

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

No: LOK/INQ/14-A/41/2006-2007
No. LOK/ARE-4/ENQ-23/2007

Multi Storied Buildings,
Dr.B.R.Ambedkar Veedhi,
Bengaluru-560 001,
Date: 16/11/2018

RECOMMENDATION

Sub:- Departmental inquiry against;

- (1) Sri N. Nagaraj, Assistant Executive Engineer, City Municipal Council, Mahadevapura. Bengaluru.
- (2) Sri T.C. Kodandaram, Assistant Engineer, City Municipal Council, Mahadevapura, Bengaluru - Reg.

- Ref:-1) Government Order No. ಲೋಕ 63 ಸೇಇವಿ 2006, Bengaluru dated 16.09.2006.
- 2) Nomination order No.LOK/INQ/14-A/41/2006-2007 Bengaluru dated 3/11/2006 and 27/2/2007.
 - 3) Inquiry Report dated 14/11/2018 of Additional Registrar of Enquiries-4, Karnataka Lokayukta, Bengaluru

The Government by its Order dated 16/09/2006, initiated the disciplinary proceedings against (1) Sri N. Nagaraj, Assistant Executive Engineer, City Municipal Council, Mahadevapura, Bengaluru and (2) Sri T.C. Kodandaram, Assistant Engineer, City Municipal Council, Mahadevapura, Bengaluru (hereinafter referred to as Delinquent Government Official's for short as **'DGO-1 and DGO-2 respectively'**) and entrusted the Departmental Inquiry to this Institution.

2. This Institution by Nomination Order No. LOK/INQ/14-A/41/2006-2007 dated 30/11/2006 nominated Additional Registrar of Enquiries-5, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct Departmental Inquiry against DGOs 1 and 2 for the alleged charge of misconduct, said to

have been committed by them. Subsequently by Order No.LOK/INQ/14-A/41/2006-2007 dated 27/02/2007 the Additional Registrar of Enquiries-4 was re-nominated as Inquiry Officer to conduct Departmental inquiry against DGOs 1 and 2.


3. The DGO-1 Sri N. Nagaraj, Assistant Executive Engineer, City Municipal Council, Mahadevapura. Bengaluru and DGO-2 Sri T.C. Kodandaram, Assistant Engineer, City Municipal Council, Mahadevapura, Bengaluru were tried for the following charge:-

“That, you Sri N. Nagaraj, AEE and Sri T.Kodanda Ramu, A.E, CMC, Mahadevapura, when Sri M.C. Prabhakar Reddy, Class III, PWD Contractor, (hereinafter referred to as complainant) approached you and requested you for preparing the bill relating to the contract work done by the complainant, both of you, DGO-1 & 2 demanded and DGO-2 accepted the bribe amount of Rs.20,000/- This act on your part amounts to misconduct as both of you DGO-1 & 2 have failed to maintain absolute integrity, thus this act on your part is unbecoming of a Government Servant and thus, you DGO-1 & DGO-2, are guilty of misconduct Under Rule 3(1)(i) and (iii) read with Rule 16 (iv) of K.C.S (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-1 Sri N. Nagaraj, Assistant Executive Engineer, City Municipal Council, Mahadevapura. Bengaluru and DGO-2 Sri T.C. Kodandaram, Assistant Engineer, City Municipal Council, Mahadevapura, 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-1 & 2;
- i) DGO-1 Sri N. Nagaraj is due to retire from service on 30/04/2023.
 - ii) DGO-2 Sri T.C. Kodandaram has retired from service on 31/05/2013 (during the pendency of inquiry).
7. Having regard to the nature of charge (demand and acceptance of bribe) proved against DGO-1 Sri N. Nagaraj and DGO-2 Sri T.C. Kodandaram;
- i) It is hereby recommended to the Government for imposing penalty of compulsory retirement from service on DGO-1 Sri N. Nagaraj, Assistant Executive Engineer, City Municipal Council, Mahadevapura, Bengaluru.
 - ii) It is hereby recommended to the Government for imposing penalty of permanently withholding 50% of pension payable to DGO-2 Sri T.C. Kodandaram, Assistant Engineer, City Municipal Council, Mahadevapura, Bengaluru.
8. Action taken in the matter shall be intimated to this Authority.

Connected records are enclosed herewith.


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

KARNATAKA LOKAYUKTA

No.LOK/ARE-4/ENQ/23/2007
Old No.LOK/INQ/14-A/41/06-07

M.S.Building,
Dr.B.R.Ambedkar Road
Bangalore-560 001
Date: 14/11/2018

INQUIRY REPORT

Sub: Departmental Inquiry against,

- 1) Sri N. Nagaraj
Assistant Executive Engineer
- 2) Sri T. Kodanda Ramu
Assistant Engineer
City Municipal Council
Mahadevapura (**Now retired**)

- Ref:**
- 1) Report u/s 12(3) of the K.L Act, 1984 in
Compt/Uplok/BCD/290/2005/Regr
dated:03/04/2006
 - 2) Govt. Order. No. ಲೋಕ 63 ಸೇಇವಿ 2006
Bangalore dated:16/09/2006
 - 3) Order No.LOK/INQ/14-A/41/2006-07
Dtd.03/11/2006 of the Hon'ble
Lokayukta
 - 4) Order No.LOK/INQ/14-A/41/2006-07
Dtd.27/02/2007 of the Hon'ble
Upalokayukta

1. This Departmental Inquiry is directed against 1) Sri N. Nagaraj, Assistant Executive Engineer and 2) Sri T. Kodanda Ramu, Assistant Engineer, City Municipal Council, Mahadevapura (**Now retired**) (herein after referred to as the

Delinquent Government Official in short "DGO Nos.1 and 2 or DGOs")

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 Lokayukta, vide order dated: 03/11/2006 cited above at reference-3, nominated Additional Registrar of Enquiries-5 of the office of the Karnataka Lokayukta as the Inquiry Officer to frame charges and to conduct Inquiry against the aforesaid DGOs. Additional Registrar Enquires-5 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 DGOs calling upon them to appear before this Authority and to submit written statement of their defence.

