



KARNATAKA LOKAYUKTA, BENGALURU

No:LOK/INQ/14-A/131/2011/ARE-3

M.S.Building,
Dr.B.R.Ambedkar Veedhi,
Bengaluru. Dated: 18/12/2017

RECOMMENDATION

Sub:Departmental Enquiry against Sriyuths:
1)M.Narayanaswamy, the then district
Manager, Karnataka Food & Civil Supplies
Corporation Ltd., Mandya (now retired) and
2) B.S.Ramesh, Assistant Manager,
Karnataka Food & Civil Supplies Corporation
Ltd., Mandya (now retired)-reg.

Ref: 1) Government Order
No.ka.a.na.sa.nini/Adalitha/Sibbandi/249
/86-87/2011-12 dtd 27/6/2011.
2) Nomination order by Hon'ble
Upalokayukta dtd 7/7/2011

The Government by order dtd 27/6/2011 initiated the disciplinary proceedings against the Delinquent Government Servants Sriyuths: 1)M.Narayanaswamy, the then district Manager, Karnataka Food & Civil Supplies Corporation Ltd., Mandya (now retired) and 2) B.S.Ramesh, Assistant Manager, Karnataka Food & Civil Supplies Corporation Ltd., Mandya (now retired) (hereinafter referred to as 'DGO-1' and 'DGO-2' in short) and entrusted the disciplinary enquiry to this institution. Accordingly, by nomination order dtd 7/7/2011,

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nominated the Additional Registrar Enquiries-3 to conduct departmental enquiry against the DGO-1 and DGO-2 for the alleged charge of misconduct alleged to have been committed by them.

The said enquiry officer, after completing the departmental enquiry, submitted his report dtd 16/12/2017, inter-alia holding that, the disciplinary authority has satisfactorily proved the charge of misconduct as alleged against the DGO-1 and DGO-2.

The charges alleged against the DGO-1 and DGO-2 was that, while DGO-1 was working as District Manager and DGO-2 was working as Assistant Manager of Karnataka Food & Civil Supplies Corporation Limited, Mandya, DGO-1 demanded and accepted bribe amount of Rs.10,000/- on 4/2/2008 through DGO-2 from one Sri A.R.Manjuanth, Proprietor, Nandi Transport, No.440, E/2, Industrial Area, Hebbal, Mysore, (hereinafter referred to as 'complainant') on the same day at the same place for passing the bill of the complainant and for issuing a cheque for the bill amount of the month of January 2008 and thereby, the DGO-1 and DGO-2 have failed to maintain absolute integrity and devotion to the duty, the act of which is unbecoming of Government servants and thereby have committed misconduct under Rule 3(1)(i) to (iii) of KCS (Conduct) Rules, 1966".

The disciplinary authority, to prove the charge of misconduct against the DGOs, has examined complainant as PW2, shadow witness as PW1 and IO as PW3 and got marked Ex.P1 to P14 in their evidence. Whereas, the DGO-1 got himself examined as DW2 and DGO-2 got himself examined as DW1 and got marked Ex.D1 to Ex.D4 in their evidence.

S/eli

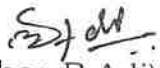
The enquiry officer, after considering the entire evidence of the disciplinary authority as well as DGO-1 and DGO-2 has found that, the evidence led by the disciplinary authority probabalises and prove the charge of misconduct alleged against DGO-1 and DGO-2. Considering the evidence of PW1 and PW2, it is clinchingly clear that DGOs demand and acceptance of bribe amount to do official act.

Considering the evidence in detail, the enquiry officer has submitted his report.

Hence, having regard to the findings of the enquiry officer and the nature and gravity of misconduct alleged against the DGOs, **it is hereby recommended to the Government that the DGO-1 M.Narayanaswamy, the then district Manager, Karnataka Food & Civil Supplies Corporation Ltd., Mandya and DGO-2 B.S.Ramesh, Assistant Manager, Karnataka Food & Civil Supplies Corporation Ltd., Mandya both stated to have been retired from government service be punished with penalty of denial of 25% of the pensionary benefit perpetually in exercise of power under Rule 214(1)(a) of the Karnataka Civil Services Rules.**

Action taken in the matter is to be intimated to this Authority.

Connected records are enclosed herewith.


(Justice Subhas B Adi) 18/12/17 -
Upalokayukta
Karnataka State, Bengaluru

KARNATAKA LOKAYUKTA

No. LOK/INQ/14-A/131/2011/ARE-3

M.S.Building,
Dr. B.R.Ambedkar Veedhi,
Bengaluru - 560001.
Date: 16.12.2017

Enquiry report

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

Sub:

Departmental Enquiry against:

1. Sri M. Narayanaswamy, the then District Manager, Karnataka Food and Civil Supplies Corporation Ltd.,Mandya (now retired)
2. Sri B.S. Ramesh, Assistant Manager, Karnataka Food and Civil Supplies Corporation Ltd., Mandya (now retired) - reg.

