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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 07.03.2013

Judgment delivered on: 02.07.2013

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WP(C) 3883/2011

J. NEHRU

.....PETITIONER

Vs

UNION OF INDIA

.....RESPONDENT

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner:

Petitioner in person

For the Respondents:

Mr. Jatan Singh, CGSC with Mr. Tushar Singh, Advocate

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This writ petition seeks to assail the order dated 10.09.2010 passed by the respondent, i.e., the Union of India, Ministry of Chemicals and Fertilizers, Department of Fertilizers.

1.1 The petitioner is aggrieved by the impugned order as it seeks to convey the respondent's displeasure qua his alleged role in the time and cost overrun vis-à-vis the Namrup Revamp Project of Hindustan Fertilizer Corporation Ltd. (in short HFCL), since then, known as, Brahmaputra Valley Fertilizer Corporation Ltd. (in short BVFCL).

1.2 BVFCL is a public sector undertaking under the administrative control of the Department of Fertilizers (DOF), Ministry of Chemicals and Fertilizers, Government of India (GOI). BVFCL was created pursuant to it being hived off from HFCL on 01.04.2002.

1.3 This is the petitioner's second round of litigation in this court. The order conveying the respondent's displeasure qua the petitioner's role in the cost and time overrun of the Namrup Revamp Project was issued for the first time on, 28.04.2006. The petitioner had made representations qua the memo of displeasure issued to him which were disposed of vide communications dated 06.02.2008 and thereafter, on a re-examination on 15.04.2009.

1.4 Since the petitioner was aggrieved, he had moved this court by way of a petition under Article 226 of the Constitution laying challenge to not only the memorandum (memo) of displeasure dated 28.04.2006 but also the communications dated 06.02.2008 and 15.04.2009. This petition was numbered as WP(C) 3883/2010. A Single Judge of this court by a brief order dated 30.07.2010 set aside the impugned order and the communications referred to above based on a representation of the respondent contained in its letter of 23.07.2010. The said letter is extracted in the order of this court dated 30.07.2010.

1.5 Briefly, the respondent took the stand that if the court so directs, the Secretary (Fertilizers), GOI would accord hearing in the matter to the petitioner, and thereafter, the competent authority, which at the relevant time was, Minister of Chemical and Fertilizers, GOI would take a view on the representation of the petitioner.

2. Accordingly, the operative directions, which were issued by the court in WP(C) 3883/2010, were two-fold: First, to set aside the impugned order and the communications. Second, to direct the Secretary (Fertilizers) to inform the petitioner within ten (10) days, the date when he would have to appear before him, but before that the material, on the basis of which the impugned order may have been passed, would be furnished alongwith the letter communicating the date of hearing. The petitioner was also given liberty to place on record, all such documents on which he wished to place

reliance, for consideration of the Secretary (Fertilizers). The concerned Minister was thereafter, required to render a decision on the petitioner's representation within a period of four weeks.

3. It is the petitioner's case that the directions of the court were not complied with: as the material, which was the basis of the impugned order (i.e., order dated 28.04.2006), was not supplied - the hearing given, was thus, a mere formality; and that documents received by the petitioner by taking recourse to the statutory route provided under the Right to Information Act, 2005 (in short RTI Act), had revealed that the decision was premeditated. In this behalf the petitioner specifically sought to rely upon the report of the Dy. Secretary, DOF, GOI dated 10.08.2010.

3.1 As a matter of fact, it is alleged that the note-sheet, wherein the approval of the Minister is stated to have been obtained does not bear his signature instead the note dated 08.09.2010 records that the approval of the Minister has been obtained through fax, which evidently is appended to the note. The petitioner claims that, a copy of the said fax was not supplied to him when, an application was filed for receiving information under the RTI Act.

3.2 The petitioner has also challenged the assertion in the impugned order (which is based on the report of the Standing Committee of the DOF), that he had been sent a notice of hearing prior to finalization of the report, in which, responsibility for the time and cost overruns has been fixed on the petitioner alongwith four other high ranking officers.

