

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

WRIT PETITION NO. 10944 OF 2021

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Abdullah Al Mamun

.....Petitioner

-VERSUS-

Bangladesh represented by the Secretary, Ministry of
Expatriates' Welfare and overseas Employment, and
others

..... Respondents

Mr.Mohammad Nazrul Islam, Advocate, with
Mr. Md. Saiful Alam, Advocate

..... For the Petitioner

Mr. Mohammad Arife Billah, Advocate

.....For the Respondent No. 1

Mr. Md. Akram Uddin Shyamol, Advocate

.....For the Respondent No. 2

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

Heard on 19.01.2026 and 09.02.2026

Judgment on 16.02.2026

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under
Article 102(2) of the Constitution of the People's Republic of Bangladesh
in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the Office Order vide memorandum No. 49.04.0000.004.18.042.21-204 dated 09.11.2021(Annexure-D) issued under the signature of respondent No. 2 discharging the petitioner from service shall not be declared to have been passed without lawful authority and of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.”

Relevant facts necessary for disposal of the instant Rule, in short, are that, the petitioner was appointed as Data Entry Operator/Computer Operator on 18.10.2006 by the Director (welfare) and Member Secretary of Board of Directors of Waged Earners’ Welfare Fund (WEWF) on a daily payment and temporary basis. During his service he has worked in different division of the WEWF and on 04.07.2021 he was transferred to the District Employment and Manpower Office (Site Office, Gazipur), Dhaka.

On 12.10.2021 a report was submitted by the Assistant Director, District Employment and Manpower Office, Dhaka with some allegations of misappropriation of the government money against the petitioner and two others and on the same day he was served with a show cause notice to explain his position regarding the said allegations. On 17.10.2021 the petitioner made a reply stating that the discrepancy occurred due to

inadvertence and prayed for permission to allow him to deposit the amount but the prayer was not considered.

Thereafter the respondent no. 2 i.e. the Director General (Additional Secretary) of WEWF vide memo dated 09.11.2021 discharged the petitioner from his service. Thereafter the petitioner made several representations to the respondents praying for reinstating him in the service and the same were received by the office of the respondents but with no result.

Being aggrieved by that order and there having no other alternative and efficacious remedy, the petitioner filed the instant writ petition and obtained the Rule.

Learned Advocate Mr. Saiful Alam, appeared on behalf of the petitioner and submitted that, the petitioner has been discharged from the service without considering the explanation made by the him and without allowing him to deposit the money to the government treasury although the petitioner did not misappropriate the amount. He next submitted that, since joining the petitioner has been working with sincerity and efficiency and there is no previous bad record in his name, the impugned order has been issued arbitrarily and is issued with colourable exercise of power.

Learned Advocate then submitted that, the allegations were made against three Data Entry Operators, one of them filed Writ Petition No. 10938 of 2021 before the High Court Division challenging his discharging order dated 09.11.2021 and upon hearing the Rule issued in

that writ petition the same was made absolute declaring the order discharging that petitioner from service to have been passed without any lawful authority and is of no legal effect by the judgment and order dated 11.02.2024. By virtue of that judgment of the High Court that employee, namely Md. Mamunoor Rashid, was allowed to join in his service. As a result, the present petitioner is being discriminated by the impugned order.

Learned Advocate contended that, the notice was issued on 12.10.2021 directing him to show cause within three working days as to why penal action shall not be taken against him as per Rule 2 (kha) and 3 (gha) of the Government Servants (Discipline and Appeal) Rules 2018. The authority disregarding his reply to the show cause discharged him from service although there is a procedure described in the said Rules of 2018 in case of imposing major penalty. The impugned order was issued in violation of the Government Servants (Discipline and Appeal) Rules 2018 and as such the same is liable to be declared to have been made without lawful authority.

On the other hand, learned Advocate Mr. Mohammad Arife Billah entered appearance on behalf of Respondent no. 1 i.e. Secretary, Ministry of Expatriates' Welfare and Overseas Employment. He contested the Rule by filing an affidavit in opposition.

He submitted that, on 12.10.2021 upon sudden inspection by the Assistant Director of DEMO, Gazipur Site Office, it was found out that between 06.07.2021 to 12.10.2021 the petitioner and two other Data Entry Operators conducted registration and fingerprint procedures of total 2101

workers out of which 894 workers holding e-passport were registered and some were fingerprinted without pay order and an amount of 1,96,680/- taka was not deposited in the government treasury. The said Assistant Director filed an inspection report on the same day and a show cause notice was issued upon the petitioner and two others. The petitioner responded to the show cause on 31.10.2021 admitting the allegations brought against him and requested to allow him to deposit the money to the government treasury; however, he has not done the same till date. As a result he was rightly discharged from service following the provision of law.

