CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 593 of 2007

Tuesday, this the 6th day of November, 2007

CORAM:

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

V. Gopinathan, IFS,
S/o. Late V. Krishnan,
Aged 53 years,
Chief Conservator of Forests (Vigilance),
(Under orders of suspension),
Thiruvananthapuram,
Residing at "Arcadia", T.C.5/2568(4),
Sasthamangalam, Thiruvananthapuram : 695 010 ... Applicant.

(By Advocate Mr. O.V.Radhakrishnan, Sr. with Mrs. K. Radhamani Amma)

versus

1. State of Kerala,
   Represented by its Chief Secretary,
   Secretariat, Thiruvananthapuram : 695 001.

2. Union of India, represented by its
   Secretary, Ministry of Environment and Forests,
   Pariavaran Bhavan, CGO Complex,
   Lodhi Road, New Delhi : 110 003 ... Respondents.

(By Advocates Mr. P. Nandakumar, GP, for R1 and
Mr. TPM Ibrahim Khan, SCGSC, for R2)

This application having been heard on 26.10.07, the Tribunal on 6.11.07 delivered the following:

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Challenge in this case is against the order dated 18-09-2007 (Annexure A-1) whereby the applicant was kept under suspension.

2. The applicant is a Member of the Indian Forest Service of 1979 batch and in January, 2007 he was posted as the Chief Conservator of Forest(Vigilance). In March, 2007 he was also assigned the duties of Custodian of Ecologically Fragile Lands to exercise the powers and to perform the function of Custodian under the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 (Act 21 of 2005).

3. On two occasions, the applicant had requested the authorities to divest him of the functions of Custodian as the dual functions of Chief Conservator of Forests (Vigilance) and Custodian may not be performed by the same individual since, as in-charge of Vigilance, he may have to inquire into various omissions and commissions of other wings of the Department. Annexures A-3 and A-4 refer. Thus, on the appointment of another officer w.e.f. 3rd July, 2007, vide Annexure A-5, the applicant held the post of Custodian till 2nd July,2007.

4. Under the Kerala Forest (Vesting and Assignment) Act, 1971 (Act 26 of 1971), certain lands ad-measuring a total of 23.7371 hectares, situated in different places, belonging to one Merchiston Estate was notified as Vested Forest. This was challenged by the owners of the land before the Forest Tribunal, for a declaration that they are not vested forest under the Act. That OA No. 100/1980 having been dismissed, the matter was taken up before the Single Bench of the High Court in MFA 359/1983 whereby the Tribunal's order was set aside and the matter was remanded back to the Forest Tribunal for fresh consideration. The Forest Tribunal, while rendering a finding that the said Merchiston Estate was the owner of the disputed property, however, held that such lands fell under private forest and consequently vested with the

Government under the above mentioned Act. The owners agitated before the Division Bench against the Judgment of the Single Bench vide MFA No. 652/1989 and by judgment dated 12-09-1997 (Annexure A-6) it was held that the disputed property was outside the scope of the provisions of Act 26 of 1971. While action for restoration of the disputed property was on, the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) ordinance 6 of 2000 was promulgated and later, on its not being replaced by an Act, Ordinance No. 8 of 2000 was promulgated. Now, the disputed property along with certain other Tea Estates amounting to 268.872 hectors was notified under Sec 3(1) of the Ordinance No. 8 of 2000 as Ecologically Fragile Land (EFL). As certain errors kept in declaring the property as coming under Sec. 3(1), the authorities had published Annexure A-7 notification, whereby, certain portion was held to be brought within the purview of Sec 3(1) of the Act and the remaining as coming within the purview of Sec 4 of the Ordinance. This ordinance was kept under currency by successive ordinances passed in 2001. And **according to the applicant**, as the afore said ordinance got lapsed w.e.f. 17-07-2001, the consequence of the same was that the notification issued under Ordinance No. 8 of 2000 ceased to be operative and Merchiston Tea Estates was no longer vested with the Government. It was later in 2005 that Act No. 21 of 2005 (the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 came to be passed, effective from 08-06-2005. Again, **according to the applicant**, under the provisions of the Act Tea Estate was excluded from the definition of forest and ecologically fragile land under the Act and as such, there was no impediment for M/s Merchiston Tea Estate to dispose of the property to any one and as such, the land was purchased by one Mr. Xavi Mano Mathew to the extent of 286 .21 hectors on 30-03-2005 and mutation also effected.

