

**GOVERNMENT OF KARNATAKA**



**KARNATAKA LOKAYUKTA**

NO: LOK/INQ/14-A/379/2011/ARE-3

Multi Storied Building,  
Dr. B.R. Ambedkar Veedhi,  
Bengaluru-560 001  
Date: 02/04/2019

**RECOMMENDATION**

Sub:- Departmental inquiry against;

- 1) Sri B.S.Manjunatha Kutta, First Division Assistant, Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bengaluru;
- 2) Sri B.L. Manjunatha, Attender, Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bengaluru - Reg.

Ref:- 1) Government Order No. ಆಕುಕ 248 ಹೆಚ್‌ಎಸ್‌ಎಂ 2011, Bengaluru dated 28/10/2011.

2) Nomination order No.LOK/INQ/14-A/379/2011, Bengaluru dated 4/11/2011 of Upalokayukta-1, State of Karnataka, Bengaluru

3) Inquiry Report dated 30/03/2019 of Additional Registrar of Enquiries-3, Karnataka Lokayukta, Bengaluru

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The Government by its Order dated 28/10/2011 initiated the disciplinary proceedings against (1) Sri B.S.Manjunatha Kutta, First Division Assistant, Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bengaluru and (2) Sri B.L.Manjunatha, Attender (Group-D), Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bengaluru (hereinafter referred to as Delinquent Government Officials 1 & 2, for short as DGO-1 and DGO-2) and entrusted the Departmental Inquiry to this Institution.

2. This Institution by Nomination Order No.LOK/INQ/14-A/379/2011, Bengaluru dated 4/11/2011 nominated Additional

Registrar of Enquiries-3, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct Departmental Inquiry against DGOs 1 & 2 for the alleged charge of misconduct, said to have been committed by them.

3. The DGO-1 Sri B.S. Manjunatha Kutta, First Division Assistant, Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bengaluru and DGO-2 Sri B.L.Manjunatha, Attender (Group-D), Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bengaluru were tried for the following charge:-

“That you Sri Manjunatha Kutta S/o. Late D.S. Sathyanarayan (hereinafter referred to as Delinquent Government Official-1, in short DGO-1) while working as FDA, Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bangalore demanded and accepted a bribe of ₹5,000/- on 22/01/2017 through DGO No.2 from the complainant Sri B.V.Ramadasegowda S/o.Late Venkategowda, No.57/1, 3rd Cross, 3rd Main Road, K.G. Nagar, Nanjappa Layout, Bengaluru 19 and that you for putting up the file before the concerned officer for sending intimation to Smt.Deepa for training as Junior Women Health Assistant and that you Sri B.L. Manjunatha (hereinafter referred to as Delinquent Government Official-2, in short DGO-2) while working as Attender, Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bangalore received a bribe of ₹5,000/- on 22/01/2007 from complainant as per the direction of DGO No.1 that is for doing an official act, and thereby both of you failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of a Government Servant and thus both of you are guilty of misconduct under Rule 3(1)(i) to (iii) of KCS (Conduct) Rules, 1966.”

4. The Inquiry Officer (Additional Registrar of Enquiries-3) on proper appreciation of oral and documentary evidence has held that the Disciplinary Authority has proved the above charge framed against DGO-1 Sri B.S. Manjunatha Kutta, First Division Assistant, Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bengaluru and DGO-2 Sri B.L.Manjunatha, Attender (Group-D), Directorate of Health & Family Welfare Services, Ananda Rao Circle, 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. The DGO-1 Sri B.S. Manjunatha Kutta was convicted in Spl. C.C. No: 189/2007 by Special Judge, Bengaluru Urban District vide Judgment dated 30/6/2012. The DGO had challenged the judgment of conviction dated 30/6/2012 by filing Appeal in Criminal Appeal No. 781/2012 before the High Court of Karnataka at Bengaluru, which is pending consideration. In view of conviction of DGO-1 Sri B.S Manjunatha Kutta he has been dismissed from service by Order No. DPN (1) Cr-50/2006-07 dated 30/7/2013 of the Commissioner of Health & Family Welfare Services, Bengaluru.

7. As per the First Oral Statement submitted by DGOs 1 & 2;
- (i) DGO-1 Sri B.S. Manjunatha Kutta was due to retire from service in the normal course, on 31/8/2040.
  - (ii) DGO-2 Sri B.L. Manjunatha is due to retire from service on 31/5/2023.

8. Having regard to the nature of charge (demand and acceptance of bribe) proved against DGO-1 Sri B.S. Manjunatha Kutta and DGO-2 Sri B.L.Manjunatha and challenge to the judgment of conviction of DGO-1 Sri B.S.Manjunatha Kutta in Criminal Appeal No. 782/2012;

(i) it is hereby recommended to the Government for imposing penalty of compulsory retirement from service on DGO-1 Sri B.S. Manjunatha Kutta, the then First Division Assistant, Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bengaluru, if the judgment of conviction of DGO-1 dated 30/6/2012 in Spl. C.C. No. 189/2007 is set aside in Criminal Appeal No. 781/2012. If the judgment of conviction dated 30/6/2012 against DGO-1 is confirmed in Crl. Appeal No.781/2012, this recommendation shall be treated as redundant;

(ii) it is hereby recommended to the Government for imposing penalty of compulsory retirement from service on DGO-2 Sri B.L.Manjunatha, Attender (Group-D), Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bengaluru.

9. 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

**KARNATAKA LOKAYUKTA**

No. LOK/INQ/14-A/379/2011/ARE-3

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

Date: 30.03.2019

**Enquiry report**

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

Sub: Departmental Enquiry against (1) Sri Manjunatha Kutta, FDA, Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bangalore.(2) Sri B.L.Manjunatha, Attender, Directorate of Health & Family Welfare Services - reg

Ref: 1. Report under Section 12(3) of the Karnataka Lokayukta Act, 1984, in No. Compt/Uplok/BCD/289/2008/ARE-11 dated 12.8.2011  
2. Government Order No. HFW 248 HSM 2011 dated 28.10.2011  
3. Nomination Order No.LOK/INQ/14-A/379/2011 dated 4.11.2011 of Hon'ble Upalokayukta, Karnataka State, Bengaluru.

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1. One Sri B.V. Ramadasegowda S/o Late Venkategowda R/o No. 57/1, 3<sup>rd</sup> Cross, 3<sup>rd</sup> Main Road, K.G.Nagar, Nanjappa Layout, Bangalore-19 (hereinafter referred to as 'complainant') has filed a complaint to Lokayukta police, Bengaluru City Division on 22.1.2007 against (1) Sri Manjunatha Kutta, FDA, Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bangalore (hereinafter referred to as 'DGO-1' for short) making allegations against him that, in order to process the file pertaining to selection of Smt. V. Deepa, to the post of Junior Women Health Assistant and to depute her for training,

DGO-1 having demanded bribe of Rs. 10,000/- received Rs. 5000/- as part payment, and since the name of Smt. V. Deepa was not included in the regular select list but, she has been included in the waiting list, in order to put up file for sending the name of Smt. V. Deepa for training, DGO is insisting him/complainant to pay the balance of Rs. 5000/-.

