

A CASE STUDY OF THE PROCEDURE FOR ADJUDICATION
OF GRIEVANCES OF PUBLIC EMPLOYEES

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Preface

The case study on the 'Procedure for Adjudication of Grievances of Public employees' was undertaken as a part of the research programme of BPATC to strengthen the instructional capability of the institute so that cases thus studied might be used as class-materials. The area of conduct and discipline is so subtle, touchy and controversial that it was difficult to venture in this field. However, this was perhaps the first study of this kind in Bangladesh. The study was principally a case study of six cases although an adhoc opinion survey is also be included in the study.

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Summary

This is a case study to find out and analyse the grievances of the public employees. The Constitution provides for a group of people in the service of the Republic. The Penal Code terms them as 'public servants' and the Civil Procedure Code names them as 'public officers'. In some other laws, rules, case laws and judicial pronouncements, the term 'government servants' and 'public employees' have been used. For the purpose of this study, the term 'public employees' has been preferred.

The purpose of the study was to identify to what extent the existing laws and rules for adjudication of grievances of the public employees are put into practice effectively. Grievance, in this study means individual grievance and not the group grievance. Similarly, the grievance in respect of ACR was excluded from the study.

The study elaborates the present system of ventilating grievances. There are provisions for appeals, review and revisions under disciplinary rules. Moreover, there is a quasi-judicial body i.e. Administrative Tribunal/Administrative Appellate Tribunal. Under labour law, Labour Courts and the Labour Appellate Tribunal look after the grievances of the employees.

In the present study, six cases were undertaken. One is the case of a punishment where the incumbent felt that justice was not done to him and the Appellate Tribunal was in his favour. In the second case, the grievance of a public employee is owing to change of designation, frequent transfers and sanction of leave without pay while leave was due at his credit. The third case is that of a grievance of a government employee who has been superseded by promotion by his juniors. The fourth case is that of a government employee who being aggrieved took the shelter of

the Appellate Tribunal, but the decision was not fully in his favour. The fifth case is that of a delayed procedure for which a government employee is supposed to have incurred loss. And the sixth case is the grievance of an employee under labour law for arbitrary action by the employer relating to his service privileges. The summary of the cases may be found below :

Case No. 1 : Mr. H, a member of erstwhile EPCS (Executive) class I, was transferred, within only 56 days of his posting as Deputy Commissioner, Y district and posted as Deputy Director of an autonomous body P. Mr. H showed reluctance to join as Deputy Director, as according to him, the posting was not befitting for him. He was stand-released and placed under suspension. Departmental proceedings were started against him for the charge of misconduct. In the departmental proceedings, penalty of reduction to a lower time scale was imposed upon Mr. H. The order of penalty was set aside by the Administrative Appellate Tribunal.

The decision of withdrawal of an officer within only 56 days of his posting as Deputy Commissioner and placing him to a post not befitting for him and then again placing him under suspension and initiation of departmental proceeding for not joining his new posting even before the expiry of joining time were the cause grievance.

Case No. 2 : In 1984 Mr. R was serving as Supervisor, Works Programme, Sylhet Sadar Upazila. At that time due to the creation of a new Department, called the Local Government Engineering Bureau (LGEB), he was redesignated as draftsman. Being aggrieved, for this change of designation which involved change of work also, Mr. R filed a civil suit which was rejected by the court. Within a span of two and half years Mr. R got eight transfer orders (including one in a remote district) of which five were cancelled and three were carried out. Within this period Mr. R fell ill after leaving the Head Quarters on leave of four days. After recovery he tried to join but by that time he was

transferred twice. Ultimately after a lapse of almost a year, Mr. R resumed duty but got no pay for two months.

All these could be avoided if the concerned authority showed tolerance and farsightedness in dealing with a low paid employee who was already aggrieved for change of his designation and nature of work.

Case No. 3 : This is a case of apparent supersession by junior colleagues. Mr. G, an officer of Livestock Department was superseded by 4 of his juniors apparently because of misreporting. He has not even been given the privilege of higher time scale though allowed to some of his juniors. Mr. G has applied to all concerned but without any effect.

Case No. 4 : Mr. M, while practicing law at the age of 47 years, was recruited as a Magistrate. He was given only 15 days training and was hurriedly posted as an Upazila Magistrate having cognizance power and other powers of erstwhile Subdivisional Magistrates. He was departmentally proceeded against on the charge of inefficiency and misconduct and was ultimately removed from the service being found guilty of charges.

Not being trained properly and hurriedly vested with the powers of erstwhile Subdivisional Magistrate, Mr. M overestimated his power and position and over exercised it. He was removed from service. But the Administrative Appellate Tribunal advised the govt to give him a reasonable opportunity of showing cause.

Case No. 5 : Mr. L, an Upazila Rural Development Officer, BRDB, X upazila was placed under suspension. After about four and a half months, departmental proceedings were started against him and formal charge was communicated to him. Though the authority has decided to impose the penalty, it could not be acted upon, as criminal cases are pending against the accused and the Anti-corruption department is in charge of cases. The accused

is under suspension for more than 3 years and 4 months.

Case No. 6 : The sixth case is about an ex-Machine-man, Drum Factory, Tejgaon, Dhaka against the Managing Director and Managers of National Engineers Ltd. The Machine-man was appointed as a Machine-helper in 1977 when the firm was under the control and management of Bangladesh Steel and Engineering Corporation (BSEC). He was later promoted as Machine-man. He was also the President of Trade Union of the Factory and in such capacity he ventilated the grievances of the employees. The Machine-man was not in good health. When he was operated for an illness and could not attend his duty for about two months, his management discharged him on the ground of his physical unfitness without, however, consulting any physician. He had the argument that it was done because of his trade union activity which was lawful. But the incumbent did not approach the Labour Appellate Tribunal apparently because he was poor, had a 'tabligi' bent of mind and feared loss of accommodation instantly.

Besides, the above six cases, an opinion survey of 200 officials belonging to generalist cadres, specialist cadres non-cadre managerial personnel, non-technical personnel and others like educationists, planners and statisticians was made. Opinions of 50 persons belonging to another experimental group have also been incorporated. 88.5% of the respondents opined that timely disposal of grievances is few and far between, 68.5% viewed that the existing laws and rules for disposal of grievances are inadequate. 69.0% viewed that the main cause of ineffectiveness of the grievance procedure is the carelessness and lack of sympathy of the concerned officials. 95% of the respondents viewed that failure to remedy the grievances in time affects efficiency of the public employees.

Major Recommendations

1. Although there is provision for taking into task the person or persons responsible for failure to dispose of departmental proceeding in time, hardly it is being done. This provision may be strictly followed.
2. The provision if automatic discharge of the accused of the charge brought against him in case of failure of the authority to dispose the case in time is also not followed in all the cases. The authorities may be compelled to carry out this provision in toto. Any negligence shown by any quarter may be taken into task seriously.
3. Provisions of the Government Servants(Discipline and Appeal) Rules, 1985 may be amended as follows :
 - a) There should be provision to revive a case in the event of discharge of the accused person for failure of timely disposal of the case on individual merit.
 - b) In the enquiry procedure of cases calling for major penalties, the formation of Board of Inquiry consisting of three members may be made compulsory.
 - c) Time limit for disposal of cases under rule 6 and 7 may be extended.
 - d) The provision of presumption of agreement of PSC with the decision to award penalty if no advice is received within twenty working days may be changed. The time limit may be increased and PSC may be asked to ensure examination and sending of opinion of all the cases referred to it.
 - e) The provision for staying of imposition of any penalty in the departmental proceedings till the disposal of the presecution or legal proceeding against a government servant pending in any court on the same issue often

drags a departmental proceeding case for years together. This provision may be suitably amended.

4. The provision of automatic suspension of a government employee on being taken into custody as given in Rule 73 of Bangladesh Service Rules may be amended. In case of arrest of any government employee, the case should be decided on its own merit.
5. The Government Servants(Conduct) Rules, 1979 may be suitably amended so that government servants may allow their dependants to deal in trade and no permission may be required by a government servant to construct houses for normal residential purposes.
6. There should be a time limit for anti-corruption cases also, so that the sufferings of the accused are minimised.
7. Labour law should be suitably amended as to make the employers responsible for medical treatment of the employees. No one should be discharged on medical ground without a certificate by a government appointed physician.
8. A decision is necessary whether leave without pay should be granted as a punishment. If so, it should be included in the disciplinary rules.

Chapter-IINTRODUCTION

- a) Background of the study: The Constitution of the People's Republic of Bangladesh provides for a group of people who would be 'in the service of the Republic'. It further provides that every person in the service of the Republic has a duty to strive at all times to serve the people. The constitution uses another term i.e. 'public officer'. Public officer means a person holding or acting in any office of emolument in the service of Republic, while 'the service of the Republic' means any service, post or office whether in a civil or military capacity, in respect of the Government of Bangladesh, and any other service declared by law to be a service of the Republic¹.

The civil procedure code 1908 defines a 'public officer' as follows :²

- (a) every judge;
- (b) every member of the Civil Service of the Republic;
- (c) every commissioned or gazetted officer in the military, naval or air forces of Bangladesh while in the service of the Republic;
- (d) every officer of Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial

¹ The Constitution of the People's Republic of Bangladesh, Art. 152

² The Civil Procedure Code 1908, sec. 2(17).

process, or to preserve order, in the Court, and every person especially authorised by a Court of Justice to perform any of such duties;

- (e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;
- (f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
- (g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interest of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and
- (h) every officer in the service or pay of the Republic, or remunerated by fees or commission for the performance of any public duty.

However, more usually the term 'public servant' is in use which is described in the Penal Code as follows:³

First - (Omitted);

Second - Every Commissioned Officer in the Military, Naval or Air Forces of Bangladesh;

Third - Every Judge including any person empowered by any law to perform, whether by himself or as a member of anybody of persons, any adjudicatory function;

³ The Penal Code 1860, sec. 21.

Fourth - Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court; and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth - Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth - Every arbitrator or other person to whom any case or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh - Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth - Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth - Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interest of the Government;

Tenth - Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh - Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

But more often a person in the service of Republic is identified as a government servant. A government servant has been defined as a person in the service of the Republic and includes any such person on foreign service or whose services are temporary placed at the disposal of a local authority or other authority or of a foreign government or agency.⁴

It is usually contended that the term 'public servant' has a greater connotation than the term 'government servant'. The former not only includes the persons on the government pay roll but also the officers and other employees of public corporations, autonomous or semi-autonomous bodies. Usually in the statutes of public corporations and autonomous bodies a provision is made to treat its employees including officers to be the public servants within the meaning of the section 21 of the Penal Code. Since this term traditionally connotes some powers and prestige, many a one in the past aspired to be named as public servants and people went to the court for being declared as such. Thus in the past the President of the Union Board was declared to be a public servant⁵, while a

⁴ vide Dr. Mozammel Huq Chowdhury vs. CMLA(1980) 32, DLR (AD), 100.

⁵ Khabiruddin vs. Crown(1955), 7 DLR, 166(168).

member of the Union Board was declared as not being public servant⁶. But as this was a cause of heart-burning for the members of the local councils, Local Government(Union Parishad) Ordinance 1983 affirmed that the chairman, members and all other employees of the Parishad would be regarded to be the public servants⁷.

For long, a number of other terms like 'civil servant', 'public employee', 'government employee' etc. were also in use. Although in western countries like USA the term 'civil servant' is in use to distinguish a public employee from military services, historically in our country the term denoted a person in the central or provincial administrative services. However, with the widening of Bangladesh Civil Service, the term applies to all the cadre officials.

There has been a awakening that the constitutional term 'in the service of the Republic' and the usually used term 'Government servant' do not connote the same qualities and qualifications. A public employee is in the service of the state and the people. He has the allegiance to the state and he is supposed to up-hold the state objectives without fear or favour, ill-will or affectations. He need not have allegiance to a particular party government and therefore must exercise neutrality for the sake of justice and fair-play.

The service of a government servant does not fall within the purview of Contract Act, Sales of Goods Act or Specific Relief Act. During the British period, the service of a government servant and his salaries were regarded to be a bounty from the crown which was again up-held by the Supreme Court of Pakistan in its celebrated case i.e. State vs. Mehrajuddin⁸.

⁶ Manindra vs. State(1960) 12 DLR, 84

⁷ Local Government (Union Parishad) Ordinance 1983, Sec.81.

⁸ 2 DLR (SC.) 260.

However, our Supreme Court opined that the relationship between the government and its servants is more of status than of contract⁹.

The Constitution of Bangladesh provides that every person in the service of the Republic has a duty to strive at all times to serve the people and the duty of the people is to observe the Constitution and the laws, maintain discipline, perform public duties and protect public property. As a corollary to it, when^a member of the public does not obey law or does not maintain discipline etc. he is to be disciplined by the public servant. In this connection, the Penal Code 1860 provides two long chapters (Chapters IX & X) on the rights and duties of a public servant.

As the Constitution visualised a group of devoted public servants to serve the people, it provided that the Parliament would, by law regulate the appointment and conditions of service of the persons in the service of the Republic.

However, the Constitution provided that the President would be competent to make rules regulating the appointment and conditions of service of such persons until provision in that behalf is made by or under any law, and rules so made shall have effect subject to the provisions of any such law.

In fact, however, neither during the Pakistani regime nor after independence of Bangladesh many laws have been passed regulating the conditions of service of the persons in the service of the Republic except with few exceptions like Public Servants (Retirement) Act or Reorganisation of Services Act etc. More so in 1978 by an executive order the then President Ziaur Rahman delegated to the Vice-President with effect from 3rd November, 1978 the powers as envisaged under the proviso to Article 133 of the constitution¹⁰. The Constitution

⁹ vide BLD, vol.1. 1981, p.XXIV.

¹⁰ The President's Secretariat, Public Division, Notification No. PS/ADmn/8(24)/78-1569, dated, 28th November, 1978 vide Bangladesh gazettee dated 30th November, 1978, p.293.

under Article 56(2), however, provided that he may by order 'specify' some of his functions to the Vice-President but the word used in this notification was 'delegated'. The Vice-President so empowered framed the Government Servants (Conduct) Rules 1979 almost immediately after and also authenticated on behalf of the President a large number of other service rules and recruitment rules.

Under the constitution, every person in the service of the Republic is to hold office during the pleasure of the President¹¹. But at the same time it provides that no person who holds any civil post in the service of the Republic shall be dismissed or removed or reduced in rank by an authority subordinate to that by which he was appointed and no such person shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause why that action should not be taken, except in certain special circumstances like conviction of a criminal offence or state security reasons etc¹².

Our Constitution and the law of the land provide a number of measures for redressing the grievance of the Government servants. In case of award of some major punishments, the Public Service Commission is to be consulted for class I and class II officers¹³. The government also framed Government Servants (Discipline and Appeal) Rules 1985 and made therein provisions for appeal, review or revision under these rules. The Government Servants (Special Provisions) Ordinance 1979, and the Public Employees Discipline (Punctual Attendance) Ordinance 1982 are also operative and there are provisions for appeals.

Apart from a public employee's grievance against disciplinary measures taken by the authorities, he may have host of other grievances. Grievance means a hardship, injury, real or fancied ground of complaint. But in real term, it is anything

11 The Constitution, Art. 134.

12 Ibid, Art. 135

13 The Bangladesh Public Service Commission (Consultation) Regulations 1979. r.6.

about pay, working conditions or personal relationship which irritates an employee and causes him to be unhappy in his work.

Within the frame-work of the Constitution, a government servant may go to the Administrative Tribunals under the Administrative Tribunals Act of 1980. Under sec. 4(2), a person in the service of the Republic may make application to an Administrative Tribunal if he is aggrieved by any order in respect of the terms and conditions of his service including pension rights. The Administrative Tribunals Rules of 1982 lays down the detailed procedure for making such application. An aggrieved person may often seek redress in the Administrative Appellate Tribunal if he not satisfied with the decision of the Administrative Tribunal.

- b) Purpose and Scope of the Study: The present study was undertaken with a view to making an enquiry into the following points:
- (a) To identify to what extent the existing laws, rules, policy guidelines, practices etc. are adequate to prevent or handle grievances of different descriptions effectively.
 - (b) To find out the causes of unusual and often unnecessary delay in disposing of grievances and ways and means to improve the position.
 - (c) To find out the hardship and inconvenience of the public employees caused by lack of proper adjudication of their grievances.
 - (d) To analyse the effects of presence of grievances on the performance of the organization in the form of internal hostilities, neglect in work, tendencies of subversion, decline in morale and discipline etc.

