In the Supreme Court of Bangladesh (High Court Division)

Contempt Petition No. 31 of 2001

Published in BLD:

- Volume: 23
- Year: 2003
- Page: 578 to 610

Decided On:

The 19th December, 2002

Result:

Rule absolute

Parties:

Md. Faroque Hossain vs Mr. M. Iqbal Hossain and others

Hon'ble Judge(s):

Syed Amirul Islam and Mirza Hussain Haider, JJ

Counsels:

For the petitioner:

Mr. M.A. Samad with Mr. M.G.H. Ruhullah and Mr. Md. Ashraful Kamal Advocates. For petitioner.

Mr. Abdur Razzaq with Mr. Mohammad Hossain, Mr. Mohammad Ali and Mr. Rafiqul Islam Bakshi, Advocates. For the contemners.

Subject Matter:

Contempt of Court Act, 1926 (XII of 1926)

In contempt matters the intention of the contemner is not relevant. It is the effect of the contemner's action which is to be taken into account in deciding whether contempt was committed or not. The effect of the contemner's action is that the sanctity of the Court's order has been flouted. It must be made clear that when this Court passes an order it is meant for execution and not for flouting it. **(Para—23)**

*The general notion in currency that the contempt application is not an execution proceeding and no consequential relief can be given in contempt proceedings is an erroneous view. It is wellsettled that in an appropriate case the mere imposition of imprisonment or fine or both may not meet the ends of justice and there it may be necessary to pass an order to purge the contempt by directing the contemner to implement the judgment issuing necessary and consequential directions for enforcing the same.***(Para—26)**

Jurisdiction:

(Special Original Jurisdiction)

Related Acts/Rules/Orders:

Contempt of Court Act, 1926 (XII of 1926)

Key words:

JUDGMENT

Syed Amirul Islam, J*:* In this contempt petition initially the rule was issued against the contemner Nos. 1-4 on 18.04.2001 and during the pendency of this rule the contemner Nos. 1-4 had been replaced in their office by their successors and as such by order dated 6.7.2002 a further rule was issued upon the added respondent-contemner Nos. 5-8 as to why they should not also be committed for contempt of court for not complying with the order dated 12.5.1999 passed by this Court in Writ Petition No. 1152 of 1998 and punished accordingly. In due course the added respondent-contemners entered appearance and filed affidavit-in-opposition denying the allegations raised against them. Initially Mr. Mohammad Ali along with Mr. R.I. Bakshi entered appearance for the contemner Nos. 1-4 and upon issuance of the rule on the added respondent-contemners the same set of lawyers appeared for the rest of the contemners and at a late stage Mr. Abdur Razzaq, the learned Advocate, filed power on behalf of the added respondent-contemner Nos. 5-8 on 24.8.2002. Initially he advanced argument in this case on behalf of the added respondent-contemners and on the final date he verbally submitted before us that for the rest of the contemners, that is, contemner Nos. 1-4 he is appearing as senior to Mr. R.I. Bakshi who had

earlier represented them along with Mr. Mohammad Ali.

2. The relevant facts for disposal of the rule may be stated as follows:-

The petitioner is a diploma engineer and he joined the service of the then Airport Development Agency Ltd. as supervisor (Sub-Assistant Engineer) on 1.6.1966. Thereafter he was promoted to the post of Assistant Engineer on 5.11.1977 and on further promotion on 7.8.81 he became an Executive Engineer under the Airport Authority and was confirmed in that post with effect from 7.8.1981 and he is still serving in the said post. The Airport Development Agency (A.D.A.) has subsequently been converted into Civil Aviation Authority of Bangladesh (CAAB) by Ordinance No XXXVIII of 1985 and for the sake of clarity it may be referred to as CAAB. The authority prepared a seniority list on 17.6.91 wherein the petitioner was shown at serial No. 1 as Executive Engineer (Civil) and in the said list one Mr. Ahmedul Islam Chowdhury was shown at serial No. 5 and Mr. Ramijuddin and Mr. Ahammad Hossain were the Assistant Engineers. Against that seniority list two employees of CAAB filed two writ petitions, which were registered as Writ Petition Nos. 4046 of 1992 and 100 of 1993 wherein the antedated seniority given to the petitioner was called in question. The said rules were finally made absolute and conse quent thereto the said gradation list was re vised. In the revised seniority list the peti tioner was placed at Sl. No. 4 and Mr. Ah medul Islam Chowdhury and Mr. Ramijuddin were shown at Sl. Nos. 5 and 6 respectively. It is stated that after the retirement of the per sons mentioned in Sl. Nos. 1 and 3 of the said gradation list and the subsequent promotion of the person figured at Sl. No. 2 the petitioner became the senior most in the gradation list as an Executive Engineer which was prepared on 27.10.96 pursuant to the judgment passed in the aforesaid two writ petitions. It is further stated that to utter shock and surprise the pe titioner came across the office order in Nothi No. CAAB/FF-16/16963 dated 23.4.98 wherein the petitioner was shown at Sl. No. 4 in the revised gradation list and his juniors Mr. Ahmedul Islam Chowdhury, Mr. Rami juddin and Mr. Ahmed Hossain were shown at Sl.Nos. 1, 2 and 3 respectively in the new gradation list by purported revision of the list prepared on 27.10.1996 on the ground that the earlier list was erroneous. It is further stated that the Service Regulation, 1988 of the CAAB in Schedule 2(cha) at item No. 10(Ka) a pre-condition has been set up for promotion to the next higher post of Superintending En gineer (Civil), namely- graduation in civil engineering or A.M.I.E. degree-holders are eligible for promotion to the said post and this pre-condition as laid down in the Service Regulation 1988 stands as a bar to the pro motion of the petitioner to the next higher post and this condition was incorporated in the Service Regulation at a point of time after the entrance of the petitioner in the service. Therefore, after coming into force of the said Regulation the petitioner was asked to exer cise his option whether he would remain in the service despite the new conditions which is adverse to his existing terms and condi tions. The petitioner instead of exercising his option either to accept the terms and condi tions or to resign, challenge the legality and propriety of the provision as contained in Sl. No. 10(Ka) of the Schedule 2(cha) of the Service Regulation in Writ Petition No. 1152 of 1998 and the High Court Division by its judgment and order dated 12.5.99 was pleased to declare that gradation list as unlawful and of no legal effect and was further pleased to hold that the condition at Sl. No. 10(ka) of schedule 2(cha) shall not be binding upon the petitioner and the respondent-contemners shall not consider the same as a bar in giving him promotion if he is otherwise found fit for promotion to the next higher post. Being ag grieved by the aforesaid judgment of this Court the CAAB filed Civil Petition No. 1282 of 1999 before the Appellate Division and that Civil Petition was dismissed by judgment and order dated 14.3.2000 against which the CAAB filed Review Petition No. 17 of 2000 before the Appellate Division and the same was also dismissed by the Appellate Division by their judgment and order dated 18.10.2000. It is contended that since the order of this court passed in Writ Petition No. 1152 of 1998 reached its finality after dismissal of Review Petition No. 17 of 2000 the peti

tioner's legitimate expectation was that the gradation list would be corrected and he would be accordingly treated but from the successive action of the CAAB, it is alleged, that the order passed by this court in the aforesaid writ petition has been deliberately and willfully flouted initially by the respondent-contemner Nos. 1-4 as men in authority and subsequently by the respondent- contemner Nos. 5-8 as their successors in of- fice. It is stated that one Md. Ataur Rahman, Superintendent Engineer (Civil) of CAAB was proposed to be appointed on contract service for two years after his retirement on 30.12.99 on the ground that no eligible Ex- ecutive Engineer for appointment as Superin- tendent Engineer is available. When such an attempt was made by the respondent- contemner Nos. 1-4 the petitioner got a legal notice served upon the Secretary, Ministry of Civil Aviation and Tourism, Government of Bangladesh, on 25.12.99 and ultimately at the intervention of the Ministry the appointment could not be made. Inspite of that the CAAB turned their blind eyes and remained abso- lutely adamant in their stand to ignore the order of this Court and by their order dated 30.12.99 gave charge of office of Superintending Engineer to one Harunor Rashid Bhuiyan, a degree-holder Executive Engineer who was much junior to the petitioner and at that point of time said Harunor Rashid was not eligible for consideration for promotion to the post of Superintending Engineer. As the respondent-contemner Nos. 1-4 failed to cherish their unholy intention of appointing said Ataur Rahman then to feed fad their grudge the respondent-contemner Nos. 1-4 violating all official norms instead of either placing the petitioner in the charge of Superintending Engineer or considering his case for promotion to the said post placed the aforesaid Harunor Rashid in the current charge of the Superintending Engineer, that too in violation of the Service Regulation of the CAAB inasmuch as that Harunor Rashid Bhuiyan was not eligible for promotion to the post of the Superintendent Engineer which disqualified him for holding the current charge of the said post. It is further contended that the Service Regulation does not provide for holding a current charge by an incumbent for more than six months and in the instant case the respondent-contemner Nos. 1-4 in violation of the petitioner's legitimate right in service placed the said Harunor Rashid Bhuiyan in the current charge of Superintendent Engineer and allowed him to hold the current charge for one and half years and under these compelling circumstances the petitioner served a legal notice dated 15.12.1999 on the Secretary, Ministry of Civil Aviation and Tourism but to no effect whereupon waiting for a long period of one year the petitioner served another legal notice on 28.1.2001 on the respondent-contemner Nos. 1-4 requesting them to act with promptitude and to give effect to the order of this court passed in Writ petition No. 1152 of 1998 but this time also no action was taken by the respondent- contemners and their inaction compelled the petitioner to move this application and obtain a rule on 18.4.2001.

3. The matter was taken up for hearing on 25.6.2002 when Mr. Mohammad Ali along with Mr. R.I. Bakshi appeared for the respondent-contemner Nos. 1-4. Thereafter, on 6.7.2002 an application was filed by the petitioner for adding the added respondent- contemner Nos. 5-8 in this rule as they are the successors of the original contemners in office and being in office not implementing this court's order. The application was heard which was opposed by Mr. Mohammad Ali, the learned Advocate, and after hearing both the parties the application was allowed and a fresh contempt rule was issued against the added respondents. In the application dated 6.7.2002 it is stated that there has been change in the office of the respondent-contemners and the original respondent No.1 has been transferred to Bangladesh Air Force and in his place one Mr. Lutfar Rahman has been posted as Chairman of the CAAB. It is further contended that the original respondent contemner No. 2 Mr. Asaduzzaman Chowdhury by that time went on L.P.R. with effect from 30.6.2002. Similarly, the original re-spondent No.3 Mr. Md. Nazrul Islam, Direc-tor (Administration) has been transferred to National Sports Council and in his place Mr. Mokhlesur Rahman, Director (Finance) has been given the extra-current charge of Direc-tor (Administration) with effect from 30.6.2002. Similarly the original respondent No.4 has been transferred

as Additional Dep-uty Commissioner, Naogaon and Mr. A.M.M. Farhad, Member (Finance), C.A.A.B. has been given the charge of Member (Admini-stration) and as such the petitioner prayed for adding them as contemners inasmuch as it is now the legal obligation of the persons in of-fice to carry out the order passed by this court which was not implemented by their prede-cessors in office. Mr. Mohammad Ali along with Mr. R.I. Bakshi initially also appeared for the added respondent-contemners but sub-sequently Mr. Ali went out of the scene and Mr. Abdur Razzaq the learned advocate, en-tered appearance by filing a vokalalnatnama on their behalf.

4. By the supplementary affidavit the pe-titioner annexed the certified copy of the judgment of Writ Petition No. 1152 of 1998 which could not be annexed by him at the time of moving the contempt petition on 18.4.2001. It further appears that till the pro-nouncement of the judgment from time to time supplementary affidavits have been filed by the petitioner against which affidavit-in-opposition in due course have been filed by the respondent-contemners and affidavits-in-reply have also been filed by the petitioner but against the affidavit-in-opposition of the con-temner respondent Nos. 5-8 dated 6.11.2002 no affidavit-in-reply has been filed.

