

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

No.LOK/INQ/14-A/418/2011/ARE-4

Multi Storied Buildings,
Dr.B.R.Ambedkar Veedhi,
Bengaluru-560 001,
Date: **28/10/2019**

RECOMMENDATION

Sub:- Departmental inquiry against;

- 1) Sri Shivaji S/o Amboji Kavale, Assistant Executive Engineer, Panchayath Raj Engineering Sub Division, Kalaburagi.
- 2) Sri Khaja Sadruddin S/o Mohammed Mahmood Ali @ Mohammed Mahaboob Ali, Junior Engineer, Panchayath Raj Engineering Sub Division, Kalaburagi.

Ref:-1) Government Order No.ಸ್ತ್ರೂಪ ಇಎನ್‌ಕ್ಯೂ 2011 Bengaluru dated 09/11/2011.

2) Nomination order No.LOK/INQ/14-A/418/2011 Bengaluru dated 19/11/2011 of Upalokayukta-1, State of Karnataka, Bengaluru.

3) Inquiry Report dated 24/10/2019 of Additional Registrar of Enquiries-4, Karnataka Lokayukta, Bengaluru

The Government by its Order dated 09/11/2011 initiated the disciplinary proceedings against (1) Sri Shivaji S/o Amboji Kavale, Assistant Executive Engineer, Panchayath Raj Engineering Sub Division, Kalaburagi and (2) Sri Khaja Sadruddin S/o Mohammed Mahmood Ali @ Mohammed Mahaboob Ali, Junior Engineer, Panchayath Raj Engineering Sub Division, Kalaburagi (hereinafter referred to as Delinquent Government Officials 1 and 2 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/418/2011 dated 19/11/2011 nominated Additional Registrar of Enquiries-4, 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.

3. The DGO-1 Sri Shivaji S/o Amboji Kavale, Assistant Executive Engineer, Panchayath Raj Engineering Sub Division, Kalaburagi and DGO-2 Sri Khaja Sadruddin S/o Mohammed Mahmood Ali @ Mohammed Mahaboob Ali, Junior Engineer, Panchayath Raj Engineering Sub Division, Kalaburagi were tried for the following charge:-

“That, you DGO-1 Sri Shivaji s/o Amboji Kavale and DGO-2 Sri Khaja Sadduruddin S/o Mohd. Mahmood Ali @ Mohd. Mahaboob Ali while working as Assistant Executive Engineer and Junior Engineer respectively in the office of the Panchayath Raj Engineering Sub-Division at Gulbarga, the District Social Welfare Officer of Gulbarga had sent letter dtd.23/06/2007 to you DGO-1 to inspect and submit the report with regard to the construction work of the Sakpal Pre-metric hostel at Kurikot belonging to Santh Kabeer Das Education Institution and you DGO-2 was asked by DGO-1 to inspect and when the complainant namely Sri Tukaram Mareppa Bhavidoddi being the President of the said institution approached you DGO-2 on 15/09/2007, you DGO-2 took bribe of Rs.5,000/- from the complainant to inspect and submit report, failing to maintain absolute integrity and devotion to duty, the act of which was unbecoming of Government


Servant and thereby you DGO-2 committed misconduct as enumerated U/R 3(1)(i) to (iii) of Karnataka Civil Service (Conduct) Rules 1966.”

4. The Inquiry Officer (Additional Registrar of Enquiries-9) on proper appreciation of oral and documentary evidence has held that the Disciplinary Authority has failed to prove the above charges against DGO-1 Sri Shivaji S/o Amboji Kavale, Assistant Executive Engineer, Panchayath Raj Engineering Sub Division, Kalaburagi and the Disciplinary Authority has proved the above charge against DGO-2 Sri Khaja Sadruddin S/o Mohammed Mahmood Ali @ Mohammed Mahaboob Ali, Junior Engineer, Panchayath Raj Engineering Sub Division, Kalaburagi.
5. On re-consideration of inquiry report, I do not find any reason to interfere with the findings recorded by the Inquiry Officer.
6. It is hereby recommended to the Government to accept the report of Inquiry Officer and to exonerate the DGO-1 Sri Shivaji S/o Amboji Kavale, Assistant Executive Engineer, Panchayath Raj Engineering Sub Division, Kalaburagi of the aforestated charge.
7. As per the First Oral Statement submitted by DGO-2 Sri Khaja Sadruddin S/o Mohammed Mahmood Ali @ Mohammed Mahaboob Ali, he is due to retire from service on 28/02/2024.
8. Having regard to the nature of charge (demand and acceptance of bribe) proved against DGO-2 Sri Khaja Sadruddin S/o Mohammed Mahmood Ali @ Mohammed Mahaboob Ali, it is hereby recommended to the Government for imposing penalty of

compulsory retirement from service on DGO-2 Sri Khaja Sadruddin S/o Mohammed Mahmood Ali @ Mohammed Mahaboob Ali, Junior Engineer, Panchayath Raj Engineering Sub Division, Kalaburagi and also for permanently withholding 20% of pension payable to DGO-2 Sri Khaja Sadruddin.