- (e) To find out the scope to build up a proper environment in the public administration system in Bangladesh to provide for congenial human relations which could minimise incidences of grievances and to what extent the culture and social disposition in the country may assist or hinder smoothening the process.

The study is supposed to focus the adjudication process of the grievances of the public employees through case studies. Six different types of cases as follows were undertaken for the study:

- (a) The case of a punishment where the incumbent feels that justice was not done to him.
- (b) The case of a delayed procedure for which a government employee is supposed to have incurred irreparable loss.
- (c) The case of a government employee who has been superseded in promotions by his juniors.
- (d) The grievance of a government employee about arbitrary decision of the authority affecting his service conditions/privileges.
- (e) The grievance of an officer/employee of an autonomous body/public corporation for arbitrary action by the superior authorities relating to his service privileges.
- (f) The grievance of an employee under labour law for arbitrary action by the employers relating to his service privileges.

It was also intended to ascertain whether the time limits as laid down in rules 6 and 7 of the Government Servants (Discipline and Appeal) Rules 1985 for departmental proceeding is adhered to, and if not, whether the principle of automatic withdrawal of allegation/charge against the accused in case of failure to dispose of cases within the time limit is really followed in practice.

The study was also intended to include the role of decentralization of administration in quick and efficient disposal of cases and the role of the Administrative Tribunal, court of law and other legal agencies.

(c) Limitations

Under the present study the grievance includes only the personal or individual grievance. Group grievance, grievance of trade union or service association were excluded from the study. Similarly, the grievance in respect of Annual Confidential Report (ACR) was also to be excluded from the study as it was thought that the Annual Confidential Reports — being classified documents might not be easily available to the researchers.

The second limitation was about the availability of grievance cases of the disciplinary nature. Ministry of Establishment being the custodian of such cases was found hesitant in supplying records. In fact, the concerned officials regretted to supply certain cases which were of interest to the researchers.

Thirdly, the main focus of the study was the grievance in respect of disciplinary matters. Although some other grievances like those of seniority, change of designation or transfer have been included in the study but the cases concerned are not supposed to cover the grievances in respect of the whole gamut of personnel administration in the country.

(d) Methodology

While collecting 6 cases, a number of grievance cases were collected initially. News papers were consulted to collect the grievances of public employees. Following news paper clue, the researchers pursued some grievance cases, but it was soon discovered that the addresses were incomplete or the incumbents did not reside in the addresses mentioned in the news paper.

In some cases, offices were approached where the persons concerned served but the office concerned usually expressed its regret for not knowing the address. In pursuing one such case the researchers went as far as to the Nilphamari district Collectorate and ultimately found one relevant person. But the person concerned was afraid; he was not willing to disclose all facts and gave only a sketchy picture of his grievance and thereafter requested not to pursue it.

Then the researchers approached the Ministry of Establishment and the Administrative Tribunal. In consultation with the relevant Deputy Secretary and Assistant Secretary of the Discipline branch, after obtaining permission from superior authorities, two cases were selected. The two cases are the decided cases of the Administrative Tribunal and Administrative Appellate Tribunal. In one such case the government was defeated in the first instance for procedural loopholes but later it could amend itself. Another case was in respect of posting of a Deputy Commissioner to a position which he felt was lower than his present rank and status.

Then the Administrative Tribunal was approached by following two cases of labour officials who were compulsorily retired on the ground that they had completed 25 years of service while they were still in their allowable age limit and their junior was allowed promotion by superseding both of them. Both the cases seemed to be quite interesting but when the Acting Secretary, Ministry of Labour and Manpower was approached, he did not allow the cases for study. Another chosen case was that of an Upazila Local Government Engineering Bureau office where a former Supervisor was redesignated as Draftsman while many others of his equals were adjusted with promotion as Sub-Assistant Engineers. For study of this case, Secretary of Local Government Division was approached. Permission was given—although it came very late.

Next was the seniority cases. Three cases were collected from two educationists and one Livestock Officer. The Livestock Officer served in erstwhile Pakistan in the then West Pakistan. His case seemed to be more complicated and was chosen on that ground.

The fifth case chosen was from an autonomous organisation i.e. BRDB. This was a disciplinary case where decision could not be made in long three years. The Director General, BRDB, permitted this case for the study.

The last case was a case under labour law. By studying the Labour Law Cases journal and approaching the Labour Court three cases were ear-marked. The Labour Court cooperated but the present addresses of complainants of two cases could not be available. Ultimately, the case of a Drum Factory was undertaken. The Drum Factory management cooperated half-heartedly.

In addition to case studies, an opinion survey of 200 officers was made in order to understand the officials' view in respect of grievance matters. The respondents included generalist cadre officials, specialist cadre officials, managerial non-cadre officers, non-managerial personnel, educationists, planners and economists and some non-gazetted officials. However, the opinion so got might only be suggestive in nature as the opinion survey was not a major component of the case study.

The last method applied was the brain storming sessions arranged for 50 mid level officers, who were undergoing training in a Conduct and Discipline Course of BPATC. The brain storming sessions were followed by group discussions. They were the officers of the government and autonomous organisations administering or dealing with disciplinary matters. Some of their suggestions have been incorporated in the study.

Chapter-IIThe Present System of Ventilating the Grievances:

A public employee is supposed to work according to his job description. In an ideal situation there should be the Job specification and job description for all the positions in an organisation. While the Job specification include the quality and qualification requirements for a job, a job description may include, inter alia, name of the post, duty station, scale of pay, major duties, other duties, supervision, coordination, career development and facilities. Such is the system followed in the different agencies of the international organizations. In Bangladesh, however, some organizations do not have simple job descriptions for their employees not to speak of following the ideal pattern. A few years back an effort was made to prepare job descriptions in the above line in the President's Secretariat but it was soon realised that unless all the ministries and organizations follow the same pattern, no much benefit could be accrued out of it.

Even in some organizations, specific objectives of the organisations are not clearly spelt out. Some years back when a staffing pattern study group visited the Agricultural marketing Directorate and asked the Director to state the objectives of his organisation, he counted four objectives. By interrogation, it was found that his directorate performed many more other functions apart from the real objectives. Sometimes it is found that an organization performs many more unanticipated functions which were not originally designed or conceived of and the unanticipated ones get upper hand over the real objectives of the organizations. Thus an organization becomes 'dysfunctional' in Merton's terminologies. Herbert Simon's concept of empire-building often accounts for it where zealous over-enthusiastic super-qualified chief executive thinks that his organization and himself can perform

many functions than what is designed in the charter. His capabilities do not satisfy him to remain confined within the charter boundaries, rather he marches on to other spheres. As a corollary, more people are engaged to work and a time comes when the original objectives are lost or put to secondary use.

However, the employees in an organisation usually do not, in general, bother for job description. Usually they do or atleast try to do everything which they are asked to do by their superiors but there is limitation to it. Employees are indifferent to their job description as long as the superiors give them reasonable orders and make reasonable requests whether official or personal. But if the orders and directions and requests are such as to cross far beyond the boundaries of reasonableness and the dignity, they will no longer be indifferent to job description. This boundary was called 'zone of indifference' by Chester Bernard.

While adding to types of misconduct in addition to items enumerated in the Government Servants (Conduct) Rules 1979, the Government Servants (Discipline and Appeal) Rules 1985 enumerates that disobedience to lawful orders of the superiors is also a misconduct¹. So was an item of misconduct under Employment of Labour (standing orders) Act 1965².

But what is lawful ? Who decides what is lawful and what is not lawful? An employee does not risk deciding if a particular order of the superior is not lawful not to speak of its inclusion in his job description. He consoles himself and pleases his superiors by doing things of the marginal or borderlines of unlawfulness to please them and not to risk his own careers. An experienced officer recollects that when he displeased a superior by not pleasing him by doing a not-lawful favour to one of his relations(not knowing that

¹ Rule 2(f)

² Section 17(3)

the man was his relation), the boss was very annoyed but when he amended himself, the boss was not only happy rather he wrote in his ACR that the officer was a very conscientious one.

Thus some of the terminologies under Discipline and Appeal Rules like 'lawful orders' or 'gross negligence' or as in Employments of Labour(standing orders) Act 'habitual' or 'illegal gratification in connection with his or others employment' etc. pose problems and include value judgement. But a superior willing to victimise his subordinate may make a value judgements in his own favour.

Under the present system, a subordinate aggrieved of any decision of his superior cannot appeal to any other authority except only through his superior. Previously civil courts were taken recourse to but that has been barred after the promulgation of Administrative Tribunal Act. In our case No.2 Mr. R went to the civil court against the change of his designation but the court in its judgement declared itself incapable of accepting his plaint. There are provisions for appeal, review and revision against disciplinary action, provided the appeal is made within 3 months. No appeal can be made if the order is passed by the honourable President. However, review and revision are possible. The Government Servant(Special Provisions) Ordinance 1979, however, limits the appeal period to 7 days and Public employees Discipline(Punctual Attendance) Ordinance 1982 limits it to 48 hours.

In M.A. Hye vs. T.C.B. case³ Supreme Court, Appellate Division held that in an enquiry under the Government Servants (Discipline and Appeal) Rules, the evidence must be recorded in presence of the accused and the accused shall be entitled to cross-examine the witnesses against him. Failure to comply

3

32 DLR(AD), 46.

this is against natural justice. It was also held that though the finding of the inquiry officer is not binding upon the authority, the authority in imposing heavier penalty than recommended by inquiry officer should explain the reason of it. Failure to explain the reason is also illegal.

In Bangladesh vs. Matiur Rahman case⁴ Supreme Court, Appellate Division, held that according to The Government Servants(Discipline and Appeal) Rules, the inquiry officer is to give his finding stating whether the accused is guilty or not guilty on each charge and he shall not give any recommendation regarding punishment or otherwise. So, even if the inquiry officer recommends a minor penalty, the authority can impose a heavier penalty without assigning any reason thereof and it is not bad in law. It was also held that advice of the Bangladesh Public Service Commission in disciplinary matters as per the Bangladesh Public Service Commission(Consultation) Regulation 1979 is also not binding upon the authority.

In BSIC vs. Mahboob Hossain Chowdhury case⁵ it was held that according to BSIC rule when an inquiry officer found the accused not guilty of the charge against him, the authority can not punish the accused on the basis of that report. The authority if desires can order to hold fresh inquiry.

4 34 DLR(AD), 285

5 29 DLR(SC), 41

Chapter-IIIThe present system of adjudication of grievances.

The grievances of public employees are often many. In our opinion survey it was found that in around 73.0% cases the sufferers do not at all approach the authorities for remedying grievances out of fear or in apprehension of embarrassment. However, in disciplinary cases appeals are made to the appellate authorities unless an order by which a government servant is aggrieved was made by the President. In the latter case the government servant may apply to the President for review of the order.

Under rule 17 of the Government Servants (Discipline and Appeal) Rules a government servant may appeal against any order -

- (a) imposing upon him any penalty,
- (b) terminating his services in accordance with the terms of his contract, if he has been engaged on contract and has rendered continuous service for a period exceeding five years at the time when his services are terminated,
- (c) alternating, varying or denying to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or contract of service, or
- (d) interpreting to his disadvantage the provisions of any rules or contract of service whereby his pay, allowances, pension or other conditions of services are regulated.

to the authority specified by a general or special order made by the government or where no such authority is specified, to the authority to which the authority making the order is immediately subordinate or, where the order is made by an authority subordinate to the appointing authority, to the appointing authority.

Government, however, by notification defined an authority for class I government servant whose appointing authority is the President and the maximum of the scale of pay of whose post is below Tk.2,600(later raised to Tk.5250) per month for the purpose of calling for major penalties, appointment of enquiry officer, contempt of the enquiry officer and for suspension. The officers so designated are the Secretary, the Additional Secretary in-charge and the Joint Secretary in-charge of the administrative ministry to which the government servant belongs.¹ Under Schedule III of the Rules of Business, suspension of officers of the maximum of the scale of pay of the above limitation requires the approval of the President.

Under discipline rules no appeal shall be entertained unless it is submitted within 3 months of the date on which appellant was informed of the order appealed against provided that the appellate authority may entertain an appeal within 3 months, after the expiry of that period. This might be done if the appellant authority is satisfied that the appellant has sufficient cause for not submitting the appeal in time.

Every person submitting an appeal shall do so separately and in his own name. The appeal shall be addressed to the authority to whom it lies, shall contain material statement and argument on which the appellant relies, shall not contain any disrespectful or improper language and shall be complete in itself. Every appeal shall be submitted through Head of the office in which the appellant serves or if he is not in service, the head of the office in which he served last and through the authority against whose order the appeal is preferred. But an advance copy of the appeal may be submitted direct to the appellate authority.

¹ Ministry of Establishment Notification No. ME(Regn-V)ID-17-84-10, dt. 14-2-1985.

The authority which made the order appealed against shall forward to the appellate authority ^{every appeal} unless it is non-appealable or not submitted in time or is in improper form or is a repetition of the former appeals.

In disposal of appeals, the appellate authority shall pass orders within a period of 60 working days after considering whether the procedure prescribed in these rules has been complied with and if not whether such non-compliance has resulted in failure of justice, whether the finding on the charge are justified and whether the penalty imposed is excessive, adequate or inadequate. In case of appeal against any other order, the appellate authority shall consider the facts and circumstances of the case and pass such orders as it deems just and equitable within a period of 30 working days from the date of receipt of the appeal. The authority which passed the order appealed against shall give effect to the orders passed by the appellate authority within 30 working days from the date of receipt of the order of the appellate authority.

Review and Revision

Where appeal cannot be made, the government servant may apply to the President for review of the order, provided it is submitted within 3 months of the date on which the applicant was informed of the order by which he is aggrieved. The President may entertain an application for review within 3 months after the expiry of the said period if he is satisfied that the applicant had sufficient cause for not submitting the application in time. Every person submitting application for review shall do so separately in his own name. The application should be submitted through head of office in which the applicant serves or if he is not in service, the head of office in which he served last.

Similarly, the President may on his own motion or otherwise after calling for the records of the case revise any order passed in appeal or any order which is appealable but the accused

preferred no appeal. This can be done within one year of the date on which the order was passed.

In explaining the above provision the Ministry of Establishment in consultation with the Ministry of Law and Justice issued a circular that the rule did not provide for any application for such revision. Therefore the appellate authority is not bound to forward to the President any such application from the aggrieved person².

Court Proceeding

If there is any prosecution or legal proceeding against a government servant pending in any court on the same issue, there shall be no bar on the disposal of the departmental proceedings against him. But the rules provide that if the authority decides to impose any penalty on such government servant in the departmental proceedings, imposition of such penalty shall be delayed until disposal of the prosecution or legal proceeding.

Role of Public Service Commission

Under rule 6 of the Public Service Commission (Consultation) Regulations and sub-rule 7 of rule 7 of the Government Servants (Discipline and Appeal) Rules, consultation with the Public Service Commission is necessary for imposition of any major penalty in respect of class I & class II govt. officer i.e. dismissal, removal and reduction in rank. In such case the authority shall within 7 working days after the accused has been given chance to explain why the proposed penalty shall not be imposed on him, forward the proceedings together with the cause shown, if any, by the accused to the Commission for advice and the Commission shall give its advice within 20 working days of the receipt^{of} such proceedings. If no advice is received within the specified time, the authority shall presume that the Commission agrees with the decision to award the penalty.

² Ministry of Establishment Notification No. সস(বিধি-৫) ১ডি-১০/৮৮-৭০
৫৭ ৫-৯-৮১

Ministry of Establishment however elaborated in a circular the document of the proceedings to be sent to the Public Service Commission as follows³.

- (a) Charge with the statements of allegations
- (b) Reply to the charge by the accused
- (c) Deposition of the witness with daily record during enquiry and the enquiry report with the relevant papers
- (d) Second show cause notice
- (e) Reply to the 2nd show cause notice

Under labour law

Under labour law, however, an individual worker who has a grievance may bring his grievance to the notice of his employer in writing within 15 days of the occurrence of the cause of such grievance and the employer shall within 30 days of the receipt of such grievance enquire into the matter and give the worker concerned an opportunity of being heard and communicate his decision in writing to the said worker.

If the employer fails to give a decision or if the worker is dis-satisfied with such decision, he may make a complaint to the Labour Court for adjudication within 30 days unless the grievance has already been raised or has otherwise been taken cognizance of as Labour dispute case. On receipt of complaint, the court after giving the notice to the party concerned for hearing may decide the matter in such summary way as it deems proper and may also pass orders as to its cost.