Ref:

1. Report under Section 12(3) of the Karnataka Lokayukta Act, 1984, in No. Compt/Uplok/Mys/439/2010/DRE-4 dated 23.5.2011
2. Order No. ಕಆನಾಸನಿನಿ/ಆಡಳಿತ/ಸಿಬ್ಬಂದಿ/249/86-87/2011-12 ದಿ: 27.6.2011
3. Nomination Order No.LOK/INQ/14-A/131/2011 dated 07.07.2011 of Hon'ble Upalokayukta, Karnataka State, Bengaluru.

1. The complainant Sri A.R. Manjunath, Proprietor, Nandi Transports, R/o Mysore (hereinafter referred to as the 'complainant') has filed a complaint against Sri M. Narayanaswamy, District Manager, Karnataka Food and Civil Supplies Corporation Ltd., Mandya (hereinafter referred to as DGO-1 for short) making allegations against him that, he/DGO-1 is demanding Rs. 10,000/- by way of bribe from him in order to pass his bill for disbursement of the

amount towards transportation charges claimed by him under the said bill, for having transported kerosene oil from warehouse KFCS, Mandya to the entire District of Mandya.

2. On registering a case on the basis of the said complaint, a trap was held on 4.2.2008 in the office of the District Manager, KFCS, Mandya and DGO-1 was caught along with Sri B.S. Ramesh, Assistant Manager, Manager, Karnataka Food and Civil Supplies Corporation Ltd., Mandya (hereinafter referred to as DGO no.2) and the tainted amount was recovered from the pant pocket of DGO no. 2. Since it was disclosed that, DGO-1 having demanded bribe of Rs. 10,000/- from the complainant in order to pass the bill, and received the said amount of bribe from the complainant through his Office Manager/DGO-2 who received the tainted money from the complainant as per the direction of DGO-1 and since the tainted money was recovered from the possession of DGO-2 the Police Inspector Lokayukta Police Station, Mandya, having conducted investigation, charge sheeted both DGO no.1 and 2.
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 both the DGOs 1 and 2, providing them an opportunity to show-cause as to why recommendation should not be made to the Competent Authority for initiating departmental enquiry against them. The DGO no.1 and 2 have submitted their reply denying the allegations made against them and taken up a contention that, they are innocent and they have been falsely implicated. Since the

explanation offered by the DGOs 1 and 2 were not satisfactory, a recommendation under Section 12(3) of the Karnataka Lokayukta Act was forwarded to the Competent Authority recommending to initiate disciplinary proceedings against them 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., the Managing Director, Karnataka Food and Civil Supplies Corporation Limited, Bengaluru vide Order no. ಕಆನಾಸನಿನಿ/ಆಡಳಿತ/ಸಿಬ್ಬಂದಿ/249/86-87/2011-12 initiated departmental proceedings against the DGOs 1 and 2 and entrusted the same to Hon'ble Upalokayukta to hold enquiry. The Hon'ble Upalokayukta issued a nomination order dated 07.07.2011 nominating ARE-3 to frame charges and to conduct enquiry against the DGOs 1 and 2. Accordingly, charges were framed by the then ARE-3 against the DGOs 1 and 2 as under.

Charge:

That you, Sri. M. Narayanaswamy (here in after referred to as Delinquent Government Official-1, in short DGO-1), while working as the District Manager, Karnataka Food and Civil Supplies Corporation Limited at Mandya demanded and accepted a bribe of Rs. 10,000/- through B.S. Ramesh, Assistant Manager, Karnataka Food and Civil Supplies Corporation Limited, Mandya (here in after referred to as Delinquent Government Official-2, in short DGO-2) on 4.2.2008 and you DGO-2 received a bribe of Rs. 10,000/- from complainant Sri A.R. Manjunath, Proprietor-Nandi Transport, No. 440,E/2, Industrial Area, Hebbal Mysore as per the direction of the DGO-1 on the same day at the same place for passing the bill of the complainant and for issuing a cheque for the bill amount of the month of January 2008 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 Government Servant and thus you are guilty of misconduct under Rule 3(1)(i) to (iii) of KCS (Conduct)Rules 1966.

STATEMENT OF IMPUTATION OF MISCONDUCT:

The complainant Sri A.R. Manjunath, Proprietor-Nandi Transport, No. 440,E/2, Industrial Area, Hebbal Mysore filed a complaint on 4.2.2008 before the Police Inspector, Karnataka Lokayukta, Mandya alleging that, he has obtained contract of transporting Kerosene in the Mandya District and he used to supply kerosene in the Mandya District and he used to submit bills and Sri M. Narayanaswamy who was working as District Manager, Karnataka Food and Civil Supplies Corporation Limited at Mandya (here in after referred to as Delinquent Government Servant-1, in short DGO-1) was delaying the passing of bills and issuing of cheques and was demanding Rs. 1,000/- bribe for every months bill and that on 4.2.2008 he had given the bill for the month of January 2008 for having supplied the kerosene to DGO-1 through tappal and DGO-1 demanded a bribe of Rs. 10,000/- for passing the bill and issuing the cheque for the month of January 2008

