

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESEVED ON: 16.02.2022

DELIVERED ON: 13.04.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

Sub.A.No.135 of 2015 in Cont.P.No.2975 of 2014
and W.P.No.28541 of 2015 & W.P.No.9062 of 2021

Sub.A.No.135 of 2015 in Cont.P.No.2975 of 2014

A.Babu,
Forest Range Officer,
Krishnagiri Range (District Forest Office),
Bangalore Road,
Krishnagiri 635 001

.. Petitioner

vs.

Mr.Vinod Kumar, I.F.S.,
Principal Chief Conservator of Forests &
Head of Force-1,
“Panagal Buildings”,
1-Zenith Road, Saidapet,
Chennai-600 015.

.. Respondent

W.P.No.28541 of 2015

A.Babu,
Forest Range Officer,
Krishnagiri Range (District Forest Office),
Bangalore Road,
Krishnagiri 635 001

.. Petitioner

vs.

1.Secretary to Government,
Environment & Forest Department,
Fort St.George,
Chennai-600 009.

2.The Principal Chief Conservator of Forests &
Head of Force-1,
Panagala Buildings,
1-Zenith Road, Saidapet,
Chennai-600 015.

3.District Forest Officer,
Nellikuppam Road, Cuddalore.

.. Respondents

W.P.No.9062 of 2021

A.Babu,
Forest Range Officer,
Krishnagiri Range (District Forest Office),
Bangalore Road,
Krishnagiri 635 001

.. Petitioner

vs.

1.Secretary to Government,
Environment & Forest Department,
Fort St.George,
Chennai-600 009.

2.The Principal Chief Conservator of Forests &
Head of Force-1,
Panagala Buildings,
1-Zenith Road, Saidapet,
Chennai-600 015.

3.District Forest Officer,
Nellikuppam Road, Cuddalore.

4.The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 003.

.. Respondents

Prayer in Sub.A.No.135 of 2015 in W.P.No.2975 of 2014: Application filed to re-open the Cont.P.No.2975 of 2014 and punish the respondent herein for having wilfully disobeyed the order dated 01.10.2013 passed in W.P.No.15089 of 2009.

Prayer in W.P.No.28541 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records pertaining to the impugned order of the second respondent in Ref.No.BB3/20306/2015 dated 19.08.2015 and quash the same.

Prayer in W.P.No.9062 of 2021: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the second respondent dated 19.08.2015 issued in Ref.No.BB3/20306/2015 and the Lr. Dated 23.12.2019 made in 6152/DCD/B2/2019-1 of TNPSC on the file of the proposed 4th respondent and the order dated 21.01.2020 made in G.O.Ms.No.(2D)No.06 of the 1st respondent / Appellate Authority, on the file of the 1st respondent and to quash the same and consequently, direct the respondents 1 & 2 to give promotion to the petitioner as Assistant Conservator of Forests on par with his junior B.Kalaivanan (S.No.58) promoted as ACF w.e.f. dated Dec. 2014 and as per petitioner's seniority fixed at 50-A in the list of "Foresters" fit for promotion as Ranger (2009-10) panel vide 2nd respondent's Proc.B2/39887/2009 dated 27.10.2015 with all consequential service and monetary benefits.

In all Petitions

For Petitioner : Mr.G.Masilamani, Senior Counsel
for Mr.V.Chokalingham

For Respondents : Mr.Haja Nazirudeen,
Additional Advocate General
assisted by

Mr.T.Arunkumar,
Additional Government Pleader (Forest)

COMMON ORDER

The issue involved in these petitions are interlinked and intertwined and therefore, they are heard together and disposed of by this common order.

2. The case of the petitioner, briefly narrated, are as follows:

2.1. The petitioner joined service as Agricultural Assistant in CINCHONA Department on 04.09.1985. The CINCHONA Department was wound up with effect from 01.04.1990, by virtue of G.O.Ms.No.221, Environment and Forest Department dated 03.04.1990 and the petitioner was transferred and absorbed as Forester in the Tamil Nadu Forest Subordinate Service with effect from 01.04.1990. Admittedly all the staff of CINCHONA were absorbed in the Forest Department by G.O.Ms.No.275, Environment and Forest (FR-VIII) Department dated 06.11.1996, only after the Tribunal Order dated 13.03.1997 in Contempt Application No.328/1996 in O.A.No.4487/1993 and consequently the second respondent proceedings dated 22.05.1997. However, the former CINCHONA staff were given step motherly treatment and the petitioner's seniority was denied for a long time since 1997.

