

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

Writ Petition No.6038 of 2012

IN THE MATTER OF:

An application under Article 102 (2)(a)(ii) of the
Constitution of the People's Republic of
Bangladesh

-And-

IN THE MATTER OF :

Anwar Ahmed and others

.....Petitioners

-Versus-

Bangladesh represented by the Secretary,
Ministry of Railway, Bangladesh Secretariat,
Dhaka-1000 and others

.....Respondents.

Mr. Md. Salauddin Dolon, with

Mr. Md. Omar Farouq,

Mr. Gias Uddin, and

Mr. Mohammad Sherajun Monir, Advocates

.....for the Petitioners

Dr. Naim Ahmed, Advocate

.....for respondent no.3-5

Heard on : 04.04.2013 and 21.04.2013

Judgment on : 28.04.2013

Present:

Ms. Justice Naima Haider

And

Mr. Justice Zafar Ahmed

Naima Haider, J;

In this application under Article 102 (2)(a)(ii) of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why they should not be directed to

give all the benefits of promotion to the petitioners in the post of “Auditor” with retrospective effect from the date of passing the Foundation Course Examination and/or such other or further order or orders passed as to this Court may seem fit and proper.

The facts leading to the issuance of the Rule, in brief, are that:

The petitioners all are serving as Auditors in the Bangladesh Railway under the Financial Advisor & Chief Accounts Officer, Bangladesh Railway/EAST/CRB/Chittagong. For the last about 24 years no direct recruitment in the post of Auditor was made for which the petitioners who were the junior Auditors for smooth functioning of the Department had been unofficially assigned the duties and responsibilities of the Auditors. The terms and conditions of service including promotion of the petitioners are being governed by the provisions of the Railway Accounts Code. It has been provided in the Rule 124(a) of part- I of the Railway Accounts Code that the promotion in the posts above junior Auditor would be made to an employee who has passed the examination prescribed in the Appendix-II or any other examination held at the Training Institution .

The examination as described in Appendix-II of the Code had been stopped since, 1984, that is long before the appointments of the petitioners as junior Auditors were made. Thus the petitioners did not have any opportunity to sit for the said examination rather except 15 of them (Petitioner Nos. 88-96 and 104-110) all of the petitioners had been sent to the Railway Training Academy, Chittagong for “Junior Auditor Foundation Course” which was equivalent to the syllabus of the Appendix-II.

Thereafter, all of them have successfully passed the Foundation Course (FC) after successful completion of the same on different dates.

After passing the 'Foundation Course' it was the petitioners' bonafide expectation that they would be promoted as Auditor. The petitioners did not take any legal steps because they were assured that whenever the promotion order would be made in the same would be retrospectively effective from the date passing reexamination. The petitioners had no option but to rely on such assurance because in similar situation vide orders No. Rebi/Finance /promotion/2000(loose)-191(ka) dated 24.06.2003 and order No. Administration-18/2001 dated 22.07.2003 respectively 50(30+20) junior Auditors were promoted with retrospective effect from 1992-1997.

On 02.04.2008, the Office of the Director General of Bangladesh Railway vide letter no. Mopo/Obi/Junior Auditor/Promotion/East(Part-1) 97-408 had advised the Finance Advisor and Chief Accounts Officer, East and West to take necessary steps for promotion of the Junior Auditors following the provisions of Rule 123 and 124 of the Railway Accounts Code Part-I. Earlier the FA and CAO/East vide Memo No. Administration-30/94 (promotion) dated 28/02/2008 had sent a letter to the ADG/Finance categorically stating to make promotion order of the petitioners in compliance with the provisions of Rule 123 and 124 of the Code.

In such situation suddenly vide orders dated 23.06.2008, 29.03.2009, 17.09.2009, 18.10.2009 and 06.09.2010 under Memo Nos. 120,42,125,138 and 108 respectively all the petitioners were promoted to

the posts of Auditor and all the orders were made retrospectively effective albeit illegally in a discriminatory manner. It is further stated that the said orders have been made by the respondents in violation of their own decisions with regard to application of the provision of Rule 124(a) of the Code.

After issuance of the first order of promotion dated 23.06.2008 the petitioner No.1 on behalf of all the Auditors have filed an application to the FA and CAO/East on 23.08.2009 with a prayer to make the promotion retrospectively effective from the date of passing the Foundation Course under the provision of Rule 124(a) part-1 of the Code. After long lapse of about 2 years on 30.08.2010 vide memo no. Administration-30/90 (Promotion)(loose) the FA and CAO had requested the ADG/Finance to issue formal orders of retrospective promotion of the petitioners and also to pay financial benefits from the said date by fixing their pay in their entitled scales.