The law provides that no court fee shall be payable for filing or exhibiting of any complaint or document of any kind in the court. It further provides that whoever refuses or fails to comply with an order passed by the court may be punished with simple imprisonment upto 3 months or a fine upto Tk. one thousand or with both but no court shall take cognizance of an offence

3 Ministry of Establishment Notification No. স্মক(বিবি-৩) সবি-১/৬৬
৮২(৩০) ডিএ ২-৭-৬৬

except on complaint made by the aggrieved person.

Administrative Tribunal

The Constitution of Bangladesh contains enabling power to make law on the Administrative Tribunal. Article 117 authorises Parliament to provide by law for the adjudication or trial by Administrative Tribunal of disputes and complaints with respect of terms and conditions on service of persons in the service of the Republic including their discipline, award of penalties or punishment.

Administrative Tribunal is a new concept in this country. Administrative Tribunal so called does not mean that its decision are necessarily administrative. The tribunal has to decide facts and apply rules to the parties concerned impartially with considering executive policy. It is not a judicial court rather a quasi-judicial body.

The reason for providing for the administrative court is that the process of ordinary court is elaborate, slow and costly, that of the administrative tribunal is brief, quick and cheap. The objects of the two are also different. The defects of the ordinary court are also its merits, because the object is the highest standard of justice. But the object of administrative court is to dispose of the matters quickly and cheaply consistent with the efficient administration.

In pursuance of the Article 117 of the constitution the Administrative Tribunal Act 1980 was framed (Act VII of 1981). The Act provides for the establishment of Administrative Tribunals to exercise jurisdiction in respect of matters relating to or arising out of the terms and conditions of the persons in the service of the republic.

The Tribunal consists of only one member who is or has been a district judge. It has the exclusive jurisdiction to hear and determine application made by any person in the service of the Republic or of any statutory public authority

in respect of the terms and conditions of his service including pension right or in respect of any action taken in relation to him as a person in the service of the Republic or of statutory public authority. The pre-requisite is the final decision of the higher authority and the limitation is six months from that order. Persons in the Defences service and of Bangladesh Rifles are excluded.

Administrative Appellate Tribunal

The Administrative Appellate Tribunal hears and determines appeals from any order or decision of an Administrative Tribunal provided the appeal is made within two months of the decision of the Administrative Tribunal. It may confirm, set aside, vary or modify any order or decision of Administrative Tribunal. Its decision is final and has binding effect upon the Administrative Tribunals and the concerned parties. Its decision cannot be challenged, reviewed, quashed or called in question in any court.

For hearing an application or appeal, a tribunal shall have all the powers of civil court in respect of service matters. The proceeding before a tribunal is deemed to be a judicial proceeding within the meaning of section 193 of the Penal Code. In the event of any difference of opinion among the members of Administrative Appellate Tribunal, the opinion of the majority shall prevail. For execution of decisions of the order of a tribunal, provision of the Civil Procedure Court relating to execution of decree shall be followed as far as practicable.

Effect of Act VII of 1981

Article 117(2) provides that where any administrative tribunal is established under this article, no court shall entertain any proceedings or make any order in respect of any matter falling within the jurisdiction of such tribunal, provided that Parliament may, by law, provide for appeals

from, or the review of, any such decision by any such court. This excludes the jurisdiction of the ordinary Civil Court. Article 102 of the Constitution provides powers of High Court Division to exercise its writ jurisdictions. In clause (5) of this article it is provided that "person" includes a statutory public authority and any court or tribunal, other than established under a law relating to any disciplined force or a tribunal to which article 117 applies. This appears to exclude the Administrative Tribunals from High Court Division's writ jurisdiction. Serious doubts have arisen regarding the exclusion of the jurisdiction of the High Court Division in service matter and the question whether the exclusion of the jurisdiction of the High Court Division does totally bar judicial review is yet to be fully settled. In other words, whether the Administrative Appellate Tribunal is a substitute of the High Court Division and is entitled to exercise the powers thereof is to be finally settled yet.

Nature of the Law i.e. Act VII of 1981

This is a remedial law for the lapses in the disciplinary proceedings. The tribunals are to be guided by the principles of natural justice and fair procedure. Also 'justice should not only be done but should manifestly be seen to be done'. In fact Act VII of 1981 is a remedial statute.

CHAPTER - IV

Opinion of the Public Employees about the Present System of Grievance-Procedure and its Effectiveness

As mentioned earlier, in the present study the opinions of 200 public employees were recorded. These public employees belong to different professions and service status ranging from administrators to educationists and senior clerical level to the level of Joint Secretary. The profession of the respondents were as follows :

Table - 1

Types of respondents by profession

<u>Profession</u>	<u>Frequency</u>	<u>%</u>
Generalist cadres (SSP, Admn, Sectt)	25	12.5
Specialist cadres (Agri, Livestock, Fisheries)	59	29.5
Non-cadre Managerial	25	12.5
Non-cadre non-managerial	36	18.0
Others (Educationists, Economists, Statisticians etc.)	55	27.5
Total	200	100.0%

The length of service of the respondents may be found from the following table :

Table - 2

Length of service of the respondents

<u>Years</u>	<u>Frequency</u>	<u>%</u>
Up to 5 yrs	19	9.5
6-10 yrs	40	20.0
11-15 yrs	68	34.0
16-20 yrs	36	18.0
21-25 yrs	21	10.5
Above 25 yrs	16	08.0
Total	200	100.0%

When the respondents were asked what type of grievances of public employees generally occur, a cumulative 940 responses were recorded. Following are the types of grievances as they viewed according to weightages :

Table - 3
Types of Grievances

<u>Grievance</u>	<u>% of weightage</u>
Not given promotion although it is due	15.0
Not given proper position and honour	13.8
Superseded by juniors	11.3
Harassed by higher authority for personal displeasure	11.3
Transferred frequently for harassment	11.0
Could not apply for a rightful privilege for not being informed	10.6
Not given career development opportunity	10.3
Deprived of departmental welfare facilities	7.2
Not reinstated though directed by the court	6.7
Others	2.8
	<u>100.0%</u>

Amongst the other grievances some of the points mentioned by the respondents are as follows :

- a) Authority not commensurate with responsibility
- b) Not being posted in the line of specialisation
- c) Posting of favoured persons either for money or family relation to advantageous places
- d) Not promoted because of the absence of adequate number of senior positions
- e) Sitting on the fence and delaying the applications without conveying 'yes' or 'no'
- f) Not evaluating the work in the individual
- g) Assigning others to perform the responsibilities which is actually 'my responsibilities'
- h) Not implementing properly the recruitment and promotion rules

- i) Sending abroad the juniors breaking the seniority
- j) Not given proper training
- k) Being deprived of genuine privileges
- l) Putting into trouble for not fulfilling the personal demand of the superiors

When the respondents were asked about the means of appeals in the average the respondents opined that in 66.5% cases oral appeals are made and in 14% cases formal appeals are preferred while in 19.5% cases both oral and formal appeals are made. However other means of remedying grievances were stated as follows :

- Lobbying and making 'tadbirs' and 'sufarish' through influential people
- Pressurising the authorities through an influential third person
- Going to political leaders
- Joint application through the service association
- Taking recourse to procession, slogans and strike
- Sending anonymous letters
- Taking recourse to the court of law
- Taking recourse to Administrative Tribunal

When asked to whom the verbal approach is made for remedying grievances when needed, 48.0% mentioned the supervising authority, 20.5% mentioned the authority higher than the supervising authority, 20.0% mentioned both and 11.5% were not sure about it.

When asked about the timely disposal of grievances, only 10.5% said that mostly grievances were remedied in time while 88.5% mentioned that grievances were not timely disposed of and 1.0% was not sure about it. Similarly, when asked about the adequacy/inadequacy of existing rules/regulations for disposal of grievances 30.0% opined that they were adequate, but 68.5% viewed that the existing rules and regulations were not adequate while 1.5% were not sure about it. Some respondents mentioned that most of the

problems could be solved if the present rules are properly followed. It has also been suggested that if the accusation of wrongful and motivated harassment is proved against any person, there should be procedure to bring the person concerned to justice. When asked about the causes for failure of timely disposal of grievances only 10.5% mentioned about the failure of existing laws and rules while 69.0% mentioned about the carelessness of concerned officers, 8.0% as to both, 6.5% mentioned other reasons and 3.5% were not sure about it. Some of the other reasons mentioned are as follows :

- Corruption and nepotism
- There is no accountability for not applying rules properly
- Inability to accept the mistake
- Unwillingness and timidity to uphold justice
- Lengthy procedure in the ministry and attached department
- External influence
- Absence of clear idea of superior authority about laws and rules

When asked whether the failure to remedy the grievances in time affects efficiency, 95.0% answered in the affirmative while 2.5% answered in the negative and another 2.5% were not sure about it.

When asked about the time required for the appeal to reach the appellate authority when submitted through proper channel, the response was as follows :

Table - 4

Time required for appeal to reach the appellate authority

<u>Time</u>	<u>Frequency</u>	<u>%</u>
15 days or less	28	14.0
1 month	46	23.0
1½ month	10	5.0
2 months	25	12.5
3 months	9	4.5
More than 3 months	62	31.0
Not sure	20	10.0
	200	100.0

But a number of respondents mentioned that the appeals do not reach the appellate authority. Even some mentioned that sometimes they remain with the administering authorities for years together.

When asked whether the time required under law/rules is reasonable or unreasonable, the response was as follows :

Table - 5

Reasonableness of time limit under disciplinary rules

<u>Response</u>	<u>Frequency</u>	<u>%</u>
Reasonable	42	21.0
Unreasonable	148	74.0
Not sure	<u>10</u>	<u>5.0</u>
	200	100.0

The respondents were further asked whether the authority gives due importance to the complain or appeal. The response was as follows :

Table - 6

Whether the authority gives due importance to the complain or appeal

<u>Response</u>	<u>Frequency</u>	<u>%</u>
Affirmative	37	18.5
Negative	153	76.5
Not sure	<u>10</u>	<u>5.0</u>
	200	100.0

The respondents were again asked whether the existing rules for disposal of appeal were adequate or inadequate. Their opinions are cited below :

Table - 7

Adequacy of existing rules for disposal of appeals

<u>Response</u>	<u>Frequency</u>	<u>%</u>
Adequate	74	37.0
Inadequate	116	58.0
Not sure	<u>10</u>	<u>5.0</u>
	200	100.0

As it was complained by different persons that the authority often takes whimsical decisions in disposal of grievance cases, the same was asked to the respondents and their views were as follows :

Table - 8

Nature of decisions in disposal of grievances by the authorities

<u>Type of decision</u>	<u>Frequency</u>	<u>%</u>
Whimsical	145	72.5
Reasonable	49	24.5
Not sure	$\frac{6}{200}$	$\frac{3.0}{100.0}$

Experience shows that many a time public employees do not ventilate grievances, rather they suppress them out of fear or other considerations. The respondents, therefore, were asked about it and their response is cited below :

Table - 9

Whether the public employees suppress most of their grievances out of fear

<u>Response</u>	<u>Frequency</u>	<u>%</u>
Suppress the grievances	146	73.0
Ventilate grievances	49	24.5
Not sure	$\frac{5}{200}$	$\frac{2.5}{100.0}$

On a probe question, 72.0% viewed that by raising any complain, the complainant is subjected to indirect torture and pressure by the authority, while 24.0% did not feel so and 4.0% were not sure about it.

The respondents were asked whether the system of submission of appeal through proper channel was reasonable. The response was as follows :

Table - 10

Reasonableness of submission of appeal through proper channel

<u>Response</u>	<u>Frequency</u>	<u>%</u>
Reasonable	61	30.5
Unreasonable	122	61.0
Not sure	$\frac{17}{200}$	$\frac{8.5}{100.0}$

The respondents were asked whether the policy of decentralisation has positive impact on the quick and efficient disposal of grievances of public employees. The response was as follows :

Table - 11

Contribution of decentralisation policy in quick disposal of grievances

<u>Response</u>	<u>Frequency</u>	<u>%</u>
Positive impact	69	34.5
No positive impact	122	61.0
Not sure	$\frac{9}{200}$	$\frac{4.5}{100.0}$

Even few respondents mentioned that superiors sometimes verbally ask the subordinate officials to do the wrong and unjust work. When asked if the Ministry of Law and Justice and legal agencies were playing their roles effectively in disposal of grievances of public employees, 28.5% answered in the affirmative while 71.5% answered in the negative and 5.5% were not sure about it.

CHAPTER - V

Case No.1 : A case of grievance in respect of rank and status

Mr. H was appointed to the erstwhile EPCS(Executive) class I and joined as Deputy Magistrate and Deputy Collector, on 13.8.69. In due course he was promoted to the Senior Scale in the NNS of Tk. 1400-Tk.2225 on 13.4.79 and subsequently placed in the time Scale of Tk. 1850-Tk. 2375 w.e.f. 1.10.81. He was also absorbed in BCS(Admn:Admn) cadre under the Cadre Service Rules. While he was working as the Chief Executive Officer, X Pourashava he was appointed as Deputy Commissioner, Y district under a Notification dated 14.2.84. He joined his new post on 15.2.84. By another notification dated 10.4.84 he was transferred and appointed as Deputy Director of an autonomous body P.

By order dated 18.4.84 the Ministry of Establishment directed him to make over charge by the afternoon of 21.4.84 to his successor. Mr. H did not, however, make over the charge and the Ministry released him from his office with effect from the forenoon of 2.5.84 appointing him at the same time as OSD, Ministry of Establishment. He was placed under suspension with immediate effect by an order dated 5.5.84.

Subsequently, a departmental proceeding was drawn up against him on 11.7.84 on allegation of misconduct. A Board of inquiry was constituted to enquire into the allegations. The accused Mr. H submitted a written defence. On completion of the enquiry the Board submitted its report on 1.10.84. The authority directed Mr. H by notice dated 9.12.84 to show cause as to why he should not be reduced to a lower time scale. Mr. H submitted reply in time. Ultimately the authority passed on him the penalty of reduction to lower time scale by an order dated 24.1.85.

Being aggrieved Mr. H filed a case before the Administrative Tribunal. The learned Judge, Administrative Tribunal by his

decision dated 24.10.85 dismissed the case.

Mr. H then preferred an appeal before the Administrative Appellate Tribunal. The Administrative Appellate Tribunal by its decision dated 4.3.86 set aside the order of the Administrative Tribunal dated 24.10.85 and the order of the Government dated 24.1.85 reducing Mr. H to a lower time scale on the ground of not consulting PSC, illegal constitution of the Board of Inquiry and failure to dispose the case in time.

Summary of Mr. H's career

1.	Joined the EPCS(Ex) class I post	13.8.69
2.	Confirmed in service	13.8.71
3.	Promoted to Senior Scale	13.4.79
4.	Got time scale benefit	1.10.81
5.	Posted as D.C,Y district	14.2.84
6.	Joined as D.C, Y district	15.2.84
7.	Transferred as Deputy Director of an autonomous body	10.4.84
8.	Asked to make over charge of D.C. by 21.4.84	18.4.84
9.	Stand-released from forenoon of 2.5.84	2.5.84
10.	Placed under suspension	5.5.84
11.	Departmental proceeding initiated	11.7.84
12.	Board of Inquiry formed	11.7.84
13.	Board submitted inquiry report	1.10.84
14.	Asked to show cause as to why should not be reduced to lower time scale	9.12.84
15.	Penalty of reduction to lower time scale imposed	24.1.85

Observations

On examination of the case and the charge framed against him, it appears that Mr. H was suspended and departmental proceeding was drawn against him for the offence of misconduct because he failed to comply with the orders of the Ministry of Establish-

ment. He did not join as Officer on Special duty in the said Ministry till 5.5.84, when he was placed under suspension.

Mr. H was stand-released with effect from forenoon of 2.5.84. As his new posting involved a change of residence, he was entitled to joining time as per rules of BSR. It could not be ascertained as to why suspension and disciplinary action was initiated against him for not joining the new place of posting before the expiry of joining time though he was not asked to join his new place of posting without availing of any joining time.

It is true, before being stand-released Mr. H showed reluctance to carry out the Government order of transferring him as Deputy Director.

