

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

WRIT PETITION NO. 13326 OF 2024

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Md. Aminul Islam

.....Petitioner

-VERSUS-

Bangladesh, represented by the Secretary, Ministry
of Finance and others

..... Respondents

Mr. Mohammad Humaun Kabir Pallab, Advocate with
Mr. Md. Shah Alam, Advocate

..... For the Petitioner

Mr. Mohammad Waliul Islam Oli, D.A.G with
Mr. Md. Ershadul Bari Khandakar, D.A.G with
Ms. Nilufar Yesmin, A.A.G with
Mr. Md. Moshir Rahman (Rahat), A.A.G with
Mr. Md. Motasim Billah Parvez, A.A.G with
Mr. Md. Faridul Islam, A.A.G

.....For the Respondents

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

Heard on 27.01.2026, 15.02.2026, 17.02.2026, 04.03.2026

Judgment on 11.03.2026

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under Article 102 (2)(a)(ii) and (i) 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 Serial “Ka” and “Kha” of the Office order vide Nothi No. 11(8) Tax Administration-2/2000 dated 07.01.2003 (Annexure-P) prescribing new rule of Seniority for Promotion and Gradation List/Seniority List prepared by the Seniority List Formulation Committee dated 27.08.2024 for being promoted in the post of Extra Assistant Tax Commissioner from the post of Inspector of Taxes displacing the petitioner from the serial No. 373 (Annexure-M) should not be declared to have been passed without lawful authority and is of no legal effect and why a direction should not be given upon the respondents for correcting the gradation list/seniority list dated 27.08.2024 reinstating the position of the petitioner as serial No. 373 of gradation list and also why a further direction should not be given upon the respondents to consider the matter of promotion by giving retrospective effect with the newly promoted Extra Assistant Tax Commissioner dated 27.08.2024 by reinstating the position of the petitioner as serial No. 373 (Annexure-M) and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Necessary facts for disposal of the instant Rule, as narrated in the Writ Petition, in short, are that, pursuant to the advertisement published in the ‘Daily Dinkal’ on 26.08.2006 the petitioner applied for the post of

Upper Division Assistant and having been successful in the examination, an appointment letter was issued on 08.02.2007 asking him to join as Upper Division Assistant in the Tax Region-3, Dhaka. The petitioner submitted his joining letter on 14.02.2007 to the Commissioner of Taxes concerned. Since then he has been working with sincerity and to the satisfaction of the authority. The Ministry of Public Administration sent an opinion on 17.02.2015 and opined that the seniority list should be prepared considering the post of Upper Division Assistant as the 'Feeder Post'. The Respondent No. 3 prepared and published a gradation list/seniority list on 01.11.2016 of the Upper Division Assistants and the Head Assistants for considering the promotion for the post of the Inspector of Taxes, wherein the petitioner's name appeared in serial number 373. Thereafter a departmental examination was held for promotion to the next post but the petitioner could not pass the examination. The employees who passed the exam were promoted as Inspector of Taxes in 2017. As many as 289 Head Assistants and Upper Division Assistants were promoted as Inspector of Taxes on 22.03.2017.

Subsequently, the petitioner again took part in the departmental examination and successfully passed the same on 22.11.2018. He was recommended by the Public Service Commission (PSC) on 10.10.2019 for being promoted as Inspector of Taxes, in which list his position was mentioned as no. 373. The petitioner along with other were considered for promotion by publishing a notification dated 20.10.2019 and in that list the petitioner maintained his position as per the earlier seniority list in

serial Number 373. The Gazette Notification was published on 01.06.2021 mentioning the same serial number.