2.2. In order to fix the seniority, the petitioner has earlier filed W.P.No.15089 of 2009 and this Court, vide order dated 01.10.2013, had directed the respondents to fix seniority of the petitioner in the cadre of Forest Ranger

from the date of his initial appointment i.e., 04.09.1985 and also ordered to give promotion as Forest Range Officer, with all consequential benefits recognizing the petitioner's seniority, above his immediate junior, as per the list of seniority of Foresters fit for promotion as Rangers in the year 2009-10, qualified as on 15.08.2009. Since the said order was not complied with, the petitioner filed contempt application and this Court, vide order dated 02.09.2015 in Sub.A.No.135 of 2015 in Cont.P.No.2975 of 2014, directed the respondent herein to fix his seniority as per Rule 35(aa) and (b) of the Tamil Nadu State and Subordinate Service Rules.

2.3. Cont.P.No.2975 of 2014 was closed by this Court on 23.12.2014 on the basis of the statement made by the counsel for the second respondent citing the second respondent's proceedings No.B2/39887/2009 dated 08.12.2014. Thereafter, the petitioner was constrained to move Sub.A.No.135 of 2015 in Cont.P.No.2975/2014 to reopen the contempt petition and to punish the second respondent, since the order was not properly implemented giving the petitioner due seniority and consequential promotions. This Court passed an order in Sub.A.No.135 of 2015 on 10.06.2015 to promote the petitioner as Assistant Conservator of Forests from the date on which, his immediate junior was promoted and the second respondent was directed to comply with the said order

on or before 01.07.2015.

2.4. According to the petitioner, when Sub.A.No.135 of 2015 was listed for hearing on 02.07.2015, on behalf of the second respondent, it was submitted that an enquiry was pending against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, with regard to fine imposed by the petitioner against a person who indulged in catching 5 cranes under Wild Life Protection Act and depositing the fine amount in treasury without prior permission of District Forest Officer, Cuddalore, which is 40kms away from Chidambaram and letting off the cranes. It is further stated that on account of pending enquiry on the issue, the petitioner was not promoted as Assistant Conservator of Forests. This Court has passed further orders on 23.07.2015 in Sub.A.No.135/2015, by which the second respondent viz., Principal Chief Conservator of Forests was directed to report on or before 30.07.2015 as to the decision taken on the Enquiry Report (charges not proved) dated 07.04.2015 submitted to the second respondent by the Enquiry Officer/DFO, Kallakurichi.

2.5. The third respondent has issued a charge memo dated 28.10.2013, for which the petitioner submitted his explanation to the second respondent on 24.02.2014. In the domestic enquiry, no witness was examined by the Department to prove the charges of not getting prior permission from the third

respondent / DFO Cuddalore, before imposing fine and depositing the same into the treasury. The defence taken by the petitioner was that he got telephonic permission from the third respondent / DFO, since carrying the cranes alive to DFO's Office at Cuddalore, 40 Kms away from Chidambaram was life hazard to the birds.

2.6. The petitioner examined himself as witness and examined another witness one Mani- Forester, who happened to be with him when he got permission from the third respondent/DFO over phone, in the enquiry to prove that charges were created for the purpose of denying promotion to the petitioner as Assistant Conservator of Forest. The Enquiry Officer (DFO-Kallakurichi) filed a detailed report dated 07.04.2015 to the second respondent, holding that charges were not proved and further recorded that the entire fine amount had been promptly deposited into the treasury immediately and the birds had been saved and set at liberty, sub-serving the object of the Act.

2.7. According to the petitioner, the second respondent, having rage over the contempt proceedings initiated by the petitioner in the year 2015, disagreed with the findings of the enquiry officer and sent a communication dated 03.08.2015, calling for further representation. The petitioner filed his detailed written submissions and brought to the notice of the second respondent that in

the domestic enquiry, no witness was examined on behalf of the department and no evidence was marked. The case of the department was not at all proved in accordance with law against the petitioner, especially, in a "major penalty proceedings" under rules.

2.8. Subsequently, the second respondent has passed an order dated 19.08.2015, imposing a penalty of stoppage of increment for one year with cumulative effect. It is the grievance of the petitioner that such a penalty was imposed only to scuttle the petitioner's opportunity of getting promotion as Assistant Conservator of Forests and to overcome and frustrate the orders dated 10.06.2015 passed in Sub.A.No.135 / 2015 in Cont.P.No.2975 of 2014. The second respondent, being the Disciplinary Authority, imposed such a penalty in an arbitrary manner, based on the diary entry of the departmental staff, namely P.Mani-Forester, who was neither examined nor the entries in the diary were proved and even a copy of the diary was not served to the petitioner.

2.9. Challenging the impugned order passed by the second respondent, the petitioner preferred an appeal, along with a petition for stay, before the first respondent /appellate authority on 01.09.2015. Since the petitioner felt that there could not be an efficacious remedy, has also filed W.P.No.28541 of 2015, challenging the impugned order of the second respondent dated 19.08.2015

imposing the penalty of stoppage of increment for one year with cumulative effect, which seriously affect the petitioner's promotional chances and retirement benefits.

