

JUDGMENT REVIEW



The Draft Civil Service Act Cords and discords

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WHILE employment in the service of the State goes back to the Middle Age notion of serving a monarch, the modern civil service established at the eve of 21st century witnesses major transformations towards democratic systems governed by rule of law. Now to concerns about the cost of public services, there has been more persistent criticism of the quality of service provided and the failure to meet citizens' expectations in terms of access, equity, speed of service and effectiveness. Hence there is a worldwide wave of reforms in civil service legislations where Bangladesh cannot afford to be an exception.

A vacuum to be filled up

While Article 133 of the Constitution contemplates an Act of Parliament regulating the appointment and conditions of service of persons in the service of the Republic, no umbrella Act has been enacted till date. The Civil Service, Defence Service and Judicial Service are dealt on a piecemeal basis by some Acts of Parliament and many rules, regulations, policies and notifications etc issued by the executives. Hence the total legal regime suffers from a certainty crisis and it is almost impossible to bring out the exact volume of laws, rules, policies, regulations, orders, notifications, instructions etc regulating the area. The Ministry of Establishment has published a draft act in its website and welcomed public opinion on it. This write up intends to present the key features of the draft with some commentaries regarding its further modification.

Key provisions of the Draft

1. The commencement clause of the Draft Act indicates that it shall come into force on the date fixed through official gazette of the government (Section 1(b)).
2. Regarding the principles of service the draft Act sounds engaging. Section 7(1) embodies many principles of good governance which the members of the service are to observe while performing their duties. Which includes balancing of interests, neutrality, generosity, efficiency, accountability, professionalism etc. Sections 7(2) and 10(1)

narrate the functions and duties of members of civil service concentrating mainly on serving the people and non-discrimination.

3. Section 5 divides the ranks and profiles of the Civil Service into three groups: Superior Rank (including 1st and 2nd Grade Officers), Senior Rank (including 3rd to 9th Grade Officers) and Junior Rank (including 10th to 12th Grade Officers). While the Civil Servants of the Superior Rank bear the policy making responsibility, the Senior and Junior Rank officers are expected to oversee their enforcement.

4. The most debatable issue in the Draft is the appointment process which seems to encourage nepotism to some extent. All the 1st Grade officers would be promoted from amongst the 2nd grade officers. Section 5(4) of the Act empowers the government to appoint 10% of 2nd grade officers on terms and conditions set out by it while the remaining 90% are to be promoted from 3rd grade Senior Rank officers. In the 9th grade of the Senior Rank 80% posts shall be filled up by direct appointment while the rest 20% shall be filled up by promotion from Junior Rank. All other grades in the Senior Rank shall be filled up by regular promotion. However, except the 3rd grade, the government may directly appoint 10% officers in 'technical or specialized' posts created in each grade of the Senior Rank (Section 5(5)). In Junior Rank the 12th grade shall be filled up by direct appointment (Section 5(6)) while 10th and 11th grades should be filled up by way of promotion. Here again the government may directly appoint 20% officers in 'technical or specialized' posts created in each grade of the Junior Rank.



5. Section 12(a) of the Act provides that recruitment tests for the direct appointment shall be conducted by the Public Service Commission. As a matter of principle the appointment would always be based on merit and qualifications (Section 12(e)). Job shall be permanent on basis of merit and departmental test results. Transfer and promotion also would be based on merit, suitability for the post and excellence of performance (Section 12(f)(g)).

6. Section 15(3) provides that if someone fails in the promotional tests for three consecutive times he may choose voluntary retirement. If he fails for the fourth time government may compulsorily retire him without any notice.

7. In case of disciplinary actions, Section 20(2) of the Draft guarantees a right to hearing and a departmental proceeding without which no person in the service may be removed, dismissed or retired compulsorily. Section 21(3) provides that if any member

of the civil service is convicted for upto three years for any offence not involving corruption and moral turpitude, the President may conclusively determine as to his continuance in service. In case of imprisonment for more than three years for any other offence or for any term for offence involving corruption or moral turpitude, the offender would be dismissed from service immediately.

The missing links

1. In light of our experience with the Ombudsman Act 1980, the commencement clause of the Draft may be the single cause for which the Act may be kept hanging indefinitely. There should not be any problem in giving a law immediate effect which has been passed after eliciting mass opinion and many thoughts and after-thoughts.

2. Given the alarming rate of civil servants' engagement with part time jobs and side businesses, there should have been a provision to the following effect: "Unless it is otherwise provided in the terms of his appointment or in any other law for the time being in force, every Civil Servant shall place the whole of his time at the disposal of the Government." Such a provision is found in the Botswana Public Service Act 1998.

3. In almost every grade of the civil service ranks, the government may appoint a good number of officials on political considerations. A sort of spoil system is present almost everywhere in the world and sometimes it is useful as well. Without it, it will be difficult for a political government to execute its political agenda. However excessive scope of politicization we see in the Draft will surely spoil the spoil system itself.

4. The provision regarding dismissal on

ground of conviction by court of law (Section 21) is not clear as to when the conviction should attract the dismissal. Logically the dismissal should follow the conviction by the court of first instance. A person with questionable disposition should not continue in the service on the excuse that his appeal is pending. Hence Section 21(3) should specifically provide that the dismissal would follow the conviction by the lower court specially when a civil servant may not even be sued or arrested without prior permission of the government (Section 21(2)).

5. The Civil Service laws of Srilanka, Antigua, Barboda, Poland etc provide that the highest posts (Superior Ranks) in the civil service would be filled by parliamentary committees through interviews and examination of the civil servants service records. Under the Draft Act this power has been vested in the Executive. Introducing the parliamentary involvement in the appointment to the Superior Rank officials would poster democratic oversight over the administration.

