

4 SCOB[2015] HCD 42

**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Mr. A. B. M. Siddiqur Rahman Khan with
Mr. M. Mainul Islam, Advocates
.....For the petitioners.

Writ Petition No. 10746 of 2013

Gazi A. K. M. Fazlul Haque and others
..... Petitioners

Mr. Md. Motaher Hossain (Sazu),
Advocate
....For the respondent nos. 1 & 6.

-Versus-

**The Privatization Commission
represented by its Chairman, Prime
Minister's Office, Paribahan Pool
Bhaban (9th and 10th Floor), Secretariat
Link Road, Dhaka-1000 and others**
.....Respondents

Ms. Purabi Rani Sharma, AAG and
Mr. Md. Shafiqueel Islam Siddique, AAG
....For the respondent no. 2-5.

Heard on 09.09.2014, 22.10.2014,
29.10.2014 and 19.11.2014.
Judgment on 20.11.2014.

Present:

**Mr. Justice Moyeenul Islam Chowdhury
-And-
Mr. Justice Md. Ashraful Kamal**

Article 102 of the Constitution:

It is a settled proposition of law that the Writ Court cannot direct the authority to promote the petitioners to the posts of Director of the Commission; but they have the right to be considered for promotion in accordance with Regulation 6 and the schedule of the Service Regulations of 2002. ... (Para 18)

**Privatization Commission (Officers and Employees) Service Regulations, 2002
Regulation 6:**

Only seniority is not the sole yardstick for promotion of any officer of the Commission to the next higher post. Along with his seniority, merit of the officer shall be taken into consideration for promotion to the next higher post by the Selection Committee/DPC. In case of promotion of a Deputy Director to the post of Director of the Commission, he must have completed a minimum of 5(five) years service and his service record must be satisfactory and free from any blemish or stain. If no Deputy Director having the requisite service length and satisfactory service record is available for promotion, only in that event, the post of Director of the Commission may be filled up by deputation. ... (Para 22)

Judgment

MOYEENUL ISLAM CHOWDHURY, J:

1. On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why they should not be directed to consider the promotion of the petitioners as per the

Privatization Commission (Officers and Employees) Service Regulations, 2002 framed under the Privatization Act, 2000 and why the filling up of the posts of Directors of the Commission by deputation despite the availability of the eligible/qualified Deputy Directors of the Commission being violative of the Privatization Commission (Officers and Employees) Service Regulations, 2002 should not be declared to be without lawful authority and of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

