



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2020

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD)Nos.9551 to 9554 of 2012 and 3199 of 2013

and

M.P. (MD) .Nos.2, 2, 2, & 2 of 2012 in W.P. (MD) .Nos.9551 to 9554 of 2012

and

M.P. (MD) .No.1 of 2013 in W.P. (MD) .No.3199 of 2013

N.Sreedharan

... Petitioner in
W.P. (MD) .No.9551 of 2012

G.Sadasivam

... Petitioner in
W.P. (MD) .No.9552 of 2012

P.Shunmugaperumal

... Petitioner in
W.P. (MD) .No.9553 of 2012

K.Mony

... Petitioner in
W.P. (MD) .No.9554 of 2012

T.Kesavan

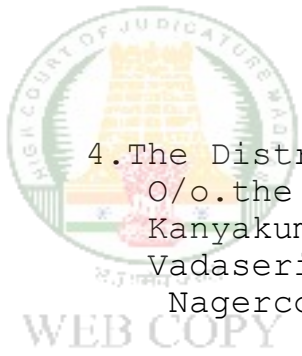
... Petitioner in
W.P. (MD) .No.3199 of 2013

Vs.

1.The State of Tamil Nadu,
rep. by its Principal Secretary,
Environment and Forest Department,
Secretariat, St. George Fort,
Chennai - 600 009.

2.The Principal Chief Conservator of Forest,
Panagal Building,
Saidapet,
Chennai.

3.The Commissioner,
Tribunal for Disciplinary Proceedings,
Collector's Office Campus,
Nagercoil,
Kanyakumari District.
Now merged with
the Commissioner for Disciplinary Proceedings,
Samathanapuram,
Palayamkottai, Tirunelveli.



4.The District Forest Officer,
O/o.the District Forest Office,
Kanyakumari Division,
Vadaseri,
Nagercoil.

... Respondents in
all the petitions

COMMON PRAYER in W.P. (MD) .Nos.9551 to 9554 of 2012:

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the first respondent in his proceedings in G.O.(3D).No.22, Environment - Forest (Va 9 A) Department, G.O.(3D).No.20, Environment - Forest (Va 9 A) Department, G.O.(3D).No.23, Environment - Forest (Va 9 A) Department and G.O.(3D).No.21, Environment - Forest (Va 9 A) Department respectively dated 06.03.2012, confirming the order passed passed by the 2nd respondent in his proceedings in Sey.Mu.Aa.No.D2/44759/96-4, Sey.Mu.Aa.No.D2/44759/96-2, Sey.Mu.Aa.No.D2/44759/96-5 and Sey.Mu.Aa.No.D2/44759/96-3 respectively dated 08.07.2010 and quash the same as illegal and consequently direct the respondents to reinstate the petitioners with all attendant benefits.

PRAYER in W.P. (MD) .No.3199 of 2013:

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the first respondent in his proceedings in G.O.(3D).No.19, Environment - Forest (Va. 9 A) Department, dated 06.03.2012, confirming the order passed passed by the 2nd respondent in his proceedings in Sey.Mu.Aa.No.D2/44759/1996-1 dated 08.07.2010 and quash the same as illegal and consequently direct the respondents to settle all his attendant benefits within a stipulated period.

For petitioners in
all the petitions : Mr.M.Ajmal Khan,
Senior Counsel
for M/s.Ajmal Associates

For respondents in
all the petitions : Mr.S.Dhayalan
Government Advocate

COMMON ORDER

These writ petitions have been filed by the petitioners
challenging the concurrent orders dismissing them from service
<https://hcservices.ecourts.gov.in/hcservices/>

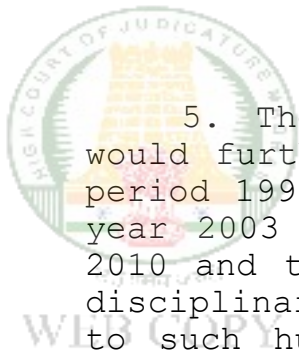


passed by second respondent / disciplinary authority and confirmation of the same in the appeals by the first respondent / appellate authority.