As per recruitment rule of autonomous body P, any officer in the scale of Tk. 1400-75-Tk. 2225 might be posted as Deputy Director on deputation. Since Mr. H was an officer of the status of Senior Assistant Secretary (at that time Senior Scale Section Officer) the Ministry may justify his posting as Deputy Director. But the hard fact is that immediately before his posting as Deputy Director he was posted as Deputy Commissioner. His scale of pay was Tk. 1850-75-Tk. 2375 and his length of service was 15 years. The post of Deputy Director was not befitting for an officer of his level. Moreover, Mr. H was posted as D.C. only 2 months back before his posting as Deputy Director. So Mr. H had genuine grievances of being posted to a post not befitting to him and that too within only 56 days of posting as D.C.

Of course, not being posted to a posting of liking could not justify the reluctance to carry out government orders. But certainly all these could be avoided or would never have happened if Mr. H was posted to a position befitting to an officer of his seniority and experience.

Mr. H was placed under suspension by order dated 5.5.84 and departmental proceeding was initiated against him on 11.7.84

There was an unusual delay of 66 days.

Mr. M, ADC, Z district was a member of the Board of Inquiry. The inclusion of Mr. M as a member of the Board of Inquiry was also a controversial issue. The Government Servant's (Discipline and Appeal) Rules 1984 (later repealed) provided that no member of the Board of Inquiry should be below the rank of the accused. In this case Mr. H, the accused was serving as D.C. at the time of commission of the alleged offence. Inclusion of an officer of the rank & status of ADC was not in accordance with the rule. The Administrative Appellate Tribunal has pointed out that the inclusion of the ADC, whose rank is below that of the appellant (Mr. H) who was DC, in the board of inquiry was not lawful and had made the constitution of the board itself unlawful.

The departmental proceeding was initiated on 11.7.84. as per the Government Servant's (Discipline and Appeal) Rules 1976. Though there was no time limit for the disposal of the departmental proceeding in the said rules, the Government Servant's (Discipline and Appeal) Rules 1984 became operative from 19.7.84. In the new rule 120 working days' time limit was fixed for disposal of any departmental proceeding initiated under major penalty like this case. Calculating 120 working days from 19.7.84 the proceeding apparently could not be completed in time as the penalty was imposed on 24.1.85 i.e. almost six months' time was taken in disposing of the case.

Chapter-VI

Case No.2 : A Case of an indirect punishment

Mr. R. joined service in 1967 as Deputy Supervisor, Works Programme under the Ministry of Local Government Rural Development and Co-operatives. In 1980 he was promoted to the post of Supervisor. In 1984 Government was pleased to create a Department called "The Local Government Engineering Bureau"(LGEB) under Local Government Division, Ministry of Local Government Rural Development and Co-operatives. LGEB was born as the second re-incarnation of the Rural works Programme (RWP)¹. In the LGEB the post of Supervisors were abolished². The then existing Supervisors having diploma in Civil Engineering were to be appointed as Draftsman(SAE) in the scale 470-1135/-. Remaining Supervisors were to continue against the posts of Draftsman till they retire or are absorbed elsewhere.

According to this government policy Mr. R, who at that time was working as Supervisor, was posted as Draftsman. On 14.6.87 Mr. R. filed T.Ss No.95/1987 in the court of 1st Subjudge, Sadar, Sylhet against this redesignation. The case was rejected on contest by the learned Subjudge on 28.11.87. Being aggrieved Mr. R preferred an appeal in the court of the learned District Judge, Sylhet against the order of learned Subjudge. It appears that ultimately he lost interest in the case and did not pursue it further. Though the redesignation was done as per government decision as pointed out by the learned Subjudge while rejecting the T.S. case no. 95/1987, the hard fact is that this sort of redesignation often creates

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- ¹ Joint GOB/Donor Task Force on Strengthening the Institutions for Food Assisted Development, "A Rapid Institutional Assessment of LGEB From the Perspective of FFW Implementation Capacity" SIFAD Study 2(3 November 1988), p. 6.
 - ² Govt. of Bangladesh, Cabinet Division, Resolution and Memorandum on Deputation of Government Officials Dealing with Transferred Subjects to Upazila Parishad (December 1984), p.3.

dissatisfaction and demoralises the affected employees causing a sense of humiliation in them which results in a series of chain action and reaction which ultimately hampers the efficiency of the organisation. The cause of dissatisfaction as appears ^{is} that Supervisors ~~were~~ ^{who} field level technical employees/used to be entrusted with the work of supervision. whereas a Draftsman is supposed to work in the office. Withdrawal from the field work might have caused a sense of deprivation and humiliation not only to Mr. R. but all the Supervisors working in the field at that time, which is evident from a resolution of a meeting of all the ex-Supervisors of works programme held on 6.12.85 in the auditorium of Dhaka Zila Parishad where they resented to this decision of redesignation of Supervisors as Draftsman.

The second part of the story is that while serving in Golapganj Upazila Parishad, on 28.2.87 Mr. R. was transferred to Sylhet sadar Upazila Parishad where he joined on 7.3.87. He continued to stay and serve there up to 5.4.87 but he was not given any pay for March '87 as the authority subsequently cancelled the transfer order of his predecessor without transferring him elsewhere and it was not possible to pay two employees against the same post from the same station at the same time. At this stage Mr. R. left H.Q. on 6.4.87 on casual leave from 6.4.87 - 9.4.87 which was duly sanctioned by the competent authority. As Mr. R. claims, he then fell ill and was admitted to hospital from 8.5.87 to 25.6.87 and prayed for leave. On 26.7.87 he appeared at his office and submitted medical certificate and a discharge certificate from Beanibazar health complex showing that he was admitted to the hospital from 8.5.87 to 26.6.87 and he was under medical treatment from 30.6.87. Mr. R. claimed that he was not allowed to join Sylhet Sadar as by that time he had already been transferred first to Zakiganj and then to Kawkhali, cancelling the order of

Zakiganj. Interesting to note that Mr. R. left the H.Q on C.L. on 6.4.87 and on the same date he was transferred to Zakiganj. It is not unlikely that on getting some hints that he was going to be transferred, Mr. R. applied for leave—may be he was not liking the transfer. When Mr. R. did not come back after availing sanctioned casual leave of 4 days and remained on unauthorised absence, the Engineering Advisor, the Chief Executive of LGEB, transferred him to Kawkhali Upazila Parishad(UZP) in the district of Rangamati.

As Mr. R. was not allowed to join Sylhet Sadar on 26.7.87 as stated above, he came back to his home and stayed there till the authority (EA) on 6.2.88 transferred him from Kawkhali to Companyganj UZP in the district of Sylhet. On 20.2.88 Mr.R. submitted his joining report to Upazila Engineer, Companyganj but the latter refused to accept it according to a memo of Chairman, UZP. But then again on 23.3.88 the same Upazila Engineer accepted his joining report and Mr. R. resumed his duties after a lapse of almost a year (6.4.87 to 22.3.88).

XEN

After Mr. R. has resumed his duty on 29.3.88/LGEB, Sylhet sanctioned him E.L. from 6.4.87 to 31.5.87. He also ordered that Mr. R. will get his pay and other allowances for the leave period along with the pay and allowances of 1.3.87 to 5.4.87 from Galapganj UZP though Mr. R was released from Galapganj and he joined Sylhet sadar UZP on 7.3.87 and actually served there up to 5.4.87 before proceeding on leave.

On 26.7.87 Mr. R. applied extension of leave from 10.5.87 to 25.7.87. He submitted one discharge certificate showing that he was admitted to Bianibazar Upazila Health Complex from 8.5.87 to 25.6.87 and a Medical Certificate by RMO of the same Complex issued on 25.7.87 showing that Mr.R. was under his treatment from 30.6.87.

Executive Engineer in his order sanctioning leave mentioned that the leave from 6.4.87 to 31.5.87 is sanctioned on medical ground as per Medical Certificate. It could not be understood why partial leave was sanctioned. When as per discharge certificate Mr. R. was admitted in hospital till 25.6.87 the reason of allowing him leave up to 31.5.87 citing the medical certificate is difficult to be understood.

According to Executive Engineer's order quoted above Mr. R. got his pay from 1.3.87 to 31.5.87 but he was not paid for the period of 1.6.87 to 31.3.88 for which he submitted prayer. Executive Engineer, LGEB, Sylhet on 28.4.88 passed the comment that Mr. R. joined Companyganj on 20.2.88 and he has L.A.P. of 2 years 4 months to his credit and as such he may be sanctioned E.L. for the period so that he may get his pay. U.E. Companyganj on 18.9.88 forwarded an application of Mr. R. to Engineering Adviser (bypassing Executive Engineer, his immediate boss) recommending necessary action.

Engineering Advisor on 24.8.88 sanctioned Extra-ordinary leave without pay from 1.6.87 to 31.3.88. When Executive Engineer in his letter admitted that Mr. R. joined Companyganj on 20.2.88 the reason for sanctioning leave without pay for atleast 20.2.88 to 31.3.88 is difficult to understand.

Observations

From the above discussion it appears that the problem started with the redesignation of Mr. R. Mr. R. went to the extent of filing civil suit which naturally his supervisors did not like. Then Mr. R. was transferred to Galapganj where he joined on 7.3.87 but he did not get his pay as the authority cancelled the transfer order of his predecessor who naturally stayed there. Authority then decided to transfer Mr. R. elsewhere which possibly Mr. R. did not like. So he went on leave of 4

days and then fell ill. But the authority did not take it lightly and transferred him unusually to Kawkhali in the district of Rangamati. Mr. R did not join Kawkhali and ultimately the authority transferred him back to Companyganj in the district of Sylhet and Mr. R resumed duties after a lapse of almost a year (6.4.87 - 23.3.88). All these could have been avoided if the predecessor of Mr. R left Galapganj timely and Mr. R was allowed to serve there or Mr. R was posted to a suitable station. Of course, a government employee is bound to serve anywhere as desired by the authority but transferring an employee within one month after joining a new station only to accommodate his predecessor at that station is not a normal affair. As such this abnormal situation could have been solved in a normal way by posting Mr. R. to a suitable station. Then again transferring a low paid employee to a remote district as an indirect punishment was also not a very wise decision which worsened the situation further and ultimately government had to lose the service of one of his employee for almost a year. This also lowered down the efficiency of Mr. R. Since the authority had to cancel the transfer order of Mr. R to Kawkhali, the image of the authority was also lowered down.

It would have been better if the authority concerned showed farsightedness and tolerance in dealing with a low paid employee who was already aggrieved for change of his original designation and nature of work.

Another interesting part of the story is that from 23.7.85 to 6.2.88, that is, in about a period of two and a half years Mr. R received as many as eight transfer orders of which five were cancelled. Upazila Engineer, Companyganj UZP refused to accept the joining report of Mr. R, at one stage, being asked by the Chairman, UZP. It appears that the Chairman, UZP in this case acted without any legal authority which further complicated the issue.

Mr.R was sanctioned leave without pay from 1.6.87 to 31.3.88 i.e. for 10 months, when 2 years 4 months' leave on average pay was due to his credit. According to rule 9(3)(1) of Prescribed Leave Rules 1959, leave without pay may be sanctioned in special circumstances when no other leave according to the rule is due to the government employee. It seems that the authority sanctioned the leave without pay as a punishment measure, but this act of the authority was not covered by any disciplinary rules, nor was it done after a disciplinary proceedings.

CHAPTER - VII

Case No.3: A Case of Apparent Supersession

This is a case of supersession by junior colleagues. The aggrieved officer Mr. G entered in the service as Veterinary Assistant Surgeon (Non gazetted) at Karachi Veterinary Hospital under central government of the then Pakistan on 15.5.59. On 14.1.65 Mr. G was promoted to the post of Assistant Research Officer, class II, gazetted and subsequently raised to class I status with effect from 1.11.1972.

After liberation of Bangladesh, Mr. G was repatriated to Bangladesh and absorbed in identical and analogous post of District Livestock Officer, Bogra. On 17.3.77 he was promoted to Bangladesh Higher Livestock Services and posted as Senior Research Officer, Animal Disease Investigation Expansion Scheme, Livestock Research Institute, Mohakhali, Dhaka. He also served as Deputy Director, Livestock Services, Khulna Division with effect from 26.8.80. After re-organization of the department of livestock services on the basis of 'Enam Committee Report' the posts of Divisional Deputy Directors were abolished and Mr. G was absorbed as Principal Scientific Officer, Pathology, Livestock Research Institute, Mohakhali, Dhaka where he is still serving.

On 31.7.84 Ministry of Establishment, Govt. of Bangladesh published a gradation list of Bangladesh Livestock Service Cadre in which the name of Mr. G appeared at Sl.No. 6 and Mr. G was satisfied with that position in the list. The program started when the Ministry of Fishery and Livestock in its letter to Secretary, Bangladesh Public Service Commission (BPSC) dated 14.5.86 informed that Mr. G was given a pre-mature promotion to the post of Deputy Director superseding many of his senior colleagues and as such in determining seniority among the existing Deputy Directors,

which BPSC was then doing, these things should be considered. Against this Mr. G submitted a representation to the Secretary, PSC justifying his seniority and position.

It seems that the case of Mr. G was convincing because on 28.9.86 vide its letter no.s-1,1-2/86/3464-psc the commission determined the seniority of Deputy Directors and equivalent officers of Livestock department and Mr. G topped the list being recognised as the senior-most officer of his level in Livestock Services by Bangladesh Public Service Commission. In the meantime on 30.1.85 one Mr. K was promoted to the post of Addl. Director, Livestock Services whose name appeared at sl.no. 7 of the afore-said gradation list published by Ministry of Establishment. Mr. G whose name appeared at sl.no. 6 and as such who was senior to Mr. K submitted prayer against this supersession by a junior but in vain.

Then again on 19.11.86, three officers whose names appeared at sl.no. 2, 4 & 5 in the list prepared by Bangladesh Public Service Commission in which Mr. G topped the list as referred earlier was promoted to the post of Addl. Directors.

Mr. G again submitted representation. This time he was informed by the Ministry that his case for promotion was submitted to the Superior Selection Board (SSB) and Council Committee on Senior Appointments showing his name at sl.no. 1. as per the seniority determined by the Bangladesh Public Service Commission but his case was not recommended for promotion by SSB and Council Committee.

Against the decision of SSB and Council Committee Mr. G has nothing to say and nothing to do. But he doubts some foul play in placing his case to SSB and Council Committee or in other words he doubts that his case was not properly placed before the SSB and Council Committee. He has got reasons to believe it because though Bangladesh Public Service Commission in its letter referred above, adjudged him as the senior-most officer of his level, his

Ministry is not convinced about his seniority. Moreover, the ministry vide its D.O letter no. 7/prose-10-83/744 dated 27.9.83 informed Mr. G that there are some adverse comments in his ACR of 1981. When Mr. G submitted representation against it, the Ministry informed him that the adverse comments were in the ACR of 1980 and not in 1981 as informed earlier. Mr. G then informed the Ministry that actually he did never serve under the R.T O, who according to the Ministry, has written the adverse comments. Then the Ministry asked him to get the ACR of 1980 and up to May 1981 initiated by the concerned RIO which he did. Finally the Ministry informed him that the ACR of 1980 containing the adverse comments written not by the proper officer has been cancelled.

It is interesting to note that there were allegation of corruption and misconduct against all the three officers who superseded Mr. G on 19.11.86 and one of them has already been reverted being found guilty of the offence of misconduct. Departmental proceedings are pending against two others now.

Mr. S, whose name appeared at serial no.3 in the list of PSC and as such who is junior to Mr. G is holding the charge of Additional Director, since April, 1988. He was found to be guilty of the offence of misconduct in a departmental proceeding case in March 1989 and was penalised. His pay was ordered to be reduced to the initial stage of his time scale and his promotion was ordered to be withheld for five years. But, though punished in the departmental proceeding case, Mr. S is still allowed to hold the charge of a senior post (Additional Director).

All these adds to the sense of deprivation of Mr. G who has been denied even the privilege of higher time scale though allowed to some of his juniors.

It may be mentioned here that according to the Bangladesh Civil Service Recruitment Rules, 1981 (Part-VI, Serial No.2) the

post of Additional Director, Livestock Services is to be recruited by promotion from amongst the Deputy Directors and the qualification prescribed for the post is 15 years experience in the concerned service including 2 years experience as Deputy Director.

Observations

In this case Mr. G was promoted to the post of Deputy Director on 17.3.77 i.e. now he has more than twelve years' experience as Deputy Director.

