



KARNATAKA LOKAYUKTA

No. LOK/INQ/14-A/111/2011/ARE-3

Multi Storied Building,  
Dr. B.R. Ambedkar Veedhi,  
Bengaluru-560 001.  
Dated 31.01.2019

RECOMMENDATION

Sub:- Departmental inquiry against Shri K. Puttaswamy,  
the then Junior Engineer (Elecl.), BESCO, Rural  
Sub-Division, Chikkaballapura District - reg.

- Ref:- 1) Order No. KPTCL/B21/17319/2010-11  
dated 03.02.2011.  
2) Nomination order No. LOK/INQ/14-A/111/2011  
dated 25.06.2011 of Upalokayukta, State of  
Karnataka.  
3) Inquiry report dated 29.01.2019 of Additional  
Registrar of Enquiries-3, Karnataka Lokayukta,  
Bengaluru.

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The Director (Administration and Human Resources)  
Karnataka Power Transmission Corporation Limited,  
Bengaluru, by his Order dated 03.02.2011, initiated the  
disciplinary proceedings against Shri K. Puttaswamy, the then  
Junior Engineer (Elecl.), BESCO, Rural Sub-Division,  
Chikkaballapura District [hereinafter referred to as Delinquent  
Board Employee, for short as 'DBE'] and entrusted the  
departmental inquiry to this Institution.

2. This Institution by Nomination Order No. LOK/INQ/14-  
A/111/2011 dated 25.06.2011 nominated Additional Registrar

of Enquiries-3, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct departmental inquiry against DBE for the alleged charge of misconduct, said to have been committed by him.

3. The DBE - Shri K. Puttaswamy, the then Junior Engineer (Elect.), BESCOM, Rural Sub-Division, Chikkaballapura District was tried for the following charge:-

“That you, Shri K. Puttaswamy s/o late Kariappa (hereinafter referred to as Delinquent Government Official, in short DGO), while working Junior Engineer (Elect.), BESCOM, Rural Sub-Dn., Chikkaballapura, Chikkaballapur District demanded and accepted a bribe of Rs.5,000/- on 16.08.2008 from complainant Shri K.M. Narasimhamurthy s/o Maribhutappa, Rangamajji House, T.G. Tank Road, Chikkaballapura for preparing the estimate of cost for low-sum for shifting the electric wire and pole from his residential site bearing No.7 situated at Srinivas Layout of Chikkaballapura Town that is for doing an official act, and thereby you failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of a Board Employee and thus you are guilty of misconduct under Rule 3(1) of Karnataka Electricity Board Employees (Conduct) Regulations, 1988.”

4. The Inquiry Officer (Additional Registrar of Enquiries-3) on proper appreciation of oral and documentary evidence has held that, the Disciplinary Authority has '*proved*' the above charge against the DBE - Shri K. Puttaswamy, the then Junior Engineer(Elecl.), BESCO, Rural Sub-Division, Chikkaballapura District.

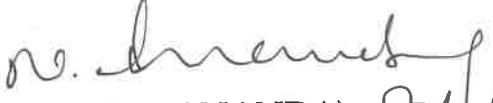
5. On re-consideration of report of inquiry, I do not find any reason to interfere with the findings recorded by the Inquiry Officer. Therefore, it is hereby recommended to the Government to accept the report of Inquiry Officer.

6. As per the First Oral Statement of DBE furnished by the Inquiry Officer, the DBE - Shri K. Puttaswamy has retired from service on 31.10.2010.

7. Having regard to the nature of charge (demand and acceptance of bribe) '*proved*' against Shri K. Puttaswamy, the then Junior Engineer (Elecl.), BESCO, Rural Sub-Division, Chikkaballapura District, it is hereby recommended to the Government to impose penalty of 'permanently withholding 50% of the pension payable to the DBE - Shri K. Puttaswamy.'

8. Action taken in the matter shall be intimated to this Authority.

Connected records are enclosed herewith.

  
(JUSTICE N. ANANDA) 21/1  
Upalokayukta,  
State of Karnataka.

**KARNATAKA LOKAYUKTA**

No. LOK/INQ/14-A/111/2011/ARE-3

M.S.Building,  
Dr. B.R.Ambedkar Veedhi,  
Bengaluru - 560001.

Date: 29.1.2019

**Enquiry report**Present: Sri.S. Renuka Prasad  
Additional Registrar Enquiries-3

Sub: Departmental Enquiry against Sri K. Puttaswamy, the then Junior Engineer, (Elec) BESCO, Rural Sub Division, Chikkaballapura District (now retired)- reg

- Ref: 1. Report under Section 12(3) of the Karnataka Lokayukta Act, 1984, in No. Compt/Uplok/BD/783/2009/ARLO-1 dated 22.12.2010
2. Order No. KPTCL/B21/17319/2010-11 dated 3.2.2011 of the Director (Administration and Human Resources), KPTCL, Bengaluru
3. Nomination Order No.LOK/INQ/14-A/111/2011 dated 25.6.2011 of Hon'ble Upalokayukta, Karnataka State, Bengaluru.

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1. One Sri K.M. Narasimhamurthy S/o Maribhutappa Rangamajji House, T.G.Tank Road, Chikkaballapura (hereinafter referred to as 'complainant') has filed a complaint to Lokayukta police, Chikkaballapura on 14.8.2008 against Sri K. Puttaswamy, Junior Engineer, (Elec) BESCO, Rural Sub Division, Chikkaballapura District (hereinafter referred to as 'DGO' for short) making allegations against him that, he/DGO is demanding him to pay Rs. 5,000/- as bribe in order to shift the electrical poles and change the alignment of the electric wire since, the electric pole has been

installed in the site belonged to him and the electric line has been passing over head on his property.

