

**GOVERNMENT OF KARNATAKA**



**KARNATAKA LOKAYUKTA**

No.LOK/INQ/14-A/388/2011/ARE-4

Multi Storied Building,  
Dr. B.R. Ambedkar Veedhi,  
Bengaluru-560 001  
Date: 3/5/2019

**RECOMMENDATION**

Sub:- Departmental inquiry against;  
Sri V. Gopalakrishna, Assistant Engineer, Bengaluru  
Mahanagara Palike (Presently Bruhat Bengaluru  
Mahanagara Palike), Yeshwanthpur Sub Division,  
Bengaluru - Reg.

- Ref:- 1) Government Order No. ಲೋಕ 298 ಸೇಇವಿ 2011, Bengaluru  
dated 18/10/2011.
- 2) Nomination order No.LOK/INQ/14-A/388/2011,  
Bengaluru dated 8/11/2011 of Upalokayukta-1,  
State of Karnataka, Bengaluru
- 3) Inquiry Report dated 30/4/2019 of Additional  
Registrar of Enquiries-4, Karnataka Lokayukta,  
Bengaluru

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The Government by its Order dated 18/10/2011, initiated the disciplinary proceedings against Sri V. Gopalakrishna, Assistant Engineer, Bengaluru Mahanagara Palike (Presently Bruhat Bengaluru Mahanagara Palike), Yeshwanthpur Sub Division, Bengaluru (hereinafter referred to as Delinquent Government Official, for short as DGO) and entrusted the Departmental Inquiry to this Institution.

2. This Institution by Nomination Order No.LOK/INQ/14-A/388/2011, Bengaluru dated 8/11/2011 nominated Additional Registrar of Enquiries-4, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct Departmental Inquiry against DGO for the alleged charge of misconduct, said to have been committed by him.

3. The DGO Sri V. Gopalakrishna, Assistant Engineer, Bengaluru Mahanagara Palike (Presently Bruhat Bengaluru Mahanagara Palike), Yeshwanthpur Sub Division, Bengaluru was tried for the following charge:-

“That, you Sri V. Gopalakrishna, the DGO while working as Assistant Engineer at Yeshwanthpur Sub Division of Bengaluru Mahanagara Palike in Bengaluru, about one week earlier to 4/12/2006 you visited site No.7 in 3<sup>rd</sup> Cross, Jalahalli West in Bengaluru which was standing in the name of Smt. Sharmila W/o. of the Complainant namely Sri S.B. Somashekhar of T. Dasarahalli, Bengaluru and then you asked the Complainant to stop construction of house stating that the construction is not in accordance with sanctioned plan and demanded bribe of ₹40,000/- from the complainant telling that you will not give trouble and when the Complainant pleaded inability, you asked the Complainant to pay ₹20,000/- at first instance and remaining amount at the time of road cuttings and on 4/12/2006 you took the said amount of ₹20,000/- as bribe from the Complainant to show official favour, failing to maintain absolute integrity and devotion to duty, the act of which was unbecoming of Government Servant and thereby committed misconduct as enumerated U/R. 3(1) (i) to (iii) of Karnataka Civil Services (Conduct) Rules, 1966.”

4. The Inquiry Officer (Additional Registrar of Enquiries-4) on proper appreciation of oral and documentary evidence has held that the Disciplinary Authority has proved the above charge against DGO Sri V. Gopalakrishna, Assistant Engineer, Bengaluru

Mahanagara Palike (Presently Bruhat Bengaluru Mahanagara Palike), Yeshwanthpur Sub Division, Bengaluru.

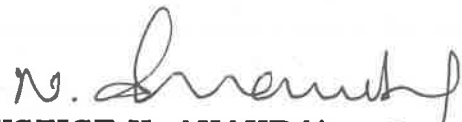
5. On re-consideration of inquiry report, I do not find any reason to interfere with the findings recorded by the Inquiry Officer. It is hereby recommended to the Government to accept the report of Inquiry Officer.

6. As per the First Oral Statement submitted by DGO, he is due to retire from service on 31/7/2022 .

7. Having regard to the nature of charge (demand and acceptance of bribe) proved against DGO Sri V.Gopalakrishna, it is hereby recommended to the Government for imposing penalty of Compulsory Retirement from service on DGO Sri V. Gopalakrishna, Assistant Engineer, Bengaluru Mahanagara Palike (Presently Bruhat Bengaluru Mahanagara Palike), Yeshwanthpur Sub Division, Bengaluru and also for imposing penalty of permanently withholding 30% of pension payable to DGO Sri V.Gopalakrishna.

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

Connected records are enclosed herewith.

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

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**KARNATAKA LOKAYUKTA**

No.LOK/ARE-4/ENQ/388/2011

M.S.Building,  
Dr.B.R.Ambedkar Road  
Bengaluru-560 001  
Date: 30/04/2019

**INQUIRY REPORT**

**Sub:** Departmental Inquiry against,

- 1) Sri V. Gopalakrishna  
Assistant Engineer  
Bengaluru Mahanagara Palike  
Sub-Division  
Yeshwantpur  
**Bengaluru**

**Ref:**

- 1) Report u/s 12(3) of the K.L Act, 1984 in  
Compt/Uplok/BCD/679/2007/ARE-10  
dated:22/08/2011
- 2) Govt. Order. No. PWD 298 SDE 2011  
Bengaluru dated:18/10/2011
- 3) Order No.LOK/INQ/14-A/388/2011  
Dtd.08/11/2011 of the Hon'ble  
Upalokayukta

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1. This Departmental Inquiry is directed against Sri V. Gopalakrishna, Assistant Engineer, Bengaluru Mahanagara Palike Sub-Division, Yeshwantpur, **Bengaluru**(herein after referred to as the Delinquent Government Official in short "DGO")

2. After completion of the investigation a report u/sec. 12(3) of the Karnataka Lokayukta Act was sent to the Government as per Reference No.1.

