

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

Writ Petition No. 4038 of 2015

IN THE MATTER OF:

An application under Article 102 read with Article 44
of the Constitution of the People's Republic of
Bangladesh.

AND

IN THE MATTER OF:

Mr. S.M. Zahid Hasan

....Petitioner

Versus

Secretary, Ministry of Finance (Banking Division),
Secretariat Building, Ramna, Dhaka and others

....Respondents

Mr. A.M. Masum, Senior Advocate with
Mr. Taisir Hoque, Advocate

....For the Petitioner

Mr. Shamim Khaled Ahmed, Senior Advocate

.... For the Respondent No. 3

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice S M Saiful Islam

Judgment on 23.06.2026.

Md. Iqbal Kabir, J:

This Rule Nisi was issued calling upon the respondent Nos. 1-5 to show cause as to why the impugned order dated 14.01.2015 of dismissing the petitioner from the service of the respondent No. 3 Bank shall not be declared unlawful, mala-fide and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

Short facts necessary for disposal of the Rule are that the petitioner joined the respondent Bank as an Assistant Officer Grade-II on 28.12.1999. He was subsequently promoted to the post of Officer, thereafter to Assistant Manager, and finally to Deputy Manager. However, on 17.04.2014, the respondent No. 4 placed the petitioner under suspension. Challenging the order of suspension, the petitioner filed Writ Petition No. 3960 of 2014. During the pendency of the said Rule, a departmental proceeding was initiated against the petitioner and a charge-sheet dated 28.04.2014, containing 10/11 allegations, was served upon him with a direction to submit his reply within ten working days. The petitioner submitted a detailed charge-wise reply on 27.05.2014.

Thereafter, the respondent Bank issued a second show-cause notice dated 01.01.2015 asking the petitioner to explain within seven days why he should not be dismissed from service. However, the inquiry report was not enclosed with the notice. On 05.01.2015, the petitioner sought time to submit his reply to the second show-cause notice; however, his prayer was rejected on 08.01.2015. Thereafter, by a letter dated 11.01.2015, the petitioner informed the respondent that, in the absence of the inquiry report, he was unable to submit an effective reply. Although the respondent No. 3 sent the inquiry report on 11.01.2015, the petitioner received it only on 13.01.2015, long after the second show-cause notice had been served. The petitioner could not make any effective representation upon receipt of the inquiry report, since respondent No. 3, on the very next day, i.e., 14.01.2015, dismissed him from service.

In the above backdrop, the petitioner, being aggrieved and dissatisfied with the order of dismissal, filed the instant writ petition and obtained the Rule.

Mr. A.M. Masum, learned Senior Advocate appearing for the petitioner, upon placing the petition, submits that he was not afforded any opportunity to respond to the findings of the inquiry report, as the Respondent No. 3 Bank furnished a copy of the inquiry report only on 13.01.2014, which was long after the issuance of the second show-cause notice.

He submits that the inquiry report is self-contradictory and unsupported by the evidence on record. He contends that although the petitioner was not found guilty as the principal offender, the inquiry officer nevertheless held him guilty as an accomplice on Charge Nos. (i), (ii), (iii), (v) and (viii), stating that those charges had been proved beyond reasonable doubt. He further submits that the petitioner was also found guilty of Charge No. (vi), even though the inquiry report itself states that the charge was only partially proved, indicating that the required standard of proof was not met. He points out that Prosecution Witness No. 2 accepted full responsibility as the Branch-in-Charge and did not implicate the petitioner in any manner. Likewise, Prosecution Witness Nos. 3 to 7 supported the petitioner's version of events and did not make any statement adverse to him. Despite the absence of incriminating evidence, the inquiry officer found the petitioner guilty of the charges, which, according to the learned Advocate, is wholly unjustified.

He submits that the findings of the Inquiry Officer are erroneous and suffer from non-application of mind. He categorically described reasons, according to him. (i), the petitioner was wrongly held liable as an accomplice although the former Branch-in-Charge admitted sole responsibility without implicating him, and there is no evidence that the petitioner disbursed the loan

or aided or abetted the alleged misconduct; (ii), the petitioner made negative observations on the proposal, which were corroborated by other witnesses, but the loan was ultimately sanctioned by the Board, and no action was taken against the senior members of the Branch Credit Committee; (iii), despite the petitioner's adverse observations, the Board approved the loan, and there is no evidence that he assisted or encouraged any wrongdoing; (iv), the evidence showed that the mortgage was executed after the loan account had been opened and that the petitioner was not the Credit In-Charge at the relevant time, but the Inquiry Officer ignored such evidence; (v), the Board sanctioned the facilities despite being aware of the alleged irregularities, while the petitioner merely acted on the instructions of the Branch-in-Charge, and there is no evidence to justify holding him liable as an accomplice; (vi), the finding that the charge was only "partially established" does not satisfy the required standard of proof to warrant punishment; (vii) suffers from the same infirmity; and (ix), although the petitioner made negative observations, the Head Office approved the proposals and directed disbursement without 100% collateral coverage, while the former Branch-in-Charge accepted sole responsibility without implicating the petitioner. Accordingly, the finding that the petitioner acted as an accomplice is unsustainable.