So far as the educational qualification is concerned, the Ministry claims that Mr. G is a Diploma holder and he has no post-graduate degree or inservice training to his credit. On the otherhand Mr. G claims that he had 6 months' inservice training of superior standard in the then West Pakistan than what used to be imparted in the then East Pakistan. Since in the Recruitment Rules no mention of educational qualification is there, this controversy can not be accepted to be the main cause of supersession. If it is so, it should have been specifically mentioned in the Recruitment Rules.

Mr. G has been relentlessly submitting prayers to higher authorities without any positive effect. It seems that the Ministry is raising different questions at different times about his case. First the Ministry raised the question about his seniority. When PSC opined in his favour, then questions were raised about his qualifications and ACR.

All these adds to the belief of Mr. G that something is wrong somewhere about his promotion case. He has already been superseded by four junior colleagues against three of whom allegation of corruption and misconduct were there. Mr. G having thirty years of clean service record to his credit is still serving the Government but in a demoralised way being highly aggrieved.

Chapter-VIIICase No. 4: A case of removal from service

The case in brief is that Mr. M. while practicing law as the age of 47 years was recruited in a special batch as a Magistrate by the Govt. in 1983. After completion of initial training he was posted as Upazila Magistrate. While working at Upazila 'H' as an Upazila Magistrate he was departmentally proceeded against on the charge of inefficiency and misconduct as per Govt. Servant (Discipline^{and}/Appeal) Rules 1984. Seven charges were brought against him as follows:

- a. He criticised the government policy and stated that had he been the Finance Minister, he would have abolished the income tax department.
- b. While submitting prayers he did not follow official discipline, decency and decorum.
- c. He used to remain absent from headquarters unthorisedly affecting government work and requested several persons for arranging 'Muta' marriage for him.
- d. While he was Upazila Magistrate of H Upazila, he misbehaved with the lawyers there and they boycotted his court.
- e. He also misbehaved with the lawyers of D Upazila while serving earlier as Upazila Magistrate there. The Lawyers boycotted his court and demanded his removal resulting in miseries of litigant members of the public.
- f. He did not take care about provisions of law and used to dispose of the cases according to his sweet will.
- g. Earlier he admitted all his faults in an enquiry conducted by an Additional Deputy Commissioner on the allegation by lawyers and public of D Upazila.

He was served with the charge dated 10.3.85 and directed among others to submit a written statement of his defence within 10 working days from the date of receipt of the charge. Though the charge was communicated to him on 10.3.85 he did not submit any written statement within the time fixed i.e. 10 working days. On 1.4.85, however, he submitted a petition for extension of time to submit written statement of defence enclosing therewith what he calls a 'statement of justification' in support of his prayer. As the time granted was inadequate, he submitted another petition on 8.4.85 to treat the statement of justification as his statement of defence in the case. A Board of Inquiry was constituted. Mr. M did not appear before the Inquiry board to defend himself rather he challenged the legality of the board. The enquiry was carried out ex-parte and the board found the accused Mr. M to be guilty of misconduct and inefficiency. Mr. M was served with a 2nd show cause notice dated 3.7.85 proposing imposition of penalty of removal from service. Mr. M submitted his answer to the 2nd show cause notice on 5.7.85 which was considered to be unsatisfactory by the authority. The case was referred to the Public Service Commission. The Commission agreed with the proposed decision imposing penalty of removal from service and ultimately Mr. M was removed from service on 4.8.85. Against the order of removal from service he submitted a review petition before the Hon'ble President but it was rejected on 26.11.85.

Being aggrieved Mr. M filed a case before the Administrative Tribunal. The Administrative Tribunal by its decision dated 22.5.86 dismissed the case.

Mr. M then preferred an appeal before the Administrative Appellate Tribunal. The Administrative Appellate Tribunal by decision dated 12.11.86 set aside the order of the Administrative Tribunal dated 22.5.86 and the order of the Govt. dated 4.8.85

removing Mr. M from service on the ground of non-supply of the enquiry report of the board of Inquiry with the 2nd show cause notice. The learned member of the Appellate Tribunal adjudicating the case, however, opined that if the authority so desires, it may proceed with the dept. proceeding from the stage of the 2nd show cause notice by supplying copy of the enquiry report.

Accordingly, the Ministry of the Establishment served the 2nd show cause notice along with the copy of the enquiry report upon Mr. M on 15.12.86. The reply which was submitted was considered to be unsatisfactory and the case was again referred to the Public Service Commission (PSC) for penalty of removal from service. As the PSC was of the same opinion as the authority, Mr. M was removed from service on 14.10.87. Against this order of removal from service Mr. M submitted a review petition to the Hon'ble President on 22.10.87 which was rejected on 10.3.88.

Summary of the case

1.	Charge framed	10.3.85
2.	Charge communicated	10.3.85
3.	Prayer submitted for extension of time to submit written statement alongwith statement of justification.	1.4.85
4.	Petition to treat statement of justification as written statement.	8.4.85
5.	Board of Inquiry formed	22.4.85
6.	Enquiry report submitted	23.6.85
7.	Second show cause notice served	3.7.85
8.	Answer of second show cause notice submitted	5.7.85
9.	Summary submitted to Hon'ble President proposing removal from service	25.7.85
10.	Removed from service	4.8.85
11.	Review petition rejected	26.11.85
12.	Case filed before Administrative Tribunal	26.4.86

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| 13. | Judgement delivered by the Administrative Tribunal | 22.5.86 |
| 14. | Judgement of Administrative Appellate Tribunal | 12.11.86 |
| 15. | Second show cause notice along with copy of enquiry report served. | 15.12.86 |
| 16. | Answer to 2nd show cause notice submitted | 18.12.86 |
| 17. | Summary submitted to Hon'ble President proposing removal from service | 7.4.87 |
| 18. | Removed from service | 14.10.87 |
| 19. | Review petition submitted | 22.10.87 |
| 20. | Summary about review prayer submitted to Hon'ble President | 27.12.87 |
| 21. | Review petition rejected by Hon'ble President | 10.3.88 |

Observations

(a) On examining the case it appears that the learned Member, Administrative Appellate Tribunal set aside the order of the Govt. removing Mr. M from service for non-supply of copy of the enquiry report with the 2nd show cause notice. The accused was departmentally proceeded under the Govt. Servants(Discipline and Appeal) Rules 1984. The said rules did not provide for supplying any copy of the enquiry report along with 2nd show cause notice. But when a 2nd show cause notice is served on an accused, he gets an opportunity to show cause against the proposed penalty as well as against the findings of being guilty on the allegation levelled against him. The basis for the finding of guilt of the accused is the enquiry report and it is evident that if a copy of the enquiry report is not furnished to the accused at the time of the 2nd show cause notice he can not be held to have been given a reasonable opportunity to defend himself. The absence of such a reasonable opportunity vitiates the penalty and as such the learned Member, Administrative Tribunal found reason to set aside the order of removal on the ground of non-supply of copy of enquiry report with 2nd show cause notice. But as per the then existing rules,

the non-supply of copy of enquiry report was no illegality. So it can be seen that the provision of rule was faulty. Govt. realised the defect and in the rules of 1985 i.e. The Govt. Servants (Discipline and Appeal) Rules 1985 which came into force repealing the rules of 1984 the provision of supplying copy of the enquiry report alongwith 2nd show cause notice has been incorporated.

(b) Mr. M was apparantly at fault for more than one count:

He was an advocate and was age-barred for government service. In order to decentralise administration and reach the administration of justice at the Upazila level, government recruited a batch of magistrates of different ages relaxing age limits. However, in order to compensate the elderly recruits who were supposed to have been in various other professions and services, government considered that payment of initial scale would not be just for newly recruited elderly persons. So they were allowed higher pay . But this does not mean that this newly recruited magistrates were superiors to others who got lesser pay but were holding higher position like UNO, ADC/ADM or Deputy Commissioner. Mr. M was at fault for not understanding his correct position. Similarly, it would have been wiser for the government to make the newly recruited magistrates of higher pay to understand their positions through proper instructions.

(c) Mr. M was obviously not discharging his judicial responsibility properly. He was given only a 15 days training. This was hurriedly arranged earlier and government was very eager and was in a hurry to post the officers at the Upazila level. He was given a second class power with the power to take cognizance of cases. Obviously, his training was not sufficient. Yet Mr. M, as a former lawyer was not supposed to make so much of mistakes in administration of justice and also should not have

made rifts with advocates in his place of posting.

(d) There had been an allegation against him for misconduct particularly in respect of 'Muta' marriage. But the enquiry report shows that the allegation was not established. Yet in the summary to the Honourable President, the allegation of muta marriage was mentioned.

(e) Mr. M was called by the Area Martial Law authority and was apparently asked to go ahead with magisterial work without fear or favour. But Mr. M understood very late that it was not possible. The question is — Has the society provided sufficient protection for the magistrates and other judicial officers to administer justice without fear or favour?

(f) One of the charges against Mr. M was that he stated in the presence of the Deputy Commissioner and occasionally in presence of others that had he been the Finance Minister, he would have abolished the Income tax department. This was a wishy-washy tall talk which by itself might not have constituted an offence. Hundreds of other public servants make more serious comments about government departments than this. It appears that it was his way of talking and not the content of it which was material. Mr. M could have perhaps been given a chance to write a thesis on it by transferring him to the National Board of Revenue. Perhaps, he could have given some constructive suggestions how the Income tax department of the government and its activities could be more rationalised. But as he was specifically recruited for magistracy, nobody thought of it. It was not at all impossible because he belonged to BCS(Admn.) cadre and mobility of a BCS(Admn.) official to National Board of Revenue in an equivalent post was not impossible.

(g) Mr. M realised very late that "in order to be in the service one is to please his superiors". This is perhaps not a very happy observation by a member of magistracy. A member

of magistracy like other judicial officers is to feel independent in the administration of justice.

(h) The enquiry was conducted primarily in respect of judicial work of a magistrate. But the Board of Inquiry was headed by a lady who although a member of SSP had had BCS (Education: General) cadre as her recruitment base. Perhaps, it would have been better to appoint a Board of Inquiry to be headed by someone who had the experience of magistracy.

(i) There was a point of limitation for time bar. It was rather a hair-breadth escape for the government. Proceedings could perhaps be handled more efficiently if the concerned officers were more careful. Although the total time was maintained by serious calculation with one day's margin, care was not taken for the time limit of some steps within it. The Board of Inquiry was set up on 22/4/85 which submitted its report on 23/6/85 and the second show cause was served on 3/7/85. While under rules the maximum time allowed for submitting inquiry for major penalty case is 30 days and the authority can extend only 15 days time more.

(j) The Government won in this case but with the pronouncement of learned Appellate Tribunal, an important dictum of law i.e., audi alteram partem i.e. nobody should be punished without being heard is re-established. The learned Appellate Tribunal asked the government to supply the accused with copy of enquiry report to hear his pleadings. Government was also wise to include this provision in 1985 discipline and appeal rules by improving the 1984 rules.

Chapter-IXCase No. 5 : A case of delayed procedure

Bangladesh Rural Development Board (BRDB), a statutory body, was created in 1982 by conversion of Integrated Rural Development Programme set up in 1971 to organise and boost up rural development through two-tier co-operative system. It organises Krishak Samabay Samity, Bittahin Samabary Samity, Mahila Samabay Samity, Mahila Bittahin Samabay Samity etc. It also arranges credit programme for members of various co-operative societies and training programme for co-operative workers and employees. In September, 1988 government has approved the Service Rules including Discipline and Appeal Rules for the employees of this organisation. Prior to this they used to follow the Government Servants (Discipline and Appeal) Rules 1985 in disciplinary matters. The Service Rules adopted by BRDB are prepared following the model service Rules circulated by the Ministry of Establishment and basically are similar to those of the government. The case in brief is that on 8.1.86 the accused Mr. L. Upazila Rural Development Officer, Upazila Central Co-operative Association, was placed under suspension. The reason of suspension according to the suspension order is that the Bangladesh Rural Development Board (BRDB) has proposed to take action against the accused person under Rules 3(a), (b) & (d) of the Government Servants (Discipline and Appeal) Rules 1985 i.e. for the offence of inefficiency, misconduct and corruption as defined in the aforesaid rules and the Board was of the opinion that it was necessary to place the accused under suspension.

Subsequently on 26.5.86 a formal charge was framed against the accused for as many as 8 different offences alleged to have been committed during the period of 6.2.84 to 10.10.85 Mr. R was charged to have committed the offence of inefficiency, misconduct and corruption as defined in the Government Servants (Discipline & Appeal) Rules 1985 and was asked to show cause

as to why he should not be removed from the Service of the Board or otherwise punished. The reply was to be submitted to the Inquiry Officer Mr. I, Deputy Director (Co-operative) within 10 working days from the day the charge has been communicated to the accused person.

Mr. I submitted his written statement of defence denying all the charges levelled against him within the stipulated time.

The Inquiry Officer conducted the inquiry on 26.6.86 and 12.8.86 and submitted his inquiry report on 1.9.86 recommending serious penal action against the accused and also steps to recover the alleged misappropriated amount. According to the Inquiry report Mr. I was found to be guilty of the offence of misappropriation of fund, misuse of power, misconduct and causing financial loss to UCCA.

On 18.10.86 the accused was served with a so called final show cause notice against proposed penalty of removal from service or any other penalty and recovery of Tk. 2,24,929/- (two lakh twenty four thousand nine hundred twenty nine) only within 10 working days from the day the notice has been communicated to him.

In the meantime, District Anti-Corruption officer(DACO) Rajshahi lodged four FIR against the accused Mr. I under a X P.S./no. 5 dated 31. 12.85 u/s 409/109 of the Penal Code and u/s 5(2) of Anti-Corruption Act 1947.

- b. X P.S. case no. 6 dated 31.12.85 u/s 409 of the Penal Code & u/s 5(2) of Anti Corruption Act 1947.
- c. X P.S. no.4 dated 3.1.86 u/s 409/109 of the Penal Code & u/s 5(2) of Anti-corruption Act 1947.
- d. X P.S. no. 2 dated 28.2.86 u/s 409 of the Penal Code and 5(2) of Anti Corruption Act 1947, for the same alleged offence for which departmental proceedings were initiated.

In reply to the so called final show cause notice the accused submitted a prayer on 1.11.86 stating that he is not in a position to disclose his defence at that stage which may prejudice his defence in the criminal case. He also stated that the I.O. did not record any oral evidence nor he was given any chance to cross-examine any witness which has caused serious miscarriage of justice. Finally he prayed to keep the dept. proceeding case pending till disposal of the criminal cases started by DACO.

On 4.12.86 the accused was again asked to submit reply to final show cause notice within 7 working days as his earlier reply, according to the authority, was not specific. Mr. L submitted the reply on 23.12.86 again stating his inability to disclose his defence at that stage as stated earlier in his reply on 1.11.86.

Though the BRDB authorities have decided to impose penalty on Mr. L in the dept. proceeding, they cannot impose the penalty till the disposal of the legal proceedings against Mr. L as per rule 25 of the Govt. Servant (Discipline and Appeal) Rules 1985.

From a report of the D.A.C.O Rajshahi it appears that all the 4 cases are pending with Anti-Corruption council for decision.

Since the BRDB authority cannot dispose of the dept. proceeding imposing penalty on the accused, the dept. proceeding was still pending and the accused was still under suspension since 8.1.86, that is, for more than 3 years and 4 months.

Observations

On examination of the departmental proceeding case it appears that following irregularities have been committed in context of the Govt. Servants (Discipline & Appeal) Rules 1985:

- (a) The accused was suspended on 8.1.86 and the charge against him was framed on 26.5.86. As per rule 11(2) of the Rule 'An order of suspension made under sub-rule (1) shall stand vacated on the expiry of a period of thirty working days unless before the expiry of that period the allegations brought against him under rule 6 are made known to him or the charge framed against him under rule 7 is communicated to him.' In this case the charge was framed long after 4 months 18 days. So as per provision of the rule, the suspension order should have been vacated on 7.2.86 for failure to communicate the charge to the accused.
- (b) No deposition was recorded by the I.O and accused was not given any opportunity to cross examine the witnesses which is mandatory provision of rule 10(2).
- (c) It appears that no conducting officer was appointed to present the case in support of the charge before the I.O as per Rule 10(4). Inference can be drawn that I.O. himself has done the job of conducting officer losing his neutrality.
- (d) According to rule 7(2) the accused is supposed to submit his statement of defence to the authority and the authority is supposed to consider it before taking next step. In this case the accused was asked to submit his statement of defence to the I.O. which clearly vitiates the provision of rule.
- (e) In the charge, the accused was not asked to state whether he desired to be heard in person as per rule 7(1)(b) there by depriving him of legal right.
- (f) As per provision of Rule 7(b), seven working days time shall be given to the accused to answer 2nd show cause notice, but in this case 10 working days time was given.
- (g) According to Rule 7(4) the I.O. is to complete the enquiry and submit his findings to the authority within 30 working days from the date of his appointment, provided that if the I.O. cannot conclude his findings within the

specific time, he may request in writing stating the reasons therefore, and the authority ordering the enquiry may extend the time not exceeding 15 working days. So the maximum time that the I.O. can get to complete the enquiry is 45 working days from the date of his appointment. In this particular case the I.O. was appointed on 26.5.86 and he submitted his inquiry report on 1.9.86 taking about 3 months' time. There is no proof also that he prayed for extension of time.