5. M/s Jay Shree Tea and Industries Ltd., the erstwhile owners of Merchiston Tea Estates had filed OP No. 35714/ of 2000 challenging the vires of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Ordinance No. 16 of 2001 as unconstitutional and the High Court by its judgment dated 24-05-2006 directed, having regard to the fact that Ordinance 16 was replaced by Act 21 of 2005, that the petitioners could move the Custodian under Sec 19(3) of the Act. Thus, the purchaser Xavi Mano Mathew filed Application on 30-03-2007 before the Custodian for exclusion of lands he had purchased from Merchiston Estate consisting of 268.872 hectors notified under the Ordinance. As under the Rules, a designated Committee was constituted, the Committee which considered the matter, held that only 24.409 hectors of lands come within the purview of the term, Ecologically Fragile Land, as per Act 21 of 2005 and recommended for restoration of the remaining area of the tea estate. The Applicant, in his capacity as Custodian, accepting the recommendation of the Designated Committee held that only 24.409 acres form part of Ecologically Fragile Land and hence, retaining the same, ordered for restoration of the remaining land to the erstwhile land owners. Annexure A-9 proceedings dated 12-06-2007 refer.

6. According to the applicant, as per the order under challenge, the suspension order passed by the respondents is on the ground that the applicant failed in his duty to apprise the government regarding the land deal in Merchiston tea Estates and related matters and that the government was not apprised of the issue in question. Again, according to the applicant, the matter pertains to the Chief Conservator of Forest, Southern Region Kollam and hence, the Conservator of Forest, Southern Circle, Kollam and Chief Conservator of Forest Southern Region Kollam are the officers primarily responsible to apprise the

Government regarding the land deal in Merchiston Tea Estates and related matters. As per the applicant, the duties and responsibilities of Chief Conservator of Forests (Vigilance) do not include appraisal to the Government of any land deal including the land deal in Merchiston Tea Estate. Again, others working under the applicant are equally responsible for informing the Government but no action was taken either against them or against the Chief Conservator of Forest, Southern Region Kollam. By no stretch of imagination can the responsibility be fixed upon the applicant. There was no complaint from any corner in connection with the deal and in the absence of such complaints, or grievance of the public or any intelligence report alleging irregularities in the deal, the question of failure on the part of the applicant to apprise the Government regarding the land deal in Merchiston Estate and related matters did not arise.

7. The applicant has, in this OA, stated that rules do not provide for suspension at a stage when disciplinary proceedings are only contemplated. Legislative scheme underlining Rule 3 is indicative of the intention of the rule making authority to restrict its operation only to those cases in which the Government concerned is possessed of sufficient material whether after preliminary investigation or otherwise and the disciplinary proceedings have in fact commenced and not merely when they are contemplated. The impugned Annexure A-1 Order being issued without authority of law and being ultra vires and void, the applicant has no effective alternative remedy than to approach this Tribunal under Sec. 19 of the A.T. Act. Various grounds have been raised by the applicant including that there is non application of mind by the authorities. When no disciplinary proceedings are commenced by issuance of and serving articles of charges on the applicant, the stage for considering and satisfying of the necessity or desirability of placing under suspension having regard to the

nature of the charges and the circumstances have not reached. The applicant has relied upon the decision of the Apex Court in the case of **P.R. Nayak vs Union of India**, ***AIR 1972 SC 554***. The ground also includes malafide as the impugned order has been issued in the context of the political controversy regarding the involvement of the Minister for Forest in the matter of land deal of Merchiston Estate and in the wake of the demands of the opposition for his resignation. The impugned order is also assailed on the ground of "selective suspension".

8. At the time of initial admission, the counsel for the respondent was present and the question of exhaustion of alternative remedy was posed to the applicant. The applicant stated that this is a case which comes within the exceptional circumstances and as such, invoking the discretionary power, admission could be granted. The applicant further submitted that in view of the fact that the allegation was that the impugned order is vitiated on being totally without authority and without complying with the ingredient required for invoking the provisions of Rule 3 of the All India Services (Discipline and Appeal) Rules, the OA deserves admission. The OA was admitted.