As the complainant was not willing to pay any bribe to the DGO, he went to Police Inspector, Karnataka Lokayukta, Mandya on 4.2.2008 and lodged a complaint. On the basis of the same a case was registered in Mandya Lokayukta Police Station Cr. No. 2/2008 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-1 and Sri B.S. Ramesh, who was working as Assistant Manager, Karnataka Food and Civil Supplies Corporation Limited, Mandya (here in after referred to as Delinquent Government Official-2, in short DGO-2) was trapped on 4.2.2008 by the Investigating Officer after DGO-1 demanding and directing DGO-2 to accept the bribe amount of Rs. 10,000/- and after DGO-2 receiving and accepting the bribe amount of Rs. 10,000/- as per the direction of DGO-1 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 IO has recorded the statements of panchas and other witnesses and further statement of the complainant. The IO during the investigation has sent the seized articles to the

chemical examiner 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-1, demanded and DGOs no.1 and 2 accepted the bribe of Rs.10,000/- from the complainant on 4.2.2008 for doing an official act i.e., for passing the bill of the complainant and for issuing a cheque for the bill amount of the month of January 2008. Thus you, the DGOs 1 and 2, 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) (i) to (iii) of KCS (Conduct) Rules 1966.

In this connection an observation note was sent to both of you, and you both 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 both, the DGOs 1 and 2. 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 both, the DGOs 1 and 2 and to submit report. Hence the charge."

4. The Articles of Charges and Statement of Imputation are duly served on the DGOs 1 and 2. They have appeared in response to the notice issued to them and First Oral Statement of the DGOs 1 and 2 was recorded. They have denied the charges framed against them. They have engaged the services of an advocate, to appear on their behalf and to defend them in the enquiry.
5. The DGOs 1 and 2 have filed their written statement on 24.5.2012 denying the allegations made against them, taking up a contention that, they are innocent and they have been falsely implicated. DGO no.1 has taken up a further contention in his written statement that, he never demanded any bribe from the complainant. It is his

contention that, the complainant having presented the bill on 4.2.2008 filed the complaint to Lokayukta police on the same day, without allowing time to process the bill and hence the complaint was filed against him with a malafide intention to harass him. He has taken up a further contention that, the enquiry initiated against him is not at all maintainable under Rule 214(2)(b) KCSR since the articles of charges dated 3.2.2012 was served on him on 4.2.2012 i.e., after more than 4 years from the date of incident of the trap on 4.2.2008. He has taken up a further contention that, he being the employee of KFCSC, the provisions of KCS(CCA) Rules are not applicable to him. DGO-2 has taken up a contention that, he never demanded any bribe from the complainant as he was not the concerned person empowered to pass the bill of the complainant. He has taken a specific defense that, the complainant kept Rs. 10,000/- in his hands (hands of DGO-2) saying that, DGO-1 has asked him/complainant, to pay that money to him/DGO-2 and soon after the complainant kept the money in his hands, Lokayukta police caught hold of him and falsely implicated him in this case. Taking up these contentions, both DGO-1 and 2 have requested this authority to absolve them from the charges levelled against them.

6. The case was taken up for enquiry and during enquiry on behalf of the Disciplinary authority, 3 witnesses have been examined as PW1 to PW3, and 14 documents came to be marked as Ex-P1 to P14. After closure of the evidence on behalf of the disciplinary authority, second oral statement of the DGOs 1 and 2 was recorded. Since, they have desired to lead defence evidence by examining themselves in order to put forth their defence, permission was granted to them accordingly. Both DGOs 1 and 2 have examined themselves as DW1 and DW2 in support of their defense and produced copy of the

judgment dated 29.3.2014 in Spl Case No. 41/2009 on the file of Principal Session Judge Special Court, Mandya. The copies of the deposition of the shadow witness/Shivaramu, complainant/A.R. Manjunath and IO recorded before the Special Court, Mandya in Spl. Case No. 41/2009 came to be marked as Ex-D1 to D3, during the cross examination of PW1 to PW3 since confronted to them.

7. Thereafter, learned PO filed written arguments. On behalf of the DGO-2, his learned counsel filed written arguments. The learned counsel for DGO-1 submitted his oral arguments and supported his arguments with certain decisions of the Hon'ble Supreme Court and vehemently argued that, DGO-1 along with DGO-2 have been acquitted by the Special Court, Mandya in Spl. Case no, 41/2009 absolving them from the charges levelled against them and requested this authority to hold that, charges against DGOs 1 and 2 are not proved, absolving them from the charges levelled against them. Thereafter this matter is taken up for consideration.

8. The following points would arise for my consideration.

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

Point No.2: Whether the charge framed against the DGO no.2 are proved by the Disciplinary Authority?

Point No.3: What findings?

9. The above points are answered as under:

Point No.1: In the affirmative

Point No.2: In the affirmative

Point No.3: As per the findings.