2. On registering a case on the basis of the said complaint, a trap was held on 16.8.2008 in the O/o BESCO, Rural Sub-Division situated on Manchanbele road, Chikkaballapura wherein, the DGO having demanded bribe from the complainant received the said bribe amount of Rs. 5000/- from him. The tainted money of Rs. 5000/- was recovered from the left side shirt pocket of the DGO during the trap proceedings conducted in the O/o DGO. Since it was revealed during investigation that, the DGO has demanded bribe of Rs.5000/- from the complainant and received the same, in order to show an official favour i.e., in order to shift the electrical poles and change the alignment of the electric wire as requested by the complainant, the Dy.SP having conducted investigation filed charge sheet against the DGO.
3. The ADGP, Karnataka Lokayukta, Bengaluru has forwarded the copy of the charge sheet to the Hon'ble Upalokayukta. On the basis of the materials collected during investigation and materials placed before this authority, an investigation was taken up under Section 7(2) of the Karnataka Lokayukta Act. An observation note was served on the DGO providing him an opportunity to show-cause as to why recommendation should not be made to the Competent Authority, for initiating disciplinary proceedings against him. DGO submitted his reply dated 13.9.2010 denying the allegations made against him contending that, he never demanded or received any money by way of bribe from the complainant and he has been falsely implicated. He has denied each and every allegations made against him in the observation note served on him and made allegations against the complainant that, he has filed frivolous and vexatious

complaint against him just to harass him. It is his further contention that, in the office of the BESCO, Chikkaballapura Sub-Division, the employees formulated an association for the welfare of the officials and because of this reason there are 2 groups which are fighting against one another and since he is heading one group, the members of the other group in order to take revenge against him, instigated the complainant and got a false complaint filed through him, just to tarnish his image. It is his further contention that, since he is facing trial before Principal Session Judge and Special Court, Chikkaballapura in PCA CC.7/2010, no parallel proceedings by way of disciplinary proceedings can be initiated against him and requested this authority to drop the proceedings against him.

4. Since the explanation offered by the DGO was not satisfactory, a recommendation under Section 12(3) of the Karnataka Lokayukta Act was forwarded to the Competent Authority recommending to initiate disciplinary enquiry against DGO and to entrust the enquiry under Rule 14-A of KCS (CCA) Rules, to this authority to hold enquiry. Accordingly, the Disciplinary Authority, i.e., Director (Administration and Human Resources), KPTCL, Bengaluru by its order in No. KPTCL/B21/17319/2010-11 dated 3.2.2011 initiated disciplinary proceedings against the DGO and entrusted the same to Hon'ble Upalokayukta to hold enquiry. As per the order issued against the DGO, the Hon'ble Upalokayukta issued a nomination order dated 25.6.2011 nominating ARE-3 to frame charges and to conduct enquiry against the DGO. Accordingly, charges were framed by the then ARE-3 against the DGO as under.

“Charge:

That you, Sri. K. Puttaswamy S/o late Kariappa (here in after referred to as Delinquent Government Official, in short DGO), while working Junior Engineer (Elec) BESCOM, Rural Sub-Dn., Chikkaballapura, Chikkaballapur District demanded and accepted a bribe of Rs. 5,000/- on 16/8/2008 from complainant Sri K.M. Narasimhamurthy S/o Maribhutappa Rangamajji House, T.G.Tank Road, Chikkaballapura for preparing the estimate of cost for low-sum for shifting the electric wire and pole from his residential site bearing no.7 situated at Srinivas Layout of Chikkaballapura Town that is for doing an official act, and thereby you failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of a Board Employee and thus you are guilty of misconduct under Rule 3 (1) of Karnataka Electricity Board Employees (Conduct) Regulations 1988.

**STATEMENT OF IMPUTATION OF MISCONDUCT:**

The complainant Sri K.M. Narasimhamurthy S/o Maribhutappa Rangamajji House, T.G.Tank Road, Chikkaballapura filed a complaint on 14/8/2008 before the Dy. SP. Karnataka Lokayukta, Chikkaballapura alleging that, the complainant owns and possesses a residential site bearing no.7 situated in Srinivasa Layout of Chikkaballapura Town and that he was constructing the house at the said residential layout and that the electric wires were running over his residential site and that he had filed an application on 28/3/2008 for shifting the electric pole and wires from that place and that in this connection he had met Sri K. Puttaswamy the Jr. Engineer, BESCOM, rural Sub-Dn. Chikkaballapura (here in after referred to as Delinquent



Government Servant, in short DGO) on many occasions and the DGO told him that the expenses of the shifting will have to be borne by the complainant and that the estimate of cost will have to be prepared and that the approximate cost of shifting would be Rs. 54,000/- and that when the complainant pleaded his inability to pay so much of money and requested him to reduce the cost of shifting the electric pole and wire, the DGO demanded Rs. 10,000/- bribe and he told the complainant that he would prepare the estimate of cost for Rs. 20,000/- to Rs. 25,000/- instead of Rs. 40,000/- to Rs. 50,000/- and that inspite of paying Rs.3,000/- the DGO did not prepare the estimate and did not cause to shift the said electric pole and wire till 14/8/2008 and that he was insisting for the payment of balance bribe amount of Rs. 7,000/- and that when the complainant told that he is not in a position to pay Rs. 7,000/- and after bargain the DGO agreed to do the needed work for Rs. 5,000/- bribe.

As the complainant was not willing to pay any more bribe amount to the DGO, he went to Dy. SP Karnataka Lokayukta Police station Chikkaballapur on 14/8/2008 and lodged a written complaint before him and on the basis of the same a case was registered in Chikkaballapur Lokayukta Police Station Cr. No. 9/2008 for offences punishable under sections 7, 13(1) (d) r/w section 13(2) of the P.C. Act,1988 and FIR was submitted to the concerned learned special judge.

After registering the case, investigating officer observed all the pre trap formalities and entrustment mahazar was conducted and you, the DGO was trapped on 16/8/2008 by the Investigating Officer after your demanding and accepting the bribe amount of Rs. 5,000/- from the complainant in the presence

of shadow witness and the said bribe amount which you had received from the complainant was seized from your possession under the seizure mahazar after following the required post trap formalities. During the investigation the I.O has recorded the statements of Panchas and other witnesses and further statement of the complainant. The I.O during the investigation has sent the seized articles to the chemical examiner and obtained and obtained the report from him and he has given the result as positive.