4. When the matter was pending for inquiry, the Hon'ble Upalokayukta vide order dated: 27/02/2007 at reference No. 4 nominated Additional Registrar of Enquiries-4 of the office of the Karnataka Lokayukta as the Inquiry Officer to continue the inquiry proceedings against the aforesaid DGOs.

5. The Articles of Charges framed by ARE-4 against the DGOs are as below;

CHARGE

That, you Sri N. Nagaraj, A.E.E., and Sri T. Kodanda Ramu, A.E., CMC, Mahadevapura, when Sri M.C. Prabhakar Reddy, Class III, PWD Contractor, (herein after referred to as complainant) approached you and

requested you for preparing the bill relating to the contract work done by the complainant, both of you, DGO-1 & 2 demanded and DGO-2 accepted the bribe amount of Rs. 20,000/-. This act on your part amounts to misconduct as both of you DGO-1 & 2 have failed to maintain absolute integrity, thus this act on your part is unbecoming of a Government Servant and thus you DGO-1 and DGO-2, are guilty of misconduct under Rule 3(1)(i) and (iii) read with Rule 16 (iv) of KCS (Conduct) Rules, 1966.

ANNEXURE NO. II

STATEMENT OF IMPUTATIONS OF MISCONDUCT

This is a Suo-motu investigation under Sec. 7(2) of the Karnataka Lokayukta Act, 1984 on the basis of the material placed by the Deputy Superintendent of Police, Karnataka Lokayukta, Bangalore City Division, Bangalore (herein after referred to as I. O.) in the matter of alleged demand and acceptance of bribe by Sri N. Nagaraj, A.E.E., and Sri T. Kodanda Ramu, A.E., both working in CMC Mahadevapura, from Sri M.C. Prabhakar Reddy, Class III, PWD Contractor, Bangalore.

It is alleged that, the complainant approached you DGO-1 & DGO-2, and requested for preparing the bill relating to the contract work done by him. At that time, you DGO-1 and 2 demanded the bribe amount of Rs. 20,000/- to take up inspection of the said work and to pass the bill amount of Rs. 2,30,000/-. As the complainant was not willing to pay any bribe, the complainant filed a complaint before the Lokayukta Police, Bangalore on 21/12/2004, at 1.30 p.m. and a case was registered in Cr. No.21/2004 against you, DGO-1 and 2, under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988. The I.O. on the same day, secured two panch witnesses by name 1) Sri B.C. Shivakumar, FDA o/o Assist Director of Land Records, K.R. Circle,

Bangalore and 2) Sri C. Venkateshaiah, Research Officer, O/o Director of Women and Child Welfare, M.S. Building, Bangalore and they were introduced to the complainant. The complainant narrated his case. The complainant produced Rs. 20,000/- before the I.O. and the phenolphthalein powder was smeared to these notes. The said notes were given to pancha Sri B.C. Shivakumar, to count the notes and Sri C. Venkateshaiah, was told to note down the numbers of the notes. Sri B.C. Shivakumar, counted the notes and the said notes were given to the complainant. Both hands of the Sri B.C. Shivakumar, were washed in the sodium carbonate solution and the said solution turned into pink colour, which was preserved in a bottle. Necessary instructions was given to the complainant to pay the bribe on demand and give the signal. The accompanying shadow witness Sri B.C. Shivakumar was instructed to watch the transaction between the complainant and the DGO-1 and DGO-2. A detailed entrustment mahazar was drawn in the office of the Lokayukta Police. Thereafter, on the same day the complainant, panchas I.O., and the staff left the Lokayukta Office at 4.35 p.m. the I.O. sent the complainant and the accompanying witness Sri B.C. Shivakumar, to the office of CMC, Mahadevapura. The complainant and the accompanying witness came out at 5.50 p.m. and gave pre-arranged signal I.O. and the trap party rushed to the spot. The complainant, along with accompanying panch witness had met you DGO-1 and you DGO-1, asked the complainant whether he has brought the money, when the complainant said that he has brought the money, you, DGO-1 directed the complainant to pay the money to the DGO-2 and you, the DGO-2 accepted the bribe amount from your right hand, counted the same with both hands and kept them in your right side pant pocket and told the complainant that the

work of the complainant will be done. The I.O. recovered the bribe amount from you, DGO-2. The numbers and denomination of the currency notes recovered tallied with the numbers and the denomination of the currency notes mentioned in the entrustment mahazar. Your (DGO-2) right and left hand fingers when washed separately with sodium carbonate solution, they changed into pink colour. The said solution was collected in bottles and seized. The trap mahazar was drawn to this effect. During the course of investigation, I.O. recorded the statements of witnesses and seized the records pertaining to the works of the complainant. The chemical examiner has examined the articles seized under the entrustment mahazar, the trap mahazar and given the report, which supports the case against you. The statements of the witnesses also support the case against you-DGO-1 and DGO-2. From the materials it is prima facie seen that you, DGO-1 & DGO-2 have demanded and accepted the illegal gratification of Rs. 20,000/- from the complainant on 21/12/2004, for showing an official favour.