2.10. It is averred by the petitioner that during the course of arguments in W.P.No.28541 of 2015, the learned Additional Advocate General for the respondents suggested that the petitioner can file an appeal against the impugned order of the second respondent dated 19.08.2015 and that if so filed, the Appellate Authority will consider the same on merits. Therefore, this Court, vide order dated 22.07.2019 in Cont.P.No.2975 of 2014, had observed as follows:

“... the petitioner in the contempt petition is directed to file an appeal before the Principal Chief Conservator of Forests, Chennai-15, the second respondent, within a period of two weeks from the date of receipt of a copy of the order. On such filing, the second respondent shall forward the same to the Secretary to Government, Environment and Forests Department, Chennai-9, the first respondent, within a period of one week thereafter. On receipt of the same, the first respondent shall consider the same and pass appropriate orders on merits, after affording due opportunity of personal hearing to all the parties, within a period of 30 days therefrom”.

2.11. The first respondent has rejected the appeal filed by the petitioner, vide G.O.Ms.(2D)No.06, Environment and Forest Department dated 21.01.2020, by placing reliance on the opinion of the fourth respondent/TNPSC dated 23.12.2019. Challenging the impugned order of the second respondent dated

19.08.2015 and the opinion of the fourth respondent/TNPSC dated 23.12.2019 and the consequential rejection of appeal by the first respondent dated 21.01.2020, the present writ petition has been filed.

3. Mr.G.Masilamani, learned Senior Counsel for the petitioner made the following submissions/contentions:

(i) The place of alleged occurrence relating to catching of cranes by the accused and the DFO's office is nearly about 50 kms. and in view of the above, the DFO ordered over phone to the petitioner to collect the compounding fee and the same was duly recorded and forwarded the same to the DFO immediately. While that being so, framing of charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules on 28.10.2013, that too three years after the incident, is an *malafide* action to deny promotion to the petitioner as Assistant Conservator of Forest.

(ii) Though the Enquiry Officer has held that the petitioner was not guilty of the charges, the second respondent / disciplinary authority has chosen to disagree with the same only on the basis of the alleged entry in the Diary of the defence witness by name P.Mani (Forester), which was not produced before the Enquiry Officer. Further the said witness was not even cross examined by the Department and the said diary was not even produced before the Domestic Enquiry Officer and marked as an Exhibit through any witness on behalf of the Department. Therefore, in the

absence of the same, the said entry in the alleged diary ought not to have been relied upon suo motu by the second respondent behind the back of the petitioner without giving any opportunity to the petitioner. Further, TNPSC and the first respondent / appellate authority has not even considered and applied their mind to the crucial factual and legal aspect and simply affirmed the differing conclusion of the second respondent / disciplinary authority and therefore, the impugned orders are liable to be set aside on the ground of violation of principles of natural justice.

(iii) The fourth respondent had failed to advert to the specific stand of the petitioner that he imposed fine and collected the same from the accused and remitted the same in the Treasury and let off the cranes safely, only after obtaining telephonic instructions from the third respondent/DFO, whose office is situated 50Kms away from the scene of occurrence and to transport the birds in captivity for long distance shall be counter to the object of the Wild Life Protection Act. The said stand of the petitioner was not refuted by the Department either by cross examining the petitioner in the domestic enquiry or by examining the 3rd respondent / District Forest Officer of Cuddalore, from whom telephonic instructions was obtained by the petitioner over phone. Since the stand of the petitioner remain unchallenged, the findings of the second respondent or TNPSC or the first respondent/Appellate Authority are not legally and factually right.

(iv) When the nature of punishment is minor and the penalty imposed also falling under minor punishment, it is not known under what provisions the the Appellate Authority has referred the matter to TNPSC for its opinion, which is unsustainable under law.

4. Mr.Haja Nazirudeen, learned Additional Advocate General assisted by Mr.T.Arun Kumar, learned Additional Government Pleader (Forest) made the following submissions:

(i) W.P.No.28541 of 2015 challenging the order of the Disciplinary Authority filed on 19.08.2015 has become infructuous in view of the fact that order was passed by the Appellate Authority vide G.O.(2d)No.6, Environment and Forest (FR1) Department dated 02.01.2020, confirming the order of the Disciplinary Authority imposing the punishment and thereby W.P.No.9062 of 2021 came to be filed challenging the order of the Appellate Authority.

(ii) The petitioner did not evince any interest to rebut the so called diary of Mani -Forest Range Officer or made requisition to furnish the same and on the contrary, the said Mani had deposed in favour of the delinquent official suppressing the diary, which might have known and within the knowledge of the petitioner.