The materials collected by the I.O. during the investigation prima facie disclose that you, the DGO, demanded and accepted bribe of Rs. 5,000 /- from the complainant on 16/8/2008 for doing an official act i.e., for preparing the estimate of cost for low-sum for shifting the electric poles and wires from his residential site bearing no.7 situated at Srinivas Layout of Chikkaballapura Town. Thus you, the DGO, have failed to maintain absolute integrity and devotion to duty and this act on your part is unbecoming of a Government servant. Hence, you have committed an act which amounted to misconduct as stated under Rule 3 (1) Karnataka Electricity Board Employees (Conduct) Regulations 1988.

In this connection an observation note was sent to you, the DGO and you have submitted your reply which, after due consideration, was found not acceptable. Therefore, a recommendation was made to the Competent Authority under Section 12(3) of the Karnataka Lokayukta, Act 1984, to initiate Departmental Proceedings against you, the DGO. The Government after considering the recommendation made in the report, entrusted the matter to the Hon'ble Upalokayukta to

conduct departmental/disciplinary proceedings against you, the DGO and to submit report. Hence the charge.”

5. The Articles of Charges and Statement of Imputations are duly served on the DGO. DGO has appeared before this authority and First Oral Statement of the DGO was recorded. DGO has denied the charges framed against him. He has engaged the services of an advocate to appear on his behalf and to defend him, in the enquiry.
6. DGO has filed his written statement on 06.01.2012, denying the allegations made against him contending that, he never demanded or accepted any money by way of bribe from the complainant and he has been falsely implicated. He has challenged the very authority of the enquiry officer to frame AOC against him contending that, the enquiry initiated against him and referred to this institution is illegal and without authority of law. Except denying allegations made against him in the AOC, he has not taken up any specific defence contention, in his written statement.
7. During enquiry, 3 witnesses have been examined as PW1 to PW3 and 12 documents came to be marked as Ex-P1 to Ex-P12 on behalf of the disciplinary authority. After closure of the evidence on behalf of disciplinary authority, second oral statement of the DGO was recorded. Since, DGO desired to lead defence evidence, permission was granted to him accordingly. When the matter was posted for recording defence evidence by the DGO, the learned counsel for DGO filed memo stating that, DGO does not desire to adduce any defence evidence in support of his defence. Therefore, DGO has been questioned under Rule 11(18) of KCS (CCA) Rules with reference to the questionnaire prepared. DGO having denied the entire evidence

adduced on behalf of disciplinary authority, further taken up a contention that, the complainant himself thrust money in his shirt pocket though he never demanded any money from him, ~~and~~ during the trap proceedings, <sup>and</sup> taken up a further contention that, the Dy.SP asked him about the money and forced him to take out money from his shirt pocket and falsely implicated him. He has further taken up a contention that, the property/site belonged to the complainant does not come within the jurisdiction of BESCOM Rural Sub-Dn. but the persons inimical to him have falsely implicated him, with the help of the complainant.

8. Thereafter, the learned Presenting Officer has filed written arguments. The learned counsel for DGO has submitted his written arguments. Thereafter, this matter is taken up for consideration.

9. The points that would arise for my consideration are:

**Point No.1:** Whether the charge framed against the DGO is proved by the Disciplinary Authority?

**Point No.2:** . What order?

10. The above points are answered as under:

**Point No.1:** In the 'Affirmative'

**Point No.2:** As per Conclusion.

### REASONS

#### Point No.1:-

11. DGO was working as Junior Engineer, (Elec) BESCOM, Rural Sub Division, Chikkaballapura District, during the relevant period.

12. The complainant in his complaint has narrated in detail the circumstances under which he has filed the said complaint against

the DGO. According to him, he is having a site bearing no. 7 at Srinivasa Layout situated just behind stadium at Chikkaballapur. An electric pole is installed in the said site and high tension electric wire has been passing overhead above his site. Since he has taken up construction of a house in the said site, and in order to construct a house, the electric pole installed in his site is required to be shifted and even the alignment of the electric wire needs to be changed, hence, he filed an application to the BESCO, Rural Sub-Division on 28.3.2008 requesting for shifting of electric pole and change of alignment of electric wire. In this regard, he has approached the DGO on several occasions and requested him to consider his request in shifting the electric pole and changing the alignment of the wire. DGO told him that, the expenses towards shifting of electric pole and for changing the alignment of the electric wire, was to be borne by him and in that regard he has to prepare an estimate and the approximate expenses he has to incur would come to about Rs. 54000/- asking the complainant to be ready to remit that much amount to consider his request. The complainant pleaded his inability to pay that much amount. Then DGO asked him to pay Rs. 10,000/- for himself by way of bribe and he will help him while preparing the estimate and he will reduce the expenses to Rs. 20,000 or Rs. 25000/-. He/DGO having demanded part payment from the complainant received Rs. 3000/- from him to prepare the estimate but, the DGO has not prepared the estimate as promised by him. Hence, the complainant again approached the DGO and requested him to prepare the estimate at an earliest. At that time, the DGO insisted him to pay the balance of Rs. 7000/- and then only he would prepare the estimate. The complainant pleading his inability to pay Rs. 7000/- as demanded by the DGO and convinced him that, he would pay Rs. 5000/- and requested him to prepare the estimate at an earliest. The DGO has agreed for the said amount

asking him to pay that amount of Rs. 5000/- and then only he would prepare the estimate.