5. In response to the rule issued on 18.4.2001, affidavit-in-opposition has been separately filed by the contemner Nos. 1-4 wherein their case is more or less same. The crux of the case of the respondent-contemner Nos. 1-4 is that the petitioner claimed ante-dated seniority on the ground of being a free dom fighter showing a certificate to that ef-fect and as a result of that he superseded many of his senior colleagues in different stages of promotion and obtained his promo-tion to the post of Executive Engineer. There-after, when the petitioner was going to further supersede the most senior Executive Engi-neers, namely-late Delwar Hossain and Ataur Rahman they filed two separate writ petitions wherein the claim of the petitioner to be a freedom fighter was challenged and this court after hearing the parties made the rule abso-lute and found that the petitioner was not a freedom fighter and he illegally obtained promotion and financial benefit on the plea that he was a genuine freedom fighter. It is further stated that against the judgment of the High Court Division passed in the aforesaid writ petitions Civil Petition for Leave to Ap-peal was preferred by the petitioner which was also dismissed by their Lordships of the Appellate Division as the petitioner did not come within the definition of freedom fighter. Pursuant to the judgment of the aforesaid Writ Petitions a new gradation list was prepared on 27.10.1996 wherein petitioner was placed in Sl.No.4. It appears that after the death /retirement of the persons shown in serial No. 1-3 another gradation list was prepared on 23.4.1998 again showing the petitioner at se-rial No.4 and his juniors were shown at serial Nos. 1-3 challenging the said revised grada-tion list the petitioner filed Writ Petition No.1152 of 1998 and the Rule was made ab-solute and the revised gradation list dated 23.4.1998 was declared illegal and it was further ordered that the condition as contained in CAAB Service Regulation at Sl. No. 10(ka), schedule 2(cha) shall not be binding upon the petitioner and the respondents should not consider the same as a bar in giving him promotion to the next higher post. Thus, it is contended that the petitioner could not be promoted to the post of Superintending Engineer as the said provisions of the service regulation do not allow a diploma engineer to be considered for promotion to the said post and it is further contended that by filing the contempt petition in fact the petitioner has re-opened the issue which had already been decided by this court in the aforesaid writ petitions. It is further stated that the respondents filed the Civil Petition for Leave to Appeal before the Appellate Division but that could not be heard on merit as that was dismissed on the ground of delay and consequently the aforesaid contemners accepted the verdict of this Court and the petitioner has been placed in Sl. No. 1 in the gradation list removing the other Executive Engineers whose names were above him. It is further stated that in obedience to the order of this court the Departmental Promotion Committee (shortly known as DPC) consisting, amongst other, of

a Joint Secretary from controlling Ministry, met several times to consider the case of the petitioner as to whether he was fit for promotion to the next higher post and the name of the petitioner was in Sl. No. 1 in the working paper but for want of vital papers like A.C.Rs. the matter was being delayed and D.P.C. sat again. Therefore, since his case has been duly placed before the D.P.C. for promotion there remains nothing for the petitioner to agitate the matter before this court and as such contempt proceeding is not maintainable inasmuch as the contemners have not violated any order of this court with regard to the promotion of the petitioner. It is therefore contended by the first set of contemners that it is clear from the ordering portion of the judgment passed in writ petition No. 1152 of 1998 that the case of the petitioner would be considered for promotion to the next higher post of Superintending Engineer notwithstanding the fact that he is a diploma engineer but will be promoted if otherwise found fit for promotion to the said post and the petitioner could not be promoted to the next higher post as the D.P.C. did not consider him to be a fit person to be promoted to the next higher post.

After the issuance of the rule on 6.7.2002 on the second set of contemners they also filed separate affidavit-in-opposition individually wherein the case made out by them in their affidavits-in-opposition are more or less same and reiterated with more emphasis certain facts which were initially agitated by the first set of contemners. The crux of the case of the second set of contemners is that in view of the judgment passed by this court in writ petition No. 1152 of 1998, though the CAAB felt aggrieved by this judgment and preferred a leave petition before the Appellate Division but ultimately after the order of the Appellate Division they have accepted the aforesaid judgment thereafter on all occasions the D.P.C. considered the case of the petitioner whenever occasion arose for promotion to the higher post of Superintending Engineer but he could not be promoted to the higher post because of adverse remarks in the A.C.R. of the petitioner for the years 1997 and 1998. Besides, there were some other dissatisfactory performance of the petitioner and he was not a freedom fighter within the meaning of provision of the Government Servant (Seniority of Freedom Fighter) Rules, 1979 and the rule 3 of the Rule of Airport Development Agency Limited Employees (Seniority of Freedom Fighters) Rules, 1980 and by committing a fraud and suppressing the fact he obtained ante-dated seniority as freedom fighter and he subsequently superseded many of his seniors by ante-dated seniority and obtained financial benefit of Tk. 4 lacs and odd by virtue of that seniority until his seniority was knocked down by this court in two writ petitions filed by Ataur Rahman and Delwar Hossain, namely – Writ petition Nos. 4060 of 1992 and 100 of 1993 and thereafter the petitioner was asked to return the amount which he unduly took from the department by virtue of the aforesaid seniority but he had never returned the amount to the authority inspite of repeated reminders. The D.P.C. in all the subsequent meetings duly considered his case in obedience to the order of the High Court Division passed in the aforesaid writ petition No. 1152 of 1998 but could not give promotion to the petitioner due to his unsatis- factory service record as has been laid down in the provision No. 7(2), 15(2) and 15(3) of the CAAB Service Rules, 1988 and therefore the main contention of this set of contemners as those of the other set of contemners is that in no way or in any manner they violated this court's order passed in writ petition No. 1152 of 1998 rather the petitioner by filing this contempt petition has, in fact, re-opened the aforesaid writ petitions. Therefore, in fact, if any body has committed the contempt of this court it is the petitioner and nobody else. Here it may further be mentioned that the case of the contemners is that in 1988 the Service Rule of CAAB came into existence and in Sl. No. 10(ka) of Schedule 2(cha) of the said Service Regulation put an embargo upon the diploma engineers for promotion to the post of the Superintending Engineer and subsequently in the light of the judgment of this court whenever there was a meeting of the D.P.C. the case of the petitioner was considered as it was observed by the High Court Division that so far it relates to the present petitioner the aforesaid provisions of the Service Rules will not stand in his way. Therefore, though he was a diploma engineer and not entitled to be promoted to the post of

Superintendent Engineer, yet his case was considered in the light of the observation of this court given in the aforesaid writ petition No.1152 of 1998.

6. Before we go to the submissions made by the learned Advocates for the respective parties it may be stated that all the documents which have been submitted by all the parties have not been disputed and in the course of our discussions we shall refer to the relevant annexures as and when necessary.

7. Mr. M.A. Samad, the learned Advocate appearing for the petitioner submits that the petitioner was given ante-dated seniority as freedom fighter and accordingly a gradation list was prepared giving him the ante-dated seniority but subsequently at the instance of Delwar Hossain and Ataur Rahman two other engineers of CAAB who filed writ petitions before this court challenging the legality and propriety of the said ante-dated seniority given to the petitioner this court found that the petitioner is not a freedom fighter within the meaning of the provisions of Government Servant (Seniority of Freedom Fighters) Rules, 1979 and Airport Development Agency Limited Employees (Seniority of Freedom Fighters) Rules, 1980 and as such the seniority given to the petitioner was struck down and that decision of the High Court Division was ultimately upheld by the Appellate Division and the petitioner accepted that decision so far it relates to the ante-dated seniority. But he further submits that thereafter a service rule was promulgated by the CAAB in 1988 wherein in Sl. No. 10(ka), schedule 2(cha) put an embargo on the diploma engineer to be promoted to the post of Superintendent Engineer and that service rule was promulgated in 1988 and the petitioner entered the service long before promulgation of the said rule. Therefore, he called in question the legality and propriety of that provision in writ petition No. 1152 of 1998 and this court after hearing the parties made the rule absolute with the observation that provision of the service rule will not be applicable so far it relates to the petitioner in the matter of promotion to the next higher post of Superintendent Engineer and it was further observed by the High Court Division that the petitioner's case will be considered for promotion to the next higher post if he is otherwise found fit. Mr. M.A. Samad then submits that pursuant to the decision given by the High Court Division in the writ petitions filed by Mr. Delwar Hossain and Mr. Ataur Rahman the gradation list was revised and the petitioner was placed at Sl. No. 4 and subsequently those persons who had been in serial No. 1-3 were either promoted or retired but even thereafter to the utter shock and surprise of the petitioner he came across upon an office order being Nothi No. CAAB/PF-16/16963, dated 23.4.98 wherein he was shown at Sl. No. 4 in the revised gradation list and his juniors Md. Ahmedul Islam Chowdhury, Mr. Ramijuddin and Mr. Ahmed Hossain were shown at Sl. Nos. 1, 2 and 3 respectively of the gradation list by the purported revision of the list on the ground that the earlier list was erroneous and this was challenged amongst other in the writ petition No. 1152 of 1998 by the petitioner. After hearing the parties this court was pleased to make the rule absolute and directed the respondents of the writ petition who were the first set of contemners to revise the gradation list and also observed that the provisions as contained in Sl. No. 10(ka), schedule 2(cha) of the Service Regulation will not be applicable in case of the petitioner. The learned Advocate further submits that even after that order the gradation list dated 23.4.98 has not been corrected till now rather meanwhile the CAAB took unusual long time and within this period Mr. Ahmedul Islam Chowdhury and Mr. Ramijuddin Ahmed retired from service and Mr. Abul Hossain died during his service and as such inspite of non-revision of the gradation list the petitioner became senior most after the retirement and death of the aforesaid officers. Thus, it is contended by Mr. Samad that it was the incumbent duty of the first set of contemners to revise the gradation list pursuant to the order of this Court but they by not revising that list committed contempt of this court by willfully and deliberately flouting the order of this court. The learned Advocate for the petitioner further submits that it is one of the contention of all the contemners that the petitioner could not be promoted to the next higher post because of adverse remarks in the A.C.R. And for other unsatisfactory activities of the petitioner such as