(h) As per Rule 7(5) the authority is to consider the findings of the inquiry officer and record its decision on the charge and communicate the same together with a copy of the report to the accused within 10 working days from the date of receipt of the report.

In the case the inquiry report was submitted on 1.9.86 and the authority asked the accused to submit the so-called final show cause notice on 18.10.86. In other words authority took more than one and a half month's time in place of only 10 working days specified in the rule.

(i) As per Rule 10(8) the I.O. shall give only his findings stating whether the accused is guilty or not guilty on each charge and he shall not give any recommendation regarding punishment or otherwise.

But in this case I.O. recommended serious penal action against the accused which is absolutely against the provision of rules and the neutrality of the I.O. can be very much questioned.

CHAPTER - X

Case no. 6: A Case Under Labour Law

This is the case of one Mr. Q, ex-Machineman, Drum Factory, Airport Road, Tejgaon, Dhaka against the Managing Director, National Engineers Ltd(Drum Factory) and the Manager of the said Factory under complaint case number 266 of 1985 in the First Labour Court of Bangladesh at Dhaka. The complaint case was as follows :

Mr. Q was appointed as a Machine-helper in Drum Factory on 1-10-77 before its privatization. The firm was under the control and management of Bangladesh Steel and Engineering Corporation(BSEC). He was promoted to the post of Machine man subsequently and he used to draw Tk. 660/- per month as his salary. On 8-4-85 when he was performing his duties, he felt pain in his stomach and he was taken to his residence and therefrom he was taken to P.G. Hospital for treatment. P.G. Hospital referred him to Dhaka Medical Hospital on 9-4-85. He was admitted into the Dhaka Medical Hospital first as out-door patient and then he got admission for treatment as in-door patient on 12.5.85. He was operated on 28.5.85. He was discharged from the hospital on 19.6.85.

Mr. Q went to join his duty on 11.7.85 and met the Manager of the factory who sent him to the Managing Director. Thereafter he joined his duties on 22.7.85. The Manager discharged him from service on the ground of continued ill health. Mr. Q being aggrieved by and dissatisfied with the order of discharge submitted grievance petition to the Management on 15.8.85 by registered post requesting for reinstating him in the post with the full back-wages. The second party replied the grievance petition on 31.8.85 denying to redress the

grievance without giving any personal hearing.

Mr. Q contended in his plaint to the Labour Court that he was ailing on account of chronic duodinal ulcer and he was operated on 28.5.85 by Professor Abu Ahmed Chowdhury and was discharged from the hospital on 19.6.85 with certain instruction such as -

- a) To take complete rest for two weeks
- b) To take soft rice for two months
- c) Not to do any heavy work for three months
- d) To take sufficient water and vegetables

When he went to join his duties and met the manager, he verbally advised him to come to join a few days after the return of the Managing Director from USA. Accordingly he joined his service on 22.5.85 but his joining letter was not accepted rather he was discharged from service on the ground of continuous ill health.

Mr. Q submitted that he was not unfit to work. He was a Machine-man and the duty of Machine-man was not too heavy. The main reason was that he was the President of the National Engineers Sramik Karmachari Union which is a registered trade union under Registration No. 123 and the union was also a Collective Bargaining Agent(CBA). Mr. Q as President of the union used to ventilate the grievance of the workers for which the management became annoyed with him and on flimsy ground discharged him. He viewed that the discharge was nothing but victimisation for trade union activities. He contended that he was promoted to the post of Machine-man for efficient and meritorious service and that he was a permanent employee and he was discharged illegally without allowing a personal hearing.

The respondents in their written statement contested the case stating that Mr. Q was not promoted for efficient and meritorious service rather he was promoted in usual grade on account of length of service. His service record was not at all

satisfactory. Mr. Q was suffering from duodinal ulcer prior to the date of joining the company and the company was not aware of the fact that he was operated once earlier for chronic ulcer. He did not keep well since the date of appointment and during his continuation of service often and anon he remained absent on the ground of illness. He submitted leave applications from 19.12.78 on different occasions upto 21.7.85. He was warned earlier for his unauthorised absence.

The Management did not agree that he was discharged for trade union and Collective Bargaining Agent activities rather he was discharged on the ground of continued ill health because as a Machine-man he was supposed to do some jobs such as handling the Drumsheets, Drum Machines etc. which were heavy in nature and would not be possible at the state of health of Mr. Q. It was a case of discharge. Such an action did not require any show-cause notice or holding of enquiry in any manner.

Points for determination in this case, as the Labour Court viewed, were as follows :

- a) Whether Mr. Q was discharged from his service legally
- b) Whether he was entitled to be reinstated in his service in the firm with full backwages and other legal dues
- c) To what relief, if any, was Mr. Q entitled

The Labour Court observed that under sec.16 of the Employment of Labour(Standing Orders) Act 1965, a worker might be discharged from service for reason of physical or mental capacity or continued ill health or such other reasons not amounting to misconduct. Mr. Q was on medical leave from 9.4.85 to 11.4.85 and was operated in the Dhaka Medical College. The Management was competent to decide whether he was able to do his work further. But in this case they should have consulted a physician but this was not done. But Mr. Q was not entitled to be rein-

stated in his service as his service was liable to be terminated with all backwages and other legal dues.

One learned member, however, put a note of dissent and noted that it was proved from several applications from 19.12.78 to 21.7.85 that Mr. Q was in poor health. But for this poor health his previous employer i.e. BSEC did not get rid of him earlier on the ground of physical incapacity. Mr. Q had an operation and the entire period of absence from the date of feelings stomach pain(8.4.85) to reporting for joining(11.7.85) after hospitalisation, rest etc. was as per advice of the doctor. The period was for about three months. Not allowing a permanent worker to join duties after hospitalisation and operation could not be considered as humanitarian treatment. He viewed that soon after privatisation of the firm when Mr. Q became the President of the registered union and legally ventilated the grievance of the employees, the management was looking for opportunity to get rid of him and his operation give the management a chance.

Observations and Follow up

Mr. Q was a pious type of man. He served the factory for long and was respected by his colleagues. Therefore, he was made the President of the Karmachari Union. He was of ill health and therefore on many occasions, he absented himself from duty. Yet he was bold enough to ventilate to the Management the grievances of the employees.

Another cause of his occasional absences was his participation in 'tablig'. It was found in a personal letter written to the Managing Director on 18.9.84 that he submitted a leave application on account of illness but went for 'tablig' for one 'chilla' (40 days) and proposed to be granted leave for three 'chilla' and also prayed for help of Tk. 2,000/-(two thousand).

Mr. Q was granted along with some other workers an accommodation within the premises which was available to bache-

lors in a thatched tin-shed house. Later, he brought his wife and children and accommodated them in a room which was allotted to him. Some other workers followed suit. It was also stated by the management that Mr. Q had accommodated other guests including one driver along with his wife who worked in a garments-factory as subtenants. The management was to oust him from the accommodation and also served a notice upon him. But even in February 1989 long after his discharge he was traced to be residing there by the researchers. But he goes out early in the morning and comes home back late at night. Perhaps, he has been working somewhere else which does not provide him accommodation and devotes a time for 'tablig'. Apparently the management could not oust him for sympathy of the other workers for him.

Mr. Q's trade union activities might also be a cause for his discharge. But he did not approach the labour Appellate Tribunal. Law permits that if somebody loses his job for trade union activities, he can bring the management to justice after approaching the Labour Appellate Tribunal. Mr. Q did not do so. It appeared that Mr. Q has compromised a little with the management and vice-versa for holding his accommodation for some time more as the accommodation problem was one of the acute problems in the city. Mr. Q is no more vocal, he does not see anybody nor he allows anybody to see him or to talk to him about his problems.

Chapter-XIA Special Group Suggestions

Under the present study, a group of 50 officers of mid seniority level attending a Conduct and Discipline Course of BPATC were asked what should be essential fore-most 5 qualities of a public employee. In response, a general consensus was as follows:

- (a) Neutrality and justice without fear and favour
- (b) Integrity
- (c) Alertness about the duty and responsibility
- (d) Trustworthiness to the people
- (e) Courteousness.

The group sat in brain-storming sessions and later in group discussions. They found that the present Disciplinary Rules need adjustments, modifications and amendments. Their suggestions are given below:

Conduct Rules

- (a) Rules regarding acceptance of gift may be amended to allow the Secretary of the Ministry or Division or Head of the department to accept and keep with himself a gift from foreign organisation etc. up to the value of Taka 2,000/-.
- (b) Rules regarding buying and selling of property may be amended to raise the ceiling from Tk. 15,000/- to 1,50,000/-. Moreover, there need not be any restriction for selling of the property of any amount at the time of transfer of the public employees.
- (c) Rules regarding declaration of assets of Tk.10,000/- may be raised to Tk.1,00,000/-, but the jewelleries over Tk.20,000/- may be declared.

(d) There are also suggestions from some that public employees need not be the members of luxurious clubs. This may help moderate living as well as finding lesser activities for corruption for lesser contact with the wealthy people.

(e) Provision for raising of funds may be relaxed for the civil administrators. In fact, funds are often raised for social welfare activities and it is difficult to take permission of the government on each and every matter, but the account should be maintained for inspection and audit. However, the police, officials of taxation department and food department should not participate in fund-raising in order to avoid the probability of corruption.

(f) There need not be any bar for construction of building for dwelling purposes and no permission need be taken. But the head of the department may be informed of it along with the source of the funds as a matter of information.

(g) There need not be any restriction to carry on business or trade by the members of the family of the gazetted and non-gazetted employees. However, the work must not prejudice their official duty. There need not be also any bar for gazetted officers who are not the administrators of a particular area to carry on a trade or business of a moderate nature beyond their normal office hours. In fact many a senior officials are said to be conducting some business either silently or in the name of others. Hence there is no need for such restriction.

Disciplinary Rules

The suggestion that came forward was as follows:

(a) The term 'unbecoming of an officer' may be substituted by 'unbecoming of a government servant' to cover both officers and staff.

(b) Infirmary of mind or body may not be treated as inefficiency if it is caused by an accident or other natural causes over which a government servant has no control. Rather the term 'invalidity' may be added.

(c) The term 'otherwise' in respect of inefficiency may be elaborated because there are much more inefficiency found here and there than passing the departmental examination.

(d) The term 'corruption' may be exhaustively defined as to include bribery and illegal gratification within it.

(e) There need be a time limit for framing of charge after receiving the statement of allegations in case of the major punishment procedure.

(f) Like the provision in the Criminal Procedure Code there should be a provision in the disciplinary rules for a revival of a case by the government or more appropriately by the head of the department in case of grave offences. Because it is found that some times serious offenders are set free because of time limit.

(g) The time limit for each step need be extended and the total time limit for major punishment procedure may be raised to clear six months.

(h) It is often found that there is no presenter of the case before the inquiry committee. Compulsory provision may be made for the presenter.

Punctual Attendance Ordinance

(a) In the Public Employees Discipline(Punctual Attendance) Ordinance 1982 there is provision for punishment for late attendance but there is no provision for early leaving the office without permission. If punishment is to be provided, it should be provided both ways.

(b) In the said ordinance instead of deducting one day's salary, provision should be made for deducting one day's casual leave for three days late attendance or early departure.

(c) Forty eight hours appeal time is a very insufficient time. It may be raised to 7 working days.

Special Provisions Ordinance 1979

(a) 'Absence for two days' without permission need be raised at least to 'absence for 7 working days'. The period of show-cause and the period of appeal may be also be raised to 10 days and one months respectively. In fact, this ordinance need to be combined with the Discipline and Appeal Rules as there is provision for desertion in the Discipline and Appeal Rules.

Dismissal of Public Servants(On Conviction) Ordinance and Rule 73 of BSR Part-I.

A Government servant need not be put under suspension if he is arrested provided he gets the bail. Each case may be dealt with on its own merit.

Employment of Labour(Standing Order) Acts and the Industrial Relations Ordinance

(a) There need be a change in the definition of 'misconduct' to cover 'illegal gratification' not only for employment but for any other reason.

(b) 'The lawful order of the superiors' may be further elaborated.

(c) Employers may be required to lookafter the health of their employees. Once recruited, in the extreme case of discharge, opinion of a government employed Medical Board need be taken.

Leave Rules

There should be a set procedure for granting leave without pay if leave is available at the credit of the public employee. Since in such cases it is considered to be a punishment, it may be included in punishment clause of the Discipline and Appeal Rules so that show-cause and other procedures should follow.

Recruitment and Seniority Rules

Recruitment and seniority rules should be more specific so that once codified no incumbent should be deprived of the facility by discretion.

Administrative Appellate Tribunal Procedure

According to section 5(2) of the Administrative Tribunal Act, 1980 an Administrative Appellate Tribunal shall consist of one Chairman and two other members. According to section 7(4) of the same Act in the event of any difference of opinion among the members of the Administrative Appellate Tribunal, the opinion of the majority shall prevail. The purpose was to combine the practical service experience of one of the members with the experience of members from judiciary. Subsequently, the Appellate Tribunal was made a one member Tribunal. Of late, Government felt the necessity of reverting back to the original provision about its composition. The Rules have been amended accordingly. But all the three members of the Tribunal are now from the judicial service. It would be better if the original provision of supplementing the professional experience of the learned members from the judicial service with the administrative experience of members from other civil service was kept unchanged, and all the three members remain present at the hearing.

Public Service Commission Procedure

According to rule 7(7) of the Government Servants (Discipline and Appeal) Rules, where consultation with the Bangladesh public Service Commission is necessary the authority shall forward the necessary papers of the proceeding case to the Commission for advice and the commission shall give its advice within twenty working days of the receipt of such proceeding. If no advice is received within the specified time, the authority shall assume that the Commission agrees with the decision to award penalty. In many cases due to the fault of despatch or receiving section, the papers may not reach the Commission in time and it may not be possible on the part of the Commission to examine the papers within the short time to give any opinion. So the time limit for this purpose may be increased and provision may be made for actual advice of the Commission rather than presumption.

Chapter-XIIConclusion: Adequacies of Existing Laws, Rules, Procedures and Practices

A public employee is in the service of the Republic. In the broader sense, he is to serve the public. He is to serve the public without fear and favour, ill will or affectation. He does not serve a particular government rather all the governments. He is loyal to the state and the Constitution. In a modern state, he is not a traditional collector of revenue and maintainer of law and order rather he is a developmental agent. He should trust the people, and the people in turn should trust him.

In order to build up a right type of public servant, right type of motivational forces should work behind. In the long past, pay of the public employee was something to be envied by the others, so was the status and public image about him. To day all the three factors have lost ground. In a separate case study, when the officers of three popular cadre were asked whether they would sacrifice their government job for a good job in a foreign company or a foreign country nearly 33.3% of the cadre officers had answered in the affirmative. Even more, when they were asked a probe question whether they would advise their children and dependants to follow their own career, overwhelming majority in the average (70%) answered either in the negative or were not sure about it.¹ This shows the present state of the morale at the higher level, not to speak of morale that exists amongst the non-gazetted and other employees of lower grades.

The crux of the problem is to boost up the morale of the public employees in discharge of their responsibilities not only without fear or favour but also without financial and other worries for themselves and their dependants. There has to be a sense of security in their services not only for

¹ M.Safiur Rahman and M.Wahiduzzaman, "A Study of the Career Development Programme in the Bangladesh Civil Service" (Dhaka: BPATC, 1988), p.XII-7(Mimeo).

the service period but also for the days when they would retire. A public servant need not undertake a style of living which is pompous, showy and beyond his means, but he cannot but maintain a style of living which is worthy to his position and status and matches with the moderate expectations of his kith and kin.