3.3 It is also the case of the petitioner that five (5) years after he had retired from service, the respondent, conveyed the conclusions arrived at by the Standing Committee of DOF fixing, inter alia, responsibility on him and conveying its displeasure in that behalf. It is the petitioner's case that, at no stage was the petitioner informed about the deliberations being carried out by

the Standing Committee of DOF, and therefore, both the earlier order of 28.04.2006, and thereafter, the impugned order of 10.09.2010, conveying displeasure was illegal and hence, deserved to be set aside.

3.4 The recourse taken by the respondent to the Vigilance Manual in this behalf is challenged by the petitioner on the ground that firstly, the investigation was carried out by the Standing Committee of DOF and not by the Vigilance Department; and secondly, the provision relied upon by the respondent, which is paragraph 4 of Chapter X of the Vigilance Manual, was clearly applicable to serving officials.

3.5 In sum and substance, it is the petitioner's contention that the provisions of paragraph 4 of the Vigilance Manual applies only to the serving officers and if, displeasure of the Government is conveyed to a serving officer, and a copy of the same is to be placed in the character role of the concerned officer, since it would constitute an adverse entry, an opportunity is required to be granted to the concerned officer, in order to enable him to make a representation qua the same.

4. The petitioner, has also assailed the impugned order and the conclusion of the Standing Committee on merits, which in my view, this court need not examine as, while exercising jurisdiction under Article 226 of the Constitution, in my opinion, the court should confine its scrutiny to the decision making process and not the decision itself unless the conclusions arrived at are bereft of any base material. I would, however, briefly touch upon the same if I am otherwise persuaded that principles of natural justice have been breached, as alleged, to show what could have perhaps been argued by the petitioner in defence.

5. Keeping in mind the aforesaid broad grounds of challenge made in the writ petition, let me briefly advert to the factual aspects, which led to the filing of the present writ petition.

5.1 In 1992, HFCL suffered a reversal of fortunes, resulting in it being declared a sick industrial company by the Board for Industrial and Financial Reconstructions (in short BIFR) under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (in short SICA). Consequently, in March, 1994, Industrial Credit and Investment Corporation of India (ICICI) was appointed as an operating agency, which was tasked with the responsibility of preparing a rehabilitation scheme. ICICI, in turn, entrusted the job of assessing the achievable level of performance and, to make recommendations qua measures required to be taken to improve the plant performance, to Fertilizers and Chemicals Travancore Limited Engineering and Design Corporation (in short FEDO). Based on the technical study conducted by FEDO, ICICI submitted a rehabilitation scheme to BIFR.

5.2 In October, 1997, GOI approved a rehabilitation scheme for the Namrup Revamp Project at the cost of Rs. 350 Crores, as a measure to rehabilitate HFCL. Pertinently, there were other plants of HFCL, which were not considered fit for rehabilitation. The zero date for the Namrup Revamp Project was pegged as: 02.11.1998. The revamping exercise was required to be completed within a period of 30 months i.e., by 01.05.2001. It is important to note that there were three phases of the Namrup Revamp Project, which were identified as Namrup-1, Namrup-II and Namrup-III.

5.3 In the interregnum, i.e., on 30.06.1997, the petitioner was appointed as a Chairman and Managing Director of HFCL after approval of the Appointments Committee of the Cabinet (in short ACC). The petitioner was appointed for a period of five (5) years or till superannuation, whichever was earlier.

5.4 Evidently, based on the recommendations of the Planning Commission [backed by the decision of the Cabinet Committee on Economic Affairs (in short CCEA), which required that, in every project, where cost overrun was

over 20% and time overrun of 10%, the revised cost estimate were to be brought before the CCEA only after due responsibility was fixed for such cost and time overruns], the DOF, constituted a Standing Committee, on 19.08.1998. The Standing Committee submitted its report on 17.08.2005.

5.5 A perusal of the standing committee report would show that the revised completion cost of the project had reached Rs. 610.24 Crores and the project completion date had been shifted from 01.05.2001 to 16.05.2004, that is, a project which was required to be completed in thirty (30) months, was given a time frame of sixty six (66) and a half (1/2) months.