REASONS**Points No.1 and 2 :-**

10. The DGO no.1 was working as District Manager and DGO-2 was working as Assistant Manager, Karnataka Food and Civil Supplies, Corporation Ltd., Mandya Branch during the relevant period.
11. The complainant is a Transport contractor having fleet of lorries and tankers doing transport business. He has entered into a contract with District Manager, KFCSC, Mandya Branch wherein the task of transporting kerosene from the warehouse KFCSC, Mandya, to the entire District of Mandya was entrusted to him. The complainant having transported the kerosene as per the contractual agreement for the month of January 2008, submitted bill claiming Rs. 73,443.96/- towards the Transportations charges. According to his allegations, DGO-1/District Manager, has been demanding him for bribe in order to pass his bills for the previous months also and when he presented the bill for the month of January 2008, it is his allegation that, the DGO -1 has demanded him to pay Rs. 10,000/- as bribe in order to pass his bills and to issue cheque to him telling him that, unless Rs. 10,000/- is paid to him, he will not pass the bill and he will keep it pending without passing the same. The complainant since not willing to pay any bribe to get his bill passed at the hands of DGO-1, he approached Lokayukta police, Mandya on 4.2.2012 and filed a complaint against DGO-1, as per Ex-P7.
12. On the basis of this complaint, the Police Inspector, Karnataka Lokayukta, Mandya has registered a case in Cr. No. 2/2008, under

Sections 7,13(1)(d) R/w 13(2) of P.C Act, 1988 and took up investigation.

13. An entrustment proceedings was conducted in the Police Station in the presence of two panch witnesses viz., Sri Shivaramu, SDA, Sri C.N. Nagaraju, SDA from the office of the Assistant Commissioner of Commercial Taxes, Mandya and in the said proceedings the bait money of Rs. 10,000/- consisting 10 currency notes of Rs. 1000/- denomination each, given by the Complainant, were smeared with phenolphthalein powder making it as tainted money and the said money was entrusted to the Complainant asking him to give the said money to the DGO no.1 when he meets him in his office and only in case if the DGO no.1 demands for bribe. Panch witness Shivaramu was sent along with the Complainant as a shadow witness. In this regard, a detailed entrustment mahazar was also prepared in the Police Station on the same day.
14. The Complainant accompanied with the shadow witness went to the office of the District Manager, KFCSC, Mandya Branch on the same day at about 2.05pm and since DGO-1 was not present in the office, he/complainant and the shadow witness waited for DGO-1 till about 5.30pm, and on arrival of DGO-1, he/complainant met DGO-1 in his chambers and requested him for passing of his bill and payment of the amount towards transportation charges for the month of January 2008. DGO-1 enquired the complainant as to whether he has brought Rs. 10,000/- as demanded by him in the morning on that day at the time when he presented the bill. Then the complainant offered DGO-1, the tainted notes of Rs. 10,000/-. Then DGO-1 asked the complainant to give that money to the hands of DGO-2/Assistant Manager, Ramesh who was there in the chamber

of DGO-1 at that time and asked DGO-2 to receive that money from the complainant. Accordingly, the complainant paid money to DGO-2 as per the instruction of DGO-1. DGO-2 as per the instruction of DGO-1 received that money from the complainant and counted the money by using his both hands and kept that money in the right side pocket of his pant. Thereafter, the complainant came out of the chamber of DGO-1 and gave pre-arranged signal to the Police Inspector. Shadow witness Shivaram, by standing near the door of the chamber of DGO-1 has watched all these happenings and also DGO-1 asking the complainant to give money to the hands of DGO-2 and DGO-2 having received money from the complainant as per the instructions of DGO-1, kept that money in his pant pocket.

15. The Police Inspector on receiving signal from the complainant came inside the chamber of DGO-1 along with his staff and another panch witness and the complainant showed DGO-1 stating that, he is the District Manager and he having demanded bribe from him, received Rs. 10,000/- from him by way of bribe, through his Assistant Manager.
16. The Police Inspector having introduced himself to DGO no.1 and 2 and on explaining them, the purpose for which he has come there, obtained hand wash of both hands of DGO-1 in his chambers, but it did not give positive result since there was no change in the colour of the solution.
17. The Police Inspector again got prepared sodium carbonate solution in two separate bowls and made DGO no.2 to dip his both hand fingers in two separate bowls containing sodium carbonate solution

and when DGO no.2 dipped his right hand fingers in one bowl and left hand fingers in another bowl containing sodium carbonate solution, the colourless solution in both the bowls turned into pink colour. The hand wash of DGO-1 and 2 were collected in four separate bottles separately and sealed the same.