The statement on oath, of the complainant was recorded on 23/08/2005. Vide letter No. Compt/Uplok/BCD/290/2005 dated: 16/11/2005 of the Registrar you DGO-1 & DGO-2 were called upon to submit your comments by sending the copy of the statement of the complainant dated: 23/08/2005. Both of you DGO-1 & DGO-2 has submitted a reply denying the allegations. The explanation submitted by you, DGO-1 & DGO-2, after due consideration was found to be not acceptable.

The materials collected during the course of investigation, make out a prima facie case for initiating departmental proceedings against both of you, DGO-1 and DGO-2 for the misconduct committed by both you, DGO-1 & 2. You DGO-1 & DGO-2, have failed to maintain

absolute integrity and acted in such a manner, which is unbecoming of Government Servant. You DGO-1 & DGO-2 are guilty of misconduct under Rule 3(1)(i)(iii) Read with Rule 16(iv) of KCS (Conduct) Rules, 1966.

Hence, the charge.

6. DGOs appeared before this Inquiry Authority on 23/12/2006 and on the same day their First Oral statement was recorded U/R 11(9) of KCS (CC & A) Rules 1957. The DGOs pleaded not guilty and claims to hold an inquiry.

7. DGO No.1 had filed his written statement and the gist of the same is as follows:-

The charges leveled against the DGO No.1 is totally false, concocted and fabricated by the complainant. The complaint is filed with ulterior motive just to escape from the legal consequences and penalty. At the material point of time the DGO No.1 was working as Assistant Executive Engineer, CMC, Mahadevapura, Bangalore. He has executed his official work sincerely. The complainant was one of the approved contractors at the material point of time. The CMC had allotted three contracts works to him namely:-

1. Providing pipeline work in Ward No. 3 of Munireddy layout worth about Rs. 30,000/-
2. Providing pothole filing in Ward No. 7 of Andhra Colony Roads and removal of silt in storm water drains work worth Rs. 1,00,000/-.
3. Providing pothole filing in Ward No. 10 of B. Narayanapura Roads and removal of silt in storm water drains work worth Rs 1,00,000/-.

The complainant agreed to abide all the terms and conditions in respect of the above said three contract works. The complainant should have completed the works on or before 08/12/2004. The said condition was totally violated by the contractor/complainant. As on 08/12/2004 he had executed only the partial work of the contract to the tune of 40% without maintaining the standard of the norms prescribed by the CMC. He lifted lesser quantum of raw-materials against the full allotted quantum. In that respect the contractor was warned and necessary oral instructions were given to him. In spite of the same, the complainant/contractor failed to complete the work in the stipulated period. DGO No.1 conducted the spot inspection on 22/11/2004, 23/11/2004, 04/12/2004, 14/12/2004 and 16/12/2004 and signed the necessary records at the spot itself. Therefore, the question of demanding Rs. 20,000/- from the complainant as illegal gratification for conducting inspection is highly untenable. The allegations made by the complainant against the DGO No.1 are totally false and concocted. On 21/12/2004 DGO No.1 was busy with the official meeting along with his sub-ordinate officer Sri Afeez, the complainant entered into his chamber and handed three requisition letters for refund of EMD amount of other contractors and those letters were duly signed by DGO No.1 and directed to be handed over to the A.E. After few minutes the DGO No.1 came to know that the Lokayukta police have apprehended the A.E., no document has been seized from the possession of the DGO No.1. Hence, prays to exonerate him from the charges leveled against him in this case.

8. DGO No.2 has filed his written statement as follows:-

The charges leveled against him are totally false, concocted and fabricated by the complainant. At the material point of time he was working as Assistant Engineer, CMC, Mahadevapura, Bangalore. The complainant was one of the contractor and CMC had allotted the three contract works to him already stated above in the written statement of the DGO No.1. The complainant agreed to execute the work within the stipulated period while executing the agreement. The complainant should have completed the contract work on or before 08/12/2004 as per the agreement. The complainant failed to complete the work within the above said time. On 08/12/2004 the contractor had executed partial work of the contract to the tune of 35% to 40% only. He had also lifted lesser quantity raw materials against the full allotted quantum, which establishes the standard of work executed by the complainant. He has made necessary entries in the M.B. books in accordance with the work done the presence of the contractor-complainant. The complainant has not lodged any complaint against the DGO No.2. No adverse remarks are found in the complaint against the DGO No.2. On 21/12/2004 while he was on official duty the complainant thrust Rs. 20,000/- along with three application forms on the false pretext and false assurance and made him this scape-goat. Hence, prays to exonerate him from the charges leveled against him in this case.

9. In order to substantiate the charge leveled against the DGO, the Disciplinary Authority examined in all five witnesses as PW1 to PW5 and got marked documents at Ex.P1 to P13 After closing the evidence of the Disciplinary Authority, the

Second Oral Statement of DGOs were recorded as required u/Rule 11(16) of KCS (CC & A) Rules, 1957. On behalf of DGO No.1, one witness examined as DW1 and DGO No.1 himself examined as DW2 and got marked documents Ex.D1 to D6 and closed his evidence. Thereafter, questioning of this DGO No.2 is recorded as required u/Rule 11(18) of KCS (CC&A) Rules, 1957.

10. The Disciplinary Authority has not submitted any written brief, but DGOs have submitted their written brief. Oral arguments of the Presenting Officer was heard.

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

- 1) Whether the Disciplinary Authority satisfactorily proved the charge framed against DGOs?
- 2) What order?