Thereafter latest draft gradation list was published on 21.08.2024 asking the Inspector of Taxes to submit their objections on it, if any. The petitioner submitted his objection on 21.08.2024. The final gradation list was published on 27.08.2024 but the objection of the petitioner was not considered. The authority concerned displaced his position from 373 and his name was mentioned in the gradation list in serial number 531. On the basis of this latest gradation list published on 27.08.2024, 143 Inspectors of Taxes were promoted as Extra Assistant Tax Commissioner on 09.09.2024 but the matter of promotion of the petitioner was not considered. The petitioner submitted an application on 10.09.2024 praying for amendment of the gradation list/seniority list keeping his serial number 373 in the place of 531. He again prayed for considering his promotion in the post of Extra Assistant Tax Commissioner with retrospective effect but without any result.

Being aggrieved thereby and there having no other alternative equally efficacious remedy available, the petitioner has filed the instant writ petition and obtained the rule.

Learned Advocate Mr. Mohammad Humaun Kabir Pallab with learned Advocate Mr. Md. Shah Alam, appeared on behalf of the petitioner. At the very outset of his submission learned Advocate for the petitioner candidly submitted that he does not want to press the first part of the Rule and therefore only prays that direction may be given upon the

respondents to correct the gradation list/seniority list dated 27.08.2024 by reinstating the position of the petitioner in serial number 373 and also for a direction upon the respondents to consider the matter of promotion by giving retrospective effect with his original batchmates who have been newly promoted as Extra Assistant Tax Commissioner.

Learned Advocate Mr. Humaun Kabir Pallab submitted that, in the latest seniority list serial number of the petitioner has been displaced from 373 to 531, which is conflicting with Rule 7(5) (Ga) of the নন ক্যাডার কর্মকর্তা ও কর্মচারী (জ্যেষ্ঠতা ও পদোন্নতি) বিধিমালা, ২০১১, as such the impugned gradation list is liable to be declared to have been passed without lawful authority and is of no legal effect.

He next submitted that, the fundamental right of the petitioner has been infringed by not considering him for promotion with the newly promoted Extra Assistant Tax Commissioner on 09.09.2024 and since the petitioner's seniority ought to have counted from his date of joining, he ought to have considered for promotion with the newly promoted Extra Assistant Tax Commissioners but the respondents degraded his position in the seniority list from serial number 373 to 531, which is liable to be declared to have been passed without lawful authority.

His further submission is that, the respondents gave promotion to various persons giving retrospective effect but the petitioner was not considered for promotion and thereby violated the fundamental rights of the petitioner as guaranteed under Articles 27, 29 and 31 of the Constitution.

By referring to the supplementary affidavit dated 04.03.2026 learned Advocate for the petitioner finally submitted that, two persons standing on the same footing as that of the petitioner have been given seniority in the subsequent gradation list with his original batchmates by giving retrospective effect as per Rule 7(5) of Rules of 2011. The petitioner has been discriminated as his case was not considered in the same manner.

In the end learned Advocate prayed that the Rule may be made absolute in part.

The Rule was merely opposed by the learned Deputy Attorney General without filing any vokalatnama or any affidavit in opposition.

We have heard the learned Advocates for the respective parties, perused the writ petition, the supplementary affidavit and all the documents annexed therewith.

Since the first part of the Rule has not been pressed by the learned Advocate for the petitioner, we shall straightaway move on to the second part of the Rule for disposal.

It appears from the record that, the gradation list was prepared on 01.11.2016 for promotion to the post of Inspector of Taxes, in that list the petitioner's name was in serial number 373 out of 538. Thereafter, a departmental examination was held for promotion but the petitioner could not pass. On 22.03.2017, 289 candidates, who passed the departmental examination, were promoted to the post of Inspector of Taxes.

Subsequently the petitioner passed the departmental examination on 22.11.2018 and he was given promotion by the gazette notification dated 20.10.2019 (Annexure-J). In the recommendation list as well as in the gazette the petitioner's name appeared in serial no. 5 out of 66 candidates and in the column of 'Gradation Number' it states '373' next to his name. The petitioner was confirmed in the post of Inspector of Taxes by the notification dated 13.04.2021 giving effect from 20.10.2019 and in that list the same gradation number '373' was mentioned (Annexure-K).

