

KARNATAKA LOKAYUKTA

No. LOK/INQ/14-A/361/2013/ARE-3

M.S.Building,
Dr. B.R.Ambedkar Veedhi,
Bengaluru - 560001.
Date: 26.09.2017

Enquiry report

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

Sub: Departmental Enquiry against Sriyuths:
(i) Raju, the then Chief Officer, Town Municipal Council, Bannur, Mysore District and
(ii) B.C. Krishna, D Group Employee Town Municipal Council, Bannur, Mysore District - reg.

Ref: 1. Report under Section 12(3) of the Karnataka Lokayukta Act, 1984, in No. Compt/Uplok/ MYS-2959/2012/ ARE-11 dated 13.3.2013
2. G.O. No. UDD 45 DMK 2013, Bengaluru dated 30.8.2013
3. Nomination Order No.LOK/INQ/14-A/361/2013 dated 26.8.2016 of Hon'ble Upalokayukta-2, Karnataka State, Bengaluru.

1. The complainant Sri Syed Ummar S/o Syed Mohamood R/o Bannur of T. Narasipura Taluk has filed a complaint against (1) Sri Raju, the then Chief Officer, Town Municipal Council, Bannur, T. Narasipura Taluk, Mysore District (hereinafter referred to as DGO-1 for short) making allegations against him that, he/DGO-1 is demanding Rs. 1000/- by way of bribe in order to issue him cheque towards payment of last installment of the amount sanctioned to him under Ashraya scheme, to construct a house in Makanahally village of

Bannuru Hobli, since he was a beneficiary selected under Rajeev Gandhi Rural Housing Scheme and he was sanctioned amount towards the construction of the house under Ashraya Scheme.

2. On registering a case on the basis of the said complaint, a trap was held on 05.01.2008 in the office of the Town Municipality, Bannur and DGO no.1 was trapped along with DGO no.2 Sri B.C. Krishna, 'D' Group Employee Town Municipal Council, Bannur, Mysore District (hereinafter referred to as DGO no.2) and the tainted money of Rs. 1000/- was recovered from the possession of DGO-2 from his pant pocket. Since it was disclosed during investigation that, DGO-2 took the money from the table drawer of DGO-1 as per the instructions of DGO-1 and the said money was collected by DGO-1 by way of bribe from the complainant asking him/complainant to keep the money in his table drawer (table drawer of DGO-1) and since it was revealed that, DGO-1 having demanded bribe of Rs. 1000/- from the complainant to show an official favour, in issuing last installment cheque to the complainant towards the benefit given to him under Ashraya scheme and received Rs. 1000/- by way of bribe from the complainant and as per the instruction of DGO-1, DGO-2 was keeping money with him, charge sheet came to be filed both against DGO no.1 and 2.
3. The ADGP, Karnataka Lokayukta, Bengaluru has forwarded the copy of the charge sheet to the Hon'ble Upalokayukta. On the basis of the materials collected during investigation and materials placed before this authority, an investigation was taken up under Section 7(2) of the Karnataka Lokayukta Act. An observation note was served on both ~~the~~ DGOs 1 and 2, providing them an opportunity to show-cause as to why recommendation should not be made to the

Competent Authority for initiating departmental enquiry against them. ~~The~~ DGO no.1 and 2 have submitted their reply denying the allegations made against them and taken up a contention that, they are innocent and they have been falsely implicated. Since the explanation offered by ~~the~~ DGOs 1 and 2 were not satisfactory, a recommendation under Section 12(3) of the Karnataka Lokayukta Act was forwarded to the Competent Authority, recommending to initiate disciplinary proceedings against them and to entrust the enquiry under Rule 14-A of KCS(CCA) Rules, to this authority to hold enquiry. Accordingly, the Government in the Urban Development Department vide G.O. no. UDD 45 DMK 2013, Bengaluru dated 30.8.2013 initiated departmental proceedings against ~~the~~ DGOs 1 and 2 and entrusted the same to Hon'ble Upalokayukta to hold enquiry. The Hon'ble Upalokayukta issued a nomination order dated 26.8.2016 nominating ARE-3 to frame charges and to conduct enquiry against the DGOs 1 and 2. Accordingly, charges are framed against the DGOs 1 and 2 as under.

Charge:

That you DGO-1 Sri Raju, the then Chief officer, Town Municipal Council, Bannuru, Mysore District demanded and accepted a bribe of Rs. 1000/- on 5/1/2008 from complainant Sri Syed Umar S/o late Syed Mohammad, R/o Dayyar Mohalla, Bannur, Mysore District by instructing the DGO-2 B.C. Krishna, D Group Employee, Town Municipal Council, Bannuru, Mysore District to take the bribe amount of Rs. 1000/- (which was kept in the drawer of the table by the complainant on the instruction of DGO no.1) for releasing the remaining installment amount of Rs. 5000/- sanctioned under Rajeev Gandhi Scheme towards the construction of a house, a site of which was sanctioned under Ashraya 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.

