

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

সচিব-এর দপ্তর, বাণবিবো।
ডায়েরী নং ২৬০
তারিখঃ ২৬/৭/১৫
উপ-সচিব(বোর্ড)
উপ-সচিব(আইন)
উপ-সচিব(পলিসি)
সহ-সচিব(বোর্ড)
সহ-সচিব(আইন)
সহ-সচিব(পলিসি)

Writ Petition No.8178 of 2015

IN THE MATTER OF:

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

-And-

IN THE MATTER OF :

Surjo Narayan Vowmik

.....Petitioner

-Versus-

Govt. of Bangladesh and others

.....Respondents

Mr. Qumrul Hoque Siddique with
Ms. Salina Akther, Advocate

.....for the petitioner.

Mr. Shaikh Md. Jakir Hossain

.....for the respondents

Judgment on. 02.02.2016

Mr. Justice Md. Rezaul Haque

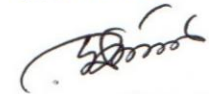
&

Mr. Justice Muhammad Khurshid Alam Sarkar

Md. Rezaul Haque, J;

Upon an application under Article 102(2) of the Constitution of the People's Republic of Bangladesh filed by the petitioner, this rule was issued calling upon the respondents to show cause as to why the স্বারক নং ২৭.১২.২৬০৭.০১২.৩১.০২৪.১৪.৪৭৫ dated 26.05.2015, signed by the respondent No. 3, demoting the petitioner from the post of "Deputy General Manger" as per Rule 39 (1) (kha) (1) of the Palli Biddut Samity Employee Service Rule, 1992 (amended upto 2012) to the

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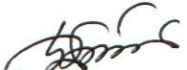
(মুহাম্মদ মনিরুজ্জামান)
সহকারী বেঞ্চ অফিসার
বাংলাদেশ সুপ্রীম কোর্ট
হাই কোর্ট বিভাগ, ঢাকা

চেয়ারম্যান, বাণবিবো
নং ১৩৬৩
তারিখঃ ২৭/৭/১৫

post of "Assistant General Manager", Bangladesh Rural Electrification Board, Head Office, Nekunjo-2, Khilkhet, Dhaka-1219, Dhaka, as contained in (Annexure-N), should not be declared to have been issued without lawful authority 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.

The relevant facts are that the petitioner Surjo Narayan Vowmik being appointed as Assistant General Manager in Bangladesh Rural Electrification Board on 05.09.1991 joined on 12.09.1999 and was promoted to the post of Deputy General Manager in which post he joined on 26.12.2012 in Munshiganj Palli Biddut Samity, Munshiganj. The petitioner used to live alone in the Government Quarter of Lowhojong Upazilla Parishad, Munshiganj. On 03.05.2014 Mrs. Fatema Akhter Iti who was serving as Data Entry Operator in Munshiganj Palli Biddut Samity, Sadar Daptor, Munshiganj, after enjoying 3 days leave on her way back from native District- Khulna to her place of posting at 9.30 p.m. went to the residence of the petitioner for seeking pickup but the petitioner refused and as such she left the house at 10.00 p.m. After two days the respondent No. 6 sent a letter dated 05.05.2014 alleging that on 03.05.2014 Mrs. Fatema Akhter Iti who has been serving as Data Entry Operator in Munshiganj Palli Biddut Samity, Sadar Daptor, Munshiganj came to the petitioner's house at 9.00 P.M and stayed at his house till 11.30 P.M and since it relates to the image of the said office, the respondent recommended for transfer of both the persons. The petitioner was accordingly transferred to Pabna Palli Biddut Samity-2, on 12.05.2014.

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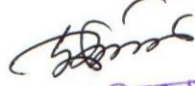

(মুহাম্মদ মনিরুজ্জামান)
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হাই কোর্ট বিভাগ, ঢাকা

Thereafter, the respondent No. 3 on 20.05.2014 formed one member inquiry committee comprising respondent No. 5 who issued show cause notice upon the petitioner on 01.07.2014.