We find that the reference of the gradation number in these lists correspond to the earlier gradation list dated 01.11.2016 to identify the seniority position of the petitioner among the candidates who were promoted as Inspector of Taxes subsequently after passing the departmental examination for the second time.

Thereafter, latest gradation list among the Inspectors of Taxes was finally published on 27.08.2024 for giving promotion to the post of Extra Assistant Tax Commissioner. In that list petitioner's name appeared in serial number 531(Annexure-M) and on 09.09.2024 promotion was given to 143 Tax Inspectors to the post of Extra Assistant Tax Commissioner from this gradation list serially (Annexure-N). Petitioner was not among them due to his position in the list.

Upon placing the supplementary affidavit dated 04.03.2026, learned Advocate for the Petitioner submits that the respondent no. 5 published a gradation list among the Extra Assistant Tax Commissioner, considering similar facts and circumstances as that of the petitioner

(Annexure-W) from which it appears that, one Mr. Monir Ahmed, serial no. 1. Tax Zone-7. Dhaka and one Mr. Rajib Rana Mollik, Tax Zone-14, Dhaka were considered for promotion for the post of Extra Assistant Tax Commissioner by giving seniority with their original batchmates as per Rule 7 (5) of the Rules of 2011 although they failed in the departmental examination like the petitioner, which is evident from the earlier gradation list dated 01.11.2016 (Annexure-U). In 2024 their seniority was given with their original batchmates by upgrading their position in the gradation list (Annexure-W).

It appears from Annexure-W that Mr. Monir Ahmed, serial no. 1, has been given 'seniority in the lower post' (নিম্ন পদের জ্যেষ্ঠতা) as per Rule 7 (5) of the Rules of 2011. Annexure W-1 is the office order dated 11.12.2018, by which this Monir Ahmed was posted in the post of Extra Assistant Tax Commissioner from the post of Tax Inspector on transfer to Cumilla Tax Zone upon giving seniority with his original batchmates. Annexure-W-2 is the office order dated 23.01.2020 from which it appears that, since the earlier order was not given effect by the authority, on an application dated 05.11.2019 made by him, he was given seniority in the lower post as per Section 7(5) (ka), (kha) and (ga) of the Rules of 2011. However, Section 7(5) applies in a case where someone is promoted subsequently (not with his batchmates) due to his own fault. In case of Monir Ahmed, he was given seniority with his batchmates earlier by the office order in 2018 but that was not given effect by the authority for whatever reason, and that is why, on an application, his seniority was

restored in the subsequent gradation list in 2024. This has caused due to inaction of the authority, not as a result of his own fault. Therefore, Rule 7 (5) has no manner of applicability in this case.

Annexure W-3 is the memo dated 30.10.2019 in which it has been stated that, one Rajib Rana Mollik passed the departmental examination in October, 2013 but in the gradation list of the Tax Inspectors his name appeared in serial number 128 with the remark that he did not pass; for this reason, he was not given promotion to the post of Extra Assistant Tax Commissioner with his batchmates in 2016 but later on he was promoted in 2018. On his application it was ordered that, since he was left out due to inadvertence of the authority, he should be given seniority with his original batchmates from 01.12.2016 following the provision of Rule 7 (1) (ka) of the Rules of 2011. However, in the subsequent gradation list (Annexure-W) it appears that in the remark column no. 9 it has been stated that Rajib Rana Mollik has been given seniority in the lower post as per the provision of Rule 7 (5) of the Rules 2011. Although, Rule 7 (5) is not applicable in such circumstances as has already been discussed in the previous paragraph. This is another manifestation of gross negligence of the respondents.

In this circumstances, we find that, firstly, the remarks made in the gradation list annexed as Annexure-W, so far as serial numbers 1 and 2 are concerned, are palpably erroneous and secondly facts and circumstances of those two particular cases are not similar to the case of the Petitioner before us.

