

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

WRIT PETITION NO.9964 of 2019

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Sheikh Saeem Ferdous

... Petitioner.

-VS-

***Bangladesh, represented by the Secretary,
Rural Development and Co-operatives
Division, Ministry of Local Government, Rural
Development and Cooperatives, Bangladesh of
the Peoples Republic of Bangladesh,
Bangladesh Secretariat, Dhaka and others.***

... Respondents.

And

Mr. Md. Bodruddoza, Senior Advocate with
Mr. Md. Reajul Hasan, Advocate

..... For the petitioner.

Mr. Shihab Uddin Khan, Advocate

.....For the respondent Nos.2-4.

Mr. Nishat Mahmood, Advocate

.....For the respondent No.9

Mr. Samarendra Nath Biswas, D.A.G. with

Mr. Md. Abul Kalam Khan (Daud), A.A.G. with

Mr. Md. Modersher Ali Khan (Dipu), A.A.G.with

Mr. Md. Taufiq Sajawar (Partho), A.A.G.

....For the Respondents-government.

***Heard on: 03.05.2023, 10.05.2023,
24.05.2023 and Judgment on: 07.06.2023***

Present:

Mrs. Justice Farah Mahbub.

And

Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, J:

This Rule Nisi was issued under Article 102 of the Constitution of the
People's Republic of Bangladesh, calling upon the respondents to show cause

as to why the deprivation of the petitioner of promotion to the post of Joint Director in Bogura Palli Unnayan Academy (RDA), Garidaho, Sherpur, Bogura despite having fulfilled all criteria for promotion to the said post and at the same time giving promotion to the respondent Nos.5-9 to the post of Joint Director upon superseding the petitioner vide Memo No.47.00.0000.033.12.027.19.223 dated 05.08.2019 issued by the respondent No.1 and the office order dated 06.08.2019 issued by the respondent No.2 under Memo No.47.64.1088.014.12.030.15/845 (Annexure-D) despite the fact that the respondent Nos. 5-9 were junior to the petitioner and that the initial appointment of respondent No.5 was made at the age of over 42 years, should not be declared to have been done without any lawful authority, and hence, of no legal effect and also, as to why the respondent Nos.1-4 should not be directed to promote the petitioner to the post of Joint Director with retrospective seniority from the date of promotion of his immediate junior officers in the gradation list.

At the time of issuance of the Rule, the respondent Nos. 1-4 were directed to reserve 1(one) post of Joint Director in Bogura Palli Unnayan Academy subject to disposal of the instant Rule Nisi.

Facts, in brief, are that Bogura Palli Unnayan Academy, also known as Rural Development Academy (RDA), Bogura is a statutory body established under the Bogura Palli Unnayan Academy Ain, 1990 (in short, the Ain, 1990). Said Academy is a specialized institution for rural development related training, research etc. It also provides advisory services and offers post graduate diploma.

In exercise of power as provided under Section 21 of the said Ain, 1990 the Board of Governors of the Academy framed "Bogura Palli

Unnayan Academy Karmachari Chakuri Probidhanmala, 1990” (in short, the Regulations, 1990) to provide for the organogram of the Academy and to regulate the terms and conditions of services of its employees including their appointment and promotion respectively. Subsequently, said Regulations was re-pealed and re-formulated as “Bogura Palli Unnayan Academy Karmachari Chakuri Probidhanmala, 2015” (in short, the Regulations, 2015).

The petitioner was initially appointed in the post of Assistant Director in Bogura Pally Unnayan Academy. He joined in the said post on 10.11.2004. Subsequently, by virtue of his satisfactory service record he was promoted to the post of Deputy Director vide office order dated 01.04.2012(Annexure-B).

In this regard, the contention of the petitioner is that since he had joined in the Academy on 10.11.2004 and since 01.04.2012 he is serving in the current post of Deputy Director as such, he is senior to respondent Nos.5-9 as per the gradation list of Deputy Directors, as prepared and circulated by the Academy on 18.02.2019 (Annexure-C).