The petitioner submitted reply to the show cause notice on 13.07.2014 stating that on 09.04.2014 when the petitioner was busy in his official work at that time somebody by breaking the key of the door of the petitioner's house stole some goods and cash in total amounting to Tk. 46,055/- (forty six thousand fifty five). After searching, the petitioner came to know that the night guard namely Masud Rana of the Government Quarter of Louhojong Upazilla Parishad, Munshigonj, was involved with that theft. Then the petitioner wanted to take initiative to file a criminal case in the concerned police station against the night guard, but the Louhojong Upazilla Assistant Commissioner, (Land), Mr. Abul Kalam, who was the controlling authority of that night guard, requested the petitioner not to file a criminal case against the said night guard and the night guard promised that he would try to recover the stolen properties of the petitioner. For that reason, the petitioner did not file any criminal case against the night guard. But the said night guard for taking revenge raised a false allegation against the petitioner regarding the stay of Fatema Akhter Iti at the house of the petitioner and it clearly shows that there was conspiracy against the petitioner.

The respondent No. 3 being not satisfied framed charge on 19.08.2014 against the petitioner (Annexure-G). The Data Entry Operator Fatema Akhter Iti was also asked to submit her reply,

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accordingly she submitted her reply to the show cause on 20.04.2015 (Annexure-H-1) wherein she stated that after enjoying three days leave in her local District-Khulna she on her way back to place of posting at Munshiganj on 03.05.2014 after crossing Mawaghat at 8.30 P.M went to the house of her superior authority, the petitioner, for a lift and being refused she left the house at about 10.15 P.M. The petitioner though prayed for personal hearing before the inquiry officer but that was denied by the letter dated 24.01.2015 (Annexure-J). It is also stated that the second inquiry officer (respondent No.5) submitted report on 24.02.2015 before the authority against petitioner after examining 4 witnesses namely Upazilla Chairman Mr. Osman Gani Talukder, Upazilla vice Chairman Mr. Md. Zakir Hossain, Mr. Masud Rana (night guard of the Government quarter of Louhojong) and Mr. Abul Kalam, Upazilla Assistant Commissioner (land). Out of these 4 witnesses the Chairman and vice Chairman are the hearsay witnesses and the Assistant Commissioner (land) denied to give any statement before the inquiry committee. The only witness night guard Osamn Gani stated about the Fatema Akhter Iti's time of entry as 8.30 pm and departure as 10.30 pm in the house of the petitioner. The Copy of the inquiry report dated 24.02.2015 is annexed as (Annexure-k). It is also stated that respondent No. 5 on 20.04.2015 served a final show cause notice with inquiry report upon the petitioner regarding punishment for demoting the petitioner asking him to submit written explanations within 10 working days from the date of receipt (Annexure-L). The petitioner accordingly submitted

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written reply on 30.04.2015 (Annexure-M). However, the petitioner was demoted from the post of Deputy General Manager to the post of Assistant General Manager on 26.05.2015 (Annexure-N). Thereafter the petitioner filed appeal before the authority on 02.06.2015 before the respondent No. 2, the Chairman of the Palli Biddut Samity. The appeal was rejected on 22.06.2015 (Annexure-o-1) which is made impugned in this writ petition.

Mr. Qumrul Haque Siddique along with Ms. Salina Akter, the learned Advocates appear for the petitioner. Mr. Siddique submits that it is the initial allegation against the petitioner that on 03.05.2014 Data Entry Operator Mrs. Fatema Akhter Iti at 8.30 P.M entered in the house of the petitioner where he used to live alone and left at 12.30 P.M and at about 11.30 P.M the night guard Masud Rana with some police personnel found Mrs. Fatema Akhter Iti in the bathroom of the petitioner and this fact was supported by the Assistant Commissioner (land) of Louhojong but this Assistant Commissioner as well as the aforesaid police personnel were not examined as witness by the inquiry officer at all. He further submits that only the night guard Masud Rana was examined as eye witness who contradicted about the time of entrance and departure/recovery of Fatema Akhter Iti from the petitioner's house. Moreover, there are allegations of theft against said Masud Rana committed on 03.05.2014 in the house of the petitioner, earlier to the instant date of allegation. The petitioner in writing wanted personal hearing before the inquiry officer but the same was refused. He further submits

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that there being no complaint from any individual of dis interested person of the locality or officials and in the absence of any such formal complaint the initiation of the proceeding and subsequently imposing punishment upon the petitioner demoting him is without lawful authority, illegal, improper, unjust, arbitrary and clear violation of principle of natural justice.