18. The Police Inspector asked DGO no.1 about the money the complainant has offered to him. DGO no.1 told the Police Inspector that, the money given by the complainant is available with DGO no.2. Then the Police Inspector asked DGO-2 to produce money which he has received from the complainant. DGO-2 took out the money from the right side pocket of his pant and produced the same before the Police Inspector. Those notes were verified with reference to its serial numbers and confirmed that, those were the notes entrusted to the complainant under entrustment proceedings. Even the pant of DGO-2 was got removed and subjected to phenolphthalein test which gave positive result and the said pant of DGO-2 was also seized.
19. The Police Inspector asked DGO no.1 to produce the relevant file pertaining to the complainant regarding the bill submitted by him claiming transportation charges. DGO no.1 has produced a file containing the bill and other documents submitted by the complainant containing pages 1 to 23. Those documents were seized as per Ex-P6. Even the extract of the attendance register and also the 'From register' maintained in the office, were also seized.
20. The Police Inspector asked DGO-1 and 2 to give their explanation in writing. DGO-1 gave his explanation as per Ex-P2 claiming that, he is innocent and he never demanded any bribe from the complainant

and no money was seized from his possession but he has been falsely implicated. DGO-2 gave his written explanation as per Ex-P3 claiming that, the complainant having submitted his bill, requested him to pass the bill and he asked the complainant to meet the District Manager/DGO-1 and request him for passing of the said bill. He has taken up a further contention that, the complainant again came to his chambers at about 4.30pm and while talking with him, he gave him a marriage invitation, inviting him for the marriage of the daughter of his elder brother. He/DGO-2 further claimed that, the complainant having given him a marriage invitation gave him Rs. 10,000/- consisting of 10 currency notes of Rs. 1000/- denomination each saying that, District Manager has asked him/complainant to give that money to him/DGO-2 and by saying so, the complainant kept the money on his table/table of DGO-2. By that time, 2 persons in mafti entered his chambers and forced him to take that money and to keep that money in his pocket and accordingly, he took that money from the table and kept that money in his pant pocket and thereafter, he was caught and money was recovered from his pant pocket and he has been falsely implicated.

21. The complainant has been examined as PW2 who narrated in detail regarding circumstances which forced him to file complaint against DGO no.1 as per Ex-P7. He gave details regarding entrustment proceedings conducted in the Police Station and also entrustment of tainted money of Rs. 10,000/- to him during the said proceedings. He also gave evidence as to how DGO no.1 and 2 were trapped. According to him, he having accompanied with shadow witness approached DGO no.1 in his chambers and enquired about his bill and the DGO no.1 enquired him as to whether he has brought money as demanded by him. He has further claimed that, he told

DGO-1 that, he has brought money and offered that money to him. According to the complainant, DGO-1 secured the presence of Assistant Manager/ DGO-2 to his chambers and asked him/complainant to give that money in the hands of DGO-2 and accordingly he paid money to DGO-2 and DGO-2 having received money from him/complainant, counted the same and kept that money in his right side pant pocket. He further gave details regarding obtaining of hand wash of both DGO-1 and DGO-2 and the hand wash of DGO-1 giving no result but, hand wash of DGO-2 giving positive result. He also deposed regarding recovery of tainted notes from the pant pocket of DGO-2 since DGO-2 himself took out the money from his pant pocket and produced the same before the Police Inspector when enquired him about the money he has received from the complainant. He also gave details regarding giving of written explanation by DGO-1 and 2 as per Ex-P2 and P3 and preparation of trap mahazar as per Ex-P6.

22. Since the complainant has failed to give supporting evidence with respect to certain material particulars of entrustment and trap proceedings, he was permitted to be treated as partly hostile witness and he has been cross examined by learned Presenting Officer only to that extent. During his cross examination the complainant gave positive answers to the suggestions put to him claiming that, he has forgotten those details while giving his evidence in his chief examination.
23. The shadow witness who has been examined as PW1 gave all the details regarding conducting of entrustment proceedings in the Police Station and entrustment of tainted money of Rs. 10,000/- to the complainant. He further deposed that, he

accompanied the complainant and went to the office of DGOs and waited for DGO-1 till about 5.15pm and on arrival of DGO-1, the complainant went inside the chamber and enquired about his bill. PW1 has further claimed that, he was standing near the door of the chamber of DGO-1 and watched the happenings taken place right from the time the complainant met DGO-1 till the arrival of the Police Inspector and also gave details regarding the trap proceedings conducted in the chamber of DGO-1. PW1 has also categorically stated that, when the complainant enquired DGO-1 about his bill, DGO-1 enquired the complainant about the money he has demanded in the morning and when the complainant offered tainted notes to DGO-1, he/DGO-1 asked the complainant to give that money to Assistant Manager, Ramesh/DGO-2 who was also present in the chamber of DGO-1 at that time. He has further stated DGO-2 received money from the complainant as per the instruction of DGO-1 and kept that money in his pant pocket. He further gave details regarding obtaining of hand wash of DGO-1 and 2 and recovery of tainted notes of Rs. 10,000/- from the pant pocket of DGO-2 and also seizure of the pant of DGO-2 and when the pocket portion of the pant of DGO-2 tested for presence of phenolphthalein gave positive result. He further gave details regarding the giving of written explanation by DGO-1 and 2 as per Ex-P2 and P3 and seizure of documents pertaining to the complainant and preparation of the trap mahazar.