9. In their counter, the respondents contended that the applicant has approached the Tribunal without exhausting the statutory remedy of appeal available to him. As regards merits, the respondents contended that provisions of Rule 3 clearly provides for invoking the same when even disciplinary proceedings are only contemplated. As the applicant has failed to inform the government in his capacity as Chief Conservator of Forests (Vigilance) he has failed in his duties.

10. Learned Senior Counsel for the applicant argued that the order of suspension does not disclose in so many words as to the contemplation of proceedings and in any event, in view of the decision of the Apex Court in the case of P.R. Nayak (supra) the inquiry not having been commenced at all, the impugned order is illegal and invalid. The order is void due to non application of mind. The applicant relies upon the decision of the Apex Court in the case of ***Managing Director, U.P. Warehousing Corpn. v. Vijay Narayan Vajpayee, (1980) 3 SCC 459*** , wherein the Apex Court has held, **"A regular departmental enquiry takes place only after the charge-sheet is drawn up and served upon the delinquent and the latter□s explanation is obtained".** The applicant has further relied upon the decision of the Hon'ble High Court of Kerala in the case of ***State of Kerala vs Balakrishnan, (1992) 1 KLT 420*** which stipulates that the order should disclose reasons. He has also relied upon the decision of the Apex Court in the case of ***Chandra Singh v. State of Rajasthan, (2003) 6 SCC 545*** , wherein the Apex Court has held, **"It is fairly well settled that the legality or otherwise of an order passed by a statutory authority must be judged on the face thereof as the reasons contained therein cannot be supplemented by an affidavit. (See *Mohinder Singh Gill* v. *Chief Election Commr.,* *(1978) 1 SCC 405).***

11. As regards non exhaustion of alternative remedies, the learned senior counsel relied upon the following decisions:-

(a) ***S.J.S. Business Enterprises (P) Ltd. v. State of Bihar,(2004) 7 SCC 166 :***

"The existence of an adequate or suitable alternative remedy available to a litigant is merely a factor which a court entertaining an application under Article 226 will consider for exercising the

discretion to issue a writ under Article 226 5. But the existence of such remedy does not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed."

(b) ***Durga Enterprises (P) Ltd. v. Principal Secy., Govt. of U.P.,(2004) 13 SCC 665 :***

"2. By the impugned order the writ petition, which was pending for a long period of thirteen years, has been summarily dismissed on the ground that there is remedy of civil suit.

3. The High Court, having entertained the writ petition, in which pleadings were also complete, ought to have decided the case on merits instead of relegating the parties to a civil suit. "

(c) ***Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1 :***

"15. *Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."*

(d) ***U.P. State Spg. Co. Ltd. v. R.S. Pandey,(2005) 8 SCC 264 :***

"16. *If, as was noted in Ram and Shyam Co. v. State of Haryana the appeal is from 'Caesar to Caesar's wife' the existence of alternative remedy would be a mirage and an exercise in futility."*

(e) ***Ram & Shyam Co. v. State of Haryana, (1985) 3 SCC 267 :***

"Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law."

(f) ***L.K. Verma v. HMT Ltd.,(2006) 2 SCC 269 :***

"It is well settled, availability of an alternative forum for redressal of grievances itself may not be sufficient to come to a conclusion that the power of judicial review vested in the High Court is not to be exercised. "

(g) ***Harbanslal Sahnia v. Indian Oil Corpn. Ltd.,(2003) 2 SCC 107 :***

" The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

12. Learned Senior Counsel for the applicant further submitted that as regards legality in respect of promulgation of ordinances, the decision by the Apex Court in the case of ***D.C. Wadhwa v. State of Bihar, (1987) 1 SCC 378*** applies wherein the Apex Court has not appreciated repeated promulgation of the same ordinances, which has ceased to operate. The learned senior counsel also relied upon the decision in the case of ***Krishna Kumar Singh vs State of Bihar, (1998) 5 SCC 643*** on this point.