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

Connected records are enclosed herewith.


(JUSTICE N. ANANDA)
Upalokayukta-1, 28/10
State of Karnataka,
Bengaluru

KARNATAKA LOKAYUKTA

No.LOK/INQ/14-A/418/2011/ARE-4

M.S.Building,
Dr.B.R.Ambedkar Road
Bengaluru-560 001
Date: 24/10/2019

:: INQUIRY REPORT ::

Sub: Departmental Inquiry against,

- 1) Sri Shivaji
S/o Amboji Kavale
Assistant Executive Engineer
Panchayath Raj Engineering Sub-Division
Gulbarga (now retired)
- 2) Sri Khaja Sadduruddin
s/o Mohd. Mahmood Ali
@ Mohd. Mahaboob Ali
Junior Engineer
Panchayath Raj Engineering Sub-Division
Gulbarga

- Ref:**
- 1) Report u/s 12(3) of the K.L Act, 1984 in
Compt/Uplok/GLB/245/2009/ARE-6
dated: 26/09/2011
 - 2) Govt. Order. No.Gra.Aa.Pa. 32 ENQ
2011, Bengaluru dated: 09/11/2011
 - 3) Order No.LOK/INQ/14-A/418/2011
Dtd.19/11/2011 of the Hon'ble
Upalokayukta

1. This Departmental Inquiry is directed against 1) Sri Shivaji S/o Amboji Kavale, Assistant Executive Engineer, Panchayath Raj Engineering Sub-Division, **Gulbarga (now retired)** and 2) Sri Khaja Sadduruddin s/o Mohd. Mahmood Ali @ Mohd. Mahaboob Ali, Junior Engineer, Panchayath Raj Engineering Sub-Division, **Gulbarga** (herein after referred to

as the Delinquent Government Officials in short "DGO No.1 and DGO No.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 Upalokayukta, vide order dated: 19/11/2011 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 DGOs. 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 DGOs calling upon them to appear before this Authority and to submit written statement of their defence.

4. The Articles of Charges framed by ARE-4 against the DGOs are below:

ANNEXURE-I

CHARGE No.1

That, you DGO-1 Sri Shivaji s/o Amboji Kavale and DGO-2 Sri Khaja Sadduruddin s/o Mohd. Mahmood Ali @ Mohd Mahaboob Ali while working as Assistant Executive Engineer and Junior Engineer respectively in the office of the Panchayath Raj Engineering Sub-Division at Gulbarga, the District Social Welfare Officer of Gulbarga had sent letter dated: 23/06/2007 to you DGO-1 to

inspect and submit the report with regard to the construction work of the Sakpal Pre-matric hostel at Kurikot belonging to Santh Kabeer Das Education Institution and you DGO-2 was asked by DGO-1 to inspect and when the complainant namely Sri Tukaram Mareppa Bhavidoddi being the President of the said institution approached you DGO-2 on 15/09/2007, you DGO-2 took bribe of Rs. 5,000/ from the complainant to inspect and submit report, failing to maintain absolute integrity and devotion to duty, the act of which was unbecoming of Government Servants and thereby you DGO-2 committed misconduct as enumerated u/Rule 3(1)(i) to (iii) of Karnataka Civil Service (Conduct) Rules 1966.

CHARGE No. 2

That you DGO-2 inspite of payment of bribe of Rs. 5,000/- submitted an incomplete report and when the complainant approached you DGO-2 requesting to make complete report, you DGO-2 after contacting you DGO-1 asked the complainant to pay a total sum of Rs. 20,000/- including the share of you DGO-1 and further asked to pay Rs. 10,000/- and to pay a balance of Rs. 5,000/- at later stage to submit a complete report with regard to construction work which was done up to slab level, failing to maintain absolute integrity and devotion to duty , the act of which was unbecoming of Government Servants and thereby you-DGO-1 and DGO-2 committed misconduct as enumerated u/Rule 3(1)(i) to (iii) of Karnataka Civil Service (Conduct) Rules 1966.