obtaining ante-dated seniority as freedom fighter and non-refunding of an amount of Tk. 4 lacs and odd which was obtained by him due to that seniority. It is contended that the A.C.Rs. for the years of 1998 and 1999 of the petitioner was not submitted to the Administration Department as per CAAB A.C.R. Rules and the A.C.R. of the petitioner for the years 1998 and 1999 were prepared and submitted in the year 2001 by the controlling officer who had already retired on 30.12.99, that is, at least one and a half years earlier and as the A.C.R. was not submitted within time as provided by Rule, the Chief Engineer clearly mentioned about such irregularity in his letter to the Administration Department in the year 2001 and consequently because of this irregularity the A.C.Rs. of the said years were cancelled by the authority and inspite of that the petitioner's promotion to the next higher post was not only delayed but denied on the basis of the two aforesaid A.C.Rs. which were in fact cancelled by the controlling authority. It is further submitted that in the A.C.R. of 1997 there was adverse remarks passed by controlling officer against the petitioner but the counter signing authority disagreed with the comments of the controlling officer and found the petitioner to be a fit person to be promoted to the next higher post and it is laid down in the A.C.R. Rules that if there is difference of opinion in the A.C.R. between the controlling officer and the counter signing authority the remarks of the counter signing authority shall prevail but inspite of that in derogation to the A.C.R. Rules the authority intentionally noted these adverse remarks against the petitioner in the A.C.R. of 1997. It is also submitted by Mr. Samad that when it came to the promo-tion of the petitioner they did not consider the case of the petitioner on the ground that the A.C.R. of the petitioner was not available. The learned Advocate then submits that the activities of disobeying the court's order not only continued during the tenure of the first set of contemners but even after their transfer from CAAB the succeeding officers, namely-the contemner Nos. 5-8 also pursued the said path of denying promotion the petitioner to the next higher post on false pretext and it is apparent from the working papers prepared on 27.6.2002 for the DPC to be considered in their meeting date d30.6.2002 that irregular promotion has been given to Mr. Harunor Rashid Bhuiyan in derogation of the Service Regulation of the CAAB inasmuch as in order to promote to the post of Superintendent En-gineer an incumbent must serve at least for five years as Executive Engineer but he did not serve in the feeder post for five years as Executive Engineer and on top of that in pro-moting him the D.P.C. has considered the A.C.Rs. of 1996 and 97 when the said Ha-runor Rashid was an Assistant Engineer. Thus the second set of contemners in order to de-prive the petitioner of his legitimate claim of promotion most illegally promoted that Ha-runor Rashid to the post of a Superintending Engineer on 30.6.2002. The learned Advocate further submits that on an examination of the provisions, working paper of the D.P.C. dated 18.4.2001 (Annexure 'S') and the corre-sponding working paper dated 27.6.2002 (Annexure 'U') it appears that the contemners are bent upon the petitioner not to give him promotion in any event and with that end in view not only irregularity were committed by them but also they changed the remarks in the A.C.R. column of the working paper and this manifestly demonstrate that the second set of contemners were also very adamant not to promote the petitioner to the next higher post although he was otherwise fit for promotion. The learned Advocate further submits that the same illegalities have also been made in the working papers for promotion in the similar post of Superintendent Engineer (P&D/QS Circle) where the petitioner was also in Sl.No. 1 and in working papers also in the similar way the A.C.Rs. of the petitioner for the years 1998 and 1999 have been reflected though the A.C.Rs. of both these years have been cancelled by the authority because of the irregularity in writing the A.C.R. as the A.C.R. was written by the officer long after his retirement from his service. In this con-nection it is further submitted by the learned Advocate for the petitioner that after the can-cellation of the A.C.Rs. of 1998 and 1999 the petitioner was again asked to fill up fresh A.C.R. Form and he submitted the same on 14.10.2001 to the Chief Engineer enclosing the A.C.R. Form as evidenced by Annexure 'W' but the subsequent remarks made in the A.C.R. for the years 1998 and 1999 were not reflected in the working paper of the D.P.C. It is further submitted by the learned Advo-cate for the petitioner that the petitioner

sub-mitted the A.C.R. for the year 2001 to the controlling officer on 24.1.2002 but that was not shown in the working paper of D.P.C. dated 27.6.2002 though the A.C.R. of Mr. Harunor Rashid and Mr. A.K.M. Abdur Rafique Dewan have been shown in the said D.P.C. The learned Advocate further submits that the plea of the respondent-contemners is that the A.C.R. of the petitioner did not reach the administrative authority of CAAB before the sitting of the D.P.C. and therefore they had no scope to reflect the same in the working paper and this plea, according to him, is nothing but a lame excuse inasmuch as he had submitted the filled up A.C.R. form long ago on 24.1.2001 about six months before the meeting of the D.P.C. Therefore, from this fact also it appears that the respondent-contemners with the ill motive of not promoting the petitioner to the next higher post withheld the A.C.R. for the year 2001 although it was filed by the petitioner well in time, the learned advocate contends. The motive of not implementing the court's order and of depriving this petitioner of his 'legitimate right is further demonstrated by the fact that the respondent-contemners in flagrant violation of rule 15(5) of the Service Regulation, 1998 promoted Mr. Harunor Rashid on 30.6.2002 to the post of the Superintendent Engineer by not reflecting the correct provision of the said rule in the D.P.C. which provides that an accelerated promotion can be given to a deserving candidate if he in the meantime passed in any departmental examination but during that time no such examination was held and as such Harunor Rashid did not qualify to be considered for promotion nor he was in the feeder post for 5 years yet it was commented in the working paper that he is entitled to be promoted to the next higher post because of his brilliant past records and in fact he was promoted on some extraneous consideration in order to bypass the petitioner although the said Harunor Rashid was not eligible to be considered for promotion to that post. Mr. Samad then draws our attention to some other contentions raised by the contemners, namely – that the petitioner was not found to be freedom fighter by promotion as freedom fighter. He then submits that from the judgment of this Court in writ petitions filed by Mr. Delwar Hossain and Mr. Ataur Rahman it has only been stated that his ante-dated seniority has been knocked down only on the ground that he does not come within the provisions of rule 3 of the Government Servant (Ante-dated Seniority of Freedom Fighter) Rules, 1991 and the rule 3 of the Airport Development Agency Ltd. (Seniority of Freedom Fighters) Rules, 1980 because of the fact that he admittedly did not abstain from his duty under the occupation regime and received his salaries during the period of liberation war and as such he does not fall within the definition of freedom fighter under rule 3, but it was never observed by the High Court Division that he was not a freedom fighter nor it was ordered that he should refund the amount which he obtained from the CAAB by virtue of his ante-dated seniority and inspite of that it was adversely repeated in the working paper of the D.P.C.that the High Court Division ordered the Petitioner to refund Tk. 4 lacs and odd and inspite of repeated reminders he did not refund to amount. The learned Advocate further emphasised that it is the case of the second set of contemners that the petitioner was repeatedly asked to refund the amount of Tk. 4 lacs and odd, which he received because of antedated seniority but he never returned that amount inspite of repeated reminders and it was rightly reflected in the working paper of D.P.C. dated 30.6.2002 that he illegally obtained financial benefit as freedom fighter and did not refund that amount inspite of re-peated reminders and it is reflected in the A.C.R. This contention is a blatant lie and contrary to materials on record inasmuch as the question of refund was considered firstly by the meeting held on 7.8.96 of the Tripartite Audit Committee wherein realisation of an amount of Tk. 3,50,000/- was considered and necessary papers were called for as appears from item No. 5 of the agendas of the meeting and after considering all the documents the said Tripartite Audit Committee consisting of Audit Department of the CAAB, Comptroller of Audit and the Ministry concerned with-drawn the demand in their meeting dated 3.2.98. In support of his contention Mr. Samad also refers to a letter (annexed in the affidavit-in-reply to the affidavit-in-opposition filed by the respondent-contemner No. 1, dated 13.5.2002) of the Deputy Direc-tor (Audit) of CAAB wherein it has been stated that, "?????????? ???????? ??????? ?????? ????? ???? ??? ??, ???? ??????? ???? ??????

??????? ???? ???? ????? ?????, ???????? ????????? ???? ??????????? ????? ??? and from next page a portion of the relevant note sheet has been annexed where from paragraph No. 28 it clearly appears that the demand for the said amount was withdrawn. Similarly from next page of the note sheet it further appears that it has been noted in paragraph No.28 of the af-fidavit-in-reply dated 13.5.2002 that, "???? ??? ????? ????? ???????? ???????? (?????) ?? ??????????? ?????? ???.?? ?????????? ?????????? ???????? ???????? ? ??????????? ?????????? ???? ?????? ???? ??? ????? ???,???/- ???? ?????? ???????? ????? ???????? ??????? ?? ???? (?????) ???? ???????? ???, ????? ??????, ????? ?? ??-??-???? ??? ??????? ???? ??-?????? ?/????/??-????? ???? ??????? ???? ??? ??/????/??? ????? ????? ?? ???? ????????? ???????? ?????? ??????? ?, ??, ???? ?????? ???????? ??, ??, ??, ?? ? ?? ???, ???????? ???????? ???????? ? ??????????? ????? ?????? ?????? ????? ??, ??, ??, ? ?? ?????????? ??? ??????? ??????? ???? ?????? ????? ?? ?????????? ???????? ????
????????? ?????????? ???/??-/??? (?? ???) ???/??? ????? ??-?-???? ??? ?? ??????? ???? ?? ????? ????????? ?, ??, ?????? ?????????? ??? ??????? ???? ??? ????? ?????, ???????? ???????? (?????) ?? ????????????? ?????? ??????? ????????? ??????? ?????? ????? ?????? ??? ????? ???? ????????? ????? ???????? ?.?? ?????? ??? ???? ?????? ????"that was done, in view of the fact that the High Court Division and Appellate Division simply cancelled the sen-iority of the petitioner but there was no direc-tion given by this Court to realise the amount obtained by the petitioner due to antedated seniority and paragraph No. 88 of the note sheet of the said affidavit-in-reply at page 108 it is clearly stated that since the objection has been withdrawn in a meeting of the Tripartite Audit Committee said amount is no more re-alisable from the petitioner.Therefore, inspite of the fact that the dispute as to the realisation of the said amount has finally been decided by the Tripartite Audit Committee consisting of representative of the controlling Ministry of the CAAB and the Comptroller of Audit the contemners most illegally reflected the same in all the A.C.Rs only with a view to deprive him of the promotion to the next higher post.

Mr. Samad then draws our attention to a let-ter-dated 3.12.2001 written by the Deputy Director (Administration), Current charge, addressed to the Director (Finance) that he requested him to realise the amount of Tk.4,47,464.09 which was obtained by the petitioner as additional benefit due to ante-dated seniority. Of course a copy of the letter was given to the petitioner but no action whatsoever was taken by the Director (Fi-nance) or any other officer of the CAAB or no letter has been sent or addressed to the peti-tioner asking him to refund the said amount. Therefore Mr. Samad in elaborating his sub-missions makes a further submission that this letter dated 3.12.2001 is nothing but the prod-uct of ill will of the contemners inasmuch as this letter is issued by the Deputy Director (Administration) to the Director (Finance), contrary to the decision of the highest authority of the Tripartite Audit Committee wherein they had finally resolved the issue and decided not to realise the amount from the petitioner. The learned Advocate further submits that the issuance of this letter also exposes the evil design of the contemners and it has been issued with the sole motive to show that a demand was made to the petitioner to refund that amount and this letter was issued at a point of time after the issuance of the contempt rule to substantiate their false case that inspite of repeated reminders the petitioner did not refund the said amount. Therefore, by this letter another blatant attempt was made by the contemners to flout the order of this court by writing such a letter contrary to the decision of the Tripartite Audit Committee.The learned Advocate further submits that although this court did not observe that the petitioner is a fake freedom fighter but in order to deprive him of his benefit of being promoted to the next higher post all through with the ill motive they have reflected in the working papers that it has been decided by this court in writ petitions filed by Delwar Hossain and Ataur Rahman that the petitioner is a fake freedom fighter and on perusal of the judgment of this court it does not appear to be so. Mr. Samad then submits that it has been admitted by the CAAB itself in the note sheet which has been annexed at