2. Since the issue involved in all the writ petitions are one and the same, they were heard together and are being disposed of by way of this common order.

3. The learned senior counsel appearing for the petitioners submitted that the petitioners were working in the Environment and Forest Department as Forest Guard, Forester, Forest Watcher, Forest Guard and Forest Ranger respectively at Azhagiapandiepuram Range, Nagercoil, Kanyakumari District. On 03.01.1996, the fourth respondent had issued a charge memo against the petitioners alleging that during the period 01.02.1993 to 27.07.1995, out of permission given to cut 441 trees, 82 teak and other variety of trees were illegally cut and removed and thereby, the petitioners committed dereliction in their duty by not protecting those trees. But, on 25.04.1997, the charge memos dated 03.01.1996 were cancelled by the 4th respondent in respect of the petitioners in W.P.(MD).Nos.9552 and 9554 of 2012 and 3199 of 2013 and fresh charge memos have been issued alleging that out of enumerated 607 trees, 248 trees were cut and removed and thereby, they committed dereliction in their duty by not protecting those trees. But, subsequently, the said charge memos were also withdrawn by the fourth respondent and the matter was referred to the third respondent herein / Tribunal for Disciplinary Proceedings. In the meantime, based on the charge memo dated 03.01.1996, the fourth respondent has imposed a punishment of stoppage of increment in respect of the petitioners in W.P.(MD). No.9551 and 9553 of 2012 and it was also confirmed in the appeal. But, the first respondent subsequently cancelled the said punishment order by *suo motu* review and referred the matter to the Tribunal for disciplinary proceedings.

4. The learned senior counsel appearing for the petitioners would further submit that on 08.03.2003 the third respondent herein / the Commissioner for Disciplinary Proceedings has issued charge memos to the petitioners framing a charge to the effect that the petitioners illicitly cut and removed various species of 313 dead trees including royal trees from Vellambikani area, Azhagiapandiyapuram Range, during the period between 1.7.1993 and 27.07.1995 and misappropriated the same and thereby caused loss to the Government to the tune of Rs.44,15,458.51; and failed to maintain absolute integrity and devotion to duty. Thereafter, the petitioners submitted their explanations denying the charge. On 08.07.2010 the second respondent, after extracting the conclusion of the third respondent, has simply dismissed the petitioners from service. As against that order, the petitioners have filed appeal before the first respondent. The first respondent, by the impugned order dated 06.03.2012, has dismissed the appeal by one line order. Aggrieved by the same, the above writ petitions have been filed by



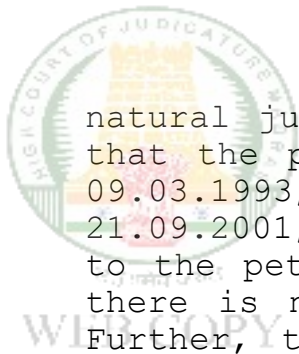
5. The learned senior counsel appearing for the petitioners would further submit that for the occurrence took place during the period 1993 to 1997, the charge memo came to be issued only in the year 2003 and the final orders have been passed only in the year 2010 and therefore, there is a delay of 10 years in initiation of disciplinary proceedings and 7 years in completion of the same. Due to such huge delay, the petitioners could not defend their case effectively and the petitioners suffered mental agony for these long years. Thus, he prayed to set aside the impugned orders on the ground of delay. In support of his contention, he relied on the following decisions:

- (a) **State of Punjab and others Vs. Chaman Lal Goyal** reported in 1995 (2) SCC 570;
- (b) **P.V. Mahadevan v. M.D. Tamil Nadu Housing Board** reported in 2005 (4) CTC 403;
- (c) **Special Commissioner and Commissioner of Commercial Taxes, Chepauk v. N. Sivasamy** reported in 2005 (5) CTC 451.