13. As regards duties and responsibilities as of the Chief Conservator of Forest (Vigilance) the senior counsel had taken us through the functional responsibilities as contained in Annexure A-10. If at all the case could be brought within the functional responsibilities, the same, contended the counsel, would be item IX (3) – Matters relating to intelligence gathering. In this regard it has been argued that it is not the applicant alone who is to gather intelligence. In fact, his subordinates are only to collect and it is for him to scrutinize the same. In the instant case, according to the applicant, there is nothing for the Chief Conservator of Forests (Vigilance) to inform the Government, as the

Government is already aware of the facts of the case. The learned counsel referred to the contents of para 10 of the rejoinder and Annexure A-14, which is a communication from Vikram Sarabhai Space Centre to the Hon'ble Chief Minister.

14. Learned Counsel for the applicant also contended that when many an authority is associated with the subject matter, in case action is to be taken, the same should be uniformly taken, and here there is only selective suspension, which is illegal as per the decision of the Apex Court in the case of ***K. Sukhendar Reddy v. State of A.P., (1999) 6 SCC 257*** wherein the Apex Court has held, ***"The Government cannot be permitted to resort to selective suspension."***

15. Counsel for the respondents submitted that at the very outset, the applicant having not exhausted the alternative remedy, the application is premature. He has relied upon the Full Bench judgment of the Tribunal in the case of ***B. Parameshwara Rao vs Divisional Engineer, Telecommunications & Ors.*** in OA No. 27 of 1990 of the Hyderabad Bench, wherein it has been held as under:-

> *"The emphasis on the word, 'ordinarily' means that if there be an extraordinary situation or unusual event or circumstances, the Tribunal may exempt the above procedure being complied with and entertain the application. Such instances are likely to be rare and unusual. That is why, the expression 'ordinarily' has been used. There can be no denial of the fact that the Tribunal has power to entertain an Application even though the period of six months after the filing of the appeal has not expired but such power is to be exercised rarely and in exceptional cases.*

16. According to the counsel for the respondents, there is no special circumstances in this case to exercise this discretion. In addition to the above,

the counsel for the respondents invited the attention of the Tribunal to the decision of the Apex Court in the case of ***S.A. Khan vs State of Haryana*** (1993) 2 SCC 327, wherein the Apex Court has held, "***Above all, we are inclined to dismiss this writ petition since it is only a suspension order and there is a statutory remedy available to the petitioner.***"

17. As regards judicial interference in matters of suspension, the counsel relied upon the judgment of the Hon'ble High Court of Kerala in WPC 28804 of 2006 decided on 13th April,2007, wherein their Lordships have held, "*Whether the Government servant against whom disciplinary proceedings are contemplated should or should not continue in his/her office during the period of inquiry is a matter to be assessed by the authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are malafide and without there being even prima facie material connecting the Government servant with the alleged misconduct. ..... A government servant can be placed under suspension for the smooth conduct of disciplinary proceedings. It is not necessary that before suspending the employee he shall be found guilty. In* **Muhammed vs State of Kerala,** *(1997 (2) KLT 394), this Court has held that 'when the allegations are of a serious nature, which have got considerable public interest, and those allegations are based on some relevant material, authority can always place the Government under suspension, even till the completion of the disciplinary proceeding, investigation or trial. It depends upon the gravity of the offences, nature of the allegations as well as public interest involved."* As to the power to suspend by the authorities and limited scope for judicial interference in matters of suspension, the counsel for the respondents relied upon the decision of the Apex Court in the case of **U.P. Rajya Krishi Utpadan Mandi Parishad and Others vs Sanjiv Rajan (1993) Supp (3) SCC 483.**