5.6 As a matter of fact the Standing Committee was of the view that the date of completion would shift to December, 2004 and the cost overrun would go beyond Rs.610 Crores. In coming to this conclusion, the Standing Committee adverted to several factors, including the fact that FEDO had made recommendations without conducting a proper health study of each equipment and machinery, and that their recommendation was based on pre 1994 data available with HFCL. Glaring inadequacies were also found in the design of the original plant, which was carried out by an organization by the name of PDIL. Therefore, fault was found in HFCL engaging PDIL's services, to implement the Namrup Revamp Project. Fault was also found with the fact that: a Detailed Project Report (DPR) was not prepared; fresh manpower was not recruited; and an independent project incharge was not appointed. There was, according to the Standing Committee, inter alia, a lack of decentralization in the decision making process.

5.7 The petitioner, on his part submitted that at each and every juncture, the respondent was kept in the loop. There were at least two to three senior officers of GOI on the Board of Directors of HFCL. The Board of Directors meetings were held every month, and quarterly review meetings were held in

the Ministry of Chemical and Fertilizers under the aegis of the Secretary, DOF.

5.8 It is the petitioner's contention that FEDO was engaged in 1994 by ICICI for carrying out a technical study. FEDO prepared a report based on inputs received from DOF over a period of two years. The report prepared by FEDO was scrutinized at various levels by specialists in various Ministries prior to its acceptance by the Cabinet for revamping the Namrup Plants. There was, therefore, according to the petitioner, no requirement to prepare a DPR once again as a DPR in the form of reports prepared by FEDO and ICICI was already on record. Before commencing work, the revised scope of work was jointly determined by FEDO, PDIL and HFCL after fresh health study of plants was completed in 1997-1998. The work of revamping the Namrup plants was thus executed taking into account the relevant material generated by the said agencies.

5.9 The petitioner, contended that the cost for revamping the Namrup plants got enhanced as there was nearly a three year delay between the time when the study was first conducted, i.e., in 1994, and its approval, in November, 1997. What was sought to be emphasized was that by the time the petitioner joined HFCL as its CMD in June, 1997, costs to be incurred for executing the Namrup Revamp Project had already enhanced.

6. In so far as induction of additional manpower was concerned, it was contended that, till January, 2001 when the petitioner demitted office, no requirement of additional manpower / staff was felt. There were no suggestions to the contrary by DOF; which was fully aware of the manpower situation. It is the case of the petitioner that post the revamp, the requirement and availability of manpower at Namrup was under consideration, as it was one of the recommendations made by FEDO. Since, till the time the petitioner demitted office as CMD of HFCL, the separation

of Namrup from HFCL had not been realized, new pay scales could not be introduced as DOF had stopped introduction of higher pay scales in other plants of HFCL located in Haldia, Durgapur and Barauni.

6.1 With regard to constitution of a project implementation team, the petitioner contended that the best officers from various plants of HFCL were grouped together to constitute a project team for revamping the Namrup plant. As a matter of fact, one Sh. N.K. Borah, Executive Director was made Incharge of the Namrup Revamp Project. PDIL, a public sector company, was appointed as the main consultant, by the Board of Directors of HFCL in consultation with DOF and, the petitioner, being its CMD agreed with the said decision. PDIL, according to the petitioner, had good credentials to execute the Namrup Revamp Project.

6.2 The petitioner also denied the accusation that there was delay in floating enquiries for ordering equipment on the ground that before initiating enquires, certain ground work had to be conducted. In this regard, he referred to the fact that enquiries for equipment could not be made without completing systems designs and drawings, freezing of technical parameters, completion of materials balance analysis, and finalizing technical parameters. The petitioner thus emphasised that it was because of this precise reason that the zero date for commencement of the project was fixed as 02.11.1998 whereas the delay curiously has been counted from November 1997 i.e., the date of approval.