2. The case of the petitioners, as set out in the Writ Petition, in short, is as follows:

The petitioners have been working as Deputy Directors of the Privatization Commission (previously Privatization Board) for long 15-18 years. Pursuant to Sections 15 and 26(1) of the Privatization Act, 2000, the Privatization Commission, with the prior approval of the Government, framed the Privatization Commission (Officers and Employees) Service Regulations, 2002 (hereinafter referred to as the Service Regulations of 2002) specifying the terms and conditions of service for its officers and employees. However, Regulation 3 of the Service Regulations of 2002 provides that appointments in the vacant posts of the Commission will be made by direct recruitment, promotion and deputation. Regulation 6 of the Service Regulations of 2002 deals with the provisions of promotion of the officers and employees of the Commission. According to the schedule of the Service Regulations of 2002, there are 4(four) posts of Director and one Legal Adviser in the Commission. The Legal Adviser of the Commission shall be appointed by deputation and in case of failure, he will be appointed on contractual basis. Anyway, the Commission treats the post of Legal Adviser as Director (Law) for all practical purposes. According to the schedule of the Service Regulations of 2002, the posts of Director will be filled up by promotion from amongst the Deputy Directors of the Commission who have completed 5(five) years of service and if no competent or eligible candidates are found amongst the Deputy Directors, the posts of Director may be filled up by deputation. But since the framing of the Service Regulations of 2002, all posts of Director of the Commission were filled up by the officers on deputation from various Ministries of the Government. The respondents have been disregarding the Service Regulations of 2002 in the matter of promotion of the Deputy Directors to the posts of Director. All the Deputy Directors have been eligible for appointment as Directors of the Commission having completed more than 5(five) years of service and in view of their unblemished service records. Although the petitioners were eligible/competent for promotion to the posts of Director of the Commission, they were left out for reasons best known to the respondents themselves. However, the petitioners made several representations to the respondent no. 2 ventilating their grievances and requesting him to act in accordance with the Service Regulations of 2002 in the matter of promotion of the petitioners to the posts of Director of the Commission; but in vain. As a matter of fact, by resorting to various smart tricks and dilatory strategies, the respondents have been depriving the petitioners of their promotion to the posts of Director of the Commission with the malafide intention of accommodating various officers of the Government on deputation. Since the inception of the Privatization Commission, there have been 4(four) Deputy Directors including the petitioners. These Deputy Directors pursued their claim for appointment as Directors of the Commission from time to time as per the Service Regulations of 2002. At long last, the respondents considered the case of the senior most Deputy Director of the Commission, namely, Mr. Md. Mizanur Rahman and promoted him as Director and he joined the Commission as Director on 02.01.2013 and subsequently, he was allocated the post of Director (Law) on 23.06.2013. But the petitioners were deprived of their legal right to be promoted as Directors of the Commission despite their repeated representations to the respondent no. 2 in that regard. Eventually the petitioners served a notice demanding justice

upon the respondents for legal redress of their grievances; but the respondents turned a deaf ear thereto. Hence the Rule.

3. The respondent nos. 1 and 6 have opposed the Rule by filing an Affidavit-in-Opposition. Their case, as set out in the Affidavit-in-Opposition, in short, is as follows:

According to the schedule of the Service Regulations of 2002, the post of Director of the Privatization Commission is equivalent to that of a Joint Secretary to the Government of Bangladesh. A Joint Secretary or an officer having equivalent status of a Joint Secretary can be appointed to the post of Director of the Privatization Commission on deputation. No one of the petitioners has been promoted to the post of Joint Secretary or any equivalent post of Joint Secretary. In the absence of any qualified officers, the Government transferred Joint Secretaries from different Ministries to the Commission to fill up the posts of Director on deputation. Anyway, the 4th column of the schedule of the Service Regulations of 2002 refers to the minimum requirement for promotion from the post of Deputy Director to the post of Director and unless and until any Deputy Director completes 5(five) years of service, the Selection Committee or the Departmental Promotion Committee (DPC), as the case may be, will not consider his case for promotion to the post of Director. However, mere completion of 5(five) years service as Deputy Director of the Commission is not the sole criterion for promotion to the post of Director of the Commission. In this respect, the Selection Committee/DPC will take into account other factors specified in Regulation 6 of the Service Regulations of 2002. Promotion is generally given on the principles of seniority, merit, integrity, fitness and satisfactory service records subject to availability of vacant posts. After considering all the criteria for promotion, the Selection Committee, or for that matter, the DPC arrives at the decision to promote a Deputy Director to the post of Director of the Commission. Unfortunately, the petitioners have not been able to satisfy all the criteria for promotion to the posts of Director of the Commission. So they have not been promoted to the posts of Director as yet. Without the Selection Committee/DPC's recommendation, the respondent no. 2 has no authority whatsoever to appoint or promote any Deputy Director to the post of Director of the Commission. The authority has no malafide intention of depriving the petitioners of their promotion to the posts of Director of the Commission. In due course, the DPC recommended the senior most Deputy Director of the Commission, that is to say, Mr. Md. Mizanur Rahman for promotion to the post of Director and accordingly he was promoted to the post of Director of the Commission. In the absence of any vacancy in the post of Director, the respondent no. 2 could not take any step for promotion of the petitioners to the posts of Director of the Commission. If the petitioners are able to fulfill all the criteria for promotion and if any vacancy arises, the Selection Committee/DPC will recommend the petitioners for promotion to the posts of Director of the Commission. Before fulfillment of all the criteria and/or in the absence of any vacancy in the post of Director, it is not possible on the part of the Privatization Commission to consider the petitioners for promotion to the posts of Director. The respondents did not violate any provision of the Service Regulations of 2002 on the question of promotion of the petitioners to the posts of Director. In the absence of any qualified Deputy Director for promotion to the post of Director, all the posts of Director were duly filled up by the officers on deputation in the past. The petitioners can not claim promotion as a matter of right. Promotion has to be earned by the meritorious service of the concerned officer. After the promotion of the Deputy Director Mr. Md. Mizanur Rahman to the post of Director, no vacancy has arisen in the post of any Director of the Commission and as such there is no question of violation of Article 27 of the Constitution.