2. On registering a case on the basis of the said complaint, a trap was held on 22.1.2007 in the office of the Director of Health and Family Welfare, Anand Rao Circle, Bengaluru wherein, DGO-1 along with his subordinate employee Sri B.L.Manjunatha, Attender, Directorate of Health & Family Welfare Services (hereinafter referred to as 'DGO-2' for short) approached the complainant near Annapurna Canteen situated within the premises of the office of Director of Health and Family Welfare Services and DGO-1 having demanded bribe from the complainant received Rs. 5000/- from him through DGO-2 and as per the direction issued by DGO-1, the complainant gave the bribe amount to the hands of DGO-2, who on receiving the tainted notes from the complainant kept that money in his right side pant pocket. The tainted money of Rs. 5000/- was recovered from the right side pant pocket of the DGO-2 during the trap proceedings conducted inside the office of the DGOs. Since it was revealed during investigation that, the DGO-1 having demanded bribe, received Rs. 5000/- by way of bribe from the complainant through DGO-2 and DGO-2 since received the bribe amount from the complainant as per the direction of DGO-1, and the said bribe amount was demanded and received by DGO-1 through DGO-2 in order to process the file and place it before the Competent Authority for selecting Smt. V. Deepa as Junior Women Health Assistant, whose name has been included in the waiting list, to send her for

training, the Police Inspector having conducted detailed investigation, filed charge sheet, both against DGOs 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 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 disciplinary proceedings against them.
4. DGO-1 has submitted his reply on 16.9.2010 denying the allegations made against him contending that, he never demanded or received any money by way of bribe from the complainant and he has been falsely implicated, though no tainted notes were recovered from his possession. It is his further contention that, he is nothing to do with the recovery of tainted notes from the possession of DGO-2 and he never gave instructions to DGO-2 to receive any money by way of bribe from the complainant on his behalf. Taking up such a contention he has requested this authority to drop the proceedings against him.
5. DGO-2 in his reply dated 29.1.2011 denied the allegations made against him contending that, he never demanded or received any money by way of bribe from the complainant, claiming that, he has been falsely implicated. He has taken up a contention that, on that day while he was entering the compound of his office, he met DGO-1 and he/DGO-1 took him to lunch to Annapoorna canteen and after both of them having their lunch in the said canteen, they were going

back to their office and in the meantime one person met DGO-1 in the compound and had conversation with him/DGO-1 and all of a sudden that person turned towards him/DGO-2 and handed over some amount to him, asking him to pass on that amount to DGO-1. It is his further contention that, at that moment, DGO-1 asked him to collect the amount from that person and give that money to him afterwards. Hence in obedience to the orders of DGO-1, he being an attender, took that money from the said person as per the directions of DGO-1 and kept that money in his right side pant pocket. It is his further contention that, on recovering that money from his pant pocket, the Police Inspector enquired him and he gave his explanation before the Police Inspector claiming that, he received that money from that person/complainant, at the instance of and as per the direction of DGO-1. Pleading his ignorance about the money he has received from the complainant was the bribe amount demanded by DGO-1 and further claiming that, he never demanded any bribe but received the amount from the complainant only as per the direction of DGO-1, he/DGO-2 claimed that, he is innocent and requested this authority to drop the proceedings against him.

6. Since the explanation offered by 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 DGOs 1 and 2 and to entrust the enquiry under Rule 14-A of KCS (CCA) Rules, to this authority to hold enquiry. Accordingly, the Disciplinary Authority, the Government of Karnataka in the Health and Family Welfare Department by its order in No. HFW 248 HSM 2011 dated 28.10.2011 initiated disciplinary proceedings against both DGOs 1 and 2 and entrusted the enquiry to Hon'ble



Upalokayukta to hold enquiry. As per the order issued against DGOs 1 and 2, the Hon'ble Upalokayukta issued a nomination order dated 4.11.2011 nominating ARE-3 to frame charges and to conduct enquiry against DGOs 1 and 2. Accordingly, charges were framed by the then ARE-3 against the DGOs 1 and 2 as under.

“Charge:

“That you, Sri Manjunatha Kutta S/o late D.S. Satynarayan (here in after referred to as Delinquent Government Official-1, in short DGO-1), while working as FDA, Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bangalore demanded and accepted a bribe of Rs. ₹ 5000/- on 22/01/2007 through DGO no.2 from the complainant Sri B.V. Ramadasegowda S/o Late Venkategowda, No. 57/1, 3<sup>rd</sup> Cross, 3<sup>rd</sup> Main Road, K.G.Nagar, Nanjappa Layout, Bangalore-19 and that you for putting up the file before the concerned officer for sending intimation to Smt. Deepa for training as Jr. Women Health Assistant and that you Sri B.L.Manjunatha (here in after referred to as Delinquent Government Official-2, in short DGO-2) while working as Attender, Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bangalore received a bribe Rs. 5000/- on 22/01/2007 from complainant as per the direction of DGO no.1 that is for doing an official act, and thereby both of you failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of a Government Servant and thus both of you are guilty of misconduct under Rule 3(1)(i) to (iii) of KCS (Conduct)Rules 1966.

**STATEMENT OF IMPUTATION OF MISCONDUCT:**

The complainant Sri B.V. Ramadasegowda S/o Late Venkategowda, No. 57/1, 3<sup>rd</sup> Cross, 3<sup>rd</sup> Main Road, K.G.Nagar, Nanjappa Layout, Bangalore-19 lodged a complaint on 22/01/2007 before the Police Inspector, Karnataka Lokayukta City Division, Bangalore alleging that Smt. Deepa.V. is the W/o the brother of his wife and that at the time of the process of selection for the post of Jr. Women Health Assistant in the Directorate of Health and Family Welfare Services, Sri Manjunatha Kutti, FDA, Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bangalore (here in after referred to as Delinquent Government Official-1 in short DGO-1) demanded a bribe of Rs. 11000/- and after bargain agreed for Rs. 10,000/- and received a sum of Rs. 5000/- 2 months prior to 22/01/2007 assuring that he would get her selected for the post and that she was not selected and her name was found in the waiting list and thereafter when she went to the DGO no.1 and asked him, DGO no.1 again demanded a bribe of Rs. 5000/- for putting up the file before the concerned officer for sending intimation to her for the training.

As the complainant was not willing to pay remaining bribe of Rs. 5000/- to the DGO, he went to Police Inspector, Karnataka Lokayukta City Division, Bangalore on 22/01/2007 and lodged a complaint. On the basis of the same a case was registered in City Division, Bangalore Lokayukta Police Station Cr. No. 01/2007 for offences punishable under sections 7, 13(1) (d) r/w section 13(2)

of the P.C. Act,1988 and FIR was submitted to the concerned learned special judge.

After registering the case, investigating officer observed all the pre trap formalities and entrustment mahazar was conducted and you, the DGOs 1 and 2 were trapped on 22/01/2007 by the Investigating Officer after DGO-1 demanding and accepting the balance bribe amount of ₹5000/- through DGO no.2 and DGO no.2 accepting the bribe amount of Rs. 5000/- from the complainant as asked by the DGO no.1 in the presence of shadow witness and the said bribe amount which DGO-2 had received from the complainant was seized from the possession of DGO-2 under the seizure mahazar after following the required post trap formalities. During the investigation the I.O has recorded the statements of Panchas and other witnesses and further statement of the complainant. The I.O during the investigation has sent the seized articles to the chemical examiner and obtained and obtained the report from him and he has given the result as positive.