(iii) The petitioner relies on the evidence of Mani-Forest Range Officer as witness on his side and has raised the plea that the copy of the diary has not been furnished, which is nothing but after thought and the petitioner cannot blow hot and cold, which is impermissible under law.

(iv) Neither the District Forest Officer cannot delegate the power to his subordinates nor the delinquent officer to act on the basis of instructions said to have been given over phone by the District Forest Officer. The provision does not empower the District Forest Officer, under Section 54 of Wildlife Protection Act, 1972 to delegate the power to compound by anyone like the petitioner.

(v) The main prayer of Sub.A.No.135 of 2015 is to promote the petitioner as Assistant Conservator of Forests on par with his junior Thiru B.Kalaivanan, who was promoted as Assistant Conservator of Forests in the panel year 2014-2015 with crucial date 15.08.2013. As per Schedule XI, Part (A) (8) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, pendency of charge framed under Section 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rule against a ***member of a service shall be a bar for inclusion of his name in the approved list.***

(vi) As per Schedule XI, Part A(11) of the said Act, “Any punishment (other than Censure) imposed on a member of service within a period of five years prior to the crucial date and a punishment of 'Censure’ imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list.

(vii) It is not compulsory for the Disciplinary Authority to

accept the findings of the Enquiry Officer and the Disciplinary Authority can very well take a deviated view and in that event, only a memo has to be given to the delinquent officer calling for further explanation. Accordingly, the disciplinary authority / second respondent called for explanation from the petitioner on 3.08.2015, wherein the details of diary were explicitly mentioned and the same was received by the petitioner on 04.08.2015. The petitioner had submitted his further explanation on 07.08.2015, wherein he did not deny about the entries made in the connected diary and purposely avoided to give his reply on this point and therefore, it is clearly proved that the writ petitioner himself is very well aware of the details entered in the diary and hence, he is unable to give reply against reality; otherwise he should have refused in his explanation submitted on 07.08.2015.

(viii) The delinquent officer in his own handwriting has written the receipts of the compounding of offences and did not record that he was doing as per the instructions of the District Forest Officer. Further Thiru.P.Mani Forest Range Officer has deposed that on that particular day, he was accompanying the District Forest Officer for the field inspection with regard to Chief Minister's Massive Tree Planting Programme and the delinquent officer did not categorically want to cross examine / call the then District Forest Officer to disprove the charges. Hence, on the Preponderance of Probability, the disciplinary authority rightly came to the conclusion, after adhering to statutory procedures and

imposed lenient punishment of stoppage of increment for one year with cumulative effect.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. The fact remains that the petitioner earlier had filed W.P.No.15089 of 2009, challenging the order of the second respondent dated 11.06.2009 for rejection of his request to include his name in the panel for promotion as Forest Ranger by counting his service as Forester from the date of initial appointment in Cinchona Department i.e., from 04.09.1985 and promote him as Forest Ranger and grant him with all consequential benefits as was done to his Junior Kalaivanan. This Court, vide order dated 01.10.2013 has allowed the writ petition with a direction to fix the seniority in the cadre of Forest Ranger from the date of his initial appointment i.e., 04.09.1985 and also ordered to give promotion as Forest Range Officer, with all consequential benefits recognizing his seniority, above his immediate junior, as per the list of seniority of Foresters, fit for promotion as Rangers, in the year 2009-2010, qualified as on 15.08.2009. Since the said order was not complied with, the petitioner filed Cont.P.No.2975 of 2014 and earlier it was closed based on the statement made by the counsel for the second respondent. Thereafter the petitioner filed Sub.A.No.135 of 2015 to reopen the contempt petition and vide order dated 10.06.2015, this Court

directed the respondents to promote the petitioner as Assistant Conservator of Forester from the date on which his immediate junior was promoted. While the said sub application was listed for hearing on 02.07.2015, the second respondent submitted that an enquiry is pending against the petitioner for certain charges framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules and therefore, on that ground the petitioner was not given promotion.

7. The charge against the petitioner is that he imposed fine against a person who indulged in catching 5 cranes under Wild Life Protection Act and deposited the fine amount in treasury, without prior permission of DFO, Cuddalore. It is the stand of the petitioner before the Enquiry Officer that since carrying the birds alive to DFO's office at Cuddalore 40kms away from Chidambaram was life hazard to the birds and therefore, he obtained oral permission to compound the offence and collected the fine and deposited the same in the Treasury and also made relevant entries in the records and forwarded to DFO, on the same day itself.