Mr. Shaikh Md. Zakir Hossain the learned Advocate appearing on behalf of the respondent No. 7 the General Manager of Pabna Palli Biddut Samity-2, Pabna filed an affidavit-in-opposition which was sworn by Mr. Md. Rezaul Karim, Assistant General Manager Pabna Palli Biddut Samity, Pabna on behalf of respondent No. 7. In this affidavit the deponent denied the material allegations made by the petitioner. In paragraph 4 it is stated that Data Entry Operator Fatema Akhter Iti used to visit the petitioner's house in every now and then and these facts were well-known to the surroundings, office, staffs and their families. In paragraph No. 21 the deponent stated that although they had mutual consent but both offenders are married and therefore, the petitioner has committed the offence of adultery which is punishable under Section 497 of the Penal Code. None appeared on behalf of the remaining respondents, namely respondent Nos. 1-6 of whom respondent No. 5 issued the impugned memo.

Heard the learned Advocates for both the parties, perused the writ petition along with the annexures, and the Affidavit-in-opposition. On perusal of the materials on record it appears from Annexure-A that the petitioner Surjo Narayan

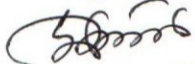
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হাই কোর্ট বিভাগ, ঢাকা

Voumik being appointed as Assistant General Manager in Bangladesh Rural Electrification Board on 05.09.1991 was posted at Habiganj and joined on 12.09.1999 and was promoted by his higher authority in the post of Deputy General Manager on 20.12.2012 in which post he joined on 26.12.2012 in Munshiganj Palli Biddut Samity, Munshiganj. From Annexure-B it appears that the petitioner used to live in the Government Quarter of Lowhojong Upazilla Parishad, Munshiganj without his family members, and on 03.05.2014 Mrs. Fatema Akhter Iti who was serving as Data Entry Operator in Munshiganj Palli Biddut Samity, Sadar Daptor, Munshiganj and after enjoying 3 days leave on her way back from native District-Khulna to his place of posting at 9.00 P.M went to the residence of the petitioner and stayed there till 11.30 P.M. It further appears that after two days the respondent No. 6 sent a letter dated 05.05.2014 (Annexure-B) alleging that on 03.05.2014 Mrs. Fatema Akhter Iti who is serving as Data Entry Operator in Munshiganj Palli Biddut Samity, Sadar Daptor, Munshiganj came to the petitioner's house at 9.00 P.M and Stayed at his house till 11.30 P.M and, thus, considering the image of the said office was in question the respondent recommended for transfer of both the persons. The petitioner was accordingly transferred to Pabna Palli Biddut Samity-2, Pabna on 12.05.2014 (Annexure-C). Thereafter show cause notice was issued upon the petitioner on 01.07.2014 (Annexure-F), the petitioner submitted his reply to the show cause notice on 13.07.2014 (Annexure-F-1). Wherein the petitioner in para-2 explained that on 09.04.2014 when the petitioner was busy in his

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official work at that time some body has broken the key of the door of the his house and stolen some goods and cash, total amount is Tk. 46,055/- (forty six thousand fifty five). After searching, the petitioner came to know that the night guard namely Masud Rana of the Government Quarter of Louhojong Upazilla Parishad, Munshigonj was involved with that theft. Then the petitioner wanted to take initiative to file a criminal case in the concerned police station against the night guard. But the Louhojong Upazilla Assistant Commissioner, (Land) Mr. Abul Kalam who was the controlling authority of that night guard requested the petitioner not to file a criminal case against the said night guard and the night guard promised that he would try to recover the stolen things of the petitioner. For that reason, the petitioner did not file any criminal case against the night guard. But the

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said night guard for taking revenge raised a false allegation against the petitioner regarding the stay of Fatema Akhter Iti

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at the house of the petitioner, which clearly shows there was conspiracy against the petitioner. The respondent No. 3 being not satisfied framed charge on 19.08.2014 against the petitioner (Annexure-G). The Data Entry Operator Fatema Akhter Iti also submitted her reply to the show cause on 20.04.2015 (Annexure-H-1) wherein she stated that after enjoying three days leave in her local District-Khulna she on her way back to her place of posting at Munshiganj on 03.05.2014 after crossing Mawaghat at 8.30 P.M went to the house of her superior authority, the petitioner, for a lift and being refused she left the house at about 10.15 P.M. The inquiry

officer though submitted report but the same being not accepted by the authority the inquiry officer framed a further charge on 30.11.2014 (Annexure-I). The petitioner though prayed for personal hearing before the inquiry officer (Annexure-I-1) which was allowed by the letter dated 24.01.2015 (Annexure-J).

