

## KARNATAKA LOKAYUKTA

No. LOK/INQ/14-A/257/2013/ARE-1

Bengaluru

Dated: 31.12.2019

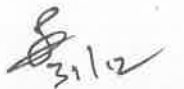
### :: REPORT OF ENQUIRY ::

**Sub:-** Departmental Enquiry against 1. Sri. Ashok Kumar S/o Bhimappa Paradi, Joint Director and 2. Sri. Ashok S/o Phakeerappa Kalkani, Second Division Assitant both in the office of Joint Director, District Industrial Centre in Haveri-reg.

**Ref:-** Proceedings Order No. LOK/INQ/14-A/257/2013, Dated: 15/06/2013 of Hon'ble Lokayukta, State of Karnataka, Bengaluru

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This enquiry is conducted in pursuance to the Government Order No. Vaa Kai 80 KaiSeV 2010 (Part-1) Bangalore dated: 29.05.2013 issued by the Disciplinary Authority, i.e., the Commerce and Industries Department, Government of Karnataka, Bangalore against 1. Sri. Ashok Kumar S/o Bhimappa Paradi, Joint Director and 2. Sri. Ashok S/o Phakeerappa Kalkani, Second Division Assistant, both were working in the office of Joint Director, District Industrial Centre in Haveri (hereinafter referred as DGO 1 and DGO 2 respectively in short). Hon'ble Lokayukta had entrusted the departmental enquiry to the Additional Registrar, Enquiries-3, Karnataka Lokayukta, Bengaluru, by nominating him as Enquiry



Officer. After receipt of the records Additional Registrar Enquiries-3 framed article of charges and sent it to DGO 1 and 2 and they were summoned to appear. Accordingly, DGO 1 and 2 appeared in person and their First Oral Statements were recorded. DGO 1 and 2 pleaded not guilty and requested for detailed enquiry. Afterwards DGO 1 and 2 have filed their written statements denying the charge and allegations made in the statement of insinuation. The enquiry was transferred from Additional Registrar Enquiries-3 to Additional Registrar Enquiries-1 by order No. LOK/DE/Transfers/2018 dated 06.08.2018 of Hon'ble Lokayukta

**2.** In order to establish the charges framed against the DGOs 1 and 2, the Disciplinary Authority has examined three witnesses and has marked thirteen documents. DGOs have examined one witness in defence. DGOs 1 and 2 were examined under rule 11 (18) of KCSR on 02.11.2019. Both DGOs in their statement denied the evidence appeared against them in the case. Presenting Officer, as well as the Counsel for DGOs, have filed written brief. The Presenting Officer in his written brief has stated that the evidence produced by the disciplinary authority in the case clearly shows the misconduct of the DGOs, and the evidence given by the witnesses examined in the case clearly shows that the DGO no.1 initially demanded bribe from the complainant to issue subsidy certificate and then he asked the complainant to hand over the bribe amount to DGO no.2 and therefore the complainant approached the Lokayukta Police, Haveri and filed complaint. The Presenting Officer has further stated that the evidence produced in the case shows that the Police officer had conducted pre trap proceedings in

the station and the currency notes worth Rs. 8000/-, smeared with phenolphthalein powder, was entrusted to the complainant with instruction to hand over the amount to the DGOs and then sent the complainant, along with PW-2, to meet the DGOs. The Presenting Officer has further stated that the evidence further disclose that when the complainant and shadow witness met DGO no.2 in the office and enquired about the work and the DGO no.2 again demanded and accepted the amount from the complainant. The Presenting officer has stated that the evidence produced on record clearly established the charge framed against DGOs.

**3.** Learned Counsels for the DGOs 1 and 2 in their written brief have stated that the evidence produced by the disciplinary authority give room for serious doubts and the evidence clearly shows that the DGOs have been falsely implicated. Learned counsels have further stated that both the complainant and shadow witness have not said a single word about DGOs 1 and 2 demanding or accepting bribe and therefore the charge framed against DGOs is not proved. The learned counsels have further stated that in the criminal case filed against the DGOs on the basis of the same incident, the court has already acquitted both of them and therefore they cannot be held guilty in the departmental enquiry case.

**4.** The charge framed against the DGO 1 and 2 is as follows:

That you DGO-1 Sri. Ashok Kumar Bhimappa Paraddi, Joint Director, District Industrial Centre, Haveri through DGO-2 Sri.

Ashoka Phakeerappa Kalkani, SDA, District Industrial Centre, Haveri demanded and accepted a bribe of Rs. 8000/- on 23.03.2020 for self and for DGO-2 from complainant Sri. Hajarath Bilal Sahebjan Koti R/o Rattihalli of Hirekerur Taluk, Haveri District at the office of the DGO i.e., the O/o Joint Director, District Industrial Centre, Haveri for issuing the subsidy certificate for availment of loan under PMEGP scheme, that is for doing an official act, and thereby you both have failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of a Government Servant and thus you both are guilty of misconduct under rule 3 (1)(i) to (iii) of KCS (Conduct) Rules 1966.

**5. The point that arises for my consideration is:**

**Whether the Disciplinary Authority has established the charge framed against the DGOs 1 and 2?**

My finding on the above point is in the **AFFIRMATIVE** for the following:

**:- REASONS :-**

**6.** Before examining the evidence produced by the disciplinary authority, it is necessary to narrate the case of the disciplinary authority. The complainant Sri. Hazarath Bilal Sahed Jan Koti had given an application to the office of Joint Director, District industrial centre, Haveri in the month of October 2009 for issue of certificate to avail subsidy on the loan amount under Prime Minister Rojgar Yojane (PMEGP) and after the interview, he was asked to bring loan sanction letter from the bank. Accordingly, the complainant brought the loan sanctioned letter and approached

DGO no.1 for issue of loan subsidy certificate and at that time DGO no.1. Demanded Rs. 15000/- as bribe to extend loan subsidy facility to him and on bargain the bribe amount was reduced to Rs. 8000/ and DGO no.1 asked the complainant to hand over the amount to DGO no.2. The complainant was not willing to pay bribe to the DGO no.1 and therefore he approached Lokayukta Police, Haveri and gave a complaint. The Police officer conducted a pre trap proceedings in the station and currency notes worth Rs. 8000/- smeared with Phenolphthalein powder was entrusted to the complainant with a instruction to hand over the amount to the Officer who had demanded the bribe. After that the police officer sent the complainant along with a shadow witness to meet the DGOs and accordingly complainant, along with shadow witness by name Lokanna Basavannappa Elivara, went and met DGO no.2 and at that time also DGO no.2 demanded the complainant to pay bribe and received the bribe amount of Rs. 8000/- on behalf of himself and on behalf of DGO no.1 and immediately he was trapped by Lokayukta Police. A trap mahazar was prepared in the office of the DGOs in the presence of panch witnesses. The Police Officer conducted further investigation and, after securing prosecution sanction order, filed charge sheet against the DGOs in court and also sent a report to the Hon'ble Lokayukta. On the basis of the said report, Hon'ble Lokayukta sent a report under Section 12(3) of the Karnataka Lokayukta Act 1984 to the Competent Authority to initiate disciplinary action against DGOs 1 and 2.

7. During the enquiry the presenting officer has examined three witnesses and has got marked thirteen documents. Among the

witnesses examined by the disciplinary authority, PW-1 is the complainant, who had given complaint against the DGOs in Karnataka Lokayukta Police Station, Haveri. PW-2 is the shadow witness, who was sent with the complainant at the time of trap and he is also said to be an eye witness to the incident of DGO no.2 demanding and accepting bribe amount from the complainant at the time of trap. PW-3 is the Police constable, who was present with the Investigating Officer at the time of registering complaint and also when pre trap proceedings, as well as trap proceedings were conducted. It was reported by the Police that the Investigating Officer of the case is not alive and therefore the Presenting officer has examined PW-3, who had witnessed the trap proceedings. DGOs have examined DW-1 in the case.