Learned Advocate for Respondent no. 1 next submitted that, in the light of the inspection outcome on 12.10.2021 the DEMO (District Employment and Manpower Office) Dhaka office reviewed the documents and information in this regard and on 02.11.2021 submitted complaint against the petitioner requesting the respondent no. 2 to take necessary action against the petitioner and others as the allegations are punishable offences as per Rule 2 (kha), 3 (kha) (ga) and (gha) of the Government Servants (Discipline and Appeal) Rules 2018. On the basis thereof the respondent no. 2 issued the impugned order dated 09.11.2021 discharging the petitioner from his service for corruption, irregularities and misappropriation of government revenue of taka 1,97,120/-.

He further submitted that the writ petition no. 10938 of 2021 was filed by another accused Mr. Mamunoor Rashid on suppression of material facts wherein he stated that only he was discharged from the

service although allegations were brought against three of them. This is in fact not true. The instant petitioner was also discharged from his service on the same day as Mr. Mamunoor Rashid but that fact was suppressed in that writ petition. The judgment was obtained by misleading the court. Challenging that judgment, the respondent no. 2 has filed C.P. No. 323 of 2025 before the Appellate Division, which is still pending for disposal.

He finally submitted that as per Rule 16 of the Government Servants (Discipline and Appeal) Rules 2018, there is a forum available for filing appeal to the concerned authority but without exhausting the available alternative remedy the petitioner has filed the writ petition, which is not maintainable.

Learned Advocate Md. Akram Uddin Shyamol, appeared for respondent no. 2 i.e. the Director General of Wage Earners' Welfare Board and contested the Rule by filing an affidavit in opposition.

Learned Advocate for the respondent no. 2 made submission in chorus with the learned Advocate for the respondent no. 1. He only added that, admittedly the petitioner was appointed on daily payment basis and he was lawfully categorized as temporary appointee having a specific period of day to day tenure. The respondent no. 2 being the procuring authority has every lawful right to remove the petitioner without serving any prior notice whenever his service will not be required. Yet, the petitioner was given opportunity of being heard and thereby the fairness of administrative action was maintained. There being no illegality in issuing the impugned order, he prays that the Rule may be discharge.

Heard the learned advocates for the respective parties and perused the writ petition, supplementary affidavits thereto, the affidavit in opposition and all the documents annexed therewith.

It appears from the record that admittedly the petitioner was appointed on a temporary basis on 18.10.2006. He remained as a temporary worker until he was discharged from service by the impugned order on 09.11.2021. The impugned order is quoted below:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

ওয়েজ আর্নাস কল্যাণ বোর্ড

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স্মারক নম্বর-৪৯.০৪.০০০০.০০৪.১৮.০৪২.২১.২০৪

তারিখঃ ২৪ কার্তিক ১৪২৮

০৯ নভেম্বর ২০২১

অফিস আদেশ

আপনি জনাব আব্দুল্লাহ আল মামুন দৈনিক হাজিরা ভিত্তিতে ওয়েজ আর্নাল কল্যাণ বোর্ডের ডাটাএন্ট্রি কাজে জেলা কর্মসংস্থান ও জনশক্তি অফিস (ডিইএমও), ঢাকায় নিয়োজিত থাকাবস্থায় গত ০৬-০৭-২০২১ হতে ১৪-১০-২০২১ তারিখ পর্যন্ত মোট ৮৯৬ জন বিদেশগামী কর্মীর বিপরীতে ২২০/- টাকা (২০০/- টাকা রেজিস্ট্রেশন ফি ও ব্যাংকের সার্ভিস চার্জ ২০/-টাকাসহ সর্বমোট ১,৯৭,১২০/- (এক লক্ষ সাতানব্বই হাজার একশত বিশ) টাকা আদায় পূর্বক আত্মসাৎ করেছেন। উক্ত সরকারী রাজস্ব অর্থ প্রবাসী কল্যাণ ব্যাংকে জমা প্রদান করেননি। যা সরকারী অর্থ আত্মসাৎ ও দুর্নীতির সামিল। ইতোপূর্বেও আপনার বিরুদ্ধে অর্থ আত্মসাৎ, অনিয়ম ও দুর্নীতির অভিযোগ রয়েছে।

অতএব বর্ণিত অর্থ আত্মসাৎ ও দুর্নীতি করায় আপনাকে ওয়েজ আর্নাস কল্যাণ বোর্ডের দৈনিক হাজিরা ভিত্তিক কর্ম হতে/ অদ্য ০৯-১১-২০২১ তারিখ হতে অব্যাহতি প্রদান করা হলো।

(মোঃ হামিদুর রহমান)

মহাপরিচালক (অতিরিক্ত সচিব)

