

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

NO: LOK/ARE-4/ENQ/332/2011/ARE-4

Multi Storied Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001,
Date: 10/08/2018

RECOMMENDATION

Sub:- Departmental inquiry against Sri H.Shivappajaiah,
Village Accountant, Hesaraghatta Circle,
Bengaluru North Taluk, Bengaluru

Ref:- 1) Government Order No.ಕಂಇ 115 ಬಿಡಿಎ 2011, Bengaluru
dated 22/9/2011

2) Nomination order No.LOK/INQ/14-A/332/2011,
Bengaluru dated 13/10/2011 of Upalokayukta-1,
State of Karnataka, Bengaluru

3) Inquiry Report dated 8/8/2018 of Additional
Registrar of Enquiries- 4, Karnataka Lokayukta,
Bengaluru

The Government by its Order dated 22/9/2011, initiated the disciplinary proceedings against Sri H.Shivappajaiah, Village Accountant, Hesaraghatta Circle, Bengaluru North Taluk, Bengaluru (hereinafter referred to as Delinquent Government Official, for short as '**DGO**) and entrusted the Departmental Inquiry to this Institution.

2. This Institution by Nomination Order No.LOK/INQ/14-A/332/2011, Bengaluru dated 13/10/2011 nominated Additional Registrar of Enquiries-4, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct Departmental Inquiry against DGO for the alleged charge of misconduct, said to have been committed by him.

3. The DGO Sri H.Shivappajaiah, Village Accountant, Hesaraghatta Circle, Bengaluru North Taluk, Bengaluru was tried for the following charge:-

“That, you Sri H.Shivappajaiah, the DGO, while working as Village Accountant at Hesaraghatta Circle in Bangalore North Taluk, the complainant namely Sri H.A. Jnanamurthy applied for change of khatha in respect of land bearing Sy. No.249/2 of Hesaraghatta village to the Tahsildar of Bangalore North Taluk (Addl.) on 19/01/2005 and about two weeks later you called the complainant and asked for bribe of Rs.3,500/- and after request, demand was reduced to Rs.2,000/- asking the complainant to bring the same on 14/02/2005 and on 14/02/2005 received Rs.2,000/- as bribe to show official favour failing to maintain absolute integrity and devotion to duty, the act of which was unbecoming of a Government Servant and thereby committed misconduct as enumerated u/Rule 3(1)(i) to (iii) of the Karnataka Civil Services (Conduct) Rules, 1966.”

4. The Inquiry Officer (Additional Registrar of Enquiries-4) on proper appreciation of oral and documentary evidence has held that the Disciplinary Authority has proved the above charge against DGO Sri H.Shivappajaiah, Village Accountant, Hesaraghatta Circle, Bengaluru North Taluk, Bengaluru.


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

6. As per the First Oral Statement submitted by DGO, he has retired from service on 31/3/2014 (during the pendency of inquiry).

7. Having regard to the nature of charge (demand and acceptance of bribe) proved against DGO Sri H. Shivappajaiah, it is hereby recommended to the Government for imposing penalty of permanently withholding 50% of pension payable to DGO Sri H. Shivappajaiah, Village Accountant, Hesaraghatta Circle, Bengaluru North Taluk, Bengaluru.

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

Connected records are enclosed herewith.


(JUSTICE N. ANANDA)
Upalokayukta-1,
State of Karnataka,
Bengaluru

CO/S

KARNATAKA LOKAYUKTA

No.LOK/ARE-4/ENQ/332/2011

M.S.Building,
Dr.B.R.Ambedkar Road
Bangalore-560 001
Date: 8/08/2018

ENQUIRY REPORT

Sub: Departmental Enquiry against,

- 1) Sri H. Shivappajaiah
s/o Honnalingaiah
Village Accountant
Hesaraghatta Circle
Bangalore North Taluk
Bangalore (**now retired**)

Ref:

- 1) Report u/s 12(3) of the K.L Act, 1984 in
Compt/Uplok/BCD/353/2006/ARE-10
dated:22/08/2011
- 2) Govt. Order. No. RD 115 BDP 2011,
Bangalore dated:22/09/2011
- 3) Order No.LOK/INQ/14-A/332/2011
Dtd.13/10/2011 of the Hon'ble
Upalokayukta

1. This Departmental Enquiry is directed against Sri H. Shivappajaiah s/o Honnalingaiah, Village Accountant, Hesaraghatta Circle, Bangalore North Taluk, Bangalore (**now retired**) (herein after referred to as the Delinquent Government Official in short "DGO")
2. After completion of the investigation a report u/sec. 12(3) of the Karnataka Lokayukta Act was sent to the Government as per Reference No.1.