The materials collected by the I.O. during the investigation prima facie disclose that you, the DGO-1 demanded and accepted the balance bribe of ₹5000/- through DGO no.2 from the complainant on 22/01/2007 for doing an official act i.e., for putting up the file before the concerned officer for sending intimation to Smt. Deepa for training as Jr. Women Health Assistant and that DGO no.2 received a bribe Rs. 5000/- on 22/01/2007 from complainant as per the direction of DGO no.1. Thus you, the DGOs 1 and 2, have failed to maintain absolute

integrity and devotion to duty and this act on your part is unbecoming of a Government servant. Hence, both of you have committed an act which amounted to misconduct as stated under Rule 3 (1) (i) to (iii) of KCS (Conduct) Rules 1966.

In this connection an observation note was sent to both of you, and you DGO-1 have submitted your reply which, after due consideration, was found not acceptable. Therefore, a recommendation was made to the Competent Authority under Section 12(3) of the Karnataka Lokayukta, Act 1984, to initiate Departmental Proceedings against you both, the DGOs no.1 and 2. The Government after considering the recommendation made in the said report, entrusted the matter to the Hon'ble Upalokayukta to conduct departmental/disciplinary proceedings against you both, the DGOs 1 and 2 and to submit report. Hence the charge."

7. The Articles of Charges and Statement of Imputations are duly served on DGOs 1 and 2. DGOs 1 and 2 have appeared in response to the notice issued to them and First Oral Statement of the DGOs 1 and 2 was recorded. DGOs 1 and 2 have denied the charges framed against them. They have engaged the services of Advocates of their choice, to appear on their behalf and to defend them, in the enquiry.
8. DGO-1 has filed his written statement dated 21.3.2013 denying the allegations made against him contending that, he never demanded or received any money by way of bribe from the complainant claiming that, he has been falsely implicated. He has reiterated the contentions he has urged in his reply, contending that, though no tainted notes were recovered from his possession, he has been

falsely implicated on the basis of the alleged statement said to have been given by DGO-2 against him. It is his further contention that, he is nothing to do with the recovery of tainted notes from the possession of DGO-2 and he never gave any instructions to DGO-2 to receive any money by way of bribe from the complainant, on his behalf. It is his further contention that, he has no role to play in any of the selections and no power of selection has been given to him for selecting the candidates for the post of Junior Health Assistant. It is his further contention that, though he has been convicted by the Trial court, holding him guilty of offence of demand and acceptance of bribe from the complainant, the said judgment is erroneous and hence he has challenged the said judgment of conviction by filing appeal before the Hon'ble High Court of Karnataka in Cr.A. No. 781/2012 and the Hon'ble High Court on hearing the appeal on merits, reserved the appeal for pronouncing judgment. Taking up such contentions in his written statement, DGO-1 has requested this authority to absolve him from the charges levelled against him.

9. DGO-2 has filed his written statement on 1.8.2013 denying the allegations made against him. He has reiterated the contentions he has urged in his reply taking up a contention that, he was on leave from 12.1.07 till 25.1.07 and on that day i.e., on 22.1.07, he came to the office to meet the Deputy Director to request him for extension of leave and while he was entering the compound of his office, he met DGO-1 and he/DGO-1 took him to lunch to Annapoorna canteen and after both of them having their lunch in the said canteen they were going back to the office and in the meantime one person met DGO-1 in the compound and had conversation with DGO-1 and all of a sudden that person turned towards him/DGO-2 and handed over some amount to him asking him to pass on that amount to

DGO-1. It is his further contention that, at that moment, DGO-1 asked him to collect the amount from that person and give that money to him afterwards. Hence in obedience to the orders of DGO-1, he being an attender, took that money from the said person as per the directions of DGO-1 and kept that money in his right side pant pocket. It is his further contention that, on recovering that money from his pant pocket, the Police Inspector enquired him and he gave his explanation before the Police Inspector claiming that, he received that money from that person/complainant at the instance of DGO-1. Pleading his ignorance about the money he has received from the complainant was the bribe amount demanded by DGO-1 from the complainant. He has taken up a further contention that, the Spl. Court, Bengaluru on holding detailed trial, though convicted DGO-1, proceeded to acquit him/DGO-2, and further claiming that, he never demanded any bribe from the complainant and received the amount only as per the direction of DGO-1, he/DGO-2 claimed that, he is innocent and requested this authority to absolve him from the charges levelled against him.

10. During enquiry, on behalf of disciplinary authority, 2 witnesses viz., Shadow witness and Investigation officer have been examined as PW1 and PW2 and 13 documents came to be marked as Ex-P1 to Ex-P13. The complainant could not be secured before this authority despite issuing summons and warrants against him. The summons could not be served on him since the complainant is not residing in the given address and his present address is not available. Even the arrest warrant issued against the complainant could not be executed against him, and returned un-executed with a shara that, the complainant vacated his house given in the address about 4 years ago and his present address could not be ascertained despite making efforts to that effect. Since all the efforts to secure the

complainant before this authority did not give positive result, without examining the complainant, the case of the disciplinary authority came to be closed.

11. DGO-2 having filed his written statement was attending this enquiry regularly till 11.12.2015. But he never bothered to appear before this authority to participate in the proceedings on subsequent hearing dates. Despite granting him sufficient opportunity to appear before this authority and to contest the enquiry, DGO-2 never bothered to appear before this authority. Hence vide order dated 21.9.2017, DGO-2 has been placed exparte and enquiry was proceeded only against DGO-1. PWs 1 and 2 examined on behalf of disciplinary authority, were not cross examined on behalf of DGO-2 since, the counsel representing DGO-2 never bothered to appear before this authority during recording of the evidence of PW1 and PW2 and hence the evidence given by PW1 and PW2 as against DGO-2, remained unchallenged.

12. After closure of the evidence on behalf of disciplinary authority, second oral statement of DGO-1 was recorded. Since, DGO-1 desired to lead defence evidence, permission was granted to him accordingly. Subsequently, learned counsel for DGO-1 filed a memo stating that DGO has no defence evidence to lead and DGO-1 is not willing to examine himself in support of his defence. Hence DGO-1 has been examined under Rule 11(18) of KCS (CCA) Rules with reference to questionnaire prepared. But on behalf of DGO-1 his counsel filed defense statement as provided under Rule 11(17) of KCS(CCA) Rules.

13. Thereafter, the learned Presenting Officer has filed written arguments. The learned counsel for DGO-1 has submitted his

written arguments in support of the defense of DGO-1. Thereafter, this matter is taken up for consideration.

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

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

**Point No.2:** Whether the charge framed against the DGO-2 is proved by the Disciplinary Authority?

**Point No.3:** What order?

15. The above points are answered as under:

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

**Point No.2:** In the 'Affirmative'

**Point No.3:** As per Conclusion.

### REASONS

#### Point No.1 and 2 :-

16. Both point no.1 and 2 are taken up for consideration together as common set of facts and evidence are required to be considered to answer these points.