Rural Development and Co-operative Division under the Ministry of Local Government, Rural Development and Co-operatives (in short, LGRD) vide Memo No.47.00.0000.033.12.027.19.223 dated 05.08.2019 recommended 6(six) Deputy Directors for promotion to the post of Joint Director. With reference to the aforesaid Memo dated 05.08.2019, the respondent No.2, the Director General of the Academy vide the impugned Memo No.47.64.1088.014.12.030.15/845 dated 06.08.2019(Annexure-D) gave promotion to the respondent Nos.5-9 and another to the post of Joint Director. In this regard, the contention of the petitioner is that said

impugned promotion has been given to the respondents concerned despite the fact that respondent Nos. 5-9 were junior to him as per the gradation list dated 18.02.2019(Annexure-C) and that considering the date of birth of the respondent No.5 his age was over 42 years on the date of his appointment in the post of Deputy Director of the Academy, which is a violation of the Service Regulations, 1990, as it was in force at the relevant time, as well as under the Regulations, 2015 respectively.

Being aggrieved by and dissatisfied with, the petitioner has preferred the instant application and obtained the present Rule Nisi.

Mr. Md. Bodruddoza, the learned Senior Advocate appearing with Mr. Md. Reajul Hasan, the learned Advocate for the petitioner submits that the petitioner had joined in the Academy on 10.11.2004 and is serving in the current post of Deputy Director since 01.04.2012; hence, he fulfills the requirement of 10(ten) years service period in the respective post including 5(five) years as Deputy Director for promotion to the post of Joint Director. In this regard, he also submits that the petitioner had successfully completed respective professional courses like, the Cereal System Initiative for South Asia (CSISA) and the NDC, and has over 3(three) prestigious research publications to his credit.

Moreover, he submits that during his service career there was no adverse or negative remark in his annual confidential report; thus, having an unblemished record of service and having remarkable achievements and accomplishments during his service career in the Academy he was entitled to be considered for promotion to the post of Joint Director.

In the given context, failure of the respondent Nos.1-4 to promote the petitioner and at the same time by giving promotion to respondent

Nos.5-9 vide the impugned order dated 06.08.2019(Annexure-D) upon superseding the petitioner in particular respondent No.5 who was appointed in the post of Deputy Director at the age of 42 years in violation of the Service Regulations, 1990 and 2015 respectively, is liable to be declared to have been issued without lawful authority and hence, of no legal effect.

Conversely, Mr. Shihab Uddin Khan, the learned Advocate appearing for the respondent Nos. 2-4 by filing affidavit-in-opposition and supplementary affidavit to the affidavit-in-opposition submits that seniority in service is not the only criteria to get promotion to the higher post. In this regard, referring to the Service Regulations, 1990 as well as 2015 respectively he goes to submit that vide Regulation 11(1) and (2) of the Regulations, 2015 no one can claim promotion as of right showing seniority but is subject to the conditions as prescribed in the respective Service Regulations. In this regard, he goes to argue that the DPC in its meeting dated 04.08.2019 upon scrutinizing the merit, seniority, experience, publications, annual confidential reports etc. of the recommended candidates had finally confirmed 6(six) candidates for promotion to the post of Joint Director against 8(eight) vacant substantive posts. In this connection, he further goes to submit that the DPC did not find eligible candidates other than those 6(six) candidates; hence, the contention of the petitioner of giving promotion to respondent Nos. 5-9 upon superseding the petitioner, is absolutely misconceived and devoid of any substance; as such, not tenable in the eye of law.

He also submits that in the DPC meeting dated 04.08.2019 another recommended candidate named Md. Mazharul Anwar, who is senior to

the petitioner, was also not confirmed for the post of Joint Director whereas another candidate named Maksud Alam Khan, who is senior to the petitioner got promotion to the post of Joint Director. Accordingly, he submits that the DPC had tried to promote the best candidates amongst the recommended candidates; hence, question of arbitrariness, as alleged by the petitioner, has no leg to stand.

Further, drawing attention to the resolution dated 04.08.2019 (Annexure-2 to the affidavit-in-opposition) he submits that admittedly against 8(eight) substantive vacant posts of Joint Director 9(nine) candidates including the petitioner were considered for promotion. However, prior to giving recommendation for promotion the DPC considered seniority, experience, research publication, Annual Confidential Report etc. Ultimately, the name of 6(six) candidates were recommended for promotion. However, the name of the petitioner could not be considered for “ব্যক্তিগত নথি, বার্ষিক গোপনীয় প্রতিবেদন (এসিআর) পর্যালোচনা ও চাকুরীকাল সম্বোধনক না হওয়ায়।”