18. The learned counsel further argued that Rule 3(1) of the All India Services (Discipline and Appeal) Rules, does provide for suspension of a Member of the Services even when disciplinary proceedings are contemplated. In the instant case, proceedings were contemplated and the decision to invoke the provisions of Rule 3 of the afore said Rules had been taken by the competent authority before passing the impugned order. The decision of the Apex Court in Nayak, argued the learned counsel for the respondents is with reference to the earlier rule, when suspension could be resorted to after the commencement of inquiry. However, as the Rules have been subsequently amended, whereby, provision of suspension has been made available even when disciplinary proceedings are contemplated, the applicant has, by competent authority, been suspended. There is thus, no illegality in the order of suspension. He has further argued that *when a statutory power is subject to the fulfilment of a condition then the recital about the said condition having fulfilled in the order raises a presumption about the fulfilment of the said condition and that the validity of the order does not depend upon the recital of the formation of the opinion in the order but upon the actual formation of the opinion and the making of the order in consequence.* In this regard, the counsel relied upon the decision of the Apex Court in the case of ***State of Haryana vs Hariram Yadav, 1994 2 SCC 617.*** The counsel has further submitted that detailed inquiry in the involvement of the applicant in the issue and his failure to inform the Government of the matter in advance will be held.

19. According to the counsel for the respondents, the applicant has committed a serious misconduct and a conscious decision to suspend him, has been taken by the competent authority. In this regard, the applicant relied upon the decision of the High Court of Kerala in O.P 27195 of 2001 wherein the High Court has

extracted the following decision of the Apex Court in the case of ***Govt. of India, Ministry of Home Affairs v. Tarak Nath Ghosh, (1971) 1 SCC 734***,

> *"When serious allegations of misconduct are imputed against a member of a Service normally it would not be desirable to allow him to continue in the post where he was functioning. If the disciplinary authority takes note of such allegations and is of opinion after some preliminary enquiries that the circumstances of the case justify further investigation to be made before definite charges can be framed, It would not be improper to remove the officer concerned from the sphere of his activity inasmuch as it may be necessary to find out facts from people working under him or look into papers which are in his custody and it would be embarrassing and inopportune both for the officer concerned as well as to those whose duty it was to make the enquiry to do so while the officer was present at the spot. Such a situation can be avoided either by transferring the officer to some other place or by temporarily putting him out of action by making an order of suspension. Government may rightly take the view that an officer against whom serious imputations are made should not be allowed to function anywhere before the matter has been finally set at rest after proper scrutiny and holding of departmental proceedings. Rule 7 is aimed at taking the latter course of conduct. Ordinarily when serious imputations are made against the conduct of an officer the disciplinary authority cannot immediately draw up the charges: it may be that the imputations are false or concocted or gross exaggerations of trivial irregularities. A considerable time may elapse between the receipt of imputations against an officer and a definite conclusion by a superior authority that the circumstances are such that definite charges can be levelled against the officer. Whether it is necessary or desirable to place the officer under suspension even before definite charges have been framed would depend upon the circumstances of the case and the view which is taken by the Government concerned."*

20. As regards functions of Chief Conservator of Forests (Vigilance) the counsel for the respondents argued that it is his responsibility to be vigil and alert and inform the government of important aspects and in the instant case, notwithstanding the fact that the applicant is a custodian of the EFL and is in the full knowledge of the matter relating the disputed property, kept silent without informing the Government of the same. When application was submitted by the party as early as in March 2007, the applicant chose not to inform the government of the same.

21. In rejoinder to the above, the learned senior counsel reiterated the contentions as originally advanced and supported his case with certain other authorities.

22. Arguments were heard and documents perused. The respondents have also made available the records wherein the decision to initiate proceedings against the applicant had been taken and the authority has also decided to place the applicant under suspension. The note reflects that there has been full application of mind, with a detailed note as to the serious suspicion about the involvement of the applicant in the land dispute, the necessity to keep him away from the scene and hence to suspend the applicant. The note further gives an inkling that as vigilance in charge the matter may have to be dealt with by the officer and it is to avert the same too that the applicant has been kept under suspension.

23. As to the provisions of Rule 3, the same when read between lines would clearly mean that under two circumstances the Government may place a Member of the service under suspension. They are:-

(a) If, having regard to the circumstances in any case, the Government is of a State or the Central Government as the case may be, is satisfied; and

(b) where articles of charge have been drawn up, having regard to the nature of the charges, the Government is of a State or the Central Government as the case may be, is satisfied;

The case of the applicant falls under (a) above. Learned Senior Counsel for the applicant argued that the conjunction 'and' appearing in rule 3(1) has to be given its due regard which would then mean that the two ingredients i.e. (a) having regard to the circumstances in any case and (b) where articles of charges have

been drawn up, should concurrently be available for the Government to satisfy itself to place a Member of the Services in suspension. Counsel for the respondents argued that if that be the case, the second proviso which reads as under would be become otiose:-

> Provided further that, where a member of the Service against whom disciplinary proceedings are contemplated is suspended, such suspension shall not be valid unless before the expiry of a period of ninety days from the date from which the member was suspended, disciplinary proceedings are initiated against him.