3. In view of the Government Order cited above at reference-2, the Hon'ble Upalokayukta, vide order dated: 08/11/2011 cited above at reference-3, nominated Additional Registrar of Enquiries-4 of the office of the Karnataka Lokayukta as the Inquiry Officer to frame charges and to conduct Inquiry against the aforesaid DGO. Additional Registrar Enquires-4 prepared Articles of Charge, Statement of Imputations of mis-conduct, list of documents proposed to be relied and list of witnesses proposed to be examined in support of Article of Charges. Copies of same were issued to the DGO calling upon him to appear before this Authority and to submit written statement of his defence.

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

**ANNEXURE NO.1**

**CHARGE**

*That, you Sri V. Gopalakrishna, the DGO while working as Assistant Engineer at Yeshwantpur Sub-Division of Bengaluru Mahanagara Palike in Bengaluru, about one week earlier to 04/12/2006 you visited site No. 7 in 3<sup>rd</sup> Cross of Jalahalli West in Bengaluru which was standing in the name of Smt. Sharmila w/o of the complainant namely Sri S.B. Somashekhar of T. Dasarahalli, Bengaluru and then you asked the complainant to stop construction of house stating that the construction is not in accordance with sanctioned plan and demanded bribe of Rs. 40,000/- from the complainant telling that you will not give trouble and when the complainant pleaded inability, you asked the complainant to pay Rs. 20,000/- at first instance and remaining amount at the time of road cuttings and on*

04/12/2006 you took the said amount of Rs. 20,000/- as bribe from the complainant to show official favour, failing to maintain absolute integrity and devotion to duty, the act of which was unbecoming of Government Servant and thereby committed misconduct as enumerated u/Rule 3(1)(i) to (iii) of Karnataka Civil Service (Conduct) Rules, 1966.

**ANNEXURE NO. II**

**STATEMENT OF IMPUTATIONS OF MISCONDUCT**

In connection with the approved plan issued by BBMP to construct house at site NO. 7, 3<sup>rd</sup> Cross, Jalahalli West, Bengaluru standing in the name of Smt. Sharmila the wife of the complainant namely Sri S.B. Somashekhar, the complainant had moved the BBMP office. About a week earlier to 04/12/2006, the DGO visited the spot and informed that construction is not in accordance with the sanctioned plan and asked the complainant to stop the work. Then, the DGO demanded bribe of Rs. 40,000/- from the complainant promising that he will not give trouble. When the complainant pleaded his inability to pay that much of the amount in lumpsum the DGO asked to pay Rs. 20,000/- at first instance and remaining amount at later stage. As the complainant was not willing to pay bribe to the DGO, and he approached the Lokayukta police of Bengaluru City Division (hereinafter referred to as Investigating Officer, for short, 'I.O.') and lodged a complaint. The I.O. registered the complaint in Cr. No.47/2006 for the offences punishable usec.7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act 1988. During the course of investigation into the said crime, the I.O. trapped the DGO on 04/12/2006 when the tainted amount was given by the complainant to the DGO in the office of the DGO at Bengaluru in the presence of the complainant and panch witness. The I.O. seized the

*tainted amount under mahazar from the possession of the DGO and followed post-trap formalities. The I.O. recorded statement of the complainant, panch witnesses and others. After receiving the report of chemical examiner about the articles sent for chemical examination the I.O. filed his investigation report. The materials on record and the investigation report prima facie showed that the DGO being a Government Servant failed to maintain absolute integrity and devotion to duty, the act of which was unbecoming of Government Servant. Therefore, a suo-moto investigation was taken up u/sec. 7(2) of Karnataka Lokayukta Act against the DGO. An observation note was sent to the DGO calling for his explanation. The reply given by the DGO was not convincing and not satisfactory to drop the proceedings. As the facts and materials on record prima facie showed that the DGO committed misconduct as per Rule 3(1)(i) & (iii) of KCS (Conduct) Rules, 1966, a report u/sec. 12(3) of the Karnataka Lokayukta Act was sent to the Competent Authority with recommendation to initiate disciplinary proceedings against the DGO and to entrust the departmental inquiry to the Hon'ble Upalokayukta u/R 14-A of KCS (CCA) Rules. Accordingly, the Competent Authority initiated disciplinary proceedings and entrusted the inquiry to the Hon'ble Upalokayukta. Hence, the charge.*

5. DGO appeared before this Inquiry Authority on 12/04/2012 and on the same day his First Oral statement was recorded U/R 11(9) of KCS (CC & A) Rules 1957. The DGO pleaded not guilty and claims to hold an inquiry.

