

IN THE SUPREME COURT OF BANGLADESH

APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique
-Chief Justice

Mr. Justice Md. Nuruzzaman

Mr. Justice Obaidul Hassan

Mr. Justice Borhanuddin

Mr. Justice M. Enayetur Rahim

Ms. Justice Krishna Debnath

CIVIL REVIEW PETITION NOS. 277-282 of 2019

(From the judgment and order dated 15.04.2019 passed by this Division in Civil Petition for Leave to Appeal Nos.3696, 3694, 3700, 3703, 3698 and 3692 of 2018).

Md. Gaisuddin Bhuiyan	: <u>Petitioner.</u> (C.R.P No. 277 of 2019)
Iqbal Kabir Chowdhury	: <u>Petitioner.</u> (C.R.P No. 278 of 2019)
Md. Anowaruzzaman	: <u>Petitioner.</u> (C.R.P No. 279 of 2019)
Monir Ahmed	: <u>Petitioner.</u> (C.R.P No. 280 of 2019)
Md. Bazlur Rashid Akhonda	: <u>Petitioner.</u> (C.R.P No. 281 of 2019)
Md. Nurunnabi Bhuiyan	: <u>Petitioner.</u> (C.R.P No. 282 of 2019)

-Versus-

The Secretary, Security Services : Division, Ministry of Home Affairs, Bangladesh Secretariat, Dhaka and others.	: <u>Respondents.</u> (In all the civil review petitions)
---	---	--

<u>For the Petitioners.</u> (In all the civil review petitions)	:	Mr. Murad Reza, Senior Advocate with Mr. Mohammad Ibrahim Khalil, Advocate instructed by Mr. Md. Zahirul Islam, Advocate-on-Record.
--	---	--

<u>For the Respondents.</u> (In all the civil review petitions)	:	Mr. Badrul Islam, Advocate-on- Record.
--	---	---

<u>Date of Hearing</u>	:	<u>The 7th April, 2022.</u>
------------------------	---	--

JUDGMENT

Borhanuddin, J: Since above Civil Review Petitions involve identical point of law based on similar facts as such the

petitions have been taken together for hearing and are disposed of by this common judgment.

The point of law is that whether the right of promotion/seniority can be taken away by subsequent amendment of service rules that have already been earned under the previous rules. In each of the aforementioned review petitions the petitioner challenge legality of the orders passed by this Division in Civil Petitions for Leave to Appeal affirming the judgment and orders passed by the Administrative Appellate Tribunals (hereinafter referred as A.A.T) as depicted in the Chart below:

CHART-I

Civil Review Petition	C.P.L.A Nos. and Order passed on	A.A.T Appeal No. and Judgment dated
C.R.P No.277 of 2019 Md. Gaisuddin Bhuiyan	C.P.L.A No. 3696-3697 of 2018 Dated: 15.04.2019	A.A.T No.106 of 2017 A.A.T No.192 of 2017 Dated:15.07.2018
C.R.P No.278 of 2019 Iqbal Kabir Chowdhury	C.P.L.A No. 3694-3695 of 2018 Dated: 15.04.2019	A.A.T No.104 of 2017 A.A.T No.193 of 2017 Dated:15.07.2018
C.R.P No.279 of 2019 Md. Anowaruzzaman	C.P.L.A No. 3700-3701 of 2018 Dated: 15.04.2019	A.A.T No.175 of 2017 A.A.T No.199 of 2017 Dated:15.07.2018
C.R.P No.280 of 2019 Monir Ahmed	C.P.L.A No. 3703-3704 of 2018 Dated: 15.04.2019	A.A.T No.176 of 2017 A.A.T No.190 of 2017 Dated:15.07.2018
C.R.P No.281 of 2019 Md. Bazlur Rashid Akhonda	C.P.L.A No. 3698-3699 of 2018 Dated: 15.04.2019	A.A.T No.177 of 2017 A.A.T No.194 of 2017 Dated:15.07.2018
C.R.P No.282 of 2019 Md. Nurunnabi Bhuiyan	C.P.L.A No. 3692-3693 of 2018 Dated: 15.04.2019	A.A.T No.105 of 2017 A.A.T No.191 of 2017 Dated:15.07.2018

Brief facts of the cases are that the petitioners were appointed as Deputy Jailor and Assistant Jailor (C.R.P No. 281 of 2019) under the provisions of Officers and Staff (Department of Prisons) Recruitment Rules, 1984. As per

provision of Rules, 1984 the petitioners were eligible for promotion to the post of Jailor on completion of 5 years service in the feeder post. Though the petitioners were eligible for regular promotion to the post of Jailor but they were given current charge. Subsequently they were promoted to the post of Jailor but their seniority from the date of entitlement was not restored.