**8.** PW-1 Sri. Hazarath Bilal Sahed Jan Koti, who is the complainant in the case, has stated in his evidence that he had filed an application in the office of District Industrial centre Haveri seeking loan facility and subsidy to establish a mobile shop and was visiting the office and when he enquired a clerk in the office he asked him to again come after eight days. Complainant has stated that his friend one Chandru told him that he has got friends in the office and therefore he would pursue the application and later said Chandru told that the officials are demanding money to sanction loan and then his friend took him to Lokayukta police station and Police officer gave a voice recorder asking them to record the conversation. Complainant has further stated that his friend took the voice recorder and went inside the office and then came back stating that he had recorded the conversation about demand of

bribe. PW-1 has stated that on the instruction of the Police officer he wrote the complaint at Exhibit-P1. He has further stated that on the next day Police officer received Rs. 8000/- from him and called witnesses and smeared some powder on currency notes and gave the amount to him and asked him to give those currency notes to the officers in the office of District industrial centre and then to give signal. Complainant has further stated that on the same day he along with his friend and one official went to the District industrial centre and his friend asked him to wait outside the centre saying that he would hand over the amount to the officer and after sometime his friend came out and said he handed over the amount to the officer and accordingly he gave signal to the police officer. PW-1 has stated that Police officer came inside office and apprehended DGO-2 and his friend told the police officer that the money was available in the table drawer of DGO no.2 and accordingly the Police officer asked DGO no.2 to take out the amount from the table drawer and count that amount and afterwards the hand wash of DGO no.2 was obtained and the colour of the solution turned to pink colour. PW-1 has stated that DGO no.1 was not in the office at that time and later Police officer secured DGO-2 TO office and then both DGOs were brought to the station. PW-1 was treated as an hostile witness and cross examined by the presenting officer but even during the cross examination the witness has not said anything in support of the case of the disciplinary authority.

9. PW-2 Sri. Lokanna Basavannappa Elivara has stated in his evidence that on 23.03.2010 Lokayukta Police, Haveri called him

to the station and when he went to the police station one Talwar was present and PW-1 was also present. The witness has further stated that the currency notes worth Rs. 8000/- were smeared with Phenolphthalin powder and the serial numbers of the currency notes were noted down in the paper and then the amount was given to the PW-1 with instruction to hand over the amount to the person who had demanded bribe and then to give signal. PW-2 has stated that a mahazar as per Ex.P-3 was prepared in the station and he signed the mahazar. The witness has further stated that on the same day the Police officer sent him and PW-1 to the office of Joint Director of Industries department, Haveri and the complainant went inside the room of DGO no.2 whereas he was waiting outside the room and after some time PW-1 came out and told that the amount was paid and then the pre arranged signal was given to the Police. PW-2 has stated that Lokayukta Police came inside the office and apprehended DGO no.2 and questioned him about the money and DGO no.2 shown the envelope in which money was kept in the table drawer and the hands of DGO no.2 were washed and colour of the liquid turned to pink. PW-2 has stated that the serial numbers of the currency notes produced by DGO no.2 were checked with the numbers noted down earlier and the numbers tallied with each and police prepared mahazar as per Ex.P-7 and seized the amount. During cross examination DGO no.2 has stated that the complainant was not visible to him when he went inside the room of DGO no.2 and also conversation between them was not audible to him. PW-2 has further stated in the cross examination that the complainant took out the amount from the table drawer and produced before the Police at the time of trap.



**10.** PW-3 Sri. Ningappa Gudappa Kanavalli has stated that he worked as Head Constable in Lokayukta Police station, Haveri from 2008 to 2013 and on 22.03.2010 he was present when the entrustment proceedings were conducted in the Lokayukta station. PW-3 has stated that he had accompanied the Investigating Officer and PWs 1 and 2 to the office of DGOs and was present when the trap proceedings were conducted in the station and also he has signed the mahazar as per Ex.P-7. PW-3 has stated that DGOs 1 and 2 had given written explanation as per ex.P-10 and P-11 at the time of trap. During cross examination it is suggested to the witness that he was not present either at the time of pre trap proceedings or at the time of trap proceedings and has given false evidence and the witness has denied the suggestion.

**11.** DGOs have examined a witness as DW-1. The witness has stated in his affidavit evidence that he worked as office Superintendent in District industries centre, Haveri and at the time DGO no.1 was working as Joint Director and DGO no.2 was working as Second Division assistant. The witness has stated that on 10.03.2010 one Chandranna alias Chandru Mohite had come to the office and told that he had come to meet the Joint Director regarding sanction of loan to one Hazarath Bilal and went inside the office of DGO no.1 and there was exchange of words and immediately he along with DGO 2 went inside the room and advised said Chandranna Mohite not to misbehave in the office. DW-1 has stated that he came to know that Chandru Mohtie and complainant has filed false complaint against DGOs by colluding

with Haveri Lokayukta Police. During cross examination the witness has stated that on 23.03.2010 he was not present in the office when the trap proceedings took place.

**12.** PW-1, who is the complainant, has not supported the case of the disciplinary authority on material points. Any how the evidence given by PW-1 in the examination in chief shows that he had visited the office of DGOs seeking loan subsidy to establish mobile shop. PW-1 has specifically stated that his friend had told him that the officers of Industrial centre Haveri were demanding bribe for sanction of loan subsidy. PW-1 has also stated that police officer had taken him to the office of the DGOs and then he was sent inside the office with the bait amount accompanied by PW-2. PW-1 has also stated about the presence of DGO-2 in the office when he went inside the office. The witness has not disputed his signature on the complaint at Ex.P-1 and also on the mahazars at Ex.P-3 and P-7. Though PW-1 has given contradictory versions in his oral evidence, some of the portions of his evidence, which are in favour of the case of disciplinary authority and corroborated by the evidence of other witnesses can be believed. After careful scrutiny of the oral evidence of PW-1 and the documents marked in the case I am of the view that PW-1 has deliberately changed his version when he gave evidence in the case for the reasons best known to him. The shadow witness, who was sent with the Complainant at the time of trap and witness to the Mahazars prepared in the Lokayukta Station and in the office of DGOs, is examined as PW-2 and he has clearly stated that PW-1 had given complaint in Lokayukta Station and the complainant was present in the station

when he went there and also the complainant participated in the proceedings. That apart the evidence given by PW-2 and PW-3 clearly shows that phenolphthalein test conducted on DGO no.2 at the time of trap proceedings was found positive and the bait amount entrusted to the complainant in Lokayukta office was later found in the table drawer where DGO no.2 was sitting. Therefore, I am of the view that PW-1 is either won-over by the DGOs or due to sympathy, he has given evidence to support the DGOs.

**13.** As pointed out earlier, PW-2 has stated that when the hands of DGO-2 were washed in the solution, the colour of the solution had turned to pink. There is clear evidence on record to show that the bait amount, which was smeared with phenolphthalein powder and entrusted to PW-1 in Lokayukta Police Station, was later found in the table drawer of the DGO no.2. The fact that the colour of the solution, in which the hands of DGO-2 were washed, had turned to pink colour, clearly shows that DGO-2 had received the bait amount in his hands at the time of trap. If really DGO-2 had no intention to receive the amount from the complainant at the time of trap, then he would not have allowed the complainant to keep the amount inside his table drawer. Further the evidence shows that the DGO-2 had touched the bait amount before the Police officer entered the chambers after pre-arranged signal was given by PW-1. PW-3, who is the Police constable, has spoken about his presence at the time of entrustment proceedings in the station and also at the time of Trap proceedings. PW-3 has also stated about PW-1 visiting Lokayukta station, Haveri to file complaint about DGOs demanding bribe in order to extend loan subsidy to PW-1. After