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

7. The Lokayukta police had filed the Special Case NO. 140/2007 before the Special Judge, Bengaluru Urban District



against the DGO and after conducting the detailed trial the DGO has been acquitted. In the judgment it is stated that, the prosecution has utterly failed to prove the guilt of the accused/DGO beyond all reasonable doubt and the explanation given by the accused/DGO has per Ex.P26 appears to be more probable looking into the facts of the case. The notice had also been issued to the wife of the complainant u/sec. 321(2) of KMC Act. So far as imputations of misconduct is concerned it is not clear as to the demand and acceptance of the alleged bribe amount by the DGO from the complainant. The DGO has not demanded and accepted the alleged bribe amount. Hence, prays to exonerate him from the charges leveled against him in this case.

8. In order to substantiate the charge leveled against the DGO, the Disciplinary Authority examined in all four witnesses as PW1 to PW4 and got marked documents at Ex.P1 to P14. PW4 has been examined after ascertaining that the death certificate of PW4 (complainant) is not produced inspite of giving time and that PW4 is not dead and he is alive. After closing the evidence of the Disciplinary Authority, the Second Oral Statement of DGO was recorded as required u/Rule 11(16) of KCS (CC & A) Rules, 1957. On behalf of the DGO, DW1 and DW2 examined and got marked documents at Ex.D1 to D5 and closed their evidence. Hence, recording the answers of DGO to questionnaire u/Rule 11(18) of KCS (CC&A) Rules was dispensed with.

9. The Disciplinary Authority has not filed written brief, but DGO has filed his written brief and additional written brief. Oral arguments of the Presenting Officer was heard.

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

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

2) What order?

11. My finding on the above points are as follows

Point No.1: In the “ **AFFIRMATIVE**”

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

**:: REASONS ::**

**12. Point NO.1:** As stated above it is the case of the disciplinary authority that the DGO while working as Assistant Engineer, at Yashwantpur Sub-division of Bengaluru Mahanagara Palike in Bengaluru about one week earlier to 04/12/2006 visited the site No. 7 in 3<sup>rd</sup> Cross of Jallahalli West standing in the name of Smt. Sharmila wife of the complainant and asked the complainant to stop the construction of the house stating that the same is not in accordance with the sanctioned plan and demanded bribe of Rs. 40,000/- by telling that if the amount is given he will not give any trouble to the complainant and when the complainant pleaded inability to pay the amount demanded the DGO asked the complainant to pay Rs. 20,000/- at first instance and the remaining amount at the time of road cutting and on 04/12/2006 received the amount of Rs. 20,000/- as bribe from the complainant to show official favour and thereby failed to maintain absolute integrity and devotion to duty.

13. The complainant-Sri S.B. Somashekhar has been examined as PW4 and the copy of the complaint lodged by him before the Lokayukta Police is at Ex.P5. The gist of Ex.P5 is as follows:-

14. PW4 is the husband of Smt. J. Sharmilla and PW4 is constructing the house in site NO. 7, 3<sup>rd</sup> cross, S.M. Road, Jallahalli West, Bengaluru which stands in the name of his wife. He has got the plan approved from the corporation and now the construction is under plastering stage and about one week back the A.E.E., of BBMP (DGO) told him that the house is not constructed according to the plan and to stop the construction, otherwise PW4 has to give an amount of Rs. 40,000/- and the DGO will not give trouble for further construction when PW4 told that he cannot give Rs. 40,000/- at a time the DGO insisted that Rs. 20,000/- has to be given and the remaining amount can be given at the time of the road cutting, as the complainant was not interested in completing the construction of house by giving the bribe amount, he lodged the complaint. The complaint has been lodged on 04/12/2006 at 11.45 a.m. as per the shara made in Ex.P5.

15. PW4 in his examination in chief has deposed that about 10 years back, he was constructing the house in the site which stood in the name of his wife Smt. Sharmila. He has deposed that the DGO objected that the construction is not according to the approved plan and demanded for the payment of Rs. 40,000/-. He has deposed that he told the DGO that he will pay Rs. 20,000/- and the remaining amount will be paid at the time of the road cutting. He has deposed that afterwards he did not like to give the amount to the DGO

and hence he approached the Lokayukta police station and gave the complaint as per Ex.P5 and Ex.P5(a) is his signature. He has deposed about the I.O. securing the two panchas. He has deposed that he produced 40 notes of denomination of Rs. 500/- (Rs. 20,000/-) and the phenolphthalein powder was smeared to the notes and one of the panchas kept those notes in his shirt pocket and I.O. told him that he should pay the said amount to the DGO and afterwards he has to give the signal by cleaning his face with his hand kerchief. He has deposed that in Ex.P1, his signature is at Ex.P1(b). Ex.P1 is the certified copy of the entrustment mahazar. He has further deposed that afterwards all of them went to BBMP office situated in RTO building, Yashwanathapura. He has deposed that he made the phone call to the DGO and DGO told that he is in the ground floor the RTO building and hence PW4 went there and the DGO was present there and he gave the tainted currency notes and the DGO received the same with his right hand and kept the same in his right side pant pocket and afterwards he gave the pre-instructed signal to the I.O. He has deposed that immediately the I.O. and his staff came to that place and they apprehended the DGO. He has deposed that the right hand wash of the DGO was positive and the I.O. seized the tainted currency notes of Rs. 20,000/- from the DGO and afterwards the DGO was taken to his office and he has signed Ex-P2 in that office. Ex.P2 is the certified copy of the trap mahazar. PW4 has been treated as hostile witness by the Presenting Officer on the ground that he has not spoken about all the averments mentioned in Ex.P1 and P2. In his cross-examination by the Presenting Officer, he admits that he has studied up to SSLC, and he knows reading and writing

Kannada. He has deposed that photographs have been taken at the time of the entrustment mahazar and trap mahazar. He has deposed that he do not know whether the pant of the DGO was also seized. He admits that the contents of Ex.P11 were read over to himself and the shadow witness and they denied the contents of the same as false. Ex.P11 is the copy of the explanation given by the DGO immediately after the trap.