Unfortunately again nothing was done in favour of the petitioners which had compelled all the writ petitioners to file another application on 12.06.2011 to the FA and CAO/East with the same prayer and reiterating their earlier statements . Pursuant to the said application the Additional Finance Advisor and CAO/General/EAST had sent letter No. Administration-30/94 (Promotion)(loose) dated 12.12.2011 to the ADG/Finance/East with a recommendation to make the promotions of the petitioners as Auditor effective from the date of passing the FC

examination held under the Railway Training Academy and also to pay all pecuniary financial benefits.

Pursuant to the office Memo No. CAG/GB-3/392(part-1)/1069 dated 10.03.1997 issued by the office of the CAG the post of the Financial Advisor Communication under the volume 1 of the Railway Establishment Code has been re-designated as ADG/Finance of Bangladesh Railway. The said memo stated that under the provisions of fundamental Rules-4 (F.R-4) and sanction/ approval given by the ADG Finance would be considered as a sanction of the Ministry of Finance. Thus the ADG has ample power and authority to meet the grievances of the petitioners without referring the matter to the Government but for inexplicable reasons he is not taking any action to end the sufferings of the petitioners.

Being aggrieved by and dissatisfied with the inaction of the respondents the petitioners have moved this Court and obtained the Rule Nisi.

Respondent nos.3-5 entered appearance by filing an affidavit in opposition. The case of respondent nos.3-5 in short is that: The petitioners were all appointed as junior auditor/typist of Bangladesh Railway under the Financial Advisor and Chief Accounts Officer, East. Some of the petitioners were working as junior auditors being promoted from lower posts. An employee does not have a right to get retrospective promotion and the authority has no obligation to give retrospective promotion to the employees. While every employee has the right to be considered for promotion, the decision to promote depends on the vacancy of posts.

Restrictions imposed by applicable rules and laws, the eligibility of the candidate and discretion of the employer. The Foundation Course offered by the Railway Training Academy is nothing but a departmental training program which is not equivalent to any competitive examination taken for the purpose of promotion of employees. Even if the training program is considered as equivalent to the examinations prescribed in Appendix-II, there is nothing to show that it obliges the authority to give promotion with retrospective effect. The petitioners were eventually promoted on special consideration and not due to taking part in the departmental training program. It is further stated that the on 10.03.2002, the Ministry of Finance has instructed the Railway that the promotion shall be effective from the date of joining. Accordingly, the Railway is unable to give promotion with retrospective effect. The Rules of Business, 1996 no change in the terms and conditions of service of government servants having financial implications can be made without previous consultation with the Ministry of Finance. Accordingly, the Railway cannot give promotion with retrospective effect without approval of the Ministry of Finance.

Mr. Salahuddin Dolon, learned Advocate on behalf of the petitioners submits that every employee has a right to have his case considered for promotion according to his turn. He further submits that the similar benefits of retrospective promotion with all pecuniary benefits were allowed to many of the officers of different cadre and various Departments including the Disciplined Forces in our country but the same has been

denied to the petitioners which is discriminatory and violative of Article 29 of the Constitution.

Mr. Dolon emphatically argues that the concepts of retrospective promotion and notional promotion are accepted position in law and the respondents having failed to promote the petitioners as “Auditors” immediately after passing the Foundation Course without any valid reason are now under serious legal obligation to allow the petitioners all the benefits of retrospective promotion with effect from the date of passing the examination inasmuch as the petitioners are also entitled to retrospective pay fixation and all arrears the denial of which will be arbitrary and malafide.

Dr. Naim Ahmed, learned Advocate appearing on behalf of respondent nos.3 to 5 at the outset submits that if petitioners are given retrospective promotion as a matter of course or as a matter of right, it will create a dangerous precedent in the administration having far reaching financial implications for the government. He next submits that the other junior auditors were promoted when they have passed MRAS, 1st Part examination which was organized by the Comptroller and Auditor General of Bangladesh. The present petitioners and the said earlier promoted employees are not of the same category or class and the question of discrimination does not arise and as such retrospective effect cannot be given in respect of their promotion. Dr.Ahmed further contends that the other junior Auditors were promoted when they passed a competitive

examination which is clearly distinguishable from a mere departmental training course taken by the writ petitioners.