page 106 of the affidavit-in-reply in paragraph No. 29 that the highest court in their judgment only cancelled the ante dated two years' seniority but no direction was given to realise the additional amount which was obtained by the petitioner due to his antedated seniority. Only the question of seniority was determined in the judgment and it is further stated in paragraph No.30 of the said note sheet that initially an audit objection was raised by the A.G. Office which was subsequently withdrawn in the Tripartite Audit Committee meeting. Therefore, styling of the petitioner although as fake freedom fighter was motivated. The learned Advocate further contends that the design of the contemners of flouting the order of this court is apparent from another instance, namely – on 25.6.2002 this court made verbal queries from the learned Advocate for the contemners as to whether the posts of Superintendent Engineer (Civil, Planning and Design) are still vacant and if so how long the said posts have been vacant and the learned Advocate for the contemners could not reply to the said query readily without any instruction from his clients and submitted that he will inform the court regarding the same on the next date and prayed for adjournment and taking advantage of this adjournment to undo the case of the petitioner the contemners hurriedly promoted Mr. Harunor Rashid and two other persons with the sole motive of depriving the petitioner which is evident from the working paper and decision dated 30.6.2002.Mr. Samad the learned Advocate for the petitioner by way of illustrating another nefarious act of the respondent-contemners submits that though the petitioner was eligible to be considered for promotion to the post of Superintendent Engineer yet the contemners with a view to obstruct his promotion made an attempt to appoint Mr. Ataur Rahman as Superintendent Engineer on contract basis for two years on the ground that there was no one eligible in CAAB to be considered for promotion to that post and in response to that proposal the controlling Ministry by their letter dated 22.12.99 informed the CAAB that the present petitioner and one Ahmedul Islam Chowdhury joined as Executive Engineer on 7.8.81 and 30.10.86 respectively and as such should not be considered for promotion to the next higher post and in reply to that query the respondents vide their letter dated 23.12.99 informed the Ministry that none of them has requisite academic qualification to be considered for promotion to the said post as both of them are diploma holders and according to Mr. Samad this shows that another attempt was made by the respondent-contemners by making a false representation to the Ministry withholding the observations of this court given in writ petition No. 1152 of 1998 which clearly indicates the nefarious design of the contemners to deprive him of the benefit of the judgment passed by this court in writ petition No. 1152 of 1998 Mr. Samad then submits that if the aforesaid activities of all the contemners are taken into consideration then it would be evident and clear that right from the beginning after the pronouncement of the judgment by this court in writ petition No. 1152 of 1998 they were adamant and arrogant not to implement the same and were bent upon the petitioner to deprive him of the benefit of the aforesaid judgment by any means whatsoever and therefore they have committed contempt of this court by not implementing the judgment. The learned Advocate further submits that contempt is a continuous offence and all the contemners are liable to be punished for not implementing the court's order inasmuch as the first set of contemners were in office at the time of passing of the judgment in the writ petition No. 1152 of 1998. Therefore, it was their official and constitutional obligation to carry out the order of this Court in a true spirit but they did not do the same and violated it in various ways and after the transfer of the first set of contemners from CAAB the new set of officers succeed them but they also followed the same path as laid down by the first set of contemners and till today did not implement the court's order. Rather during the pendancy of this rule they by order dated 30.6.2002 gave promotion to two other persons to the post of Superintendent Engineer, who are not only much junior to the Petitioner but *also* not eligible to be promoted, on the false and motivated plea that the petitioner is not fit to be promoted and therefore, all of them are guilty of contempt of this court, as the order has not yet been implemented the learned advocate contends. The learned Advocate in support of his contention relied on the decision of the Appellate Division as reported in 35 DLR (AD) 203 wherein it has been laid down by our Appellate

Division that if disobedience of this court's order is willful and deliberate then it would amount to contempt of court and in the instant case from the facts and circumstances of the case it is crystal clear that one after another all the condemners flouted this court's order willfully and deliberately to deprive the petitioner of the benefit of the judgment passed by this Court in the name of considering his case for promotion. Mr. Samad *also* submits that it is not correct to say that the second set of contemners had no knowledge of the judgment passed by this court in writ petition No. 1152 of 1998 because rule of this contempt proceeding was issued on 18.4.2001 on the first set of contemners and the second set of contemners are the successors in office of those contemners upon whom a further Rule was issued on 6.7.2002. Therefore, they must be fixed with the knowledge of the pendency of the contempt proceeding. Moreover, on receipt of the further rule issued upon the second set of contemners on 6.7.2002 they entered appearance and contested the rule. So, even if it is assumed for argument's sake that they have no knowledge about the pendency of this contempt proceeding they could rectify the same after issuance of second contempt rule upon them but instead of rectifying the situation they were adamant to justify their action. The learned Advocate further submits that by no stretch of imagination it could be said that they have no knowledge about the pendency of the contempt proceeding which was initiated on 18.4.2001 and lawyer of CAAB was representing all through the first set of contemners in this matter even after their transfer from the CAAB and that the 2nd set of contemners must have knowledge about the contempt proceeding as they are successor office and contesting this Rule. Therefore, the second set of contemners in order to safe-guard the stand taken by the first set of contemners went out of their way and most illegally have deprived the petitioner by promoting one Harunor Rashid to the post of Superintendent Engineer on 30.6.2002 although Mr. Harunor Rashid was not eligible to be considered for promotion in that post inasmuch as he had neither served in the feeder post for five years nor he had passed any departmental examination in that period which could however enable him to be considered for accelerated promotion under rule 15(5) of the Service Rules and in order to deprive the petitioner the contemners misquoted the legal provision of Service Regulation in the working paper and thereby going out of their way to feed fad their grudge against the petitioner has promoted said Harunor Rashid to the post of Superintendent Engineer on 30.6.2002 and the proceeding of the DPC was signed by the second set of contemners which is evident from the working paper and decision dated 30.6.2002 which is an admitted document. Mr. Samad finally submits that the offence of contempt of court is a continuous offence and it continues unless and until the order is complied with and therefore even after the transfer of the first set of contemners it was the legal obligation of the second set of contemners to fulfill the same and they cannot go away with the plea that the initial rule was issued against first set of contemners who did not implement the order during the tenure of their office.

8. Mr. Abdur Razzaq, the learned Advocate advanced his argument initially for the second set of contemners and finally argued the case on behalf of the first set of contemners as well. The learned Advocate at the very out set of his argument submitted that the set- tled proposition of law is that in order to find one guilty of contempt of court for not implementing any order of this Court the disobedience must be willful and deliberate and for this purpose he relied on the decision which has already been relied on by the petitioner, namely- 35 DLR (AD) 203. The learned Advocate further submits that in the instant case if any contempt has been committed that has been committed by the first set of contemners against whom the rule was initially issued but the second set of contemners had nothing to do with it. The learned Advocate further submits that if the judgment of this Court passed in writ petition No. 1152 of 1998 is perused it is found that this court ol served that provision contained at Sl. No. 10(ka), schedule 2(cha) of the Service Rules will not be applicable to the petitioner and he may be considered for promotion to the higher post if he is otherwise found fit for promotion to the next higher

post. Therefore, from the admitted facts of the case it cannot be said that the case of the petitioner was not post as and when occasion arose after the pronouncement of the aforesaid judgment. The learned Advocate then submits that by no stretch of imagination it could be said by the petitioner that the decision of CAAB taken in its meeting dated 30.6.2002 was contemptuous firstly because the decision was taken after the issuance of the contempt rule and secondly the contents of the decision does not in any way violated the direction of this court given in writ petition No. 1152 of 1998. The learned Advocate further submits that in fact the contemners have fully complied with the direction of this court in its true sense inasmuch as the case of the petitioner was duly considered by the contemners but he could not be promoted to the next higher post because it was found by the High Court Division in its judgment dated 23.6.1996 passed in writ petition No. 4060 of 1992 along with writ petition No. 100 of 1993 that the petitioner was not a freedom fighter and that judgment was duly affirmed by the Appellate Division and also from the fact that upon the aforesaid judgment of this Court he was asked to repay the amount of money which he received pursuant to the two years' antedated seniority but inspite of that he did not repay the huge amount of Tk. 4,47,646.09 to the public exchequer which was over paid to him because of antedated seniority and at the top of that his A.C.R. for the years 1997, 1998 and 1999 were not satisfactory and on the basis of those materials the petitioner was not found to be a fit person to be promoted to the next higher post by the D.P.C. in their meeting held on 30.6.2002. The learned Advocate then in order to refute the submissions of the learned Advocate for the petitioner that Mr. Harunor Rashid Bhuiyan was promoted illegally or in violation of the Service Regulation contended that there is no substance in this submission because his promotion was passed on the following objective consideration, namely :--

(i) The Chief Engineer recommended him for accelerated promotion because of his successive performance in the department of Chittagong Air Port Project of which he was a director;

(ii) Such promotion is permitted in exceptional circumstances under rule 15(5) of 1998 Service Rule of CAAB;

(iii) His A.C.R. was satisfactory;

(iv) He was in charge of Superintendent Engineer (Civil) and in charge of many other important Projects of the authority.

9. And as such in the interest of CAAB he was considered to be promoted to the next higher post and the decision of promoting him which was taken in the meeting of the D.P.C. on 30.6.2002 was not malafide in any way rather that decision was taken on the basis of materials on record and in the greater interest of the CAAB. The learned Advocate further submits that even if it is assumed for arguments sake that the said decision of the authority was wrong(which is not conceded) even then the petitioner's remedy lies elsewhere and not by way of application for contempt under section 2 of the Contempt of Court Act, 1926 read with Article 108 of the Constitution and in support of his contention he relies on the decision reported in 22 BLD 283. The learned Advocate then emphatically submits that the admitted position is that the petitioner who by committing a fraud upon the authority obtained two years' antedated seniority as freedom fighter and derived a benefit of Tk. 4 lacs and odd and inspite of repeated demands that amount has not yet been paid by the petitioner to the CAAB and this aspect of the case was duly reflected in the working paper of the D.P.C. and D.P.C. also duly took into consideration his case for promotion to the next higher post. The learned Advocate then submits that the claim made by the petitioner that he has been exempted from paying Tk. 3,50,000/- by the Audit

Committee in its meeting dated 7.8.96 and Memo. Annexure 'L' dated 30.12.2001 which is the latest correspondence made by the contemners a demand of Tk. 4,47,464.09 has been made to the petitioner and admittedly that amount has not yet been paid by the petitioner to the CAAB. The learned Advocate then diverts his attention to another aspect of the case and submits that these respondent- contemners have no responsibility whatsoever to write down the petitioner's A.C.R. It was written by his immediate senior officers. Therefore, these contemners cannot be held liable for any injustice alleged to have been committed upon the petitioner in preparing the A.C.R. Finally it is contended by the learned Advocate that the second set of contemners in accordance with the decision of writ petition No. 1152 of 1998 prepared the working papers for promotion wherein the petitioner was placed as the senior most person in his department as evidenced by Annexure 'I' and 'XII' of affidavit in opposition in reply to the additional supplementary affidavit on behalf of the respondent Nos. 6 and 7 dated 26.8.2002. Therefore, the decision of the High Court Division has substantially been complied with and by no stretch of imagination it can be said that the respondent-contemners are guilty of contempt of court.Mr. Razzaq finally brought to our notice the fact that although he has filed power on behalf of the second set of contemners but in this matter he is also appearing as senior lawyer for the first set of contemners along with Mr. R.I. Bakshi and advanced argument on behalf of all the contemners ultimately and he submits that the cause of this contempt petition arose with the service of the legal notices dated 25.12.99 and 20.1.2001 and the grievance raised in those notices have, in fact, been met by the first set of contemners and therefore, after meeting the grievances raised in the aforesaid legal notices there remains nothing for the petitioner to file this case against the contemners for alleged non-compliance with the court's order. The learned Advocate then submits that it was, in fact, a legitimate expectation of the petitioner that after the pronouncement of the judgment passed in his second writ petition he would be considered for promotion to the next higher post and it is evident from the materials submitted in this case by both the parties that although his case was considered but unfortunately due to adverse remakes in his A.C.Rs. and for his unsatisfactory performance as Executive Engineer he could not be promoted to the next higher post. The learned Advocate then submits that even if it is assumed for argument's sake that there has been a breach of the legitimate expectation then also remedy does not lie by way of an application for contempt of court rather there is an alternative remedy available to the petitioner and without resorting to the alternative remedy he has practically reopened the issue which was settled once for all by this court in writ petition No. 1152 of 1998 and his attempt to reopen a settled issue is not permissible under law and in support of his contention he relies on the decision reported in 22 BLD(AD) 1. The learned Advocate further submits that in view of the admitted facts and circumstances of the case Article 108 of the Constitution is not attracted in the instant case inasmuch as there is no direction given by this court to promote the petitioner to the next higher post rather the direction is that his case should be considered as and when occasion arises for promotion to the next higher post which was ultimately complied with by the contemners. The learned Advocate then most emphatically submits that the admitted position is that the contempt proceeding is a quasi criminal proceeding and it is the duty of the petitioner to prove the allegation to the hilt to find one guilty of contempt of court and in the instant case the petitioner has failed to prove conclusively that the contemners have failed to implement the court's order. The learned Advocate further submits that there is no means rea and means rea has neither been pleaded nor established by the petitioner against the contemners and he has failed to show that there was any intention of the contemners to violate the order. The learned Advocate further submits that there is also a grievance of the petitioner that the contemners illegally gave current charge to Mr. Harunor Rashid but from the materials on record it appears that in the greater interest of the CAAB he was given the current charge of the Superintendent Engineer and moreover that is not an issue in the instant contempt proceeding. The learned Advocate for the contemners further submits that the respondent-contemner Nos. 6 and 7 joined in their present

post on 30.6.2002 and they have simply signed the proceedings of the CAAB without having any intention or mens rea to flout this court's order. The learned Advocate further submits that the contention raised by the petitioner that by taking adjournment on 25.6.2002 the contemners hurriedly promoted Harunor Rashid to the post of Superintendent Engineer is also belied by evidence on record inasmuch as the notices of the D.P.C. for the meeting dated 30.6.2002 which is annexed by the respondent No.7 in his affidavit-in-opposition in reply to the cause shown clearly show that notice was issued on 22.6.2002 and the meeting was held on 30.6.2002 and the notice of the meeting dated 22.6.2002 is earlier to the date of taking adjournment on 25.6.2002 and therefore there is no substance in the contention that by taking adjournment on 25.6.2002 surreptitiously the contemners promoted Mr. Harunor Rashid and behind the knowledge of the petitioner two other officers were also promoted to the higher post by way of said decision dated 30.6.2002. The learned Advocate further submits that after the pronouncement of the judgment passed by this court in writ petition No. 1152 of 1998 the gradation list prepared by the CAAB was set aside and then on all occasions the petitioner was shown in Sl. No. 1 as the senior most Executive Engineer as evidenced by Annexure 'III' of affidavit-in-opposition dated 5.8.2002 of the respondent No.5.