It appears from Annexure-K that on 24.02.2015 the second inquiry officer respondent No. 5 submitted his report before the authority against the petitioner and although the report contains the depositions of four witnesses namely Upazilla Chairman Mr. Osman Gani Talukder, Upazilla vice Chairman Mr. Md. Zakir Hossain, Mr. Masud Rana (night guard of the Government quarter of Louhojong) and Mr. Abul Kalam, Upazilla Assistant Commissioner (land), however, out of these 4 witnesses, while the Chairman and Vice Chairman are the hearsay witness as they did not see the allege stay of Fatema Akhter Iti in the house of the petitioner, the Assistant Commissioner (land) denied to give any statement before the inquiry committee and the only witness is the night guard Masud Rana who stated about the time of entry and departure of Fatema Akhter Iti in the house of the petitioner as at 8.30 to 10.30 P.M.

It appears from the annexed papers that the witnesses were not examined in presence of the delinquent. As per service Rules the petitioner is entitled to cross examine the witnesses i.e. the evidence must be recorded in his presence and, therefore, it is apparent that natural Justice has been violated by the authority in dealing in with the petitioner's

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matter. It also appears from Annexure-L that respondent No. 5 on 20.04.2015 served a final show cause notice with inquiry report upon the petitioner containing proposed punishment for demoting the petitioner asking him to submit written explanation within 10 working days from the date of receipt of the notice. The petitioner accordingly submitted written reply on 30.04.2015 (Annexure-M). The authority being not satisfied on 26.05.2015 (Annexure-N) demoted the petitioner from the post of Deputy General manager to the Post of Assistant General Manager. Thereafter the petitioner filed appeal before the authority on 02.06.2015 before the respondent No. 2 the Chairman of the Palli Biddut Samity (Annexure-O). The appeal was not considered and the petitioner was informed on 22.06.2015 (Annexure-O-1).

On consideration of documents annexed and the submissions made by the learned Advocates for both the parties it appears that it was the initial allegation against the petitioner that

Data Entry operator Mrs. Fatema Akhter Iti entered in the house of the petitioner at 8.30 P.M and left at 12.30 P.M on

03.05.2014 and at about 11.30 P.M the night guard Masud Rana with some police personnel found Mrs. Fatema Akhter Iti in the bath room of the petitioner and this fact was alleged to be found by the Assistant Commissioner (land) of Louhojong but this Assistant Commissioner as well as the aforesaid police personnel were not examined as witness by the inquiry officer at all. It further appears that only the night guard Masud Rana was examined as eye witness who contradicted about the time of entrance and departure of FAtema Akhter Iti. Moreover,

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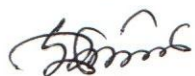

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there are allegation of theft committed by said Masud Rana in the house of the petitioner early to the instant date of allegation i.e. on 03.05.2014. It also appears that the inquiry officer who held the preliminary inquiry and further inquiry is the same person there being no complaint from any individual or disinterested person of the locality or officials and in the absence of any such formal complaint the initiation of the proceeding and subsequently punishment imposed on the petitioner demoting him is without lawful authority, illegal, improper, unjust, arbitrary and clear violation of principle of natural justice.

In the affidavit-in-opposition of respondent No. 7, the deponent denied the material allegations made by the petitioner but he introduced some new facts which are not supported by the allegations or charges framed by the inquiry officer against the petitioner and Data Entry Operator Mrs.

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Fatema Akhter Iti. For example, in paragraph 4 it is stated



that Data Entry Operator Fatema Akhter Iti used to visit the

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petitioner's house in every now and then and these facts were

well-known to every one of the office, even to their families

and in paragraph No. 21 the deponent further stated that

although they had mutual consent but offenders are married

apart from themselves and therefore the petitioner has

committed the offence of adultery which is punishable under

section 497 of the Penal Code. It is unfair on part of

respondent No. 7 to make such statement before this Court now

and although we refrain ourselves from making any comment

about this statements, which are not on record from beginning

of the proceeding till passing the impugned order. However, the concerned authority must take note of it.