It appears from the show cause notice dated 12.10.2021, Annexure -C, that the allegations were brought under Rule 2(kha) and 3 (gha) of Government Servants (Discipline and Appeal) Rules 2018. Rule 2 (chha) provides that, (ছ)“ "সরকারি কর্মচারী" অর্থ প্রজাতন্ত্রের কর্মে নিযুক্ত কোনো ব্যক্তি, এবং বৈদেশিক চাকুরিতে নিয়োজিত অথবা কোনো স্থানীয় কর্তৃপক্ষ বা অন্য কোনো কর্তৃপক্ষ বা কোনো বিদেশি সরকার বা সংস্থায় অস্থায়ী ভিত্তিতে নিযুক্ত কোন ব্যক্তি।”

In Rule 7 of Government Servants (Discipline and Appeal) Rules 2018 there is a procedure for imposing major penalty. Rule 7 (2) (kha) provides that, “গুরুদণ্ড আরোপের ক্ষেত্রে তদন্তের পদ্ধতি।- (১) যে ক্ষেত্রে বিধি ৩ এর দফা (ক) বা (খ) বা গ) বা (ঘ) এর অধীন কোনো কার্যধারা সূচনা করা হয় এবং কর্তৃপক্ষ যদি মনে করে যে, অভিযোগ প্রমাণিত হইলে কোনো গুরুদণ্ড আরোপ করা প্রয়োজন হইতে পারে, যে ক্ষেত্রে কর্তৃপক্ষ-

(ক) অভিযোগনামা প্রণয়ন করিবে ও উহাতে প্রস্তাবিত দণ্ডের বিষয় উল্লেখ করিবে, এবং যে সকল অভিযোগের ভিত্তিতে অভিযোগনামাটি প্রণীত হইয়াছে, উহার বিবরণ এবং কর্তৃপক্ষ আদেশ প্রদানকালে অন্য যে সকল পারিপার্শ্বিক অবস্থা বিবেচনা করিবার ইচ্ছা পোষণ করেন উহাসহ অভিযোগনামাটি উক্ত কর্মচারীকে অবহিত করিবে;

(খ) অভিযুক্ত ব্যক্তিকে অভিযোগনামা প্রাপ্তির ১০ (দশ) কার্যদিবসের মধ্যে আত্মপক্ষ সমর্থনে লিখিত বক্তব্য দাখিল করিতে বলিবেন এবং সেই সঙ্গে প্রস্তাবিত দণ্ড কেন তাহার উপর আরোপ করা হইবে না উহার কারণ দর্শাইতে বলিবে এবং তিনি ব্যক্তিগতভাবে শুনানির ইচ্ছা পোষণ করেন কিনা তাহাও উল্লেখ করিবে:

তবে শর্ত থাকে যে, নির্ধারিত সময়সীমা শেষ হইবার পূর্বে অভিযুক্ত ব্যক্তি সময় বৃদ্ধির আবেদন করিলে কর্তৃপক্ষ তাহাকে বক্তব্য দাখিল করিবার সুযোগ প্রদানের জন্য অতিরিক্ত ১০ কার্যদিবস পর্যন্ত সময় বর্ধিত করিতে পারিবে।

(২) যে ক্ষেত্রে অভিযুক্ত ব্যক্তি নির্ধারিত বা বর্ধিত সময়ের মধ্যে আত্মপক্ষ সমর্থনে লিখিত বক্তব্য দাখিল করিলে এবং যদি তিনি ব্যক্তিগত শুনানি পাইবার ইচ্ছা পোষণ করেন, তাহা হইলে ব্যক্তিগতভাবে শুনানির পর কর্তৃপক্ষ অভিযোগের সহিত সংশ্লিষ্ট সকল বিষয়সহ দাখিলকৃত বক্তব্য বিবেচনা করিবে, এবং অনুরূপ বিবেচনার পর কর্তৃপক্ষ যদি মনে করেন যে,-

(খ) অভিযুক্ত ব্যক্তি শর্তহীনভাবে সকল অভিযোগ স্বীকার করেন এবং কর্তৃপক্ষ যদি মনে করেন যে, অভিযোগের গুরুত্ব বিবেচনায় লঘুদণ্ড আরোপযোগ্য হইবে, তাহা হইলে, যে কোনো লঘুদণ্ড আরোপ করিবে, তবে গুরুদণ্ড আরোপযোগ্য হইবে বলিয়া ধারণা করা হইলে কর্তৃপক্ষ দফা (ঘ) অনুযায়ী তদন্ত কর্মকর্তা বা তদন্ত বোর্ড নিয়োগ করিবে;”

In the present case the petitioner alleges that he acknowledged his mistake and prayed for permission to allow him to deposit the money but the authority did not consider the same prayer in the light of the provision of the abovementioned section and imposed the highest major penalty by discharging him from service. The authority did not even follow the procedure mentioned therein by forming an inquiry committee and by giving the petitioner an opportunity of being heard.