3. In view of the Government Order cited above at reference-2, the Hon'ble Upalokayukta, vide order dated: 13/10/2011 cited above at reference-3, nominated Additional Registrar of Enquiries-4 of the office of the Karnataka Lokayukta as the Enquiry Officer to frame charges and to conduct Inquiry against the aforesaid DGO. Additional Registrar Enquires-4 prepared Articles of Charge, Statement of Imputations of mis-conduct, list of documents proposed to be relied and list of witnesses proposed to be examined in support of Article of Charges. Copies of same were issued to the DGO calling upon him to appear before this Authority and to submit written statement of his defence.

4. The Articles of Charges framed by ARE-4 against the DGO is as below;

ANNEXURE NO.1

CHARGE

That, you Sri H. Shivappajaiah, the DGO, while working as Village Accountant at Hesaraghatta Circle in Bangalore North Taluk, the complainant namely Sri H.A. Jnanamurthy applied for change of khatha in respect of land bearing Sy.No. 249/2 of Hesaraghatta village to the Tahasildar of Bangalore North Taluk (Addl) on 19/01/2005 and about two weeks later you called the complainant and asked for bribe of Rs. 3500/- and after request, demand was reduced to Rs. 2,000/- asking the complainant to bring the same on 14/02/2005 and on 14/02/2005 received Rs. 2,000/- as bribe to show official favour failing to maintain absolute integrity and devotion to duty, the act of which was unbecoming of a

Government Servant and thereby committed misconduct as enumerated u/Rule 3(1)(i) to (iii) of Karnataka Civil Service (Conduct) Rules 1966.

ANNEXURE NO. II

STATEMENT OF IMPUTATIONS OF MISCONDUCT

The complainant namely Sri H.A. Jnanamurthy s/o Gudihatti Anjenappa of Madurai Road at Hesaraghatta in Bangalore North Taluk applied for change of khatha in respect of land bearing sy.No. 249/2 of Hesaraghatta village to the Tahasildar of Bangalore North Taluk on 19/01/2005. About two weeks later the DGO called the complainant and informed him about the receipt of the said application. Instead of attending the work of the complainant, the DGO asked for bribe of Rs. 3,500/- to forward the record and after request, the DGO reduced the demand to Rs. 2,000/- and asked the complainant to bring the same on 14/02/2005. The complainant was not willing to pay bribe as demanded by the DGO. Therefore, on 14/02/2005, the complainant lodged complaint before the Lokayukta Police Inspector of City Division, Bangalore (herein after referred to as the Investigating Officer, for short, " the I.O."). The I.O. registered the complaint n Cr. No. 02/2005 for the offences punishable u/sec. 7,13(1)(d) r/w 13(2) of the Prevention of Corruption Act 1988. During the course of investigation into the said crime, when the tainted amount of Rs. 2,000/- was given by the complainant to the DGO, the I.O. trapped the DGO on 14/02/2005 in the presence of the complainant, the Pancha witnesses and his staff in the office of the DGO and seized the tainted amount under mahazar after following post-trap formalities. The I.O. took statement of

the DGO in writing and recorded statements of the complainant, the pancha witnesses and others. After receiving report of the chemical examiner, the I.O submitted report of investigation. The facts and materials on the record of investigation of the I.O., prima facie showed that the DGO being a Government servant, failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government Servant. Therefore, a suo-moto investigation was taken up u/sec. 7(2) of Karnataka Lokayukta Act and an observation note was sent to the DGO calling for his explanation. The DGO submitted his reply and the reply was not convincing and not satisfactory to drop the proceedings. As the facts and materials on record prima-facie showed that the DGO has committed misconduct as per rule 3(1)(i) & (iii) of KCS (Conduct) Rules, 1966, a report u/sec. 12(3) of the Karnataka Lokayukta Act was sent to the competent authority with recommendation to initiate disciplinary proceedings against the DGO and to entrust enquiry to the Hon'ble Upalokayukta u/Rule 14-A of the Karnataka Civil Services (Classification, Control and Appeal) 1957. Accordingly the competent authority initiated disciplinary proceedings against the DGO and entrusted the enquiry u/Rule 14-A of the KCS (CCA) Rules 1957 to the Hon'ble Upalokayukta. Hence, this charge.

