hoque Miah Vs. Government of Bangladesh and others* reported in **17 BLT 2009 (AD), 211**, the case of *Dr. A.Y.M. Akramul Hoque Vs. Government of Bangladesh and others* reported in **12 SCOB (2019) HCD, 24**, and the case of *Secretary, Ministry of Agriculture and 5 others Vs. Kh. Mosaddeq Hossain and 11 others* reported in **73 DLR 2021 (AD), 63**. In all this writ petitions the petitioners were granted antedated promotion/seniority and therefore, the learned Advocate prays that the present petitioners being on the similar footing are liable to be considered in the similar manner for ends of justice.

On the other hand Mr. Md. Moshir Rahman (Rahat), the learned Assistant Attorney General appears on behalf of the respondent no. 1 and contested the Rule by filing an affidavit in opposition and submits that, in compliance with disposal of CPLA No. 958 of 2004 filed against the judgment and order passed in the Contempt Petition No. 52 of 2003, the respondents of the instant writ petition issued 04 (four) notifications (as admitted in paragraph no. 6 of the instant writ petition) by which they allowed antedated seniority in the senior scale to the instant writ petitioners respectively. But the instant writ petitioners did not agree with

the said 04 (four) notifications because according to them the antedated seniority effective date was not appropriate. Accordingly, the petitioners submitted representations to the respondents to consider their promotion in line with their claimed antedated effective dates. Regarding the promotion of Md. Azizul Islam, learned Assistant Attorney General submitted that if someone is senior in service than others do not guarantee him any automatic promotion and does not grow any right of legitimate expectation. The matter of promotion is adjudicated on number of factors apart from seniority. Hence, the petitioners cannot have any legitimate expectation of promotions in accordance with their representations.

Learned Assistant Attorney General further submits that, the instant writ petition is not maintainable because it deals with promotion of the instant writ petitioners which falls within the definition of terms and conditions of the petitioners' service of the Republic. It is the exclusive jurisdiction of the Administrative Tribunal constituted under the Administrative Tribunals Act, 1980 and Article 117 of the constitution. Furthermore, the issue of terms and conditions including promotion of service have been meticulously examined by the Hon'ble Appellate Division in the case of *Bangladesh Vs. Santosh Kumar Shaha and others* reported in **6 SCOB (2016) AD** and it was held that those issues will be tried before the Administrative Tribunal and as such the instant Rule is liable to be discharged on the ground of maintainability alone.

Learned Assistant Attorney General finally submits that the instant petitioners are not entitled to get promotion under the 'Next Below Rule' because the promotion cannot be claimed as of right. Having said that, the promotion of the instant petitioners were considered vide 04 (four) notifications as per the judgment of this court and if the instant writ petitioners are not satisfied with their promotion, they are to agitate their grievances before the Administrative Tribunal and as such the instant writ petition is liable to be discharged.

We have heard the learned Advocates for the respective parties and perused the writ petition, supplementary affidavits thereto, the affidavit in oppositions and all the documents annexed therewith.

At the outset, it is necessary to determine the question of maintainability of the instant writ petition, the same having been raised by the learned Assistant Attorney General appearing for the respondents. It has been contended in the affidavit-in-opposition that, since the subject matter of the instant writ petition pertains to promotion, which comes under the terms and conditions of service of the petitioners in the Republic, the same falls within the exclusive jurisdiction of the Administrative Tribunal, in view of the decision in *Bangladesh vs. Santosh Kumar Shaha and others*, reported in 6 SCOB (AD) (2016) 1.

In the case in hand, although the subject matter pertains to the promotion of the petitioners, the claim is grounded not in any dispute over the terms and conditions of service per se but in the enforcement of a series of judgments earlier passed in the petitioners' favour by the High

Court Division and the Appellate Division. What falls for consideration, therefore, is not a question ordinarily cognizable by the Administrative Tribunal, but the true interpretation and implementation of those judgments. We are, accordingly, of the view that the instant writ petition is maintainable.