6. He would further submit that in the charge memo dated 08.03.2003 issued by the third respondent, it has not been specifically stated as to how many trees were standing in Vellambikani area and as to how they were removed and therefore, the charge itself is a vague one. He would next submit that the disciplinary authority, without even going into the merits of the contention raised by the petitioners, has dismissed the petitioners from service only after extracting the views of the Tribunal for Disciplinary Proceedings. Similarly, the appellate authority, without even looking into the grounds raised by the petitioners, has confirmed the order of the disciplinary authority only after extracting the views of the TNPSC. As the orders passed by the disciplinary authority as well as the appellate authority are non speaking orders, they may be set aside. In support of his contention, he relied on the following decisions:

- (a) **East Coast Railway and another vs. Mahadev Appa Rao and others**, reported in (2010) 7 SCC 678;
- (b) **N.S. Jayaraman & Sons Vs. the Government of India**, reported in 2010 (2) CWC 485;
- (c) **V.P. Suresh Kumar Vs. Deputy Inspector General of Police, Armed Police, Trichy and another**, reported in (2011) 7 MLJ 1282; and
- (d) **The Divisional Forest Officer Vs. Madhusudhan Rao**, reported in 2008 (2) LLN 30 (SC) : 2008 (3) SCC 469.

7. The learned senior counsel appearing for the petitioners would next submit that as of now all the petitioners attained the age of superannuation, the respondents may be directed to grant service and retirement benefits. He would lastly submit that the opinion of TNPSC based on which the appellate authority confirmed the order of the disciplinary authority has not been furnished to the petitioners and therefore, the order of the appellate authority is liable to be dismissed on the ground of violation of principal of



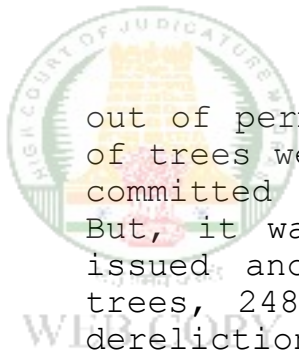
natural justice also. He would further submit that even assuming that the petitioners have caused loss, as per G.O.Ms.No.92, dated 09.03.1993, G.O.Ms.No.1, dated 03.01.1994 and G.O.Ms.No.145, dated 21.09.2001, the respondents ought to have apportioned the said loss to the petitioners as well as the District Forest Officer. Thus, there is non application of mind on the part of the respondents. Further, the respondents did not take any action on the District Forest Officer and thereby, the petitioners alone have been discriminated. Thus, he prayed to allow these writ petitions.

8. The learned Government Advocate appearing for the respondents submitted that the petitioners colluding together cut and removed 313 dead trees and thereby caused loss to the tune of Rs.44,13,458.51 to the Government and therefore, the first respondent referred the matter to the third respondent for a detailed enquiry. The Tribunal for Disciplinary Proceedings, after giving all opportunities to the petitioners, conducted a detailed enquiry and held that the charge levelled against the petitioners are proved. Further, after enumeration of list of 618 trees in the year 1991, it was given to the petitioners in W.P.(MD).Nos.3199 of 2013 and 9552 of 2012 and the said petitioners did not dispute the list within a reasonable time. By suppressing the list found in exhibit No.1, the said petitioners had sent the lists found in exhibit Nos.6 and 12 to the higher officials and subsequently, in collusion with other petitioners, they cut and removed the trees by using services of private individual, Government vehicles and private lorries and even by using elephants.

9. The learned Government Advocate appearing for the respondents would further submit that as per the Tamil Nadu Forest Department Code, the Forest Ranger, Forester, Forest Guard, Forest Watcher of the respective area are responsible in safeguarding the reserved forest area and also removal of the dead and wind fallen trees. Further, every officer on first assuming the charge of the Range / area must satisfy himself as to the condition of the stock which he takes charge and in the case of the stock at the distance from the headquarters, he must inspect the same within one month of assuming charge and notice its condition, etc. and if there is any variation, he should inform the same to the higher authority. But, the petitioners have not done so. The disciplinary authority as well as the appellate authority, after considering the above aspects, have rightly dismissed the petitioners from service and therefore, the impugned orders need not be interfered with. Thus, he prayed to dismiss all the writ petitions.