10. In reply Mr. Samad, the learned advocate appearing for the petitioner, submits that the admitted position is that they have not revised the gradation list after the judgment passed by this court in writ petition No. 1152 of 1998 and over the lapse of time with the death/retirement of three Executive Engineers, namely- Ahmedul Islam Chowdhury, Ramijuddin and Ahmed Hossain the petitioner automatically came up in Sl. No. 1 of the gradation list which was challenged in the writ petitions and the document to which the respondent-contemners refer to show that after the pronouncement of the judgment they have put his name at the top in the gradation list is also belied by the document as that is not the gradation list rather the working paper of the meeting of the D.P.C. to be held on 30.6.2002 and the contemners never revised the gradation list prepared by them on 23.4.1998 as evidenced by page 57 of the affidavit-in-reply dated 13.5.2002. Mr. Samad further submits that in the affidavit-in-reply to the affidavit-in-opposition of the respondent-contemner No.7 dated 3.11.2002 it has been specifically denied by the petitioner that he is not a self drawing officer and it is further mentioned that the salary of the petitioner is fixed by the Audit Department of CAAB and accordingly the pay bill is prepared by Accounts Section and approved by the controlling officer and as a self drawing officer the petitioner simply put signature on the bill and after receiving the cheque he address the bank to transmit the salary to the respective bank account of the petitioner. So, it is not true that the petitioner himself withdrew the money without the consent or authority of CAAB.

11. We have perused the application and the various supplementary affidavits filed by the petitioner and the relevant affidavits-in-opposition and replies thereto along with annexures and considered the submissions made by the learned Advocates for both the parties. In this case at the very out set Mr. Razzaq has submitted that the settled proposition of law is that the pre-requisite of finding one guilty of contempt of court for violation of an order must be willful and deliberate and that the contempt proceeding is a quasi criminal proceeding and the onus is on the petitioner to prove the allegation to the hilt and if there be any doubt that would go in favour of the contemners. Mr. Samad did not dispute this legal proposition of law as these are well settled.

12. Now we are to examine the contentions raised by the parties in order to arrive at a decision as to whether the contemners in any way or otherwise committed contempt of this court by not implementing the judgment of this court passed in writ petition No. 1152 of 1958 filed by the petitioner and before we embark upon that aspect we would like to mention that in the course of argument Mr. Razzaq also

emphasised that in this case the petitioner has miserably failed to spell out the mens rea or intention to violate the court's order and to meet this aspect it can be said that in a contempt proceeding intention or mens rea is absolutely irrelevant and it is the duty of the court to find out whether there has been any willful or deliberate violation of court's order. The facts have already been noted in detail in the course of recording submissions of the learned Advocate for the respective parties. In a nut shell it can be said that the petitioner obtained two years' ante-dated seniority as a freedom fighter and therefore he superseded many of his juniors in the service. As such some time after granting of antedated seniority to the petitioner the same was called in question by two of his colleagues, namely - Delwar Hossain and Ataur Rahman who filed two writ petitions, namely - writ petition Nos. 4060 of 1992 and 100 of 1993 and both these writ petitions were heard together and after hearing the parties it was found by this court that the petitioner does not come within the definition of freedom fighter as contained in provision 3 of the Government Servant (Seniority of Freedom Fighters) Rules, 1979 and therefore his ante-dated seniority was struck down by the judgment of this court which was ultimately accepted by the petitioner after affirmation of the same by the Appellate Division. Pursuant to that judgment a revised gradation list was prepared on 27.10.96 wherein the petitioner was placed at Sl. No. 4. Subsequently the said three senior officers were either promoted or retired and thus the petitioner became Sl. No.1. Taking a plea that that gradation list was erroneously prepared a further gradation list was prepared on 23.4.98 wherein also the petitioner was shown or placed at Sl. No. 4 and this was challenged by the petitioner in the latter writ petition, namely - writ petition No. 1152 of 1998. This gradation list was challenged along with some provision of Service Rule. After hearing the parties rule was made absolute and the gradation list was declared illegal and the provision in Sl.No.10 (ka) of the schedule 2(cha) of the Service Regulation was made not applicable to the petitioner. But from the materials on record it appears that pursuant to the judgment of this court the contemners did not at all care to revise the gradation list and in due course the three persons who have been placed above the petitioner in the gradation list dated 27.10.96 have, in the meantime, either been retired or died. Therefore, the question of promotion to the next higher post became due. It appears that at that point of time the contemners without making any attempt to consider the case of the petitioner to see as to whether he is eligible for promotion to the next higher post an unholy attempt was made by the respondent contemners to appoint one Ataur Rahman who retired on 30.12.99 as Superintendent Engineer on contract service for two years on the plea that there was no one eligible in the existing service of the CAAB to be promoted to the said post but that request was ultimately turned down by the controlling Ministry in view of the fact that the petitioner along with another person were eligible to be considered for promotion to the said post. So, this fact shows that firstly the respondent-contemners have shown a blind eye to the judgment of this court by not revising the gradation list dated 23.4.98 which was knocked down by this court and secondly even after consider able lapse of time when seniors of the peti tioner were either retired or died the peti tioner became the senior most in the category of Executive Engineer, then also his case was not taken up by the contemners to consider for promotion to the next higher post and to de prive him of the promotion they have started to take illegal steps to appoint the retiring of ficer Ataur Rahman on contract service on the plea of non availability of suitable person which is evidenced by Annexure 'CC' in the additional affidavit dated 6.11.2002. So this is the second act of the contemners which clearly indicates that they have not only re fused to revise the gradation list but they were bent upon the petitioner not to allow him to get the benefit of the judgment by considering his case for promotion to the next higher post and to block his promotion they by suppress ing the truth falsely informed the ministry that as no suitable candidate is there said Ataur Rahman should be reappointed on contract service for two years. It further appears that the respondent-contemners having failed in their attempt to block the way of the petitioner by appointing Ataur Rahman on contract service they put one Mr. Harunor Rashid Bhuiyan degree holder engineer in current charge of Superintendent Engineer on 30.12.99 who was much junior to the peti tioner.

13. It is contended by the petitioner that in violation of the service rule the said Harunor Rashid was given the current charge and on examination of the Service Rules and the materials on record it is found that at that point of time Mr. Harunor Rashid was not eligible for promotion to the post of Superin tendent Engineer nor he was the senior most amongst the executive engineers. Therefore, it is evident from this act of the contemners that to teach a good lesson to the petitioner for coming to this court and for filing writ peti tion No. 1152 of 1998 they have resorted to another illegal activity by giving the said Ha runor Rashid the current charge of Superin tendent Engineer by flouting and violating the service rule of CAAB because it appears from Service Rules that a man who is not eligible for promotion to the post of Superintendent Engineer cannot be given the current charge and no man can be given a current charge for more than two months but in the instant case the said Harunor Rashid continued to hold the current charge for a period of two and half years as evidenced by Annexure '4' of the affidavit in opposition in reply to the cause shown by the respondent No. 7 dated 5.8.2002 and in violation of the rule, namely — F.R 49A, which provides that a person cannot hold the current charge for more than two months and within that period the matter must be placed before the promotion committee for filling up the vacant post. It appears that the contemners were determined and adamant not to consider the case of the petitioner and with that end in view they remained silent and did not make any attempt to hold a meeting of the D.P.C. within three months from 30.12.99 and defying the order of this court they resorted to illegal activities one after another willfully and deliberately showing disregard and disre spect to the authority of this court. The matter did not end there. Ultimately the contemners had to hold a meeting of the D.P.C. for filling up the post of Superintendent Engineer (Civil and P&D/QS). The D.P.C. in their first meet ing could not take any decision for the pro motion to the post of Superintendent Engineer as the A.C.R. of the petitioner for the years 1998 and 1999 were not available and as such they postponed the decision and asked the administrative department to supply the same. It appears from the working paper of the D.P.C. dated 23.4.2001 as annexed with the affidavit-in-opposition in reply to the cause shown on behalf of the contemner No. 8 dated 5.8.2002 that in the meantime the A.C.Rs. of the petitioner for the years 1998 and 1999 have been received and there are adverse remarks against the petitioner. Since the A.C.R. has been recently received and has not been communicated to the petitioner to explain his position about the adverse remarks the Director (Administration) was asked to do the needful and place the same in the next meeting of the D.P.C. It further appears from Annexure 'III' at page 36 of the said affidavit-in-opposition that the D.P.C. in their meeting dated 11.7.2001 could not take any steps to fill up the post of Superintendent Engineer because of want of papers and the Director (Administration) was asked to incorporate all the information in the next meeting. It further appears from Annexure 'IV' of the said affidavit-in-opposition that pursuant to the meeting held on 27.6.2002 a meeting was held on 30.6.2002 and in that meeting the case of the petitioner was considered and he was not found fit to be promoted to the next higher post because there were some adverse remarks in his A.C.R. of the years 1997, 98 and 99 and therefore he was not promoted. It appears from the working paper that it was recorded against his name that he obtained an illegal financial benefit to the tune of Tk. 4 lacs and odd by virtue of two years' antedated seniority and he was declared by this court not to be freedom fighter and this court directed him to refund the amount inspite of that he did not refund the same and he has no academic qualification for promotion to the higher post as he is neither B.Sc. engineer nor A.M.I.E. yet he is eligible for promotion to that post as Sl. No. 10(ka), schedule 2(cha) of the rule is not a bar in his case and in the A.C.Rs. of 1997 and 1998 there are adverse remarks against him but from the proceedings of the meeting dated 30.6.2002 it appears that the D.P.C. has considered his A.C.R. for the years 1996-2000 out of which they did not find the A.C.R. of 1997,98 and 99 satisfactory. The grievance of the petitioner is that although in preparing the working paper for the meetings of the D.P.C. the contemners intentionally did not reflect the true state of affairs. It appears that in the working paper it has