24. The investigation officer who is examined as PW3 gave details regarding the various steps he has taken right from the registration of the case on the basis of the complaint filed by the complainant, till the filing of the charge sheet against DGO no.1 and 2 and also the details of the investigation he has conducted in this case.

25. Both PWs 1 and 2 have been thoroughly cross examined by the learned counsels for DGOs 1 and 2 separately. During their evidence the copy of the depositions given by them before the Special Court were confronted and marked as Ex-D1 and D2. Similarly, the copy of the deposition of the Investigation officer given by him before the special court, has been confronted to him and marked through him as Ex-D3. During his cross examination PW1/shadow witness has reiterated his contention that, when he and the complainant went inside the chamber of DGO-1, DGO-2 was also present in the chamber of DGO-1 at that time and further confirmed that, as per the instructions of DGO-1, complainant gave money to the hands of DGO-2. Even PW1/complainant in his cross examination has reiterated his contention that, DGO-1 has been demanding him for bribe while passing the bills for previous months and when he presented the bill for the month of January 2008, DGO-1 insisted him to pay Rs. 10,000/- by way of bribe and said that, unless the amount demanded by him is not paid, he will not pass the bill. The complainant during his cross examination by the learned counsel for DGO-2 has admitted that, DGO-2 never demanded any bribe from him and his work was not pending with DGO-2 but, reiterated his contention that, as per the instruction of DGO-1, DGO-2 received money from him. Though IO/PW3 was cross examined by the learned counsel for DGO-1, nothing was elicited to disbelieve the evidence of PW3. The learned counsel for DGO-2 did not cross examine PW3/IO.
26. On considering the evidence of PW1 to PW3 with reference to the documentary evidence produced on behalf of the disciplinary authority, the complainant has categorically deposed regarding the

circumstances which forced him to file complaint against DGO-1 making specific allegations against him that, he is demanding bribe amount of Rs. 10,000/-, in order to pass the bill pertaining to the transportation charges claimed by the him/complainant for the month of January 2008. Besides making such allegations in his complaint Ex-P7, he has reiterated that allegation even in his evidence given before this authority. As per the evidence of PW1 and PW2 when the complainant met DGO-1, he/DGO-1 having demanded bribe from the complainant, asked the complainant to give that money to the Assistant Manager/DGO-2 who was also present in his chamber/chamber of DGO-1 at the time when, complainant met DGO-1 in his chambers. They have also deposed that, DGO-2 having received tainted notes from the complainant as per the direction of DGO-1, counted the same and kept that money in his pant pocket.

27. DGO-2 did not seriously dispute the recovery of tainted notes from his possession. While filing his written statement, he has taken up a contention that, the complainant kept Rs. 10,000/- in his hands (hands of DGO-2) saying that, DGO-1 has asked to pay him that money. But while giving his written explanation as per Ex-P3, DGO-2 has taken up a contention that, the complainant while giving him a marriage invitation, gave him Rs. 10,000/- saying that, District Manager/DGO-1 has asked him/complainant to give that money to him/DGO-2. The relevant portion of the explanation in writing given by DGO-2 reads as follows:

“..... ನಂತರ ಸುಮಾರು 4.30ರ ಸಮಯದಲ್ಲಿ ಶ್ರೀ ನಂದಿ ಟ್ರಾನ್ಸ್‌ಪೋರ್ಟ್‌ನ ಮಂಜು ಎಂಬುವವರು ಬಂದು ಅಣ್ಣನ ಮಗಳ ಮದುವೆ ಮತ್ತು ಇನ್ನಿತರ ವಿಷಯದ ಬಗ್ಗೆ ಚರ್ಚಿಸುತ್ತಾ ಮದುವೆಯ ಕರೆಯೋಲೆ ನೀಡಿ 1000-00 (ಒಂದು ಸಾವಿರ ರೂಗಳ) ನೋಟುಗಳನ್ನು ನೀಡುತ್ತಾ ಇದರಲ್ಲಿ 10,000/- (ಹತ್ತು ಸಾವಿರ) ಇದೆ ಇದನ್ನು ಜಿಲ್ಲಾ

ವ್ಯವಸ್ಥಾಪಕರು ನಿಮಗೆ ನೀಡಲು ಹೇಳಿರುತ್ತಾರೆ ಎಂದು ಟೇಬಲ್ ಮೇಲೆ ಇಟ್ಟಿರುತ್ತಾರೆ. ಆ ವೇಳೆಗೆ ಇಬ್ಬರು ಮಷ್ಟಿಯಲ್ಲಿ ಬಂದು ಇದನ್ನು ತೆಗೆದುಕೊಂಡು ಜೇಬಿನಲ್ಲಿ ಇಟ್ಟುಕೊಳ್ಳಲು ಬಲವಂತ ಮಾಡುವ ವೇಳೆಗೆ ತಾವು ಬಂದು ಪರಿಶೀಲಿಸಿರುವುದು ವೇದ್ಯವಾಗಿರುತ್ತದೆ.”