4. In the Supplementary Affidavit-in-Opposition filed on behalf of the respondent nos. 1 and 6, it has been stated that according to the Bangladesh Civil Service Recruitment Rules,

1981, for recruitment in the post of Deputy Director in any Government, Semi-Government or Autonomous Organization, the required condition is 10(ten) years experience with adequate qualifications. In the Privatization Board (Appointment Rules), 1993 and in the advertisement notice for recruitment of Deputy Directors of the Privatization Board in 1994, it was mentioned that candidates need only 5(five) years experience which may be relaxed. That is totally contradictory to the Bangladesh Civil Service Recruitment Rules for appointing a Deputy Director. However, the Privatization Board was subsequently transformed into Privatization Commission on 11th July, 2000. All officers and employees of the Privatization Board were transferred to the Privatization Commission as a matter of course. Only 5(five) years experience in the feeder post of Deputy Director with no mention of total service length is against the general recruitment rules of the Government. This type of relaxed opportunity is never found in any Government Office or Autonomous Body. The Privatization Commission has already taken steps to review the Service Regulations of 2002 in order to remove the anomalies and inconsistencies with the existing Bangladesh Civil Service Recruitment Rules, 1981. Anyway, promotion is a continuous process. Apart from Mr. Md. Mizanur Rahman, if other Deputy Directors are found eligible for promotion, they will definitely be considered for promotion to the posts of Director of the Commission. Any officer working on deputation in the Commission may be withdrawn from the deputed post at any time, if any officer of the Commission is promoted. So the deputed officers are not an impediment in the way of promotion of the Deputy Directors of the Commission.

5. In the Affidavit-in-Reply dated 22.10.2014 filed by the petitioners, it has been mentioned that only the Privatization Commission is empowered to deal with the promotion of the officers and employees of the Commission as per the Service Regulations of 2002. According to the Service Regulations of 2002, the posts of Director are firstly and mainly reserved for competent Deputy Directors of the Commission and only in the absence of competent Deputy Directors, Joint Secretaries of the Government, Officers of Statutory Corporations and Semi-Government Organizations may be appointed as Directors of the Commission on deputation. Officers in an Autonomous Body, Semi-Government Organization or Corporation having the salary scale of a Joint Secretary are also competent for the posts of Director of the Commission. Officers having the salary scale of a Joint Secretary are not necessarily Joint Secretaries. It is evident from the Service Regulations of 2002 that only the competent Deputy Directors are to be promoted to the posts of Director of the Commission. Only in case of unavailability of any competent Deputy Director, the question of filling up of the post of any Director of the Commission by deputation arises. All the petitioners are qualified and competent Deputy Directors; but the respondents did not promote them to the posts of Director of the Commission with malafide intention. However, the authority arbitrarily recommended only one Deputy Director, namely, Mr. Md. Mizanur Rahman for promotion to the post of Director leaving out the petitioners without any cogent reason which is discriminatory. On 05.12.2012, the DPC recommended Mr. Md. Mizanur Rahman for promotion to the post of Director of the Commission. It is interesting to note that Mr. Md. Mizanur Rahman was promoted to the post of Director of the Commission without having any clear vacancy in the Directorship of the Commission. So the plea of non-existence of any vacancy in the Directorship of the Commission is a flimsy excuse which is indicative of the bad faith of the respondents. The respondents grossly violated the provisions of Regulation 6 and those of the schedule of the Service Regulations of 2002 and thereby deprived the petitioners of their due promotion as Directors of the Commission.