been pointed out that there was a direction by this Court to refund the amount which he obtained by virtue of two years' antedated seniority and inspite of repeated requests and reminders he did not make the payment, besides there are adverse remarks in the A.C.Rs. of three years, namely- 1997-1999. This note in the working papers are contrary to the materials on record and do not reflect the correct position. The A.C.R. Rule has been annexed in this case and there is no dispute about the said Rules between the parties and it is provided in the A.C.R. Rule that if there is difference of opinions in the A.C.R. of a particular year between the controlling officer and the counter signing officer, the opinion of counter signing officer shall prevail. We have care fully examined the A.C.R. of the petitioner for the year 1997 and it is found that the control ling officer passed certain adverse remark against the petitioner but the counter signing authority did not agree with him and he ob served that the petitioner is a suitable person to be considered for promotion to the next higher post. Therefore, according to the A.C.R. Rules the legal position is that there is no adverse remark against the petitioner in the A.C.R. of 1997 but the respondent-contemners ignoring the A.C.R. Rules intentionally and deliberately to deprive the petitioner of any opportunity of promotion most illegally noted in the working paper that there is adverse remark in the A.C.R. of the petitioner for the year 1997. The story did not end here. The A.C.R. of 1998 and 1999 were submitted by one Ataur Rahman long after his retirement from service against the provisions of the A.C.R. Rule and on receipt of the said A.C.R. the counter signing authority brought it to the notice of the competent authority that in flagrant violation of the rules the said A.C.Rs. were signed by his erstwhile controlling officer long after his retirement. Mr. Ataur Rahman retired on 30.12.99 and the said A.C.Rs. were signed by him long after his retirement some time in 2001. It appears from Annexure 'M' at page-74 of the affidavit in reply of the petitioner dated 13.5.2002 that the Chief Engineer of CAAB by his letter dated 7.4.2001 brought it to the notice of the Member (Administration) that very recently about 10 days back he has received the A.C.R. of the petitioner for the years 1998 and 1999 and thereafter he sent the same after counter signing. From the A.C.R. Rules it appears that a retiring officer can write the A.C.R. of a subordinate within one year, that is, during the period of L.P.R. but in the instant case the A.C.Rs. were submitted to the counter signing authority after signing by the controlling officer after the expiry of L.P.R. period. On the other hand it is contended by the respondent-contemners relying on the A.C.R. itself that it was signed on 10.7.99 and thereby they meant to say that the A.C.R. of 1998 was signed by the controlling officer during the period of L.P.R. but from their own papers, namely - Annexure 'M'-series at page 74 it appears that the said A.C.R. was sent to the counter signing authority at beast on 1.4.2001 and from pages-75 and 76 particularly from the letter dated 9.10.2001 it appears that it has been clearly pointed out by Assistant Director (Administration) that if an officer is in retirement he has no right or jurisdiction to write any A.C.R. of his subordinate and therefore the A.C.Rs. for the years 1998 and 1999 signed by Mr. Ataur Rahman after his retirement could not be accepted and thus the Chief Engineer was asked to procure filled up A.C.R. Form afresh for the said years to prepare the A.C.Rs of those years. Against that contention of the petitioner the case of the contemners is that it is evident from the A.C.R. of the said years that the A.C.R. for the year 1998 was signed on 10.7.99 and for the year 1999 it was signed on 8.10.2000 by Mr. Ataur Rahman which is well within the period of L.P.R.. This contention of the contemners is belied by series of documents of the CAAB. We have already referred to the letter dated 10.4.2001 written by the Chief Engineer to the Director (Administration) wherein he has stated that he received the A.C.Rs. for the said years very recently about 10 days back and therefore after signing and counter signing the same he had sent them to the Director (Administration). Thereafter it appears from Annexure "K" a letter dated 9.10.2001 that these A.C.Rs. were signed by Mr. Ataur Rahman after his retirement and as such they cannot be accepted and asked the Chief Engineer to file new A.C.R. to the authority concerned. Besides from Annexure "V-series" of additional supplementary affidavit filed by the petitioner dated 5.8.2002 it appears that starting from 11.4.2000 a series of letters were written to Mr. Ataur Rahman for filing the A.C.R. of the petitioner for the years 1998 and 1999 and lastly by letter

dated 11.2.2001 the Director (Administration) asked Mr. Ataur Rahman to send the A.C.Rs. for the said years within seven days from the date of receipt of that letter. Therefore, these documents which are the undisputed documents of the contemners clearly contradict the date given by Ataur Rahman in the A.C.Rs. for the years 1998 and 1999 and who is this Ataur Rahman, he is the immediate boss of the petitioner who got promotion to the post of Superintendent Engineer pursuant to the judgment given by this Court in the writ petitions filed by Delwar Hossain and himself, i.e. a beneficiary of that judgment. It is natural that such a man who was once superceded by the petitioner will bear a grudge against the petitioner. It further appears to us that he sailed with the contemners in the same boat to drown the petitioner in deep sea for no fault of his and therefore at the instance of the contemners he antedated those A.C.Rs. And we find as a matter of fact that those marks in those A.C.Rs. are antedated which have been annexed with the affidavit-in-reply as Annexures 'J', 'K' and 'V' series. It is therefore clear that though the A.C.R. signed by Ataur Rahman for the year 1998-99 were not accepted by the authority yet those adverse remarks were repeatedly noted in the working papers of the D.P.C. and the purpose is only to put a stigma on the service career of the petitioner to deprive him of the benefit of judgment passed in writ petition No. 1152 of 1998.

14. We have already referred to the working paper which was place. before the D.P.C. in its meeting dated 30.6.2002 and in that working paper as many as 4 adverse re- marks were noted against the petitioner but from the materials on record it is found that these are all false and contrary to the materials on record. Inspite of that the contemners in their meeting after considering the relevant papers arrived at a finding that they had considered the A.C.Rs. for five years of the petitioner starting from 1996-2000 and they found adverse remarks against him in the A.C.Rs for 1997, 1998 and 1999 and therefore they found him not suitable for promotion to the next higher post as is evidenced from the decision of the D.P.C. dated 30.6.2002 as appeared in paragraph No.1 of Annexure 'VI' of the affidavit-in-opposition in reply to the cause shown filed by the respondent No.1 dated 5.8.2002 and on similar grounds they have also found him not suitable for the post of Superintendent Engineer (P&D/QS). Therefore, these documents clearly point out to the fact that although both the sets of contemners were setting up their plans not to give the petitioner any chance to get a promotion to the next higher post although it seems that he was otherwise fit for promotion to the said post.

15. One of the other contentions raised by the contemners was that the second set of contemners are members of the D.P.C. and as Member of the D.P.C. they have considered the materials which were placed before them by the department through the working paper and they have taken decision on the basis of the materials available on record. Therefore, after considering the materials on record they did not find the petitioner suitable for promotion to the next higher post and that decision is supported by the materials on record. Therefore, it cannot be said that with mala fide intention the second set of respondents denied the benefit of promotion to the petitioner. We do not find any substance in this submission because it must be remembered that both the sets of contemners are the highest officials of CAAB. They are the Chairman, Director (Administration), Member (Finance) and the Chief Engineer of CAAB and by virtue of holding those posts they are Ex-officio member of the D.P.C. Therefore, as they are the highest officials of the CAAB and as Chairman, Director, Member and the Chief Engineer it was their obligation to prepare the working paper correctly reflecting the true state of affairs. But it is found that repeatedly wrong and false information's were given in the working paper withholding the facts. Further it is one and the same set of contemners who prepared the working paper and considered the same in their duel capacity as members of the D.P.C. Therefore, they had their own knowledge as Chairman and highest officials of the CAAB as to the true state of affairs. So, it does not lie in the mouth of the second set of contemners to say that they have been implicated in the contempt proceeding as

member of D.P.C. It is correct that they are both highest officials of the CAAB as well as member of the D.P.C. and in both the capacities they have repeatedly denied the opportunity of promotion to the petitioner which is not expected from the public servant. Moreover, it was brought to our notice that the respondent Nos. 6 and 7 joined on 30.6.2002 as Chief Engineer and Director (Administration) respectively but fact remains that although these two contemners assumed their office as Chief Engineer and Director(Administration) respectively on 30.6.2002 but nevertheless they were in the service of the CAAB from long ago prior to their assumption of the present office. Prior to his promotion as the Chief Engineer, the respondent No.6 was a Superintendent Engineer under the CAAB and the respondent No.7 prior to his appointment on 30.6.2002 as Director (Administration) was holding the post of Director (Finance) of CAAB. Moreover, it appears from Annexure 'IV series' at page-39, that is, the notice of the D.P.C. dated 29.6.2002 that the notice for the meeting was signed by respondent No.7 on 29.6.2002 as Director (Administration). This document also belies the contention of the respondent contemner No.7 that he for the first time assumed his office as Director (Administration) on 30.6.2002. These are the documents of the contemners and these have never been disputed by the contemners and therefore it is established beyond any doubt that the contemners repeatedly and deliberately flouted the decision of this court in the name of considering the case of the petitioner for promo-tion.

16. Another contention of the second set of contemners is that it is not true that by taking adjournment in the hearing of this Rule on 25.6.2002 they had hurriedly held a meeting on 30.6.2002 only to deprive the petitioner from the benefit of getting any relief pursuant to the decision of this Court. This also does not appear to us to be factually correct. The petitioner in his affidavit-in-reply to the affidavit in opposition of the contemner No.7 filed on 3.11.2002 actually stated in paragraph No. 3 of that reply that the respondents with the intention to deprive the petitioner from his right of promotion hurriedly prepared the working paper dated 27.6.2002 and this is evident from No.1 promotion pro-ceeding dated 30.6.2002 which has been an-nexed as Annexure 'IV' of the affidavit in-opposition of contemner-respondent No.5 where it has been mentioned as under :-

"[illegible]
[illegible]
[illegible]

and thereby it has been contended by the petitioner that the working papers were not prepared prior to 27.6.02 because in the said proceeding there was no mention about any other date rather the date has been mentioned as 27.6.2002. when the said committee hurriedly took decision for promotion and finally issued promo- tion letter on 30.6.2002 and before the next hearing date of this Rule which was fixed on 6.7.2002. Even if it is assumed for argu- ment's sake that the working paper was pre- pared on 27.6.2002 in a regular way then also it is found that it was prepared on a date after obtaining adjournment in this matter on the previous day. Therefore, even if we assume that the working papers were prepared on 27.6.2002 that was prepared with the sole intention of depriving the petitioner because the working papers were not prepared on 14.5.2002 as claimed by the contemners. Be that as it may, that it was the intention of the contemners to hurriedly fill up the post of Superintendent Engineer depriving the petitioner is evident from yet another fact. If we examine the earlier notices which were issued by the competent authority it appears that in respect of the meeting of the D.P.C. it is found from Annexure 'III' at page 30 of the affidavit-in-opposition filed by the contemner No.,5 on 5.8.2002 that the notice for the meeting held on 23.4.2001 was issued on 16.4.2001 but in the instant case after taking adjournment on 25.6.2002 the contemners prepared the working papers on 27.6.2002 in hot haste and it appears from Annexure 'IV' at page 39 of affidavit-in-opposition of the said date that the notice was issued on 29.6.2002 and the meeting was held on the 29.6.2002 and the decision to promote Harunor Rashid Bhuiyan was also taken on that date and the letter of promotion was also issued on that date. Therefore, it is found that the con- temners were very fast in doing these acts in hot haste only to deprive the petitioner of any promotion. In the notice dated 29.6.2002 there is a reference that pursuant to the meeting dated 22.6.2002 the adjourned meeting was called on 30.6.2002. From Annexure 'IV' at