was taken up u/sec. 7(2) of Karnataka Lokayukta Act and an observation note was sent to DGO-1 and DGO-2 calling for their explanation. DGO-1 & DGO-2 submitted their replies and the replies were not convincing and not satisfactory to drop the proceedings. As the facts and materials on record prima-facie showed that DGO-1 & DGO-2 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-1 & DGO-2 u/Rule 14-A of the Karnataka Civil Services (Classification, Control and Appeal) 1957 and to entrust inquiry to the Hon'ble Upalokaykta. Accordingly the Competent Authority initiated disciplinary proceedings against DGO-1 & DGO-2 and entrusted the inquiry u/Rule 14-A of the KCS (CCA) Rules 1957 to the Hon'ble Upalokayukta. Hence, this charge.

5. DGOs appeared before this Inquiry Authority on 01/06/2012 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.

6. DGO No.1 has filed his written statement as follows:

It is an admitted fact that he was working as A.E.E. and DGO No.2 was working under him. In view of letter dated: 23/06/2007 by the Assistant Social Welfare office DGO No.1 personally attended the work and instructed the complainant to comply with the mandatory requirements as per rules. The work undertaken by the complainant was not up to the mark

and the complainant was insisting for submitting the report on the basis of liquid materials that was available. The allegation of demanding Rs. 5,000/- and obtaining the same by the DGO is without any basis. It is false to state that there was demand for Rs. 20,000/- including the share of DGO No.1. As on the alleged date of demand the DGO No.1 was not present in the head quarter and he was on leave. After full-fledged trial the DGO has been acquitted in Special Case No. 221/2009 by the Prl. District and Session Judge, Gulbarga. Hence, DGO No.1 prays to exonerate him from the charges leveled against him in this case.

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

It is true that the DGO No.2 was working as Junior Engineer in Panchayath Raj Engineering Sub-Division. Gulbarga. DGO No.1 personally attended the work and instructed the complainant to comply the mandatory requirement as per rules. It is false to state that there was demand for Rs. 5,000/- and the same was obtained by the DGO. It is false to state that there was demand for Rs. 20,000/- including the share of DGO No.1. DGO No.2 has given the explanation at the first instance regarding forcibly putting the money in his shirt pocket. In Special Case No. 221/2009 the DGO No.2 has been acquitted after trial. There was no demand from DGO No.2 and only with an intention to expedite his work the complainant put the money in the shirt pocket of DGO No.2. Hence, DGO No.2 prays to exonerate him from the charges leveled against him in this case.

8. In order to substantiate the charge leveled against the DGOs, the Disciplinary Authority examined in all four witnesses as PW1 to PW4 and got marked documents at Ex.P1 to P15. After closing the evidence of the Disciplinary Authority, the Second Oral Statement of DGO No.2 was recorded as required u/Rule 11(16) of KCS (CC & A) Rules, 1957. After closing the evidence of the Disciplinary Authority, DGO No.1 examined as DW2 and DGO No.2 examined as DW1 and got marked Ex.D1 to D8 and closed their evidence. Hence, recording the answers of DGOs to questionnaire u/Rule 11(18) of KCS (CC&A) Rules was dispensed with.

9. The Disciplinary Authority has not filed any written brief, but DGO Nos.1 and 2 have submitted their written brief separately. Oral arguments of the P.O. and DGOs was heard.

10. Upon consideration of the oral and documentary evidence placed on record, the defence of DGO Nos.1 and 2 the only points, that arises for the consideration of this inquiry authority is:-

1) Whether the Disciplinary Authority satisfactorily proved the charges framed against DGOs?

2) What order?

11. My finding on the above points are as follows:

Point No.1: In the “**AFFIRMATIVE**” regarding DGO No.2 and in the “**NEGATIVE**” in respect of DGO No.1

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

:: REASONS ::

12. **Point NO.1:** It is the case of the Disciplinary Authority that the DGO No.1 while working as Assistant Executive Engineer and DGO No.2 while working as Junior Engineer in the office of Panchayath Raj Engineering Sub-Division, Gulbarga, the District Social Welfare officer had sent letter dated: 23/06/2007 to DGO No.1 to inspect and to submit the report with regard to the construction work of Sakpal Pre-matric Hostel at Kurikot belonging to Santh Kabeer Das Education Institution and DGO No.1 asked DGO No.2 to inspect and when the complainant by name Sri Tukaram Mareppa Bhavidoddi being the President of the above said institution approached DGO No.2 on 15/09/2007, DGO No.2 took bribe of Rs. 5,000/- from the complainant to inspect and to submit the report and inspite of the same DGO No.2 submitted an incomplete report and when the complainant approached the DGO No.2 to submit the complete report, DGO No.2 asked the complainant to pay a total sum of Rs. 20,000/- including the share of DGO No.1 and further asked to pay Rs. 10,000/- and to pay balance amount of Rs. 5,000/- at later stage to submit the complete report with regard to the construction work and on 26/10/2007 the DGO No.2 received the said amount of Rs. 10,000/- from the complainant in Yathrinivas Hostel Premises at Gulbarga and thereby committed the misconduct.