16. PW4 has been cross-examined on a different date and in his cross-examination by the learned counsel for the DGO, he admits that notice had been given to his wife to pay penalty of Rs. 20,000/- as per Ex.D2 on the ground that the building materials had been dumped in the road. He has deposed that one Sri Devaraju took him to Lokayukta police station and introduced him to PW3-I.O. He has deposed that the I.O. asked him to bring Rs. 20,000/- on the next day and accordingly he had been to the Lokayukta police station on the next day along with Rs. 20,000/-. He has deposed that he had been to the BBMP office and in that office he found Sri Devaraju and that Sri Devaraju told him that the DGO has gone outside and to keep the amount on the table and that receipt will be given afterwards. He has deposed that he had gone to the toilet and by the time he returned from the toilet people have gathered in the BBMP office. He has deposed that the DGO did not receive any amount from him by demanding for the payment of the amount. In his cross-examination on behalf of the DGO, he has not deposed as per the say of Sri Devaraju, he kept the amount on the table of the DGO and in his cross-examination nothing is made out as to how the amount of Rs. 20,000/- which was with PW4 came to the

possession of the DGO. Further more in his re-examination by the presenting Officer PW4 admits that he has given his examination in chief on 23/02/2013 as per the documents. Hence, he admits that his examination in chief is as per the documents and it can only be said that after his examination in chief, at the instance of the DGO he has tried to help the DGO by giving the above said evidence in his cross-examination by the learned counsel for the DGO. As stated above in his examination in chief PW1 has clearly deposed that the DGO objected the construction on the ground that it is not in accordance with the approved plan and demanded for the amount of Rs.40,000/- and in that connection he gave the amount of Rs. 20,000/- to the DGO and the DGO received the same with his right hand and kept it in his right side pant pocket and after that he gave the pre-instructed signal, the I.O. and his staff apprehended the DGO and the right hand wash of the DGO was positive and the tainted currency notes were also seized from the right side pant pocket of the DGO. There is no cross-examination of PW4 to the effect that PW4 gave the amount of Rs.20,000/- to the DGO as the penalty amount mentioned in Ex.D2 and the DGO received the same as the penalty amount and when the DGO was going to his office to give the receipt in that respect the Lokayukta police apprehended him (the defence of the DGO mentioned in Ex.P11).

17. PW1 is Sri Basavaraju B.L. the shadow witness according to the case of the disciplinary authority. He has deposed that he was working as SDA in the year 2006 in Directorate of Technical Education Board, Bengaluru and he was not at all

summoned to Lokayukta police station and no proceedings took place in his presence in the Lokayukta police station. He has deposed that about 10 years back he had been taken to Yashwanthapur RTO office and he do not know what happened there. He has deposed that he do not know anything about this case. PW1 admits that his signature is found in Ex.P1. Ex.P1 is the copy of the Entrustment Mahazar dated: 04/12/2006. He also admits that his signature is found in the trap mahazar marked as Ex.P2. He admits that Ex.P1(a) and Ex.P2(a) are his signatures. He has been treated as hostile witness and cross-examined on the side of the disciplinary authority. In his cross-examination he admits that on 04/12/2006 he had been summoned to Lokayukta police station, Bengaluru and at that time another witness Sri Siddagangappa was also present in the Lokayukta police station. He denies about the complainant being introduced to him. He has deposed that he has not know the contents of the complaint. He has denied the other averments made in entrustment mahazar. He has denied the averments made in the trap mahazar-Ex.P2. He admits that he has passed SSLC and he knows reading and writing Kannada. He admits that he puts his signature to the documents in his office only after reading the documents. The above said evidence given by PW1 shows that he is not coming forth with true facts. He admits that he is seen in the photos marked Ex.P3(b) and (c). Ex.P3(b)( and P3(c) are the photos taken at the time of the entrustment mahazar. As stated above PW1 admits that he has signed Ex.P1 and P2 but denies the contents of Ex.P1 and P2. It is hard to believe that he has simply put his signatures to Ex.P1 and P2 without knowing the contents of the same. As

stated above PW1 is a Government Official working in Directorate of Technical Education Board and he knows reading and writing Kannada. The evidence of PW1 totally denying Ex.P1 and P2 even though he admits that on 04/12/2006 he had been to the Lokayukta police station, Bengaluru and that he had been taken to BBMP office situated in Yeshwanthapura at about 2.30 p.m. on the same day by the Lokayukta police clearly shows that he is not coming forth with true facts and that he has withheld the facts known to him with an intention to help the DGO.