With this context, the conduct of a public servant need be analysed. In 1860 when two long chapters on the Public Servants (Chapter IX & X) were added to the Penal Code, image of the public servant was high and their morale was unparalleled. The two chapters consisted not only of the liabilities but also of some privileges. For example, if a public servant in discharge his official duties is in trouble and asks for the assistance of some members of the public and the latter refuse him, the latter would be punished under law (Sec. 187). Nearly 100 years after in 1947 Anti-corruption Act was passed. This indicates that corruption came to be rampant amongst the the public servants.

Decades after, government found that the public servants needed stricter and separate rules of conduct. The process of ordinary law court is slow and time-consuming and based on the presumption of innocence, hence separate conduct rules were framed in 1964, in 1966 and finally in 1979. Alongwith it provision for separate departmental proceedings were made in 1959 under the title Government Servants (Discipline and Efficiency) Rules, in 1960 under the title Government Servants (Efficiency and Discipline) Rules; in 1976, in 1984 and in 1985 Government Servants (Discipline and Appeal) Rules.

Position of Public Employees in India

In India apart from the Constitution, public employees are protected by the Act of Parliament, so far as the security of services are concerned. In India Article 310(1) states that 'except as expressly provided' in the Constitution, public servants hold their office during the pleasure of the President or the Governor as the case may be. Exception provided

elsewhere are for the Supreme Court and High Court Judges, the Auditor General, the Chief Election Commissioner etc. Subject of this exception, the Indian Constitution by Article 310(1) has adopted the English common law rule that a public servant holds office during the pleasure of the President or the Governor as the case may be and has by Article 311 imposed qualifications on the exercise of such pleasure.

In *Nripendranath Bagchi vs. Chief Secretary, Government of West Bengal*, it was held that the pleasure referred to in Article 310 can only be exercised in strict accord with the express provisions of the Constitution^{1a}. Article 311 provides that the parliament and the legislatures of the states can make a law laying down and regulating the scope and content of the doctrine of reasonable opportunity. But the said law would be subject to judicial review². It was also further held that Article 311 was designed to promote a sense of security in the Civil Servants and this Constitutional safeguard emphasises this aspect of the condition of service and protects the civil servant from arbitrary dismissal or removal or reduction in rank.

Government of India initially followed the Government servants Conduct Rules 1926 until it framed government servants Conduct Rules 1950 and later All India Service (Conduct) Rules 1954 and the Central Civil Service (Conduct) Rules 1955. The Government of India have issued instructions from time to time stating that "Government servants should at all times maintain absolute integrity and devotion to duty. It is in fact exiomatic that government servants, specially those holding position of trust^{and}/responsibility should not only be honest and impartial in the discharge of their official duty, but also have the reputation of their being so A Government servant is expected to maintain a reasonable and decent standard of

^{1a} AIR 1961 Calcutta-10

² *UP vs. Baburam Upadhyaya*, AIR, 1961. SC 751.

conduct in his private life and not bring discredit to his service by his misdemeanour". However, it was held in courts that the misconduct on the part of the public servant must arise within his employment and not outside it. He should not be dismissed without being furnished a reasonable opportunity of defending himself nor should be victimised and deprived of the right of a fair trial³.

The Administrative Reforms Commission 1967 dealt, inter alia, the conduct rules and found that some of them were not in conformity with the fundamental right guaranteed by article 19 of the Constitution and observed that civil servants are entitled to fundamental right in the same manner as any other class of citizens⁴ and hence suggested various measures to simplify Conduct Rules which were mostly accepted.

Grievance Procedure in Europe

In United Kingdom grievance procedure includes inter alia, appeal to superior administrative authority, appeal to administrative tribunal, avenue to political action and appeal to Court of Law. In both France and West Germany, special Administrative Courts look after the grievance in relations to public servants. In France, judges of administrative courts are almost exclusively professional civil servants. In German Federal Republic, there are three types of Administrative Courts, viz. Administrative Court of General Jurisdiction, Social Security Court and Fiscal Court. Procedure for France and German Courts are largely written. In both the countries it may annul any administrative action.

In U.K., declaration by the court of law has a wider significance but declaration can be obtained only by the High Court and not by the County Court. The French Administrative

³ See Hind Publications, Removal & Dismissal of Government Servants (Undated) pp. 151-53.

⁴ Administrative Service Commission, Report of the Study Team: Promotion Policy, Conduct Rules, Discipline and Morale. Vol. I & II (December, 1967). pp. 107-41.

Court has the power to make declaration and also award damages, while the German Administrative Court has the power of limited declaration but it can award no damage. The French Administrative Court may accept petition for seeking annulment of administrative action by person who shows that he has an interest, but in the German Administrative Court only an affected person may make such petitions. In German Administrative Court, the petitioner must first appeal to the issuing authority, in French Court, there is no such requirement. In German Administrative Courts, right of action accrues after three months' waiting and lodging of appeals automatically suspends execution of appealed decision. In French Court, right of action accrues after four months' waiting. But no automatic suspension of appealed decision is there. Plaintiff may apply for it. In French Administrative Court arguments put forward are (a) Correct Procedure not followed by the authority, (b) mis-interpretation of law, (c) Action outside jurisdiction. The German Administrative Courts accept an additional arguments i.e. abuse of discretion.

In Bangladesh, although the Constitution provides that Parliament may, by law regulate the appointment and conditions of service of persons in the service of the Republic, no effective law has yet been formulated. However, Article 135 of the Constitution provides that no person who holds any civil post in the service of the Republic shall be dismissed or removed or reduced in rank by an authority subordinate to that by which he was appointed and that no such person shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause why that action should not be taken. But the Constitution states that when it is not reasonably practicable to give that person an opportunity of showing cause or where the President is satisfied that in the interests of the security of the state it is not expedient to give that person such an opportunity, the opportunity of showing cause may not be given.

Security of tenure

In most of the advanced countries civil servants have a great security of tenure — a security sometimes sanctioned by law, and sometimes by convention. In the extreme case this security is sanctioned in Sweden by the constitution itself. In Sweden, the constitution not only protects the official against removal except after trial but also protects him from any transfer except with his own consent. The Norwegian constitution follows this very closely. It protects the official from dismissal unless judgement has gone against him in the proper tribunal nor may he be transferred against his will. The Danish civil service law also protects the official from arbitrary dismissal or transfer. Even in the 19th century when promotion and appointment were frequently subject to influence, favouratism and nepotism, a civil servant once appointed had very considerable personal security. In France, for instance, by the middle in the 19th century, judges and officers were entirely protected and member of the technical corps were hardly less so⁵.

In UK, the rules of natural justice not only protect the citizens and restrict the freedom of administrative action but also protect civil servants from arbitrary decisions of the authorities in disciplinary cases⁶.

The American civil service reform started as a battle against the spoils system right from the Hatch Act. Purity rather than performance was the main consideration at that stage⁷. Many of the empirical research show that the security of the government employment dominate all other motivations. Some people even critically remark "once on the pay roll, they get off less and less qualified"⁸. Yet the benefits from the

⁵ Brian Chapman, the Profession of Government: The Public Service in Europe (London: George Allen and Unwin Ltd, 1963, pp. 145-46.

⁶ Margherita Rendal, "Natural justice and disciplinary cases in Britain and France" Public Administration (RIPA, London) Vol. 58. (Spring, 1980) pp. 67-68.

⁷ O. Glenn Stahl, "Public Personnel Administration" (5th edition) New York: Harper and Row, 1962, pp. 364-65.

⁸ Franklin P. Kilpatrick and Others, "Image of the federal service" (Washington, the Brookings Institutions, 1964) pp. 224-25.

feeling of security is there. Today public personnel administration is entering a new period in respect of ethical considerations. The Civil Service Reform Act of 1978 is indicative of the trend to lodge actual responsibilities for ethics in personnel offices⁹.

Rules of conduct

Civil service pay and conditions of service code(CSPCSC) and the Established officer's guide (EOG) in UK set out a number of general rules which apply to all members of the service as follows:¹⁰

- (a) Undivided allegiance to the state at all times;
- (b) The avoidance of conflict between the official duty and private enterprise;
- (c) Refraining from private activities that might bring discredit on the service;
- (d) Honesty not only in fact but also conduct that does not lay one open to suspicion of dishonesty, and
- (e) Maintaining a proper reticence on matters of public and political controversy so that one's impartiality is beyond suspicion.

. The form of misconduct counted by Dwivedi and Jain in India's context are:¹¹

- (a) Bribery, graft patronage, nepotism, influence, peddling
- (b) Conflict of interest including such activities as financial transaction to gain personal advantage, accepting outside employment during tenure in government
- (c) Misuse of inside knowledge
- (d) Protecting incompetence

⁹ Jeremy F Plant, "Ethics and Public Personnel Administration" Public personnel administration: Problems and prospect (Ed.S.W. Hays and RC Kearny) Engle Wood Cliffs: Prenlic Hall, 1983, pp. 290-91.

¹⁰ Gavin Drewry and Tony Butcher, "The civil service today" (Oxford: Basil Black Well Ltd, 1988, pp. 131.

¹¹ O.P.Dwivedi and R.B. Jain, Indias Administrative State (New Delhi: Gitanjali Publishing House, 1985) pp.100-101.

- (e) Regulating trade practices or lowering standards in such a manner as to give advantage to oneself or to family members
- (f) The use and abuse of official and confidential information for private purposes.

V.M. Sinha writes that India's conduct rules cluster round the following five sub-divisions:¹²

- a) Political activities
- b) Relations with non-officials, press, radio and criticism of government
- c) Public demonstrations and gifts
- d) Property, private employments and investments
- e) Miscellaneous.

He observes that Government servant conduct rules in 1926 included complimentary present of flowers and fruits or similar articles of trifling value within the meaning of. Though the officials were permitted to accept such gifts, the government required them to discourage the tender of such gifts. The Railway service conduct rules too contained a similar provision.¹³

The Swiss civil service regulations require that public official must obtain official permission before he may: (a) pursue activities outside the scope of his official duties if they bring him financial gain or consistently take up much of his time, (b) be a member of a board or association or institution for economic advantage and financial gain. Moreover, the regulations forbid the exercise of a profession which may lead to a breach of official secrets Acts or involve unfair competition with craftsman, industry, commerce etc. or may seriously endanger the life or health of an official.¹⁴

¹² V.M. Sinha, The Superior civil service in India (Joipur, The Institute of Research and Advanced Studies, 1985), p. 183.

¹³ Ibid, p. 194

¹⁴ Brian Chapman, op.cit., p. 138.

In United States or in fact in most of the countries the more usual form of punishments are warning or reprimand, the reassignment of duties, low performance ratings, loss of seniority rights, suspension without pay, demotion, dismissal, and dismissal with continuing disability. Mostly, however, reprimand, suspension and dismissal are extensively used.¹⁵

In order to ventilate grievances civil service unions are formed in most countries. In UK a number of civil service associations like Civil and Public Services Association(CPSA) Society of Civil and Public Servants(SCPS), Institution of Professional Civil Service(IPCS), etc. are federated under the umbrella of the Council of Civil Service Unions(CCSU) apart from the Whitley Councils.¹⁶

Similarly in USA, American federation of government employees, National federation of federal employees etc. have large membership.¹⁷

But the problem arises when the public employees approach the authorities with their grievances. There are, however, legal pronouncements that their making of a request, complain or demand of a superior able to satisfy it through proper channels is not misconduct. A Nigerian decision was that an employee cannot be dismissed for demanding that his employer pay a just debt. Likewise the Supreme Court of Burma has ruled that a demoted policeman cannot be disciplined for going to headquarters to protest against the demotion and asking that it be reconsidered.¹⁸

¹⁵ O. Glenn Stahl, op. cit., p.371.

¹⁶ Drewry and Butcher, op. cit., pp.121-23. Whitley Councils are related to labour relations in the civil service sponsored of J.H. Whitley, a liberal M.P. for Halifax, and later speaker of the House of Commons, who chaired a sub-committee of the war time reconstruction committee set up in 1916 to consider ways of improving relations between employers and employed.

¹⁷ Robert Presthus, Public Administration (6th edition, New York Ronard Company, 1975) p.257.

¹⁸ Alfred Avins, Employees Misconduct: As cause for discipline and dismissal in India and the Commonwealth (Allahabad: Law Book Company, 1978) p.385.

Organisational Health

It is viewed that in general grievance procedure functions can be logically categorised as:

- a) Conflict management
- b) Agreement clarification
- c) Adjudication and due process
- d) Communication
- e) Institutional strength and enhancement.

Grievance procedure has been useful in preventing strikes and other forms of job action¹⁹. M.H. Bowers writes that grievance mediation can be an effective, readily available and comparatively cost-free method of resolving some grievances without resorting to labour arbitration.²⁰

In the absence of the statutes on the security of public employees and change in the nature of the government in Bangladesh as in erstwhile Pakistan, the security base of public employees was shaken several times. Dismissal and compulsory retirement after abrogation of the Constitution in 1958, and later again of 303 during Pakistan period, PO-9 of 1972, MLO-9 during Martial law period etc. have shaken the security base of the public servants enormously.

Government of Bangladesh like the earlier governments turned more attention to the discipline of the public employees. In 1959 erstwhile Government of Pakistan issued Government Servants (Discipline and Efficiency) Rules. It was re-named as Government servants (Efficiency and Discipline) Rules in 1960. The government of erstwhile East Pakistan also followed suit in the same year. At that time efficiency and discipline were

¹⁹ Steven Griggs, "The grievance procedure and organisational health", Personnel Journal (USA) Vol.60, No.6 (June, 1981) p.471..

²⁰ Mollic H. Bowers, "Grievance mediation: Another Route to Resolution", Personnel Journal (USA) Vol.59, No.2 (February, 1980) p.132.

considered to be a subject of the Finance department. The rules continued operating until it was repealed and the Ministry of Establishment issued the Government Servants (Discipline and Appeal) Rules, 1976. Later in 1984 different time limits were set for different stages in the new rules. The same was again found inadequate in 1985 when it was remodelled supplementing some provisions of the Conduct Rules of 1979 as well.

The Government Servants (Conduct) Rules itself has under-gone changes. It was framed in 1964, reframed in 1966 and also re-shaped in 1979. But the Conduct rules of 1979 limits the area of the activities of the government servants in many dimensions. The approach is very much negative.

The conduct rules, for example, provides, inter-alia, that the Secretary to the government or officers of equivalent status may accept and keep gifts while offered abroad or within Bangladesh by institutions or official dignitaries within the limit of the value of Tk. 500 only; no funds could be raised by the government servants without permission; buying and selling of valuable property-movable or immovable exceeding the value of Tk. 15,000 or construction of buildings require the approval of the government. The Rules also provide that a government servant shall not without the previous sanction of the government permit any member of his family to engage in trade, or no government servant can directly or indirectly approach any member of the Parliament. Similarly, trade unionism is prohibited for government servants. But in fact few of these provisions are said to be followed in actual practice.

Coming to the Discipline and Appeal Rules, it is found that there are several ambiguities and confusions. Whether the preliminary enquiry is permitted under the major punishment procedure, whether the person who has not been found in his residential address should be notified in the newspaper, whether the time limits for each stage is to be followed strictly or the total time limit should suffice, whether it is compulsory

for the supervising authority to forward the appeal if it is made — are some of the points yet to be settled. When a person goes abroad without permission for fortune-hunting or absconds, usually it is seen that notice in the newspaper invokes Government Servant(Special Provisions) Ordinance 1979, whereas there is specific provision of 'desertion' for remaining absent from duty for a period of 60 days or more.

However, there has been some improvement in the 1985 Discipline and Appeal Rules over the 1984 Rules and 1976 Rules. Under 1976 Rules, there was no provision for second show cause notice in case of inflicting major penalty although it was a constitutional requirement. This was made good in 1984 Rules. But under 1984 Rules there was no provision for giving the copy of enquiry report to the accused. This was provided in 1985 Rules. In our M case, we find that the Administrative Appellate Tribunal quashed a government decision because the copy of the enquiry report was not given. But it allowed the government to give him the copy of enquiry report, permit him to show cause why the punishment should not be inflicted upon him and make the final decision.