In this connection, he further goes to submit that on 06.11.2013, the petitioner had also been served with a show cause notice for being negligent in performing his official duties as in charge of the Computer Section. The petitioner gave reply to the said notice stating, *inter-alia*, “এজন্য আমি আন্তরিকভাবে দুঃখিত, মর্মান্বিত ও ক্ষমা প্রার্থী। সেই সাথে এই মর্মে উল্লেখ করছি যে, ভবিষ্যতে নিজ দায়িত্ব পালনে আমি আরও সচেষ্ট হব।”. Again, he submits, on 10.06.2019 another show cause notice was served upon the petitioner for being negligent in discharging his respective responsibilities. The petitioner gave reply to the said show cause notice stating, *inter-alia*, “তাই এমতবস্থায়, বিনীত প্রার্থনা এই যে, দাখিলকৃত পত্রটি আপনার কারন স্পষ্টিকরন এবং বিষয়টি ক্ষমা

সুন্দর দৃষ্টিতে দেখার জন্য মহোদয়ের সদয় মর্জি হয়।”। The authority although was not satisfied with the said reply but because of seeking apology in his reply the allegation so was brought against him was ultimately disposed off asking him to be more careful in future while discharging his respective duties.

Lastly, he submits that recently in the DPC meeting dated 22.12.2022 the respondent Nos. 2 and 4 had discussed the matter of the petitioner for considering his promotion to the post of Joint Director and accordingly, opined, *inter-alia*, that due to pendency of this Rule and ad interim order it is difficult to proceed with his promotion. Accordingly, the petitioner gave an undertaking to the authority concerned for non prosecution of the instant Rule (Annexure- 12 to the affidavit-in-opposition).

In view of the above facts and circumstances and position of law, he submits that the instant Rule being devoid of any substance is liable to be discharged.

Ms. Nishat Mahmood, the learned Advocate appearing for the respondent No.9 by filing separate set of affidavit-in-opposition adopts the submissions so have been advanced on behalf of the respondent Nos. 2 and 4 and submits that the petitioner having failed to substantiate any of the grounds/contentions this Rule is liable to be discharged.

Bogura Palli Unnayan Academy also, known as Rural Development Academey (RDA) has been established vide Section 3 of the “বগুড়া পল্লী উন্নয়ন একাডেমী আইন, ১৯৯০” (Act No.10 of 1990) (in short, Act, 1990). Section 7, however, provides its respective responsibilities and functions which includes training, research etc. for rural development. It also

provides advisory services to the government and other government organization on rural development. However, vide Section 12(2) the terms and conditions of service of its officers and employees are being governed by the Regulations so made by the government under Section 21 of the said Ain namely, “বগুড়া পল্লী উন্নয়ন একাডেমী কর্মকর্তা ও কর্মচারী প্রবিধানমালা, ১৯৯০” (in short, Regulations 1990) . Vide clause 6 of the Schedule of the said Regulations the post of the Deputy Director shall be filled up 50% by direct recruitment having requisite qualifications i.e. “ পিএইচডি ডিগ্রী অথবা স্নাতক পর্যায়ে সম্মানসহ মাধ্যমিক থেকে স্নাতকোত্তর পর্যন্ত সকল পরীক্ষায় কমপক্ষে ২য় শ্রেণীসহ ৫ বছরের চাকুরী অভিজ্ঞতা এবং ২টি গবেষণা প্রকাশনার অধিকারী হইতে হইবো” and 50% by promotion having “সহকারী পরিচালক হিসাবে কমপক্ষে ৫ বৎসরের অভিজ্ঞতা উল্লেখযোগ্য পেশাগত খ্যাতি সহ ২টি গবেষণা প্রকাশনার অধিকারী।”.

The petitioner having required qualifications were initially appointed in the post of Assistant Director in the Academy, who joined in his respective post on 10.11.2004. Subsequently, considering his satisfactory performance he was promoted to the post of Deputy Director on 01.04.2012 (Annexure-B).

Conversely, from Annexure-5 to the affidavit-in-opposition filed by the respondent Nos.2 and 4 it appears that respondent No.5 was appointed by the Academy on 19.07.2022 (Annexure-5 of the affidavit-in-opposition filed by the respondent No.2) as the departmental candidate following the appointment circular published in “Daily Koratoa” on 17.10.2011 and “Daily Ittefaq” on 22.10.2011 (Annexure-3) respectively. However, considering his outstanding qualifications, 15(fifteen) years working experience with RDA, Bogura the Academy in its “বগুড়া পল্লী উন্নয়ন একাডেমীর রাজস্ব খাতভুক্ত প্রথম শ্রেণীর কর্মকর্তা নিয়োগের নিমিত্ত সংশ্লিষ্ট বাছাই কমিটির” meeting dated