13. Complainant has been examined as PW1 and the copy of the complaint lodged by him is at Ex.P3. The gist of Ex.P3 is to the effect that he is running Santh Kabeer Das Education Institution from last 10-11 years. One of the institution run by

the above said institution is Sri Ramji Sakpal Pre-matric Hostle in Kurikot village. In order to have the own building for the above said hostel in the year 2003-2004 he put up the proposal before the Government through District Social Welfare Department by preparing the estimate for Rs. 16.5 lakhs and in the year 2005-2006, 10 lakhs was granted and 25% of the amount has to be spent by the institution. The first installment of Rs. 5,000/- was sanctioned and out of that amount the construction was put up, up to lental level and Panchayath Raj Engineering Department also gave the certificate that the work is satisfactory and hence the second installment of Rs. 2.5 lakhs was released and out of that amount the construction was put up, up to roof level. The institution has also incurred 25% of the amount for construction. For further work the building material are also secured and for preparing the windows and doors Rs. 50,000/- was also given. After the release of second installment it was found that for completing the constructing of building Rs. 15 lakhs more is necessary and hence on 06/06/2007 application was given to social welfare department for sanction of the same and the social welfare department called for the report from the Panchayath Raj Engineering Section, Gulbarga through its letter dated: 23/06/2007 and the Assistant Executive Engineer (DGO No.1) ordered DGO No.2 to inspect the spot and to give the report. The DGO No.2 did not sent the report and on 15/09/2007 the complainant met the DGO No.2 and DGO No.2 told that there was Ramzon festival and to give Rs. 5,000/- and that he will give the report after spot inspection and hence on the same day the complainant gave Rs. 5,000/- to the DGO No.2,

afterwards the DGO No.2 conducted the spot inspection and gave an incomplete report and when the complainant contacted the DGO No.2 regarding the same, DGO No.2 asked for 20% of the amount and the complainant told that he was unable to pay the same as he has to incur 25% of the expenses of the construction and to reduce the amount. On 26/10/2007 the DGO No.2 informed the complainant over phone that Rs. 20,000/- has to be given for himself and DGO No.1 and the complainant told that he was already paid Rs. 5,000/- and the DGO No.2 told that out of Rs. 15,000/- in the evening Rs. 10,000/- has to be given and the report will be submitted within one day and not willing to get the work done by paying the bribe amount the complaint is lodged. The complaint has been lodged on 26/10/2007 at 2 p.m.

14. PW1 in his examination in chief has deposed about all the averments made in his complaint stated above except the demand for bribe by DGO No.2. He has further deposed that for sanction of additional Rs. 15 lakhs, he gave the application on 06/06/2007 to Social Welfare Department and on 23/06/2007 the letter was written from Social Welfare Department to Gulbarga Panchayath Raj Engineering Department to conduct the spot inspection and to give the report. He has deposed that Ex.P1 is the copy of the above said letter addressed to Panchayath Raj Engineering Division. In the same it is stated that Rs. 10 lakhs has been sanctioned for construction of the above said hostel and out of the same Rs. 2,50 lakhs has been spent by the above said institution and the remaining amount of Rs. 7.50 lakhs has been released and the certificate has to be given regarding proper utilization

of Rs. 7,50,000/-. PW1 has further deposed that DGO No.1 entrusted the above said work to DGO No.2 and in that connection the complainant met the DGO No.2 and DGO No.2 gave an incomplete report and did not give the estimate for sanction of additional amount. He has deposed that the copy of that report given by DGO No.2 is at Ex.P2. He has further deposed that he met the DGO No.1 and DGO No.1 told PW1 to meet the DGO No.2. He has deposed that hence, he went to the Lokayukta police station and gave the complaint and copy of the same is at Ex.P3.