careful scrutiny of the evidence of PW-3, I am of the view that his evidence is believable one. Merely because PW-3 is a police constable, there is no reason to suspect his evidence. It is to be noted that Exhibit P-7, which is the mahazar prepared at the time of trap bears the signature of PW-3 and therefore his presence at the time of trap is established. In fact PW-1 has stated about he going to the Lokayukta station, Haveri on the date of trap and also he has admitted that he went inside the office of DGO-2, along with bait amount. This fact is also supported by PW-2 in his oral evidence. No doubt, the evidence of PWs 1 and 2, on some aspects of the case, is contrary to the case of disciplinary authority but considering the overall evidence available on record and also the admitted facts about PW-1 meeting the DGO-2 in his office and later the bait amount was seized in the Chambers of DGO-2, I am of the view that there is clear and corroborative evidence on record to show that the DGO-2 had received the bait amount, which was entrusted to PW-1 in the Police station. No reliable evidence is produced by DGO-2 to rebut the positive evidence produced by the disciplinary authority to show that he had accepted the bait amount from the Complainant at the time of trap. The explanation offered by the DGO-2 that the Lokayukta Police forcibly made him to touch the bait amount before his hands were washed in Sodium carbonate solution is hard to believe. It is to be noted that PW-1 has admitted his signature in the complaint at Ex.P-1 given to Lokayukta Police. PW-3 has spoken about PW-1 coming to Lokayukta Office, Haveri and lodging complaint at Ex.P-1. Though there are some contradictory versions found in the evidence of PWs 1 and 2, I am of the view that the said contradictory versions will

not discredit the charge framed against the DGO no.2. After carefully considering the overall evidence on record, particularly the corroborative oral evidence of PWs 1 to 3 and the documents marked as Ex.P-1 to P-3 and P-7, I am of the view that there is clear evidence on record to show that the DGO-2 had demanded and accepted bribe from the complainant on the date of trap in order to show official favour.

**14.** The charge framed against the DGO-1 in the case is that he had demanded bribe from the complainant in the initial stage and then asked the complainant to hand over the amount to DGO-2. Though the witnesses examined in the case have not spoken about DGO no.1 demanding bribe before complaint was lodged with Lokayukta Police, the complainant in his oral evidence has not disputed the fact that exhibit-P1 was given by him to Lokayukta Police and the complaint bears his signature. It is clearly mentioned in Ex.P-1 by the complainant that when he approached DGO-1 for issue of loan subsidy certificate, DGO-1 demanded him to pay a Rs. 15,000/- as bribe and after bargain the amount was reduced to Rs. 8,000/-. It is also mentioned in Ex.P-1 that DGO-1 asked the complainant to hand over the bribe amount of Rs. 8000/- to DGO-2 who was working as second division assistant and case worker in the office. As already discussed supra, there is clear and convincing evidence on record to show that at the time of trap DGO-2 received the bait amount, which was negotiated with DGO no.1, from the complainant. Since, the complainant has specifically mentioned in the complaint at Ex.P-1 given to the Lokayukta Police that DGO-1 demanded bribe from him and then

asked him to hand over the amount to DGO no.2, it can be safely presumed that DGO no.2 was acting as an agent of DGO no.1 and had received the bait amount from the complainant knowing fully well that the said amount was a bribe amount. Though the complainant has given different versions stating that his friend had took him to the Lokayukta Police station and the complaint was given at his instance, the evidence of PW-3 shows that complainant alone had come to the station and gave complaint. Therefore it is clear from the evidence on record that complainant has changed his version when he gave evidence in the case either because he has been won over by the DGOs 1 and 2 or that he has changed his version due to sympathy to help the DGOs. After careful scrutiny of the evidence available on record, I am of the view that the evidence clearly shows that DGO no.1 and 2 had colluded with each other to extract bribe from the complainant and DGO no.1 had initially demanded bribe from the complainant and after negotiation asked the complainant to hand over the amount to DGO no.2 and then DGO no.2 knowing fully well that the amount was bribe amount, had received the amount from the complainant. Though there are contradictory versions in the evidence of PW-1 the complaint given to Lokayukta Police against DGO no.1 and also about DGO no.1 demanding bribe from him to issue loan subsidy certificate, I am of the view that the other evidence available on record clearly establish the misconduct of DGO no.1 in demanding bribe from the complainant. As mentioned supra, the evidence available on record shows that when Lokayukta Police arranged trap, DGO no.2 received the bait amount, smeared with phenolphthalein powder, and he was caught red handed. Hence, I hold that the charge

framed against DGO no.1 is also proved.

**15.** Learned counsel appearing for DGOs 1 and 2 have stated in their written arguments that the evidence on record, particularly the evidence of PWs 1 and 2, who are material witnesses, consists of contradictory versions and therefore it leads to reasonable doubts about the case of the disciplinary authority. Learned counsel further submitted that the DGOs 1 and 2 are already acquitted in the Criminal case filed against them and therefore the departmental enquiry initiated against the DGOs will not survive. Learned counsel has produced the copy of the judgement delivered in Special (LOK) case no. 3/2011 of Principal District and Sessions Judge and Special Judge at Haveri dated 07.04.2016 to show that the DGOs have been acquitted by the court. The law is well settled that the proof required in a criminal case and the proof required in the departmental enquiry is entirely different. In the criminal case, prosecution is required to prove the offences alleged against the accused beyond reasonable doubts and if the evidence produced by the prosecution on record give room for reasonable doubts, then the accused is entitled for the benefit of doubts. In departmental enquiry the charge has to be proved on the basis of preponderance of probabilities. If the evidence produced by the disciplinary authority probabalize the allegations made against the DGOs 1 and 2 then it is the duty of the DGOs to rebut the said evidence. It is to be noted that though the DGO-2 has produced defence evidence in the case, he has failed to explain why the Complainant, who was not having any ill will or enmity towards him, targeted him. In my opinion there is positive evidence available in the case in support of

the charges framed against the DGO-2.

**16.** Learned counsel appearing for the DGOs submitted in his arguments that the DGOs 1 and 2 are already acquitted in the criminal case filed against them in Special C.C No. 3/2011 by the District & Sessions Judge Court, Haveri and therefore the DGOs cannot be held guilty on the same set of evidence in the departmental enquiry case.

Hon'ble Supreme Court in the decision reported in (2005) 7 SCC 764 (Ajithkumar Nag V/s General Manager (PJ) Indian Oil Corporation Limited, Haldia and Others has held that;

“As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgement, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rules relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a



departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

In another decision reported in (1997) 2 SCC 699 (Depot. Manager, AP State Road Transport Corporation V/s Mohammed Yusuf Miya and Others) has held that " the purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So, crime is an act of commission in violation of law or omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service." Therefore, the arguments holds no water.

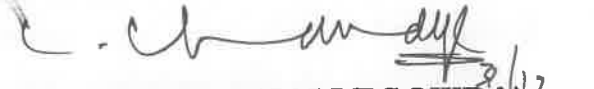
**17.** After examining the evidence produced by the disciplinary authority in the case, I am of the view that the disciplinary authority has clearly proved the charge framed against DGOs 1 and 2 that DGO no.1, while working as Joint Director and DGO no.2, while working as Second Division Assistant in the office of the Joint Director, Industrial Centre Haveri, had demanded bribe and then accepted the bait amount of Rs. 8,000/- from the complainant when trap was arranged by Lokayukta Police. Therefore I am of the view that the disciplinary authority has proved the charge framed against both the DGOs 1 and 2 by producing, clear and convincing evidence. The evidence on record shows that DGOs 1 and 2 have failed to maintain absolute integrity and devotion to duty and have

committed grave official misconduct, as defined under Rule 3 (i) to (iii) of the KCS (Conduct) Rules 1957 and hence I have answered the point formulated above in the **AFFIRMATIVE** in respect of both DGOs 1 and 2 and to proceed to pass the following order.

**:- ORDER :-**

The charge framed against the DGOs 1 and 2 is proved.

It is reported that the DGO-1 has retired from service on 31.12.2018 and DGO-2 has retired from service on 31.05.2017.