13. Since the complainant was not willing to pay any bribe to the DGO, he approached Dy.SP, Chikkaballapura on 12.8.2008 and informed the Dy.SP about the demand for bribe being made by the DGO. The Dy.SP gave him a voice recorder asking him to meet the DGO again and to record the conversation with him regarding the demand for bribe being made by him. Having taken the voice recorder with him, the complainant again approached the DGO and discussed with him about preparation of estimate and recorded the conversation with him, wherein, during the course of the said conversation, DGO has insisted him to pay Rs. 5000/- as agreed, in order to prepare the estimate. Having recorded the said conversation with the DGO in the voice recorder entrusted to him, the complainant has approached the Dy.SP, Karnataka Lokayukta, Chikkaballapura on 14.8.2008 and filed a written complaint as per Ex-P1 and produced the conversation he has recorded with the DGO, in the voice recorder entrusted to him.
14. On the basis of the complaint so filed by the complainant on 14.8.2008 the Dy.SP, Karnataka Lokayukta, Chikkaballapura has registered a case in Cr. No. 9/2008 under Sections 7,13(1)(d) R/w 13(2) of P.C Act, 1988 and took up investigation.
15. An entrustment proceedings was conducted in the Lokayukta Police Station, Chikkaballapura on 14.8.2008 in the presence of two panch witnesses viz., Sri K.R. Venkatesh Murthy, FDA, O/o Assistant Commissioner, Chikkaballapura and Sri K.N. Shivakumar, Village Accountant, working as Bhoomi Operator in Taluk office, Chikkaballapur and in the said proceedings, the bait money of Rs.

5000/- consisting of 10 currency notes of Rs. 500/- denomination each, given by the Complainant, were smeared with phenolphthalein powder making it as tainted money, and the said tainted notes were entrusted to the Complainant asking him to give that money to the DGO when he meet him and only in case if the DGO demands for bribe. Panch witness Sri Shivakumar was sent along with the complainant, as a shadow witness.

16. The complainant and the shadow witness were taken to the O/o DGO at about 3.45pm on the same day but, due to non-availability of the DGO in the office on that day, the proposed trap was postponed. Again on 16.8.2008 the panch witnesses were secured and tainted notes were again entrusted to the complainant under a mahazar Ex-P4 and the complainant and shadow witness were taken to the O/o BESCO, Rural Sub-Division, Chikkaballapura situated at Manchanabele road. When the complainant accompanied with the shadow witness approached the DGO in the said office and the complainant enquired him about the preparation of estimate, DGO enquired him about the money and the complainant having taken out the tainted notes of Rs.5000/- from his shirt pocket, gave it to the DGO. DGO having received that money with his right hand, counted the same by using his both hands and kept that money in his left side shirt pocket. Thereafter, the complainant came out of the office and gave pre-arranged signal to the Dy.SP.
17. On receiving the signal, the Dy.SP and his staff and another panch witness approached the complainant and along with him went inside the office of BESCO. The complainant showed the DGO to the Dy.SP telling him that, he is the concerned Junior Engineer, and he has received money from him.

18. The Dy.SP introduced himself to the DGO and explained to him about the registration of a case against him and asked him to cooperate in the investigation. DGO disclosed his name as Sri K. Puttaswamy, Junior Engineer, (Elec) BESCO, Rural Sub Division, Chikkaballapura District.
19. Thereafter, the hand wash of DGO was obtained, asking him to wash his both hand fingers separately in two separate bowls containing sodium carbonate solution. When the DGO washed his right hand fingers and left hand fingers separately in two separate bowls containing sodium carbonate solution, the colourless solution in both the bowls turned into pink colour. Those pink coloured solution of right hand wash and left hand wash of the DGO, were collected in two separate bottles and sealed the same.
20. Thereafter, the Dy.SP asked the DGO about the money he has received from the complainant. Since DGO disclosed the fact that, the tainted money he has received from the complainant, is available in his left side shirt pocket, the Dy.SP instructed panch witness Venkateshmurthy to search the left side shirt pocket of the DGO. The said panch witness-Venkateshmurthy having searched the left side shirt pocket of the DGO, took out the money from the said shirt pocket and produced the same before the Dy.SP. On verification of those notes with reference to its serial numbers, it was confirmed that, those were the notes entrusted to the complainant during the entrustment proceedings. Those notes were kept in a separate cover and sealed the same.
21. On providing an alternate shirt to the DGO, shirt worn by him was got removed and left side pocket portion of the said shirt, when dipped in sodium carbonate solution got prepared separately in a



- separate bowl and on such dipping of the pocket portion of the shirt of the DGO, the colourless solution in the said bowl turned into pink colour and the said solution was collected in a separate bottle and sealed and seized, along with the shirt of the DGO.
22. The Dy.SP asked the DGO to give his explanation in writing. DGO gave his explanation in writing as per Ex-P9 claiming that, though he refused to receive money from the complainant when money was offered to him by the complainant, the complainant himself forcibly thrust money in his shirt pocket. Both the complainant and shadow witness have denied the correctness of the version of the explanation given by the DGO, claiming it as false and incorrect.
23. The Dy.SP asked the DGO to produce the relevant documents viz., the application and other documents filed by the complainant. DGO produced the relevant file containing documents pertaining to the complainant and the application filed by the complainant dated 28.3.2008 is marked as per Ex-P7 and other documents in the file are marked as Ex-P8.
24. The voice recorder entrusted to the complainant was taken back from him and when played in the presence of panchas, the conversation though found recorded in it, the same was not clearly audible. A detailed mahazar was got prepared as per Ex-P5 incorporating all these details of trap proceedings. Photographs of these proceedings were also obtained as per Ex-P6 (1 to 6).
25. During enquiry, the complainant has been examined as PW1. But the complainant has not supported the case of the disciplinary authority and turned hostile. He in his evidence, though admitted filing of application to the BESCO office, Chikkaballapura Rural,

requesting for shifting of electric pole and change of alignment of electric wire passing over head on his land, according to him, one contractor promised him that, he will get the said work done and contractor took Rs. 3000/- from him telling him that, his work will be got done through the concerned officer of the BESCO. It is his contention that, he never met the DGO after giving the application to the said office. He further stated that, he met the DGO and requested him to prepare the estimate and DGO promised him that, he would prepare the estimate. The contractor asked him to give Rs. 5000/- to the DGO and the contractor took him to Lokayukta office and made him to file a complaint as per Ex-P1. He pleaded his ignorance about conducting of any entrustment proceedings in the Police Station but, admitted that, due to non availability of the DGO in the office on 14.8.2008, he again went to BESCO office on 16.8.2008. He further admitted that, he went inside the said office and he was told to give money to the DGO. According to him, DGO did not demand money from him and told him to pay the amount as per the estimate prepared by him. Further he stated that, he offered Rs. 5000/- to the DGO requesting him to attend his work, but DGO did not receive that money from him and hence, he/complainant claimed that, he kept the money in his/DGO's shirt pocket. In his chief examination itself, he has taken up a contention that, though the DGO has not demanded any bribe from him but, he paid the amount of Rs. 5000/- to the DGO to do his work. He has further stated about obtaining of hand wash of DGO and even the shirt of DGO was got removed and pocket portion of the said shirt was washed in his presence and a mahazar was prepared as per Ex-P5.