The respondent No. 3 Bank illegally dismissed the petitioner by Memo No. BASIC/HO/HRD/2015/700 dated 14.01.2015 (the impugned order). The petitioner received the inquiry report on 13.01.2015 and was dismissed the very next day, on 14.01.2015, without any reasonable opportunity to respond to the findings of the inquiry report. Furthermore, the impugned order reveals that the Board of Directors had already decided on 11.12.2014 to dismiss the petitioner, even before issuing the second show-cause notice, which clearly indicates a predetermined, mala fide, and unlawful decision.

He submits that the charges brought against the Petitioner prima facie do not constitute any offence within the meaning of misconduct by an employee. The allegations brought against the Petitioner were as a principal offender and not as an accomplice, but the Petitioner was found guilty as an accomplice without there being any such charge against him. Further, the Petitioner did not receive the inquiry report before dismissal. The inquiry report was received only after being dismissed from service. It is clear from the inquiry report that all witnesses of the respondent No.3 bank gave evidence in favour of the Petitioner, but the inquiry officer willfully overlooked such evidence and found him guilty arbitrarily and in a mala fide manner. Further, all the charges leveled against the petitioner are absolutely vague, and the punishment imposed upon

him is outrageously disproportionate to the nature of the charges. The punishment is not only vindictive or unduly harsh but amounts in itself to conclusive evidence of bias.

Respondent No. 3, Bank, contested the Rule by filing an affidavit-in-opposition controverting the statements made in the writ petition and supporting the impugned order.

Mr. Shamim Khaled Ahmed, learned Senior Advocate for the respondent No. 3, by filing an affidavit in opposition brought to this Court that the sanction letter dated 16.06.2011 noted that "the branch has to ensure physical verification of the chain of documents to ascertain title of properties from the concerned office. The branch has to ensure physical possession, demarcation and actual valuation of the mortgaged or to be mortgaged properties. Genuineness of all the documents & title of the property must be verified jointly by a prudent lawyer of Head office & branch. Physical verification of the property was required to be done jointly by branch officials and officials of the credit administration department, head office." But the writ petitioner, in connivance with the then branch-in-charge, Mr. Shiper Ahmed (dismissed), did not comply with such terms and conditions of the sanction letter. He allowed loan facilities and accepted mortgages without complying with the terms and conditions of sanction letters, making the recovery of loan uncertain.

He submits that the branch had to take permission from the Disbursement Committee before allowing disbursement of several enterprises, i.e., M/S. Khadiza & Sons, EFS Enterprise, S.L. Designer Ltd, M/S. Ma Tex, M/S. Monica Trading International and M/S. Surma Steel, but in connivance with the then branch-in-charge allowed disbursement without taking prior permission from the disbursement committee.

He brought to notice that the sanction letters dated 29.08.2012, 14.03.2013, and 07.03.2013 required the branch to ensure 100% collateral coverage, inspect the securities, and verify the proper valuation and genuineness of the mortgaged properties before disbursing any loan. However, the petitioner, in collusion with the then Branch Manager, Mr. Shiper Ahmed (dismissed), disbursed loans without complying with these conditions. He approved loans to several enterprises in haste, accepted fake and overvalued collateral securities, and thereby made recovery of the loans, amounting to Tk. 574 crore, uncertain and caused serious loss to the bank.

He submits that the proceedings against the writ petitioner were duly conducted and the writ petitioner had ample opportunity to cross-examine the witnesses for the establishment. According to him, charge No. 4 is proved

against him whereas charge Nos. 1, 2, 3, 5 and 8 are proved against him as an accomplice. The charges are duly proved; the proceedings against him are duly preceded; a second show-cause notice and inquiry report were sent, but enough time was not given, and the subsequent dismissal order has basis and is proportionate to the culpability. As many as seven witnesses for the establishment proved six charges against the petitioner, and the inquiry officer correctly found the charges proved.