07.05.2012 had relaxed his age bar in view of clause (4) of the appointment circular dated 22.10.2011 (Annexure-3) which states, *inter-alia*, “দরখাস্ত গ্রহণের শেষ তারিখে প্রার্থীর বয়স প্রতিটি পদের বিপরীতে উল্লেখিত বয়সসীমার মধ্যে থাকতে হবে। তবে এ একাডেমীর বিভাগীয় প্রার্থীদের ক্ষেত্রে বয়সসীমা শিথিলযোগ্য।”. So far respondent 6 is concerned, she joined in the post of Deputy Director on 19.07.2012 under direct recruitment having required qualifications and work experience of 5(five) years in different reputed organizations; respondent Nos.7, 8 and 9 joined in the respective posts in the Academy on 17.11.2004, 27.02.2005 and 17.11.2004 respectively by direct recruitment.

Grievance of the petitioner is that vide the impugned Memo dated 06.08.2019 (Annexure-D) all those respondents have been given promotion to the post of Joint Director upon superseding him despite being junior to him. In support of the said assertion the contention of the petitioner is that respondent No.5 was age barred at the time of his initial appointment in the post of Deputy Director and respondent No.6 did not have required service period, for, in view of clause (6) of the Schedule of the “বগুড়া পল্লী উন্নয়ন একাডেমী কর্মকর্তা ও কর্মচারী প্রবিধানমালা, ১৯৯০” for being appointed by direct recruitment in the post of Deputy Director along with required educational qualifications, the aspiring candidate aged 35(thirty five) years has to have 5(five) years service experience with 2(two) research publications.

As has been observed earlier, the Academy while giving appointment to respondent No.5 as a departmental candidate on 19.07.2012 in the post of Deputy Director relaxed his age bar in the respective meeting dated 07.05.2012 under clause (4) of the appointment

circular dated 22.10.2011 considering his outstanding qualifications and 15(fifteen) years service experience. Moreover, respondent No.6 was appointed and joined in the post of Deputy Director with more than 5(five) years service experience.

However, in view of clause (3) of the Schedule of the Service Regulations, 2015 for promotion to the post of Joint Director the candidate has to fulfill the following requirements-

“পদোন্নতির ক্ষেত্রে:

- (ক) উপ-পরিচালক বা প্রটোকল অফিসার পদে অন্যান্য ৫ (পাঁচ) বৎসরের চাকুরিসহ মোট ১০ (দশ) বৎসরের চাকুরি; এবং
 - (খ) সংশ্লিষ্ট পেশাগত খ্যাতিসহ ৩টি গবেষণা প্রকাশনা থাকিতে হইবে।
- সরাসরি নিয়োগের ক্ষেত্রে:
- (ক) কোন স্বীকৃত বিশ্ববিদ্যালয় হইতে পিএইচডি ডিগ্রী; অথবা
 - (খ) কোন স্বীকৃত বিশ্ববিদ্যালয় হইতে স্নাতক (সম্মান) বা সমমানের ডিগ্রী;
 - (গ) মাধ্যমিক থেকে স্নাতকোত্তর পর্যন্ত সকল পরীক্ষায় অন্যান্য দ্বিতীয় শ্রেণী বা সমমানের সিজিপিএ; এবং
 - (ঘ) ১০ (দশ)বৎসরের চাকুরির অভিজ্ঞতাসহ ৩টি গবেষণা প্রকাশনা থাকিতে হইবে।”

In the meeting of DPC dated 04.08.2019 (Annexure-2) the name of the petitioner along with 8(eight) other candidates including respondent Nos.5-9 were considered against 8(eight) vacant posts admitting the fact that the petitioner is senior to those respondents.

However, Regulation 11 of the Regulations, 2015 in this regard provides as under:

- “১১। পদোন্নতি।--(১) তফসিলের বিধানাবলী সাপেক্ষে, কোন কর্মচারীকে পরবর্তী উচ্চতর পদে পদোন্নতির জন্য বিবেচনা করা যাইতে পারে।
- (২) কেবলমাত্র জ্যেষ্ঠতার কারণে কোন ব্যক্তি অধিকার হিসাবে তাহার পদোন্নতি দাবী করিতে পারিবেন না।
 - (৩) টাকা ৩৭০০-৪৮-২৫ তদুর্ধ্ব বেতনক্রমের পদসমূহে পদোন্নতি মেধা তথা জ্যেষ্ঠতার ভিত্তিতে হইবে।
 - (৪) কোন কর্মচারীকে তাহার অসাধারণ কৃতিত্ব, কর্তব্যনিষ্ঠা এবং চাকুরিকালে উচ্চতর পদের জন্য প্রয়োজনীয় পেশাগত পরীক্ষায় উত্তীর্ণ হওয়ার কারণে ব্যতিক্রমী ক্ষেত্র হিসাবে, পালা অতিক্রম করতঃ পদোন্নতি দেওয়া যাইতে পারে।”