18. PW2 is the another pancha witness by name Sri Siddagangappa and he has deposed that he is working as SDA in Directorate of Technial Education Board and 10 years back he was summoned to Lokayukta Police Station and along with him PW1 had also come to the Lokayukta police station. He has deposed that the Lokayukta police inspector introduced the complainant to himself and to PW1 and also read the complaint given by the complainant. He has deposed that afterwards they were taken near the RTO office, Yashvathapura and from there they went to the Corporation Office. He has deposed that a document was typed in the corporation office and he has signed the same. He admits his signatures in Ex.P1 and P2. He has deposed that he do not know about the hand wash of the DGO and recovery of the amount from the DGO. He has also been treated as hostile witness and cross-examined on the side of the disciplinary authority. In his cross-examination he admits that as per the advice of their higher officer himself and PW1 reported before the police inspector, Karnataka Lokayukta, Bengaluru and



they were introduced to the complainant-Sri Somashekar. He denies the averments made in the entrustment mahazar. He admits that in the afternoon at 2.30 p.m. they had been to the BBMP office situated in Yashwanthpur but denies the other averments made in Ex.P2. He admits his signature in Ex.P4. But denies the seal being given to his possession by the I.O. with a direction to produce the same when called upon by the I.O. or the court. In Ex.P4 it is clearly mentioned that PW2 has received the seal used for sealing the articles seized at the time of Ex.P1 and P2 with a direction that he should produce the same as stated above. In his cross-examination he admits that he will not sign the documents without reading the contents. Hence, it has to be said that he has signed Ex.P1,P2 and P4 only after knowing the contents of the same. The evidence given by PW2 stated above also shows that he is not deposing the true facts.

19. DW1 is the DGO and he has deposed that on 25/11/2006 he found the wife of the complainant by name Smt. Sharmila putting up construction in site No. 7, Forty Garden, S.M. Road, Jalahalli, by storing the building materials on the road and thereby caused obstruction to the movement of the vehicles. He has deposed that he informed the matter to his higher officer and his higher officer orally told him to issue notice for levying penalty and accordingly he prepared the notice and took the signature of his higher officer to the same and served the same on Smt. J. Sharmila on 25/11/2006 itself and the copy of the same is at Ex.D2. He has further deposed that on 28/11/2006 he again inspected the construction and found that the construction was done

without leaving set-back and one additional floor had been constructed contrary to the approved plan. He has deposed that the same was brought to the knowledge of his higher officer and his higher officer instructed him to prepare the notice as per section 321(2) of KMC Act and copy of that notice is at Ex.D3. He has deposed that to Ex.D3 the deviation sketch is also annexed. He has deposed that on 01/12/2006 he had been to the spot again and the owner was not present and the workers did not give the address of the owner and his higher officer instructed him to affix the notice on the building itself and hence he affixed the notice Ex.D3 on 02/12/2006 on the building itself and took photographs in that respect and those photos are at Ex.D4 (four photos)

20. In Ex.D2 it is stated that Smt. Sharimila has stored building materials on the road and caused obstruction to the movements of the vehicles etc., and she has been levied fine of Rs. 20,000/- and that fine amount has to be paid by way of D.D. in favour of Commissioner, BBMP, and to obtain receipt.

21. As stated above, in the complaint it is clearly mentioned that the DGO insisted for the bribe amount from the complainant on the ground that the construction is not in accordance with the plan. Ex.D1 is the copy of the note sheet in which it is stated that on 28/11/2006 the DGO inspected the above said building and came to know that it is being constructed contrary to the approved plan and the above said Ex.D1 corroborates the averments made in the complaint to the effect that the DGO demanded for the bribe amount on the ground that the construction is not according to the plan and building bye-laws. Ex.D3 is the copy of the notice u/sec.

321(2) of the KMC Act 1976 dated: 13/11/2006, in which it is stated that the building is not constructed according to the sanctioned plan and building bye-laws and the deviated portion have to be removed.

22. DW1 has further deposed that on 04/12/2006 at about 3 pm. he was drinking tea in the ground floor of his office and at that time some persons concerned with Smt. J. Sharmila came and told him that they have brought the penalty amount and to receive the same for which he told that the receipt book is in the office and to come to the office. He has further deposed that he received the penalty amount in the place where he was drinking the tea and he was going to his office situated upstairs to give the receipt but Lokayukta police apprehended him and took him to his office. He has deposed that he told the Lokayukta police that he has received the amount as penalty amount and that he was going to his office to give the receipt but the Lokayukta police did not accept the same.