STATEMENT OF IMPUTATION OF MISCONDUCT:

The complainant Sri Syed Umar S/o late Syed Mohammad, R/o Dayyar Mohalla, Bannur, Mysore District filed a complaint on 5/1/2008 before the Police Inspector, Karnataka Lokayukta, Mysore alleging that he had been allotted site no.44 size of 25x20 feet in sy. No. 1934 of Maaranahalli village in Bannur Hobli by Bannur Town Municipality under "Ashraya Scheme", besides Rs. 25000/- for construction of a house under "Rajeev Gandhi Rural Scheme" two years prior to 5/1/2008 he had already taken Rs. 20,000/- in four installments at the rate of Rs. 5000/- for the house constructed by him in the said site, but he was due to receive balance subsidy amount of Rs. 5000/- in that regard. So on 27/12/2007 he made an application in the said Municipality with photo of the said built house and met DGO no.1 on 28/12/2007. For that you DGO no.1 demanded a bribe of Rs. 1000/- to release the said remaining installment amount of Rs. 5000/- to him. As the complainant was having only Rs. 400/- with him and when he pleaded his inability to pay so much amount, DGO no.1 refused to receive Rs. 400/- and insisted that the work will be done only on payment of bribe of Rs. 1000/-

As the complainant was not willing to pay any bribe to the DGO, he went to Police Inspector, Karnataka Lokayukta Mysore on 5/1/2008 and lodged a complaint. On the basis of the same a case was registered in Mysore Lokayukta Police Station Cr. No. 1/2008 for offences punishable under sections 7, 13(1) (d) r/w section 13(2) of the P.C. Act, 1988 and FIR was submitted to the concerned learned special judge.

After registering the case, investigating officer observed all the pre trap formalities and entrustment mahazar was conducted the DGOs were trapped on 5/1/2008 by the Investigating Officer after demanding and accepting the bribe amount of Rs. 1000/- from the complainant in the presence of shadow witness and the said bribe amount which DGO no.1 had received from the complainant was seized from the possession of DGO no.2 as DGO no.2 had kept that amount with him on the instruction of DGO no.1 under the

seizure mahazar after following the required post trap formalities. During the investigation the I.O has recorded the statements of Panchas and other witnesses and further statement of the complainant. The I.O during the investigation has sent the seized articles to the chemical examiner and obtained the report from him and he has given the result as positive.

The materials collected by the I.O. during the investigation prima facie disclose that the DGO, demanded and accepted bribe of Rs. 1000/- from the complainant on 5/1/2008 for doing an official act i.e., for releasing the remaining installment amount of Rs. 5000/- sanctioned under Rajeev Gandhi Scheme towards the construction of a house, a site of which was sanctioned under Ashraya Scheme. Thus the DGOs 1 and 2 have failed to maintain absolute integrity and devotion to duty and this act on their part is unbecoming of a Government servant. Hence, they both have committed an act which amounted to misconduct as stated under Rule 3 (1) (i) to (iii) of KCS (Conduct) Rules 1966.

In this connection an observation note was sent to the DGOs 1 and 2 and they have submitted their replies which, after due consideration, was found not acceptable. Therefore, a recommendation was made to the Competent Authority under Section 12(3) of the Karnataka Lokayukta, Act 1984, to initiate Departmental Proceedings against the DGOs 1 and 2. The Government after considering the recommendation made in the report, entrusted the matter to the Hon'ble Upalokayukta to conduct departmental/disciplinary proceedings against DGOs 1 and 2 and to submit report. Hence the charge."

4. The Articles of Charges and Statement of Imputation are duly served on ~~the~~ DGOs 1 and 2. They have appeared in response to the notice issued to them and First Oral Statement of ~~the~~ DGOs 1 and 2 was recorded. They have denied the charges framed against them. They have engaged the services of an advocate to appear on their behalf and to defend them in the enquiry.
5. The DGO-1 has filed his written statement on 21.3.2014 and DGO-2 filed his written statement on 8.11.2013. DGO-1 in his written

statement, denied the allegations made against him and taken up a contention that, he is innocent and he has been falsely implicated. DGO no.1 has taken up a further contention in his written statement that, on that day i.e., on 5.1.2008 the complainant came to his office and attempted to pass over the gratification to him/DGO-1 and he/DGO-1 scolded him and also warned him not to do any such act and this discussion between them has been recorded in the tape recorder carried by the complainant on that day. He has taken up a further contention that, the learned Sessions Judge after holding detailed trial in Special Case No. 90/09, acquitted both him and DGO-2 absolving them from the charges leveled against them and requested this authority to drop the proceedings against him by absolving from the charges leveled against him.

6. DGO-2 has filed a separate written statement denying the allegations made against him in the articles of charges served on him claiming that, he is innocent and he has no role to play in the said incident of trap proceedings as he never demanded and received any money by way of bribe from the complainant. It is his specific contention that, as per the complaint averments, it was DGO-1 who is stated to have insisted the complainant to pay Rs. 1000/- to do his work and hence the complainant filed complaint only against DGO-1. According to him he never demanded and received Rs. 1000/- from the complainant by way of bribe and no work of the complainant was to be attended by him. He has also taken up a contention that, since the special court on holding detailed trial acquitted him absolving him and also DGO-1 from the charges leveled against them, he has also requested this authority to drop

the proceedings against him and to absolve him from the charges leveled against him.