Details described in the following Chart:

CHART-II

Petitioners name and C.R.P No.	Joined as Deputy Jailor	Eligible for promotion as Jailor	Promoted as Jailor	Eligible for promotion as Superintendent	Promoted as Superintendent
Md. Gainuddin Bhuiyan C.R.P No.277 of 2019	27.02.1990	27.02.1995 (given current charge of Jailor on 22.02.1998)	12.12.2001	12.12.2008 (given current charge of Superintendent on 23.11.2008)	22.12.2012
Iqbal Kabir Chowdhury C.R.P No.278 of 2019	10.03.1990	10.03.1995 (given current charge of Jailor on 22.01.1998)	13.06.2001	13.06.2008 (given current charge of Superintendent on 23.11.2008)	16.11.2011
Md. Anowaruzzaman C.R.P No.279 of 2019	10.10.1992	10.10.1997 (given current charge of Jailor on 19.10.1999 and again additional charge of Jailor on 26.06.2000)	25.05.2004	25.05.2011 (given current charge of Superintendent on 16.07.2009)	23.09.2012
Monir Ahmed C.R.P No.280 of 2019	10.01.1997	10.01.2002 (given Additional charge of Jailor on 12.09.2001 and current charge of Jailor on 02.03.2002)	20.05.2004	20.05.2011 (given current charge of Superintendent on 23.11.2008)	23.09.2012
Md. Bazlur Rashid Akhonda C.R.P No.281 of 2019	Joined as Assistant Jailor on 01.11.1992 and promoted to Deputy Jailor on 12.02.1998	12.02.2003 (given current charge of Jailor on 07.02.2004)	02.06.2008	02.06.2015 (given current charge of superintendent on 18.02.2013)	Not promoted till date
Md. Nurunnabi Bhuiyan C.R.P No.282 of 2019	01.03.1990	01.03.1995 (given current charge of Jailor on 25.01.1998)	24.07.2002	24.07.2009 (given current charge of Superintendent on 23.11.2008)	26.12.2011

As per provision of Rules, 1984 requirement for promotion to the post of Deputy Superintendent of Jails was four years service as Jailor and for promotion to the post

of Superintendent of Jails requirement was either three years service as Deputy Superintendent or seven years service as Jailor.

Rules, 1984 was repealed by re-enactment of Rules, 2006 and in the new Rules it was mandated that for the purpose of promotion to the post of Superintendent, 3 years service as Deputy Superintendent of Jails is mandatory and the scope of promotion of Jailor to the post of Superintendent was omitted. Two groups of Superintendent of Jails were appointed directly under the provision of Rules, 2006, on 13.12.2010 and 07.06.2011. But the petitioners were not promoted as the Rules, 1984 was repealed. The Rules, 2006 being found inconsistent was further repealed by re-enactment of Rules, 2011 and the petitioners were promoted as Deputy Superintendent of Jails and thereafter Superintendent of Jails but belated promotion made the petitioners junior to those directly appointed as Superintendent of Jails and their prospect of promotion to the next higher post has been adversely affected.

Two officers of the department were given retrospective promotion though those officers were appointed under the Rules, 1984 like the petitioners.

In this circumstances, the petitioners applied to the authority to give retrospective effect to their belated promotion under the Rules, 1984 which was rejected. The petitioners preferred departmental appeal which remained unattended and thus the petitioners separately preferred Administrative Tribunal Case (hereinafter referred as A.T case) seeking declaration that they are entitled to have retrospective effect to their belated promotion under the Rules, 1984.

The opposite parties entered appearance and contested the cases by filing written statement contending interalia that the petitioners could not be promoted as Superintendent of Jails since the Rules, 1984 was repealed followed by the re-enactment of Rules, 2006 and there was ambiguity in the Rules, 2006 to promote to the post of Superintendent from Jailors. It is also stated that the authority were on the process of removing the ambiguity when the direct recruitment was made.

After hearing the parties, Administrative Tribunal allowed the cases holding that the petitioners are entitled to have retrospective effect to their belated promotion under Rules, 1984 as they were appointed under the said

Rules and accordingly directed the authority to give retrospective effect to their belated promotion.

Being aggrieved, the respondents herein as appellants preferred appeals before the Administrative Appellate Tribunal and the group of direct appointees also preferred appeals before the Tribunal. After hearing the appeals, the Tribunal allowed the appeals holding that the Administrative Tribunal directed the authority without following Rule 5 of the Rules, 1984 and the petitioners did not implead Bangladesh and the direct appointees as party in their cases.