6. The Draft Act gives a detailed list of duties and principles of services of the Civil Servants. There are provisions regarding the disciplinary proceedings as well. Another important supplement in this regard could be the protection for whistle-blowers. It is specific protection for persons drawing attention to suspected wrongdoing within the administration. To boost accountability within the framework of the Act, such protection for the whistle-blowers from victimization or discrimination on the ground of reporting a breach of duties could encourage anti-corruption drive a lot.

The initiative to enact a Civil Service Act is a commendable effort. Part IX of the Constitution dealing with the Service of the Republic gives a broad outline regarding the organization and principles of civil service. Now the proposed Act shall supplement the issues with greater details. The principal challenge after passing of the Act would be to bring the almost innumerable legal instruments regulating the area in conformity with the new law.

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FOR YOUR INFORMATION



What to do during traffic stops

When you first see the police car

Pull over quickly and safely, letting the police officer know you understand and are complying. Use your signals and pull as far to the left shoulder as you can. Your goal is to calm down a potentially high strung officer and make it clear that you understand he is in control. By pulling over quickly, you can also be close to the scene where the officer claims you committed a violation. This allows you to review the scene to evaluate the truthfulness of the officer's allegation and look for potential defenses such as obstructed views.

Right after you are stopped

Always be polite during traffic stops, even if the officer is aggressive. You have little to lose by being polite and a lot to lose by being belligerent. Roll down your window, turn off the engine and place your hands on the steering wheel. If it is night time, turn on your interior light. Do not reach for documentation: officers are trained to spot driver's reaching for hidden items, or stashing items, and it is likely an officer may misinterpret your actions.

Don't give the officer an excuse to search your car

Although police officers are normally not allowed to search your car during traffic stops, it's easy to give the officer a valid reason to search your car if you're not careful. Once the officer shines his spotlight on your car, the officer is watching you closely for any suspicious movements. For instance, if an officer observes you trying to hide or throw something out of the window, the officer may legally search your car. If you appear to hunch down in your seat, the officer may reasonably believe you're hiding something under the seat. Be calm, don't make sudden or suspicious movements and don't reach for anything until the officer asks you to.

Only get out of your car if the police officer asks

You should not get out of your car unless the police officer asks you to. Again, you want to avoid antagonizing the officer and communicate that you understand he is in control. Officers are trained to expect the worst, and if you suddenly exit the vehicle, the officer is trained to think you're either going to fight or flee.

If an officer asks you to exit the vehicle, you should do so calmly and carefully, with no sudden movements. Exiting the vehicle may give you the opportunity to better survey the scene to verify the officer's allegations.

Talking to the police officer

Let the officer do most of the talking. Don't interrupt, don't be argumentative, and don't say anything that the officer can record and use against you. This means when an officer asks you questions such as "do you know why I stopped you", you should respond "no". If the officer asks you "do you know how fast you were going", you should simply answer "yes". Officers are trained to let you incriminate yourself by letting you admit to violations or admit that you were careless or negligent. If required, give noncommittal responses such as "ok" or "I see". Be polite, but don't give the officer anything - it's his job to prove your guilt.

Source: findlaw.com



RIGHTS CORNER

Preservation of forest and environmental rights

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DESPITE all the efforts made by environmentalists, forests are continued to be under threat. Though laws have been enacted and there are some improvements in implementations, some degraders have adopted new techniques. Many of the readers might come across the news published in The Daily Star on plundering of the mangrove forest. It revealed how a group of people backed by a local NGO had been able to cut huge number of trees in the mangrove forest. Environment is not only degraded through cutting trees, but massive urbanisation is also contributing in various forms of pollution in the environment.

Bangladesh is one of the most vulnerable countries in the world suffering from the impacts of climate change. On the other hand, Bangladesh lags behind the minimum required forest coverage despite forestation and tree plantation drives every year. There are also scopes created for Bangladesh to trade carbon under Kyoto Protocol through forestation. However, environmentalists always argue for preserving natural forest as the existence of natural forest is crucial for maintaining bio-diversity.

Environment Conservation Act was promulgated in 1995 even before the effect of climate change is widely known. One of the salient feature of this Act is the government could declare Environmentally Critical Area depending on the status of degradation occurred in a particular area. It has been stated in Article 5(1) of the Act, "If the Government is satisfied that an area is in an environmentally critical situation or is threatened to be in such situation, the Government may, by notification in the official Gazette, declare such area as an ecologically critical area". Although the Ministry of Environment and Forests has already declared seven areas including Sundarbans as critical areas, reports of activities hazardous to environment in those areas still appears in the newspapers.

Awareness rising at the grassroots is very important to protect the environmental diversity. Mass education on environmental issues would help prevent degradation of environment. If local communities take an active interest in maintaining environment around them, it would make the job of other

stakeholders including Department of Environment (DoE) easier. DoE is yet to establish offices in all districts and it is not possible for the department alone to address all the issues related to environment without an active participation of local communities.

Bangladesh Environmental Lawyers Association (BELA) first initiated Public Interest Litigation (PIL) on environmental issues and has been successful in bringing some positive changes. Influential quarters have been made to comply with



environmental regulations upon having directions from the court. A few other organisations and civil society bodies like Bangladesh Poribesh Andolon (BAPA) have now come forward to advocate on environmental issues. However, sustaining positive changes is still a challenge and involvement of local communities is fundamental to sustain changes brought through legal activism.

Trees and forests help alleviate changes in climate by removing carbon dioxide from the atmosphere and converting it during photosynthesis to carbon. Forest stores those carbons in the form of wood and vegetation. Preserving forest is, therefore, of paramount important and measures must be taken before it is too late.

The writer is a human rights worker.