8. The Enquiry Officer / District Forest Officer (DFO) Kallakurichi, on considering the oral and documentary evidence had come to the conclusion that there is no evidence to prove the charge against the petitioner that he had

voluntary took decision to collect the fine amount by compounding the offences under the Wild Life Protection Act and ultimately held that the charges against the petitioner were not proved, based on the statement of Thiru.P.Mani Forest Range Officer dated 14.11.2014, wherein he has informed that the petitioner has obtained orders over phone from DFO for compounding the offences on 15.11.2011.

9. The Disciplinary Authority / second respondent, namely the Principal Chief Conservator of Forests had disagreed with the views of the Enquiry Officer on the ground that P.Mani-Forest Range Officer has made entries in his diary that on 15.11.2011 he had accompanied DFO for the field inspection with regard to Chief Minister Massive Tree Planting Programme. According to the petitioner, in the domestic enquiry neither any witness was examined nor any evidence was marked and the evidence of himself and P.Mani-Forester were unchallenged and however the Disciplinary Authority / second respondent has disagreed with the views of the Enquiry Officer and imposed the penalty of stoppage of increment for one year with cumulative effect, in an arbitrary manner based on the diary entry of P.Mani-Forester, who was neither been examined nor the copy of the diary had been furnished to the petitioner and therefore, there is a clear violation of principles of natural justice.

10. A perusal of the impugned order of punishment dated 19.08.2015 passed by the second respondent/disciplinary authority would disclose that the same has been passed on the reasoning that the petitioner has not disputed the contradictory statement given by Mani-Forester before the Enquiry Officer and the Disciplinary Authority and also held that the Enquiry Officer, without proper examination of documents and witnesses has erroneously held that charges were not proved against the petitioner, by taking into consideration the false evidence given by Mani-Forester. The disciplinary authority further observed that when the petitioner/delinquent has no power to compound the offences under the Wildlife Protection Act, 1972 and to collect fine, he has acted beyond his powers and thereby violated the provisions of Section 54 of the Wildlife Protection Act, 1972.

11. The second respondent / Disciplinary Authority in the disagreement notice, has stated that though P.Mani- Forester has informed that the petitioner has obtained orders over phone from the DFO before compounding the offence, but in the Diary of P.Mani-Forester, he has entered that he has accompanied DFO with regard to Massive Tree Plantation Programme and based on the said diary entry of P.Mani, the aforesaid disagreement notice was served to the petitioner. However, the said diary of P.Mani-Forester has not been furnished to

the petitioner and he has took the said stand before the Disciplinary Authority. If the said stand of the petitioner had been properly taken into consideration, the second respondent / Disciplinary Authority ought to have remanded the matter to the Enquiry Officer for fresh consideration for non-furnishing of the diary of P.Mani-Forester to the delinquent / petitioner. However, in the case on hand, the disciplinary authority / second respondent had failed to do so. The petitioner has also submitted his explanation to the disciplinary authority by justifying the stand and denied the allegation to the second respondent/disciplinary authority, more particularly he had denied that there is no contradictory evidence placed to prove the charge against the petitioner.

12. It is to be noted that Forms 'A' & 'C' sent to DFO Cuddalore for the period between 15.11.2011 and 03.12.2011, which is enclosed in the typed set of papers filed in Sub.A.No.135 of 2015, would disclose that fine amount was collected by the petitioner and offences were compounded and the copy of the same was also marked to the DFO, Cuddalore Forest Division, Cuddalore and therefore, DFO has not objected for collecting the fine amount by compounding the offences by the petitioner and he has not denied granting any permission to the petitioner. Thus the said documents in Forms 'A' and 'C' sent to DFO, Cuddalore for the period between 15.11.2011 and 03.12.2011 clearly establish

the fact that DFO has not disputed for the said collection of fine amount by compounding the offences by the petitioner. Therefore, the findings given by the Disciplinary Authority / second respondent in the disagreement notice based on the diary of P.Mani-Forester, is totally unacceptable. Except the diary entry of P.Mani - Forester, no other material or evidence has been relied upon by the Disciplinary Authority to disagree with the findings of the Enquiry Officer.

13. It is well settled that if the Disciplinary Authority deviates from the findings of the Enquiry Officer, they have to assign reasons for taking dissenting view on the report of the Enquiry Officer. On this proposition, it is useful to refer to the following decisions:

13.1. The Hon'ble Supreme Court in the decision in ***Punjab National Bank & Others Vs. Kunj Behari Misra [(1998) 7 SCC 84]*** held as under:

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged

of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer. “

13.2. This Court in the decision in ***M.Muthu Anand Vs. Principal Secretary and Secretary to Government, Home (Transport) Department, Chennai [(2011) 6 MLJ 122]*** held as follows:

“16. At this juncture, it is pertinent to point out that when the Disciplinary Authority takes the assistance of an enquiry officer to conduct the enquiry into the charges and if any findings adverse to the interests of the charged official are recorded, then he has to be furnished with a copy of the enquiry officer's report, so as to enable him to make his further representation, on the findings of the enquiry officer, to the disciplinary authority and at that stage, when the Disciplinary Authority acknowledges the further representation, then he has to apply his mind and consider as to whether, the facts on the basis of which, disciplinary action has been taken, have been established, whether the charged official has been provided with sufficient opportunity to defend the disciplinary proceedings, whether the procedure contemplated under the rules have been followed, whether there is sufficient ground to proceed further with the disciplinary proceedings, and then, he can record his final findings on the charges to remit the matter to the enquiry officer to rectify any procedural defect noticed with regard to the above aspects. But if the enquiry officer records the findings in favour of the delinquent officer, holding that the charges as not proved, with or without any recommendation for exoneration and if the Disciplinary Authority disagrees with those findings, then, it is mandatory on the part of the Disciplinary Authority to form a tentative opinion for disagreeing with the findings of the enquiry officer. But if the Disciplinary Authority, instead of recording a tentative opinion with reasons, for disagreement, proceeds to hold him guilty of the charges and thereafter, issue notice to the charged official, then it is nothing but a post-decisional hearing. It should also be borne in mind that principles of natural justice require that before the disciplinary authority records his final finding on the charges, he has to examine

various aspects stated supra. But, without examining the same, if the Disciplinary Authority arrives at a final finding on the charges as proved, and thereafter, call upon the charged official to offer his further representation on the finding and also on the procedural aspects, then it is only an empty formality, for the reason, there is not only a post decisional hearing on the findings, but it is also on the procedural aspect. In the case on hand, the Disciplinary Authority has not only recorded his reasons for disagreeing with the findings of the enquiry officer, but has also arrived at the conclusion, holding the charges as proved. At the risk of repetition, the final conclusion of the Disciplinary Authority on the charges is extracted hereunder:

"You have thus allowed the arrangements (i.e., allowing the private individual to work) to continue which certainly should not have been done. The findings of the Inquiry Officer is not accepted. Hence, the charge is held as proved."

17. In P.Govindan v. State of Tamil Nadu reported in 2006 (1) MLJ 624, a Division Bench has considered a case as to whether recording a conclusion on the charges, at the stage of issuance of notice, would cause prejudice to the charged official and whether it satisfies principles of natural justice. In the reported judgment, the Disciplinary Authority, after differing with the enquiry officer, issued a show cause notice to the above said official with a pre-determined mind, holding that the charges as proved. While testing the correctness of the above said order, the Division Bench of this Court, at paragraph 12, held that, "12. The Supreme Court in (1998) II LLJ 809 SC in the case of Punjab National Bank and Ors. v. Kunj Behari Misra and Ors., held that in a departmental proceedings, what is of ultimate importance is a finding of the disciplinary authority. In the context of such seriousness, the Supreme Court held that principles of natural justice would demand that the disciplinary authority, which is deciding against the delinquent officer, must give an opportunity to rebut the view taken, differing from that of the enquiry officer. It further held that whenever the disciplinary authority disagreed with the enquiry authority, then, it must record its tentative reasons for such disagreement and give the delinquent officer an opportunity to represent, before it records its findings. The judgment of the Supreme Court applies in all force to the case on hand, considering the fact that

the first respondent's notice dated 11.5.2001 is silent on the reasons for taking a different view from that of the enquiry officer. As submitted by the learned counsel for the petitioner, it seemed to carry a conclusion premature that all five charges are held as proved. With such pre-emption on the conclusion, the very purpose of issuing a notice appears to be an empty formality. The purpose of issuing a notice is for enabling the delinquent officer an opportunity to persuade the disciplinary authority to accept the findings of the enquiry officer. Hence, the effectiveness of an opportunity is an absolute necessity, which must be patent even on the face of reading the notice, so that it would enable the delinquent officer to counter all the allegations, before the disciplinary authority takes further action, which may be prejudicial to the delinquent officer. The recording of a conclusion even at the notice stage is premature to give an impression to a delinquent officer that the entire exercise is a mere ritual before the ultimate order is passed. In the light of the facts found by the enquiry officer and the total absence of any material disclosed to form the basis for a different conclusion, we are constrained to accept the plea of the petitioner to set aside the order dated 11.5.2001."