12. My finding on the above points are as follows:-

Point No.1: In the **"AFFIRMATIVE"**

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

:: REASONS ::

13. Point NO.1: It is the case of the Disciplinary Authority that the DGO No.1 being the A.E.E., and DGO No.2 being the A.E., of CMC, Mahadevapura when the complainant-Sri M.C. Prabhakar Reddy, Class-III PWD contractor approached the DGO No.1 and requested for preparing the bills related to the contract works done by him both the DGOs have demanded

the bribe amount and DGO No.2 accepted the bribe amount of Rs. 20,000/- on 21/12/2004.

14. By going through the evidence adduced by both the parties some facts are not in dispute and they are as follows:-

At the relevant point of time, the DGO No.1 was working as A.E.E., and DGO No.2 was working as A.E., in CMC., Mahadevapura, Bangalore and the complainant-Sri M.C. Prabhakar Reddy, was working as Class-III, PWD contractor and he was entrusted with three contract works mentioned below from CMC, Mahadevapura as follows:-

- 1) Providing pipeline work in Ward No. 3 of Munireddy layout worth about Rs. 30,000/-
- 2) Providing pothole filing in Ward No. 7 of Andhra Colony Roads and removal of silt in storm water drains work worth Rs. 1,00,000/-.
- 3) Providing pothole filing in Ward No. 10 of B. Narayanapura Roads and removal of silt in storm water drains work worth Rs. 1,00,000/-.

15. The complainant has been examined as PW3 and the copy of the complaint lodged by him before the Lokayukta Police station is at Ex.P8. The gist of Ex.P8 is to the effect that PW3 is working as Class-III contractor and he had applied for contract works of Mahadevapura CMC and the above said three works were allotted to him. The complainant has completed the works and requested DGO No.1 about 10 times to inspect the works but DGO No.1 did not inspect the works.

On 20/12/2004 he again met the DGO No.1 and prayed for inspection of the works and DGO No.1 demanded bribe of Rs. 20,000/- to make entries in the M.B books and to prepare the bills and if the amount is not given the bills will not be prepared.

16. PW3 has deposed that the above said three works were allotted to him and he was directed to commence the works from 09/11/2004 and to complete the works within one month from the said date. He has deposed that he completed the works within one month. Ex.P5 to P7 are the work order copies in respect of the above said three works and in the same it is mentioned that the works should be commenced on 09/11/2004 and to be completed by 08/12/2004 and the date of agreement is mentioned as 08/11/2004. PW3 has deposed that in respect of the above said three works he was entitled to receive totally Rs. 2,30,000/-. He has deposed that after completing the works he approached the DGO No.1 about 5 to 6 times and asked him to make entries in the M.B, books. He has deposed that afterwards the DGO No.1 demanded the amount of Rs. 20,000/- to make entries in the M.B. books and to make payment and hence he lodged the complaint before the Lokayukta police station on 21/11/2004 and copy of his complaint is at Ex.P8.

17. PW3 has further deposed that the I.O. secured two panchas namely Sri Shivakumar and Sri Venkateshaiah and he produced the amount of Rs. 20,000/- before the I.O. (40xRs.500 each). He has deposed that the Lokayukta police smeared the powder to the notes and through pancha witness Sri Venkateshaiah, the notes were entrusted to him and

afterwards the hands of Venkateshaiah washed in the solution and that solution turned to purple colour. He has deposed that panchanama was prepared in the Lokayukta police station and copy of the same is at Ex.P1. He has deposed that on that day itself the I.O. took himself and the panchas along with his staff to CMC office, Mahadevapura and himself and pancha witness Sri Shivakumar went inside the CMC office, Mahadevapura. He has deposed that in the office the DGO No.1 was present and he gave applications pertaining to his other works and DGO No.1 signed them and gave them back to him. He has deposed that afterwards he requested the DGO No.1 about the bills in respect of the works mentioned in Ex.P5 to P7 and the DGO No.1 asked for the money already demanded and also told him to give the amount to the DGO No.2 who is in the neighbouring room. He has deposed that he approached the DGO No.2 and gave the applications signed by DGO No.1 and also gave the tainted currency notes of Rs. 20,000/- and DGO No.2 received the amount on behalf of the DGO No.1 and afterwards he gave the signal to the Lokayukta police. He has deposed that afterwards the Lokayukta police and Sri Venkateshaiah came there and he showed DGO No.2 and told that he has given the amount to DGO No.2 as per the instructions of DGO No.1. He has deposed that the hands of the DGO No.2 were washed in the solution and the solution turned to purple colour and the tainted currency notes were also seized from the possession of the DGO No.2. He has deposed that the DGO Nos.1 and 2 gave their explanation separately in writing and the trap mahaazar was also conducted, at that time and the copy of the same is at Ex.P2.