7. Initially this enquiry was pending before ARE-3 as per the nomination order dated 13.9.2013. While the enquiry was pending before ARE-3, in pursuance of the orders of Hon'ble Upalokayukta in No. LOK/INQ/14-A/2014 dated 14.3.2014, this enquiry file was withdrawn from the file of ARE-3 and was assigned to ARE-6 by nominating ARE-6 to proceed with the enquiry. While the enquiry was in progress before ARE-6, by virtue of order No. UPLOK-2/DE/2016, Bengaluru dated 3.8.2016 of Hon'ble Upalokayukta-2, this enquiry file was again withdrawn from the file of ARE-6 and was made over to ARE-1 to proceed with the enquiry. Again as per the orders of Hon'ble Upalokayukta-2 dated 26.8.2016 this enquiry file was again assigned to ARE-3 to continue the enquiry and to submit report. Hence, further enquiry was taken up before ARE-3.
8. When the case was taken up for enquiry before ARE-6 and during enquiry on behalf of the Disciplinary authority, 2 witnesses have been examined as PW1 and PW2 and 6 documents came to be marked as Ex-P1 to P6. The Police Inspector who conducted the investigation was not examined since, despite issue of summons to him, the IO did not turn up and hence without examining the IO, the evidence on behalf of disciplinary authority came to be closed.
9. After closure of the evidence on behalf of the disciplinary authority, second oral statement of ~~the~~ DGOs 1 and 2 was recorded. Since, DGO-1 desired to lead defence evidence by examining himself in order to put forth his defence, he was permitted accordingly. DGO-2 since did not desire to lead any defence evidence, he was questioned

under Rule 11(18) of KCS(CCA) Rules with reference to the evidence of PW1 and PW2 adduced during enquiry. DGO-1 has filed his written brief and further examined himself as DW-1 and gave evidence in support of his defense.

10. Thereafter, learned PO filed written arguments. On behalf of the DGOs 1 and 2 their counsels also filed written arguments and produced the certified copy of the judgment dated 8.8.2011 in special case No. 90/09 on the file of III Additional Sessions and Special Judge, Mysore and requested this authority that, since both DGOs 1 and 2/accused no.1 and 2, have been acquitted by the special court absolving them from the charges leveled against them, requested this authority to hold that, charges against DGO-1 and 2 not proved in this enquiry by the disciplinary authority. Thereafter this matter is taken up for consideration.

11. The following points would arise for my consideration.

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

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

Point No.3: What findings?

12. The above points are answered as under:

Point No.1: In the 'Affirmative'

Point No.2: In the 'Negative'

Point No.3: As per the findings.

REASONS

Points No.1 and 2 :-

13. Both points no.1 and 2 are considered together, as common set of facts need to be considered, while dealing with those points.
14. The DGO no.1 was working as Chief Officer and DGO no.2 was working as 'D' Group employee in the O/o Town Municipal Council, Bannuru of T.Narasipura taluk, Mysore district, during the relevant period.
15. The complainant was a beneficiary under Rajeev Gandhi Rural Housing Scheme. He was allotted with a site at Makaanahalli village of Bannuru hobli under Ashraya Scheme. Since he desired to construct a house in the said site and he applied for sanctioning of financial benefit under Rajeev Gandhi Rural Housing Scheme, he was selected as a beneficiary and Rs.20,000/- in 4 installments of Rs.5000/- each was already released in his favour and by utilizing that amount, he has completed the construction of the house. He filed an application on 27.12.2007 to the Town Municipality, Bannuru requesting for releasing final installment of Rs.5,000/- and he has produced the photographs of his completed house and other relevant documents. In this connection, the complainant met ~~the~~ DGO-I on 28.12.2007 and requested him for release of the final installment in his favour. It is the allegation of the complainant that, DGO-I/Chief Officer demanded him to pay Rs.1000/- by way of bribe, in order to release the final installment of Rs.5000/- in his favour. According to the complainant he pleaded before DGO-1 about his inability to pay that much amount and he offered to pay

Rs.400/- requesting him to accept Rs.400/- the money he was having at that time. But DGO-1 refused to received the said amount stating that, unless Rs.1000/- is paid to him as demanded by him, his final installment will not be released in his favour. Since the complainant was not willing to pay any bribe to DGO-1, he approached Lokayukta Police, Mysore district and filed a complaint as per Ex.P-1.

16. On the basis of this complaint, the Police Inspector, Karnataka Lokayukta, Mysore has registered a case in Cr. No. 1/2008, under Sections 7,13(1)(d) R/w 13(2) of P.C Act, 1988 and took up investigation.
17. An entrustment proceedings was conducted in the Police Station in the presence of two panch witnesses viz., Sri A.R.Mallaraje Urs, Second Division Assistant and Sri Mohammed Rafeeq Pasha, Physical Education Teacher (Grade-I) from Government Pre-University College for Girls, Mysore and in the said proceedings the bait money of Rs. 1,000/- consisting one currency note of Rs. 500/- denomination and five currency notes of Rs.100/- denomination each, given by the Complainant, were smeared with phenolphthalein powder making it as a tainted money and the said money was entrusted to the Complainant asking him to give the said money to the DGO no.1 when he meets him in his office and only in case if ~~the~~ DGO no.1 demands for bribe. Panch witness Mohammed Rafeeq Pasha was sent along with the Complainant as a shadow witness. In this regard, a detailed entrustment mahazar was also prepared in the Police Station on the same day. A voice recorder was entrusted to the complainant asking him to switch on the same when he meets

the Chief Officer and to record the conversation that may take place between him and DGO-1.