29. Further, if the matter has to be remitted at this length of time, giving liberty to the Disciplinary Authority and in the event of the enquiry proceedings not completed before the date on which, he attains the age of superannuation, then there is always a possibility of placing the petitioner under suspension, with a further direction not to permit him to retire from service, till the disposal of the disciplinary proceedings, as there is a necessity to retain the master and servant relationship. Again Courts have held that except in the case of recovery, disciplinary proceedings cannot be continued after retirement, if he is not retained in service. Thus, in the case of disagreement with the enquiry officer's report, substantial requirement of following the principles of natural justice is that, the disciplinary authority can record only his tentative opinion on the charges with reasons and then, issue a notice to the charged official to show cause and that the disciplinary authority cannot hold him guilty at that stage and thereafter, receive further representation, which would offend the well cherished principles of natural justice. Considering the process involved in examining the witnesses, whose statements have been

recorded in the preliminary enquiry and the time, which is likely to be consumed, this Court is not inclined to remit the matter. Yet another aspect taken into consideration is that the petitioner has already been overlooked once for promotion, during the pendency of the charges and again, for the second time, during the currency of punishment. Prejudice to the petitioner caused due to the disciplinary proceedings is apparent on the face of record. He has virtually undergone the punishment of postponement of promotion. Though Courts have held that postponement of promotion due to currency of punishment, is not a double jeopardy, yet on the facts and circumstances of this case, by remitting the matter to the disciplinary authority, the agony will be only prolonged, even after the age of superannuation. Justice should not only be done, but should manifestly seemed to be done.

30. In view of the above, the impugned G.O.(D)No.1133, Home (Transport II) Department, dated 09.11.2009 is set aside. Consequently, the petitioner is entitled to consider for promotion as Deputy Transport Commissioner for the panel of the year 2009-10. As the petitioner is due to retire in this month, the respondents are directed to consider his case, well before the age of superannuation and pass orders.

31. In the result, the Writ Petitions are allowed. No costs."

13.3. The Hon'ble Supreme Court in the case of **Yoginath D.Bage Vs.**

State of Maharashtra & another [(1999) 7 SCC 739], held as follows;

"29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which enables the Disciplinary Authority to disagree with the findings of the Inquiring Authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The Rule does not specifically provide that before recording its own findings, the Disciplinary Authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before Disciplinary Authority

finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the Inquiring Authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with."

13.4. Following the aforesaid decision of the Hon'ble Supreme Court, this Court in *W.P.No.28724 of 2001 dated 16.04.2009* has held as follows;

"6. At this, the learned Addl. Advocate General, who appeared for the respondents would submit that there were sufficient materials available in the disciplinary proceedings initiated against the petitioner and since the petitioner was involved in serious misconduct of corrupt practice, the Disciplinary Authority has rightly dismissed the petitioner from service. Therefore, the petitioner cannot be allowed to take a technical objection in regard to the decision of the Disciplinary Authority for differing from the findings given by the second respondent Tribunal. This Court is unable to appreciate as to how such argument could be accepted by this Court in view of the settled legal position that in case the Disciplinary Authority takes a decision to differ from the findings of the Enquiry Officer, it is incumbent upon the authority to issue show cause notice to the charged officer and only after obtaining his explanation, the Disciplinary Authority can proceed further in the matter. In this case, unfortunately, the Disciplinary Authority without giving any opportunity to the petitioner herein, has directly issued notice saying that he would not accept the findings and would hold that the charges were proved against him. Such a course adopted by

the Disciplinary Authority is in complete violation of established principles of natural justice and also contrary to the law declared by the Hon'ble Supreme Court of India on the subject matter.

7. As rightly contended by the learned Senior Counsel for the petitioner that the above decision of the Hon'ble Supreme Court would squarely cover the case in favour of the petitioner herein. Once the findings are in favour of the charged Officer, the charged Officer must be given due and reasonable opportunity to put forth his claim in support of the findings and he should be given opportunity to impress upon the Disciplinary Authority about the findings in his favour. Such opportunity is the very essence of complying with principles of natural justice, which cannot be termed as hyper technical.”

13.5. It is also useful to extract Chapter IV of Hand Book on Office

Administration:

“1.The enquiry officer will send his report to the concerned punishing authority. The report of the enquiry officer is intended to assist the punishing authority in coming to a conclusion about a guilt of a Government servant. The findings of the enquiry officer are advisory in character and are not binding on the punishing authority who can disagree with them and come to his own assessment of the evidence from the record of enquiry. On receipt of the report and the records on enquiry, the punishing authority will examine them carefully and dispassionately keeping in view the position indicated above and after satisfying himself that the Government servant has been given a reasonable opportunity to defend himself, will record his findings in respect of each charge saying whether, in his opinion, it stands proved or not. If the punishing authority disagrees with the findings of the enquiry officer on any charge, he will, while recording his own findings, also record reasons for disagreement”

Further, the Government has also issued a Circular in Lr.No.105983/Per.N/90, dated 08.02.1994 issued by the Personal and Administrative Reforms (Personal -N) Department. The relevant portion of the communication is also extracted

hereunder:

“On receipt of the report of the enquiry officer, the disciplinary authority will examine it carefully. After satisfying itself that the Govt. Servant has been given reasonable opportunity to defend himself, the disciplinary authority will record its findings in respect of each article of charge saying whether, in its opinion, it stands proved or not. If the disciplinary authority disagrees with the findings of the inquiry officer, on any article of charge, it will while recording its own findings, also record reasons for disagreement. Reason need not, however be given if the disciplinary authority agrees with the enquiry officer.”