Feeling aggrieved, the petitioners filed separate Civil Petitions for Leave to Appeal before this Division. All the appeals were heard together. Upon hearing the petitioners, this Division dismissed the Civil Petitions for Leave to Appeal vide order dated 15.04.2019 and thereby affirmed the judgment and orders passed by the A.A.T.

Having aggrieved, above Civil Review Petitions are filed by the petitioners.

Mr. Murad Reza, learned senior advocate appearing for the petitioners in all the Review Petitions submits that while dismissing the Civil Petitions for Leave to Appeal

this Division did not take into consideration the material fact that the petitioners were appointed under Rules, 1984 and as such their promotion and seniority would be determined in accordance with the provision of Rules, 1984. He also submits that by now it is settled provision of law that subsequent change of Rules cannot operate as a bar for the petitioners to get benefit of the Rules under which they are appointed. In support of his submissions, learned Advocate referred to the case of Bakhrabad Gas System Limited Vs. Al Masud-ar-Noor and others, reported in 66 DLR(AD)187 and the case of Bangladesh Bank and another Vs. Sukamal Sinha Choudhury and others, reported in 21 BLC(AD)212 .

On the other hand, Mr. Badrul Islam, learned Advocate-on-Record appearing for the respondent Inspector General of Prisons supports the impugned order passed by this Division affirming the judgment and order passed by the Administrative Appellate Tribunal. He submits that because of repealing the Rules, 1984 by re-enactment of Rules, 2006 the petitioners could not be promoted.

Heard the learned Advocates. Perused the papers/ documents contained in the Civil Review Petitions as well as Civil Petitions for Leave to Appeal.

From Chart-II as shown above it appears that the petitioners are appointed under the provision of the Officers and Staff (Department of Prisons) Recruitment Rules, 1984. It is also clear from the chart that they were eligible for promotion as Jailor after completion of 5 years service in the feeder post as per Rules, 1984. But they were promoted to the post of Jailor subsequently without restoring their seniority from the date of entitlement.

Accordingly under Rules, 1984 promotion to the post of Superintendent required either 3 years service as Deputy Superintendent of Jails or 7 years of service as Jailor. But though the petitioners completed required tenure as per Rules, 1984 but they were given current charge of Superintendent of Jails subsequently. Administrative Tribunal allowed the cases filed by the petitioners but the Administrative Appellate Tribunal set aside the judgment passed by the Administrative Tribunal on the ground that the Court/Tribunal cannot direct the authority to give

retrospective effect to the promotion as well as for non-impleading Bangladesh and the direct appointees as party in the cases filed by the petitioners before the Administrative Tribunal.

By now it is settled that though the appointing authority has right to amend/alter the Service Rules to suit the need of time but not to the detriment to the rights or privileges that existed at the relevant time when an employee of such appointing authority entered into it's service.

In the case of Bakhrabad Gas System Limited Vs. Al Masud-ar-Noor and others, reported in 66 DLR(AD)187, this Division held:

"The appointing authority has every right to amend/alter the service rules to suit the need of the time but not to the detriment or disadvantage to the rights or privileges that existed at the relevant time when an employee of such appointing authority entered into its service. To be more explicit, the appointing authority enjoys the power and the authority to frame new rules to regulate the service of its employees, but that in no way, can take away the accrued/vested rights of its employees, here the writ-petitioners. We also make it very clear that an employee shall definitely be entitled to the new service benefits if given or created by the new rules,

but no rules can be framed to his disadvantage or detriment or to the denial of his accrued/ vested right as in the instant case sought to be taken away. The new rules adding new terms and conditions including the one as to the promotion to the next higher posts shall be effective and applicable to the employees, who will be appointed after the coming into effect or force of the same."

Similarly, in the case of Bangladesh Bank and another Vs. Sukamal Sinha Choudhury and another, reported in 21 BLC(AD)212, this Division held:

"The authority has every right to amend/alter the service Rules to suit the need of the time and, as such, there is no illegality in preparing the circular with new terms and conditions but such new terms and conditions prepared by the authority shall not be applicable to the detriment or disadvantage to the privilege that existed at the relevant time when an employee of such appointing authority entered into its service."

Under the facts and circumstances and for the reasons stated above in light of the cited judgment, we are inclined to allow the review petitions.

Accordingly, the judgment and order dated 15.04.2019 passed by this Division in Civil Petition for Leave to Appeal Nos.3692 with 3693-3701 and 3703-3704 of 2018 is reviewed and set aside. The decision of the Administrative