17. DGO-1 was working as FDA and DGO-2 was working as Attender in the office of the Directorate of Health & Family Welfare Services, Anand Rao circle, Bengaluru during the relevant period.

18. The complainant in his complaint, Ex-P11 has narrated in detail the circumstances under which he has filed the said complaint against DGO-1. Since the complainant could not be secured and examined before this authority, the complaint Ex-P11 came to be produced and marked during the evidence of PW2/IO.



19. According to the complaint averments, Smt. V. Deepa, W/o brother-in-law of the complainant had applied for selection to the post of Junior Women Health Assistant in the department of Health and Family Welfare and as per the notification issued from the O/o the Director of Health and Family Welfare. According to the complaint averments, DGO being the case worker was processing the file pertaining to the selection of candidates to the post of Junior Health Assistant and deputing such selected candidates for training. It is the allegation in the complaint that, he/complainant approached DGO-1 in connection with the selection of Smt. V. Deepa and DGO-1 demanded him to pay Rs. 15000/- by way of bribe in order to select Smt.V.Deepa to the post of junior Health Assistant and to depute her for training and on negotiation DGO-2 scaled down his demand insisting the complainant to pay Rs. 10,000/- and received Rs. 5000/- as part payment. It is the further allegation in the complainant that, the name of Smt. V. Deepa was included in the waiting list but not selected in the regular list of candidates selected for the said post. Hence, the complainant, as per the averment in the complaint, approached DGO-1 again and DGO-1 in order to put up the file and to depute Smt. V. Deepa for training demanded him to pay the balance of Rs. 5000/-. Hence the complainant was constrained to approach Lokayukta police and filed complaint against DGO-1 as per Ex-P11.

20. On the basis of the complaint so filed by the complainant on 22.1.2007 the Police Inspector, Karnataka Lokayukta, Bengaluru City Division has registered a case in Cr. No. 1/2007 under Sections 7,13(1)(d) R/w 13(2) of P.C Act, 1988 and took up investigation.

21. An entrustment proceedings was conducted in the Lokayukta office, City Division on 22.1.2007 in the presence of two panch witnesses viz., Sri H.M. Munishetty, SDA, O/o Commissioner, Social Welfare Department and Sri K. Naveen FDA, O/o Commissioner of Transport and in the said proceedings, the bait money of Rs. 5000/- consisting of 8 currency note of Rs. 500/- denomination each and 10 currency notes of Rs. 100/- denomination each given by the Complainant, were smeared with phenolphthalein powder making it as tainted money, and the said tainted notes were entrusted to the Complainant asking him to give that money to DGO-1 when he meets him and only in case if he/DGO-1 demands for bribe. Panch witness Sri Munishetty was sent along with the complainant, as a shadow witness.
22. The complainant and shadow witness, were taken to office of DGO-1 and sent them to meet him/DGO-1 the said office. The complainant accompanied with shadow witness went to the concerned section where DGO-1 was working but, since DGO-1 was not available on his seat, he complainant contacted DGO-1 on his mobile and enquired him about his whereabouts. DGO-1 asked the complainant to wait for him near the office. Hence the complainant and shadow witness were waiting for DGO-1 near Annapurna Canteen situated within the premises of the O/o Directorate of Health and Family Welfare. While the complainant and shadow witness were waiting near the canteen, DGO-1 accompanied with DGO-2 met the complainant near the said canteen and when the complainant enquired DGO-1 about sending of Smt. V. Deepa for training, DGO-1 enquired him as to whether he has brought the remaining amount as demanded by him When the complainant offered the tainted notes of Rs. 5000/- to him/DGO-1, he/DGO-1 directed DGO-2 who was with him at that time, asking him to receive the said money

from the complainant. Accordingly DGO-2 having received the said money from the complainant with his right hand, kept that money in the right side pocket of his pant. Thereafter, DGO-1 took the complainant to his section and took out the file pertaining to the selection to the post of Junior Health Assistant and kept that file on his table promising the complainant that, he will do the needful. At that time, even DGO-2 was also standing by the side of DGO-1 in the said section of the O/o Directorate of Health and Family Welfare. Thereafter, the complainant came out of the office and gave pre-arranged signal to the Police Inspector.

23. On receiving the signal, the Police Inspector and his staff and another panch witnesses approached the complainant who took them inside the section and showed DGO-1 and DGO-2 claiming that, DGO-1 having demanded bribe from him, received bribe amount through DGO-2 and the tainted notes are in the pant pocket of DGO-2.
24. The Police Inspector introduced himself to DGOs 1 and 2 and explained to DGO-1 about the registration of a case against him and asked him and DGO-2 to co-operate in the investigation. DGO-1 disclosed his name as Sri Manjunatha Kutta, FDA, Directorate of Health & Family Welfare Services, Ananda Rao Circle, Bangalore and DGO-2 disclosed his name as Sri B.L.Manjunatha, Attender, Directorate of Health & Family Welfare Services.
25. Thereafter, the hand wash of both the hands of DGO-2 was obtained, asking him to wash his both hand fingers separately in two bowls containing sodium carbonate solution. When DGO-2 washed his right hand fingers in one bowl and left hand fingers in another bowl containing sodium carbonate solution, the solution in

which DGO-2 dipped his right fingers turned into pink colour, whereas, the solution in which DGO-2 dipped his left hand fingers, there was no change in the colour of the solution. Both right hand wash and left hand wash of DGO-2 were collected in two separate bottles and sealed the same.

26. Thereafter, the Police Inspector asked DGO-2 about the money he has received from the complainant as per the direction of DGO-1. DGO-2 on taking out Rs. 5000/- notes from his right side pant pocket produced the same before the Police Inspector. On verification of those notes with reference to its serial number, it was confirmed that, those were the notes of Rs. 5000/- entrusted to the complainant during the entrustment proceedings. Those notes were kept in a separate cover and sealed the same.

27. On providing an alternate pant to DGO-2, pant worn by him was got removed and the right side pocket portion of the pant when dipped in a separate bowl containing sodium carbonate solution, the solution in the said bowl turned into pink colour. The pant pocket wash of DGO-2 along with his pant were seized by collecting the pant pocket wash in a separate bottle. Even the hand wash of the complainant was obtained which gave positive result regarding presence of phenolphthalein thereby, it was confirmed that, the complainant handed over that money to the hands of DGO-2 who collected that money from the complainant as per the direction of DGO-1.

28. The Police Inspector asked DGOs 1 and 2 to give their explanation in writing. DGO-1 and 2 gave their explanation in writing as per Ex P6 and P7. Both the complainant and shadow witness have denied the correctness of the version of the explanation given by DGO-1,

claiming it as false and incorrect but, confirmed that the explanation given by DGO-2 is correct.