15. PW1 has further deposed that the Lokayukta police secured two public servants as panchas and he produced the amount of Rs. 10,000/-. He has deposed that phenolphthalein powder was smeared to those notes and those notes were given to the hands of the pancha witness and afterwards the hands of that pancha witness was washed in the solution and that solution turned to pink colour. He has deposed that afterwards they went to the Panchayath Raj Engineering Office at Gulbarga and he went inside that office and the DGOs were not in the office and he informed the same to the I.O. He has deposed that he contacted DGO No.2 over phone and DGO No.2 told that he is outside and asked PW1 to come to Yathrinivas hotel at 6 p.m. He has further deposed that DGO No.2 came to the above said hotel and sat in the car of PW1 and PW1 requested for his work and DGO No.2 told that there are technical difficulties and that he will give the detailed report. He has deposed that he himself kept the tainted currency notes in the pocket of DGO No.2 telling DGO No.2 to give the detailed report and by that time Lokayukta police

came there and caught hold of DGO No.2. He has deposed that the hands of DGO No.2 were washed and that solution turned to pink colour. He has deposed that the shirt of the DGO No.2 was also seized and he do not know any other thing.

16. PW1 has been treated as hostile witness by the Presenting Officer and cross-examined. In his cross-examination he has deposed that he is M.A.,LLB graduate. He has deposed that as there was urgency he signed Ex.P3 without reading the same. Further he has deposed that the contents of Ex.P3 are correct. He admits that on 15/09/2007 he met the DGO No.2 and at that time DGO No.2 asked him to pay Rs. 5,000/-. He has deposed that he do not remember whether on 26/10/2007 DGO No.2 demanded Rs. 20,000/- for himself and DGO No.1 and after deducting Rs. 5,000/- already paid out of the remaining Rs. 15,000/- Rs. 10,000/- has to be paid on the same day and hence he lodged the complaint. He further admits that panchas were told about the contents of the complaint. He also admits that the tainted currency notes were kept in his shirt pocket by the pancha witness Sri Chandrakantha and afterwards the hands of Sri Chandrakantha was washed in the sodium carbonate solution and that solution turned to pink colour. He has deposed that he do not remember whether the Lokayukta police instructed him to give the tainted currency notes to DGO No.2 if DGO No.2 demands for the bribe amount. He admits that another pancha witness Sri Ashok was instructed to accompany him. He also admits that Ex.P4 is the copy of the entrustment mahazar. He also admits that after the entrustment mahazar

himself, panchas, I.O. and his staff went to the Panchayath Raj Engineering office situated in Gulbarga. He has deposed that himself and pancha witness Sri Ashok went inside the office and DGO No.2 was not in the office and he contacted DGO No.2 over phone and DGO No.2 told PW1 to meet him in Yathrinivas hotel and PW1 had parked his car in Yathrinivas hotel itself and hence all of them went to Yathrinivas hotel and himself and the pancha witness Sri Ashok sat in the car of PW1 and the I.O., his staff and another panchas stood surrounding that car at a distance. He has also deposed that at about 7 p.m. DGO No.2 came there in his motor cycle and PW1 opened door of his car and DGO No.2 sat in front seat of that car and at that time Sri Ashok was sitting in the back seat of the car. He also admits that he enquired DGO No.2 about his work. He has deposed that he do not remember whether DGO No.2 asked him in Hindi language as to whether he has brought the amount. He has denied the suggestion that he gave the tainted currency notes to the DGO No.2 and DGO No.2 counted the same and kept the same in his shirt pocket. He has deposed that he himself kept the tainted currency notes in the shirt pocket of the DGO No.2. He has deposed that afterwards Lokayukta police and others came near his car and enquired him as to what happened and took DGO No.2 along with them to Lokayukta police station. He has deposed that the hands of DGO No.2 were washed separately in sodium carbonate solution and the solution turned to pink colour. He has deposed that the tainted currency note were also seized from the possession of the DGO No.2. He has deposed that by making alternative arrangement the shirt worn by the DGO No.2 was removed and the pocket portion of

the same was washed in the sodium carbonate solution and that solution also turned to pink colour. He has deposed that Ex.P5 is the copy of the trap mahazar.

17. In his cross-examination by the learned counsel for the DGO No.2 he admits that DGO No.2 is empowered to prepare the estimate and send it for approval to Social Welfare Department and DGO No.2 has no power to sanction the additional amount.