6. In the Affidavit-in-Reply dated 29.10.2014 submitted on behalf of the petitioners, it has been averred that the respondent no. 1 is the only authority in respect of the promotion of the

petitioners and accordingly it exercised its authority in the case of Mr. Md. Mizanur Rahman, one of the Deputy Directors of the Commission. The Bangladesh Civil Service Recruitment Rules, 1981 have no manner of application in the case of promotion of the petitioners to the posts of Director of the Commission. The petitioners were not appointed as Deputy Directors under the Bangladesh Civil Service Recruitment Rules, 1981. Privatization Commission is a statutory body having its own Service Regulations for its officers and employees. As such the terms and conditions of the service of the officers and employees of the Commission are regulated by the Service Regulations of 2002. However, after the joining of Mr. Md. Mizanur Rahman as Director of the Privatization Commission on promotion on 02.01.2013, the respondent no. 2 requested the respondent no. 5 to withdraw Mr. Paresh Chandra Roy from the Commission and accordingly on 02.06.2013, Mr. Paresh Chandra Roy was withdrawn from the Commission and on 23.06.2013 Mr. Md. Mizanur Rahman was given the charge of Director (Law) of the Commission. Although Mr. Md. Mizanur Rahman is a textile graduate, yet he was given the charge of Director (Law) of the Commission. In effect, any Director of the Commission may be put in charge of any Section of the Commission irrespective of his academic background and this has been a long-standing practice of the Privatization Commission since its inception.

7. In the Supplementary Affidavit dated 29.10.2014 filed by the petitioners, it has been stated that at the moment, there are 2(two) vacant posts of Director in the Privatization Commission. One vacancy arose when Syed Jaglul Pasha was withdrawn from the Commission on 10.02.2014. Against that vacancy on the same day, one Dr. Syed Nesar Ahmed Rummy was appointed on deputation and that appointment was stayed by the High Court Division. Another vacancy in the post of Director of the Commission arose when Mr. Md. Mizanur Rahman went on Post Retirement Leave (PRL) on 25.08.2014 vide Memo dated 13.08.2014.

8. At the outset, Mr. A. B. M. Siddiqur Rahman Khan, learned Advocate appearing on behalf of the petitioners, submits that the Bangladesh Civil Service Recruitment Rules, 1981 are not clearly applicable in the case of the petitioners and the recruitment, promotion and deputation of the officers and employees of the Privatization Commission are regulated by the Service Regulations of 2002 which have been framed pursuant to Sections 15 and 26(1) of the Privatization Act, 2000.

9. Mr. A. B. M. Siddiqur Rahman Khan also submits that as per Regulation 3 of the Service Regulations of 2002, the permanent vacant posts of the Commission shall be filled up, subject to certain restrictions, through direct recruitment, promotion and deputation and as per Regulation 6 and the schedule of the Service Regulations of 2002, it is crystal clear that a Deputy Director having completed 5(five) years of satisfactory service is eligible for promotion to the post of Director of the Commission and if no competent/suitable/qualified Deputy Director is available for promotion to the post of Director of the Commission, only in that case, the post of Director of the Commission may be filled up by a Joint Secretary or an officer working in any Autonomous Body or Semi-Government Organization or Body enjoying the scale of a Joint Secretary of the Government of Bangladesh by deputation and as the petitioners are all competent for promotion to the posts of Director having unblemished service records for over 15(fifteen) years, the question of filling up of the posts of Director of the Commission by way of deputation is out of the question and in this perspective, the authority ought to have promoted the petitioners to the posts of Director of the Commission along with Mr. Md. Mizanur Rahman and by not so doing, the authority violated the

provisions of Regulation 6 and the relevant provisions of the schedule of the Service Regulations of 2002 causing grave prejudice to them.