Now, we will have to determine whether the petitioner can claim seniority with his original batchmates as per the provisions of Rule 7 (5) of the Rules of 2011.

Rule 7 of নন-ক্যাডার কর্মকর্তা ও কর্মচারী পদোন্নতি বিধিমালা, ২০১১ is about ‘departmental promotion’. Rule 7 (5) is quoted below:

“(৫) কোন কর্মকর্তা বা কর্মচারী নিজের ত্রুটির কারণে পরে পদোন্নতিপ্রাপ্ত হইলে, উক্ত ক্ষেত্রে-

(ক) পরবর্তী পদোন্নতির ফিডার পদের চাকুরীকাল তাহার পদোন্নতির ফিডার পদের চাকুরীকাল তাহার পদোন্নতিপ্রাপ্ত পদে নিয়মিত যোগদানের তারিখ হইতে গণনাযোগ্য হইবে;

(খ) তাহার, ফিডার পদের চাকুরীকাল মূল ব্যাচের পদোন্নতির তারিখ হইতে গণনাযোগ্য হইবে না;

(গ) তাহার নিম্ন পদের জ্যেষ্ঠতাক্রম বজায় থাকিবো।”

In the definition clause of this Rules, the term ‘feeder post’ has been defined as follows: 2 (cha) “ফিডার পদ” অর্থ সংশ্লিষ্ট নিয়োগবিধির বিধান অনুযায়ী যে পদ হইতে উচ্চতর পদে পদোন্নতি প্রদানের বিধান রহিয়াছে; Rule 7 (5) applies in cases where the staffs or officers get promotion subsequently as a result of their own fault, for example, not passing the departmental examination etc. 7 (ka) provides, “(ক) পরবর্তী পদোন্নতির ফিডার পদের চাকুরীকাল তাহার পদোন্নতিপ্রাপ্ত পদে নিয়মিত যোগদানের তারিখ হইতে গণনাযোগ্য হইবে;” In the petitioner’s case ‘পরবর্তী পদোন্নতি’ means promotion to the post of Assistant Tax Commissioner and the feeder post for which is the post of Extra Assistant Tax Commissioner (পদোন্নতিপ্রাপ্ত পদ) and therefore the service period for this post shall be counted from the date of joining in this post i.e. 20.10.2019. 7 (kha)

provides: “(খ) তাহার, ফিডার পদের চাকুরীকাল মূল ব্যাচের পদোন্নতির তারিখ হইতে গণনাযোগ্য হইবে না;” Since we have found that the feeder post of the petitioner was Extra Assistant Tax Commissioner and the date of his joining is 20.10.2019, therefore as per Rule 7(kha) the duration of service in the feeder post (Extra Assistant Tax Commissioner) shall not be counted from the date of promotion of his original batchmates. Rule 7(গ) provides, “তাহার নিম্ন পদের জ্যেষ্ঠতাক্রম বজায় থাকিবে,” which means, the seniority among the Inspector of Taxes of this category, who passed the departmental examination subsequently, will remain as per the earlier gradation list. These three sub-rules of Rule 7(5) have to be read conjunctively rather than disjunctively.

Since the present petitioner could not pass the departmental examination with his original batchmates and subsequently upon passing the departmental examination was promoted to the post of Inspector of Taxes, there is no scope for him to claim that, he deserves to be in the same seniority list with his original batchmates. His seniority will be maintained among those, who were promoted subsequently due to their own fault. Therefore, we find that no illegality has been committed in preparing the latest gradation list in the year 2024 by placing the petitioner’s name in serial number 531.

In view of the facts and circumstances of the cases and with the discussions and findings made hereinabove, we find that the Rule is devoid of any substance.

In the result the Rule is discharged.

However, without any order as to costs.

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

Justice Sashanka Shekhar Sarkar, J:

I agree.

Helal/ABO