18. In his cross-examination PW3 has deposed that he had agreed to finish the works within the time fixed. He has deposed that DGO No.2 did not come to the places where he was doing the works and inspected the same. In his cross-examination done afterwards on 30/10/2012 he has deposed that he was not getting the tenders in the names of other contractors and on that day he had given the applications of Sri Narayana reddy, Sri Lokesh Reddy, and Sri Manju reddy for refund of the deposit amount for signature and DGO No.1 signed them and gave back the same to him. He has deposed that DGO No.1 told him that the above said three applications have to be given to the DGO No.2. He has denied the suggestions of the learned counsel for the DGOs to the effect that he had given the amount of Rs. 20,000/- to DGO No.2 to keep the same for some time with him. He has also deposed as follows:-

“ಹಣವನ್ನು ತನ್ನ ಬಳಿ ಕೊಟ್ಟಿದ್ದು ಏತಕ್ಕೆ ಎಂದು ಎರಡನೇ ಆರೋಪಿತ ನೌಕರರು ಕೇಳಿದಾಗ ಸ್ವಲ್ಪ ಸಮಯ ಬಿಟ್ಟು ಬರುತ್ತೇನೆಂದು ನಾನು ಹೊರಟು ಹೋದೆ ಎಂಬುದು ನಿಜ”

19. When the entire evidence of PW3 is taken into consideration the above said stray sentence in his cross-examination cannot be given much weight and on the basis of the same the case of the Disciplinary Authority cannot be discarded.

20. PW3 has denied the suggestion of the learned counsel for the DGOs to the effect that he had told the DGO No.2 that he will come back within five minutes. He has also denied the suggestion that the DGO No.2 told him to take back the

amount given by him. When the over all evidence of PW3 is considered the above said evidence of PW3 to the effect that when the DGO No.2 asked why the amount is given to him he told that he will come after some time cannot be given much weight. It is also pertinent to note that no ordinary prudent person will receive any amount without knowing the reasons for giving the amount to him. He has denied the suggestion of the learned counsel for the DGOs to the effect that he had not finished the works and in that respect the DGOs had issued the notice. It is pertinent to note that the DGOs have not produced copies of any notice to prove the same. In his cross-examination which is done on 11/01/2016 by recalling him, PW3 has deposed that after the incident of this case he finished the works and I feel the said evidence is given only with an intention to help the DGOs at the request of the DGOs. The over all evidence of PW3 is to the effect that DGO No.1 demanded the amount of Rs. 20,000/- for making entries in the M.B. books and as per the directions of DGO No.1, PW3 gave the above said amount of Rs. 20,000/- to DGO No.2.

21. PW1-Sri B.C. Shivakumara, is the shadow witness according to the case of the Disciplinary Authority. He has deposed that at the relevant point of time he was working as FDA in Survey Department, ADLR office, K.R Circle, Bangalore. He has deposed that as per the instructions of his higher officer on 21/12/2004 he had been to the Lokayukta police station, Bangalore and in the police station the complainant and another pancha witness Sri Venkateshaiah were present and they were introduced to him. He has deposed that he came to know about the reasons for PW3

lodging the complaint and in fact he read the complaint. He has deposed that PW3 produced (40xRs.500 each) and himself and another pancha witness Sri Venkateshaiah verified the numbers of those notes and powder was smeared to those notes and those notes were entrusted to PW3 with necessary instructions and the copy of the mahazar written at that time is at Ex.P1. In Ex.P1 it is mentioned that after smearing the phenolphthalein powder the notes were given to the pancha witness Sri Venkateshaiah and he kept the same in the right side pant pocket of PW3.

22. PW1 has deposed that afterwards all of them went to CMC office, Mahadevapura and himself, PW3 went inside the office of the DGOs and other persons remained outside the office. He has deposed that DGO No.1 was in the office and PW3 gave some documents to DGO No.1 and DGO No.1 signed those documents and gave them back to PW3. He has deposed that afterwards PW3 came outside and PW3 gave the tainted currency notes to DGO No.2 and DGO No.2 received the tainted currency notes and kept them in his pocket. He has deposed that afterwards Lokayukta police came inside the office and himself and PW3 told what had happened and the Lokayukta police washed the hands of the DGO No.2 in the solution and also seized the tainted currency notes of Rs. 20,000/- from DGO No.2. He has deposed that panchanama was made and the copy of the same is at Ex.P2. He has been treated as hostile witness and cross-examined by the Presenting Officer and in his cross-examination he has deposed that he has not heard DGO No.1 telling PW3 to pay the amount to DGO No.2. He has deposed that DGO Nos.1

and 2 gave their explanation in writing and the copies of the same are at Ex.P3 and P4 respectively.

23. In his cross-examination by the learned counsel for the DGOs, he has deposed that the DGO No.1 told PW3 to give the applications signed by him to DGO No.2 and PW3 talked with DGO No.2 in Telugu language. He has deposed that he do not know whether the DGO No.2 asked PW3 has to why the amount of Rs. 20,000/- is given to him by PW3.

24. PW2 is Sri Venkteshaiah and he has deposed about the entrustment mahazar that was drawn in the Lokayukta police station as per Ex.P1. He has deposed that he entrusted the tainted currency notes to PW3 and afterwards his hands were washed in the solution and that solution turned to pink colour. He has deposed that after going to the office of the DGOs himself, I.O. and his staff were outside the office and after PW3 gave the signal all of them went inside the office and in the office the DGO No.2 was present and the tainted currency notes were found in the possession of the DGO No.2. He has deposed that even the pant pocket of the DGO NO.2 when washed in the solution, that solution turned to pink colour. He has deposed that Ex.P2 is the copy of the Trap Mahazar.

25. PW4 is Sri K.N. Rajanna, who has deposed that from May 2002 to February 2006 he was working as Dy.S.P., in Bangalore City Lokayukta police station and on 21/12/2004 PW3 came to his office and gave the written complaint as per Ex.P8 and he entrusted the investigation to P.I. -Sri Rajendra by making endorsement to that effect on the complaint.