23. DW1 in his cross-examination by the Presenting Officer has deposed as follows:-

“ಲೋಕಾಯುಕ್ತ ಪೊಲೀಸರು ನಿಮ್ಮ ಕೈಯನ್ನು ಸೋಡಿಯಂ ಕಾರ್ಬೋನೇಟ್ ದ್ರಾವಣದಲ್ಲಿ ತೊಳೆಸಿದಾಗ ಆ ದ್ರಾವಣ ತಿಳಿ ಗುಲಾಬಿ ಬಣ್ಣಕ್ಕೆ ತಿರುಗಿತು ಎಂಬ ಪ್ರಶ್ನೆಗೆ ಸಾಕ್ಷಿ ಗಮನಿಸಲಿಲ್ಲ ಎಂದು ಹೇಳುತ್ತಾರೆ. ಲೋಕಾಯುಕ್ತ ಪೊಲೀಸರು ರೂ. 20,000/- ಹಣವನ್ನು ನನ್ನಿಂದಲೇ ಅಮಾನತ್ತು ಮಾಡಿಕೊಂಡರು ಎನ್ನುವುದು ನಿಜ. ನನ್ ಪ್ಯಾಂಟ್ ಜೇಬಿನ ಒಳಭಾಗವನ್ನು ಸೋಡಿಯಂ ಕಾರ್ಬೋನೇಟ್ ದ್ರಾವಣದಲ್ಲಿ ಅದ್ದಿದಾಗ ಆ ದ್ರಾವಣ ತಿಳಿ ಗುಲಾಬಿ ಬಣ್ಣಕ್ಕೆ ತಿರುಗಿತು ಎಂದು ಹೇಳುವ ಬಗ್ಗೆ ನಾನು ಗಮನಿಸಲಿಲ್ಲ. ಆ ದಿನ ನಾನು ಧರಿಸಿದ ಪ್ಯಾಂಟನ್ನು ಲೋಕಾಯುಕ್ತ ಪೊಲೀಸರು ಅಮಾನತ್ತು ಮಾಡಿಕೊಂಡರು ಎಂದರೆ ನಿಜ.”

24. Thus DW1 who is the DGO admits that the Lokayukta police seized the amount of Rs. 20,000/- from him and also seized the pant which he had worn at that time and he has not denied the fact that his hand wash was positive. He has only deposed that he did not observe whether his hand wash was positive. He has also deposed that he do not know whether his pant wash was also positive. At this stage itself I would like to state about the FSL report copy which is at Ex.P13 (marked in the evidence of PW3).Ex.P13 discloses that the right and left hand wash and the pant wash of the DGO was positive, which is not disputed in the cross-examination of PW3. PW3 has also deposed that the right hand wash of the DGO and the pant wash was positive but in respect of left hand wash there was no colour change. But as stated above according to Ex.P13 the left hand wash was also positive. Thus the hand wash and the pant wash of the DGO being positive and the amount of Rs. 20,000/- recovered from him by the Lokayukta police are not in dispute. Hence even the evidence of PW1 and PW2 not supporting the case of the disciplinary authority as stated above is not of much consequence. The only question to be decided is whether the DGO had received the tainted currency notes as penalty amount or as bribe amount.

25. PW3 is the Police Inspector who has conducted the trap. He has deposed that on 04/12/2006 at 11.45 a.m. PW1 came to the police station and lodged the complaint as per Ex.P5 and on the basis of the same he registered the case and sent the FIR to the court and the copy of the same is at Ex.P6. He has deposed that he secured PW1 and PW2 as panchas by

giving the request letter to their higher officer and they came to the Lokayukta police station at 12.45 on that day. He has deposed that he introduced PW1 and PW2 to the complainant and also told the gist of the complaint lodged by the complainant to PW1 and PW2. He has further deposed that the complainant produced Rs. 20,000/- (Rs. 500x40) and the denomination and numbers of the notes were noted down on a sheet of paper and the copy of the same is at Ex.P7. he has deposed that PW1 and PW2 signed the same also. He has deposed that through his staff he got phenolphthalein powder smeared to the notes and gave the notes to the hands of PW2 and asked him to keep the same in the shirt pocket of the complainant and after PW2 did so the hands of the PW2 when washed in the sodium carbonate solution that solution turned to pink colour and that solution was seized. He has deposed that he instructed the complainant to approach the DGO and only if the DGO demands for the bribe amount he has to give the tainted currency notes kept in his shirt pocket and afterwards he should come out of the office and give the signal by cleaning his face with his hand kerchief. He has deposed that he instructed PW1 to act as shadow witness and to follow the complainant and to see what happens when the complainant meets the DGO. He has deposed that at the time of the entrustment mahazar he took the photographs and the xerox copies of those photos are in Ex.P3 and Ex.P1 is the copy of the entrustment mahazar.

26. PW3 has further deposed that on the same day at 2.30 p.m. himself and his staff, complainant and also the pancha witnessess went to the office of the DGO and the vehicle was

stopped at a distance of one furlong from the office of the DGO and afterwards complainant and PW1 were sent to the office of the DGO. He has deposed that himself and other persons stated above followed them and remained near that building. He has deposed that at about 3.30 p.m. the complainant gave the signal by standing in front of shop No. 14 situated in the ground floor and immediately himself and others went there and the complainant showed a person standing in front of him as the person who has received the bribe amount from him. He has deposed that he introduced himself to that person and he is DGO of this case. He has deposed that he got prepared the sodium carbonate solution in two bowels and washed the hands of the DGO separately and the solution in respect of the right hand wash turned to pink colour and there was no change in the colour of the solution regarding the left hand wash. He has deposed that he asked the DGO about the amount received from the complainant and the DGO took the money which was kept in his right side pant pocket and produced the same and that amount was Rs. 20,000/- consisting of the notes mentioned in Ex.P7. He has deposed that as that place was the public place he took the DGO and the panchas and his staff to the office of the DGO situated in second floor and alternate pant was arranged to the DGO and the pant worn by the DGO was got removed and the right side pant pocket of the same when immersed in the sodium carbonate solution that solution also turned to pink colour. He has further deposed that he seized two documents and the copies of the same are at Ex.P8 and P9. Ex.P8 is the copy of the plan and Ex.P9 is the copy of the licence issued in favour of Smt. J. Sharmila wife of the complainant. He has deposed