26. Since the complainant gave vague evidence regarding the filing of the complaint, conducting of entrustment proceedings and the trap of the DGO and came up with his own explanation regarding

demand and acceptance of tainted notes by way of bribe by the DGO, he has been treated as a hostile witness and he has been thoroughly cross examined by the learned Presenting Officer. During his cross examination, he claimed that, he has written the complaint at the instance of the police but admitted that, the complaint is in his hand writing. Various suggestions put to him regarding the circumstances under which he has filed the complaint against the DGO, have been answered by him positively admitting those suggestions put to him during his cross examination. But he reiterated his contention that, he kept the money in the shirt pocket of the DGO though the DGO showed his reluctance to receive money from him. The suggestions put to him regarding the demand and acceptance of Rs. 5000/- by the DGO from him have been denied by him.

27. Even the learned counsel for DGO cross examined him at length and put various suggestions to him and obtained favourable answers to those suggestions during his cross examination. The suggestion put to him by the learned counsel for DGO that, as per the instructions of the contractor he kept the amount of Rs. 5000/- in the shirt pocket of the DGO and thereafter, gave signal to Dy.SP, has been answered by him, positively by admitting the said suggestion.

28. Shadow witness Sri K.N. Shivakumar has been examined as PW2. He narrated in detail about conducting of entrustment proceedings in the Police Station and entrustment of tainted notes of Rs. 5000/- to the complainant in the said proceedings. He has further stated that, Dy.SP took him along with the complainant on 14.8.2008 to the office of DGO, but due to non-availability of the DGO in the office, no trap proceedings was conducted on that day and it was postponed to 16.8.2008. He further stated that, as per the direction

of the Dy.SP he along with another panch witness again went to Lokayukta Police Station and on re-entrusting the tainted notes to the complainant, they were taken to the office of the BESCO and Dy.SP sent him and the complainant, asking them to go and meet the DGO in the said office. He has further stated that, when the complainant met the DGO in the office who was found sitting on his chair, and met the DGO and spoke with him. PW2 has claimed that, he was standing near the door of the said office and hence he could not hear the conversation going on between the complainant and the DGO inside the hall. According to him, the complainant on conversing with the DGO, came out of the office and gave pre-arranged signal.

29. He further narrated the details of the trap proceedings conducted on the DGO by the Dy.SP, obtaining of hand wash of both the hands of DGO which gave positive result and recovery of tainted notes from the shirt pocket of DGO and subjecting the shirt pocket of the DGO to phenolphthalein test which gave positive result, giving of explanation by the DGO as per Ex-P9, and seizure of documents pertaining to the complainant as per Ex-P7 and P8, preparation of mahazar as per Ex-P5 and other details of the trap proceedings conducted by the Dy.SP.
30. Since, PW2 failed to support the case of the disciplinary authority with regard to certain material particulars of the trap proceedings and since claimed that, he never went inside the office along with the complainant and never heard the conversation took place between them and never seen the DGO receiving money from the complainant on demanding for bribe from him, he has been treated as partly hostile witness and learned Presenting Officer was permitted to cross examine him only to that extent regarding the

manner in which the DGO received tainted notes from the complainant on demanding for bribe. Various suggestions put to him with regard to demand and receiving of tainted notes from the complainant by way of bribe, have been denied by him during his cross examination, thereby even during his cross examination, PW2 has not stated anything about these aspects and denied the suggestions put to him that, the DGO having demanded bribe from the complainant received the tainted notes from him and kept that money in his shirt pocket.

31. The learned counsel for DGO has thoroughly cross examined him wherein, he has obtained certain favourable admissions during his cross examination wherein, PW2 has admitted that, the complainant after speaking with the DGO came out of the office and gave signal to the Dy.SP and the Dy.SP along with another panch witness and his staff went inside the O/o DGO and he/PW2/shadow witness along with them, went inside the office where, the Dy.SP conducted tap proceedings on the DGO. A specific suggestion was put to him that, no documents was seized from the O/o DGO and from his possession but the documents were seized from BESCO office of BB road. PW2 pleaded his ignorance as to where and from whom the documents were seized.
32. PW3/IO, in his evidence has stated in detail regarding the complainant approaching him on 12.8.2008 and told him about the demand for bribe being made by the DGO to prepare estimate for shifting the electric pole and alignment of electric wire and claimed that, he gave a voice recorder to the complainant, asking him to approach the DGO again and record the conversation with him and accordingly, complainant having taken the voice recorder with him, again came to Police Station on 14.8.2008 and produced the voice

recorder claiming that, he has recorded the conversation with the DGO and also filed a complaint as per Ex-P1 and on the basis of the said complaint, registered a case and took up investigation. He narrated in detail regarding conducting of entrustment proceedings and entrustment of tainted notes of Rs.5,000/- to the complainant in the said proceedings. He has further stated that, the voice recorder produced by the complainant was played in the presence of panch witnesses and the conversation recorded in it was heard by them and said conversation was transferred into CDs, for taking further proceedings.