We have perused the writ petition, the supplementary affidavit along with its annexures, the affidavit in opposition filed by respondent nos.3-5, its annexures and other relevant materials on record and considered the submissions of the learned Advocates of both the parties.

A brief narration of the facts of the case is necessary before we consider the issue of retrospective promotion. Admittedly, the petitioners after being appointed on different dates as Junior Auditors have been discharging their duties for the last 24-26 years. Due to postponement of recruitment in the posts of “Auditors”, the Railway had assigned them with the duties and responsibilities of “Auditors” for greater national and public interests. The petitioners became eligible for promotion long time back under the provisions of the Recruitment Rules. For the last about 24 years there has been no direct recruitment in the post of Auditor. The petitioners who were the junior Auditors of the Department had been unofficially assigned the duties and responsibilities of the Auditors. The terms and conditions of service including promotion of the petitioners are governed by the provisions of Rule 124(a) of Part- I of the Railway Accounts Code. Our attention was drawn to the provisions of Rule 124(a) of Part- I of the Railway Accounts Code which reads as under:

“Promotion above Junior Auditors of the clerical establishment up to the rank of Section Superintendent shall not be made unless an employee has passed the examination prescribed in the Appendix-II or any other examination held at

the Training Institution or has been exempted from passing such examination by an order of the competent authority.”

The vital aspect that has come on record that the examination as described in Appendix II of the Code had been stopped since 1984, i.e., long before the appointments of the petitioners as Junior Auditors were made. Thus the petitioners did not have any opportunity to sit for the said examination rather except 15 of them (Petitioner Nos. 88-96 and 104-110) all of the petitioners had been sent to the Railway Training Academy, Chittagong for “Junior Auditor Foundation Course” which was equivalent to the syllabus of the Appendix-II. All of them have successfully passed the Foundation Course (FC) after successful completion of the same on different dates. After passing the ‘Foundation Course’ it was the petitioners’ bonafide expectation that they would be promoted as Auditors. The petitioners did not take any legal steps because they were assured that whenever the promotion order would be made, the same would be retrospectively effective from the date of passing their re-examination. The petitioners had no option but to rely on such assurance because in similar situation as it appears from Annexures C and C1 vide orders No. Rebi/Finance /promotion/2000(loose)-191(ka) dated 24.06.2003 and order No. Administration-18/2001 dated 22.07.2003 respectively 50(30+20) junior Auditors were promoted with retrospective effect from 1992-1997. On 02.04.2008, the Office of the Director General of Bangladesh Railway vide letter no. Mopo/Obi/Junior Auditor/Promotion/East(Part-1) 97-408 had advised the Finance Advisor (hereinafter referred to as FA) and Chief Accounts Officer (hereinafter referred to as CAO) , East and West to take

necessary steps for promotion of the Junior Auditors following the provisions of Rule 123 and 124 of the Railway Accounts Code Part-I. Earlier the FA and CAO/East vide Memo No. Administration-30/94 (promotion) dated 28/02/2008 had sent a letter to the ADG/Finance and categorically stated to make promotion order of the petitioners in compliance with the provisions of Rule 123 and 124 of the Code.

The letter dated 28.2.2008 is quoted below for ready reference:

উপদেষ্টা ও প্রধান হিসাব অধিকর্তা/পূর্ব
এর কার্যালয়
বাংলাদেশ রেলওয়ে, চট্টগ্রাম।
নং- প্রশাসন-৩০/৯৪(পদোন্নতি) তারিখ-২৮.০২.২০০৮ ইং

বরাবর,

অতিরিক্ত মহাপরিচালক/পূর্ব,
বাংলাদেশ রেলওয়ে, রেলভবন, ঢাকা।

বিষয়ঃ অডিটর পদে পদোন্নতি।

বাংলাদেশ রেলওয়ে হিসাব বিভাগ/পূর্বাঞ্চলে নিয়োগকৃত জুঃ অডিটরগণ অডিটর পদে পদোন্নতির জন্য আবেদন করেন। এই কার্যালয়ের সমন্বয় পত্র তাং- ২১.০১.২০০৮ খ্রিঃ এর মাধ্যমে আবেদন পত্রের অনুলিপি আপনার দপ্তরে প্রেরণ করা হয়। কোন সিদ্ধান্ত না পাওয়ায় জুঃ অডিটরগণ পুনরায় অডিটর পদে পদোন্নতির জন্য আবেদন করিয়াছেন।