18. As stated above, PW1 is M.A. LL.B., graduate and it has to be said that he has lodged the complaint as per Ex.P3 by knowing the contents of the same. As stated above, Ex.P5 is the copy of the trap mahazar to which the complainant has also signed. In the same it is clearly mentioned that DGO No.2 came inside the car of PW1 and sat in the front seat and when PW1 asked DGO No.2 about his work, DGO No.2 asked PW1 in Hindi language as to whether he has brought the amount and he gave the tainted currency notes and DGO No.2 received the same with his right hand and counted the amount using both his hands and kept the amount in his shirt pocket and afterwards PW1 got down from the car and gave the pre-instructed signal and immediately the I.O. and others came there. As stated above PW1 being a graduate has signed Ex.P5 knowing the contents of Ex.P5 also. But only with an intention of helping the DGO No.2 he has deposed that he himself kept the tainted currency notes in the shirt pocket of the DGO No.2. The over all evidence of PW1 only shows that as per the demand made by DGO No.2 he had given the tainted currency notes to DGO No.2 and DGO No.2

received the same and kept it in his shirt pocket after counting the same.

19. There is no cross-examination of PW1 on behalf of DGO No.1. But as stated above even according to the complaint and evidence of PW1, DGO No.1 has not at all demanded for bribe amount at any time nor received the same from PW1. As stated above, in the complaint it is stated that DGO No.2 demanded the bribe amount of Rs. 15,000/- stating that it is for himself and DGO No.1. But as stated above, there is absolutely no evidence to prove that DGO No.1 had instructed DGO No.2 to demand for the bribe amount from PW1 on behalf of DGO No.1 also.

20. PW2 is Sri Chandrakanth, and he has deposed that he is working in Horticulture Department as gardener and on 26/10/2007 he had been to Gulbarga Lokayukta police station as per the instructions of his higher officer. He has deposed that in the police station PW2 and another pancha witness were present and the I.O. read the complaint given by PW1. He has also deposed about the gist of the complaint. He has deposed that PW1 produced the amount of Rs. 10,000/- and powder was smeared to the notes and he kept those notes in the shirt pocket of PW1 and afterwards his hands were washed in the solution and that solution turned to pink colour. He has deposed that instructions were given to the complainant by the I.O. and also to the shadow witness. He has deposed that Ex.P4 is the copy of the entrustment mahazar.

21. PW2 has further deposed that afterwards they went to the office of the Panchayath Raj Engineering Sub-Division, Gulbarga and PW1 and the shadow witness Sri Ashok were sent inside that office and they returned back and PW1 told that the DGO No.2 is not in the office and DGO No.2 has informed him over phone to come to Yathrinivas hotel at 7 p.m. on that day. PW2 has further deposed that they went to Yathrinivas hotel and DGO No.2 came at 7 p.m. in the motor cycle and sat in the front seat of the car of PW1. He has deposed that after sometime PW1 got down from the car and gave the pre-instructed signal. He has deposed that himself, I.O. and his staff approached PW1 and PW1 showed the DGO No.2 and told that DGO No.2 has received the amount from him. He has deposed that the I.O. introduced himself to the DGO No.2 and the tainted currency notes were produced by the DGO No. 2 from his shirt pocket and Ex.P5 is the copy of the trap mahazar. He has deposed that the hand wash and the shirt wash of the DGO No.2 was positive.

22. PW2 has been treated as hostile witness by the Presenting Officer on the ground that he has not given evidence in the chronological order. In his cross-examination by the Presenting Officer he admits the contents of entrustment mahazar Ex.P4 in respect of which he had not given his evidence in his examination in chief. He also admits that after PW1 gave the pre-instructed signal the I.O. introduced himself to DGO No.2 and the hands of DGO No.2 were washed in the solution and that solution turned to pink colour and afterwards when the I.O. enquired the DGO No. 2 about the amount received from PW1, DGO No.2 produced the

tainted currency notes which were in his shirt pocket. He also admits that DGO No.2 gave his explanation in writing and the copy of the same is at Ex.P8 and PW1 and the shadow witness Sri Ashok denied the contents of Ex.P6 as false. Thus PW2 has given his evidence in accordance with the case of the disciplinary authority. PW2 has been cross-examined by the learned counsel for the DGO No.2 and even in his cross-examination he has given his evidence in support of the case of the disciplinary authority. He has denied the suggestion of the learned counsel for the DGO No.2 to the effect that when PW1 tried to give the amount, DGO No.2 refused the amount by pushing the tainted currency notes from his left hand.

