

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

Present:

Mr. Justice Hasan Foez Siddique, *Chief Justice*
Mr. Justice Obaidul Hassan
Mr. Justice M. Enayetur Rahim

CIVIL APPEAL NO.680 OF 2016

Arising out of Civil Petition for Leave to Appeal No.1691 of 2014

(From the judgment and order dated 14.05.2014 passed by the Administrative Appellate Tribunal, Dhaka in A.A.T. Appeal No.176 of 2013)

Md. Nazrul Islam, son of late Abul Hasem**Appellant**

-Versus-

Government of Bangladesh, represented
by the Secretary, Ministry of Home Affairs,
Dhaka and others.

.....**Respondents**

For the appellant : Mr. Sayed Ahmed, senior Advocate,
instructed by Mr. Nurul Islam Chowdhury,
Advocate-on-Record.

For the respondents : Mr. Samarendra Nath Biswas, Deputy
Attorney General, instructed by Mr.
Haridas Paul, Advocate-on-Record.

Date of hearing and judgment : The 27th day of July, 2022.

JUDGMENT

Obaidul Hassan, J. This Civil Appeal by leave granting order dated 04.09.2016 in Civil Petition for Leave to Appeal No.1691 of 2014 at the instance of the appellant has been directed against the judgment and order dated 14.05.2014 passed by the Administrative Appellate Tribunal, Dhaka in A.A.T. Appeal No.176 of 2013 allowing the appeal and setting aside the judgment and order dated 31.03.2013 passed by the Administrative Tribunal, Bogra in A.T. Case No.105 of 2012 allowing the case.

The facts leading to the filing of this Civil Appeal in short are that, on 09.08.1986 the appellant was appointed in the post of Office

Assistant. Thereafter he was promoted on 03.08.1992 to the post of Accountant and then promoted on 15.02.2002 to the post of Chief Assistant. Subsequently, on his transfer the appellant joined the Office of Commandant (S.P.), RRF, Rajshahi on 14.08.2011. While he was in service at Rajshahi the authority brought allegation against the appellant in respect of his service at Naogaon and primarily inquired against him and issued a show cause notice. The allegation was that the appellant did not produce the records relating to schedule sale leaving his office on the pretext of physical illness without taking permission from the higher authority and did not deposit the public money earned through schedule sale to the Government exchequer. After inquiry and scrutiny of the register books and papers the authority found that there was a serious misconduct of the appellant. The appellant submitted a reply on 10.10.2011 and prayed for exoneration of him from the allegation. Thereafter the authority framed the charge against the appellant on 17.11.2011. On 04.12.2011 the petitioner submitted another reply against the said charge. But the authority without considering his case appointed one Shamim Hossain, Additional Police Super, Chapainawabgonj as Inquiry Officer. On the basis of the investigation the Inquiry Officer submitted a report on 17.01.2012 and after considering the said report the authority suspended the appellant from service on 01.02.2012, although the authority did not serve the copy of the inquiry report to the appellant. Thereafter the

authority issued 'Provisional Order' leading to 'Dismissal from Service' against the appellant. Later on, the appellant submitted a reply stating that he was given Compulsory Retirement order on 26.02.2012 without giving him an opportunity of being heard. Subsequently the appellant filed a departmental appeal on 25.03.2012 before the Inspector General of Police, Bangladesh and the same was rejected on 14.08.2012 of which the appellant was intimated on 16.09.2012.

The respondents filed a written statement denying all the material facts of the case contending *inter alia* that the appellant did not produce the value of the schedule sale and deposit the money earned from the sale of schedule to the government exchequer and he tried to show that due to physical illness he could not come to the office. In this way the appellant tried to misappropriate the government money for which an explanation was sought from him. Accordingly, the aforesaid allegations were brought against the appellant and an Inquiry Officer was appointed to inquire into the said allegations. On completion of inquiry the Inquiry Officer submitted an inquiry report finding the proof of allegations. Thereafter a 'Provisional Order' leading to 'Dismissal from Service' was issued against the appellant. Subsequently the appellant submitted a reply to consider his case, but the same was rejected. Finally on 26.02.2012 the appellant was given compulsory retirement from the service.

Subsequently on being aggrieved with the said order of compulsory retirement the appellant filed A.T. Case No.105 of 2012 before the Administrative Tribunal, Bogra. Upon hearing both the parties and considering the connected papers on record, the Administrative Tribunal, Bogra allowed the case by judgment and order dated 31.03.2013 declaring the order dated 26.02.2012 giving the appellant compulsory retirement illegal, null and void and also directed the respondents to reinstate the appellant in the service with arrear pays, allowances, rations etc.