বাংলাদেশ রেলওয়ে অর্থ ও হিসাব বিভাগে দীর্ঘ ২০ বছরের বেশী সময় ধরিয়। অডিটর/জুঃ অডিটর পদে লোক নিয়োগ না হওয়ায় লোকবল স্বল্পতা বিরাজমান। উল্লেখ্য যে, স্বাধীনতা পূর্ব হইতে অদ্যাবধি অডিটর পদে সরাসরি লোক নিয়োগ করা হয় নাই। ০১.০৪.১৯৮৪ ইং তারিখের পূর্বে জুঃ অডিটরের পদবী ছিল সিসি- টু। ০১.০৪.১৯৮৪ ইং এবং তৎপর পদবী পরিবর্তন হেতু সকল সিসি টু গণকে ফিডার

পদে (সিসি-২) তিন বছর চাকুরীর মেয়াদ উত্তীর্ণ সাপেক্ষে কোটাসীমা ব্যতিত অডিটরদের খালিপদে পদোন্নতি প্রদান করা হয়। বর্তমানে অডিটরদের সর্বমোট ৫৫ (পঞ্চাশ) টি (৩১.০১.২০০৮ পর্যন্ত) পদ শূন্য রহিয়াছে। ৩১.১২.২০০৮ খ্রিঃ পর্যন্ত আর ২১টি অডিটরের পদ শূন্য হইবে। অডিটর স্বল্পতার কারণে কর্মরত জুঃ অডিটর গণ বিভিন্ন তারিখ হইতে (তালিকা সংযুক্ত) অডিটর পদে কর্ম সম্পাদন করিয়া আসিতেছি। দীর্ঘ ২০ বছর এই সকল জুনিয়র অডিটরগণ অডিটর পদে পদোন্নতি না পাওয়ায় হতাশায় ভুগিতেছে।

এমতাবস্থায় বাংলাদেশ রেলওয়ে একাউন্টস কোর্ড পার্ট-১ এর প্যারা ১২৩ ও ১২৪ এর বিধান মতে কোটাসীমা ব্যতিত পূর্বের ন্যায় জুঃ অডিটরগণকে অডিটরের শূন্য পদে পদোন্নতির বিষয়টি বিবেচনা করা যাইতে পারে।

সংলগ্নীঃ উপরের বর্ণনামতে।

(মোঃ মাহতাব উদ্দিন)
অর্থ উপদেষ্টা ও প্রধান হিসাব অধিকর্তা/পূর্ব
বাংলাদেশ রেলওয়ে, চট্টগ্রাম।

(emphasis supplied)

It further appears from record that on 02.04.2008, the Office of the Director General of Bangladesh Railway vide letter no. Mopo/Obi/Junior Auditor/Promotion/East(Part-1) 97-408 had advised the Finance Advisor and Chief Accounts Officer, East and West to take necessary steps for promotion of the Junior Auditors following the provisions of Rule 123 and 124 of the Railway Accounts Code Part-I. Earlier the FA and CAO/East vide Memo No. Administration-30/94 (promotion) dated 28/02/2008 had sent a letter to the ADG/Finance categorically stating to make promotion order of the petitioners in compliance with the provisions of Rule 123 and 124 of the Code.

For felicity of reference the letter dated 2.4.2008 is extracted below
which reads as follows:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
মহাপরিচালক এর কার্যালয়
অর্থ ও হিসাব বিভাগ
বাংলাদেশ রেলওয়ে
রেলভবন, ঢাকা।

নম্বরঃ মপ/অহি/জুঃঅডিটর/পদোন্নতি/পূর্ব(পাট-১)৯৭-৪০৮ তারিখঃ ০২.০৪.২০০৮ খ্রিঃ

প্রাপকঃ ১। অর্থ উপদেষ্টা ও প্রধান হিসাব অধিকর্তা/পূর্ব
বাংলাদেশ রেলওয়ে,
সিআরবি, চট্টগ্রাম।
২। অর্থ উপদেষ্টা ও প্রধান হিসাব অধিকর্তা/ পশ্চিম
বাংলাদেশ রেলওয়ে,
রাজশাহী।
বিষয়ঃ অডিটর পদে পদোন্নতি প্রসঙ্গে।