that when he enquired the complainant, complainant told him that when he approached the DGO, DGO asked him whether he has brought the money and the complainant told that he has brought the money and gave the tainted currency notes of Rs. 20,000/- and the DGO received the same with his right hand and kept the same in his right side pant pocket. He has further deposed that PW1 also told as told by the complainant stated above. He has deposed that he asked the DGO to give his explanation and the DGO gave his explanation in writing and the copy of the same is at Ex.P11. He has deposed that he prepared the sketch of scene of occurrence and the copy of the same is at Ex.P12. He has deposed that the copy of the trap mahazar is at Ex.P2 and the FSL report copy is at Ex.P13 and the copy of the service particulars of the DGO is at Ex.P14.

27. As stated above Ex.P11 is the explanation given by DGO immediately after the trap and in the same no where it is stated that an amount of Rs. 20,000/- was levied as penalty and the amount received by him is the penalty amount. In Ex.P11 there is no mention about Ex.D2 also. Thus in Ex.P11 it is not at all stated by the DGO that the amount of Rs. 20,000- received by him is the penalty amount and not the bribe amount. In Ex.P11 it is only stated that the complainant is constructing the house contrary to the building bye-laws and he had instructed the complainant to construct the building as per building bye-laws and the complainant told that he will construct the building as per the advice of the DGO but implicated him falsely etc., Thus the contention of the DGO in his evidence stated above does not find a place in Ex.P11 and the same is also not suggested to PW4

(complainant) in his cross-examination. Hence it can be said that the contention of the DGO stated in his evidence is only an after thought to over come the charge framed in this inquiry.

28. It is also pertinent to note that it is not the case of the DGO that PW3 took his explanation as per Ex.P11 by force. PW3 has also denied the contention of the learned counsel for the DGO to the effect that the DGO told him that the amount of Rs. 20,000/- seized by him is the penalty amount. Thus according to the evidence of PW3 the DGO has not even orally contended before the I.O. at the time of the trap mahazar that the amount of Rs. 20,000/- seized from him is the penalty amount. Hence I feel the above said contention of the DGO taken at the time of his evidence cannot be given much weight. As already above Ex.P11 does not support his contention stated above taken in his evidence. It is also pertinent to note that DGO has also not stated above Ex.D2 nor produced Ex.D2 before PW3 at the time of trap mahazar.

29. DW2-Sri Y.B. Narayana who was the higher officer of the DGO at the relevant point of time. He has deposed that he has signed Ex.D2 and that the DGO had also reported about the construction being made contrary to the approved plan and Ex.D1 is the copy of the note sheet in that respect. It is pertinent to note that there is no note sheet in respect of Ex.D2 and the note sheet is only in respect of Ex.D3 which creates a doubt in respect of Ex.D2. There is also no prior notice to the wife of the complainant before passing the order as per Ex.D2. More over in Ex.D2 it is clearly mentioned that the penalty amount of Rs. 20,000/- has to be paid by way of



D.D. in favour of Commissioner, BBMP and by giving the DD the receipt has to be obtained. DW2 has deposed that there is a circular to the effect that the penalty amount can be paid by way of cash, but he has not produced that Circular before the I.O. and in this inquiry also such a circular is not produced. Hence the contention of the DGO to the effect that he received the amount of Rs. 20,000- by way of cash as penalty amount cannot be believed. The DGO has produced the copies of some receipts marked as Ex.D5 and contends that the penalty amount has also been received by way of cash. Some of the receipts marked as per Ex.D5 clearly shows that the amount is paid by way of D.D. In other receipts it is not clearly mentioned that the amount is received by way of cash only. More over as stated above there is no circular produced to show that the penalty amount can be received by way of cash. As stated above even in Ex.D2 it is stated that the penalty amount has to be paid by way of D.D. only. No where in Ex.D2 it is mentioned that the penalty amount can be paid by way of cash also. It is also the contention of the learned Presenting Officer that the document Ex.D2 produced by the DGO is a created document for the purpose of this inquiry. The DGO has also not produced any document to show that he was empowered to receive the penalty amount and give the receipt as his part of official duty.

30. The learned advocate for the DGO relies upon the decisions reported in 2019 CRI.L. J (NOC) 10 (GUJ.) in Hitendra Prabhulal Purohit V/s State of Gujarat, (2015) 11 SCC 314 in C. Sukumaran V/s State of Kerala, (2014) 13 SCC 55 in B. Jayaraj v/s State of Andhra Pradesh, Laws (KAR)

2012 116 High Court of Karnataka in R. Malini v/s State of Karnataka and Laws (KAR) 2012, 6 213 High Court of Karnataka in T.P. Basavaraju v/s CBI. All the above said cases are criminal cases filed under the provisions of Prevention of Corruption Act. It is pertinent to note that the burden of proof required in criminal cases is beyond reasonable doubt whereas in the departmental enquiry preponderance of probability has to be taken into consideration and the above said decisions cannot be relied upon to decide the departmental enquiry.