10. Heard the learned counsel appearing for both sides and perused the records carefully.

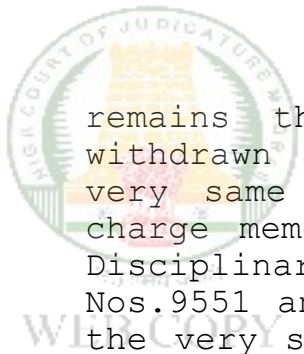
11. A perusal of record shows that initially the petitioners were issued with a charge memo dated 03.01.1996 by the fourth respondent. The learned counsel appearing for the petitioners submitted that during the period 01.02.1993 to 27.07.1995, the petitioners were not in the service of the Government.



out of permission given to cut 441 trees, 82 teak and other variety of trees were illegally cut and removed and thereby, the petitioners committed dereliction in their duty by not protecting those trees. But, it was withdrawn and subsequently, the fourth respondent has issued another charge memo alleging that out of enumerated 607 trees, 248 trees were cut and removed and thereby, they committed dereliction in their duty by not protecting those trees. Subsequently, it was also withdrawn and the third respondent has framed a charge to the effect that the petitioners illicitly cut and removed various species of 313 dead trees including royal trees from Vellambikani area, Azhagiapandiyapuram Range, during the period between 1.7.1993 and 27.07.1995 and misappropriated the same and thereby caused loss to the Government to the tune of Rs.44,15,458.51; and failed to maintain absolute integrity and devotion to duty. From the above act of the respondents, it is clear that for a single incident, three charge memos were issued leveling different types of allegations and there is no certainty in framing the charges. The variation in the shortfall of trees in the three charge memos would show that the authority themselves were not aware of the correct number of shortfall of trees.

12. Though it is stated by the respondents that a shortfall of 607 trees was found by comparison of list taken in the year 1991 and 1995, it is seen that the petitioner in W.P(MD).No.3199 of 2013 / Forest Ranger took charge of Azhakiapandipuram Forest Range only on 01.07.1993 and before that, one Mr.K.Chellam was in charge of the Range upto 30.06.1993. While working so, the said K.Chellam was issued with a charge memo alleging that he failed to prevent illicit cutting and removing of 166 dead trees. But, the said charge was dropped by the disciplinary authority holding that the earlier Forest Ranger has not even signed the list of enumerated trees but has simply submitted the list prepared by the Forest Guard and Forest Watcher, and that the enumerated trees have not been brought to stock in Form II by the Forester concerned and maintained. It would go to show that 166 trees were missing prior to the year 1993. But, the petitioners were blamed for missing of those 166 trees also. It would further fortify the contention of the petitioners that the respondents did not know the correct particulars of shortfall of trees and that without knowing the correct particulars and without framing correct charge, they were fastened with liability and punished. Further, the above factum would go to show that only with a view to cause hardship, agony and anguish, the disciplinary proceeding was initiated against the petitioners, that too without even finding out a valid charge. On the said ground alone, this Court is of the view that the impugned orders are liable to be set aside.

13. Now, let us discuss about the ground of delay. Though it is stated by the respondents that for the alleged occurrence took place during the period between 01.07.1993 and 27.07.1995, a charge