5. DGO appeared before this Enquiry Authority on 22/03/2012 and on the same day his First Oral statement was recorded U/R 11(9) of KCS (CC & A) Rules 1957. The DGO pleaded not guilty and claims to hold an enquiry.

6. DGO has filed his written statement as follows:-

7. In the criminal case the court examined the witnesses and acquitted the DGO as such the aspect of demand and acceptance was not proved. The departmental enquiry is initiated against the DGO on the basis of the same set of facts. The DGO never demanded and accepted any illegal gratification from anybody much less from the complainant. A false case is foisted against the DGO with ulterior motive. On 19/01/2005 itself the khtha was transferred to the name of the complainant as per M.R. No. 62/2004-05. Hence, the question of demand and acceptance of illegal gratification by the DGO does not arise at all. The work of the complainant was not pending with the DGO. Hence, prays to exonerate him from the charges leveled against him in this case.

8. In order to substantiate the charge leveled against the DGO, the Disciplinary Authority examined in all three witnesses as PW1 to PW3 and got marked documents at Ex.P1 to P10. After closing the evidence of the Disciplinary Authority, the Second Oral Statement of DGO was recorded as required u/Rule 11(16) of KCS (CC & A) Rules, 1957. After closing the evidence of the Disciplinary Authority, DW1 and DW2 are examined and got marked documents at Ex.D1 and closed their evidence. Hence, recording the answers of DGO to questionnaire u/Rule 11(18) of KCS (CC&A) Rules was dispensed with.

9. In this case CW2 is the shadow witness and witness summons issued to him was returned unserved on the ground

that he is dead with death certificate. Hence, the disciplinary authority was not able to examine the shadow witness.

10. The Disciplinary Authority through the Presenting Officer as well as the DGO have not submitted their written brief. Arguments of the Presenting Officer was heard.

11. Upon consideration of the oral and documentary evidence placed on record, the defence of DGO, the only points, that arises for the consideration of this enquiry authority is:-

1) Whether the Disciplinary Authority satisfactorily proved the charge framed against DGO?

2) What order?

12. My finding on the above points are as follows

Point No.1: In the “ **AFFIRMATIVE**”

Point No.2: As per the final order for the following:

:: REASONS ::

13. Point NO.1: It is the case of the disciplinary authority that the DGO while working as Village Accountant at Hesaraghatta Circle, in Bangalore North Taluk the complainant by name Sri H.A. Jnanamurthy applied for change of khatha in respect of land bearing sy.No. 249/2 of Hesaraghatta village to the Tahasildar of Bangalore North Taluk on 19/01/2005 and about two weeks later the DGO called the complainant and asked for bribe of Rs. 3,500/- and after request the demand was reduced to Rs. 2,000/- and the DGO asked the complainant to bring the same on 14/02/2005

and further on that day received the said amount as bribe to show official favour and thereby he has committed misconduct.

14. In the written statement the DGO has contended that in the criminal case he has already been acquitted even though he has not produced the certified copy of the judgment passed in the criminal case. Even otherwise it is pertinent to note that only on the ground that the DGO has been acquitted in the criminal case it cannot be held that, the disciplinary authority has not proved its case in this departmental enquiry. It is well established principle of law that, in the criminal case the prosecution has to prove its case beyond all reasonable doubt. Where as in the departmental enquiry the evidence has to be scrutinised on the basis of the preponderance of probabilities. In the decision reported in 1997(2) SCC 699 in case of Depot Manager, APSRTC V/S Mohammed Yosuf Miya and others, (2005)7 SCC 764 between Ajit Kumar Nag v/s General manager (P) Indian Oil Corporation Limited, Haldia and others and recent decision of Hon'ble Supreme Court in (2012)13 Supreme Court Cases 142 in a case of Avinash Sadashiv Bhosale (dead) V/S Union of India and others made out very clear that, the purpose of departmental enquiry and the prosecution are too different and distinct aspect though the two proceedings relates to the same set of facts. The nature of evidence in criminal case is entirely different from the departmental proceedings and in the criminal case the prosecution is required to prove the guilt of the accused beyond all reasonable doubt on the touch-stone of human conduct and where as the evidence required in a departmental