6.3 The charge that there was centralization of both financial and managerial power was refuted on the ground that there was no delay in procuring equipment as alleged or at all. In this regard, the attention of the court was drawn to the list of activities and the completion dates for the said activities between the period September, 1998 till December, 2000 when,

completion of order for major equipment (which was 90% of the entire complement of equipment ordered) was completed.

6.4 It appears, at least from the point of view of the petitioner, that despite these ground realities, on 28.04.2006, the respondent conveyed to the petitioner its displeasure based on the conclusions arrived at by the Standing Committee in its report of 17.08.2005. According to the respondent, the actions of the petitioner had caused avoidable embarrassment to the management of the company (i.e., BVCL) and to itself, being its promoter.

6.5 The petitioner, made representations dated 14.05.2006, 20.12.2006, 12.07.2007 and 09.11.2007 against the Memo of displeasure dated 28.04.2006. By a cryptic communication dated 06.02.2008, the respondent rejected the representation by observing that the petitioner could not be absolved (presumably of the responsibility) for the time and cost overruns in the execution of the Namrup Revamp Project.

6.6 It appears that the petitioner made representations thereafter which were also rejected by the respondent vide its letter of 15.04.2009. These representations were made to the Ministry of Chemicals and Fertilizers on: 29.02.2008, 21.03.2008 and 06.06.2008.

6.7 It is also relevant to point out that, the petitioner, had raised certain queries with the respondent by taking recourse to the RTI Act, vide his application dated 07.06.2008. The request was reiterated by a communication dated 08.09.2008; though this time it was addressed to the First Appellate Authority, as no information was provided by the CPIO. The respondent provided some information vide a response dated 12.09.2008.

6.8 The petitioner, not being satisfied, carried the matter in appeal to the First Appellate Authority under the RTI Act, who disposed of the same vide order dated 10.12.2008.

6.9 Evidently, the petitioner filed a second application under the RTI Act, on 04.06.2009, which resulted in the petitioner being supplied with copies of note sheets contained in the respondent's internal file pertaining to the case in issue. This information was supplied by the respondent vide its letter dated 07.07.2009. The information received by the petitioner, to the extent it is relevant, would be discussed in the later part of my judgment.

7. Suffice it to say, that the petitioner, being aggrieved by the factum of issuance of the Memo of displeasure dated 28.04.2006 by the respondent, filed a writ petition being: WP(C) 3883/2010, in this court. The said writ petition was allowed by order dated 30.07.2010 based on the stand taken by the respondent that the Secretary, Ministry of Fertilizers would accord a hearing in the matter to the petitioner, whereupon a decision would be taken by the Minister, Chemical and Fertilizer.

7.1 Pursuant to the aforesaid directions of the court, the petitioner was asked to appear before the Secretary (Fertilizers), on 06.08.2010 vide letter dated 04.08.2010. According to the petitioner, no hearing was held since the material was not supplied, as directed by this court, vide order dated 30.07.2010.

7.2 A fresh communication was issued to the petitioner on 16.08.2010, wherein it was recorded that since DOF did not have with it a certified copy of the court's order dated 30.07.2010, the report of the Standing Committee, which was the basis of the earlier decision of the GOI was not supplied to him. This defect, though was cured with the copy of the report of the Standing Committee being supplied and the petitioner being asked to appear before the Secretary (Fertilizers), on 26.08.2010.

7.3 The petitioner, apparently, submitted a detailed representation dated 24.08.2010 to the Secretary, on 26.08.2010.

7.4 The petitioner claims that the Secretary superannuated from the service on 31.08.2010; a fact which is not disputed before me.

7.5 The respondent, passed the order dated 10.09.2010 reiterating its earlier stand that the memo of displeasure, which was issued to the petitioner on 28.04.2006 was in order, and thus, need not be recalled.

7.6 The petitioner once again took recourse to the RTI route and filed an application dated 22.10.2010. This application was responded to, by the respondent, vide communication dated 18.11.2010. Since the petitioner, had asked for the minutes of meeting dated 06.08.2010 and 26.08.2010, copies of note sheets generated on 10.08.2010, 30.08.2010 and 31.08.2010 and the movement of the file leading unto the impugned order dated 10.09.2010; the same was provided to the petitioner.