31. In the written statement the DGO has contended that in the criminal case he has already been acquitted. He has produced the copy of the judgment passed in Special Case No. 140/2007 to show that he has been acquitted in the criminal case. It is pertinent to note that only on the ground that the DGO has been acquitted in the criminal case it cannot be held that, the disciplinary authority has not proved its case in this departmental inquiry. It is well established principle of law that, in the criminal case the prosecution has to prove its case beyond all reasonable doubt. Whereas in the departmental inquiry the evidence has to be scrutinised on the basis of the preponderance of probabilities. In the decision reported in 1997(2) SCC 699 in case of Depot Manager, APSRTC V/S Mohammed Yosuf Miya and others, (2005)7 SCC 764 between Ajit Kumar Nag v/s General manager (P) Indian Oil Corporation Limited, Haldia and others and recent decision of Hon'ble Supreme Court in (2012)13 Supreme Court Cases 142 in a case of Avinash Sadashiv Bhosale (dead) V/S Union of India and others made out very clear

that, the purpose of departmental inquiry and the prosecution are too different and distinct aspect though the two proceedings relates to the same set of facts. The nature of evidence in criminal case is entirely different from the departmental proceedings and in the criminal case the prosecution is required to prove the guilt of the accused beyond all reasonable doubt on the touch-stone of human conduct and where as the evidence required in a departmental inquiry is not regulated by the Evidence Act. Therefore, misconduct of the DGO required to be taken into consideration on the basis of preponderance of probabilities and merely the DGO has been acquitted in the criminal case by the judgment in Special Case No. 140/2007 <sup>by</sup> the Special Judge Urban Division, Bengaluru City, by itself is not sufficient to overlook the evidence placed on record by the Disciplinary Authority.

32. The facts and circumstances of this case stated above probablises the case of the disciplinary authority that the DGO had received the above said amount of Rs. 20,000/- as bribe amount only and not as penalty amount. Thus the DGO has failed to maintain absolute integrity, devotion to duty and acted in a manner of unbecoming of Government Servants. Hence, I answer the above point No.1 in the **AFFIRMATIVE**.

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

**:: ORDER ::**

*The Disciplinary Authority has satisfactorily proved the charge in this case that, DGO- Sri V. Gopalakrishna, Assistant Engineer, Bengaluru Mahanagara Palike, Sub-Division, Yeshwantpur, Bengaluru and thereby committed mis-conduct as enumerated U/R 3(1) (i) to (iii) of Karnataka Civil Service (Conduct) Rules, 1966.*

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

Dated this the 30<sup>th</sup> day of April, 2019

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

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

PW-1 :-Sri Basavaraju B.L. (shadow panch witness)  
PW-2 :-Sri Siddagangappa (another panch witness)  
PW-3:-Sri Subbarao (I.O.)  
PW-4:Sri S.B. Somashekar (complainant)

**LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE:**

DW-1:-Sri V. Gopala krishappa (DGO)  
DW-2:- Sri Y.B. Narayana (Witness)

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

Ex.P-1: Certified copy of the entrustment mahazar  
Ex.P-1(a,b): Relevant entries in Ex.P1  
Ex.P-2: Certified copy of the trap mahazar

- Ex.P-2(a,b): Relevant entries in Ex.P2  
 Ex.P-3: Certified copy of the xerox copy of the photos affixed on the white sheet  
 Ex.P-3(a to c) : Relevant entries in Ex.P3  
 Ex.P-4: Certified copy of the seal acknowledgement letter  
 Ex.P-4(a): Relevant entry in Ex.P4  
 Ex.P-5: Certified copy of the complaint  
 Ex.P-5(a): Relevant entry in Ex.P5  
 Ex.P-6: Certified copy of the FIR  
 Ex.P-7: Certified copy of the notes value and denomination mentioned white sheet  
 Ex.P-8: Certified copy of the map (ನಕ್ಷೆ)  
 Ex.P-9: Certified copy of the receipt of A.E.E., Yeshwantpur Sub-Division, BBMP bearing No. 42352  
 Ex.P-10: Certified copy of the attendance register  
 Ex.P-11: Certified copy of the explanation of DGO  
 Ex.P-12: Certified copy of the sketch  
 Ex.P-13: Certified copy of the chemical examination report  
 Ex.P-14: Certified copy of the service particulars of the DGO with certified copy of the bio-data of DGO

**LIST OF EXHIBITS MARKED ON BEHALF OF DGO:**

- Ex.D-1: Certified copy of the note sheet  
 Ex.D-2: Original notice of A.E.E., Yeshwanthpur Sub-Division, BBMP, dated: 25/11/2006 addressed to Smt. J. Sharmila (complainant's wife)  
 Ex.D-2(a): Relevant entry in Ex.D2  
 Ex.D-3: Original Notice under Section 321(2) of the KMC Act 1976 issued by A.E.E., dated: 30/11/2006 with original copy of the provisional order under section 321(1) of the KMC Act 1976 with certified copy of the sketch  
 Ex.D-4: Certified copy of the colour photos on the white sheet  
 Ex.D-5: Certified copy of the receipts (4 sheets)

Dated this the 30<sup>th</sup> day of April, 2019

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