enquiry is not regulated by the Evidence Act. Therefore, misconduct of the DGO required to be taken into consideration on the basis of preponderance of probabilities and merely the DGO has been acquitted in the criminal case by the judgment in Special Case No. 13/2006 on the Special Judge Urban Division, Bangalore City, by itself is not sufficient to overlook the evidence placed on record by the Disciplinary Authority.

15. Complainant has been examined as PW1 and copy of the complaint lodged by him before the Lokayukta police is at Ex.P1. The gist of Ex.P1 is to the effect that the PW1 purchased 7 guntas of land out of sy.No. 249/1 of Hesaraghatta village from one Sri Narasimhamurthy under a registered sale deed and in that respect he had given the application to the Tahasildar on 19/01/2005 for change of khatha in his name about two weeks earlier to the filing of the complaint, the Village Accountant by name Sri Shivvappajaiah, (DGO) called him and told him that he has received his application for change of khatha and to pay Rs. 3,500/- for change of khatha and PW1 told that he is not able to give the amount demanded. The DGO insisted for payment of Rs. 2,500/- and on 11/02/2005 when PW1 met the DGO in the panchayath office, the DGO demanded bribe amount of Rs. 2,500/- and when PW1 pleaded his inability to pay the said amount the DGO told that at least Rs. 2,000/- should be given for change of khatha and to give that amount on 14/02/2005. The complaint has been lodged on 14/02/2005 at 12.35 p.m.

16. PW1 has deposed about purchasing 7 guntas of land in sy.No. 249/1 from one Sri Narasimhamurthy and that he had given the application for change of khatha. He has also deposed that the DGO called him and demanded bribe amount of Rs. 3,500/- for change of khatha and he told that he is a poor person and he cannot pay the amount demanded the DGO told that Rs. 2,500/- has to be given. PW1 has deposed that he pleaded his inability to pay Rs. 2,500/- and DGO reduced the bribe amount to Rs. 2,000/-. He has deposed that as he was not willing to get his work done by paying the bribe amount he lodged the complaint on 14/02/2005 before Lokayukta police and copy of the same is at Ex.P1. Thus PW1 has also given his evidence in accordance with the averments made in Ex.P1.

17. PW1 has further deposed that on the same day the Lokayukta police secured Sri Ramakrishna and Sri Badarinath as pancha witnesses and they were introduced to him. He has deposed that he told them about the complaint lodged by him and he also produced four currency notes of the denomination of Rs. 500/- and the Lokayukta police got smeared some powder to the notes and after noting the numbers of the same, those notes were kept in his shirt pocket through pancha witness Sri Ramakrishnappa and afterwards the hands of Sri Ramakrishnappa were washed in the solution and that solution turned to pink colour. He has deposed that Ex.P2 is the copy of the mahazar which was prepared at that time and xerox impression of his signature is at Ex.P2(a). In Ex.P2 itself the value and the numbers of the currency notes are mentioned. He has further deposed that

afterwards Lokayukta police took him and the panchas to Hesaraghatta and himself and Sri Badarinatha were sent to the office of the DGO and the remaining persons were outside that office. He has deposed that the police inspector instructed him to give the signal by rubbing his face with his handkerchief after the DGO receives the amount. He has deposed that the office of the DGO was locked and when enquired it was learnt that the DGO has gone to the meeting and they waited for the DGO and the DGO after attending the meeting came back to his office and occupied his seat by opening the door of his office. He has deposed that he approached the DGO and asked about the khatha of his land and DGO asked whether he has brought the money and he told that he has brought the money and gave the tainted currency notes and the DGO received the same, counted the notes by using both his hands and kept the amount in the drawer of his table. He has deposed that the shadow witness Sri Badarinatha was also with him at that time. He has further deposed that after the DGO received the amount he went outside the office and gave the pre-arranged signal and immediately the Lokayukta Inspector, his staff came and he showed the DGO. He has deposed that the Police Inspector enquired himself and Sri Badarinath and they told what had happened and that the DGO has received the amount and kept it in his table drawer. He has deposed that the Lokayukta police washed the hands of the DGO separately in the solution and the solution turned to pink colour. He has also deposed that the tainted currency notes were found in the table drawer of the DGO and the numbers of those notes tallied with the numbers mentioned in the entrustment mahazar. He has deposed that his hands

were also washed in the solution and that solution turned to pink colour. He has deposed that the DGO has given his explanation in writing. He has deposed that the Lokayukta police seized the concerned documents and the copies of the same are at Ex.P3. He has deposed that Ex.P4 is the copy of the Trap Mahazar.