26. PW5 is Sri Rajendra D.S. and he has deposed that from 16/10/2002 to 21/05/2005 he was working as Police Inspector in Bangalore City Lokayukta Police Station and on 21/11/2004 PW4 called him and gave the complaint lodged by PW3 for investigation. He has deposed that the complainant was also present in the station at that time. He has deposed that he registered the case and send the FIR to the court and copy of the FIR is at Ex.P9. He has deposed that by writing the letters to the higher officers he secured PW1 and PW2 as panchas and they came to the station on the same day in the afternoon. He has deposed that he introduced the complainant to PW1 and PW2 and they also came to know about the averments made in the complaint. He has deposed that PW3 produced Rs. 20,000/- before him and he has deposed about all the averments made in the entrustment mahazar, the copy of which is at Ex.P2. He has deposed that at 4.35 p.m. on that day they left the Lokayukta police station and reached CMC, Mahadevapura at 5.15 p.m. and PW3 and PW1 were sent inside that office by the reminding them of the instructions already given to them at the time of the entrustment mahazar. He has deposed that at 5.50 p.m. PW1 came out of the office and gave the pre-arranged signal and immediately himself, and his staff and PW2 went inside the office and PW3 told that as per the instructions of DGO No.1 he gave the amount to DGO No.2 and DGO No.2 received the amount from him. He has deposed that they apprehended the DGO Nos. 1 and 2 and the hands of the DGO No.2 were washed separately in the solution and both the solutions turned to pink colour and those solutions were seized. He has deposed that when he asked DGO No.2 about the amount received by him from PW3

DGO No.2 produced Rs. 20,000/- from his right side pant pocket and those notes were the same notes mentioned in Ex.P1(a). He has deposed that alternative pant was arranged to DGO No.1 and the right side pant pocket of DGO No.2 when washed in the solution that solution also turned to pink colour. He has deposed that even the hands of the PW3 were washed in the solution and that solution also turned to pink colour. He has deposed that the certified copy of the attendance register of the office of the DGOs was seized and copy of the same is at Ex.P10. He has deposed that when DGO No.2 was asked to produce the file of the complainant DGO No.2 produced three files and the certified copies of the same were prepared and seized and the copies of the same are at Ex.P11 (109) sheets. He has deposed that when he inquired PW1 and PW3 as to what happened in the office of the DGOs, they told him as to what happened and the same has been incorporated in the trap mahazar-Ex.P2. In Ex.P2 it is stated that DGO No.1 asked whether PW3 has brought the money and when PW3 told that he has brought the money DGO No.1 told PW3 to give the amount to DGO No.2 and PW3 gave the tainted currency notes to DGO No.2 and DGO No.2 received the same and kept it in his right side pant pocket and told that the work of the PW3 will be done. He has deposed that the hand wash of the DGO No.2 was positive and DGO No.2 himself produced the tainted currency notes which he had kept in his right side pant pocket. He has deposed that even the pant wash of the DGO No.2 was positive and DGO No.2 produced the files of the complainant and he seized the certified copies of the same and the copies of the same are at Ex.P11. He has deposed that the copies of the written

explanations given by the DGO Nos.1 and 2 are at Ex.P3 and 4 respectively. He has deposed that PW1 and PW3 denied the contents of Ex.P3 and P4 as false. He has deposed that the copy of the FSL report is at Ex.P13 and the copy of the rough sketch of the scene of occurrence is at Ex.P12. Even in his cross-examination he has given his evidence in accordance with the case of the disciplinary authority stated above and there is no reason to discard his evidence.

27. Ex.P3 is the copy of the explanation of the DGO No.1 in which he has stated that on that day PW1 approached him along with another person and gave three applications for refund of deposit amount and on those applications he put his signatures and returned back to PW3. In the same it is further stated that DGO No.1 was engaged in his work and PW3 addressed him as 'sir' and he told PW3 to give the applications to DGO No.2 and afterwards he came to know that DGO No.2 has been trapped by Lokayukta Police.

28. In Ex.P4 it is stated that on 21/12/2004 at 5.35 p.m. Lokayukta police searched him and earlier to that the contractor PW3 came and tried to give amount to him and he told not to give any amount. But PW3 kept the amount in his hands and he asked PW3 about the amount and PW3 told that he will tell afterwards. Afterwards DGO No.2 was arranging the files and Lokayukta police came and searched him and that he has not demanded any amount for doing official favour.

29. DW1 is one Sri L. Thimmarasa and he has deposed that in the year 2004 he was working as Junior Engineer in

Mahadevapura CMC and at that time DGO No.1 was his higher officer and DGO No.1 was working as A.E.E., He has deposed about the procedure regarding calling for tenders and entrusting the work to the lowest bidder and also regarding the payment of the amount to the contractor. He has deposed that as and when the work is done the same will be entered in the M.B. book by the Assistant Engineer and it has to be submitted to the Assistant Executive Engineer. He has deposed that on 21/12/2004 after finishing the meeting he came outside and went to his chambers and at that time PW3 came to his chambers and gave the application for return of EMD in respect of the work already done by him and he signed the same and asked PW3 to give the same to the A.E.E., He has deposed that afterwards he came to know that the DGO No.2 has been trapped. He has deposed that he has produced the documents also. He has deposed that at that time PW3 had not completed the works and he had not received part payment also. In his cross-examination he has deposed that there is no ill-will between PW3 and DGO Nos.1 and 2 and likewise there is no ill-will between DGO Nos.1 and 2 and the I.O. He has deposed that the application given for refund of EMD by PW3 on 21/12/2004 is not produced by him and that application will be in the account section. It is pertinent to note that it is not the case of the DGO No.1 that PW3 had brought the application for refund of EMD amount by getting the signature of DW1 and gave the same to him.