28. But while cross examining PW2/complainant, no such suggestion was put to him by the learned counsel for DGO-2 taking up such a contention that, under the pretext of giving him a marriage invitation, the complainant gave him Rs. 10,000/- telling him that, District Manager/DGO-1 has asked him to give that money to him. While giving his defense evidence he has taken up a contention that, the complainant having approached him, gave him one invitation of the marriage of his relatives and the money was found kept in the said invitation and on seeing the money inside the marriage invitation, he claimed that, he enquired the complainant as to why the money is kept in the said invitation and the complainant told him that, the District Manager has asked him to give that money to him. Therefore, according to the claim of DGO-2, he never touched the tainted notes with his hands. But, according to the evidence of PW1 to PW3, hand wash of both the hands of DGO-2 was obtained during the trap proceedings which gave positive result, since the sodium carbonate solution in which DGO-2 washed his both hand fingers turned into pink colour. Even the chemical examiners report Ex-P13 confirms this fact that, both right hand wash and left hand wash of DGO-2 gave positive result, since presence of phenolphthalein was detected in both right hand wash and left hand wash of DGO-2. Therefore, it can be concluded that, DGO-2 has touched the tainted notes with his hands.

29. Further, as per the evidence adduced on behalf of disciplinary authority, the tainted notes was recovered from the possession of DGO-2 from his right side pant pocket and the pocket portion of the

said pant of DGO-2 was also dipped in sodium carbonate solution during the trap proceedings which gave positive result and the said pink coloured solution when tested, confirms the presence of phenolphthalein and therefore, it can be concluded that, the tainted notes were kept in the right side pant pocket of the DGO-2 which was recovered from the possession of DGO-2. But, DGO-2 has not come out with any explanation as to how the tainted notes came into his right side pant pocket and he did not explain this circumstance and never denied the recovery of tainted notes from his right side pant pocket. Therefore, the recovery of tainted notes from the right side pant pocket of the DGO-2 has been established and the hand wash of DGO-2 since gave positive result, it is confirmed that, it was DGO-2 himself received that money from the complainant and kept that money in his pant pocket.

30. It is the contention of the complainant that, when he went inside the chamber of DGO-1, DGO-2 was also there in the chamber of DGO-1 and further stated that, when he/complainant enquired DGO-1 about his bill, DGO-1 asked him as to whether he has brought money and when the complainant offered money to DGO-1, he/DGO-1 asked the complainant to give that money to DGO-2 and accordingly he paid money to DGO-2 who on receiving it from the complainant counted the same and kept that money in his pant pocket. Even the shadow witness has confirmed this fact that, DGO-no. 2 received money from the complainant as per the direction of DGO-1. The fact of recovery of tainted notes from the possession of DGO-2 also supports this contention of the complainant. It is the specific allegation made by the complainant, both in his complaint and in his evidence that, DGO-1 being the District Manager demanded him to pay Rs. 10,000/- by way of bribe in order to pass

his transportation bill. Admittedly, the bill pertaining to the complainant was pending with DGO-1 for passing and the relevant documents as per Ex-P7 have been recovered from DGO-1 during the trap proceedings since produced by him. Considering all these aspects with reference to the evidence of the complainant and the allegations made in the complaint filed by him, it can be concluded that, DGO-1 has demanded bribe from the complainant and received the bribe amount of Rs. 10,000/- from the complainant through DGO-2, as DGO-2 received that amount from the complainant as per the direction of DGO-1. Therefore, both DGO-1 and DGO-2 are guilty of misconduct as DGO-1 on demanding bribe from the complainant received bribe from the complainant through DGO-2 and hence I hold that, the charges against DGOs no.1 and 2 are established by the disciplinary authority.

31. The learned counsel for the DGO placing reliance on the decision of the Hon'ble Supreme Court reported in 2015(2) SCC 365 (S.Bhaskar Reddy Vs. Superintendent of Police) has vehemently argued that, since the DGO has been acquitted by the Special Court, Mandya, vide judgment dated 29.3.2014 in Spl. C.C. No. 41/, the charges against the DGO has to be held not proved and the DGO has to be absolved from the charges levelled against him. The Hon'ble Supreme Court in the decision 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.

32. 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.”

33. 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 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.
34. 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.
35. It is further argued on behalf of DGO-1 that, he/DGO-1 retired from service on 30.3.2010 whereas, articles of charges was served on him on 4.2.2012. According to him, since the trap of DGO-1 and 2 was held on 4.2.2008, it was beyond 4 years from the incident of trap and hence hit by Rule 214 (2)(b)(ii) of KCSR. In support of his arguments he has relied upon the decision of the Hon'ble Supreme Court reported in 2016 (9) SCC page 20 (Brajendra Singh Yambem Vs. Union of India and another) wherein the Hon'ble Supreme Court while considering Rule 9(2)(b)(ii) CCS (Pension) Rules 1972 which is similar to Section 214(2)(b)(ii) of KCSR held that, disciplinary proceedings cannot be instituted against a Government servant not in service, except with the previous sanction of President of India and in respect of event took place not more than 4 years before institution of disciplinary proceedings. According to him, the sanction of the State Government was not obtained before initiating disciplinary

proceedings against DGO-1 as provided under 214 (2)(b)(i) of KCSRs and hence the proceedings itself is bad and hence vitiated.