  
**(C. CHANDRAMALLEGOWDA)**  
Additional Registrar Enquiries-1,  
Karnataka Lokayukta, Bengaluru.

**ANNEXURE**

**LIST OF WITNESSES EXAMINED ON BEHALF OF D.A.:-**

PW-1 Sri. Hazrath Bilal (Complainant)  
PW-2 Sri. Lokanna Basavannappa Elivara (Panch Witness)  
PW-3 Sri. Nigappa Gudappa Kanavalli (Investigating Officer)

**LIST OF WITNESSES EXAMINED ON BEHALF OF DGO:-**

DW-1 Sri. Shivappa  
DW-2 Sri. Ashok Kumar Bheemappa Paraddy (DGO-2)

**LIST OF DOCUMENTS MARKED ON BEHALF OF D.A.:-**

Ex.P-1 : Certified copy of Complaint

- Ex.P-2 : Xerox copy of photographs  
Ex.P-3 : Certified copies of Entrustment Mahazar  
Ex.P-4 : Xerox copies of photographs  
Ex.P-5 : Certified copy of seized document  
Ex.P-6 : Certified copy of DGO's written explanation  
Ex.P-7 : Certified copy of Trap mahazar  
Ex.P-8 : Certified copy of Statement of Complainant  
Ex.P-9 : Xerox Copy of F.I.R  
Ex.P-10 : Xerox Copy of written explanation of DGO-2  
Ex.P-11 : Xerox Copy of written explanation of DGO-1  
Ex.P-12 : Xerox Copy of currency numbers noted paper  
Ex.P-13 : Xerox Copy of FSL Report

**LIST OF DOCUMENTS MARKED ON BEHALF OF DGO:-**

- Ex.D-1 : Certified copy of proceedings  
Ex.D-2 : Certified copy of letter dated 23.02.2010  
Ex.D-3 : Certified copy of claim form dated 11.03.2010  
Ex.D-4 : Certified copy of letter dated 22.07.2009  
Ex.D-5 : Certified copy of deposition of SVC: 3/2011  
Ex.D-6 : Certified copy of letter of RBI dated 18.06.2009

  
**(C. CHANDRAMALLEGOWDA)** 31/12  
Additional Registrar Enquiries-1,  
Karnataka Lokayukta, Bengaluru.



**GOVERNMENT OF KARNATAKA****KARNATAKA LOKAYUKTA**

NO: LOK/ARE-1/Enq-257/2013  
 (Encl: (a) Recommendation of Hon'ble  
 Lokayukta & Inquiry Report  
 of Inquiry Officer, in original  
 (b) Connected records

Multi Storied Building  
 Dr. B.R. Ambedkar Veedhi  
 Bengaluru – 560 001  
 Date: 03/02/2020

**/CONFIDENTIAL/****To;**

Sri. M. Maheshwar Rao, IAS.,  
 Principal Secretary to Government,  
 Commerce and Industries Department,  
 1<sup>st</sup> Floor, Vikasa Soudha,  
 Bengaluru – 560 001.

**Respected Sir,**

**Sub:-** Departmental Enquiry against (1) Sri. Ashok Kumar S/o Bhimappa Paradi, Joint Director and (2) Sri. Ashok S/o Phakeerappa Kalkani, Second Division Assistant both in the office of Joint Director, District Industrial Centre at Haveri – reg.

**Ref:-** Government Order No. CI 80 ISE 2010 Bengaluru, dated; 29.05.2013.

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Adverting to the above, I am directed to forward herewith the recommendations of the Hon'ble Lokayukta, State of Karnataka, Bengaluru, dated; 01/02/2020 in original, and the Report of the Inquiry Officer, in original, along with relevant records of inquiry, as detailed below:

**I N D E X**

<b>File No.</b>	<b>Particulars of Documents</b>	<b>Page No.</b>
	One sealed cover containing recommendation of Hon'ble Lokayukta dated; 01.02.2020 and Inquiry Report dated; 31.12.2019.	

<b>File -1</b>	Order Sheet file- original	1-26
<b>File- 2</b>	1. 12(3) Report -Xerox	27-29
<b>R</b>	2. Government Order-Xerox	30-32
	3. Nomination order-Xerox	33-34
	4. Articles of charge-Original	35-41
	5. FOS of DGO 1 and 2 -original	42-43
	6. Written statement of DGO 1 and 2- Original	44-48
	7. Questionnaire of DGO 1 and 2- Original	49-58
	8. Written Brief filed by P.O-original	59-61
	9. Written Brief filed by DGO-original	62-100
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Receipt of the recommendation of the Hon'ble Lokayukta, along with the Report of the Inquiry Officer in a sealed cover and the connected inquiry records, as mentioned above, may please be acknowledged, at the earliest.

Yours faithfully,

  
(B.V. PATIL)

Registrar,  
Karnataka Lokayukta,  
Bengaluru.

Copy to:

~~The Addl. Registrar of Enquiries - 1, Karnataka Lokayukta, Bengaluru  
along with copy of recommendation, for information and further necessary  
action.~~







**KARNATAKA LOKAYUKTA**

No:LOK/ARE-1/Enq-257/2013

Multi Storied Building  
Dr B.R.AmbedkarVeedhi  
Bengaluru – 560 001  
Date: 01-02-2020

**RECOMMENDATION UNDER RULE 14(A)(2)(d) OF  
THE KARNATAKA CIVIL SERVICES (C.C&A) RULES, 1957**

**Sub:-** Departmental Enquiry against (1) Sri. Ashok Kumar S/o Bhimappa Paradi, Joint Director and (2) Sri. Ashok S/o Phakeerappa Kalkani, Second Division Assistant both in the office of Joint Director, District Industrial Centre at Haveri – reg.

**Ref:-** Government Order No. CI 80 ISE 2010 Bengaluru, dated; 29.05.2013.

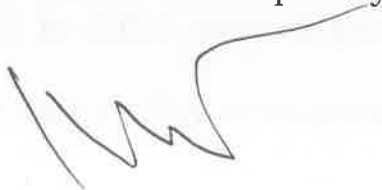
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The Enquiry report dated 31-12-2019 in No: LOK/ARE-1/Enq-257/2013 submitted by the Additional Registrar of Enquiries-1 (hereinafter referred to as the Enquiry Officer) Karnataka Lokayukta has been placed before me.

2. Pursuant to the report dated 01-03-2013 submitted by the then Hon'ble Lokayukta under Section 12(3) of the Karnataka Lokayukta Act, 1984 (hereinafter referred to as

'the Act'), the Government of Karnataka by means of its Government Order No. CI 80 ISE 2013 Bengaluru, dated; 29.05.2013, while accepting the recommendation made U/Sec. 12(3) of the Act, initiated Disciplinary proceedings against (1) Sri. Ashok Kumar S/o Bhimappa Paradi, Joint Director and (2) Sri. Ashok S/o Phakeerappa Kalkani, Second Division Assistant both in the office of Joint Director, District Industrial Centre at Haveri (hereinafter referred to as Delinquent Government Officer, for short DGO-1 & 2 respectively) and entrusted the same to the Hon'ble Lokayukta to conduct an enquiry about the allegations made against the DGOs under Rule 14-A of Karnataka Civil Services (CCA) Rules, 1957.

3. Subsequent to the receipt of the said Government Order dated 29-05-2013, the then Hon'ble Lokayukta by means of Nomination Order No.LOK/INQ/14-A/257/2013 dated 15-06-2013, nominated the Additional Registrar of Enquiries-3, Karnataka Lokayukta, Bengaluru as Inquiry Officer to frame charges and conduct an inquiry against the DGOs. Subsequently, the matter was transferred to the




Additional Registrar of Enquiries-1, Karnataka Lokayukta, Bengaluru to conduct an inquiry against the DGOs.

4. The Inquiry Officer has framed the Articles of charges against the DGOs. It is useful to extract the Article of charges framed against the DGOs, which reads as hereunder:

**CHARGE**

*That you, DGO No.1 Sri. Ashok Kumar Bhimappa Paraddi, Joint Director, District Industrial Centre, Hveri through DGO No.2 Sri. Ashoka Phakeerappa Kalkani, SDA, District Industrial Centre, Haveri demanded and accepted a bribe of Rs.8,000/- on 23.03.2010 for self and for DGO No.2 from complainant Sri. Hajarath Bilal Sahebjan Koti, R/o Rattihalli of Hirekerur Taluk, Haveri District at the office of the DGO i.e., the O/o Joint Director, District Industrial Centre, Haveri for issuing the subsidy certificate for availment of loan under PMEGP scheme, that is for doing an official act, and thereby you both DGOs have 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.*



5. The DGOs-1 and 2, after service of the Article of charges, generally denied the charges levelled against them in their statement of defence.