23. PW3 is the shadow witness Sri Ashok and he has deposed that in the year 2007 he was working as SDA in small Savings Department in Gulbarga. He has deposed that as per the instructions of his higher officer he had been to Lokayukta police station and he do not remember for what purpose he was summoned to the Lokayukta police station. He has deposed that the Lokayukta police took his signature to Ex.P4 and he do not know the contents of Ex.P2. He has deposed that the Lokayukta police took him to Yathrinivas hotel and brought him back from that place to Lokayukta police station. He has deposed that he do not remember what happened in Yathrinivas hotel. He has deposed that his signature is found in Ex.P5 and he put that signature in Lokayukta police station and he do not know the contents of the same.

24. PW3 has been treated as hostile witness and cross-examined by the Presenting Officer. He has deposed that on 26/10/2007 he had been to Lokayukta police station and PW2

had also come to Lokayukta police station on that day. He admits that the hands of PW2 were washed in the solution and that solution turned to red colour. He admits that all of them went in the jeep to the office of the DGOs. But he denies having gone inside the office of the DGOs along with PW1. He also admits that afterwards himself and PW1 went in a car to Yathrinivas hotel and Lokayukta police followed that car. He denies the remaining case of the disciplinary authority except the hand wash of the DGO No.2 being positive and DGO No.2 producing the tainted currency notes from his shirt pocket and the shirt wash of the DGO No.2 being positive. He admits that Ex.P5 is the copy of the trap mahazar. He has deposed that Ex.P6 are the copies of the 10 photographs and in all the above said 10 photographs he is also seen.

25. PW3 admitting himself and PW1 going to Yathrinivas hotel in the car, admitting the hand wash of the DGO No.2 being positive and DGO No.2 producing the tainted currency notes from his shirt pocket and the shirt wash of the DGO No.2 being positive clearly shows that PW3 is suppressing what happened in the car only with an intention to help the DGO No.2. Hence, it has to be said that PW3 has tried to help the DGO No.2 by suppressing what happened in the car between PW1 and DGO No.2 in Yathrinivas hotel.

26. PW4 is Sri Maheshwara gowda, and he has deposed that from 22/09/2007 to 23/02/2011 he was working as Police Inspector in Lokayukta police station, Gulbarga. He has deposed that on 26/10/2007 at 2 p.m. PW1 came to the Lokayukta police station and gave the complaint as per Ex.P3 and on the basis of the same he registered the case and send

the FIR to the concerned court and the copy of the same is at Ex.P7. He has deposed about securing the panchas and informing the panchas about the complaint given by PW1. He has deposed that PW1 produced the micro cassette tape-recorder which he had received from the Lokayukta police station on 25/10/2007 and the conversation recorded in the same was played in the presence of the panchas and the complainant and he has deposed that PW1 produced the amount of Rs. 10,000/-. He has deposed about all other averments mentioned in the entrustment mahazar, the copy of which is at Ex.P4 and I feel it is not necessary to repeat the same.

27. PW4 has further deposed that on the same day at 4.50 p.m. they went to the Zilla Panchayath Engineering office and PW1 and PW3 were sent inside that office. But they came back after some time and PW1 told that DGO No.2 will come Yathrinivas at 7 p.m. He has deposed that they went to Yathrinivas hotel and PW1 was waiting in his Maruthi car in that place and DGO No.2 came in his motor cycle and stopped the motor cycle and got into the car of PW1. He has deposed that after some time PW1 got down from the car and gave the pre-instructed signal. After the pre-instructed signal, his staff and panchas went to that place and by that time DGO No.2 had got down from the car of PW1. He has deposed that PW1 showed DGO No.2 and told that he has received the amount from him. He has deposed that he introduced himself to DGO No.2 and told him about case registered against him and asked him to co-operate in the investigation. He has deposed that he enquired PW1 and PW3 as to what happened in the

car and they told him that DGO No.2 came inside the car of PW1 asked for the amount and received the same and kept it in his shirt pocket. He has deposed that as that place was a public place, he brought DGO No.2 to Lokayukta police station and continued the investigation. He has deposed that the hands of DGO No.2 were washed in the sodium carbonate solution separately and the solution turned to pink colour. He has deposed that when he questioned the DGO No.2 about the amount received from PW1 and DGO No.2 produced the tainted currency notes from his shirt pocket and those notes were the same notes mentioned in the entrustment mahazar and those notes were seized. He has deposed that even the shirt wash of DGO No.2 was positive (pocket portion). He has deposed that the shirt of the DGO No.2 was also seized and DGO No.2 gave his explanation in writing as per Ex.P8 and PW1 and PW3 denied the same as false. He has deposed that Ex.P5 is the copy of the Trap Mahazar and Ex.P6 are the photographs taken at the time of the entrustment mahazar and trap mahazar. He has deposed that the copy of the sketch of scene of occurrence is at Ex.P9 and Ex.P10 is the FSL report. He has deposed that Ex.P11 is the copy of the service particulars of DGO No.2 and Ex.P12 is the copy of the service particulars of DGO No.1. He has deposed that Ex.P13 are the copies of the documents of the complainant PW4 has been cross-examined at length, but nothing is made out in his cross-examination to discard his evidence. He has denied the suggestion that the tainted currency notes were kept in the shirt pocket of the DGO No.2 by PW1 even though DGO No.2 did not demand for any amount. He has deposed that after the