8. Armed with material gathered, the petitioner lay a challenge to the order dated 10.09.2010, by which, the earlier Memo of displeasure dated 28.04.2006 had been sustained. This led to the institution of the present writ petition. Notice in this writ petition was issued on 31.05.2011. Upon completion of pleadings, the matter was taken up for arguments.

SUBMISSIONS

9. The arguments for the petitioner till a particular date were advanced by his counsel, Mr. Sanjay Kumar Pathak. Mr. Pathak took discharge on 05.03.2013, whereafter, the petitioner, was heard in person. On behalf of the respondent, submissions were made by Mr. Jatan Singh.

10. The petitioner, as indicated above, submitted that there has been a breach of principles of natural justice in as much as the relevant material on which the Standing Committee relied upon in coming to the conclusion, which it did, was not supplied. The petitioner, submitted that the only document which was available with DOF i.e., the report of the Standing Committee, was supplied once again, which was, already available with him

when, he had approached this court in the first round. This fact, was known to the court, as the said report was filed with the earlier writ petition being: WP(C) 3883/2010. It was thus contended that the respondent had failed to appreciate the import of the directions issued by the court vide its order dated 30.07.2010 directing it to supply the relevant material before hearing was granted to him by the Secretary (Fertilizers).

10.1 The contentions with regard to the untenability of the proceedings were also stressed. It was submitted that since the petitioner had retired w.e.f. 31.01.2001, the Memo of displeasure could not have been issued five (5) years after his retirement.

10.2 The fact that there was a delay between the date of the constitution of the Standing Committee i.e., 19.08.1998 and its first meeting, which was held on 17.03.2003 and a further delay in the submission of the report of two and a half years, was highlighted by the petitioner.

10.3 The petitioner submitted that, since the Standing Committee issued no notice to him, no opportunity was made available to him, to explain that there was no cost and time overrun in execution of the Namrup Revamp Project, at least till the time the petitioner was in harness. The petitioner, stressed that, as a matter of fact, not only was he appointed as a consultant with HFCL for a period of one (1) year after demitting office but was also appointed as an independent Director with the National Fertilizer Limited, in 2003, with the approval of the ACC, in due recognition of its ability as a professional and his vast experience in the field of project implementation, both in India as well as abroad.

10.4 On the merits, the petitioner took pains to draw my attention to the representations made to the respondent from time to time including the one made to the Secretary (Fertilizers), dated 24.08.2010; to which I have made a reference hereinabove.

11. On behalf of the respondent, Mr. Jatan Singh submitted that the matter regarding issuance of the Memo of displeasure was examined at their end on several occasions and it was found on each such occasion that there was no good reason to withdraw the Memo of displeasure. Mr. Jatan Singh submitted that, not only the petitioner, but also four other senior officers of public sector undertakings, at the Board level, had been found guilty of the charge that they were responsible for the cost and time overruns in the execution of the Namrup Revamp Project. Mr. Jatan Singh, to buttress his submissions relied upon the record and in particular, the impugned order dated 10.09.2010.

11.1 Qua the issue, with respect to, the source of power vested in the respondent to issue a memo of displeasure to an employee of a public sector undertaking once he / she has demitted office, Mr. Jatan Singh relied upon paragraph 4 contained in Chapter X of the Vigilance Manual. Mr. Jatan Singh concluded by contending that, the writ petition was devoid of merits and hence ought to be rejected by this court.

REASONS

12. Having heard the learned counsels for the parties and perused the record, in my view, two issues arises for consideration of this court. First, as to whether there has been breach of principles of natural justice in the conduct of the proceedings before the Secretary (Fertilizers), GOI pursuant to the directions issued by this court vide order dated 30.07.2010. Second, as to whether the respondent could have issued a Memo of displeasure to the petitioner after he had demitted office.

12.1 On the merits of the case, which concerns the conclusions arrived at by the Standing Committee, all that one can say is that, the petitioner in his defence, as is evident from the representations, made to the respondent from time to time (a reference to which I have made above); had a lot to say.