14. The decisions cited supra clearly indicates the dictum that if the Disciplinary Authority disagrees with the findings of the Enquiry Officer, it should mention the reason for such disagreement. The disciplinary authority, at the same time, has to communicate to the delinquent officer the reasons for such disagreement with the findings of the enquiry officer and thereafter, the authority concerned shall proceed and pass final orders. In the case on hand, the second respondent/Disciplinary Authority has not assigned reasons for disagreeing with the views of the Enquiry Officer and came to the conclusion arbitrarily by placing reliance upon the diary entry of P.Mani-Forester, who has neither been examined.

15. It is to be noted at this juncture that the occurrence for which the petitioner was charged, said to have been committed during November and December 2011 and the same was noted during the yearly audit done by DFO,

Cuddalore on 03.03.2012. If at all the alleged misuse of power committed by the delinquent/petitioner for violating Rule 54 of the Wildlife Protection Act, 1972 has been noted on 03.03.2012, the DFO should have immediately framed charges against the petitioner for the alleged violation. But in the case on hand, the charge memo came to be issued on 28.10.2013 i.e., 1½ years after conducting audit and the enquiry report was submitted on 07.04.2015 and the impugned order came to be passed on 19.08.2015. It is pertinent to point out that only when this Court came down heavily to place the petitioner in the appropriate seniority and to report compliance in Sub.A.No.135 of 2015 in Cont.P.No.2975 of 2014 dated 23.07.2015, at that stage, the respondents reported before this Court that charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules is pending against the petitioner. Therefore, this Court has no hesitation to draw adverse inference that only in order to scuttle the petitioner's promotion as Assistant Conservator of Forest and to overcome the order passed by this Court dated 10.06.2015 in Sub.A.No.135/2015 in Cont.P.No.2975 of 2014, the impugned order of punishment dated 19.08.2015 has been passed by the second respondent/disciplinary authority.

16. It is to be reiterated that before passing the impugned order of punishment, the disciplinary authority has neither examined the crucial witness,

namely P.Mani-Forester nor served the alleged diary of P.Mani-Forester to the petitioner/delinquent before issuing with the disagreement notice. Further, DFO, Cuddalore / third respondent herein, from whom the alleged permission said to have been obtained by the petitioner for compounding the offence, was also not examined by the Disciplinary Authority.

17. The first respondent/appellate authority, without independent application of mind, has dismissed the appeal filed by the petitioner by simply relying upon the views of TNPSC / fourth respondent dated 23.12.2019. Therefore, this Court has no hesitation to hold that the impugned order passed by the first respondent/appellant authority, confirming the order of punishment passed by the second respondent/disciplinary authority are passed in violation of statutory procedures contemplated under the Rules and also violates Articles 14 and 16 of the Constitution of India and as such, they are liable to be quashed.

18. In view of the reasons assigned above, this Court is inclined to pass the following order:

(i) The impugned order of the second respondent dated 19.08.2015 issued in Ref.No.BB3/20306/2015 and the Lr. Dated 23.12.2019 made in 6152/DCD/B2/2019-1 of TNPSC on the file of

the fourth respondent and the order dated 21.01.2020 made in G.O.Ms.No.(2D)No.06 of the first respondent / Appellate Authority are set aside.

(ii) The respondents 1 & 2 are directed to comply with the order passed by this Court dated 01.10.2013 in W.P.No.15089 of 2009 and give promotion to the petitioner as Assistant Conservator of Forests on par with his junior B.Kalaivanan and confer him with all consequential service and monetary benefits.

(iii) The aforesaid exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

19. In fine, ***W.P.No.9062 of 2021 stands allowed with the above directions. W.P.No.28541 of 2015, Cont.P.No.2975 of 2014 and Sub.A.No.135 of 2015 are closed.*** No costs. Consequently, connected miscellaneous petitions, if any, shall also stand closed.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

jvm

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

GS/25/04/2022

To

- 1.The Secretary to Government,
Environment & Forest Department,
Fort St.George, Chennai-600 009.
- 2.The Principal Chief Conservator of Forests & Head of Force-1,
Panagala Buildings,
1-Zenith Road, Saidapet, Chennai-600 015.
- 3.District Forest Officer,
Nellikuppam Road, Cuddalore.
- 4.The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 003.

Copy to:

The Section Officer,
Writ Section,
High Court, Madras 104