6. In the course of inquiry proceedings, on behalf of Disciplinary Authority, three witnesses were examined as PW-1 to PW-3 and thirteen documents were marked as Ex.P-1 to P-13. One witness was examined on behalf of DGOs as DW-1 and DGO No.1 himself examined as DW-2 and got marked six documents as Ex.D-1 to D-6.

7. The Inquiry Officer, based on the evidence adduced in the course of enquiry, found that the disciplinary authority has established the charges levelled against the DGOs.

8. I have gone through the report of the Inquiry Officer and also the evidence available on record. The substance of the charge levelled against the DGOs is that DGO No.1 Sri. Ashok Kumar Bhemappa Paraddi, the then Joint Director, District Industrial Centre, Haveri through DGO No.2 Sri. Ashok Pakeerappa Kalkani, the then SDA, District Industrial Centre, Haveri demanded and accepted a bribe of Rs.8,000/- on 23.03.2010 for himself and DGO No.2 from the complainant Sri. Hajarath Bilal Saheb Jan Koti for



issuing the subsidy certificate for availing of a loan under PMEGP Scheme i.e., for doing an official act.

9. The material on record would indicate that complainant Sri. Hajarath Bilal Saheb Jan Koti has made an application to the office of Joint Director, District Industrial Centre, Haveri in the month of October-2009 for issue of a certificate to avail subsidy on the loan amount under Prime Minister Rozgar Yojana (PMEGP) and in the interview, the complainant was asked to bring the loan sanctioned letter from the bank. Accordingly, the complainant brought the loan sanctioned letter and approached the DGO No.1 for issue of loan subsidy certificate and at that point of time, the DGO No.1 had demanded Rs.15,000/- as bribe to extend the loan subsidy certificate to him and after negotiation, the bribe amount was reduced to Rs.8,000/- from Rs.15,000/- and DGO No.1 asked the complainant to hand over the bribe amount to the DGO No.2. As the complainant was not inclined to pay a bribe to the DGO No.1, he had approached the Lokayukta Police, Haveri on 23.03.2010 and filed a complaint as per Ex.P-1, upon which a case came to be



registered by the Investigating officer in Cr.No.1/2010 and the investigation was taken up. The Investigating Officer had conducted the pre-trap proceedings in the office of Lokayukta Police and currency notes worth of Rs.8,000/-, smeared with phenolphthalein powder were entrusted to the complainant/PW-1 in the presence of panch witnesses with a direction to hand over the said amount to the DGOs, if they again make a demand for the bribe. In that connection, an entrustment mahazar dated 23.03.2010 was drawn as per Ex.P-3. On the same day the complainant along with shadow witness Sri. Lokappa Basavannappa Elivara/PW-2 was sent to meet the DGO No.2 in the office and at that time also the DGO No.2 demanded bribe amount from the complainant to attend to his work and accepted the tainted amount tendered by the complainant and DGO No.2 was caught red-handed. Then the Investigating Officer washed the hands of the DGO No.2 and there was a change of colour. The presence of DGO No.1 was also secured. The relevant documents were also seized from the office of DGOs under a mahazar at Ex.P-5 and a trap mahazar was also prepared as per Ex.P-7. On



completion of the investigation, the Investigating Officer has filed the charge sheet against the DGOs.

10. In the case on hand, there is no dispute concerning the fact that DGO No.1 was working as the Joint Director, District Industrial Centre at Haveri and DGO No.2 was working as Second Division Assistant in the office of Joint Director, District Industrial Centre at Haveri at the relevant point of time.

11. The Enquiry Officer on elaborate consideration of evidence on record has recorded a categorical finding that the Disciplinary Authority has established the charges leveled against the DGOs. Now, the question is whether the report submitted by the Enquiry Officer requires to be recommended for acceptance by the Competent Authority?

12. Now, let me examine the evidence on record regarding the demand and acceptance of a bribe by the DGOs for doing an official act and regarding the recovery of the bribe amount from the possession of DGOs. It is not disputed by the DGOs that an application was made before the office of the District Industrial Centre for issuance of a loan subsidy certificate to the complainant. It is the specific



allegation of the complainant that when he approached the DGO No.1 in connection with the issuance of a loan subsidy certificate, DGO No.1 had initially demanded him to pay Rs.15,000/- as bribe and on negotiation, it was reduced to Rs.8,000/- as a bribe and he directed the complainant to hand over the amount to DGO No.2 for attending his work. However, since the complainant was not willing to pay the bribe amount as demanded by DGO No.1, he lodged a complaint before the Lokayukta Police, Haveri District who in turn sent the complainant to the office of DGOs with tainted amount and with a direction to give the said amount to the DGOs if they make a demand for illegal gratification. Accordingly, the complainant went to the office of the DGOs wherein DGO No.1 was not present, therefore he went to the chamber of DGO No.2 and handed over the tainted amount to DGO No.2 as per the instructions of DGO No.1. Thereafter, he came out of the office and gave signal to the Investigating Officer, who subsequently conducted the trap proceedings.

13. As observed by me earlier, PW-1 is the complainant. However, in the course of the enquiry proceedings since he





did not supported the case of the disciplinary authority, he was treated as hostile and was subjected to cross examination on behalf of the Disciplinary Authority.

14. It is necessary to point out that though the PW-1 was treated as hostile, in the course of his chief examination, he has stated that he had submitted an application to the office of DGOs seeking for issue of loan subsidy certificate and in that connection he was visiting the office of DGOs and he had lodged a complaint before the Lokayukta Police as per Ex.P-1 dated 23.10.2010. In this connection, it is useful to extract the relevant portion from Ex.P-1 with respect to the allegations made against DGO No.1 about the demand of bribe made by him which reads as hereunder;