18. The Complainant accompanied with the shadow witness went to the office of the Town Municipality, Bannuru and met DGO no.1 in his chamber and enquired him about the last installment cheque. DGO no.1 asked him by making signs with his hands as to whether he has brought money as demanded by him. When the complainant took out the tainted notes from his shirt pocket and offered the said money to DGO-1, he/DGO-1 opened his table drawer and by making signs asked the complainant to keep the money in his table drawer. Accordingly, the complainant kept the tainted notes in the table drawer of DGO-1 as per his direction. Thereafter DGO-1 called DGO-2 who was standing outside his chamber. When DGO-2 came inside the chamber, DGO-1 asked to take those notes from his table drawer and to keep that money with him. Accordingly DGO-2 took the notes from the table drawer of DGO-1 and kept that money in his right side pant pocket. Thereafter DGO-1 asked the complainant to come after some time and he would make his cheque ready. Hence the complainant and also shadow witness came out of the chamber of the DGO-1 and gave pre-arranged signal to the Police Inspector and on arrival of Police Inspector, the complainant took him inside the chamber of DGO-1 and showed DGO no.1 saying that, DGO no.1 has received money from him and as per his instructions, he kept the money in the table drawer of the DGO-1 and further told the Police Inspector that, as per the instructions of DGO-1, DGO-2 took that money from table drawer of DGO-1 and keeping that money in his right side pant pocket.

19. The Police Inspector having introduced himself to DGO no.1 and 2 and on explaining them, the purpose for which he has come there, got prepared sodium carbonate solution in two separate bowls and made DGO no.2 to dip his both hand fingers in two separate bowls containing sodium carbonate solution and when DGO no.2 dipped his right hand fingers in one bowl and left hand fingers in another bowl containing sodium carbonate solution, the colourless solution turned into pink colour. Thereafter DGO-2 asked to produce the money which he has taken from the table drawer of DGO-1 as per his instruction. DGO-2 took out the money from the right side pocket of his pant and produced the same before the Police Inspector. Those notes were verified with reference to its serial numbers and confirmed that, those were the notes entrusted to the complainant during the entrustment proceedings. Even the pant worn by DGO-2 was got removed by providing him an alternate pant and the same was seized for sending it for chemical examination. By taking a cotton swab the place where the tainted notes were claimed to have been kept on a paper by the complainant in the table drawer of DGO-1 was also swabbed and the said cotton swab along with the paper was also seized.
20. The Police Inspector asked both DGO-1 and DGO-2 to give their explanation in writing. DGO-1 and 2 gave their explanations in writing as per Ex.P-5 and P-6 under their signatures Ex.P-5(a) and P-6(a). DGO-1 in his written explanation has claimed that, though the complainant offered money to him, he refused to receive that amount from the complainant and hence the complainant having forcibly given that money which he has refused to receive, to DGO-2, intentionally implicated him/DGO-1 in this case. DGO-2 in his written explanation has stated that, since DGO-1/Chief Officer

called him/DGO-2 by ringing the bell, he went inside the chamber of DGO-1 and money was there in the table drawer of DGO-1 and since DGO-1/Chief Officer asked him to keep that money with him, he took that money from the table drawer of DGO-1 and kept that money in his pant pocket and further claimed that since it is his duty to obey the order's/direction of the Chief Officer, he obeyed that order of the Chief Officer.

21. The complainant has been examined as PW1 who narrated in detail regarding circumstances which forced him to file complaint against DGO no.1 as per Ex-P1. He gave details regarding entrustment proceedings conducted in the Police Station and also entrustment of tainted money of Rs. 1000/- to him during the said proceedings. He also gave evidence as to how DGO no.1 and 2 were trapped, and gave details stating that he having accompanied with shadow witness approached DGO no.1 and enquired about the disbursement of last installment of the amount payable to him under Rajeev Gandhi Rural Housing Scheme. He has stated in detail regarding manner in which DGO-1 demanded him for money and received tainted notes from him. He has categorically stated in his evidence that, when he went inside the chamber of ~~the~~ DGO-1, shadow witness was standing near the door of the chamber of the DGO-1 and since the DGO-1 demanded him for bribe, he tried to give the tainted notes to him by offering money to him but DGO-1 opened his table drawer and asked him/complainant to keep the money in the said drawer and accordingly he kept the tainted notes in the said drawer of the table of DGO-1 in his chamber's. He has further stated that, soon thereafter, DGO-1 called ~~the~~ DGO-2 inside his chamber and asked him to take those notes from his table drawer and keep that money with him and accordingly DGO-2

having taken money from the table drawer of ~~the~~ DGO-1, kept ~~that~~ money with him in his pant pocket.

22. The complainant has been cross examined on behalf of DGO-1 by his learned counsel. Though the complainant was cross examined on various other aspects, so far as the narration of the complainant as to how DGO-1 received/accepted tainted money are concerned, no cross examination was made except putting the suggestion, suggesting that, what all he has stated in his chief examination and what all incorporated in the trap mahazar Ex.P-3 are all false and no such incident/happenings took place during the trap proceedings. A specific suggestion was put to complainant that, DGO-1 never asked him to keep the money in his table drawer and this suggestion has been categorically denied by the complainant. A further suggestion was put to him that, since the last installment was not disbursed to him, at the instance of some officials in the Town Municipality who are inimical to DGO-1, he has filed a false complaint and giving false evidence against him.
23. The shadow witness Mohammed Rafeeq Pasha has been examined as PW-2. He gave evidence regarding conducting of entrustment proceedings in the Police Station and entrustment of tainted notes of Rs.1000/- to the complainant in the said proceedings. But he failed to support the case of the Disciplinary Authority in certain material particulars of the trap proceedings. He has stated in his chief examination that, when he tried to enter into the chamber in DGO-1 accompanying the complainant, DGO-2 who was standing in the door stopped him from going inside the chamber of DGO-1 along with the complainant. According to him though he has told to DGO-2 that he want to meet DGO-1 in connection with some work,