30. DW2 is the DGO No.1 and he has deposed that the three works had been entrusted to the complainant (PW3) and whatever work was done in that respect by PW3 was inspected

and noted by the A.E., in the M.B. books. He has deposed that on 21/12/2004 he produced the files of PW3 by getting the same from DW1. He has deposed that even the part payment was not made to PW3 in respect of the three works that were entrusted to him. He has deposed that as Ex.P11 does not contain the copies of the M.B books he has produced the copies of the M.B. books as per Ex.D3 and D4. Ex.P11 contains the copies of the tenders, Tenders Rules and Directions for the guidelines of the contractors, agreements etc., It is the case of the Disciplinary Authority that the DGOs had not written the M.B. books in respect of the three works entrusted to PW3 and hence Ex.P11 does not include the copies of M.B. Books. Ex.D3 is regarding filling up of the potholes in Andhra colony roads etc., and it discloses that A.E., has recorded collection of gravel and also pre-measurement from 22/11/2004 to 16/12/2004 and DGO No.1 has also checked the same on 06/12/2004, 09/12/2004 and on 16/12/2004. The date of the trap is 21/12/2004 and hence it can be said that the measurement in Ex.D3 has been entered prior to that and even inspected by DGO No.1 prior to that date. But the part payment has not been made in respect of the same even according to the DGOs. Ex.D4 is also in respect of filling up the potholes in Andhra colony roads etc and it discloses that the entries have been made on 07/11/2005 and subsequently which are after the date of the trap. Ex.D4 and D5 pertains to the same work but they are contradictory to each other as stated above. The DGOs have not produced the copies of the measurement books in respect of two other works entrusted to PW3. Ex.D5 are the copies of the bills for payment which are subsequent to the trap. Ex.D6

is the copy of the letter said to have been written by the Commissioner, CMC, Mahadevapura to the police inspector dated: 07/02/2005 in which it is stated that as on 21/12/2004 the three works entrusted of PW3 had not been completed. But in the same it is mentioned that part payment has been made in respect of all three works entrusted to PW1 on 30/01/2005 which is after the date of trap. Even holding that PW3 had not completed the three works entrusted to him within the time given there was no hurdle for the DGOs to record the work done by PW3 in the M.B,. books and could have made the part payment for the work done even holding that PW3 had not completed the works within the date fixed in the agreements. Admittedly PW3 was entrusted with the three works stated above and even according to the DGOs he had done part of the works and in that respect at least the DGOs could have recorded the measurements in the M.B. books and considered the same for making part payment. It is also pertinent to note that in the absence of recording the work done in the M.B. books after inspection bills for part payment also cannot be prepared.

31. DW2 has deposed that without completing the works the entire amount cannot be released. But as stated above it is not even the case of the DGOs that the part payment was made for the work done and as stated above the part payment has been made only after the date of trap. As stated above the DGOs have also not entered the work done in respect of the three works entrusted to PW3 in the measurement books prior to the date of trap. It seems Ex.D3 and D4 have been created after the trap. It is also pertinent to note that DW2 has not at

all given any evidence to prove his contention stated in Ex.P3. As stated above Ex.P3 is the copy of the written explanation given by this witness immediately after the trap and in the same it is stated that PW3 had approached him on 21/12/2004 and gave the application for refund of EMD amount and he signed the same and gave back the same to PW3 and again PW3 started to enquire him and he told PW3 to give to DGO No.2. Thus he admits in Ex.P3 that he has told the name of DGO No.2 to PW3. But there is no evidence of DW2 in that respect. DGO No.2 has not been examined in this case to prove his defence stated in his written statement or in Ex.P4. In Ex.P4 no where it is mentioned that PW3 approached him on 21/12/2004 and gave him the application signed by DGO No.1 for refund of EMD. As stated above DW1 being the A.E. has deposed that he had signed the EMD return application given to him by PW3 and asked him to give the same to DGO No.1. If the same is considered then it has to be said that the EMD return application had already been signed by DW1 and there was no necessity for DGO No.1 to ask PW3 to give the same to DGO No.2. Ex.D6 also contains the copies of the application given for refund of EMD which shows that PW3 had not given any application in his name for refund of EMD and they bears the names of Sri N.C. Narayana reddy and Sri M. Lokesh reddy and Sri S.G. Manjureddy.

32. As stated above it is hard to believe that DGO No.2 has received the amount of Rs. 20,000/- from PW3 only on the oral request of PW3 to keep the amount for some time and that PW3 will receive the same afterwards. It is not in dispute that the tainted currency notes have been seized from the pant

pocket of DGO No.2 and the hand wash of the DGO No.2 was also positive. As stated above DGO No.2 has not been examined to prove his defence stated in Ex.P4 or his defence suggested to PW1 and PW3. No doubt PW1 has not clearly deposed that DGO No.1 asked for money and told PW3 to give the money to DGO No.2. But PW1 has given his evidence in that respect clearly in his examination in chief and as stated above the over all evidence of PW3 clearly supports the case of the disciplinary authority. The facts and circumstances of this case stated above only probablises the case of the disciplinary authority and not the defence of the DGO Nos.1 and 2.