“ನನಗೆ ವಟ್ಟಿ ಮೊಬೈಲ್ ಸರ್ವಿಸ್ ಸೆಂಟರ್ ಸಲುವಾಗಿ ರೂ.3,00,000/-

(ಮೂರು ಲಕ್ಷ ರೂಪಾಯಿ) ಮಂಜೂರಾಗಿರುತ್ತದೆ. ಕರ್ನಾಟಕ ಬ್ಯಾಂಕ್,

ರಚನಾ ಶಾಖೆಯಿಂದ ಮಂಜೂರಾಗಿರುತ್ತದೆ. ಈ ಸಾಲಕ್ಕೆ ಈ

ಕಾರ್ಯಾಲಯದಿಂದ ಒಂದು ಲಕ್ಷಕ್ಕೆ 35 ಸಾವಿರದಂತೆ 3,00,000/- ಲಕ್ಷ

ರೂಪಾಯಿಗೆ, ಒಂದು ಲಕ್ಷದ ಐದು ಸಾವಿರ ರೂಪಾಯಿ (ರೂ.1,05,000/-

ಸಜ್ಜಿ ಕೊಡಬೇಕು ಅಂತಾ ಸಿಎಂಐಜಿಸಿ ಯೋಜನೆಯಲ್ಲಿ ಅವಕಾಶ

ಇರುತ್ತದೆ. ಸದರಿ ಸಜ್ಜಿ ಪಡೆಲಕ್ಕೆ ನಾನು ಪದೇ ಪದೇ ಹೋದಾಗ, ಈ

ಕಾರ್ಯಾಲಯದ ಮುಖ್ಯಸ್ಥರಾದ ಜಂಟಿ ನಿರ್ದೇಶಕರು, ನನಗೆ ಸಜ್ಜಿ ಪತ್ರ ಕೊಡುವ ಸಲುವಾಗಿ ರೂ. ಹದಿನೈದು ಸಾವಿರ ರೂಪಾಯಿ (15,000/-) ಲಂಚ ಕೇಳುತ್ತಿದ್ದಾರೆ. ಆದರೆ, ನನಗೆ ಲಂಚ ಕೊಡಲಕ್ಕೆ ಇಷ್ಟ ಇಲ್ಲದ್ದರಿಂದ, ಕೇವಲ ಎಂಟು ಸಾವಿರ ರೂಪಾಯಿ (8,000/- ಕೊಡುವುದಕ್ಕೆ ಒಪ್ಪಿರುತ್ತೇನೆ. ಆದರೆ ಅವರ ಒತ್ತಾಯಕ್ಕೆ ಒಪ್ಪಿರುತ್ತೇನೆ. ನನಗೆ ಲಂಚ ಕೊಟ್ಟು ಕೆಲಸ ಮಾಡಿಸಿಕೊಳ್ಳಲು ಇಷ್ಟ ಇರುವುದಿಲ್ಲ. ಆದ್ದರಿಂದ, ಜಂಟಿ ನಿರ್ದೇಶಕರು, ಜಿಲ್ಲಾ ಕೈಗಾರಿಕಾ ಕೇಂದ್ರ, ಹಾವೇರಿ ಮತ್ತು ಅಲ್ಲ ಕೆಲಸ ಮಾಡುತ್ತಿರುವಂತಹ ಶ್ರೀ ಕುಲಕರ್ಣಿಯವರು ನೆಲೆ ಲಂಚದ ಹಣವನ್ನು ಕೇಳಿದ್ದು, ಜಂಟಿ ನಿರ್ದೇಶಕರು, ನದರಿ ಲಂಚದ ಹಣ ಶ್ರೀ. ಕುಲಕರ್ಣಿ ಕೈಯಲ್ಲಿ ಕೊಡಲು ಹೇಳಿರುತ್ತಾರೆ ಮತ್ತು ಕುಲಕರ್ಣಿಯವರು ಕೂಡ, ತಾನು ಈ ದಿನಾ ಸಂಜೆಯ 6 ಗಂಟೆಗೆ ಕಛೇರಿಯಲ್ಲಿ ಕಾಯುತ್ತೇನೆ. ರೂಪಾಯಿ ಎಂಟು ಸಾವಿರ (8,000) ತಂದು ಕೊಟ್ಟು ಸಜ್ಜಿ ಕೆಲಸ ಪತ್ರವನ್ನು ಒಯ್ಯಲು ನನಗೆ ಹೇಳಿರುತ್ತಾರೆ. ಅವತ್ತಿಂದ ಇವರ ಮೇಲೆ ಕಾಣಿಸಿದ ವ್ಯಕ್ತಿಗಳ ಮೇಲೆ ನನ್ನ ಪರಿಯಾದ ಇದ್ದು ಕಾನೂನು ರೀತ್ಯಾ ಅವರ ಮೇಲೆ ಕ್ರಮ ಕೈಗೊಳ್ಳಲು ಕೋರುತ್ತೇನೆ.

15. However, as observed by me earlier, PW-1 did not supported the version stated by him in his complaint Ex.P-1. In the course of the cross examination, he has admitted that he has given a complaint Ex.P-1. It is not his case that the statement made in the complaint Ex.P-1 does not represent the true and correct facts and the contents of the said complaint are false and baseless or was given at



the behest of somebody else with a view to fix up the DGOs. He has not given any explanation for giving complaint Ex.P-1. In these circumstances, though the complainant/PW-1 has turned hostile in the course of the evidence, one has to proceed on the basis that the complaint Ex.P-1 given by the complainant PW-1 was voluntary and the contents of the complaint are true and correct.

16. There is no material placed by the DGO No.1, though he had examined himself as DW-2, he has not offered any explanation as to what prompted the complainant to give complaint Ex.P-1. Nothing has been elicited from PW-1 on behalf of DGOs that he had any motive to implicate DGOs by filing a false complaint as per Ex.P-1. The complaint was given on 23.03.2010. The complainant was examined as PW-1 on 20<sup>th</sup> of July, 2018 i.e., nearly after eight years. Therefore, the only inference that could be drawn from the facts and circumstances of the case that PW-1 has turned hostile on account of long lapse of time, PW-1 must have been won over by the DGO-1 on account of totally extraneous reasons and irrelevant consideration. It is also



relevant to point out that the pre-trap mahazar as per Ex.P-3 was recorded on the basis of the complaint Ex.P-1. The contents of pre-trap mahazar proceedings Ex.P-3 corroborates the allegations of the complaint and the contents of the complaint which led for the preparation of the pre-trap proceedings. The complainant PW-1 in his complaint has specifically stated that the complainant was required to hand over the bribe amount to DGO No.2. The evidence on record clearly establishes that the DGO No.2 caught red handed with tainted amount. When his hands were washed, it turned into pink colour, since had touched the tainted amount.

17. The shadow witness/PW-2 who was a party to the trap proceedings has supported the case of the Disciplinary Authority and the seizure of the tainted amount of Rs.8,000/- from the possession of DGO No.2 in his office. Therefore, merely because DGO No.1 was not in the office at the time of trap proceedings and the amount was recovered from the possession of DGO No.2 only, cannot be a ground to absolve DGO No.1 from the charges levelled against him. As observed by me earlier, the complainant at



an undisputed point of time in his complaint Ex.P-1 has stated that the DGO No.1 had instructed him to pay the bribe amount to the hands of DGO No.2. Accordingly, the tainted amount was handed over to the hands of DGO No.2 and recovered from his possession. There is absolutely no reason to disbelieve the contents of Ex.P-1 as PW-1 complainant himself has admitted that he has given a complaint Ex.P-1.

18. As noticed by me earlier, the complaint Ex.P-1 clearly implicates the guilt of DGO No.1 and 2 regarding the demand. In the back ground of the demand made by the DGOs, the amount came to be received by the DGO No.2 for himself and on behalf of DGO No.1. Therefore, merely because the PW-1 has turned hostile in the course of the evidence, in my considered view cannot be a ground to absolve DGO No.1 from the charges leveled against him. The material on record also clearly supports that PW-1 has made an application for loan subsidy to the Karnataka Bank, Rattahalli Branch and the bank was insisting him to produce loan subsidy certificate from DGO No.1 and in that connection PW-1 had approached the DGO No.1 and



in that connection the PW-1 had approached DGO No.1. Therefore, on the basis of the several set of circumstances and materials available on record, I have no doubt in my mind that the main culprit is the DGO No.1 and it is at his instance, the DGO No.2 has received the tainted amount. The evidence on record clearly establishes that several links in the chain which led to payment of bribe money to DGO No.2 and recovery of same from him clearly establishes the guilt of the DGO No.1 and 2. Under these circumstances, I am of the view that the conclusion reached by the Enquiry Officer to hold that the Disciplinary Authority has established the charge levelled against DGO No.1 is proved is correct and requires to be accepted. It is also relevant to place it on record the modus operandi adopted by DGO No.1 in this case is a set method/procedure adopted by Senior Public Servants using their subordinate Public Servants who are sometime innocents and sometime who are connive with the senior officers.

19. So far as DGO No.2 is concerned, the evidence on record clearly shows that the tainted amount was



recovered from his possession. The Shadow Witness/PW-2 has supported the recovery of the amount from his custody. Though the I.O. could not be examined in the course of the enquiry proceedings on account of his death, the head constable Sri. Ningappa Gundappa Kanavalli who has participated in the investigation proceedings including the trap proceedings was examined as PW-3 and he has fully supported the case of the disciplinary authority. There are no reason to disbelieve the version of the PW-2 and 3. The Enquiry Officer on consideration of the evidence of the witnesses examined on behalf of the disciplinary authority has accepted their evidence and recorded a finding that the disciplinary authority has established the charges levelled against DGO No.2. I do not find any infirmity in the said conclusion reached by the Enquiry Officer.

20. It is the contention of the DGOs that since PW-1 has turned as hostile; his evidence cannot be relied upon to prove the case of disciplinary authority. As discussed earlier, PW-1 in his chief-examination has deposed some important facts which corroborates with the case of the



disciplinary authority. However, for the reasons best known to him, he has turned hostile. The Hon'ble Supreme Court in the case of **Ramesh Harijan vs State Of U.P** reported in **AIR 2012 SC 1979** has held as under;-

“18. It is a settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. **The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof.**”

19. In State of U.P. v. Ramesh Prasad Misra & Anr., AIR 1996 SC 2766, this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon.”