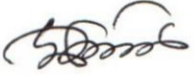
It also appears that the authority has imposed major penalty upon the petitioner but he was not given chance to cross examine the witnesses. Though the petitioner filed application that he wanted to be present before the enquiry committee at the time of taking evidence but the petitioner was not given any chance causing violation of natural justice. So, it is clear that departmental proceeding has been ended with awarding a harsher penalty. Section 45 of the Pallibiddut Samity Karmachari Chakuri Bidhi (Service Rules) deals with appeal. Subsections (2) of Section 45 of the aforesaid an provides as under,

" ৪৫/২ উপ ধারা (১) এ উল্লেখিত বিষয়সমূহ বিবেচনার পর আপীল কর্তৃপক্ষ, আপীল আবেদনের পক্ষে যে সকল যুক্তি পেশ করা হইয়াছে তাহার প্রতিটির বিপরীতে স্ব স্ব অভিমত প্রদান করতঃ কর্তৃপক্ষের আদেশ বহাল রাখিতে পারিবেন অথবা যে আদেশ প্রদান করা উপযুক্ত বলিয়া বিবেচনা করেন, আপীল দায়েরের ৩০(ত্রিশ) টি কার্য দিবসের মধ্যে সেই আদেশ প্রদান করিবেন। যুক্তিযুক্ত কোন কারনে আপীল কর্তৃপক্ষের উক্ত সময়সীমার মধ্যে সিদ্ধান্ত প্রদান করা সম্ভবপর না হইলে, কারন উল্লেখ পূর্বক উক্ত সময়সীমা আরও ৩০(ত্রিশ)টি কার্যদিবস বৃদ্ধি করা যাইবে।"

But in this case, as appears from the decision of the appellate authority annexed as annexure 0-1 to the writ Petition, the appeal has been dismissed without considering the case of the appellant passing a slipshod order by only one sentence which is made in clear violation of the above service Rules.

In this case it is clear that the only offence is as to going to the residence of high official by a junior staff of

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the opposite sex but there is no express provision of such visiting in the conduct rules. As such, in our view in the absence of any express provision in the Conduct Rules it would not come under the purview of misconduct.

From the above discussion it appears that the charges levelled against the petitioner could not be proved by the inquiry report and as such the impugned memo No. স্বারক নং ২৭.১২.২৬৩৭.০১২.৩১.০২৪.১৪.৪৭৫ dated 26.05.2015, issued by the respondent No. 3 and thereby demoting the petitioner from the post of "Deputy General Manager" as per Rule 39 (1) (kha) (1) of the Palli Biddut Samity Employee Service Rules, 1992 (amended 2012) to the post of "Assistant General Manager", Bangladesh Rural Electrification Board, Head Office, Nekunjo-2, Khilkhet, Dhaka-1219, Dhaka, as contained in (Annexure-N) is declared to have been passed illegally and without any law authority.

In the result, the Rule is made absolute.

However there shall be no order as to cost.

Md. Rezaul Haque.

Muhammad Khurshid Alam Sarkar, J.

I agree.

M. K. A. Sarkar.

Copy forwarded to;

1. Bangladesh Rural Electrification Board, represented by its Chairman, Head office, Nikunjo-2, Khilkhet, Dhaka.
 2. Chairman, Bangladesh Rural Electrocuton Board, represented by its Chairman.
 3. Director (Current Charge), Inquiry and Discipline Directory.
 4. Shafiqul Islam, Deputy Director Loans and Audit Directory, All of-Bangladesh Rural Electrification Board, Head Office, Nekunjo-2, Khilkhet, Dhaka-1229, Dhaka.
 5. Joynal Abedin, Executive Engineer, Project Division, Bangladesh Rural Electrification Board, Munshigonj.
 6. General Manager, Munshigonj Palli Biddut Samity, Munshigonj.
 7. General Manager, Pabna Palli Biddut Samity-2, Pabna.
- For information and necessary action.

By order.

Typed by: Alam: 19.07.2016

Read by:

Exam. by:

Readied by:

Superintendent

Assistant Registrar.

19.7.16

20.7.16

20.7.16

20.7.16

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বাংলাদেশ সুপ্রীম কোর্ট
হাই কোর্ট বিভাগ, ঢাকা