33. In the written arguments the DGOs have contended that they have been acquitted in the criminal case (Special C.C. No. 18/2007 and the certified copy of the judgment passed in the above said case by the Special Judge, Bangalore Urban District dated: 30/04/2012 has also produced. The same discloses that after the trial DGO Nos.1 and 2 have been acquitted in Special C.C. No. 18/2007. It is pertinent to note that only on the ground that the DGOs have 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. Where as 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 DGOs required to be taken into consideration on the basis of preponderance of probabilities and merely the DGOs have been acquitted in the criminal case by the judgment in Special Case No. 18/2007 by the Special Judge, Bangalore Urban District, by itself is not sufficient to overlook the evidence placed on record by the Disciplinary Authority in this inquiry. The facts and circumstances of the case probablises the case of the Disciplinary Authority and not the defence of the DGOs.

34. The learned counsel for the DGOs relies upon the decision reported in **2015(2) Supreme Court Cases 365 between S.Bhaskar Reddy and another V/S Superintendent of Police and another and (2015)2 Supreme Court cases 377 between Joginder Singh V/S Union Territory of Chandigarh and others** in which it is held that there was Honourable acquittal in the criminal case. From the certified copy of the judgment passed in C.C. No. 18/2007 it can be

said that the DGO Nos.1 and 2 have been acquitted as the prosecution was not able to prove its case beyond all reasonable doubt. Hence I feel the above said decisions cannot be applied for the facts and circumstances of this inquiry.

35. The learned counsel for the DGOs also relied upon decision reported in **2002(4) CPSC 504 between Subash ParbatSonvane V/s State of Gujarat, 2009 SAR (Criminal) 304 Supreme Court between C.M. Girish Babu V/s CBI Cochin, High Court of Kerala, 2009 SAR (Criminal) 906 Supreme Court between State of Maharashtra V/S Dnyaneshwar Laxman Rao Wankhede, 2012(4) KCCR 3156 (SC) between State of Kerala and Another V/s C.P. Rao, 2012 (4) KCCR 3160 between Sri Moulasab V/s Thalakk Police Station, Chitradurga District, 2015 SAR (Criminal) 524 v/s RPS Yadav, V/S CBI,** and all the above said decisions deals with the provisions of the P.C. Act 1988 and the above said decisions cannot be applied to this departmental inquiry.

36. In this departmental inquiry only the misconduct has to be proved by the Disciplinary Authority and as stated above there is the evidence of PW1 regarding the DGO No.1 remanding for the bribe amount for showing the official favour from PW3 and asking PW3 to pay the amount to DGO No.2 who is also the concerned Assistant Engineer in respect of the works allotted to PW3. As stated above DGO No.2 has not given any believable explanation for having received the tainted currency notes of Rs. 20,000/- from the PW3 which only probablises the case of the disciplinary authority to the effect that he has received the said amount to show official

favour in respect of the contract works entrusted to PW3 by the CMC, Mahadevapura.

37. Thus the DGOs have 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**.

38. 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 No.1-Sri N. Nagaraj, Assistant Executive Engineer and DGO No.2-Sri T. Kodanda Ramu, Assistant Engineer, City Municipal Council, Mahadevapura (**Now retired**) and thereby committed mis-conduct as enumerated U/R 3(1) (i) to (iii) of Karnataka Civil Service (Conduct) Rules, 1966.*

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

Dated this the 14th day of November, 2018

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

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

PW-1 :-Sri B.C. Shivakumar (shadow panch witness)
 PW-2 :-Sri C. Venkateshaiah (panch witness)
 PW-3:-Sri M.C. Prabhakar Reddy (complainant)
 PW-4:Sri K.N. Rajanna (I.O.)
 PW-5:Sri Rajendra D.S. (another I.O.)

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE:

DW-1:-Sri L. Thimmarasa (witness)
 DW-2:Sri N. Nagaraj (DGO No.1)

LIST OF EXHIBITS MARKED ON BEHALF OF DISCIPLINARY AUTHORITY

Ex.P-1: Certified copy of the Entrustment Mahazar
 Ex.P1(a): Certified copy of the notes numbers and denomination mentioned white sheet
 Ex.P-2:Certified copy of the Trap Mahazar
 Ex.P-3:Certified copy of the explanation of DGO No.1
 Ex.P-4:Certified copy of the explanation of DGO No.2
 Ex.P-5 to P7:Certifie copies of the work order
 Ex.P-8: Certified copy of the complaint
 Ex.P-8(a): Relevant entries in Ex.P8
 Ex.P-9:Certified copy of the FIR
 Ex.P-10:Certified copy f the attendance register extract
 Ex.P-11:Certified copy of the file of the complainant (containing 109 sheets)
 Ex.P-12:Certified copy of the rough sketch
 Ex.P-13:Certified copy of the chemical examination report

LIST OF EXHIBITS MARKED ON BEHALF OF DGOs:

Ex.D-1: Xerox copy of the letter Municipal Commissioner, Mahadevapura CMC, Bangalore dated: 07/07/2005 addressed to P.I. Police Wing City Division, KLA, Bangalore
 Ex.D-2: : Xerox copy of the letter Municipal Commissioner, Mahadevapura CMC, Bangalore dated: 07/02/2005 addressed to P.I. Police Wing City Division, KLA, Bangalore
 Ex.D-3: Xerox copy of the Pre-measurement recorded extract ex.D-
 Ex.D3(a,b): Relevant entries in Ex.D3
 Ex.D-4: Xerox copy of the M.B. No. 2701 extracts
 Ex.D-4(a,b): Relevant entries in Ex.D4

Ex.D-5:Xerox copy of the Contract certificate (containing three sheets)

Ex.D-6:Xerox copy of the letter of Commissioner, Mahadevapura CMC, Bangalore dated: 07/02/2005 addressed to P.I., Police Wing City Division, KLA, Bangalore with xerox copy of the enclosures

Dated this the 14th day of November, 2018

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