it is his contention that, DGO-2 asked him to go inside the chamber of DGO-1 after the complainant come out of the chamber. He/PW-2 has further stated that since he was not allowed to go inside the chamber of ~~the~~ DGO-1, he was standing near the door and on noticing that there was one more door available to reach the chamber of ~~the~~ DGO, through the office, he went inside the chamber of the DGO through that alternate door available and he has further stated that, though he could not hear the conversation between the complainant and the DGO-1, he observed that the complainant on taking out notes from his shirt pocket, placed those notes in the drawer of the table which was in front of DGO-1 ^{and in the presence of DGO-1.} He has further stated, that DGO-1 on noticing him/PW2 enquired him as to why he has come inside his chamber and he/PW2 told DGO-1 that he want to meet him with respect to transfer of khatha of certain property belongs to him/PW2. He/PW-2 has further stated that, DGO-1 on ringing the bell secured the presence of DGO-2 inside his chamber and asked him to pick up the notes from his table drawer and accordingly DGO-2 took the notes from the table drawer of DGO-1 and kept that money with him in his/DGO-2 pant pocket.

24. PW-2 has further deposed regarding other details of trap proceedings regarding obtaining of hand wash of DGO-2, recovery of tainted notes from pant pocket of DGO-2, seizer of pant worn by the DGO and seizer of certain documents as per Ex.P4 from the office of the Town Municipality.
25. Since PW-2 failed to give positive evidence regarding certain material particulars of the trap proceedings, he was treated as partly hostile witness and he ~~was~~ cross examined by the learned Presenting Officer to that extent. During his cross examination suggestion were put to

him that ~~the~~ DGO-1 enquired the complainant regarding the money and when the complainant offered money to him, DGO-1 opened his table drawer and asked complainant to put the money in that drawer and accordingly the complainant put money in the drawer of the table of ~~the~~ DGO-1 as per the instructions given by DGO-1 to him.

26. PW-2 has been cross examined on behalf DGO-1 by his learned counsel. Suggestion was put to him that, when the complainant went inside the chamber of DGO-1, DGO-1 was found angry towards the complainant and before he/PW-2 went inside the chamber of DGO-1, DGO-1 angrily told to the complainant telling him that “ಉಮ್ಮರ್ ಇವೆಲ್ಲಾ ಬ್ಯಾಡಿ ತರ್ರೆ ಮಾಡಬೇಡಿ, ಸುಮ್ಮೆ ಹೋಗಿ”. A further suggestion put to him that the voice recorder which was entrusted to him/complainant was subsequently played before him and the above wordings angrily told by DGO-1 to the complainant, was found recorded in the said voice recorder. But ~~the~~ PW-2 has categorically denied this suggestion.
27. The I.O./Police Inspector who conducted trap proceedings could not be secured before this authority and hence he could not be examined in this enquiry. Hence in order to decide whether DGO-1 has demanded and received/accepted Rs.1000/- from the complainant by way of bribe, in order to release the last installment of the amount payable to the complainant, in the manner and as narrated by the complainant, the evidence of PW-1 and PW-2 are to be looked into.
28. So far as giving of written explanation by DGO-1 as per Ex.P-5 and by DGO-2 as per Ex.P-6, are not disputed or denied on behalf of the

DGOs. DGO-1 while giving his written explanation as per Ex.P-5, in addition to giving his own explanation, offering the reasons as to why the disbursement of last installment to the complainant was delayed, stating that, the notice issued to him/complainant since returned unserved with a shara addressee not residing in the given address, in order to verify the claim of the complainant that the complainant is residing in the same address and to confirm his residential address, the last installment was not disbursed to the complainant. ~~The~~ DGO-1 has further stated in his written explanation stating as follows:

“ಪಾರ್ಟಿ ಲಂಚ ನೀಡಲು ಬಂದಿದ್ದು, ಸದರಿ ಹಣವನ್ನು ತಿರಸ್ಕರಿಸಿರುತ್ತೇನೆ. ಆ ರೀತಿ ತಿರಸ್ಕರಿಸಿದ ಹಣವನ್ನು ನಮ್ಮ ಕಛೇರಿಯ 'ಡಿ' ದರ್ಜೆ ನೌಕರರಾದ ಶ್ರೀ ಬಿ.ಸಿ.ಕೃಷ್ಣ ಎಂಬುವವರಿಗೆ ಬಲವಂತವಾಗಿ ನೀಡಿ, ಉದ್ದೇಶಪೂರ್ವಕವಾಗಿ ಆರೋಪ ಎಸಗಲು ಪ್ರಯತ್ನಿಸಿರುತ್ತಾರೆ”.

29. When DGO-2 was asked to give his written explanation regarding the seizer of tainted notes from his pant pocket, he has stated in his written explanation, explaining the circumstances as to how the tainted notes came in his pant pocket which was subsequently recovered from his pant pocket. He has stated as follows:

“ದಿನಾಂಕ 05.01.2008ರಂದು ಮಧ್ಯಾಹ್ನ 1.30ರ ಸಮಯದಲ್ಲಿ ಮುಖ್ಯಾಧಿಕಾರಿಗಳು ಬೆಲ್ ಹೊಡೆದಿದ್ದರಿಂದ ನಾನು ಮುಖ್ಯಾಧಿಕಾರಿಗಳ ಕೊಠಡಿಗೆ ಹೋಗಿದ್ದೆ. ಆಗ ಮುಖ್ಯಾಧಿಕಾರಿಗಳ ಕೊಠಡಿಯ ಡ್ರಾದಲ್ಲಿ ಹಣವಿದ್ದು ಸದರಿ ಹಣವನ್ನು ಮುಖ್ಯಾಧಿಕಾರಿಗಳು ತೆಗೆದು ಇಡುವಂತೆ ಹೇಳಿದರು. ಆಗ ತೆಗೆದು ಪ್ಯಾಂಟ್‌ನ ಜೇಬಿನಲ್ಲಿ ಇಟ್ಟುಕೊಂಡೆ. ಮುಖ್ಯಾಧಿಕಾರಿಗಳ ಆದೇಶವನ್ನು ಪಾಲಿಸಬೇಕಾಗಿದ್ದು, ನಮ್ಮ ಕರ್ತವ್ಯವಾಗಿರುತ್ತದೆ ಎಂಬ ಅಂಶವನ್ನು ತಮ್ಮ ಅವಗಾಹನೆಗೆ ಸಲ್ಲಿಸಿದೆ”.

30. DGO-1 in his defence evidence has admitted that, the last installment was due to be disbursed to the complainant. He further reiterated his contention that, in order to ascertain the fact whether

the complainant has been residing in the same address, he asked a report in this regard and the concerned case worker Smt. Jayalakshmi was attending the file of the complainant during the relevant period. But DGO-1 did not make any efforts to offer his explanation regarding the written explanation given by DGO-2 against him stating that as per the direction of DGO-1, he/DGO-2 took the money from the table drawer of DGO-1 and kept the said money with him in his pant pocket. DGO-1 made no efforts to examine DGO-2 as his witness in order to elicit from him as to the circumstances which forced DGO-2 to give such an explanation offering reason as to why he gave such a written explanation as per Ex.P-6. Even in his defence evidence, DGO-1 never bothered to deny the written explanation offered by DGO-2 as per Ex.P-6. Therefore I have no hesitation to place reliance on the written explanation given by DGO-2 as per Ex.P-6 which fact has not been disputed or denied by DGO-2 and even DGO-1 as not denied this fact of DGO-2 giving written explanation as per Ex.P-6. DGO-2 has categorically stated in Ex.P-6 that, since it was his duty to obey the order of the Chief Officer and as per the direction of Chief Officer/DGO-1 he took money from the table drawer of DGO-1 and kept that money with him in his pant pocket, since DGO-1 asked him to keep that money with him. There is nothing to disbelieve DGO-2 and also written explanation given by him as per Ex.P-6 since DGO-2 has not disputed this fact and even DGO-1 has not denied this fact.

31. DGO-1 in his written explanation has stated that, though he refused to receive money from the complainant when the complainant offered money to him, the complainant having forcibly giving that money to DGO-2 implicated him falsely in this case. But while filing

his written statement DGO-1 has not taken up such a contention, though he has stated in his written statement that, the complainant when came to his chamber's on 05.01.2008 attempted to pass over the gratification to him but he/DGO-1 scolded him and warned him. Even while cross examining the complainant, no such contention was taken ~~up~~ on his behalf stating that he/complainant forcibly gave money to DGO-2 and falsely implicated him/DGO-1 in this case. Hence there is nothing to disbelieve Ex.P-6, the written explanation given by DGO-2 during the trap proceedings.

32. The learned counsel for the DGO-1 drew the attention of this authority to certain observation made by the learned Session Judge in judgment dated 08.08.2011 in Spl. Case no.90/2009 and tried to argue that, the I.O. before the Special court has admitted about DGO-1 angrily asking the complainant to go out of his chamber's. But no such cassette has been produced before this authority. Though the concerned Police Inspector was not examined before this authority, the DGO-1 could have summoned the said Investigating officer and could have examined him in support of his defence. But no such effort was made by DGO-1, in this enquiry.
33. This authority is considering the case of the disciplinary authority only on the touch stone of 'preponderance of the probability' and not on the touch stone of ~~the~~ 'proof beyond all reasonable doubt.' In order to arrive at a conclusion, regarding the charge against the DGO, it is necessary to consider whether there was some tangible evidence for proving the charge against the DGO and such evidence reasonably supports the charge for which DGO has been hold up for enquiry.

34. Examining the facts of the present case and the evidence adduced both oral and documentary on behalf of the Disciplinary Authority, though no tainted money was recovered from the possession of the DGO-1 and the hand wash of DGO-1 was not obtained during the trap proceedings since he did not receive money directly from the complainant, that itself is not sufficient to absolve DGO-1 from the charges leveled against him. The complainant has explained in detail regarding the circumstances under which he filed a complaint to Lokayukta Police as per Ex.P1 and he has made a specific allegation against DGO-1 that, he is demanding bribe from him to release final installment to him. He has further stated the details of the trap proceedings and gave evidence in detail regarding the manner in which DGO-1 demanded bribe from him and received/accepted Rs.1000/- from him by way of bribe. The complainant has stated in categorical terms that, DGO-1/Chief Officer having demanded bribe of Rs.1000/- from him to show an official favour in order to release and disburse final installment to him and explained in detail regarding the manner in which he accepted/received bribe amount from him. When the evidence of the complainant considered in context with the written explanation offered by DGO-2, I have no hesitation to believe Ex.P-6, in holding DGO-1 guilty of misconduct of demanding and accepting bribe from the complainant, to show an official favour to him. Accordingly, I hold that charges against DGO-1 are established by the disciplinary authority.
35. Though the tainted notes were recovered from the pant pocket of the DGO-2, there is no allegation against DGO-2 that he has demanded any bribe from the complainant and he has received Rs.1000/- from the complainant by way of bribe. Since I have believed the written