Whether, finally the Standing Committee, would have been persuaded by the explanations rendered by the petitioner would remain a moot point.

12.2 In this background, if, however, I were to come to a conclusion, based on the record, that the petitioner was not noticed and therefore, given an opportunity to explain himself by the Standing Committee, the impugned order would have to be set aside. On the other hand, if I were to come to the conclusion that the petitioner was given an opportunity to appear before the Standing Committee and he chose not to avail of the said opportunity, then nothing would turn on what the petitioner had to say on merits. Either way, therefore, I would not examine the worthiness of the defence raised by the petitioner as regards the merits of the case, as while, exercising powers under Article 226 of the Constitution (as stated right at the beginning of my discussion), the court is concerned with the decision taking process and not with the decision itself. (See _____)

12.3 The petitioner has categorically stated that no notice was issued to him by the Standing Committee. The respondent had merely relied upon a statement in the second (2nd) paragraph of the Standing Committee report, which is suggestive of the fact that notices were issued to concerned parties which, inter alia, included the CMD of BVFCL. The said paragraph also records that, not only the concerned parties were heard, but that they were also given an opportunity to submit their reports. It is not in dispute that the petitioner superannuated from the post of CMD on, 31.01.2001. It also, cannot be disputed by the respondent that, even though the Standing Committee was constituted on 19.08.1998, its first meeting was held on 17.03.2003. The last aspect emerges from the respondent's letter dated 12.09.2008, issued to the petitioner. The respondent has brought nothing on record to show, apart from what is stated above, that a notice was issued to the petitioner with regard to hearing held by the Standing Committee. This

aspect is clearly borne out, on a perusal of paragraphs 11 and 12 of the note of the Dy. Secretary, GOI dated 10.08.2010. Pertinently, the Dy. Secretary after recording in paragraph 11 of his note what is stated in paragraph 2 of the Standing Committee's Report, in paragraph 12 of the very same note, he records as follows:-

“..Apart from the above certification by the Standing Committee, we have no other record to verify whether Shri Nehru was actually given a written communication to attend the proceedings and explain his part...”

12.4 Even though the Dy. Secretary's records the fact that there is nothing to show that the petitioner was served, apart from the assertion in paragraph two (2) of the Standing Committee's Report, he curiously goes on to state that there is no reason to doubt the veracity of the statement made in the report of the Standing Committee. The question, which the respondent had to answer was not whether the Standing Committee initiated a process of noticing parties who were likely to be affected by their findings but that whether the petitioner factually had been served with a notice apparently issued by the Standing Committee.

12.5 It is obvious that the Standing Committee heard, if at all, the then CMD of BVFCL. There was thus, a breach of natural justice, which is why, this court vide its order dated 30.07.2010 had directed that the petitioner be heard by the Secretary (Fertilizers).

12.6 At that stage, this court had directed that the petitioner be supplied with the relevant material based on which the Standing Committee had concluded that the petitioner, amongst others, was responsible for cost and time overruns. As has been correctly submitted by the petitioner, the Standing Committee's Report was already on record of this court forming subject matter of WP(C) 3883/2010, and therefore, the court while issuing a

direction that relevant material should be supplied to the petitioner had in mind the base documents which formed the edifice of the report.

12.7 The note of the Dy. Secretary dated 10.08.2010, whereby he recommended that displeasure Memo issued qua the petitioner, ought not to be withdrawn, also notes the fact that, apart from the Standing Committee Report, no other material had been supplied to the petitioner as none was available with the respondent. The relevant assertion made in paragraph 8 of the Dy. Secretary's note of 10.08.2008 eloquently conveys this point:

“...When he visited this Department on 06.08.2010 we have not given any document/material to him on the basis of which the Memo dated 28.04.2006 was issued to him. It is also pertinent to point out here that on record we have only the report of the Standing Committee as relevant material on the basis of which the memo was issued to him conveying displeasure...”