21. Therefore, in the light of the judgements of the Supreme Court referred to above, merely because the complainant has turned hostile, the statement made by





him in Ex.P-1 complaint and the statement made by him in the chief examination cannot be brushed aside.

22. Further, it is necessary to notice that the defence put forth by the DGO No.1 is of no use to him to prove that he was innocent of the charges leveled against him. The only defence he has put forth by him is that he had written a letter dated 23.02.2010 to the to the Karnataka Bank, Rattihalli Branch for sanction of loan to the complainant and as such it is his case that as on the date of trap i.e., on 23.03.2010, no work relating to the complainant was pending before him and the question of demanding and accepting of bribe for doing an official act does not arise. He has contended that a false complaint has been filed against him before the Lokayukta Police at the instance of one Sri. Chandru Mohithe, who is the friend of the complainant. According to him, the said Sri. Chandru Mohithe was working as an agent. It is relevant to state that even though it appears from the documents produced by DGO No.1 at Ex.D-3 that on 11.03.2010, the application of complainant was sent to the concerned bank for release of loan amount, the fact remains that the work



pertaining to the complainant was pending before the DGO No.1 for recommending sanction of loan. If, infact DGO No.1 has written a letter on 11.03.2010 as claimed by him, the first thing he should have done was to inform the complainant that he has written a letter to the concerned bank as per Ex.D-3. In that event, the question of complainant giving of a complaint as per Ex.P-1 on 23.03.2010 would not arise. Except producing letter as per Ex.D-3, the DGO No.1 has not placed any evidence to show that the said letter was actually forwarded to the bank. Further, even if he has sent the letter as per Ex.D-3 as claimed by him, the only inference that can be drawn is to keep it as a guarded secret and to make an attempt to collect the bribe money from PW-1. The defence taken by the DGOs is the stock defence taken by most of the dishonest and corrupt Public Servants. Under these circumstances, the defence set up by the DGO No.1 is unacceptable to exonerate him from the charges leveled against him. In my view the defence put forth by DGO No.1 is an afterthought and is a make believe story and as observed by me earlier it is totally unacceptable. As observed by me earlier, these are the defences normally put



forth by the corrupt officials to cover up their misdeeds. No reasonable judicial mind can accept such defences. The Enquiry Officer in his report has elaborately considered the defence raised by DGO No.1 and has rightly rejected the same.

23. So far as the defence of DGO No.2 is concerned, the material on record indicates that he gave a written explanation on the same day i.e., on 23.03.2010 as per Ex.P-10. It is useful to extract the same which reads as under:-

“ದಿನಾಂಕ; 23.03.2010ರಂದು ಶ್ರೀ. ಹಜರತ್ ಉಲಾಲ ಖವರು ಕಛೇರಿಗೆ ಬಂದಿದ್ದರು. ನಾನು ಸುಮಾರು 10:57 ನಿಮಿಷಕ್ಕೆ ಕಛೇರಿಗೆ ಬಂದಾಗ ಅವರು ಕಛೇರಿಯಲ್ಲಿ ಇದ್ದರು. ದಿನಾಂಕ; 22.03.2010ರಂದು ಶ್ರೀ. ಎ.ಐ. ಪರಡ್ಡಿ, ಜಂಟಿ ನಿರ್ದೇಶಕರು, ಡಿ.ಐ.ಸಿ., ಹಾವೇರಿ ಮತ್ತು ಶ್ರೀ. ಕೆ.ಎಸ್. ಶ್ರೀಧರರಾವ್, ಕೈಗಾಲಿಕಾ ಉತ್ತೇಜನಾಧಿಕಾರಿಗಳು, ಡಿ.ಐ.ಸಿ., ಹಾವೇರಿ ಇವರು ದುಡ್ಡು ಕೊಡಲು ಹೇಳುತ್ತಾರೆ ಎಂದು ಹೇಳಿದರು. ನನಗೆ ಅಧಿಕಾರಿಗಳು, ಹೊಸಲಿಲೆ ಗ್ರಾಮದಲ್ಲಿ ಒಂದು ದಿನದ ವಿಚಾರ ಸಂಕೀರ್ಣಕ್ಕೆ ಹೋಗಿರುತ್ತಾರೆ. ಅವರು ಸುಮಾರು 2:00 ಗಂಟೆಗೆ ಕಛೇರಿಗೆ ಬರಬಹುದೆಂದು ತಿಳಿಸಿದರು. ನಂತರ ಅವರು ಅಧೀನನಿಂದ ಹೊರಗೆ ಹೋದರು. ನಂತರ ಶ್ರೀ. ಹಜರತ್ ಉಲಾಲ ಖವರು ಕೆಲವು ಜನರೊಂದಿಗೆ ಮರಳಿ ಬಂದರು. ನಂತರ ನನ್ನ ಕೆರಡು ಕೈಗಳನ್ನು ಹಿಡಿದುಕೊಂಡು ಶ್ರೀ. ಕೆ.ಎಸ್. ಶ್ರೀಧರರಾವ್, ಕೈಗಾಲಿಕಾ ಉತ್ತೇಜನಾಧಿಕಾರಿ, ಡಿ.ಐ.ಸಿ., ಹಾವೇರಿ ಕಛೇರಿ ಕೆಲಸ ಮಾಡುವ ಸ್ಥಳಕ್ಕೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಟೇಬಲ್ ಡ್ರಾ ಟಿಪ್ಪನ್ ಮಾಡಲು ತಿಳಿಸಿದರು. ಶ್ರೀ. ಎ.ಐ. ಪರಡ್ಡಿ, ಜಂಟಿ ನಿರ್ದೇಶಕರು, ಡಿ.ಐ.ಸಿ., ಹಾವೇರಿ ಮತ್ತು ಶ್ರೀ.

ಕೆ.ಎಸ್. ಶ್ರೀಧರರಾವ್, ಕೆ.ಉ.ಅ., ಡಿ.ಐ.ಸಿ., ಹಾವೇರಿ ಭವನ ಶ್ರೀ. ಹಜರತ್ ಬಿಲಾಲ ಕೋಣಿ ಭವನ ಭಟ್ಟರು ಅಧಿಕಾರಿಗಳಿಗೆ ಯಾಕ್ ಮಡ್ಡುಕೊಡಬೇಕಾಗಿದೆ ಮತ್ತು ಯಾವ ಹಣ ಎಂಬುದು ನನಗೆ ಗೊತ್ತಿರುವುದಿಲ್ಲ ಮತ್ತು ನಾನು ಶ್ರೀ. ಹಜರತ್ ಬಿಲಾಲ ಭವನ ಹತ್ತಿರ ದುಡ್ಡನ್ನು ಪಡೆದಿರುವುದಿಲ್ಲ ಮತ್ತು ಭಟ್ಟರು ಅಧಿಕಾರಿಗಳು ಮಾತಾಡಿದ ವಿಷಯಗಳು ನನಗೆ ತಿಳಿದಿರುವುದಿಲ್ಲವೆಂಬ ವಿಷಯವನ್ನು ತಮ್ಮ ಅವಗಾಹನೆಗೆ ಸಲ್ಲಿಸಿದೆ”.

24. As could be seen from the explanation of DGO No.2, he is innocent of the allegations made against him. According to him on the date of trap the complainant had visited his office and told him that DGO No.1 and Sri. K.S. Sridhar Rao had asked him to pay money. At that time he told the complainant that those persons had gone to attend an official function at Hosarile Village and they would come back at 2:00 P.M. Therefore, the complainant had returned and after some time the complainant along with some persons came and took him to the chamber of Sri. K.S. Sridhar Rao and told him to open the table drawer and made him touch the tainted amount. According to him, he did not receive any amount from the complainant. It is relevant to point out that DGO No-2 did not examine himself as a witness in support of the explanation submitted by him at Ex.P-10. Except the allegation that he was forcibly made to touch the tainted amount, nothing is




brought on record to indicate that he has been falsely implicated in this case. In the light of what is stated above, the explanation of DGO No.2 at Ex.P-10 does not inspire the confidence to accept his version to exonerate him from the charge leveled against him. The facts and circumstances of the case would indicate that since there was a demand for the bribe, the complainant had approached the jurisdictional Lokayukta police which resulted in trap proceedings. Therefore, the explanation offered by the DGO No.2 in Ex.P-10 cannot be accepted.