page 39 it further appears that a meeting was held on 27.6.2002 of the D.P.C. but no paper has been produced before this court to substantiate that contention and even if we accept that a meeting was held on that date that too was after taking adjournment on 25.6.2002 which exhibits the evil design of the contemners to flout the decision of this court and not to give the petitioner any pro-motion. Here it may further be mentioned that even if the working paper was prepared on 14.5.2002 as claimed by the contemners, that was also done after the issuance of the initial rule on 18.4.2001 and after filing of affidavit-in-opposition of the first set of contemners. Therefore, the evil designs of the contemners are clear and obvious that by any means they would deprive the petitioner of the benefit of the judgment of this court. It further appears that the contemners are so much vindictive to the petitioner that after the post of Superintendent Engineer fell vacant the contemners in violation of the Service Rule gave current charge to Mr. Harunor Rashid Bhuiyan who was not eligible to hold the current charge of that post and he continued in that post for long two and half years to the deprivation of the petitioner and others. On top of that it further appears that in order to satisfy the greed of the B.Sc. engineers and/or A.M.I.E. they promoted said Harunor Rashid in viola-tion of Service Regulation 15(5) of 1988 and in order to give him promotion superseding the petitioner they have misquoted the rele-vant provision in the working paper and on the basis of that misleading and fabricated information the second set of contemners tried to justify their act to promote the said Harunor Rashid Bhuiyan to the post of Superintending Engineer on 30.6.2002 inasmuch as firstly he was not qualified for promotion to the post of Superintendent Engineer as he did not com-plete five years of service in the feeder post nor he qualified in any departmental exami-nation to get accelerated promotion even then on some extraneous considerations the second set of contemners have given him promotion depriving the petitioner most illegally al-though he was otherwise fit for promotion to that post. From our aforesaid discussions it is clear that there is no substance in the submis-sions of Mr. Razzaq that on consideration of merit said Harunor Rashid was promoted to the post of Superintendent Engineer and the case of the petitioner was also considered by the D.P.C. True in the working paper the name of the petitioner was shown in Sl. No.1 but certain stigma was attached to his service career and the D.P.C. also relied on the A.C.Rs. of the petitioner for the years 1997-99 although the A.C.Rs. of 1998-99 were sub-sequently rejected by the department for not filing within time by the controlling officer and similarly they have suppressed the fact that the counter signing authority disagreed with the controlling authority in the A.C.R of 1997 and found him fit to be promoted and all these facts were deliberately concealed and suppressed by the second set of contemners in their working papers and on the basis of these misleading working papers they have taken the decision in their duel capacity as members of D.P.C. and by incorporating these misstatements in the working papers they have illegally influenced the Joint Secretary of the controlling Ministry who was also a member of the D.P.C. and it is our finding that they have deliberately suppressed the facts to him and this wrong statements were incorporated in the working paper only to bias the mind of the controlling Ministry who had no occasion or any knowledge about the true state of affairs and this was done with the sole purpose of blocking the promotion of the petitioner who is in fact otherwise fit for the promotion due to his brilliant past service record.

17. Here it may further be mentioned that ultimately on 20.11.2002 the respondent No. 8 also filed an affidavit-in-opposition to the additional affidavit dated 6.11.2002. We have carefully considered the statements made therein and the papers annexed therewith but we do not find that these have any bearing upon the instant case rather it appears to us that the contemners have manufactured these documents for the purpose of this case and to justify their illegal acts and omissions. The papers annexed with that affidavit-in-opposition also demonstrate other illegal activities of the contemners. In annexure '1'of the affidavit in opposition by respondents No.8 dated 20.11.2002 they have annexed the relevant portion of A.C.R. of 1998 and it appears that the said A.C.R. was signed by Mr. Ataur Rahman

a controlling officer on 8.8.2001 and the undisputed fact is that he retired on 30.12.99 and his L.P.R. came to an end on 30.12.2000. Therefore, the Contemners Respondents plea of signing the Petitioners A.C.R. within time is belied by this document and that officer had no authority in law to issue any such letter after his retirement. They have annexed other papers with this affidavit-in-opposition which runs from page-9 to 19 but we do not find any relevancy of the same with the point in issue in the instant rule.The same also is the case of A.C.R. for the year 1999 which is annexed as Annexure- 'A1' to the said affidavit-in-opposition wherefrom it appears that A.C.Rs. were also signed by the Controlling officer on 8.8.2001 who retired on 30.12.99. Therefore, it appears to us that the second set of contemners have no respect for truth and they do not hesitate to tell lies which is most unbecoming of public servants like the contemners. Therefore, it appears to us that they went out of their way to forge and create antedated papers to feed their grudge and justify their illegal activities to deprive the petitioner of his rightful promotion. It further appears from Annexure 'A1' that they have annexed the letters dated 30.11.99 and 29.11.99 and some other documents but inspite of our best endeavour we have failed to discover relevancy of these documents with the present issue. Amongst those a letter dated 23.11.99 allegedly written by M/S. Mosharraf Hossain and company is annexed wherein it has been alleged that as back as on 21.11.99 the petitioner rebuked the employees of the contractors for which they had written that letter to the Chairman of CAAB and there is a note in that letter which is addressed to the controlling officer with a request to enquire and submit his comment/report but nothing has been placed before us to show that alleged allegation was ever brought to the notice of the petitioner or on enquiry the allegation was found correct. Therefore, it appears to us that this is nothing but another vain attempt to vitiate the mind of the court so that the contemners can justify their illegal acts of not considering the case of the petitioner as and when occasion for promotion arose.

18. Mr. Razzaq on the first day of his argument very emphatically submitted that the cause of action of this contempt petition arose out of legal notices as annexed as Annexures 'A' and 'B' to the contempt petition and in due course those grievances were considered by both the sets of contemners and therefore there is no cause of action for this rule. We also find it difficult to accept his contention. On a perusal of the legal notices it appear that at certain point of time the contemners instead of obeying the direction of this court made an attempt to deprive the petitioner of getting any chance for promotion to the next higher post when a vacancy was created on the retirement of Mr. Ataur Rahman, the then Superintendent Engineer. With the ill design of blocking the promotion, the contemners took steps to appoint said Ataur Rahman for two years on contract basis on the false ground that there was no eligible person to be considered for promotion to that post but the said proposal was turned down by the controlling ministry as the petitioner and another person were eligible for promotion to that post. Therefore, by the second legal notice the petitioner brought it to the notice of the first set of contemners and ultimately the attempt of the contemners to appoint Mr. Ataur Rahman on contract basis failed not because good sense prevailed on the contemners rather due to the intervention of the Ministry, but it further appears that the contemners left no stone unturned to undo the claim of the petitioner and also tried their best even to influence the Ministry by making false representation. Besides, these legal notices do not, in fact, give rise to the cause of action of this contempt petition because the crux of the allegation of the petitioner is that in the judgment of this court given in writ petition No. 1152 of 1998 Sl. No. 10(ka), schedule 2(cha) of Service Rules were made non applicable to the petitioner and it was further directed that his case for promotion to the next higher post would be considered if he is otherwise found fit. There are series of activities which we have already referred to hereinbefore which consistently indicated that right from the beginning both the sets of the contemners one after another were bent upon the petitioner not to promote him and the allegation of the petitioner is that in violation of the direction of this court they have illegally withheld the promotion of the petitioner by forging documents and

suppressing facts from the D.P.C. and thereby tried to make out a show of considering the Petition's Case for promotion on the basis of such fabricated and created papers. This disobedience is continuous and still continued. Until and unless the judgment passed in writ petition No. 1152 of 1998 is in effect carried out by contemners on the basis of true state of affairs they will remain under the legal obligation to implement the same. Since they are found to have been violating and disregarding the judgment of this High Court there is no other alternative but to find them guilty of contempt of this Court. The series of acts and misdeeds which we have already mentioned above exposed the evil design of both the sets of contemners and they have constantly flouted the authority of this court and did not obey the direction of this Court in the garb of considering the Petitioner's case by the D.P.C. on the basis of false and fabricated adverse remarks. Therefore, we find all the contemners guilty of contempt of this court for disobeying the judgment and order passed by this court in writ petition No. 1152 of 1998. It appears that the contemners considered themselves as Memorial Lords and as if the Petitioner was surf under them.

19. We have already noted that lastly on 6.11.2002 the petitioner has filed an additional affidavit and the second set of contemners filed an affidavit-in-opposition thereto on 20.11.2002 and from a perusal of the contents of the affidavit-in-opposition of respondent No.8 the evil design of the contemners are further exposed. In paragraph No.2 of the said affidavit-in-opposition it is stated that the contemners have simply forwarded the application of Mr. Md. Ataur Rahman, the then Superintendent Engineer for appointment on contract service but from the materials on record it appears that the contemners recommended his case on the ground that there was no competent person to be promoted to the said post and when the Ministry pointed out that the petitioner and another person are eligible for promotion and why their case should not be considered, the contemners vide their letter dated 23.12.99 stated that they are neither B.Sc. Engineer nor AMIE rather they are diploma engineer. Therefore, they are not eligible for promotion to the post of Superintendent Engineer and the same contention was also raised by the contemners in their previous letter dated 15.11.99 and from these two letters it is clear that the contemners intentionally suppressed the fact that so for it relates to the petitioner this Court by the judgment passed in Writ Petition No. 1152 of 1998 has removed that bar for his promotion if he is otherwise found fit. Therefore, from these two letters it appears that at that point of time according to their aforesaid letters they did not consider the case of the petitioner because he is a diploma engineer and not on the ground that his A.C.Rs. were full of adverse remarks. This deliberate suppression of fact clearly indicates that the contemners were determined not to consider the case of the petitioner for promotion at all. It is stated in paragraph No.8 of the additional affidavit of the petitioner dated 6.11.2002 that affidavit in reply 20.11.2002 stated that as per A.C.R., Service Rules, Form 'Ka', Sl. No. 'Cha' if there is any difference between the controlling officer and counter signing officer then the comments of the counter signing officer is only acceptable which has not been followed by the contemners in the A.C.R. of the petitioner for the year 1997 and in the working papers they have intentionally reflected the comments of the controlling officer instead of counter signing officer only to influence the mind of all concerned. In reply to the statements made in paragraph No.8 of the said additional affidavit of the petitioner dated 6.11.2002 the respondent No.8 in his affidavit in reply dated 20.11.2002 stated that it is not proved that if there is any difference between the controlling officer and the counter signing officer then the comments of counter signing officer shall prevail which is absolutely false and contrary to materials on record. Then it is contended by him that in the A.C.R. of 1997 no difference of opinion is seen between the controlling and counter signing officers but this is a blatant lie and suppression of fact. The A.C.R. of 1997 has been placed before us and it is found that the counter-signing officer differed with the comments of the controlling officer and he recommended the petitioner for promotion. Similarly, it has been stated by the petitioner in paragraph No.7 that in view of the judgment of Writ Petition No. 1152 of 1998 it cannot be said that the petitioner being a diploma engineer is not eligible for promotion and this contention of the petitioner in fact has not been denied by the contemners. It further appears

that in this affidavit-in-opposition the contemner No.8 has, in fact, admitted that Mr. Harunor Rashid Bhuiyan was holding the current charge of Superintendent Engineer (Civil) from 30.12.99 in violation of Service Rules, Current Charge Rules, Clause-2 (Cha) and (Gha) but they tried to refute the allegation on the ground that it is not relevant in the present case but fact remains that in violation of rules Mr. Bhuiyan was given the charge. It is difficult to accept the contentions of the contemners inasmuch as the definite allegation of the petitioner is that to deprive the petitioner from the benefit of the judgment of the Writ Petition No. 1152 of 1998 they in order to block the promotion of the petitioner instead of promoting any one to that post had put the said Harunor Rashid Bhuiyan in current charge and allowed him to continue for about two and half years though he was not eligible to hold current charge as he did not serve as Executive Engineer in the feeder post for five years. In paragraph No. 10 of the additional affidavit the petitioner further stated that the respondent-contemners with malafide intention have prepared and submitted this petitioner's A.C.Rs. for the years 1997,1998 and 1999 without following the provisions of clause Nos. 10,15,17 and 19 of A.C.R. Rules and thereby deprived the petitioner of his promotion as Superintendent Engineer vio-lating this Court's order and from the affidavit-in-opposition it appears that the contemners have, in fact, admitted the allegation. Their only plea is that the A.C.Rs. were written by his controlling officer and in this matter the members of the D.P.C. had nothing to do with the preparation of the A.C.R. and then he has stated that the petitioner's A.C.Rs. were sent back to his controlling officer to be re-written. The A.C.Rs. went from bad to worse. The A.C.Rs. were not expunged rather returned with supporting documents of the bad activities of the petitioner. Here it may be mentioned that we have already indicated that the contemner Nos. 5-8 are the highest officials of the CAAB and they are also members of the D.P.C. So, as the highest officials it was their legal obligation to see that the A.C.Rs. are correctly reflected in the working paper but they allowed the concerned officials to distort the facts and to reflect incorrect comments and for that matter they are responsible as the highest officials of the CAAB and also responsible as members of the D.P.C. because they did not care to see if the working papers were correctly prepared by the concerned officials, more so when occasions after occasion the petitioner's case was blocked on false grounds. It is found from the materials on record that these A.C.Rs. were written by Mr. Md. Ataur Rahman long after the expiry of his L.P.R.period. Therefore, under the law he had no authority to write the petitioner's A.C.Rs. And the A.C.Rs of 1998 and 1999 were scrapped and the petitioner was asked to fill up fresh A.C.R. Forms and he submitted the filled up Forms to the authority on 14.10.2001 and this fact is not denied by the contemners and it is substantiated by Annexure 'W', a letter dated 14.10.2001 of the petitioner to the Chief Engineer as evidenced from additional supplementary affidavit of the petitioner dated 5.8.2002. The respondents knowing fully well that the A.C.R.s for the year 1998 and 1999 were first written by Ataur Rahmanand and those A.C.R.s were not accepted yet they had repeatedly relied on those remarks whereas from the re-written A.C.R.s for the years 1998 and 1999 it is found that there is no adverse remarks against the petitioner.