36. But, this arguments advanced on behalf of the DGO-1 cannot be accepted for the reason that, DGO-1 is not the employee of the State Government but, he was the employee of KFCSC and the Corporation has not framed any rules with regard to service conditions of the employees of the Corporation but adopted the provisions of KCSR and hence the provisions of KCSR are made applicable to the employees of the Corporation. The Managing Director/disciplinary authority vide proceedings dated 27.6.2011 accorded permission to initiate proceedings both against DGOs no.1 and 2 under Rule 214(2)(b)(i) of KCSRs. Therefore, the term "State Government" in Rule 214(2)(b)(i) should be read as the "disciplinary authority and the Managing Director of the Corporation" under whom DGOs 1 and 2 were working. Therefore, it is not necessary to obtain the sanction the State Government in order to initiate disciplinary proceedings against the employees of the Corporation.

37. So far as the other aspect canvassed by the learned counsel for DGO-1 is concerned, admittedly DGO-1 and 2 were trapped on 4.2.2008. The articles of charges dated 3.2.2012 was duly served on DGOs 1 and 2 on 4.2.2012 as per the acknowledgement given by them. Therefore, the enquiry initiated against DGOs no.1 and 2 was within 4 years from the date of the trap dated 4.2.2008. Therefore, the disciplinary enquiry initiated against DGOs 1 and 2 was within the period of 4 years as provided under Rule 214(2)(b)(ii) of KCSR. Therefore, the contentions raised by the

learned counsel for DGO regarding the maintainability of this proceeding, cannot be accepted and hence rejected.

38. Hence, I am of the considered opinion that, the disciplinary authority was able to establish the charges framed against the DGOs 1 and 2. Accordingly, I hold that, the charge levelled against the DGOs no.1 and 2 have been established. Accordingly, I answer point no.1 and 2 in the affirmative.

Point No.3:

39. Having regard to the discussion made above, and in view of my findings on points no.1 and 2 as above, my finding are as below:

FINDINGS

- i. The Disciplinary Authority has proved the charges as framed against the DGOs (1) Sri M. Narayanaswamy, the then District Manager, Karnataka Food and Civil Supplies Corporation Ltd., Mandya and (2) Sri B.S. Ramesh, the then Assistant Manager, Karnataka Food and Civil Supplies Corporation Ltd., Mandya.
- ii. As per the First oral statement, the date of birth of DGO-1 Sri M. Narayanswamy is 5.3.1950 and he has already retired from service on 31.3.2010 and the date of birth of DGO -2 Sri B.S. Ramesh is 10.04.1951 and he has already retired from service on 30.4.2011, on attaining the age of their superannuation.



(S. Renuka Prasad)

Additional Registrar of Enquiries-3
Karnataka Lokayukta,
Bengaluru.

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

PW-1	Sri Shivaramu (shadow witness)
PW-2	Sri A.R. Manjunath (complainant)
PW-3	Sri E.S. Veerabhadraiah (Investigating officer)

II. Witnesses examined on behalf of the DGO:

DW-1	Sri B.S. Ramesh (DGO-2)
DW-2	Sri M. Narayanaswamy (DGO-1)

III Documents marked on behalf of D.A.

Ex.P-1	Certified copy of the entrustment mahazar
Ex.P-2	Certified copy of the written explanation of DGO-1
Ex.P-3	Certified copy of the written explanation of DGO-2
Ex.P-4	Certified copy of the documents seized
Ex.P-5	Certified copies of sheet containing serial numbers of currency notes
Ex.P-6	Certified copy of the trap mahazar
Ex.P-7	Certified copy of the complaint
Ex.P-8 & 12	Certified copies of Photographs
Ex.P-9	Certified copy of the extract of attendance register
Ex.P-10	Certified copy of the inward register
Ex.P-11	Certified copy of the rough sketch of scene of occurrence
Ex.P-13	Certified copy of FSL report
Ex.P-14	Certified copy of sketch prepared by PWD engineer of the sketch of scene of occurrence

IV. Documents marked on behalf of DGO:

Ex-D1	Xerox copy of deposition of PW1 in Spl Case No. 41/2009
Ex-D2	Certified copy of deposition of PW2 in Spl Case No. 41/2009
Ex-D3	Certified copy of deposition of PW3 in Spl Case No. 41/2009
Ex-D4	Certified copy of judgment in Spl Case No. 41/2009

V. Material Objects marked on behalf of the D.A:

Nil



(S. Renuka Prasad)

Additional Registrar of Enquiries-3,
Karnataka Lokayukta, Bengaluru.