explanation given by the DGO-2 as per Ex.P-6 and accepted the explanation of DGO-2 regarding the circumstances under which the tainted notes came to his possession, I have no hesitation to believe him and the explanation offered by him. Having regard to the nature of explanation given by DGO-2, ~~it was~~^{it is} for DGO-1 to offer plausible explanation as to the reason why DGO-2 gave such an explanation implicating him (DGO-1) in this case. The omission on the part of DGO-1 in giving plausible explanation and his failure to call for DGO-2 as his defence witness and elicit from him as to the reason why he/DGO-2 gave such an explanation implicating him/DGO-1, it is also an another factor which make me to believe the explanation offered by DGO-2 as per Ex.P-6. Therefore though the tainted notes were recovered from the pant pocket of DGO-2 and though his hand wash gave positive result, there is nothing on record that, he has demanded bribe from the complainant and received Rs.1000/- from the complainant knowing it to be bribe amount, ^{Hence} I am of the opinion that, DGO-2 has not committed any misconduct and mere obeying the orders of his superior officer and doing an act as per the direction of his superior officer, will not make him responsible for committing any misconduct. Accordingly I hold that the charges leveled against DGO-2 is not proved.

36. The learned counsel for DGO-1 vehemently argued that, the learned 3rd Additional Session's and Special Judge in Special case no.90/2009 while judgment dated 08.08.2011, acquitted DGO-1 absolving him from charges leveled against him, in the prosecution launched against him and hence he has to be absolved from the charges leveled in this enquiry. He has placed reliance on certain decisions of the Hon'ble Supreme Court to support his contention.

37. The learned counsel for the DGO placing reliance on the decision of the Hon'ble Supreme Court reported in 2015(2) SCC 365 (S.Bhaskar Reddy Vs. Superintendent of Police) has vehemently argued that, since the DGO has been acquitted by the Spl. court, Kalburgi in Special Case (PCA) no. 584/2010, the charges against the DGO has to be held not proved and the DGO has to be absolved from the charges leveled against him. The Hon'ble Supreme Court in the decision cited above, while setting aside the order of dismissal passed against the appellant, made an observation that, if the official has been honorably acquitted in the criminal trial, the disciplinary authority shall take note of that aspect and if the criminal case and departmental proceedings are based on similar facts and evidence and if the trial court acquitted the Government official honorably, then the disciplinary authority considering the grounds on which the trial court acquitted the Government official and on that basis, take a decision as to whether the report of the enquiry officer in a departmental proceedings can be accepted or not and on that basis, can decide whether the charges against the Government official stands proved or not.

38. In pursuance of the Government order issued entrusting the proceedings to Hon'ble Upalokayukta under Section 14-A of KCS(CCA) Rules, a nomination order was issued by the Hon'ble Upalokayukta directing ARE-3 to frame charges and to hold enquiry and to submit a report as to whether the charges framed against the DGO is proved or not. Hence, the enquiry officer has to frame charge and to hold an enquiry and to prepare a report as to whether the evidence adduced on behalf of the disciplinary authority are sufficient to hold that, the charges against the DGO has been

established or not. The enquiry officer has to independently consider the evidence made available on behalf of the disciplinary authority during the enquiry, without considering the judgment of the criminal court since the Hon'ble Supreme Court in a decision reported in 2012(1) SC 442 (Divisional Controller, KSRTC Vs. M.G. Vittal Rao) observed as follows:

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

39. Even in the decision rendered by the Hon'ble Supreme Court cited on behalf of the DGO in S. Bhaskar Reddy case, the Principle laid down in Paul Anthony case has been relied upon. But, in the decision in M.G. Vittal Rao's case, the Hon'ble Supreme Court made it clear that, Paul Anthony's case does not lay down the law of universal application.
40. Hence, it is for the Disciplinary Authority to consider such a contention if raised by the DGO while submitting his explanation to the second show cause notice that may be issued to him, by the disciplinary authority.
41. Accordingly, I hold that the disciplinary authority was able establish charges against DGO-1. Further I hold that the charges

against DGO-2 are not established. Accordingly, I answer point no.1 in the affirmative and point no.2 in the Negative.

Point No.3:

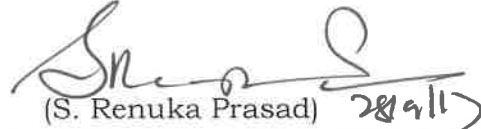
42. Having regard to the discussion made above, and in view of my findings on points no.1 and 2 as above, my finding is as below

FINDINGS

i. The Disciplinary Authority has proved the charges as framed against the DGO-1 Sri Raju, the then Chief Officer, Town Municipal Council, Bannur, Mysore District.

ii. The Charges against DGO-2 Sri B.C. Krishna, 'D' Group Employee Town Municipal Council, Bannur, Mysore District, are not established and hence not proved.

iii. As per the first oral statement of DGO, the date of Birth of DGO no.1 Sri Raju is 20.01.1961 and his date of retirement is 31.01.2021. The date of birth of DGO no.2 Sri B.C.Krishna is 31.12.1964 and he is due for retirement on 31.12.2024.



(S. Renuka Prasad) 28/11/24
Additional Registrar of Enquiries-3
Karnataka Lokayukta,
Bengaluru.