It is admitted that after a long legal battle the petitioners' case was allowed by the High Court Division and was upheld by the Appellate Division with a direction upon the respondents to consider the petitioners for promotion under the guidelines of the Ministry of Establishment dated 10.02.1998. On perusal of the judgment passed in Contempt Petition No. 52 of 2003, as has been annexed as Annexure-B to the writ petition, we find that in this judgment it was held by this Division that:

"Attempt has been made to submit that, when the judgment speaks of seniority and other benefits, it never meant promotion. We are unable to accept such interpretation in the facts and circumstances of the present case. A judgment is to be read as a whole and all that we get after reading three judgments is that, cases of the petitioners were not considered for the promotion whereas their juniors' cases were considered under the old rules and therefore they suffered discrimination in the hands of the respondents and their seniority should have been counted from 14.06.1976 and they should have been given such seniority and other benefits. Promotion is a most important benefit or a privilege

which any public servant can legitimately claim in his service. It is not the case of the petitioners that only because they are senior, they are entitled to promotion. Although the word promotion is not specifically mentioned in the judgment, it is very much there."

This judgment was challenged by the respondents before Appellate Division but the Appellate Division was pleased to affirm the said judgment of the High Court Division passed in the contempt proceeding. While dismissing the appeal Appellate Division observed that:

"Though the Rules of 2002 has amended the previous Rules but the right accrued due to seniority and other benefits under the repealed Law/Rules to a public servant could not be taken away by the subsequent Rules of 2002 and the right accrued to a public servant in the service prior to promulgation of the subsequent Rules could be claimed legitimately under the 1998 Rules."

Thereafter, in compliance with the aforesaid judgment the petitioners were given promotion to the posts of Deputy Secretary by the order dated 21.04.2025 (Annexure-C) and the petitioners' names appear in Serial No. 7, 9, 11 and 12 of that list. It is important to note that, this promotion has not been given with effect from any back date. Hence, the same shall be considered to be effective from the date of issuance of the notification, which is 21.04.2005.

It has been stated by the petitioner that, under the 1998 Rules in order to be considered for promotion as Deputy Secretary, 5 year service in the Senior Scale was required. Since the petitioners did not have the required period of service in the senior scale at the time they were given promotion in the post of Deputy Secretary in 2005 and some junior colleagues of the petitioners' were given senior scale before them, by the order dated 10.03.2010 the petitioners were given antedated seniority in the senior scale with effect from 06.05.1984 as transpires from Annexure-D. On perusal of this notification we find that, this notification is silent as to in which post the antedated seniority was given. The petitioners claim to get the seniority in the post of Deputy Secretary with effect from 08.02.1992 and seniority in the senior scale with effect from 06.05.1984 as transpires from Annexure-D.

From the representations dated 01.06.2011 made by the petitioners, annexed as Annexure-E series, it appears that, since the seniority of the petitioners were not given earlier, their case for the promotion to the higher posts could not be considered and consequently they were deprived of the said benefit. Their junior colleague one Azizul Islam was promoted to the post of Deputy Secretary on 08.02.1992. Petitioners therefore, sought seniority from that date but without any result.

Petitioners' allegation is that the earlier judgments have not been complied with by the respondents to its entirety despite several recommendations made to them. Petitioners therefore claim antedated seniority in the post of Deputy Secretary with effect from 08.02.1992.

Accordingly their claim is to consider their promotion in the post of Joint Secretary from 13.06.2002, in the post of Additional Secretary from 27.08.2003, and in the post of Secretary from 15.02.2005.