10. Mr. A. B. M. Siddiquir Rahman Khan next submits that as per the schedule of the Service Regulations of 2002, there are 4(four) posts of Director of the Commission and one post of Legal Adviser; but in practice, the post of Legal Adviser is being treated as Director (Law) which is evident from the designation of Mr. Md. Mizanur Rahman, Director (Law) who was admittedly promoted to the post of Director of the Commission on 02.01.2013 from the post of one of the Deputy Directors of the Commission and the plea of non-existence of any vacancy in the post of any Director of the Commission stands belied by the promotion of Mr. Md. Mizanur Rahman to the post of Director of the Commission on 02.01.2013 when admittedly there was no vacancy in that post and after joining the Commission as Director, admittedly after a lapse of 6(six) months or so, one of the deputed Directors, namely, Mr. Parsh Chandra Roy was withdrawn from the Commission and in such a posture of things, it can not be agitated at all that the non-existence of any vacancy in the post of Director of the Commission is an impediment in the way of promotion of any one of the petitioners to the post of Director of the Commission.

11. Mr. A. B. M. Siddiquir Rahman Khan further submits that at present, there are 2(two) vacant posts of Director in the Privatization Commission and one vacancy occurred when one Director Syed Jaglul Pasha was withdrawn from the Commission on 10.02.2014 and though against that vacancy, one Dr. Syed Nesar Ahmed Rummy was appointed by deputation; yet that appointment was admittedly stayed by the High Court Division and another vacancy in the post of Director of the Commission arose when Mr. Md. Mizanur Rahman went on PRL on 25.08.2014 and as there are 2(two) clear vacancies in the Directorship of the Commission at this point of time, the respondents may be directed to fill up those vacancies in accordance with the provisions of Regulation 6 read with the schedule of the Service Regulations of 2002 so that the petitioners will get fair play and their long sufferings will come to an end.

12. Per contra, Mr. Md. Motaher Hossain (Sazu), learned Advocate appearing on behalf of the respondent nos. 1 and 6, submits that promotion is not a matter of right and it has to be earned by the meritorious service of the officer or the employee concerned and seniority ipso facto is not sufficient for considering the petitioners for promotion to the posts of Director of the Commission and excepting the petitioner no. 1, the other petitioners along with Mr. Md. Mizanur Rahman were considered for promotion by the DPC and the DPC, having been satisfied with the seniority and satisfactory service record of Mr. Md. Mizanur Rahman, recommended him for promotion to the post of Director of the Commission and accordingly he was promoted thereto and indisputably Mr. Md. Mizanur Rahman was the senior most Deputy Director of the Commission at the time of consideration of his case for promotion to the next higher post, that is to say, to the post of Director of the Commission and given this scenario, it cannot be said by any stretch of imagination that the Deputy Directors were not considered for promotion at all.

13. Mr. Md. Motaher Hossain (Sazu) further submits that the Bangladesh Civil Service Recruitment Rules, 1981 are the general rules for appointment, promotion etc. of the persons in the service of the Republic and as the Service Regulations of 2002 run counter to the provisions of the Bangladesh Civil Service Recruitment Rules, 1981, necessary amendments to the Service Regulations of 2002 are in progress.

14. Mr. Md. Motaher Hossain (Sazu) next submits that the Service Regulations of 2002 contemplate a minimum of 5(five) years service for a Deputy Director for promotion to the post of Director of the Commission; but the total length of service of a Deputy Director for promotion has not been specified in the Service Regulations of 2002 and at the time of promotion of the Deputy Director Mr. Md. Mizanur Rahman to the post of Director of the Commission, his total length of service was taken into account together with his unblemished service record and having been satisfied, the DPC recommended him for promotion to the post of Director and accordingly he was promoted as one of the Directors of the Commission.