25. It has been contended on behalf of DGOs that since they have already been acquitted in the criminal proceedings registered against them by the jurisdictional special court in its judgment in Spl.C.C. No.3/2011, they cannot be held to be guilty of misconduct on the same set of evidence. From the perusal of the judgment in Spl. Case No. 3/2011, it reveals that the DGOs have been acquitted of the offences alleged against them under the provisions of Prevention of Corruption Act. In this connection, it is useful to refer to the judgement of the Hon'ble Supreme Court in the case of **Ajithkumar Nag V/s General Manager (PJ)**



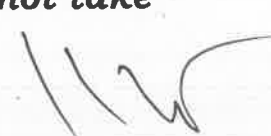
**Indian Oil Corporation Limited, Haldia and other** reported in (2005) 7 SCC 764, wherein it is held that *“strict rule of evidence and procedure would not apply to the departmental proceedings. The degree of proof which is necessary to order conviction is different from the degree of proof necessary to record commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, finding of guilt and consequent penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability”.*

26. Further, the said principle has been reiterated by the Hon'ble Supreme Court in its recent judgment in the case of **Deputy Inspector General of Police and another V/s Samuthiram** reported in (2013) 1 SCC 598. It is useful



to extract the Para No. 26 of the said Judgment, which reads as hereunder;

***“26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honorably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take***



*steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.*

27. In the light of the judgments of Hon'ble Supreme Court in the cases referred to above, I am of the view that merely because the DGOs were acquitted in the criminal case registered against them, they cannot be exonerated from the articles of charges framed against them, if the evidence adduced in the course of the disciplinary enquiry against them supports the charge leveled against them. As observed earlier, the evidence adduced by the disciplinary authority supports the charges leveled against them and it points at them about the misconduct in respect of article of charge leveled against them.





28. The Enquiry Officer, after elaborately discussing the evidence of PW-1 to PW-3 and the evidence of DW-1 and 2 has recorded a finding that the disciplinary authority has proved the misconduct of the DGOs by establishing the charge leveled against them. The evidence of DW-2 who has been examined to show that on 10.03.2010, there was some altercation between DGO No.1 and Sri. Chandru Mohithe. However, his version on the face of it cannot be believed. There is no material placed either by the DGO No.1 or DW-1 to show that at any time prior to the complaint Ex.P-1 such incident had taken place. There is no reference anywhere prior to examination of DW-1 about his presence with regard to the incident he has referred to in his evidence or about the altercation that has taken place between DW-1 and Sri. Chandru Mohithe. Therefore, it appears that DW-1 has been examined by DGO No.1 who is his subordinate taking advantage of his higher position in an attempt to protect himself from the Article of Charge framed against him. In the light of what is stated above and as observed by me earlier, no value can be given to the evidence of DW-1. Based on the evidence on record, I do not find any ground to take a different view



from the one taken by the Inquiry Officer. Therefore, the conclusion of the Inquiry Officer is required to be accepted as correct.

29. In the light of the discussion made above, the enquiry report dated 31.12.2019 submitted by the Enquiry Officer (Additional Registrar of Enquiries-1) holding that the Disciplinary Authority has proved the charge leveled against the DGOs requires to be accepted as correct and a recommendation is required to be made to the Competent Authority to accept the said report.

30. The only other question that requires to be considered is about the penalty that is required to be imposed on the DGOs.

31. The DGO-1 & 2 have already retired from service on 31.12.2018 and 31.05.2017 respectively. Rule 8 of KCS (CC&A) Rules, 1957 provides for imposition of penalty on the Government Servant against whom the misconduct is proved. Proviso appended to Rule 8 provides that in the absence of special and adequate reasons to the contrary to be mentioned in the order of the Disciplinary Authority, no penalty other than the one specified in clauses (vi) to (viii)



shall be imposed for an established charge of corruption. It is useful to extract Sub Rule (vi) to (viii) of Rule 8 and proviso given to said Rules which reads as hereunder;

**8. Nature of penalties.-** One or more of the following penalties for good and sufficient reasons and as hereinafter provided, may be imposed on Government servants, namely.-

.....

(vi) Compulsory retirement;

(vii) Removal from service which shall not be a disqualification for future employment;

(viii) Dismissal from service which shall ordinarily be a disqualification for future employment.

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the order of the disciplinary authority, no penalty other than those specified in clauses (vi) to (viii) shall be imposed for an established charge of corruption.

32. If DGO No.1 and 2 were to be in service, in view of Rule 8 of KCS (CC&A) Rules, 1957, they were required to be imposed penalty of compulsory retirement or Removal from service which shall not be a disqualification for future appointment or dismissal from service which shall ordinarily be disqualification for future employment. Since, the DGOs No.1 and 2 have retired from service, it is not possible to impose the penalties provided under Rule 8 of KCS (CC&A) Rules, 1957. However, Rule 214(1)(a) of

KCSRs provides for withholding or withdrawing a pension or part thereof either permanently or for a specified period, if in any departmental proceedings, the pensioner is found guilty of grave misconduct during the period of his service. In the instant case, DGOs 1 and 2 are found guilty of grave misconduct during the period of their service. Therefore, having regard to the facts and circumstances of the case, I am of the view, the ends of justice would be met if a recommendation is made for denial of 35% (Thirty five percent) of the monthly pension payable for a period of first 7 (seven years) and thereafter 15% (fifteen percent) of the monthly pension permanently so far as DGO No.1 is concerned and for denial of 20% (Twenty percent) of the monthly pension payable for a period of first 5 (five years) and thereafter 5% (five percent) of the monthly pension permanently so far as DGO No.2 is concerned.

33. In the light of the discussion made above, I make the following recommendation:

- (i) The Enquiry Report dated; 31.12.2019 submitted by the Inquiry Officer i.e., ARE-1 holding that the Disciplinary Authority has



proved the charge leveled against the DGO No.1 Sri. Ashok Kumar S/o Bhimappa Paradi, the then Joint Director, District Industrial Centre, Haveri and DGO No.2 Sri. Ashok S/o Phakeerappa Kalkani, the then Second Division Assistant, Office of Joint Director, District Industrial Centre at Haveri requires to be accepted by the Competent Authority.

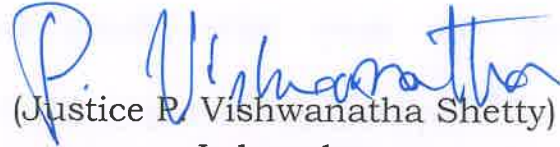
- (ii) To deny 35% (Thirty five percent) of the monthly pension payable for a period of first 7 (seven years) from the date of denial and thereafter 15% (fifteen percent) of the monthly pension permanently payable to DGO No.1 - Sri. Ashok Kumar S/o Bhimappa Paradi, the then Joint Director, District Industrial Centre, Haveri.
- (iii) To deny 20% (Twenty percent) of the monthly pension payable for a period of first 5 (five years) from the date of denial and thereafter 5% (five percent) of the monthly pension permanently payable to DGO No.2 - Sri. Ashok S/o Phakeerappa Kalkani, the then Second

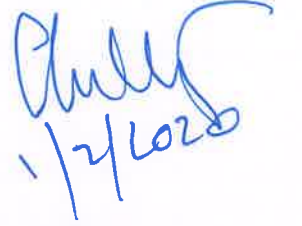
Division Assistant, Office of Joint Director,  
District Industrial Centre at Haveri.

Accordingly, recommendation is made to the  
Government.

34. Action taken in the matter be intimated to this  
Authority within three months from the date of receipt of  
the recommendation.

Connected records are enclosed.

  
(Justice P. Vishwanatha Shetty)  
Lokayukta,  
State of Karnataka, Bengaluru.

  
1/2/2020