However, lastly without prejudice to the submissions made above, he alternatively brought our notice by way of his submission that in *Mostofa Miah vs. Chairman, First Labour Court, Dhaka and others*, 46 DLR (1994) 373, the Court held that the respondent authority may initiate the disciplinary proceeding afresh, in accordance with law, from the stage of submission of the enquiry report to reach a fair and just decision. Similarly, in the unreported case of *Nasir Uddin Ahmed vs. Government of the People's Republic of Bangladesh and others* (Writ Petition No. 8561 of 2019), the Court observed that the respondents were at liberty to proceed against the petitioner from the stage of the second show-cause notice in accordance with law to ensure a fair and just determination of the matter. Therefore, according to him, it would be appropriate that an order may be passed permitting the respondent authority to recommence the proceeding afresh from the stage of submission of the enquiry report in accordance with law.

We have examined the writ petition, the affidavit-in-opposition, concerned materials on record submitted by both the parties.

Indeed, the issue for determination, in this case, is whether the respondent failed to provide the enquiry report and whether the failure to furnish the enquiry report along with the second show-cause notice is lawful.

Respondent admitted that the second show-cause notice was issued without furnishing the enquiry report. On 01.01.2015, the respondent Bank issued a second show-cause notice asking the petitioner to explain within seven days why he should not be dismissed from service. However, the petitioner sought time to submit his reply, but on 08.01.2015, said prayer was rejected. Thereafter, the petitioner, by its letter dated 11.01.2015, informed the respondent that without the inquiry report he is unable to submit an effective reply to the second show-cause notice. Knowing such on 11.01.2015, the respondent No. 3 sent the inquiry report; the petitioner received it on 13.01.2015 and on the very next day, i.e., on 14.01.2015, the respondent No. 3 dismissed the petitioner from service. That being the position, it was argued that

the dismissal of the petitioner has violated Articles 31 and 40 of the Constitution.

At this juncture, the provision contained in Rule 7.8.6 of the বেসিক ব্যাংক লিমিটেড কর্মকর্তা/কর্মচারী চাকুরী বিধিমালা, ২০১৫ may be quoted below verbatim for better understanding:

“যথাযথ কর্তৃপক্ষ যদি গুরুদণ্ড আরোপের সিদ্ধান্ত গ্রহণ করেন তাহা হইলে প্রস্তাবিত দণ্ড অভ্যুক্ত কর্মকর্তা/কর্মচারীর প্রতি কেন আরোপ করা হইবে না তৎসম্পর্কে ৭(সাত) কার্যদিবস সময় দিয়া তাহাকে দ্বিতীয় কারণ দর্শাইবার (Second Showcause) নোটিশ দিবেন। তবে, এই দ্বিতীয়বার কারণ দর্শানোর নোটিশের সহিত অভ্যুক্ত কর্মকর্তা/কর্মচারীকে তদন্ত প্রতিবেদনের কপি (সাক্ষীর সাক্ষ্য ব্যতীত) সরবরাহ করিতে হইবে।”

Upon plain reading of the above Rule, it appears that the second show-cause notice requires, together with a copy of a report, to be sent. Precisely that was not done in the instant case.

In the above context, it was asserted that respondent No. 3 violated the principle of natural justice by failing to provide the opportunity of giving effective representation to the petitioner. The petitioner was served with the second show cause notice asking him to give a reply in the light of the enquiry report, which was also made on the basis for awarding punishment. However, the report of the enquiry officer was not furnished along with the second show cause notice. The law is very much clear on this subject that the second show cause notice requires, together with a copy of a report, to be sent to the delinquent employee like the petitioner in the instant case.

In this respect, it would be beneficial to refer to the decisions by both Divisions of the Supreme Court of Bangladesh. In the case of Government of Bangladesh and others vs. Md. Tariqul Islam, 25 BLC (AD) 131, it has been held as under:

“Cardinal principle of natural justice requires supply of enquiry report to the person against whom departmental action is being taken although section 6 of the Police Officers (Special Provisions) Ordinance, 1976 is silent about it. But Tariqul was not supplied with a copy of the inquiry report at the time of issuing a show-cause notice before his dismissal in clear violation of this principle of natural justice.”

In the case of Golam Mostafa (Md) and others vs. Bangladesh Jute Mills Corporation and others, 52 DLR 299, it has been held as under:

“The supply of enquiry report along with the second show cause notice is not an idle formality but the requirement of law which is also in consonance with the provision of principle of natural justice.”