সূত্রঃ অর্থ উপদেষ্টা /পূর্ব কার্যালয়ের পত্র নম্বরঃ প্রশাসন-৩০/৯৪(পদোন্নতি), তারিখঃ
২৮.০২.২০০৮ খ্রিঃ

উপর্যুক্ত বিষয়ে সূত্রোক্ত পত্রের আলোকে জানানো যাচ্ছে যে, বাংলাদেশ রেলওয়ে
একাউন্টস কোড পাট-১ এর অনুচ্ছেদ ১২৩ এবং ১২৪ বিধান অনুসরণে জুনিয়র
অডিটরগনকে অডিটর পদে পদোন্নতির ব্যবস্থা করার জন্য পরামর্শ দেয়া হল। অতিঃ
মহাপরিচালক/অর্থ দপ্তরে আলোচ্য পদে কর্মরত কর্মচারীদের পদোন্নতির বিষয়ে অর্থ
উপদেষ্টা ও প্রধান হিসাব অধিকর্তা/পূর্ব দপ্তর থেকে একই সাথে কার্যক্রম গ্রহণ করতে
হবে। প্রয়োজনে পদোন্নতি সংক্রান্ত বিষয়ে অতিঃ মহাপরিচালক/অর্থ মহোদয় এর
পরামর্শ গ্রহণ করা যেতে পারে।

অতিরিক্ত মহাপরিচালক/অর্থ মহোদয়ের অনুমোদনক্রমে।

(কাজী মাসুদা সুলতানা)
সহকারীপরিচালক /অর্থ(প্রশাসন)
রেলভবন, ঢাকা।

Against this backdrop suddenly vide orders dated 23.06.2008, 29.03.2009, 17.09.2009, 18.10.2009 and 06.09.2010 under Memo Nos. 120,42,125,138 and 108 respectively all the petitioners were promoted to the posts of Auditor and all the orders were made retrospectively effective in a discriminatory manner. It is to be noted that the said orders have been made by the respondents in violation of their own decisions with regard to application of the provision of Rule 124(a) of the Code.

After issuance of the first order of promotion dated 23.06.2008 the petitioner No.1 on behalf of all the Auditors have filed an application to the FA and CAO/East on 23.08.2009 with a prayer to make the promotion retrospectively effective from the date of passing the Foundation Course under the provision of Rule 124(a) part-1 of the Code. After long lapse of about 2 years on 30.08.2010 vide memo no. Administration-30/90 (Promotion)(loose) the FA and CAO had requested the ADG/Finance to issue formal orders of retrospective promotion of the petitioners and also to pay financial benefits from the said date by fixing their pay in their entitled scales.

For ready reference the relevant portion of Annexure F-1 is quoted below:

অর্থ উপদেষ্টা ও প্রধান হিসাব অধিকর্তা/পূর্ব
এর কার্যালয়
বাংলাদেশ রেলওয়ে, চট্টগ্রাম।

.....
.....
.....
.....
..... এদিকে অর্থ মন্ত্রণালয়

হতে জারীকৃত পত্র নং- অম/অবি/বিধি-৫/বে-নি-১৩/৯৯/২৫ তাং-১০.০৩.২০০২ খ্রিঃ এর মাধ্যমে ভূতাপেক্ষিক পদোন্নতি প্রদানের কোন সুযোগ নেই মর্মে অবহিত করেছেন (কপি সংযুক্ত)। অন্যদিকে রেলওয়ে অর্থ ও হিসাব বিভাগে কর্মরত জুনিয়র অডিটরগন দীর্ঘ সময় ধরে অডিটর এর শূন্য পদে কাজ করে আসছেন এবং একাউন্টস কোড এর বিধান ১২৩ ও ১২৪ অনুসরনে বিভিন্ন তারিখে রেলওয়ে ট্রেনিং একাডেমী হতে জুনিয়র অডিটর মৌলিক প্রশিক্ষণ কোর্সের সিলেবাসে পরীক্ষায় উত্তীর্ণ হয়েছেন। তাই তারা পরীক্ষা পাশের তারিখ হতে পদ শূন্য থাকা সাপেক্ষে অডিটর পদে পদোন্নতির যোগ্য। কিন্তু উপর্যুক্ত কর্তৃপক্ষের অনুমোদন ব্যতিত ভূতাপেক্ষিক পদোন্নতি কার্যকর করে সুবিধা প্রদান করা যাচ্ছে না। এমতাবস্থায়, উপর্যুক্ত কর্তৃপক্ষের অনুমোদন গ্রহণ করতঃ ভূতাপেক্ষিক পদোন্নতি কার্যকর করে বেতন নির্ধারণী সুবিধা প্রদান এবং আদেশ জারীর তারিখ থেকে আর্থিক সুবিধা প্রদানের নিমিত্ত সুপারিশ সহকারে প্রেরণ করা হল।