remains that the said charge memo dated 03.01.1996 has been withdrawn and another charge memo, which has been issued for the very same occurrence, has also been withdrawn and finally, the charge memo dated 08.03.2003 has been issued by the Tribunal for Disciplinary Proceedings. In respect of petitioners in W.P.(MD). Nos.9551 and 9553 of 2012, punishment had already been imposed for the very same alleged occurrence and it was also confirmed in the appeal, but they were subsequently set aside *suo motu* by the first respondent and thereafter, charge memo dated 08.03.2003 has been issued to them also. Thus, it is clear that even for issuance of charge memo, there occurred a delay of ten years from the date of occurrence. Issuance of three charge memos for one and the same occurrence leveling different type of allegations would show that the respondents had only bereft of particulars and it caused uncertainty even in framing the charges. However, the fact remains that due to delay on the part of the respondents, the petitioners have been made to suffer by mental agony for these long years. It is also seen that even for completion of disciplinary proceedings, there occurred a delay of seven years. The respondents have not explained the reason for the delay in initiation and completion of disciplinary proceedings. Such delay would have definitely caused prejudice to the delinquent officer in defending himself.

14. In the case of **State of Punjab and others Vs.Chaman Lal Goyal** reported in **1995 (2) SCC 570**, the Hon'ble Supreme Court has held as follows:

"9.Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, *mala fides* and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to



indulge in a process of balancing... "

15. In another case in **P.V.Mahadevan v. M.D. Tamil Nadu Housing Board** reported in **2005 (4) CTC 403**, this Court, after referring to various decisions, held as follows:

"The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interest of the government employee but in public interests and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

15. We therefore, have no hesitation to quash the charge issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No cost."

16. In yet another case in **Special Commissioner and Commissioner of Commercial Taxes, Chepauk v. N.Sivasamy** reported in **2005 (5) CTC 451**, a Division Bench of this Court has held as follows:

"Though the alleged lapse occurred in the year 1995 and certain charges related to the period 1993-94, the charge memo was issued on 15.07.1997 and served on 23.07.1997, just 7 days before the date of retirement. The contention of the appellant that only with a view to cause hardship, agony and anguish, the charge memo was issued cannot be ignored..... We have already pointed out that though the applicant filed Original Application No.6284/97, challenging the charge memo, dated 15.07.1997, admittedly, no stay was granted. Despite the above fact that the department had not proceeded with the disciplinary proceedings, there is an inordinate and unexplained delay on the part of the department. According to the applicant, he is 67 years of age as on the date and had rendered 38 years of service in the department. He had undergone sufferings from mental worry, agony, anguish and hardship for all these



years. We are satisfied that there is no need to pursue the charge memo, dated 15.07.1997."

17. In the case of **Government of A.P. And others v. Appalaswamy**, reported in (2007) 14 SCC 49, the Hon'ble Supreme Court has held that the proceedings initiated belatedly can be quashed on two grounds (i) where by reason of the delay, the employer condoned the lapses on the part of the employee (ii) where the delay caused prejudice to the employee.

18. As stated earlier, in these cases, the disciplinary proceedings have been initiated after a delay of 10 years of the occurrence. The disciplinary proceeding has been concluded after a delay of 7 years. There is no explanation on the part of the respondents for the inordinate delay in initiation of disciplinary proceedings as well as in conclusion of the same. The submissions of the petitioners that in view of the belated initiation of disciplinary proceedings, they could not defend their case effectively and they suffered mental agony, have force. More over, the sufferings undergone by the petitioners for these long years would be more than the punishment. Therefore, this Court is inclined to set aside the impugned orders on the ground of delay in initiation of the disciplinary proceedings and also in completion of the same.

19. A perusal of the impugned order passed by the second respondent would show that though the petitioners have raised various grounds, the second respondent has, only after extracting the views of the Tribunal for Disciplinary Proceedings, imposed the punishment of dismissal from service, without assigning any reason by considering the grounds raised by the petitioners. It is needless to say that reasoning is the soul of the order. The order which does not contain any reason for conclusion can be termed to be a non speaking order. The disciplinary authority ought to have been discussed the grounds raised by the petitioners and held whether it is sustainable or not. But, in this case, it has not been done so by the disciplinary authority and therefore, it can be termed as a non speaking order.