Thereafter on being aggrieved, by the impugned judgment and order dated 31.03.2013 passed by the Administrative Tribunal, Bogra in A.T. Case No.105 of 2012, the respondents herein as appellants filed the A.A.T. Appeal No.176 of 2013 before the Administrative Appellate Tribunal, Dhaka. On hearing both the parties and relevant materials on record the Administrative Appellate Tribunal, Dhaka was satisfied to allow the appeal by judgment and order dated 14.05.2014 and set aside the judgment and order dated 31.03.2013 passed by the Administrative Tribunal, Bogra in A.T. Case No.105 of 2012.

Feeling aggrieved with the judgment and order dated 14.05.2014 passed by the Administrative Appellate Tribunal, Dhaka in A.A.T. Appeal No.176 of 2013 the appellant filed the Civil Petition for Leave to Appeal No.1691 of 2014 before this Division. After

hearing the parties this Division was pleased to grant leave by order dated 04.09.2016 and hence the instant Civil Appeal.

Leave was granted to consider two points such as (I) Charge against the appellant was unspecific and the inquiry report was not supplied to the petitioner and on those grounds the Administrative Tribunal set aside the order of compulsory retirement, but the Administrative Appellate Tribunal without controverting those grounds allowed the appeal, hence the decision of the Administrative Appellate Tribunal is liable to be set aside; and (II) The Administrative Appellate Tribunal failed to appreciate the provisions of law as provided in the Government Servant (Discipline and Appeal) Rules, 1985 and as such the judgment and order of the Administrative Appellate Tribunal is liable to be set aside.

Mr. Sayed Ahmed, the learned Advocate for the appellant has taken us through the judgment and order dated 14.05.2014 of the Administrative Appellate Tribunal, the judgment and order of the Administrative Tribunal dated 26.02.2012, the materials on record and has submitted that the Administrative Appellate Tribunal erred in law by passing the impugned judgment and order inasmuch as it failed to appreciate that the charge in the departmental proceedings against the appellant was vague, unspecific and he was not supplied with the inquiry report, which is flagrant violation of the principles of natural justice as settled by this Division. The learned Advocate

has further contended that the Administrative Appellate Tribunal failed to appreciate the provisions of law prescribed by the Government Servants (Discipline and Appeal) Rules, 1985 since in the said Rules there is no rule for 'Provisional Order' while imposing penalty for 'Dismissal from Service' and he has prayed for setting aside of the impugned judgment and order of the Administrative Appellate Tribunal.

Conversely, Mr. Samarendra Nath Biswas, the learned Deputy Attorney General on behalf of the respondents has contended that the Administrative Appellate Tribunal rightly allowed the appeal and thereby set aside the judgment and order of the Administrative Tribunal. He further contended that starting from bringing allegation against the appellant to the final settlement of the departmental proceedings by the respondent was held complying with the legal provisions prescribed by the Government Servants (Discipline and Appeal) Rules, 1985. He lastly has submitted that the appellant being found guilty on the basis of inquiry report was given compulsory retirement, but the Administrative Tribunal without considering the said issues illegally set aside the said compulsory retirement order.

We have considered the submissions of the learned Advocates for the both sides, perused the judgment and order dated 14.05.2014 passed by the Administrative Appellate Tribunal, Dhaka in A.A.T. Appeal No.176 of 2013 and the judgment and order dated 31.03.2013

passed by the Administrative Tribunal, Bogra in A.T. Case No.105 of 2012 and the materials on record.

On perusal of the charge it transpires that an allegation was brought against the appellant to the effect that the appellant did not produce the records before the authority relating to schedule sale leaving his office on the pretext of physical illness without taking permission from the higher authority and also did not deposit the public money earned through schedule sale to the government exchequer. But it appears that the allegation against the appellant was completely vague and unspecific. Inasmuch as how much money on which date corresponding to each schedule sale kept in custody of the appellant had not been mentioned in the charge. For the aforesaid reasons we find that the appellant had been deprived of the opportunity to defend himself against the allegation brought by the respondents which violates the cardinal principle of natural justice but the Administrative Appellate Tribunal set aside the judgment of the Administrative Tribunal without applying judicial mind and as such the impugned judgment and order of the Administrative Appellate Tribunal warrants interference by this Division. On this score it was held by this Division in the case of *Director-Cum-Professor, Pabna Mental Hospital and Ors. Vs. Tossadek Hosain and Ors* reported in *10 MLR 2005(AD) 110, Para-14 & 15* that “.....the charge against respondent was vague and unspecified and lacking, in materials as regards details regarding time,