It appears from the record that show cause notice was issued on 12.10.2021 to the three accused Data Entry Operators including the petitioner on the basis of the inspection report. Thereafter the complaint was made on 02.11.2021 (annexure 3 to Affidavit in Opposition). Following the complaint, the petitioner and another were discharged on 09.11.2021.

Annexure G to the supplementary affidavit to the writ petition is a certified copy of the judgment dated 11.02.2024 delivered in Writ Petition

No. 10938 of 2021. This writ petition was filed by Md. Mamunoor Rashid, the other Data Entry Operator, who was discharged on the same day as the petitioner. The Rule issued in that writ petition was made absolute with the following finding, amongst others, that,

“Through show cause notice total 04 (four) persons were alleged to have liabilities but the concerned authority discharged the petitioner only from his service. The authority dealt the petitioner in a discriminatory manner with colorable exercise of power.”

We have already found from the evidence on record that this finding is not correct. The present petitioner was also discharged on the same day by their employing authority, the Wage Earners' Welfare Board. This fact was suppressed before the court in that writ petition.

Moreover, from Annexure-F to the supplementary affidavit it appears that, the third accused i.e. Md. Momin Uddin, being employed by the Manpower, Employment and Training Bureau, the Director General of the Bureau vide memo dated 20.01.2022 requested the Director General of the WEWB to take necessary legal action against him after being confirmed that the misappropriated amount has been deposited in the government treasury through chalan.

As such we find that, all the three accused Data Entry Operators including the petitioner have been dealt with by their concerned employers regarding the allegations brought against them. Although, Md. Mamunoor Rashid has been reinstated to his service by virtue of the

judgment passed in Writ Petition No. 10938 of 2021, a Civil Petition for Leave to Appeal No. 323 of 2025 is pending before the Appellate Division against that judgment.

Learned Advocates for the Respondents emphatically argued that there is a provision of appeal in the Act, which the petitioner did not take recourse to before filing this writ petition.

Rule 16 of the Government Servants (Discipline and Appeal) Rules 2018 provides a forum for appeal, which runs as follows:

১৬।আদেশের বিরুদ্ধে আপিল।- (১) কোনো সরকারি কর্মচারী এই উদ্দেশ্যে সরকারের সাধারণ বা বিশেষ আদেশ দ্বারা নির্ধারিত কর্তৃপক্ষের নিকট, অথবা যে ক্ষেত্রে এইরূপ কোনো কর্তৃপক্ষ নির্ধারিত নাই, সেইক্ষেত্রে আদেশদানকারী কর্তৃপক্ষের পরবর্তী উর্ধ্বতন কর্তৃপক্ষের নিকট, অথবা যে ক্ষেত্রে নিয়োগকারী কর্তৃপক্ষের অধস্তন কোনো কর্তৃপক্ষ আদেশদান করিয়াছেন, সেইক্ষেত্রে নিয়োগকারী কর্তৃপক্ষের নিকট, নিম্নবর্ণিত যে কোনো আদেশের বিরুদ্ধে আপিল দায়ের করিতে পারিবেন, যথা:

(ক) তাহার উপর যে কোনো দণ্ড আরোপের আদেশের বিরুদ্ধে;

(খ)

(গ)

(ঘ)

Rule 21 empowers the appellate authority to pass an order after considering whether the procedure was followed or not and if not followed, whether that has caused failure of justice and also to decide whether the punishment imposed is proportionate or disproportionate with the gravity of the offence.

In the instant case, whether the procedure was followed or not, whether the punishment imposed was proportionate or not, to what extent

the petitioner is liable regarding the alleged misappropriated amount etc. issues can properly be adjudicated by the appellate authority upon taking evidence. Therefore, we hold that, since there is a specific statutory forum available, the petitioner should have exhausted that before taking recourse under writ jurisdiction.

According to Rule 17 of the Rules of 2018, any such appeal shall have to be filed within 3 (three) months from the date of knowledge of the order against which the appeal is to be filed; no appeal shall be admitted under this Rules after the expiry of that time period. Taking into consideration of the fact that the petitioner filed the writ petition within three months from the date of the passing of the impugned order and he was within the legal process, we are of the view that justice would be better served if the Rule is disposed of with the following direction:

The Respondent no. 1, being the next highest authority to the Director General of the Wage Earners' Welfare Board, who issued the impugned order, is hereby directed to admit the appeal filed by the petitioner and dispose of the same within 30 days from the date of filing of the appeal in accordance with the provisions of the Government Servants (Discipline and Appeal) Rules 2018.

The Rule is therefore disposed of with the aforesaid findings, observations and directions.

However, there is no order as to costs.

Let a copy of this judgment and order be communicated to the concerned authorities concerned at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.