33. He further gave details regarding the trap proceedings he has conducted on 16.8.2008 in the O/o DGO stating that, he sent both the complainant and the shadow witness, inside the O/o DGO and on receiving signal from the complainant, he claimed that, he and his staff went inside the O/o DGO and complainant showed the DGO claiming that, he has received money from him. He gave evidence regarding obtaining of right hand and left hand finger wash of the DGO which gave positive result, regarding presence of phenolphthalein, recovery of tainted notes from the left side shirt pocket of the DGO with the help of panch witness/ Venkateshmurthy, giving of explanation by DGO as per Ex-P9, seizure of the application of the complainant and the documents pertaining to the complainant since DGO has produced the same as per Ex-P7 and P8 during the said proceedings and preparation of trap mahazar as per Ex-P5 . PW3 has further deposed about getting prepared sketch of scene of occurrence from PWD Engineer as per Ex-P10 and sending the seized articles to FSL for chemical examination and received report of chemical examiner as per Ex-P11 and other details of the investigation he has conducted.

34. Though the learned counsel for DGO has cross examined this witness at length, nothing was elicited during his cross examination to disbelieve his evidence. While cross examining him/PW-3 a suggestion was put to him that, after the DGO took out money from his shirt pocket and produced before him, hand wash of his both hands was obtained, for which PW3 gave positive reply admitting this suggestion. Though admission in that manner has been obtained from him, by putting a stray suggestion to him, the fact that, the tainted notes were got removed from the shirt pocket of the DGO with the help of panch witness Venkateshmurthy as deposed by him in his chief examination and as admitted by PW2/shadow witness during his evidence, has not been disputed or denied on behalf of the DGO. Therefore, in view of the fact that, the tainted notes were got removed from the left side shirt pocket of the DGO with the help of panch witness Venakteshmurthy, subsequently after obtaining the hand wash of the DGO since, not disputed or denied on behalf of the DGO, this stray admission given by PW3 will have no consequence since DGO never claimed that, he took out the money from his shirt pocket and produced the same before the Dy.SP.

35. Though DGO has taken up a specific contention that, the complainant has forcibly thrust money in his shirt pocket, he never bothered to adduce any defence evidence by examining himself to substantiate his defence contention. While examining the DGO under Rule 11(18) of KCS(CCA) Rules, he has reiterated the same contention by submitting as follows:

“ ನರಸಿಂಹಮೂರ್ತಿಒವರು ಆವರೇ ದುಡ್ಡನ್ನು ನನ್ನ ಪರ್ಟನ ಜೇಬಿನಲ್ಲಿ ಇಟ್ಟರು.  
ಪೊಲೀಸ್ ಡಿವೈಎಸ್.ಪಿ ರವರು ಎಲ್ಲಿದೇ ದುಡ್ಡು ಎಂದು ಕೇಳಿ ನನ್ನ ಕೈಯಿಂದಲೇ ನನ್ನ

ಷರ್ಪು ಜೇಬಿನಿಂದ ಹಣವನ್ನು ತೆಗೆಸಿದರು. ಕಂಪ್ಲೇಂಟ್‌ನ (ದೂರುದಾರನ) ಸೈಟು ಗ್ರಾಮೀಣ ಉಪಪಂಚಾಯತ್ ಬರುವುದಿಲ್ಲ ಯಾರೂ ಬೇಕಂತಲೇ ಈ ರೀತಿ ಮಾಡಿದ್ದಾರೆ.”

36. Despite taking such a defence contention, DGO has intentionally omitted to examine himself, probably in order to avoid answering the questions that may be put to him during his cross examination and thereby intentionally refrained himself from entering into the witness box and to give evidence reiterating his defence contention. The omission on the part of the DGO in examining himself in this enquiry and his deliberate act of avoiding himself from cross examination by the learned Presenting Officer, are the factors which persuaded me to disbelieve the defence evidence taken by the DGO in this enquiry.

37. The fact of giving of explanation by the DGO as per Ex-P9 during the trap proceedings is not disputed or denied on behalf of DGO. Even while filing his reply to the observation note and in his written statement, he has not denied this aspect of giving his explanation in writing as per Ex-P9 during the trap proceedings. Even while cross examining PW3, the giving of explanation by DGO as per Ex-P9 is not disputed. DGO while giving his explanation in writing as per Ex-P9 taken up a contention that, the complainant himself requested him to prepare the estimate at an earliest and offered money to him and though he refused to receive that money, the complainant kept the money in his shirt pocket, though he never demanded for money from him. The written explanation given by DGO as per Ex-P9 reads as follows:

“ತಮ್ಮಲ್ಲಿ ತಿಳಿಸುವುದೇನೆಂದರೆ ಸ್ವಾಮಿ, ನನಗೆ ದಿನಾಂಕ 16.8.2008 ರಂದು ಮೊಬೈಲ್ ಮುಖಾಂತರ, ಶ್ರೀ ಕೆ.ಎಂ. ನರಸಿಂಹಮೂರ್ತಿ ರವರು ಮಾತನಾಡಿ || ಕೆ.ಪಿ.ಮಾರ್ಗ



ಸ್ಥಳಾಂತರಿಸಲು ಅರ್ಜಿ ಸಲ್ಲಿಸುತ್ತೇನೆಂದು ಹೇಳಿದರು. ಅದಕ್ಕೆ ಅವರಿಗೆ ನಾನು ಗ್ರಾಮಾಂತರ ಆಫೀಸಿನಲ್ಲಿ ಇದ್ದೇನೆಂದು ತಿಳಿಸಿದೆನು. ಅದಕ್ಕೆ ಅವರು ನಾನೇ ಅಲ್ಲಿಗೆ ಬರುತ್ತೇನೆಂದು ಬಂದರು. ಹಾಗೆ ಅರ್ಜಿ ಕೊಟ್ಟು ನನಗೆ ಎಸ್ಪಿಮೇಟ್ ಮಾಡಿ ಬೇಗ ಕೆಲಸ ಮಾಡಿಸಿಕೊಡಿ ಎಂದು ತಿಳಿಸಿದರು. ಆಯಿತು ಎಂದು ಹೇಳಿದೆ. ಅದಕ್ಕೆ ಅವರು ಹಣ ಕೊಡಲು ಬಂದರು. ಆದರೂ ಬೇಡವೆಂದು ಹೇಳಿದೆನು. ಆದರೆ ಜೋಬಿನಲ್ಲಿ ಇಟ್ಟರು. ನಾನು ಅಂತು ಅವರಿಗೆ ಹಣವನ್ನು ಕೇಳಿಲ್ಲ. ಇದು ಬೇಕಾಗಿ ಈ ಕೆಲಸ ಮಾಡಿದ್ದಾರೆ ಎಂದು ಸ್ವಾಮಿ ತಮ್ಮಲ್ಲಿ ಕೈ ಮುಗಿದು ಕೇಳಿಕೊಳ್ಳುತ್ತಾನೆ. ಸ್ವಾಮಿ. ಇದು ಸತ್ಯಕ್ಕೆ ದೂರವಾದದ್ದು ಸ್ವಾಮಿ ನಾನು ಹಣವನ್ನು ಅವರ ಹತ್ತಿರ. ನಾನು ಏನಕ್ಕೂ ಸಹ ಕೇಳಿರುವುದಿಲ್ಲ ಸ್ವಾಮಿ.”