12.8 On a query being put by me, to Mr. Jatan Singh, as to whether the petitioner had been given the primary documents at the time when hearing was held before the Secretary (Fertilizers) based on which the Standing Committee had returned its findings, he drew my attention to the various annexures appended to the said report. A perusal of those annexures would show that the said annexures are only tabulated charts of information collated from primary documents. The primary documents admittedly were not made available to the petitioner. These very annexures alongwith the report were available with this court when it passed the order dated 30.07.2010. In my opinion, therefore, both at that stage and now, there has been a failure on the part of the respondent to supply the material which formed the basis of the conclusion reached by the Standing Committee. It cannot be the case of the respondent that the said material was not available as the Committee clearly records in the very same paragraph, on which reliance is placed by the respondent i.e., paragraph 2(iii) of the report, that

the Committee in coming to the conclusion, which it did, strictly depended on the records available.

12.9 Thus, in my view, the petitioner is right in contending that, having been denied access to the primary documents, which were in the power and possession of the Standing Committee, based on which, conclusions were arrived at, which were inimical to the interest of the petitioner, his right of fair hearing has been compromised. Therefore, the first issue would have to be necessarily, decided in favour of the petitioner and against the respondent.

13. In so far as the second issue is concerned, it may be relevant to extract paragraph 4 of Chapter X of the Vigilance Manual on which the respondent seeks to rely, to sustain the source of its power to issue a memo of displeasure to the petitioner even after he had admittedly demitted office.

The relevant paragraph reads as follows:-

“...On occasions, an officer may be found to have committed an irregularity or lapse of a character which though not considered serious enough to warrant action being taken for the imposition of a formal penalty or even for the administration of a warning but the irregularity or lapse is such that it may be considered necessary to convey to the officer concerned the sense of displeasure over it. Such displeasure is usually communicated in the form of a letter and a copy of it may, if so decided, be placed on the character roll of the officer in the manner indicated in para 3.2 for placing a copy of the warning on the CRs. Where a copy of the letter communicating the “Displeasure of the Government” is kept in the character roll of the officer, it will constitute an adverse entry and the officer concerned will have the right to represent against the same in accordance with the existing instructions relating to communication of adverse remarks in Confidential Reports and consideration of representations against them..” (emphasis is mine)

13.1 A perusal of the aforementioned paragraph would show that, it applies to a serving officer. A close reading of paragraph 4 would show that there is intrinsic evidence to that effect. It is because the provisions contained in

paragraph 4 apply to a serving officer that, it vests, the concerned authority, with a discretion to have the same placed in the character roll of the officer. In the event, it is placed in the character roll of the officer concerned, it is to be construed as an adverse entry, against which, the delinquent officer, would have to be given a right to make a representation.

14. In these circumstances, I am of the opinion that the respondent could not have issued a memo of displeasure to the petitioner post his superannuation. Mr. Jatan Singh has failed to point to any other rule or provision which empowered the respondent to continue the enquiry post the petitioner's retirement. From the facts, as they have emerged in the present proceedings, even though the Standing Committee of DOF was constituted on 19.08.1998, its first meeting was held only on 17.03.2003, when the petitioner had already retired from the service.

14.1 The legal rationale for discontinuation of an enquiry vis-à-vis an employee who has superannuated is that: master and servant relationship comes to an end, on an employee demitting office. Therefore, no disciplinary action could have been taken against the petitioner unless Service Rules provided for such a contingency. [See judgment dated 21.10.2010, passed in WP(C) 17221-22/2004 in the case titled: *Union of India and Anr. Vs. S.K. Mathur and Anr.* Also see judgment of the Supreme Court in the case of *Chandra Singh & Ors. vs. State of Rajasthan & Anr., (2003) 6 SCC 545*].

14.2 Thus, in my opinion, the second issue will also have to be decided in favour of the petitioner and against the respondent. It is ordered accordingly.

15. In view of the discussion above, I am of the opinion that the writ petition would have to be allowed and the impugned order set aside. It is ordered accordingly.

16. In the facts and circumstances of the case, parties shall, however, bear their own costs.

RAJIV SHAKDHER, J

JULY 02, 2013

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