It is, thus, apparent that being a senior will not go to create a right to promotion, but is subject to the requirements as provided in the

Schedule of the Regulations along with merit, experience, research publication, annual confidential report etc.

Respondent Nos.5-9 along with another having fulfilled “.... জ্যেষ্ঠতা তালিকার শ্রম ও দক্ষতা এবং বিশেষ যোগ্যতা অনুযায়ী যুগ্ম-পরিচালক পদে পদোন্নতির সকল শর্ত পূরণ করায় ” DPC recommended their names for promotion. The name of the petitioner, however, was not considered on the following count: “ব্যক্তিগত নথি, বার্ষিক গোপনীয় প্রতিবেদন (এসিআর) পর্যালোচনা ও চাকুরীকাল সন্তোষজনক না হওয়ায়

Considering the said context, the assertions of the petitioner that he has been superseded while giving promotion the respondent Nos.5-9, falls through.

At this juncture, admitting the facts that at the time of considering the promotion of the petitioner on 04.08.2019 (Annexure-2) there were some adverse remarks in his ACR for the year 2017 and 2018 respectively, but those were removed subsequently by the authority concerned vide Memo dated 13.12.2022 (Annexure-J and J-1 respectively).

In view of the said assertion of the petitioner, we have examined Annexures- J and J-1 of the supplementary affidavit. It, however, appears therefrom that respective adverse remarks for the year 2017 and 2018 respectively having not been endorsed in the respective ACR in compliance with the applicable rules and regulations, were not considered by the authority concerned and accordingly, the petitioner was relieved from the respective allegations.

Relevant part is quoted below:-

“এমতাবস্থায় আপনার জবাব, প্রতিস্বাক্ষরকারী কর্মকর্তার মতামত ও বার্ষিক গোপনীয় প্রতিবেদনে বিরূপ মন্তব্যের বিষয়ে একাডেমীর বিদ্যমান এসিআর নীতিমালা-2012 ও “বার্ষিক গোপনীয় প্রতিবেদন ফরম পূরণ,

অনুস্বাক্ষরসহ লিখন, প্রতিস্বাক্ষর ও সংরক্ষণ সংক্রান্ত অনুশাসনমালা, স্মারক নং- ০৫.১০২.২২.০১.০০.০০১.২০১২-৫৮, তারিখঃ ২৩/৯/২০১২ এবং একাডেমীর প্রবিধানমালা-২০১৫ এর ৩৩ (২) পর্যালোচনায় প্রতীয়মান হয়, বিরূপ মন্তব্য লিপিবদ্ধের ক্ষেত্রে এসিআর সংশ্লিষ্ট প্রচলিত বিধি-বিধান হযনি বিষয় উল্লিখিত বিরূপ মন্তব্যটি গ্রহণযোগ্য হিসেবে বিবেচিত না হওয়ায় আপনাকে ২০১৭ সালের এসিআর-এ বিরূপ মন্তব্যের অভিযোগ হতে অব্যাহতি প্রদান করা হলো।” (Annexure-J)

“০৩। এমতাবস্থায় আপনার জবাব, প্রতিস্বাক্ষরকারী কর্মকর্তার মতামত ও বার্ষিক গোপনীয় প্রতিবেদনে বিরূপ মন্তব্যের বিষয়ে একাডেমীর বিদ্যমান এসিআর নীতিমালা-২০১২ ও “বার্ষিক গোপনীয় প্রতিবেদন ফরম পূরণ, অনুস্বাক্ষরসহ লিখন, প্রতিস্বাক্ষর ও সংরক্ষণ সংক্রান্ত অনুশাসনমালা, স্মারক নং- ০৫.১০২.২২.০১.০০.০০১.২০১২-৫৮, তারিখঃ ২৩/৯/২০১২ এবং একাডেমীর প্রবিধানমালা ২০১৫ এর ৩৩ (২) পর্যালোচনায় প্রতীয়মান হয়, বিরূপ মন্তব্য লিপিবদ্ধের ক্ষেত্রে এসিআর সংশ্লিষ্ট প্রচলিত বিধি-বিধান অনুসৃত হযনি বিষয় উল্লিখিত বিরূপ মন্তব্যটি গ্রহণযোগ্য হিসেবে বিবেচিত না হওয়ায় আপনাকে ২০১৮ সালের এসিআর-এ বিরূপ মন্তব্যের অভিযোগ হতে অব্যাহতি প্রদান করা হলো।” (Annexure-J-1)