38. Considering the nature of the defence taken by the DGO while filing his written statement and while cross examining PW1 to PW3, since he has taken up a specific defence contention that, the tainted notes were forcibly thrust in his shirt pocket, the facts that, the hand wash of both the hands of the DGO obtained during the trap proceedings gave positive result regarding presence of phenolphthalein, and recovery of tainted notes from the left side shirt pocket of DGO, are not seriously disputed or denied on behalf of the DGO and hence there is no need to consider these factors in detail. While filing his reply to the observation note, he has not taken up such a contention and even in his written statement no such defence contention was taken by him. But PW1/complainant while giving his evidence in his chief examination has come up with such a contention that, he kept the money in the shirt pocket of the DGO. The complainant since turned hostile and supported the case of the disciplinary authority, and stated in his chief examination itself that, he kept the money in the shirt pocket of the DGO, these are the factors which made me to conclude that, the complainant was made to give evidence in such a manner, taking up such a contention that, he himself kept the money in the shirt pocket of the DGO. But DGO has not taken up any such contention in his written

statement and in his reply to the observation note. Therefore, the possibility of the complainant being won over by the DGO and made him to give evidence in such a manner taking up such a contention in his examination in chief itself, cannot be ruled out. But considering the genesis of this case, the complainant, prior to filing of complaint, recorded the conversation with the DGO in the voice recorder entrusted to him and thereafter, filed a complaint making allegations against the DGO regarding demand for bribe of Rs. 5000/- from him to attend the work of the complainant. Considering the fact that, Ex-P7 and P8 were seized during the trap proceedings from the O/o DGO since DGO himself produced those documents as per the evidence of PW3, the fact of pendency of the work of the complainant in the O/o DGO has been established. Though the application as per Ex-P7 was filed by the complainant on 28.3.2008 itself, by producing all the relevant documents and the said application was received in the O/o DGO on 28.3.2008 itself, no action was found to have been taken on the said application till August 2008. DGO has not come out with any explanation as to the reason why the application received in the month of March 2008, was not attended in his office and remained pending in his office till August 2008. He has not taken up any defence contention that, an estimation has been prepared asking the complainant to remit the amount towards shifting of electric pole and wire by changing its alignment. When the averments made in the complaint are considered with reference to pending of application of the complainant in the O/o DGO, the averments made in the complaint can be believed wherein, allegation has been made against the DGO that, he/complainant told him that, the approximate estimate for shifting would come to Rs. 54,000/- and he/DGO while preparing the estimate would see that, estimated amount for shifting will be reduced to Rs.20,000/- to Rs. 25,000/- provided he/complainant

pays him Rs. 10,000/- as bribe and received Rs. 3000/- as part payment, on that day insisting the complainant to pay the balance of Rs. 7000/- in order to prepare the estimate, and at the request of the complainant he reduced his demand agreeing to receive Rs. 5000/- from the complainant, can be believed. The fact that, no estimate was prepared by the DGO till August 2008 though the application was received in the office during March 2008 is another factor which persuaded me to believe the complaint averments.

39. So far as, the recovery of tainted notes from the shirt pocket of DGO is concerned, except taking up such a contention in his written explanation, that the money was forcibly thrust in his shirt pocket by the complainant, he never bothered to take up such a contention in his reply to observation note and in his written statement. Even during enquiry, he did not elaborate his defence contention explaining the reason as to why the complainant thrust money in his shirt pocket and the reason for the complainant to falsely implicate him in this trap case. Existence of any animosity between him and the complainant has not been pleaded and proved during the course of this enquiry. In the absence of any explanation offered by the DGO, his defence contention that, the complainant has kept the money voluntarily in his shirt pocket without asking for any bribe from him, cannot be believed in view of the failure on the part of the DGO to substantiate that contention by adducing convincing evidence in support of his such contention.

40. The Hon'ble Supreme Court in a decision reported in AIR 1968 Page 1292 (Sri S.N. Bose Vs. State of Bihar) have clarified the legal position as to the nature of evidence, an Accused has to produce to prove the contention taken by him by way of his defence and the relevant portion of the observation reads as follows:

"A fact is said to be proved when after considering the matters before it, the Court either believes it to exist or considers its existence was so probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it exists. The proof given by the accused must satisfy the aforementioned conditions. If it does not satisfy those conditions then he cannot be said to, have proved the contrary. In Dhanvantrai Balwantrai v. State of Maharashtra(<sup>1</sup>) this Court considered the nature of the proof required to be given by' the accused under s. 4 (I). Wherein this, Court held that the burden resting on the accused person in such a case would not be as light as that placed on him under s. 114 of the Evidence Act and the same cannot be held to be discharged merely by reason of the fact that the explanation offered by him is reasonable and probable. It must further be shown that the explanation is a true one. The words 'unless the contrary is proved' which occur in that provision make it clear that the presumption has to be rebutted by proof and not by a bare explanation which is merely plausible."