15. Mr. Md. Motaher Hossain (Sazu) also submits that the petitioners did not specifically challenge the appointment of any Director of the Commission by way of deputation and as Mr. A. B. M. Siddiqur Rahman Khan is very vocal against the deputation orders of the Directors of the Commission, he ought to have challenged the same in specific terms; but since he did not do so and no Rule was issued in that regard, this Court will not go into the question of legality or otherwise of those deputation orders and this being the landscape, the Rule is necessarily incompetent and as such the Rule is liable to be discharged on this count alone.

16. We have heard the submissions of the learned Advocate Mr. A. B. M. Siddiqur Rahman Khan and the counter-submissions of the learned Advocate Mr. Md. Motaher Hossain (Sazu) and perused the Writ Petition, Affidavit-in-Opposition, Supplementary Affidavit-in-Opposition, Affidavits-in-Reply and Supplementary Affidavit and relevant Annexures annexed thereto.

17. There are two components of the Rule-issuing order, that is to say, (1) the respondents were called upon to show cause as to why they should not be directed to consider the promotion of the petitioners as per the Service Regulations of 2002 and (2) why the filling up of the posts of Director of the Commission by deputation despite the availability of the eligible/qualified Deputy Directors of the Commission in violation of the Service Regulations of 2002 should not be declared to be without lawful authority and of no legal effect.

18. It is a settled proposition of law that the Writ Court cannot direct the authority to promote the petitioners to the posts of Director of the Commission; but they have the right to be considered for promotion in accordance with Regulation 6 and the schedule of the Service Regulations of 2002. There is no gainsaying the fact that barring the petitioner no. 1, the other petitioners along with Mr. Md. Mizanur Rahman were considered for promotion and the DPC recommended Mr. Md. Mizanur Rahman, the senior most Deputy Director, for promotion and accordingly he was promoted to the post of Director of the Commission. Such being the state of affairs, it cannot be said that apart from the petitioner no. 1, the other 2(two) petitioners were not considered for promotion by the DPC. Presumably, the case of the petitioner no. 1 was left out by the DPC in that he was the junior most Deputy Director of the Commission at the relevant time. The learned Advocate Mr. Md. Motaher Hossain (Sazu), it appears, has rightly submitted that the petitioners did not challenge any specific deputation order in this Writ Petition. But none the less, all the petitioners have the right to be considered for promotion in accordance with the Service Regulations of 2002.

22. From a combined reading of Regulation 6 and the relevant portion of the schedule of the Service Regulations of 2002, we find that only seniority is not the sole yardstick for promotion of any officer of the Commission to the next higher post. Along with his seniority, merit of the officer shall be taken into consideration for promotion to the next higher post by the Selection Committee/DPC. In case of promotion of a Deputy Director to the post of Director of the Commission, he must have completed a minimum of 5(five) years service and his service record must be satisfactory and free from any blemish or stain. If no Deputy Director having the requisite service length and satisfactory service record is available for promotion, only in that event, the post of Director of the Commission may be filled up by deputation.

23. What we are driving at boils down to this: in the matter of promotion to the posts of Director, the Deputy Directors shall have the first priority and if they are found to be incompetent or unqualified, only in that case, the authority is empowered to fill up the posts of Director by deputation. From the whole gamut of the facts and circumstances of the case and the materials on record, it is palpably clear that the authority filled up the posts of Directors of the Commission in the past without caring for the relevant provisions of law. This is the long-standing practice of the Privatization Commission. The only recent exception is the case of promotion of the Deputy Director Mr. Md. Mizanur Rahman to the post of Director of the Commission. Against this backdrop, it seems to us that this single instance of promotion of one of the Deputy Directors to the post of Director of the Commission is a face-saving device. However, we feel constrained to hold that the authority failed to properly construe the provisions of Regulation 6 read with the schedule of the Service Regulations of 2002 in the matter of promotion of the Deputy Directors to the posts of Director of the Commission. In this respect, the respondents ought to be circumspect and careful in the future.