18. Ex.P3 contains number of documents and one of the document is copy of the registered sale deed dated: 10/11/2004 under which PW1 has purchased 7 guntas of land out of sy.NO. 249/1 of Hesaraghatta village.

19. In his cross-examination he has deposed that Ex.P3(a)(b) are the copies of the affidavit his vendor and himself respectively. He has deposed that his signature is also found in Ex.P3(c) which is the copy of the intimation chit or 'J' slip. In Ex.P3(c) the date is not mentioned but only the date of the sale deed is mentioned. In his cross-examination he has deposed that he has given his evidence before the criminal court as per Ex.D1. Ex.D1 is the certified copy of the deposition of PW1 in Special Case No. 13/2006. It is pertinent to note that in Ex.D1 after page No.1 the next page is page NO. 10 and thus Ex.D1 contains only the cross-examination portion and not the examination in chief except the first page. He has admitted that he got the complaint written through his friend Sri Govindaraju. He has deposed that the said Govindaraju also took him to Lokayukta police station for lodging the complaint. But on that ground only the evidence of PW1 cannot be discarded. PW1 has denied the suggestion that Sri Govindaraju instigated him to file the false complaint against the DGO. He has deposed that he cannot read

Kannada and hence he cannot say whether the contents of Ex.P4 and P5 are correct or not. There is nothing in the cross-examination as to why he has filed the false complaint against the DGO and given the false evidence. As stated above only on the ground that PW1 has got his complaint written through his friend Sri Govindaraju and that his friend Govindaraju took him to Lokayukta police station for lodging the complaint the evidence of PW1 and his complaint cannot be discarded as false. As stated above he has clearly deposed that he has not lodged the complaint at the instigation of the Sri Govindaraju against the DGO. Thus PW1 has clearly deposed about the demand and acceptance of the bribe amount by the DGO.

20. Sri H.G. Ramakrishna, the pancha witness and he has deposed that on 14/02/2005 he had been to Lokayukta police station and in the police station PW1 and pancha witness Sri Badarinath were present. He has deposed that he read the complaint lodged by PW1 and the copy of the same is at Ex.P1. He has deposed that PW1 produced four notes of the denomination of Rs. 500/- each and powder was smeared to the notes and those notes were put into the cover and he kept that cover in the shirt pocket of PW1. He has deposed that the serial numbers of those notes were recorded. He has deposed that afterwards his hands were washed in the solution and that solution turned to red colour. He has deposed about the instructions given to the complainant and shadow witness by the I.O. mentioned in Ex.P2. He has deposed that the copy of the entrustment mahazar is at Ex.P2. He has deposed that afterwards all of them went in two vehicles to Hesaraghatta, Nadakacheri and DGO was not available and when contacted

over phone it was known that the DGO is attending the meeting and after the DGO came back from the meeting PW1 and the shadow witness Sri Badarinatha went into the office of the DGO and at that time himself, I.O. and others were standing at a little distance from the Nadakacheri. He has deposed that at about 5 p.m. shadow witness Sri Badarinatha gave the signal by rubbing his face with hand kerchief. Immediately himself and Lokayukta police went inside the office of the DGO and PW1 showed the DGO as the Village Accountant and the Lokayukta Inspector introduced himself to the DGO and asked the DGO about the amount received from PW1 and the DGO told that he has not received any amount from PW1. He has deposed that PW1 told that the DGO has kept the amount to in the table drawer. He has deposed that the Lokayukta police got the amount removed from the table drawer and got the same counted by the DGO and those notes tallied with the numbers mentioned in the entrustment mahazar. He has deposed that the hands of the DGO were washed in the solution and that solution turned to red colour. He has further deposed that the DGO has given his explanation in writing and the copy of the same is at Ex.P5. He has deposed that the concerned documents and also the attendance register (certified copies) were seized and the copies of the same are at Ex.P3. He has deposed that the photos were also taken and the copy of the trap mahazar is at Ex.P4. He has been treated as hostile witness by the disciplinary authority and cross-examined by the presenting officer.