29. The Police Inspector asked DGO-1 to produce the relevant file pertaining to the selection of candidates to the post of Junior Health Assistant. DGO-1 having taken the relevant file which was found kept on his table produced the same before the Police Inspector. The attested copies of the said file including noting sheet and the list of selected candidates and other documents were seized as per Ex-P4.
30. When the Police Inspector enquired the shadow witness about the happenings taken place near the canteen when the complainant met DGO-1, even shadow witness confirmed that, DGO-1 having demanded bribe from the complainant received bribe amount through DGO-2. A detailed mahazar was got prepared as per Ex-P9 incorporating all the details of the trap proceedings.
31. During enquiry, shadow witness has been examined as PW1 and his examination in chief was recorded on 13.1.2017. PW1 gave evidence regarding conducting of entrustment proceedings in the Police Station and entrustment of tainted notes of Rs. 5,000/- to the complainant in the said proceedings.
32. He has further stated that, he having accompanied the complainant went to MCH section where the complainant took him, but due to non availability of the concerned official/DGO-1 in the said section, the complainant contacted him on his mobile and PW2 claimed that, DGO-1 came to the office after receiving phone call from the complainant. He further stated that, the complainant enquired DGO-1 about issue of orders to Smt. V. Deepa and DGO-1 enquired the complainant as to whether he has brought money as demanded

and when the complainant offered the money to DGO-1, he/DGO-1 asked the complainant to give that money to DGO-2 who was standing near to him and accordingly, complainant gave that money to the hands of DGO-2. He has further stated that, DGO-2 having received money from the complainant with his right hand as per the direction of DGO-1, kept that money in the right side pocket of his pant. He has further stated that, thereafter, the complainant went out of the section and gave pre-arranged signal to the Police Inspector. He claimed that, he was standing by the side of the complainant and watched all the events that was taken place in his presence wherein, DGO-1 having demanded money from the complainant received the amount through DGO-2 and DGO-2 having received that money from the complainant as per the direction of the complainant, kept that money in his right side pant pocket.

33. PW1 has further narrated about arrival of Police Inspector on receiving signal form the complainant, obtaining of hand wash of both the hands of the DGO-2 wherein right hand wash of DGO-2 gave positive result whereas, left hand wash of DGO-2 gave negative result regarding presence of phenolphthalein, recovery of tainted notes from DGO-2 since he/DGO-2 himself produced the money on taking out from his right side pant pocket, subjecting the right side pocket portion of the pant of DGO-2 for phenolphthalein test which gave positive result regarding presence of phenolphthalein, giving of explanation by DGOs 1 and 2 as per Ex-P6 and P7, production of the file pertaining to selection of candidates to the post of Junior Health Assistant, by DGO-1 on taking out the said file from his table and seizure of the relevant papers from the said file as per Ex-P4 and obtaining of photographs of trap proceedings as per Ex-P8 and

preparation of trap mahazar as per Ex-P9 and other details of the trap proceedings.

34. Since the counsel for DGO-1 and 2 were absent on that day the cross examination of PW1 was taken as Nil and subsequently at the instance of counsel for DGO-1, PW1 was recalled and subjected to cross examination on 29.1.2018 i.e., after one year.
35. During his cross examination PW1 has stated that, initially he and the complainant never went inside the concerned office and before going inside the office, complainant called DGO-1 on his mobile to enquire about his whereabouts and DGO asked him to come near Annapoorneshwari canteen which is situated within the said office premises and hence he and the complainant went near the said hotel. PW2 has further stated in his cross examination that, while they went near the said hotel, DGO-2 was standing outside the hotel and DGO-2 spoke to the complainant and demanded money from him and received Rs. 5000/- from the complainant and kept that money in his right side pant pocket. PW1 further claimed in his cross examination that, DGO-1 was not there along with DGO-2 near the said hotel at the time when DGO-2 received money from the complainant. He further claimed in his cross examination that, the Police Inspector took DGO-2 to the 2<sup>nd</sup> floor of the office and conducted proceedings on him regarding obtaining of hand wash of DGO-2 recovery of tainted notes from the possession of DGO-2 and subjecting the pant of DGO-2 to phenolphthalein test. PW1 has further stated that, DGO-1 was arrested in the office and secured the relevant file through DGO-1. Various suggestions were put PW1 during his cross examination by the learned counsel for DGO and PW1 gave positive answers to all those suggestions put to him. Considering the nature of evidence given by PW1 in his cross

examination, conducted after about one year of his chief examination and having regard to the fact that, DGO-2 remained exparte and failed to participate in the proceedings, the possibility of PW1 being won over by DGO-1 and made him to give such an evidence during his cross examination implicating only DGO-2, cannot be ruled out. Though PW1 in his chief examination has stated that, DGO-2 received money from the complainant as per the direction of DGO-1 and further claimed that, DGO-1 issued direction to DGO-2 to receive money from the complainant, during his cross examination PW1 came out with a different version claiming that, it was DGO-2 who demanded and received money from the complainant and further claimed that, DGO-1 was not there along with DGO-2 when DGO-2 received money from the complainant. By taking up such a contention in his cross examination, affirming the suggestions put to him by the learned counsel for DGO-1, it appears that, PW1 is trying to shield DGO-1 and trying to help DGO-1 in escaping from the consequences of this enquiry.

36. PW2 is the IO who gave evidence in detail regarding the various stages of investigation he has conducted, right from the registration of a case against DGO-1 on the basis of the complaint filed by the complainant as per Ex-P11 and on the basis of the said complaint, registered a case and took up investigation. He narrated in detail regarding conducting of entrustment proceedings and entrustment of tainted notes of Rs.5000/- to the complainant, in the said proceedings.
37. He further gave details regarding the trap proceedings he has conducted in the O/o DGO stating that, he sent both the complainant and the shadow witness, to meet DGO-1 in the said



office and on receiving signal from the complainant, he claimed that, he and his staff went ~~inside~~ to the first floor of the office where complainant was standing while giving him signal and on approaching the complainant, he took them inside the office and showed DGO-1 who was found sitting on his seat claiming that, he is the concerned case worker and he has received money from him through his attender. One more person was found standing by the side of DGO-1 and the complainant claimed that, he is the said attender through whom DGO-1 received money from him and as per the direction of DGO-1, he gave money to the said attender/DGO-2.

38. PW2 has further stated that, on enquiry the complainant disclosed the fact that, when he accompanied with the shadow witness went inside the section to meet DGO-1, DGO-1 was not there in his seat and hence he called DGO-1 on his mobile and enquired him about his whereabouts and DGO-1 asked him to wait near the office as he would be arriving soon. Hence the complainant and shadow witness came to the ground floor and came near the Annapoorna Canteen waiting for DGO-1 and while they were waiting there, DGO-1 accompanied with DGO-2 came there and on seeing DGO-1 he/complainant claimed that, he met DGO-1 and enquired him about his work and DGO-1 enquired him as to whether he has brought money as demanded and when he/complainant offered tainted notes of Rs. 5000/- to him, DGO-1 asked him/complainant to give that money into the hands of DGO-2 who was with DGO-1 at that time and as per the direction of DGO-1, he/complainant claimed that, he gave money to DGO-2.