Except the adverse remarks so made in the ACR for 2017 and 2018 respectively which have now been removed by the Academy for not being endorsed in due compliance of law, the respondent Academy has annexed 2 (two) show cause notices; one, on 06.11.2013 (Annexure-6) and another, on 10.06.2019 (Annexure-8). In both the cases, the petitioner replied with unconditional apology. However, the show cause notice dated 10.06.2019 was issued on the count “নিম্নস্বাক্ষরকারী একাডেমীতে যোগদানের পরপরই একাডেমীর সর্বস্তরের কর্মকর্তা-কর্মচারীদের পরিচয়পত্র তৈরী করে সরবরাহের দায়িত্ব আপনাকে প্রদান করা হয়। কিন্তু ইতোমধ্যেই দীর্ঘদিন (প্রায় তিন মাস) অতিবাহিত হওয়া সত্ত্বেও পরিচয়পত্র তৈরী ও সরবরাহের কাজটি আপনি সম্পন্ন করেননি যা দায়িত্ব অবহেলার সাক্ষ্য।”. Said matter was ultimately disposed of on 28.08.2019 (Annexure-10) with the following remarks “পর্যালোচনায় আপনার দাখিলকৃত জবাব কর্তৃপক্ষ সন্তোষজনক নয় মর্মে বিবেচিত হলেও জবাবে আপনি ক্ষমা প্রার্থনা করায় আপনার প্রতি নমনীয় মনোভাব পোষণ করতঃ ভবিষ্যতে দায়িত্ব পালনে আরও যত্নবান হওয়ার জন্য আপনাকে নির্দেশ প্রদান করে বিষয়টি নিষ্পত্তি করা হলো।”.

Since at the relevant time i.e., on 04.08.2019 (Annexure-2) when the meeting of DPC was held and his case was being considered for promotion, there was a proceeding pending against him in connection with the show cause notice dated 10.06.2019 (Annexure-8), which has been disposed of on 28.08.2019 (Annexure-10) i.e. subsequent to passing the impugned order of promotion dated 06.08.2019 (Annexure-D). As

such, it cannot be said that the Academy while considering the promotion of the petitioner along with others has committed any illegality by not giving promotion to him for the post of Joint Director.

Fact remains, now there is no proceeding pending against him and he fulfils all other requirements as prescribed under the respective Service Regulations. Under the circumstances, now, the Academy while considering the promotion of the petitioner may in its wisdom and exercising its discretionary power look into the matter of giving retrospective effect from 06.08.2019 (Annexure-D).

Considering the facts and circumstances of the case and the observations so made above it is categorically found that:

- (a) *While giving promotion to respondent Nos.5-9 vide the impugned order dated 06.08.2019 (Annexure-D) the Academy did not supersede the petitioner;*
- (b) *Admitting the fact that the petitioner is senior to respondent Nos. 5-9, but considering his service record including ACR the Academy did not consider his promotion;*
- (c) *Considering outstanding performance and 15 (fifteen) years work experience in the respective field of the Academy respondent No.5 was appointed in the post of Deputy Director relaxing his age bar vide clause (4) of the circular dated 22.10.2011 (Annexure-3); hence is found lawful;*
- (d) *Giving promotion to respondent No.6 to the post of Joint Director having served 5 (five) years in the post of Deputy Director with more than 5 (five) years service experience while giving appointment in the post of Deputy Director, in total, having 10 years service period, is found lawful; and*
- (e) *Last but not the least, since adverse remarks so made against the petitioner in his ACR for the year 2017 and 2018 respectively, were not done in due compliance of the respective Rules and regulation and now, are withdrawn; hence, the*

petitioner is now entitled to be considered for promotion to the post of Joint Director in due compliance of law.

With the above observations and directions, this Rule is accordingly disposed of.

There will be no order as to costs.

Communicate the judgment and order to the respondents concerned at once.

Muhammad Mahbub Ul Islam, J:

I agree.