21. Ex.P5 is the copy of the explanation of the DGO and in the same the DGO has stated that on 14/02/2005 PW1 told that the khatha should be made in his name and put the amount of Rs. 2,000/- in his drawer and he went to give that amount to PW1 but PW1 told him to keep the amount and went away and he had recommended for change of khatha in the name of PW1 on 19/01/2005 itself as per M.R. No. 62/2004-2005. Thus according to the above said explanation the DGO has taken the amount from his table drawer and went to give that amount to PW1 but PW1 went away stating that he will come and to keep the amount. Nowhere in Ex.P5 it is mentioned that the Lokayukta police by force got removed the amount which was in his table drawer from him and made the DGO to count the same and afterwards his hands were washed in the sodium carbonate solution. Hence, the evidence of PW2 to the effect that Lokayukta police made the DGO to count the notes and afterwards his hands were washed in the solution cannot be given much weight. As stated above PW1 has clearly deposed that the hands of the DGO were washed first and afterwards the tainted currency notes were taken out from the table drawer of the DGO.

22. PW3 is the Police Inspector Sri N.M. Dharmappa, and he has deposed that from 2002 to 2005 he was working as Police Inspector, Karnataka Lokayukta, Bangalore City division. He has deposed that on 14/02/2005 PW1 lodged the complaint as per Ex.P1 and on the basis of the same he registered the case in Crime No. 2/2005 and sent the FIR to the court and copy of the same is at Ex.P7. He has deposed that at that time itself the complainant produced the copy of his application

given to the Tahasildar office for change of khata and it is at Ex.P8. Ex.P8 shows that on 19/01/2005 PW1 has given the application to the Tahasildar for change of khatha of 7 guntas of land purchased by him in sy.No. 249/1. Hence it can be said that PW1 was under the impression that khatha of the above said land was not changed into his name as on 19/01/2005. Otherwise he would not have given the application as per Ex.P8. Ex.P8 also bears the signature of the Tahasildar office for having received the original of the same.

23. PW3 has deposed about securing the panchas and conducting the entrustment mahazar proceedings and his evidence in that respect is in accordance with the averments made in the entrustment mahazar the copy of which is at Ex.P2. He has deposed that after the entrustment mahazar at 3 p.m. they left the Lokayukta police station and went to Hesaraghatta grama panchayath village accountant office and the vehicle was stopped at a little distance and PW1 and shadow witness were sent to the office of the DGO. He has deposed that they came and told him that the office is locked and DGO has gone for meeting to the panchayath office. He has deposed that as the grama panchayath office was nearby it was ascertained that the DGO is present in the meeting and hence they waited for the DGO to return to his office. He has deposed that after the DGO returned to his office PW1 and the shadow witness were sent to the office of the DGO and after some time PW1 came outside the office and gave the pre-arranged signal and immediately himself and his staff and another pancha witness went inside the office of the DGO and PW1 showed the DGO and told that the DGO demanded for

the amount and received the same. He has deposed that he introduced himself to the DGO and got prepared sodium carbonate solution in two bowls and the hands of the DGO were washed separately in the sodium carbonate solution and the solution turned to pink colour. He has deposed that when he enquired the DGO about the amount received from PW1 the DGO told that he has kept the amount in his table drawer and further produced the amount from his table drawer and those notes tallied with the currency notes mentioned in the entrustment mahazar. He has deposed that the hands of the complainant were also washed in sodium carbonate solution and that solution also turned to pink colour. He has deposed that the DGO himself produced the file of the complainant (PW1) and the copies of the same are at Ex.P3. He has deposed that the DGO gave his explanation as per Ex.P5 and the complainant and shadow witness told him that the contents of Ex.P5 are all false. He has deposed that the copy of the trap mahazar is at Ex.P4 and copy of the rough sketch prepared by him is at Ex.P6. He has deposed that he sent the seized articles to FSL for chemical examination and Ex.P9 is the copy of the chemical examination report. According to Ex.P9 both the hand wash of the DGO was positive. PW1 has been cross-examined at length. In his cross-examination he admits that on 19/01/2005 DGO has made the shara and on that day the revenue inspector has also agreed for the mutation. Ex.P3(g) is the copy of the mutation register in which there is a shara of the DGO (village accountant) dated: 19/01/2005 to the effect that no objection is received and khatha can be made as per the sale deed by way of phodi. In the same there is another signature dated: 19/01/2005 as