24. As to the contention of the learned Advocate Mr. Md. Motaher Hossain (Sazu) that the Bangladesh Civil Service Recruitment Rules, 1981 are contradictory to the Service Regulations of 2002 in the matter of promotion of the Deputy Directors of the Commission, suffice it to say that he can not make such a contention when admittedly the recruitment and promotion of the officers and employees of the Commission are regulated by the Service Regulations of 2002. It will not be out of place to mention that the Privatization Commission is a Statutory Body. As a Statutory Body under the Privatization Act of 2000, the Service Regulations of 2002 have been framed with a view to regulating the recruitment, promotion etc. of the officers and employees of the Commission. In this context, it may be pointed out that the authority may take necessary steps for amendment of the Service Regulations of 2002 in line with the Bangladesh Civil Service Recruitment Rules of 1981, if it is so advised. Unless and until any such amendment is made, the contention of the learned Advocate Mr. Md. Motaher Hossain (Sazu) in this regard is fully and wholly irrelevant.

25. It transpires that on the plea of non-existence of any vacancy in the post of Director of the Commission, the petitioners were not considered for promotion in the past. But at a subsequent stage, Mr. Md. Mizanur Rahman along with the petitioner nos. 2 and 3 were considered for promotion by the DPC. As per the recommendation of the DPC, it is undisputed, the senior most Deputy Director Mr. Md. Mizanur Rahman was promoted to the post of Director on 02.01.2013 and he joined the Commission as Director when there was no clear vacancy in the Directorship of the Commission. Afterwards the respondent no. 2 requested the respondent no. 5 to withdraw one of the deputed Directors of the Commission, namely, Mr. Paresh Chandra Roy and in accordance with the request, the respondent no. 5

withdrew Mr. Paresh Chandra Roy from the Commission on 02.06.2013 and on 23.06.2013 Mr. Md. Mizanur Rahman was put in charge of the office of Director (Law) of the Commission.

26. In this connection, we feel tempted to say that unless and until there is any clear vacancy in the Directorship of the Commission, no attempt should be made to appoint anybody thereto either by way of promotion or by way of deputation. Be that as it may, since it is admitted that Mr. Md. Mizanur Rahman, the senior most Deputy Director, was appointed as Director on promotion when there was no vacancy in the Directorship of the Commission, it does not lie in the mouth of Mr. Md. Motaher Hossain (Sazu) to say that if there is no vacancy in the Directorship of the Commission, the question of promotion of the petitioners to the posts of Director of the Commission does not arise at all. In a word, he can not blow hot and cold in the same breath. What we are trying to emphasize is this: the Privatization Commission admittedly made a departure or deviation from Regulation 3 of the Service Regulations of 2002 in the matter of promotion of Mr. Md. Mizanur Rahman when there was no clear vacancy in the Directorship of the Commission. This conduct of the respondents is reprehensible and cannot be countenanced at all.

27. At present, there are 2(two) clear vacancies in the Directorship of the Commission as evidenced by Annexures-‘Z’ and ‘Z-1’ to the supplementary affidavit dated 29.10.2014. That being so, those 2(two) vacancies are to be filled up in accordance with Regulation 6 read with the schedule of the Service Regulations of 2002. From legal standpoint, the petitioners being Deputy Directors must be considered first for promotion to the vacant posts of Director of the Commission, having regard to their length of service and satisfactory service records and if they are not found to be eligible for promotion for some reason or other to be recorded in black and white, only then those vacant posts can be filled up by deputationists. The question of filling up of the posts by deputationists will not come first as has been the long-standing practice in the Commission as we find from the various Annexures on record. Precisely speaking, the question of filling up of the vacant posts of Director of the Commission by way of deputation will arise only when the petitioners are considered for promotion and the Selection Committee/DPC does not recommend them for promotion for any justifiable cause. That is the bottom line.

28. From the foregoing discussions and in view of the facts and circumstances of the case, the Rule is disposed of with the above observations made in the body of the judgment without any order as to costs.