In view of the clear provision of Rule 3(1), the argument of the Learned Senior Counsel has to be only rejected.

24. The learned senior counsel argued that action of the respondents is one of non application of mind. To ascertain the exact position, records were called for and a perusal of the same clearly reveal that a comprehensive note had been prepared at the Secretary level in regard to the entire episode on which a view was taken that as the applicant in his capacity as custodian had passed certain orders relating to Merchiston Estate and as Chief Conservator of Forest (Vigilance) he has not duly informed the Government despite the fact that he had full information in his capacity as the Custodian, the role of the applicant has to be enquired into and he has to be kept away from the scene. This course of action has been approved by the competent authority and the decision that suspension was warranted had also been taken after approval of the competent authority. Thus, there has been full application of mind by the competent authority whereafter only the order of suspension has been issued.

25. The learned counsel's argument that the suspension order has not disclosed any reason clearly is also not acceptable. The Senior Counsel argued

that the inquiry stated to have been proposed is with reference to the land deal and not of the alleged misconduct of the applicant. The impugned order reads as under:-

> *"It has come to the notice of the Government that Shri V. Gopinathan, IFS CCF(Vigilance) has failed in his duty to apprise Government regarding the land deal in Merchiston Tea Estate and related matters.*
>
> *As Government have decided to conduct a detailed enquiry in the matter, Shri V. Gopinathan, IFS, Chief Conservator of Forests (Vigilance) is placed under suspension forthwith under Rule 3(1) of AIR (Discipline and Appeal) Rules, 1969"*

26. The learned senior counsel tried to interpret the term, "detailed inquiry in the matter" as enquiry against M/s Merchiston Tea Estate. We are disinclined to agree with the above interpretation. Here, the term 'matter' means as to the applicant's failure in his duty to apprise the Government regarding the land deal in Merchiston Tea Estate and related Matters. Thus, the proposal to hold an inquiry has been spelt out in the order of suspension. This means contemplation to hold the inquiry.

27. Learned Senior Counsel's further contention that the ingredient "Government is satisfied" is conspicuously absent in the order is met with, rightly, by the counsel for the respondent, when he has invited the attention of the Tribunal to the decision by the Apex Court in the case of **State of Haryana vs Hari Ram Yadav** (Supra), wherein, the Apex Court referred to the decision in **Swadeshi Cotton Mills Co. Ltd. vs State of UP,** (1962) 1 SCR 422, wherein it has been observed, ***"The validity of the order therefore, does not depend upon the recital of the formation of the opinion in the order but upon the actual formation of the opinion and the making of the order in consequence."*** And, as stated earlier, the case was considered at appropriate

level and on due application of mind, an opinion was formed to place the applicant under suspension. Hence, this argument of the Learned Senior counsel for the applicant is also not acceptable.

28. As regards selective suspension, it is seen from the records that decision has been taken by the authorities in respect of those who are proximately and directly involved in the case as to how to deal with the same. It is to be pointed out here that as Chief Conservator of Forest (vigilance) the applicant has certain important role to play to know in advance certain important matters and thus, his function cannot be compared with those of other Chief Conservator of Forests. As such, the act on the part of the respondents cannot be held to be one of 'selective suspension' as alleged by the applicant.

29. In view of the above, there being no merit in the OA, the same deserves only dismissal and we accordingly order.

30. As the OA is dismissed on merit, we have not gone into the aspect of fulfilment of the requirements under the provisions of Section 20 of the Administrative Tribunal's Act, 1985.

31. Under the circumstances, there shall be no orders as to costs.

(Dated, the 6th November, 2007)

(Dr. K B S RAJAN)
JUDICIAL MEMBER

(SATHI NAIR)
VICE CHAIRMAN

cvr.