অর্থ উপদেষ্টা ও প্রধান হিসাব অধিকর্তা/পূর্ব মহোদয়ের অনুমোদনক্রমে।

(কামরুল নাহার)
অতিঃ অর্থ উপদেষ্টা ও প্রধান হিসাব
অধিকর্তা/সার্বিক/পূর্ব
বাংলাদেশ রেলওয়ে, সিআরবি, চট্টগ্রাম।

(emphasis supplied)

In spite of this nothing was done and the writ petitioners filed another application on 12.06.2011 to the FA and CAO/East with the same prayer and reiterating their earlier statements. Pursuant to the said application the Additional Finance Advisor and CAO/General/EAST had sent letter No. Administration-30/94 (Promotion)(loose) dated 12.12.2011 (Annexure-G) to the ADG/Finance/East with a recommendation to make the promotions of the petitioners as Auditor effective from the date of passing the FC examination held under the Railway Training Academy and also to pay all pecuniary financial benefits.

Annexure – G 1 is quoted below for ready reference:

promoted. The Railway itself vide a letter dated 20.08.1984 had postponed the Appendix II examination for an indefinite period and the petitioners were allowed to sit for the Foundation Course in the Railway Training Academy under the category of "any other examination held at a Training Institution" as mentioned in the Para 124(A) of the Railway Accounts Code. It is on record that the respondents had taken service of Auditors from the petitioners for a long time without giving any benefit of the said post. We are of the view that the respondents having considered this aspect had accepted the claims of the petitioners as manifested from the Annexures F-1 and G-1 to the writ petition and denying the promotion now will be against all norms of fairness and justice.

In service jurisprudence getting promotion is one of the objects in one's service life. Promotion is not a right but every employee has every right to be considered for promotion as per rules. An act need not be positive violation of fundamental rights and if the duty is not performed at the appropriate time as per constitutional mandate, it is also the glaring infraction of Fundamental Rights. Therefore, it is mandatory on the part of the authorities to discharge its duties at the appropriate time, unless the reasons are beyond their control, because even one day's loss in the service career of an employee on promotion cannot be compensated at any time as the saying goes "Justice delayed is Justice denied" and in service matter "Promotion delayed is Promotion denied". Furthermore, in service matters the inaction on the part of the authority concern is stated as dereliction of duty. Applying the said dictum of law if the concern Department does not

take appropriate steps at the appropriate time, the right of a particular employee for being considered for promotion for that particular post is deprived. They may be selected subsequently but this is not what the law contemplates.

As noted earlier, after issuance of the first order of promotion dated 23.06.2008 the petitioner No.1 on behalf of all the Auditors have filed an application to the FA and CAO/East on 23.08.2009 with a prayer to make the promotion retrospectively effective from the date of passing the Foundation Course under the provision of Rule 124(a) part-1 of the Code. Sitting over the matter for about two years, the FA and CAO on 30.08.2010 vide memo no. Administration-30/90 (Promotion) (loose) had requested the ADG/Finance to issue formal orders of retrospective promotion of the petitioners and also to pay financial benefits from the said date by fixing their pay in their entitled scales. This has created a legitimate expectation in the minds of the petitioners and the respondents at this juncture cannot retract back from their own stand. This point should be taken into account by the authorities. The delay on the part of the respondents should not be permitted to recoil on the petitioners. It would be unjust and inequitable to deny the petitioners who have been deprived of such legitimate promotion due to them when there is no fault on their part.

In view of the foregoing discussions and observations and taking the facts in their entirety and the proposition of law, we are of the view that the Rule has got merit and deserve to succeed.

Accordingly, the Rule is made absolute. The respondents are directed to consider and give the benefits of promotion to the petitioners in the post of “Auditor” with retrospective effect from the date of their passing the Foundation Course Examination subject to the condition that they are otherwise not disqualified.

However, there is no order as to costs.

Zafar Ahmed, J:

I agree.