39. He further stated about arrest of both DGO-1 and 2 and obtaining of hand wash of both the hands of DGO-2 and right hand wash of DGO-2 gave positive result regarding presence of phenolphthalein

but left hand wash of DGO-2 gave negative result as there was no change in the colour of the solution. He further stated that, when he asked DGO-2 about the money he has received from the complainant, DGO-2 took out the money from his right side pant pocket and produced the same before him/PW2 and on confirming that, those were the notes of Rs. 5000/- entrusted to the complainant, seized those notes. He further stated about subjecting the right side pocket portion of the pant of DGO-2 to phenolphthalein test which gave positive result regarding presence of phenolphthalein. He also stated that, when he directed DGO-1 to produce the relevant file pertaining to selection of candidates to the post of Junior Health Assistants, DGO-1 produced the relevant file and the papers in the said file have been Xeroxed and seized as per Ex-P4. He also gave evidence regarding giving of written explanation by DGO-1 as per Ex-P6 and DGO-2 as per Ex-P7 and the complainant shadow witness having gone through Ex-P6 and P7 denied the correctness of the version of the explanation given by DGO-1 as per Ex-P6 claiming it as false and incorrect, whereas they have confirmed the correctness of the explanation given by DGO-2 claiming it as true. He gave details regarding preparation of mahazar as per Ex-P9 and other details of trap proceedings he has conducted.

40. He further gave details regarding the investigation he has conducted including sending of seized articles to FSL for chemical examination and receipt of report of chemical examiner as per Ex-P12 and securing the service particulars of DGOs 1 and 2 as per Ex-P13 (1)& (2) and other details of the investigation he has conducted.

41. The learned counsel for DGO-1 has cross examined him at length but, nothing was elicited during his cross examination to disbelieve

the evidence of PW2. Various suggestions put to PW2 during his cross examination have been categorically denied by him. PW2 has denied the suggestion put to him that both DGOs 1 and 2 were apprehended and arrested while they were having lunch inside Annapoorna hotel. A further suggestion was put to him that, DGO-1 during interrogation disclosed before him/PW2 that, candidature of Smt. V. Deepa cannot be selected but the complainant went on insisting DGO-1 for selection of V. Deepa offering him money for selecting her. Even this suggestion has been denied by PW2.

42. Considering the evidence of PW1 and PW2, though the complainant could not be secured before this authority due to his non availability in the given address, the fact of filing of the complaint by the complainant as per Ex-P11 has been spoken to by PW2/IO wherein, he has claimed that, on the basis of the complaint filed by the complainant, he has registered a case against DGO-1 since the complainant has made allegation against DGO-1 that, DGO-1 is demanding him for bribe of Rs. 5000/- in order to send Smt. v. Deepa for training to the post of Junior Health Assistant. Therefore, reliance can be placed on the contents of this complaint Ex-P11 to conclude that, complainant had made allegations against DGO-1 regarding demand for bribe being made by him.

43. DGO-1 has taken up a contention that, he is not empowered to select candidates for sending them for training and he is only a case worker. The Director is the Competent Authority to select candidates sending them for training. But the fact that, he is the concerned case worker who was dealing with the file pertaining to selection of candidates to the post of Junior Health Assistant, is not disputed or denied by him. DGO-1 in his written explanation, Ex-P6 stated as follows:

“ ನಾನು ಬಿ.ಎಸ್. ಮಂಜುನಾಥ ಕುಟ್ಟ (ಪ್ರ.ದ.ಸ.) ಆದ ನನಗೆ, ದಿನಾಂಕ 22.1.2007 ರಂದು ಸುಮಾರು 2.00 ಗಂಟೆಯ ಸಮಯದಲ್ಲಿ ಎಂ.ಎಸ್.ಗೋಪಾಲ್, ಅಧೀಕ್ಷಕರು ಮತ್ತು ಇವರ ಸ್ನೇಹಿತರಾದ (ಗೊತ್ತಿಲ್ಲ) ರವರು, ಅವರ ಸೊಸೆಯಾದ ದೀಪಾ ವಿ. ಇವರನ್ನು 2006-07 ನೇ ಸಾಲಿನ ಕಿರಿಯ ಮಹಿಳಾ ಆರೋಗ್ಯ ಸಹಾಯಕಿರ ತರಬೇತಿಗೆ ಕಾಯ್ದಿರಿಸುವ ಪಟ್ಟಿಯಲ್ಲಿ ಆಯ್ಕೆ ಮಾಡುವಂತೆ ಕೋರಿದ್ದು, ಎಂ.ಎಸ್.ಗೋಪಾಲ್ (ಅಧೀಕ್ಷಕರು) ಇವರು ಸದರಿ ಅಭ್ಯರ್ಥಿಯನ್ನು ಆಯ್ಕೆ ಮಾಡುವಂತೆ ಕೋರಿರುತ್ತಾರೆ. ಆಯ್ಕೆಯಾಗುವ ಪಕ್ಷದಲ್ಲಿ ರೂ. 5000/- ನೀಡುವರು ಎಂದು ತಿಳಿಸಿರುತ್ತಾರೆ. ನಿರಾಕರಿಸಿದ ಪಕ್ಷದಲ್ಲಿ ಸಹ ಆಯ್ಕೆ ಮಾಡಿಕೊಡುವಂತೆ ಕೋರುತ್ತಾರೆ. ಕುಮಾರಿ ದೀಪಾ ವಿ ಇವರನ್ನು ಆಯ್ಕೆ ಮಾಡಿಕೊಡುವುದಾಗಿ ಹಣ ನೀಡಬೇಕೆಂದು ನಾನು ಡಿಮಾಂಡ್ ಮಾಡಿರುವುದಿಲ್ಲ. ಆದರೂ ಸಹಾ ದೂರವಾಣಿ ಮುಖಾಂತರ ಸಂಪರ್ಕಿಸಿ, ರೂ. 5000/- ನೀಡುವೆ ಮಾಡಿಕೊಡಿ ಎಂದು ಹೇಳಿ ಬಿ.ಎಲ್. ಮಂಜುನಾಥ್, ಗ್ರೂಪ್ 'ಡಿ' ನೌಕರರವರಿಗೆ ರೂ. 5000/- ನೀಡಿರುತ್ತಾರೆ.”

44. Giving of this explanation by DGO-1 as per Ex-P6 is not disputed by him. According to his explanation, the Superintendent, M.S. Gopal has asked him to put up proposal for sending Smt. V. Deepa for training to the post of Junior Health Assistant. On perusing Ex-P4 the file pertaining to the selection of candidates to the post of Junior Health Assistant, page no. 110 to 115 is the note sheet whereas, page no. 117 and 116 is the list of candidates selected for training and another list at page 118 to 119 is there wherein the name of Smt. V. Deepa is at Sl.no. 16 of the 2<sup>nd</sup> list. On perusing the note sheet, at para no.21 discloses that, a candidate by name Smt. Aruna Devi (sl.no.23 of the first list) was deputed for training. But She pleaded her inability to continue training due to her domestic problem and hence she was permitted to be discharged from training. In the place of Smt. Aruna Devi who opted out from training, one more candidate was to be deputed for training. As per Ex-P6, the Superintendent gave instructions to DGO-1 for sending Smt. V. Deepa for training and to put up proposal accordingly.