dates and manner. For the above defects the alleged charge has been vitiated which prevented the respondent from giving any effective reply against the alleged charge. No authority can exceed the power given to it. Any action taken by the petitioner in derogatory to the law or rules set for the purpose or in defiance of the principles of natural justice would make the purported exercise of jurisdiction invalid or in excess of jurisdiction. Thus High Court Division could interfere with the impugned order when the person proceeded did not get proper opportunity to defend himself and when it found that the act done or proceeding taken is vitiated by lack of jurisdiction or by being in excess of jurisdiction."

Again, it is evident from the record that on 01.02.2012 Deputy Inspector General (DIG), Rajshahi Range, Bangladesh Police issued 'Provisional Order' leading to 'Dismissal from Service' without supplying any copy of the inquiry report to the appellant. Thereafter the appellant submitted a reply against the said 'Provisional Order' stating that he was given compulsory retirement order on 26.02.2012 without giving him an opportunity of being heard. Thus, the said compulsory retirement order without supplying the copy of inquiry report to the appellant as well as depriving him of an opportunity of being heard is illegal in the eye of law.

In this regard the Supreme Court of India observed in the case of *T. Takano Vs. Securities and Exchange Board of India and Ors* reported in *AIR 2022 SC 1153, Para-52 & 53* that "*The Board shall be duty-bound to provide copies of such parts of the report which concern the*

specific allegations which have been levelled against the Appellant in the notice to show cause.....” “.....after a due disclosure is made to the Appellant in terms as noted above, a reasonable opportunity shall be granted to the Appellant of being heard with reference to the matters of disclosure in compliance with the principles of natural justice before a final decision is arrived at.”

Likewise, this Division held in the case of ***Government of Bangladesh represented by the Secretary, Ministry of Post Telegraph and Telecommunication & Others Vs. Mir. Abul Khair*** reported in 1 ADC(2004) 165 that “*the respondent has not been properly dealt with during the enquiry complying with the provision of law following the principles of natural justice and as such the impugned orders have been tainted with illegality making the same illegal and void and as such the same are not sustainable in law.*”

In line with the aforesaid decision this Division also held in the case of ***Government of Bangladesh and Ors. Vs. Md. Tariqul Islam*** reported in 8 LM(AD)[2020] 40 Para-16 & 19 that, “*.....Therefore, we are of the considered view that before imposing major penalty the cardinal principle of natural justice requires that copy of the enquiry report has to be supplied to the concerned employee.....Be that as it may, it appears that cardinal principal of natural justice require 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 show cause notice before his dismissal is clear violation of the principle of natural justice."

From the record it appears that leave was also granted by this Division in this appeal to examine whether the Administrative Appellate Tribunal failed to appreciate the provisions of law of the Government Servants (Discipline and Appeal) Rules, 1985. Admittedly on 01.02.2012 DIG, Rajshahi Range, Bangladesh Police found the appellant guilty on the basis of Inquiry Report and issued a 'Provisional Order' leading to 'Dismissal from Service'. But the Government Servants (Discipline and Appeal) Rules, 1985 does not contain any legal provision prescribing such 'Provisional Order'. For the reasons discussed above, we find that the respondents did not comply with the provisions of the Government Servants (Discipline and Appeal) Rules, 1985 in disposing of the departmental proceedings against the appellant. But the Administrative Appellate Tribunal without appreciating the provisions of the said Rules, 1985 most illegally allowed the appeal which warrants interference from this Division.

Moreover, admittedly the allegation against the appellant was that he did not deposit the money earned from schedule sale to the Government exchequer in due time, but at a belated period for which the appellant sought exoneration and the appellant was not

charged with misappropriation of the government money, which usually does not call for major punishment.

As per record it appears that the appellant was appointed in the government service on 09.08.1986 and he has no stigma throughout his twenty four year's service except the present allegation. Therefore, it is unnatural to impose major penalty i.e. compulsory retirement to the appellant for such minor offence. In the light of the observations made above, we find merit in the submissions of the learned Advocate for the appellant and therefore the impugned judgment and order passed by the Administrative Appellate Tribunal is liable to be set aside.

Accordingly, this Civil Appeal is **allowed**.

The judgment and order dated 14.05.2014 passed by the Administrative Appellate Tribunal, Dhaka in A.A.T. Appeal No.176 of 2013 is set aside.

C.J.

J.

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