The definition of 'corruption' is again ambiguous. It only counts the possession of pecuniary resources or property disproportionate to one's known source of income, assuming a style of living beyond ostensible means, or persistent reputation of being corrupt. But it does not include, for example, bribery and illegal gratification which are the ingredients of corruption under the Penal Code or Anti-corruption Act.

Under the present rules, ^{an} accused is automatically discharged for the failure of authority to take final decision and there is no provision for revival of the case. The time limit was set in the disciplinary rules after it was introduced in the Code of Criminal Procedure as well as the Code of Civil

Procedure, but under the Code of Criminal Procedure we find that the District Magistrate can revive a case within 6 months and the government may revive it at any time later(sec.167(7A)). In the absence of such a provision in the disciplinary rules, several good cases are lost at the amazement and embarrassment of the management. Although there is provision for proceedings against the person responsible for failure on the charge of inefficiency, this is hardly done.

There is also confusion when an enquiry officer is to be appointed and when there should be a board of inquiry. When the enquiry report is not found satisfactory, a second enquiry might be ^{made on certain points.} Under government instructions the same person makes the enquiry again. Many a one opined that there is no way out if the enquiry officer is a biased one.

The discipline rules provide that if there is any prosecution or legal proceeding against a government servant pending in any court on the same issue, there shall be no bar on the disposal of departmental proceedings against him. But it is not sure what will happen if the departmental enquiry is in his favour and the decision of the court is in his disfavour or vice versa. Sometimes the court finds a person not guilty but the punishment is inflicted on him because of the departmental proceedings which is again a miscarriage of justice.

It is also provided in the Rules that if the authority decides to impose any penalty on a government servant in the departmental proceedings, imposition of such penalty shall be stayed until disposal of the prosecution or legal proceeding. In 1982 amendments of the Cr.P.C there has been time limits for investigation and trial. But nothing has been said about the disposal of prosecution under quasi-judicial proceedings like an anti-corruption enquiry against public servant. In our BRDB case under study it is found that anti-corruption case has been hanging for nearly 3 years making the life of the incumbent miserable.

Something need be said about the dismissal on conviction and rule 73 of BSR. A person if arrested by the police, even if

on bail, is to be put under suspension. This is in fact an embarrassment of the public servants in general. Under section of 54 of Cr.P.C a police man may arrest a person even without warrant for suspicion or even on mistake of fact. Some respondents report that in early days a police man used to respect the civilian officers much more than what he does today. This is again a cause of decaying of the morale amongst the other public servants.

Secondly, often in ordinary matters suspension is taken recourse to under rule 11 of the Discipline and Appeal Rules while the Establishment Manual specifically states that no one is to be suspended unless (1) he wilfully or obstinately refuses to carry out order; (2) During the course of enquiry, his retention in his appointment would hamper or frustrate such enquiry; (3) he is in police custody; (4) he is charged with an offence of a nature which, if proved against him, would ordinarily result in his dismissal²¹.

Punctuality ordinance 1982 has also been put to disuse. It provides that for two late attendance, one day's salary should be cut. The researchers did not come across any such case where salary is deducted for late attendance.

In respect of the other rules besides disciplinary ones affecting the public servants are, inter-alia, the recruitment, seniority and promotion rules. On ^{the} one hand, rules are not uniform on the other hand when relaxation of qualification in promotion cases are provided for in the recruitment rules these are not ^{sometimes} adhered to. In our Livestock case, it is found that the incumbent has met the requirements yet he could not be promoted. One should call a spade a spade. If a particular qualification is a pre-requisite, it should be specifically mentioned in the recruitment rules.

21

Government of Bangladesh, Establishment Division, O&M Wing, The Establishment Manual Vol.1. p.236.

But it is found both in the ad-hoc opinion survey as well as in the special group brain-storming that neither the conduct rules nor the discipline and appeal rules were sufficient to control the irregular activities of the public servants, not to speak of motivating the public servants. However, in most of our rules attention has been given to guard against financial corruption. But there is another important aspect of corruption viz intellectual corruption. Intellectual corruption is far more damaging than financial corruption and it can cause far more damage to the society as it has got much deeper effect. So provisions should be there to take care of this type of corruption also.

However, it appears that Discipline and Appeal Rules are found inadequate by the Ministry of Establishment itself. Recently the Ministry after an enquiry about the activities of an officer, punished the officer by transferring him and thereafter asked the subsequent authority (Under Memo No. ११/६० (१६:)-१/६२-०१ ७१८-२-६२) to convey oral warning to the officer concerned but inform the Ministry in writing whether the oral warning was administered to him. In fact, there is no punishment like warning under the disciplinary rules, not to speak of oral warning. But in fact, this is a course of action mostly taken by the superiors and surprisingly when the warning is oral, intimation about it is to be given to the Ministry in writing.

Often suspension is another course of action taken by the authority in the spirit of punishment. As in the court procedure police custody and court custody are not imprisonments and therefore not a punishment but sometimes they are viewed as more than a punishment because of killing of one's social prestige and for physical strains and tortures, so

is the case of suspension. Supervising authorities need to understand that suspension can or should be done only when there is the possibility of tampering records or threatening witnesses or destroying records and where there is the possibility of dismissal or removal after the proceedings.

Much of the disciplinary problems may be obviated if the superiors are disciplined themselves. One cannot ask another to give up taking honey or sugar, as a Hadis says, without giving it up himself. About the other grievances, framing of elaborate rules and application of rules uniformly can help mitigating most of the problems in a government or semi-government or a public enterprise, saving time and energy of the persons.

নং অনি-১

গণ কর্মচারীদের অভিযোগসমূহের নিষ্পত্তি ঘটনা সমীক্ষা

কোড নং -----

গণ-কর্মচারীদের জন্য প্রশাসনা

(সরকারী ও আধা-সরকারী কর্মচারীদের চাকুরী সংক্রান্ত বিষয়ে বিভিন্ন ধরনের অসুবিধা ও অভিযোগ থাকে। এ সমস্ত অভিযোগের কিভাবে নিষ্পত্তি করা হয় এবং কার্যতঃ কতটুকু ন্যায় বিচার প্রতিষ্ঠা হয় এ সম্পর্কে বাংলাদেশ লোক প্রশাসন প্রশিক্ষণ কেন্দ্র (পিএটিসি) একটি সমীক্ষা চালাচ্ছেন। এ প্রশাসনাটি উক্ত উদ্দেশ্যে প্রণীত হয়েছে। অনুগ্রহপূর্বক আপনার সুচিন্তিত মতামত দিন। আপনার নাম ও পরিচয় গোপন রাখা হবে। অধিকন্তু আপনার মতামত উক্ত গবেষণার পক্ষে অত্যন্ত সহায়ক হবে। উক্তর সমূহে প্রয়োজনীয় স্থানে টিক (✓) চিহ্ন ও সংখ্যা দিন এবং প্রয়োজনবোধে কিছু লিখুন।)

১.০ আপনার চাকুরীর মেয়াদ :

অনুর্ঘ ৫ বৎসর

৬ - ১০ বৎসর

১১ - ১৫ বৎসর

১৬ - ২০ বৎসর

২১ - ২৫ বৎসর

২৫ বৎসরের উর্ধ্বে

বঙ্গবর্ধাদা :

সহকারী সচিব বা সমপর্যায়

সিনিয়র সহকারী সচিব বা সমপর্যায়

উপ-সচিব বা সমপর্যায়

উপ-সচিব পর্যায়ের উর্ধ্বে

ক্যাডারের নাম (থাকিলে) :

মন-পড়াভাল হইলে কি ধরনের কাজে নিয়োজিত :

প্রশাসনিক

কারিগরী

শিক্ষকতা/প্রশিক্ষণ

অন্যান্য

(উল্লেখ করুন)

বিভাগত যোগ্যতা :

২*০

আপনার জানা মতে গণ কর্মচারীদের সাধারণত কি কি অভিযোগ থাকে? পাণ্ডে বর্ণিত অভিযোগগুলিতে সংখ্যাধিক্যের প্রস্থানসারে ১, ২, ৩ ইত্যাদি সংখ্যা লিখুন।

- ক) ন্যায্য পদ ও সম্মান তাঁকে দেয়া হয়নি। ☐
- খ) পদোন্নতি প্রাপ্য হওয়া সত্ত্বেও তা তাঁকে দেয়া হয়নি। ☐
- গ) তাঁর নিজের কোন দোষ না থাকা সত্ত্বেও কনিষ্ঠ সহকর্মীগণ তাঁর পূর্বে পদোন্নতি পেয়েছেন। ☐
- ঘ) যৎসময়ে অবস্থিত না করায় তিনি তাঁর প্রাপ্য সুযোগ সুবিধার জন্য আবেদন করতে পারেন নি বিধায় তা হতে বঞ্চিত হয়েছেন। ☐
- চ) আদালতের রায় থাকা সত্ত্বেও তাঁকে পূর্ণবহান করা হয়নি। ☐
- ছ) ব্যক্তিগত অসম্মতি র কারণে উর্ধ্বতন কর্তৃপক্ষ কর্তৃক তিনি হয় রান্নার শিকার হয়েছেন। ☐
- জ) তিনি নিজে অথবা তাঁর পরিবারের কেউ ন্যায্য প্রাপ্য বিভাগীয় কল্যাণমূলক সুবিধা হতে বঞ্চিত হয়েছেন। ☐
- ঝ) হয় রান্নামূলকভাবে তাঁকে বারং বার অসুবিধাজনক স্থান সমূহে বদলী করা হয়েছে। ☐
- এং) তাঁর কর্মজীবন পরিকল্পনার ও উন্নয়নের আইনসংগত সুযোগ তাঁকে দেয়া হয়নি। ☐
- চ) অন্য কোন অভিযোগ (উল্লেখ করুন) ☐

২*১

এ ধরনের সমস্যাসমূহ নিরসনে তারা সাধারণতঃ কোন পথ অবলম্বন করেন। **শেতকরা হিসাব উল্লেখ করুন।**

উর্ধ্বতন কর্তৃপক্ষের নিকট

- ক) মৌখিক আবেদন নিবেদন ☐
- খ) আনুষ্ঠানিক অভিযোগ উত্থাপন। ☐
- গ) অন্য কোন উপায় (উল্লেখ করুন) ☐

২*২

মৌখিক আবেদন কি পরামর্শে তদারককারী কর্তৃপক্ষের নিকটে করা হয় না তদূর্ব কর্তৃপক্ষের স্থাপন হওয়া হয়।

- ক) তদারককারী কর্তৃপক্ষ। ☐
- খ) তদূর্ব কর্তৃপক্ষ। ☐

৩*০

আপনার ধারণায় গণ কর্মচারীদের অভিযোগ সমূহের সময়সীমা সঠিক নিশ্চিতি হয় কি?

হ্যাঁ ☐না ☐

৩.১ এ ব্যাপারে প্রচলিত বিধিমালা/পদ্ধতি কি
আপনি যথেষ্ট মনে করেন ?

☐ হ্যাঁ

☐ না

৩.২ আপনার মতে অভিযোগসমূহের সমস্যা/সমস্যা
নিষ্পত্তির ক্ষেত্রে অন্য দায়ী ।

ক) প্রচলিত আইন পদ্ধতির ব্যর্থতা
খ) সংশ্লিষ্ট কর্মকর্তাদের অমনোযোগিতা
ও বিধিমালা গুরুত্বের দাবি বিবেচনা
না করা ।

☐
☐

গ) অন্য কোন কারণে উল্লেখ করুন >

৩.৩ সময়সূচী অভিযোগসমূহের নিষ্পত্তি না হবার
কারণে কর্মচারীদের মানসিক বিভ্রমনার কারণে
জানেন কর্ম দফতার উপর প্রভাব পড়ে কি ?

☐ হ্যাঁ

☐ না

৩.৪ যথাযথ কর্মসূচীর মাধ্যমে কোন আপীল শেষ করা
হলে না আপীল কর্মসূচীর নিষ্পত্তি পৌছাতে কি
পরিসীমা সময় লাগে ?

☐ ১৫ দিন

☐ ১ মাস

☐ ১-২ মাস

☐ ২ মাস

☐ ২-৩ মাস

☐ ৩ মাস

☐ চতুর্থ

৩.৫ এই সময়কে আপনি কি যুক্তিসংগত রাখা
অসম্পূর্ণ মনে করেন ।

ক) যুক্তিসংগত

খ) অসম্পূর্ণ

৩.৬ আপনার মতে এ সময় অভিযোগ/আপীলন প্রভৃতি
কর্মসূচী যথোপযুক্ত পুনরুৎপাদনপূর্বক তা তদন্ত
ও পরিষদে সমাধানের চেষ্টা করেন কি ?

☐ হ্যাঁ

☐ না

৩.৭ আপীল নিষ্পত্তির প্রচলিত বিধি যথেষ্ট মনে
আপনি মনে করেন কি ?

☐ হ্যাঁ

☐ না

৩.৮ অভিযোগসমূহের নিষ্পত্তির ক্ষেত্রে অনেক সময়
কর্মসূচী যথোপযুক্ত পুনরুৎপাদনপূর্বক তা তদন্ত
আপনি মনে করেন ?

☐ হ্যাঁ

☐ না

৩*০

আপনি কি মনে করেন সরকারী কর্মচারীদের
এমন বেশ কিছু অভিযোগ আছে যাতে বা কর্তৃপক্ষের
ডয়ে তারা কোনো পেশ করেন না বা কর্তৃপক্ষকে জড়িত
করেন না।

ইয়া

না

৪*১

এ ধরনের কোন উদাহরণ জানা থাকলে অনুগ্রহপূর্বক
তা উল্লেখ করুন।

৫*০

আপনি কি মনে করেন কোন অভিযোগ উত্থাপন করলে
অভিযোগকারীর উপর পরোক্ষ চাপ/ব্যবস্থা গ্রহণের
ভায়ে নিষ্পদগ্রস্ত করার চেষ্টা করেন?

ইয়া

না

৫*১

এ ধরনের কোন উদাহরণ আপনার জ্ঞান থাকলে
অনুগ্রহপূর্বক তা উল্লেখ করুন।

৬*০

যথাযথ কর্তৃপক্ষের মাধ্যমে আপন পেশের ও এ ধরনের
কর্তৃপক্ষ কর্তৃক আপন আটক রাখার সরকারী কর্মচারী
(মুৎখনা ও অপরাধ) বিধির ব্যবস্থাকে আপনি কি
যুক্তিসংগত মনে করেন?

ইয়া

না

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আপনি কি মনে করেন সরকারের বর্তমান বিকেন্দ্রীকরণ
নীতি গণ কর্মচারীদের অভিযোগসমূহের দ্রুত ও সঠিক নিষ্পত্তির
ক্ষেত্রে কোন সুস্পষ্ট প্রভাব রাখতে সমর্থ হয়েছে।

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আপনি কি মনে করেন আইন ও বিচার মন্ত্রণালয় গণ
কর্মচারীদের অভিযোগ সমূহের নিষ্পত্তির ব্যাপারে তাঁদের
ভূমিকা যথাযথভাবে পালন করেন।

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Abbreviations

ACR	Annual Confidential Report
ADC	Additional Deputy Commissioner
BCS	Bangladesh Civil Service
BLD	Bangladesh Legal Decisions
BPATC	Bangladesh Public Administration Training Centre
BPSC	Bangladesh Public Service Commission
BRDB	Bangladesh Rural Development Board
BSR	Bangladesh Service Rules
Cr.PC	Criminal Procedure Code
C.L	Casual Leave
CMLA	Chief Martial Law Administrator
DACO	District Anti-Corruption Officer
DC	Deputy Commissioner
DLR	Dhaka Law Report
DO	Demi-Official
EA	Engineering Adviser
EPCS	East Pakistan Civil Service
EL	Earned Leave
FIR	First Information Report
GOB	Government of Bangladesh
HQ	Head Quarters
IO	Inquiry Officer/investigating officer
LAP	Leave on Average Pay
LGEB	Local Government Engineering Bureau
MLO	Martial Law Order
OSD	Officer on Special Duty
PO	Presidential Order
PS	Police Station
PSC	Public Service Commission
RIO	Report Initiating Officer
RMO	Resident Medical Officer
RWP	Rural Works Programme
SAE	Sub Assistant Engineer
SIFAD	Strengthening the Institutions for Food Assisted Development
SSB	Superior Selection Board
SSP	Senior Policy Pool
TS	Title Suit
UCCA	Upazila Central Co-operative Association
UE	Upazila Engineer
URDO	Upazila Rural Development Officer
UZP	Upazila Parishad

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