Hence, the work of putting up of proposal, recommending the name of Smt. V. Deepa for sending her for training in the place of the opted out candidate Smt. Aruna Devi was pending and DGO-1 being the case worker was to put up the said proposal and as per his own admission in Ex-P6, the superintendent asked him to send Smt. V. Deepa for training. Hence, the processing of file by placing the file before the Director for selecting and sending Smt. V. Deepa for training is pending with DGO-1 and as a case worker he has to put up the said proposal. Therefore, it can be concluded that, taking advantage of the pendency of putting up of the said proposal, DGO-1 has put forth demand for bribe and the averments made in the complaint can be believed so far as this allegation of demand for bribe made against DGO-1 is concerned.

45. Admittedly, the tainted notes of Rs. 5000/- was recovered from the possession of DGO-2. Since DGO-2 remained exparte and failed to contest this enquiry, the evidence available against him/DGO-2 can be looked into. The shadow witness has stated in his evidence that, he was with the complainant when DGO-1 accompanied with DGO-2 met the complainant near the canteen and DGO-1 demanded money from the complainant and asked the complainant to give that money to the hands of DGO-2 and accordingly, DGO-2 received money from the complainant as per the direction of DGO-1. The seizure of tainted notes from the possession of DGO-2 has not been disputed or denied, even by DGO-1.

46. As per the evidence of PW1 and PW2, DGO-2 gave his explanation in writing as per Ex-P7. In his explanation, he has categorically stated that, since DGO-1 asked him to receive money from the complainant, as per the direction of DGO-1, he received money from

the complainant. The written explanation given by DGO-2 as per Ex-P7 reads as follows:

“ ಶ್ರೀ ಬಿ.ಎಸ್. ಮಂಜುನಾಥಕುಟ್ಟಿ, ಪ್ರಥಮ ದರ್ಜೆ ಸಹಾಯಕ, ಇಂದು ದಿನಾಂಕ 22.1.2007 ರಂದು ನನ್ನನ್ನು ಸುಮಾರು 2.00 ಗಂಟೆಯ ಹೊತ್ತಿಗೆ ಊಟಕ್ಕೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಊಟ ಮುಗಿದ ನಂತರ ಅನ್ನಪೂರ್ಣ ಕ್ಯಾಂಟನ್ ಹತ್ತಿರ ಒಬ್ಬರು ಹಣ ಕೊಡಲು ಹೋದಾಗ ಶ್ರೀ ಮಂಜುನಾಥಕುಟ್ಟಿ, ಎಫ್.ಡಿ.ಎ. ರವರು ಹಣವನ್ನು ನೀವು ತೆಗೆದುಕೊಂಡು ಎಂದು ಹೇಳಿದರು. ಅವರು ಹೇಳಿದ ಹಾಗೆ ನಾನು ತೆಗೆದುಕೊಂಡೆ ಅಷ್ಟೆ.”

47. DGO-2 while submitting his reply to the observation note has stated that, DGO-1 took him forcibly for lunch to the said hotel and while they were returning to the office, one gentlemen/complainant met them in the compound and DGO-1, had conversation with him and all of a sudden the said person handed over amount to him asking him to pass on the said amount to DGO-1. By taking up such a contention in his reply, DGO-2 has admitted receipt of money from the complainant near the canteen. In his written statement, DGO-2 has taken up the same contention as he has taken up in his reply. But there is some change in the version of DGO-2 wherein, he claimed in his written statement that, DGO-1 asked him to collect the money from the complainant and to give that money to him later and hence he/DGO-2 collected money from the complainant. Therefore, the contention taken by DGO-2 that, he has received money from the complainant as per the direction of DGO-1 has not been refuted or denied by DGO-2 since he remained exparte and never bothered to contest this proceedings. Even DGO-1 has not made any efforts to disprove this contention of DGO-2 taken in his written explanation as per Ex-P7, in his reply to the observation note and in his written statement. There was no impediment for DGO-1 to summon DGO-2 as a witness on his behalf and to

examine him as his defense witness in order to elicit from him the circumstances under which DGO-2 has taken up such a contention in his written explanation and in his written statement. No such efforts have been made by DGO-1 to disprove or discredit Ex-P7 and the contention taken by DGO-2 in his written statement. Therefore, I have no hesitation to conclude that, DGO-2 has received tainted notes of Rs. 5000/- from the complainant as per the direction of DGO-1. Since I have already concluded that, DGO-1 has demanded bribe from the complainant and since DGO-2 has received tainted notes from the complainant as per the direction of DGO-1, I have no hesitation to conclude that, DGO-1 having demanded bribe from the complainant received Rs. 5000/- by way of bribe through his attender DGO-2.

48. The learned counsel for DGO-1 vehemently argued that, the written explanation given by DGO-2 cannot be relied upon as he is an accomplice and the statement/evidence of an accomplice implicating the co-accused is not admissible and cannot be relied upon. It was further argued on behalf of DGO-1 that, since no tainted notes were recovered from the possession of DGO-1, it cannot be held that, he has received bribe from the complainant.

49. But this argument of learned counsel for DGO-1 cannot be accepted for the reason that, in a disciplinary enquiry, the question of burden of proof depends upon the nature of charges and the nature of explanation given by a delinquent official. There is no such thing as an absolute burden of proof always lying upon the disciplinary authority. In a given case, the burden may be shifted to the delinquent official depending upon his explanation. Though in a criminal trial an incriminating statement made by an accused, in certain circumstances or before certain individuals, is totally

inadmissible in evidence, in a departmental proceeding, the enquiry officer is not bound by any such technical rule. The rule relating to appreciation of evidence in the two proceedings is also not identical. In a criminal trial the court invariably proceeds on the presumption that, accomplice evidence is suspect and shall not be acted upon without independent corroboration in material particulars. But such technical approach cannot be invoked and strict mode of proof prescribed by the evidence act may not be applied with equal vigour. Hence, the rule regarding exclusion of uncorroborated testimony of a person in the position of accomplice is not applicable to a departmental proceedings.

50. Examining the present case on hand, in the light of the above legal position, DGO-2 while giving his written explanation as per Ex-P7 clearly indicted DGO-1 stating that, he received money from the complainant as per the direction of DGO-1. DGO-1 has not come out with any specific defence regarding existence of any animosity between him and DGO-2. Hence, there was no reason for DGO-2 to indict DGO-1 in the absence of any such direction issued by DGO-1 asking him to receive money from the complainant and give that money to him later. Since DGO-2 was also apprehended along with DGO-1 and his role in this episode of alleged demand and acceptance of bribe by DGO-1 from the complainant, when considered, DGO-2 has lent his service in receiving bribe money from the complainant on behalf of DGO-1 and as an accomplice to DGO-1. DGO-2 never participated in the proceedings and never retracted or resiled in giving such an explanation as per Ex-P7. Further DGO-2 has confirmed even in his written statement that, he has received money from the complainant as per the direction of DGO-1. Therefore, I have no hesitation to conclude that, DGO-1 having demanded bribe from the complainant received Rs. 5000/-



by way of bribe from the complainant through DGO-2. Further, though DGO-2 gave such an explanation as per Ex-P7 indicting DGO-1, no efforts have been made on behalf of DGO-1 to give his own explanation as to why DGO-2 indicted him in his written explanation and in his written statement. DGO-1 never bothered to adduce his defence evidence and never came out with any explanation as to why DGO-2 falsely implicated him. Even while recording his statement, under Rule 11(18) of KC(CCA) Rules, except pleading that, he is innocent and he has taken up his defence in his defence statement filed by him, he has not come out with any explanation regarding his indictment by DGO-2. He simply claimed that he had no knowledge about receiving of Rs. 5000/- by DGO-2 from the complainant and further claimed that, the explanation obtained from DGO-2 as per Ex-P7 was forcibly obtained by the Police Inspector from DGO-2. When he pleading his ignorance about receipt of Rs. 5000/- by DGO-2 from the complainant and though DGO-2 never bothered to deny Ex-P7, DGO-1 has no authority or power to deny Ex-P7 given by PW2. Therefore, even the contention taken by DGO-1 in his defence statement cannot be believed and no reliance can be placed on the various contentions he has taken in his defense statement.