20. So far as the order of the appellate authority is concerned, it is seen that after extracting the views of the TNPSC, the appellate authority has affirmed the decision of the disciplinary authority by one line order without considering the grounds raised by the petitioners and without assigning any reason. The Hon'ble Supreme Court in the decision in **East Coast Railway and another vs. Mahadev Appa Rao and others**, reported in (2010) 7 SCC 678, has held in paragraph No.23 as follows:

"23.Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non application of mind by the



authority making the order is only one of them. Every order passed by a Public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable."

21. In a decision in **N.S.Jayaraman & Sons Vs. the Government of India**, reported in **2010 (2) CWC 485**, a learned Single Judge of this Court has held that reasoning is the heartbeat of every conclusion and without any reasoning, the conclusion becomes defunct and that the rationale behind is that the affected party can know why the decision has gone against him and that one of the salutary requirements of natural justice is spelling out reasons for the order made.

22. In the case of **V.P.Suresh Kumar Vs. Deputy Inspector General of Police, Armed Police, Trichy and another**, reported in **(2011) 7 MLJ 1282**, a learned Single Judge of this Court has held that when an appeal has been preferred questioning the order of the original authority, the appellate authority is expected to pass a speaking order dealing with the grounds raised in the appeal and that an order passed without dealing with grounds raised by delinquent before an appellate authority is nothing but a non speaking order and is liable to be set aside.

23. In another case in **Divisional Forest Officer Vs. Madhusudhan Rao**, reported in **2008 (2) LLN 30 (SC) : 2008 (3) SCC 469**, the Hon'ble Supreme Court has held in paragraph No.20 as follows:

"20. It is no doubt also true that an Appellate or Revisional Authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum but, in our view, in the interest of justice, the delinquent officer is entitled to know at least the mind of the Appellate or Revisional Authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum"

24. In these cases, as stated earlier, both the disciplinary authority as well as the appellate authority have

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passed non speaking orders. Therefore, this Court has no hesitation to set aside the impugned orders.

25. It is also seen that as per G.O.Ms.No.92, Environment and Forest dated 09.03.1993 and G.O.Ms.No.1, dated 03.01.1994 and G.O.Ms.No.145, dated 21.09.2001, if any loss caused to the Government while maintaining various works in the forest department, the same shall be recovered in the scale of 25% from the District Forest Officer; 40% from the Forest Ranger; and 35% from the Forester and Forest Guard. In this case, though the Forest Ranger, Forester and Forest Guard were fastened with liability, the District Forest Officer, who was having overall supervision in and around the District, has not been put into task. The petitioners alone have been discriminated. Even assuming that the petitioners have been caused financial loss to the Government by not protecting the forest wealth, the disciplinary authority could have apportioned the loss by applying the said G.O., but it has not been done so. The above factum would go to show that there was discrimination and non application of mind on the part of the disciplinary as well as appellate authority in passing the impugned orders.

26. Since the impugned orders are liable to be set aside on the above grounds and it is more than enough, this Court is not inclined to go into other grounds raised by the petitioners.

27. In view of the above, the impugned orders are set aside. It is stated that all the petitioners have already attained the age of superannuation and therefore, the respondents are directed to pay all the service and monetary benefits to the petitioners in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

28. All the writ petitions are accordingly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gcg



To

- 1.The Principal Secretary,
Environment and Forest Department,
Secretariat,
St. George Fort,
Chennai - 600 009.
- 2.The Principal Chief Conservator of Forest,
Panagal Building,
Saidapet,
Chennai.
- 3.The Commissioner,
Tribunal for Disciplinary Proceedings,
Collector's Office Campus,
Nagercoil,
Kanyakumari District.
Now merged with
the Commissioner for Disciplinary Proceedings,
Samathanapuram,
Palayamkottai,
Tirunelveli.
- 4.The District Forest Officer,
O/o.the District Forest Office,
Kanyakumari Division,
Vadaseri,
Nagercoil.

+1 CC to M/s.SPL.GP (SR-9114[F] dated 28/02/2020)

W.P (MD) Nos.9551 to 9554 of 2012
and 3199 of 2013

27.02.2020

MR (CO)
NR (29/10/2020) 12P : 6C