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

PW-1	Sri Syed Ummar (complainant)
PW-2	Sri Mohammad Rafiq Pasha (Shadow witness)

II. Witnesses examined on behalf of the DGO:

DW-1	Sri Raju (DGO-1)
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III Documents marked on behalf of D.A.


Ex.P-1	Certified copy of the complaint
Ex.P-2	Certified copy of the entrustment mahazar
Ex.P-3	Certified copy of the trap mahazar
Ex.P-4	Certified copy of the documents seized
Ex.P-5 & P6	Certified copies written explanation of DGO-1 and DGO-2

IV. Documents marked on behalf of DGO:

Nil

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

Nil


(S. Renuka Prasad)Additional Registrar of Enquiries-3,
Karnataka Lokayukta, Bengaluru.



KARNATAKA LOKAYUKTA

No. Lok/Inq/14-A/361/2013/ARE-3

Multi-storeyed Building,
Dr.B.R. AmbedkarVeedhi,
Bengaluru, dt.03.10.2017.RECOMMENDATION

Sub: Departmental inquiry against Sriyuths:

- 1) Raju, the then Chief Officer; and
- 2) B.C. Krishna, 'D' Group employee,
Town Municipal Council, Bannur,
Mysuru District - reg.

- Ref: 1. Govt. Order No. UDD 45 DMK 2013
dated 30.08.2013.
2. Modified nomination order No. Lok/Inq/
14-A/361/2013 dated 26.08.2016.
- ~~~~~

Government, by its order dated 30.08.2013, initiated the disciplinary proceedings against Sriyuths: (1) Raju, the then Chief Officer; and (2) B.C. Krishna, 'D' Group employee, Town Municipal Council, Bannur, Mysuru District [hereinafter referred to as the Delinquent Government Officials 1 & 2 respectively, for short 'DGOs 1 & 2'] and entrusted the departmental inquiry to this Institution. This Institution, by

modified nomination order dated 26.08.2016, nominated the Additional Registrar of Enquiries-3, Karnataka Lokayukta, Bengaluru, to conduct the departmental inquiry against the DGOs for the alleged charge of misconduct alleged to have been committed by them.

2. The Inquiry Officer has submitted his report dated 28.09.2017 inter alia holding that, the Disciplinary Authority has '*proved*' the charge of misconduct as framed against DGO 1 and charge against DGO2 is '*not established*'.

3. The charges levelled against DGOs 1 & 2 were that, while they were working as Chief Officer; and 'D' Group employee in Town Municipal Council, Bannur, Mysuru District respectively, one Shri Syed Umar s/o late Syed Mohammad, r/o Dayyar Hohalla, Bannur, Mysuru District [hereinafter referred to as 'the complainant'] had approached the DGO1 for release of the last instalment of Rs.5000/- sanctioned under '*Rajeev Gandhi Housing Scheme*' towards the construction of house. The DGO1

Syed

demanded and accepted Rs.1,000/- as bribe amount on 05.01.2008 by asking the complainant to keep the bribe amount into the drawer of his table. DGO2 was asked to collect the said amount and accordingly, DGO2 collected the same. Thereby, both DGOs 1 & 2 failed to maintain absolute integrity, devotion to duty and rendered themselves as unbecoming of Government servants and committed misconduct within the meaning of Rule 3(1)(i) to (iii) of Karnataka Civil Service (Conduct) Rules, 1966.

4. The Disciplinary Authority, to prove the charge of misconduct has examined 2 witnesses as PWs 1 & 2 viz., PW1 is the complainant; and PW2 is the shadow witnesses and got marked six documents as Exs.P1 to P6, whereas DGO1 got himself examined as DW1, but did not mark any documents. Evidence of PWs 1 & 2 clearly shows that, the DGO1 in order to discharge his official function demanded and accepted the bribe amount. DGO2 in his written statement has stated that, he collected Rs.1,000/- from the table drawer of the DGO1 as per his instructions. DGO1 in his evidence has stated that, he neither

SJA

demanding nor accepted the bribe amount and in turn, stated that Rs.1,000/- was forcibly given to DGO2 by the complainant.

5. The Inquiry Officer has considering the entire evidence at length has found that, the Disciplinary Authority has '*proved*' the charge of misconduct *against DGO1*, but '*not against DGO2*'.

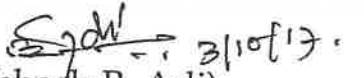
6. Considering the findings of the Inquiry Officer and also the materials on record, though the PW2, shadow witness to some extent has not supported the Disciplinary Authority, but his evidence corroborates with the evidence of PW1 to prove the charge of misconduct against DGO1. Hence, having regard the findings of the Inquiry Officer and also having regard to the nature and gravity of misconduct alleged against the DGOs, it is hereby recommended to the Government that, the DGO 1 - *Shri Raju, the then Chief Officer, Town Municipal Council, Bannur, Mysuru District* be punished with the penalty of '*dismissal from service*' in exercise of powers under Rule 8(viii) of the Karnataka Civil Service (Classification, Control and Appeal)

S. S. S.

Rules, 1957. Since the charge leveled against DGO2 is '*not proved*', it is hereby recommended that, the disciplinary proceedings against DGO-2 - *Shri B.C. Krishna, 'D' Group employee, Town Municipal Council, Bannur, Mysuru District* be *dropped as 'not proved'*.

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

Connected records are enclosed herewith.


(Justice Subhash B. Adi)
UPALOKAYUKTA
State of Karnataka