The evil design of the contemners is further evident from a further fact that the Tripartite Audit Committee in their meeting held on 3.12.98 have exonerated the petitioner from returning the money yet the contemners during the pendency of the rule to justify their misdeed annexed a letter showing that Director (Administration) asked the Director (Finance) to realise that amount from the petitioner but the petitioner has never been asked by any letter to return the said money. The contemners did not stop there. In order to justify their illegal act of placing Mr. Harunor Rashid Bhuiya in the current charge of Superintendent Engineer and to justify his promotion to the said post they have even fabricated papers. It appears from the working papers of the D.P.C. dated 27.6.2002 that the comments in the A.C.R. for 1997 of Mr. Bhuiyan is that, '????? ??????????? ?????? Whereas from the working papers of the D.P.C. dated 30.6.2002 it is stated that though Mr. Bhuiyan has not served in the feeder post for five years yet his controlling officer has commented in the A.C.R. of the said year '??????? ?????

????????? ??????? ??? ???? (????????? ??? ??????? ??? ????? ????)? as evidenced by Annexure 'D', that is, the working paper dated 18.4.2001 as annexed with the supplementary affidavit of the petitioner dated 3.7.2002 and for the same person in the working papers of the D.P.C. dated 30.6.2002 it is commented that although he has not completed 5 years in the feeder post but due to his brilliant past service record and extraordinary achievement his controlling officer has recommended for accelerated promotion. All these documents are the documents of the contemners and not disputed by anybody and from these three working papers it appears that three different comments have been made in respect of Mr. Bhuiyan for the same year which exposes the illegal activities of the contemners and that shows that they did these misdeeds to deprive the petitioner from getting benefit of the judgment of the aforesaid Writ Petition No. 1152 of 1998 and to promote said Bhuiyan. It further appears from record that the A.C.R. Form for the year 2001 was filed by the petitioner on 24.1.2002 yet it was not placed before the D.P.C.

20. We have studied the other two decision as relied by Mr. Razzak namely the cases reported in 22 BLD (H.C.D.)283 and 22 BLD (A.D.)1, as best as we could do but in the facts and circumstances of the present case they have no manner of application.

21.Things may not be as they are seen. in- spite of his long beard George Bernard Shaw was not a Sannashi. So is the case here. The contemners in order to deprive the petitioner of his promotion to the next higher post and to get rid of the rigour of the judgment of this court ultimately made a show that they have considered the case of the petitioner in the meeting of D.P.C. held on 30.6.2002. From the materials on record it appears that it was a mere show and they camouflaged things to deprive the petitioner of any promotion to the next higher post right after the judgment of the aforesaid writ petition and till today they have made attempts after attempt to block.the promotion of the petitioner both by suppressing facts and creating fabricated documents which seems to us most unbecoming of the public servants like the contemners. Thus, it appears that there are overwhelming evidence on record that the contemners deliberately and intentionally did this mischief to the petitioner only to deprive him of the benefit of the judgment as it appears from the record that his valid A.C.Rs. are full of good comments and it seems that he was otherwise fit for promotion. Therefore, we hold that by the aforesaid acts and omissions all the contemners have deliberately and willfully violated this court's order both individually and jointly on various false pretexts and thereby they have exposed themselves to be condemned for the same. It appears to us that the petitioner has conclu- sively proved the intentional and deliberate violation of this court's order by the contemners.

21. For the reasons and discussions made herein above and considering the facts and circumstances of the case, we find contemner No.1 Mr. M. Iqbal Hossain, former chairman and contemner No. 5 Mr. Lutfur Rahman, the present chairman of CAAB, contemners No.2 Mr. Asaduzzaman Chowdhury, former Chier Engineer and contemner No. 6 Mr. Anser Ali, the present Chief Engineer of CAAB, con- temner No. 3 Mr. Md. Nazrul Islam. former Director Administration and contemner No. 7 Mr. Moklesur Rahman, Director (Finance) at present Director Administration in charge of CAAB and contemner No.4 Mr. Sayeed Ali Nasim Khalequzzaman, former Deputy Director (Administration) of CAAB and contemner No.8 A.M.M. Farhad, Member Finance and Member Administration in charge of the CAAB during their tenure in office have deliberately and willfully violated this Court's order passed in W.P. No. 1152 of 1998 both jointly and severally and we find all of them guilty of contempt of this Court and accordingly be punished.

Now comes the question of sentence. In Article 152 of the Constitution the definition of State includes

Parliament, the Government and statutory public authorities and statutory public authority has been defined as any authority, corporation or body the activities or the principal activities of which are authorised by any act, ordinance, order or instrument having the force of law in Bangladesh. The admitted position is that the CAAB is a statutory authority and the contemners are the highest officials in the hierarchy of that statutory corporation wherein the petitioner is also the Executive Engineer of the said statutory authority. The contemners and the petitioner both are public servants as defined in Act X of 1974. The contemners are not private employers and the petitioner is not a private employee under the contemners and he is not governed by the rule of Master and Servant. The service condition of the petitioner is governed by the statutory service regulation. Therefore, the contemners as highest officials of a statutory authority were under the legal and constitutional obligation to carry out the direction of this Court given in the aforesaid judgment but they considered themselves to be the mightiest persons of the CAAB and thought that they are above everything. They thought that they are the all powerful Master of the petitioner who must be always at their mercy and as he has incurred the displeasure of these highest officials he must pay for it through out his tenure of office. This kind of attitude is most undesirable and we shudder to note that this attitude was constantly demonstrated by all the contemners when dealing with this poor petitioner. We do not find any reason why the petitioner was not promoted to the post of Superintendent Engineer. The only fault of the petitioner is that he is an unfortunate man who is not a B.Sc. in engineering and therefore he cannot have the equal chance of promotion with the B.Sc. degree holders as if the B.Sc. Engineers are Brahinins and the petitioner is an untouchable schedule Cast diploma holder. Be that as it may, it is apparent and obvious from the materials on record that they have intentionally and deliberately flouted the order of this court passed in Writ Petition No.1152 of 1998. Mr. Razzaq emphatically argued that the petitioner has miserably failed to spell out any mens rea or intention but fact remains that mens rea or intention has no role to play in contempt matters. The only consideration that has to be taken into consideration is whether by the acts or omissions the alleged contemners have flouted or disobeyed the order of this court and it has been found by us that they have done so deliberately and intentionally. It was their duty as public servants to come in aid of this court but they have decided voluntarily not to implement the judgment of this court rather they showed disrespect to the same.

22. We are satisfied from the facts discussed above that there has been an inordinate and intentional delay in executing the order of this Court and also a total failure to obey this Courts order at all. in this connection we may quote the observation of this Court given in the case of Mrs. Tahera Nargis Syed versus Mr. Shamsur Rahman reported in 1990 BLD (H.C.D.) 73 which is as follows :

23. “In contempt matters the intention of the contemner is not relevant. It is the effect of the contemner's action which is to be taken into consideration in deciding whether contempt was committed or not. The effect of the contemners action is that the sauctity of the Courts Order has been flouted. The dignity and authority of the Court in issuing a solemn order has been trampled and transgressed before the very eyes of the watching family members of the detenu. The Court cannot be a silent spectator to this state of affairs. We must make it clear that when this Court passes an order it is meant for execution and not for flouting.”

24. Although the said observation was made in a contempt case arising out of a detention case the same equally applies with all its force in the present case.

25.Therefore, this is a case in which we must take a strict view of the offence committed by the contemners. Therefore, we decide to inflict the highest punishment upon the contemners.

26. There is another aspect of the case. The general concept of the lawyer is that in contempt proceedings the Court can either punish or let off the contemners and there is no other way out. It is also generally thought that the contempt application is not an execution proceeding and no consequential relief to put into execution the main judgment can be given in contempt proceedings. But this is an erroneous view. It is well settled that in an appropriate case the mere imposition of imprisonment or fine or both may not meet the ends of justice and there may be necessary to pass an order to purge the contempt by directing the contemner to implement the judgment immediately and further issuing necessary and consequential directions for enforcing the same. In this case justice will not be done properly by merely going into the violation of the order and find out who is guilty or not guilty of contempt but by making effective direction to promote the petitioner to the post of Superintendent Engineer for ends of justice and preservation of the rule of law.

27. If any authority is required we may refer to the cases reported in AIR 1984 SC 1826 = 1985 Cr.L.J. 353 and AIR SC.464= 1990 Cr.L.J. 316. The aforesaid decision of the Indian Supreme Court has abundantly made it clear that in contempt preceding the Court has the full right not only to punish but also to grant consequential relief. Similarly in very clear terms the Calcutta High Court in two Division Bench decisions namely AIR 1958 Cal.474 and AIR 1959 Cal. 106=1959 Cr.L.J.17 described the contempt proceedings a form of execution wherein the Court can give direction to close the breach in addition to punishing the contemners.

28. Accordingly, the rule is made absolute and all the contemners are found guilty of contempt of court for disobeying this court's order dated 12.5.1999 passed in Writ Petition No. 1152 of 1999 and they are convicted and sentenced to suffer simple imprisonment for 6 (six) months each and to pay a fine of Tk. 2,000/- (two thousand) each to the petitioner from their own purse within 4 (four) weeks from date, in default, to suffer simple impris onment for a further period of 1 (one) month each. Besides, the contemners are directed to promote the petitioner to the post of Superintendent Engineer immediately.

29. The contemners Nos. 5-8 who are at present, Chairman, Chief Engineer, Director (Finance and Administration) and Member (Finance) respectively of the CAAB, and the contemners Nos. 1 and 3 who are past Air Commodore, Air force Headquarter, Dhaka Cantonment, Dhaka and Member (Planning and Operation), Bangladesh Export Processing Zone (BEPZA), Headquarter, Shahbag, Ramna, Dhaka, are directed to surrender before the Deputy Commissioner, Dhaka, and the contemners Nos. 2 and 4 who were the Chief Engineer and Deputy Director (Administration) respectively of the CAAB, are directed to surrender before the Deputy Commissioners of the concerned districts in which they are presently residing within 4 (four) weeks to serve their sentences, failing which the concerned Deputy Commissioners will take appropriate steps to arrest and send them to the prison for serving out their sentences.

30. The Deputy Commissioners of the concerned Districts may procure the present whereabouts of the contemner Nos. 2 and 4 as and when requires from the CAAB.

31. Let a copy of this judgment be sent to the Ministry of Establishment for perusal and necessary action.