51. Further, the Spl. Court, Bengaluru Urban District vide judgment dated 30.6.2012 in Spl.CC No. 189/2007 convicted Accused-1/ DGO-1 holding him guilty of offence under Section 7 and 13(1)(d) R/w 13(2) of P.C Act, 1988. DGO-1 has admitted that, he has challenged his conviction by filing appeal before the Hon'ble High Court of Karnataka, Bengaluru Bench and appeal so filed by him is pending consideration in Cr.A. no. 781/2012. Hence, the conviction of DGO-1 in the prosecution case launched against him is also another factor which persuaded me to believe the evidence of PW1

and PW2 and to conclude that, the disciplinary authority was able to establish the charges against DGO-1.

52. Though DGO-2 remained *exparte* and never bothered to participate in the enquiry proceedings, while filing his written statement he has taken up a contention that, since he has been acquitted by the Spl.Court, he has to be absolved from the charges levelled against him in this enquiry. But this contention of DGO-2 cannot be accepted for the simple reason that, he remained *exparte* in this enquiry proceedings and no efforts have been made to challenge the evidence given by PW1 and PW2 in this enquiry as those witnesses have not been cross examined on behalf of DGO-2. Therefore, the evidence given by PW1 and PW2 as against DGO-2 remained unchallenged. Hence, reliance can be placed on the unchallenged testimony of PW1 and PW2 in order to decide whether charges against DGO-2 has been established.

53. Further, the Hon'ble Supreme Court in the decision reported in 2005(7) SCC 764, Ajit Kumar Nag V/s. General Manager, have held that

"The two proceedings, criminal and departmental are entirely 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.

Termination/quashing of criminal case against an applicant does not ipso facts absolve him from the liability arising under the disciplinary jurisdiction as per service Rules. Hence, there is no illegality in continuation of enquiry against

the applicant not withstanding quashing of the criminal proceedings against the applicant.”

54. The Hon’ble Supreme Court in the decision of State of Rajasthan V/s. B.K. Meena.

“The approach and the objectives in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings the question is whether the respondent is guilty of such misconduct as would merit his removal from service or a lesser punishment as the case may be, whereas in the criminal proceedings the question is whether the offences referred against him under PC Act (and with IPC if any) are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different.”

55. The prayer of the DGO-2 made in his written statement, when considered in context with the 2 decisions of the Hon’ble Supreme Court referred to above, the Hon’ble Supreme have held that the approach and the objectives in the criminal proceedings and the disciplinary proceedings are all together distinct and different and the standard of proof, the mode of enquiry and the rules governing the enquiry and trial before the Court are entirely distinct and different. Therefore, the order of acquittal passed by the Special Court will not in any way come in the way of appreciating the evidence adduced in an enquiry proceedings and to come to an independent conclusion regarding the charges made against DGO-2 in this enquiry. Since the acceptance of bribe amount from the complainant by DGO-2 as per the instruction of DGO-1 since established in this enquiry and having regard to the nature of

defense he has taken in his reply contending that, the complainant on talking with DGO-1, gave money to his hand, (hand of DGO-2) asking him to hand over that money to DGO-1, is an attempt made by DGO-2 to shield DGO-1 and hence, I have no hesitation to conclude that, DGO-2 is also guilty of misconduct of receiving bribe amount from the complainant on behalf of and as per the direction of DGO-1. Hence, I hold that, even charges framed against DGO-2 are established by the disciplinary authority. Accordingly, I answer both point nos.1 and 2 in the affirmative.

**Point No.3:**

56. Having regard to the discussion made above, and in view of my findings on point no.1 and 2 as above, my conclusion is as follows:

**CONCLUSION**

- i) The Disciplinary Authority has proved the charge as framed against DGO-1 Sri Manjunatha Kutti, the then FDA and DGO-2 Sri B.L.Manjunatha, Attender, working in the O/o Directorate of Health & Family Welfare Services
- ii) As per the service particulars, Ex-P13, the date of birth of DGO-1 is 9.8.1980 and in the normal course, he was to retire from service on 31.8.2040 and date of birth of DGO-2 is 27.5.1963 and he is due for retirement on 31.5.2023
- iii) The Special Judge, Bengaluru Urban District vide judgment dated 30.6.2012 in Spl.CC No. 189/2007 convicted DGO-1/accused-1 holding him guilty of offence under Section 7,13(1)(d) R/w. Section 13(2) of P.C. Act and convicted him imposing sentence of imprisonment and fine.
- iv) DGO-1 has challenged the said judgment of conviction and sentence by preferring appeal before the Hon'ble High

Court of Karnataka, Bengaluru Bench and the appeal so filed in Cr.A.No. 781/2012, is still pending consideration.

v) Consequent to his conviction, he has been dismissed from service, vide order of the Commissioner, Health and Family Welfare Services, Bengaluru No. DPN(1)Cr-50/2006-07 dated 30.7.2013 and hence DGO-1 is no longer in Government service.



(S. Renuka Prasad)

Additional Registrar of Enquiries-3  
Karnataka Lokayukta, Bengaluru.

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

<b>PW-1</b>	Sri Munishetty (shadow witness) (original)
<b>PW-2</b>	Sri V. Shekar (investigation officer) (original)

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

<b>Ex.P-1</b>	Certified copy of the sheet containing serial numbers of currency notes
<b>Ex.P-2</b>	Photographs
<b>Ex.P-3</b>	Certified copy of the entrustment mahazar
<b>Ex.P-4</b>	Certified copy of the records seized by IO
<b>Ex.P-5</b>	Certified copy of extract of attendance register
<b>Ex.P-6</b>	Certified copy of written explanation of DGO-1
<b>Ex.P-7</b>	Certified copy of written explanation of DGO-2
<b>Ex.P-8</b>	Photographs
<b>Ex.P-9</b>	Certified copy of trap mahazar
<b>Ex.P-10</b>	Certified copy of sketch of scene of occurrence
<b>Ex.P-11</b>	Certified copy of the complaint
<b>Ex.P-12</b>	Certified copy of FSL report
<b>Ex.P-13</b>	Certified copy of service particulars of DGOs 1 and 2

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


(S. Renuka Prasad)  
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