It is not denied that the petitioners have retired from service in the year of 2007 and 2008 respectively. It further transpires from Annexure-I to the writ petition that the Ministry of Law by the opinion dated 22.09.2011 signed by the Secretary, Joint Secretary and Deputy Secretary of Law and Justice Division of the Ministry of Law, Justice and Parliamentary Affairs has given opinion in favour of the petitioners to give them antedated seniority even after the date of retirement. It appears from the note sheet that the Minister and State Minister of the concerned Ministry also signed that opinion on 05.10.2011. The relevant part of the opinion in the note sheet is quoted below:

“মাননীয় হাইকোর্ট বিভাগ জনাব এস,এম, মোঃ আব্দুল বাতেন সহ সকল রীট পিটিশনারকেই জ্যেষ্ঠতা ও চাকুরীর অন্যান্য সুযোগ-সুবিধা সহ তাঁরা চাকুরীতে নিয়োজিত মর্মে ঘোষণা প্রদান করেছেন। আলোচ্য ক্ষেত্রে অনাব এস,এম, মোঃ আব্দুল বাতেন (৩৩০৬)-কে উপ-সচিব পদে ধারণাগত জ্যেষ্ঠতা প্রদান করা উপরোক্ত রায়ের আলোকে তাকে *"seniority and other attending benefits"* প্রদান করা সংক্রান্ত নির্দেশনার সাথে সাংঘর্ষিক নয় বরং তার বাস্তবায়ন।

এমতাবস্থায়, অবসরপ্রাপ্ত উপ-সচিব জনাব এস,এম, মোঃ আব্দুল বাতেন (৩৩০৬)-কে রীট পিটিশন নং-৬২৯৫/২০০১ এ মাননীয় হাইকোর্ট বিভাগ কর্তৃক প্রদত্ত রায় অনুযায়ী অবসর প্রাপ্ত অবস্থায় ০৮-০২-১৯৯২ তারিখ হতে উপ-সচিব পদে ধারণাগত জ্যেষ্ঠতা প্রদান করার ক্ষেত্রে আইনগত কোন বাধা নাই।”

Despite the opinion given by the Ministry of Law, the respondents have not taken any action to grant notional seniority to the petitioners.

We also find from the supplementary affidavit dated 23.06.2026 that very recently by the memo dated 09.02.2025 the Ministry of Public Administration has granted notional promotion/retrospective promotion to 119 officers to the respective posts of Deputy Secretary/Joint Secretary/Additional Secretary/Secretary with effect from 2008, although they went on retirement earlier (Annexure-L).

In Bangladesh service law the concept and practice of granting notional seniority or antedated seniority/promotion is prevailing from long ago. 'Notional Seniority' confers a retrospective placement in the seniority list by means of legal fiction. By granting notional seniority an employee is treated as having entered a particular grade from an earlier date for the limited purpose of determining seniority, even though the employee did not actually hold that post from that date.

In the instant case, as we have already seen that, the petitioners after a long legal battle spanning several years, ultimately obtained the relief they had sought. The respondents, throughout the proceedings persistently contested the petitioners' claim at every stage, yet were eventually constrained to comply with the judgment and order of this Court. It is pertinent to note that, although the petitioners were subsequently granted promotion and senior scale, the same was conferred without any retrospective effect. Consequently, officers junior to the petitioners were promoted and came to supersede them, and the

petitioners were compelled to proceed on retirement without having been elevated to the subsequent higher post(s) to which they were otherwise entitled. Had the order of promotion together with the order conferring senior scale been issued with a definite retrospective date according antedated promotion and antedated seniority, the present grievance would not have arisen.

In the decision referred by the learned Advocate for the petitioners reported in 17 BLT (AD) 211 the Appellate Division also confirmed the antedated seniority given to the petitioners. However, in that case the Appellate Division though allowed the case of the petitioners, directed the respondents only to give the pension benefit to them for the said period, not any financial benefits, since they did not actually serve during that period.

In view of the facts and circumstances discussed hereinabove we find merit in the submissions made by the learned Advocate for the petitioners.

In the result, the Rule is made absolute.

The respondents are hereby directed to give antedated and notional promotions to the petitioners as Deputy Secretary with effect from 08.02.1992, to the grade of Joint Secretary from 13.06.2002, Additional Secretary from 27.08.2003 and Secretary from 15.02.2005 till their respective dates of retirement but the petitioners will not be entitled to any financial benefits for the said period. Respondents are directed to give

only their pension benefits treating them to have been promoted to the said respective posts accordingly within 60(sixty) days from receipt of this order.

With the aforesaid direction the Rule is made absolute.

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.

Farida B.O