“accepted” and it is the case of the DGO that it is the signature of the Revenue Inspector. It is pertinent to note that it is not the case of the DGO that the complainant was knowing about the above said mutation and in case he was knowing about the same he would not have given the application for change of khtaha on 19/01/2005 as per Ex.P8. In the written statement the DGO has contended that on the application of the complainant dated: 19/01/2005 stated above he has made the shara that the khatha has already been changed to the name of the PW1. But the DGO has not produced any documents to prove the same. In Ex.P3 the application given by the DGO dated: 19/01/2005 is not found and if the DGO had made the shara on the original Ex.P8 as stated above he could have got the certified copy of the same and produced to prove his stand but he has not produced the same. As stated already the disciplinary authority could not examine the shadow witness due to his death.

24. DW2 is the DGO and he has deposed that in November 2004 the DGO had approached him for change of khatha. But he told him to give the application in that respect in the taluk office. He has deposed that after 3 or 4 days of the same PW1 had come along with one Sri Govindaraju and Srinivasa who belongs to BJP party and asked him change the khatha. But he told them that the application has to be given to the Tahasildar and at that time Sri Govindaraju was angry with the DGO and he has deposed that on 19/01/2005 itself he has made the shara in Ex.P3(f) to the effect that the khatha may be changed as there is no objection. DW2 has deposed that on 19/01/2005 he secured the complainant (PW1) and

told him that his work is done and to get the phani and mutation from the computer section after 2 or 3 days. But there is no such suggestions in the cross-examination of PW1 and hence the above said evidence of DW2 cannot be given much weight. He has deposed that on 14/02/2005 also he told PW1 to get phani copy and mutation copy from taluk office and when he was searching for file in the almirah PW1 was near his table and afterwards he went away. He has deposed that after searching for the file he returned back to his seat and afterwards 3 or 4 persons came inside his office and caught hold of him and told him that they are Lokayukta police and asked him to produce the bribe amount taken from PW1. He has deposed that he has not taken any bribe amount from PW1 and at that time PW3 asked PW1 where is the amount and PW1 told that he has dropped the amount in the right side table drawer of the DGO and then only he came to know that the amount is in his table drawer. The above said evidence is also not mentioned in Ex.P5. In otherwords in Ex.P5 it is not mentioned that when the DGO was searching for the file standing near the almirah without his knowledge the complainant had put the tainted currency notes into his table drawer and he came to know about the same only after the Lokayukta police apprehended him. Thus the evidence given by DW2 cannot be accepted and as stated above there is no believable evidence to show that PW1 was knowing that the DGO had done his part of work as on the date of the trap by making the shara as per Ex.P3(g). As stated above in case the complainant was knowing about the above said shara of the DGO dated:19/01/2005 he would not have given the application for change of khtha on 19/01/2005 and it has

also come in the evidence of DW2 himself that he had instructed the PW1 to give the application for change of khatha and accordingly PW2 had given the application for change of khatha.

25. DW2 in his cross-examination has deposed that Ex.P10 is his comments and in the same he has not stated all the averments made in his examination in chief. He has deposed that he has not filed any complaint against Sri Govindaraju for having made galata against him as stated in his examination in chief. He has deposed that the Police Inspector got his explanation as per Ex.P5 by force. But he has not given any complaint in that respect to the higher officers. In Ex.P10 or in his written statement the DGO has mentioned that his explanation as per Ex.P5 was taken by force. Hence his evidence to the effect that Ex.P5 was obtained by force cannot be accepted.