In the case of Khulna Telecommunication Region vs. Sheikh Nazrul Islam and another, 90 BLT (AD) 91, it has been held as under:

“Administrative Appellate Tribunal allowed the appeal on the ground that with the second show cause notice that was served on respondent No. 1 a copy of the enquiry report was not annexed depriving respondent No. 1 of giving a reasonable opportunity to show cause against the proposed penalty, the mandatory requirement of law having not been complied with, the Administrative Appellate Tribunal rightly set aside the order of removal and reinstated respondent No. 1 to his service.”

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

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

In the case of Mostafa Miah vs. Chairman, First Labour Court, Dhaka and others, LEX/BDHC/0087/1993: 46 DLR 373, it has been held as under:

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

He also cited an unreported case, decided in writ petition No. 6625 of 2023, wherein it observed that all citizens are equal before the law and are entitled to equal protection of the law. Article 31 further guarantees every citizen and every person within Bangladesh the inalienable right to the protection of the law and to be treated only in accordance with law, and prohibits any action detrimental to the life, liberty, body, reputation, or property of any person except in accordance with law.

However, it is pertinent to note that the applicability of second show cause notice was also extended and approved in the case of In the case reported in 8 BLC (AD) 49, wherein it observed that although the Service Regulations do not expressly require the enquiry report to be supplied with the

second show-cause notice, where the notice is based on the findings of that report, the delinquent employee must be furnished with a copy to enable an effective reply. Failure to do so denies a fair opportunity of representation and violates the principles of administrative fairness, which require an authority affecting a person's rights to act fairly and in accordance with law.

Respondent No. 3 Bank, by the impugned memo dated 14.01.2015, dismissed the petitioner, but it is admitted inquiry report was given to the petitioner on 13.01.2015 and was very next day dismissed the petitioner, leaving no effective opportunity to challenge the findings made therein. Further, the impugned order itself reveals that the Board of Directors had decided on 11.12.2014 to dismiss the petitioner, even before issuance of the second show-cause notice, demonstrating a pre-determined decision, may call mala fide or motivated decision. The petitioner was thus denied a meaningful opportunity to defend himself, in clear violation of the principles of natural justice, which, as consistently held by our Apex Court, must be observed before imposing any disciplinary punishment.

By now it has been well settled that a second show-cause notice is, in fact, the accused employee's last opportunity to place his case to the authority who is to decide about the punishment to be awarded against the employee and accordingly, it has been held in the case of *Md. Torab Ali vs. Bangladesh Textile Mills Corporation* and another, reported in 1989 BLD 383 and 41 DLR 138 that the accused employee has the burden and/or the agony of disabusing the mind of the appointing authority from the impression created by the report of the inquiry officer. Further, it was observed that although the second show-cause notice requires the delinquent to explain why the proposed punishment should not be imposed or inflicted upon him, the appointing authority, after considering the reply, remains free to decide whether to impose, modify, or withdraw the proposed punishment. To be meaningful, it has to be furnished along with the report of the Enquiry Officer.

The legal position of the case in hand is identical to the case referred to in the above decisions. Therefore, the principle expressed in the case referred to above is fully applied to the case in hand. The learned Counsel for the respondents could not make any case that could attract either of the principles as laid down in the aforesaid decisions. This petitioner prayed time to make reply; the respondent refused such prayer, further based on a decision taken by the Board dismissed the petitioner; therefore, this Court is not permitting the respondents to recommence the proceeding afresh from the stage of submission of the enquiry report.

In this case, the respondent dismissed the petitioner from service, imposing a major penalty following the Service Rules. Before imposing such punishment, the authority should have given fair opportunity to defend the person against whom the allegation has been brought. Admittedly, the respondent was given a 2nd show-cause notice at a belated stage; the petitioner could not submit an effective reply to the second show-cause notice. Under law, the authority had the opportunity to reconsider and alter its decision in light of the petitioner's explanation. Since there was no effective reply, the authority did not avail opportunity to scrutinize or apply fresh thought. As a result, he was denied a reasonable opportunity to defend himself before the dismissal order was passed.

Given the facts and reasons stated above, we find substance in the submissions made by the petitioner. The dismissal of the petitioner cannot be sustained as the impugned decision was taken violating the principles of natural justice and provisions of applicable Rules.

Thus, we find merit in the Rule, for which the Rule is required to be absolute.

Accordingly, the Rule is made absolute.

However, the respondent is directed to reinstate the petitioner in service with effect from the date of this judgment. The period from the date of the petitioner's dismissal until the date of his reinstatement shall be treated as leave without pay, and he shall not be entitled to any back wages or other monetary benefits for that period.

The impugned order dated 14.01.2015 dismissing the petitioner from the service of the respondent No. 3 Bank is hereby set aside.

There will be no order as to costs.

Communicate at once.

S M Saiful Islam, J:
I agree