41. Since, DGO has failed to take up such a contention by adducing his defence evidence by examining himself and though such a contention was taken by him while cross examining PWs 1 to 3, he did not bother to adduce any evidence in support of such defence contention taken by him, I decline to believe such a defence contention taken by him that, tainted notes were forcibly thrust in his shirt pocket. Further, he failed to explain as to how his both hands came in contact with the tainted notes and circumstances under which the hand wash of his both hands obtained during trap proceedings, gave positive result regarding presence of phenolphthalein. The omission on the part of the DGO in entering into the witness box and examining himself as defence witness in support of his defence probably to avoid answering questions that may be put to him during his cross examination is also another factor which renders the defence taken by the DGO unbelievable.

42. The learned counsel for the DGO while submitting his written arguments has produced the copy of the judgment of acquittal passed in favour of the DGO and has vehemently argued that, since the DGO has been acquitted by the Principal Sessions Judge and Special Court, Chikkaballapura vide judgment dated 1.4.2016 in PCA CC No. 7/2010, the charges against the DGO has to be held not proved and the DGO has to be absolved from the charges leveled against him. In support of his arguments, he relied upon the decision of the Hon'ble Supreme Court in G.M. Tank case, captain M. Paul Antony's case which is subsequently relied upon in S. Bhaskar Reddy's Case The Hon'ble Supreme Court in the decisions cited above, while setting aside the order of dismissal passed against the appellant, made an observation that, if the official has been honorably acquitted in the criminal trial, the disciplinary authority shall take note of that aspect and if the criminal case and departmental proceedings are based on similar facts and evidence and if the trial court acquitted the Government official honorably, then the disciplinary authority considering the grounds on which the trial court acquitted the Government official and on that basis, take a decision as to whether the report of the enquiry officer in a departmental proceedings can be accepted or not and on that basis, can decide whether the charges against the Government official stands proved or not.

43. In pursuance of the Government order issued entrusting the proceedings to Hon'ble Upalokayukta under Section 14-A of KCS(CCA) Rules, a nomination order was issued by the Hon'ble Upalokayukta directing ARE-3 to frame charges and to hold enquiry and to submit a report as to whether the charges framed against the DGO is proved or not. Hence, the enquiry officer has to frame charge

and to hold an enquiry and to prepare a report as to whether the evidence adduced on behalf of the disciplinary authority are sufficient to hold that, the charges against the DGO has been established or not. The enquiry officer has to independently consider the evidence made available on behalf of the disciplinary authority during the enquiry, without considering the judgment of the criminal court since the Hon'ble Supreme Court in a decision reported in 2012(1) SC 442 (Divisional Controller, KSRTC Vs. M.G. Vittal Rao) observed as follows:

“ Thus there can be no doubt regarding the settled legal proposition that the standard of proof in both the proceedings is quite different and the termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in a criminal case cannot be the basis of taking away the effect of departmental proceedings nor can such an action of the department be termed as double jeopardy. The judgment of this court in Captain M. Paul Antony does not lay down the law of Universal application. Facts, charge and nature of evidence etc., involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry.”

44. Even in the decision rendered by the Hon'ble Supreme Court cited on behalf of the DGO in S. Bhaskar Reddy case, the Principle laid down in Paul Anthony case which was based on the judgment in G.M. Tank's case has been relied upon. But, in the decision in M.G. Vittal Rao's case, the Hon'ble Supreme Court made it clear that, Paul Anthony's case does not lay down the law of universal application.
45. Hence, it is for the Disciplinary Authority to consider such a contention if raised by the DGO, while submitting his explanation to

the second show cause notice that may be issued to him, by the disciplinary authority.

46. In view of my discussions made above, I am of the considered opinion that, the disciplinary authority was able to establish the allegations against the DGO and hence I hold that, charge against the DGO is established. Accordingly, I answer point no.1 in the Affirmative.

**Point No.2**

47. Having regard to the discussion made above, and in view of my findings on point no.1 as above, my conclusion is as follows:

**CONCLUSION**

- i) The Disciplinary Authority has proved the charge as framed against the DGO Sri K. Puttaswamy, the then Junior Engineer, (Elec) BESCO, Rural Sub Division, Chikkaballapura District.
- ii) As per the first oral statement, the date of birth of the DGO is 10.10.1950 and he has already retired from service on 31.10.2010.



(S. Renuka Prasad)

Additional Registrar of Enquiries-3  
Karnataka Lokayukta, Bengaluru.


**ANNEXURES****I. Witnesses examined on behalf of the Disciplinary Authority:**

|             |                                                     |
|-------------|-----------------------------------------------------|
| <b>PW-1</b> | Sri K.M. Narasimhamurthy (complainant) (original)   |
| <b>PW-2</b> | Sri K.N. Shivakumr (shadow witness) (original)      |
| <b>PW-3</b> | Sri M.C. Budihal (Investigation officer) (original) |

**II. Witnesses examined on behalf of the DGO: Nil****III Documents marked on behalf of D.A.**

|                |                                                  |
|----------------|--------------------------------------------------|
| <b>Ex.P-1</b>  | Certified copy of the complaint                  |
| <b>Ex.P-2</b>  | Certified copy of entrustment mahazar            |
| <b>Ex.P-3</b>  | Certified copy of mahazar dt. 14.8.08            |
| <b>Ex.P-4</b>  | Certified copy of re-entrustment mahazar         |
| <b>Ex.P-5</b>  | Certified copy of trap mahazar                   |
| <b>Ex.P-6</b>  | Photographs (Xerox)                              |
| <b>Ex.P-7</b>  | Certified copy of application of the complainant |
| <b>Ex.P-8</b>  | Certified copy of records seized by IO           |
| <b>Ex.P-9</b>  | Certified copy of written explanation of DGO     |
| <b>Ex.P-10</b> | Certified copy of sketch of scene of occurrence  |
| <b>Ex.P-11</b> | Certified copy of FSL                            |
| <b>Ex.P-12</b> | Certified copy of extract of attendance register |

**IV. Documents marked on behalf of DGO: Nil****V. Material Objects marked on behalf of the D.A: Nil**

  
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