26. DW1 is one Sri Nanjamariyappa and he has deposed that on 14/02/2005 at 4.30 p.m. he had been to the office of the DGO for his work and near the table of the DGO at a distance of 3' to 4' there is the almirah of the DGO and he was sitting inside the office of the DGO on the bench. He has deposed that at that time, PW1 came to the office of the DGO and asked the DGO whether khatha has been made in his name and the DGO told that the khatha has been made about 21 days back itself and to obtain the khatha and mutation copy from "Bhoomi Kendra". He has deposed that the DGO was searching for some records in the almirah and at that time PW1 put the amount in the table drawer of the DGO and went away. He has deposed that afterwards 3 or 4 persons

came inside the office of the DGO and told that they are Lokayukta police and asked the DGO to remove the amount from his table drawer and fearing the Lokayukta police the DGO took the amount from his table drawer and counted the same. In his cross-examination he has deposed that PW1 and DGO have no ill-will and likewise PW1 and Lokayukta Police have also no ill-will. He has deposed that he has not produced any documents to show that on 14/02/2005 he had gone to the office of the DGO. It is also pertinent to note that in case DW1 was present when the incident of this case took place, he would have given his statement before the I.O. and there is also no cross-examination of PW3 (I.O.) to the effect that DW1 was present at the time of the incident of this case and his statement was not recorded by him intentionally. Hence, the evidence of DW1 cannot be given any weight and it has to be said that he has come up for the first time as witness only with an intention to help the DGO. For the reasons stated above I hold that the facts and circumstances of this case stated above probablises the case of the disciplinary authority only and not the defence of the DGO stated above. As stated above there is no reasons to discard the evidence of PW1 and PW3 who have no ill-will of any kind against the DGO.

27. Thus the DGO has failed to maintain absolute integrity, devotion to duty and acted in a manner of unbecoming of Government Servants. Hence, I answer the above point No.1 in the **AFFIRMATIVE**.

28. Point NO.2:- For the reasons discussed above, I proceed to pass the following:-

:: ORDER ::

The Disciplinary Authority has satisfactorily proved the charge in this case that, Sri H. Shivappajaiah s/o Honnalingaiah, Village Accountant, Hesaraghatta Circle, Bangalore North Taluk, Bangalore (now retired) committed mis-conduct as enumerated U/R 3(1) (i) to (iii) of Karnataka Civil Service (Conduct) Rules, 1966.

29. Hence this report is submitted to Hon'ble Upalokayukta-1 for kind perusal and for further action in the matter.

Dated this the 8th day of August, 2018

-Sd/-

(Somaraju)

Additional Registrar Enquiries-4,
Karnataka Lokayukta,
Bangalore.

ANNEXURE**LIST OF WITNESSES EXAMINED ON BEHALF OF DISCIPLINARY AUTHORITY:**

PW-1 :-Sri H.A. Jnanamurthy (complainant)
PW-2 :-Sri H.G. Ramakrishna (pancha witness)
PW-3:-Sri N.M. Dharmappa (I.O.)

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE:

DW-1:-Sri Nanja mariyappa (witness)
DW-2: Sri Shivappajaiah H. (DGO)

**LIST OF EXHIBITS MARKED ON BEHALF OF
DISCIPLINARY AUTHORITY**

- Ex.P-1: Certified copy of the complaint
Ex.P-2: Certified copy of the entrustment mahazar
Ex.P-2(a): Relevant entry in Ex.P2
Ex.P-3: Certified copy of the file of the complainant
Ex.P-3(a to g) : Relevant entries in Ex.P3
Ex.P-4: Certified copy of the trap mahazar
Ex.P-5: Certified copy of the explanation of DGO
with certified copy of the seal received
acknowledgment
Ex.P-6: Certified copy of the sketch
Ex.P-7: Certified copy of the FIR
Ex.P-8: Certified copy of the application of the complainant
dated: 19/01/2005 addressed to the Tahasildar, Taluk
Office, Yalhanka, Bangalore
Ex.P-9: Certified copy of the chemical examination report
Ex.P-10: Original reply of the DGO dated: 03/01/2011 to the
observation note addressed to DRE-5, KLA,
Bangalore

LIST OF EXHIBITS MARKED ON BEHALF OF DGO:

- Ex.D-1: Certified copy of the deposition of complainant in
Special C.C. No. 13/2006

Dated this the 8th day of August, 2018

-Sd-
(Somaraju)
Additional Registrar Enquiries-4,
Karnataka Lokayukta,
Bangalore.