hand wash of the DGO No.2, DGO No.2 produced the tainted currency notes from his shirt pocket.

28. DW1 is the DGO No.2 and he has deposed that DGO No.1 had instructed him to inspect and to submit the utilization certificate. He has deposed that he had also submitted the utilization certificate and it was not accepted by the concerned department. He has deposed that on 26/10/2007 PW1 met him near Yathrinivas hotel and requested him to amend the utilization certificate and also requested to take into account the raw materials stored in the place of construction and forcibly kept the tainted amount in his shirt pocket and there after immediately the DGO No.2 returned the amount to the complainant and told that the utilization certificate cannot be amended as per the request of PW1. He has deposed that the moment he got down from the car of the complainant he was apprehended by the Lokayukta police and drawn the false seizure mahazar. He has deposed that in Ex.P8 it is stated that PW1 put the amount in the shirt pocket of DGO No.2 forcibly and that he returned the amount to PW1. There is no cross-examination of PW1 to that effect by DGO No.2. PW1 in his cross-examination by the disciplinary authority has stated that he voluntarily kept the amount in the shirt pocket of DGO No.2 and he has not at all deposed that he forcibly kept the amount in the shirt pocket of DGO No.2 and DGO No.2 gave back that amount to him. As stated above, DGO No.2 admits that on 26/10/2007 he met PW1 in the car of PW1 in Yathri nivas hotel and he has not given any reasons as to why he met PW1 on the above said date and place which only supports the case of the disciplinary

authority that to receive the illegal gratification he met PW1 on the above said time, date and place. DGO No.2 has produced Ex.D1 to D5. Ex.D1 is the copy of the order of CEO, Zilla Panchayath, Gulbarga regarding the release of amount of Rs. 4,99,375/- for construction of hotel building stated above. Ex.D2 is the copy of the letter from Social Welfare Department to A.E.E., Panchayath Raj Engineering Sub-division, Gulbarga dated: 23/06/2007 wherein it is stated that Administrative approval is given for Rs. 10 lakhs for construction of the above said building and out of the same Rs. 7.50 lakhs is released and remaining Rs. 2,50,000/- is to be borne by the institution and that utilization certificate be given for the amount released. In Ex.D2 itself the DGO No.1 has made shara instructing DGO No.2 to inspect the construction and to give the necessary certificate. Ex.D3 is the copy of the letter by the Sant Kabirdas Education Society, Gulbarga, addressed to A.E.E., PRE sub-division, Gulbarga requesting for issue the utilization certificate and in the same there is also mention about the building materials stored for the building construction and to consider the same also. Ex.D4 is the copy of the letter addressed to DGO No.2 by DGO No.1 dated: 23/10/2007 to inspect the construction and to give the report. Ex.D5 is the copy of the letter addressed to DGO No.1 by DGO No.2 along with copy of the utilization certificate. As stated above, it is the case of the disciplinary authority that utilization certificate given was not in order and hence, PW1 had approached DGO No.2 for issue of proper utilization certificate. The documents Ex.D1 to D5 are not in dispute. In his cross-examination DGO No.2 admits that there is no ill-will between himself and PW1 and likewise there is no ill-will

between himself and the I.O. also. He admits that on 26/10/2007 the file of PW1 was in his office. He has deposed that the tainted currency notes were seized from his shirt pocket, which is contrary to his examination in chief and Ex.P8. As stated above, in his examination in chief and in Ex.P8, DGO No.2 has stated that he had given back the amount to PW1 and afterwards he was apprehended by the Lokayukta police. But as stated above in his cross-examination he admits that I.O. seized the tainted currency notes from his shirt pocket which only supports the case of the disciplinary authority and falsifies of the contention of DGO No.2 taken in Ex.P8.

29. DGO No.1 has been examined as DW2 and he has deposed that he was on leave from 27/10/2007 to 29/10/2007 and he had taken permission to leave the head quarters by utilising the general holiday dated:28/10/2007 to go to Bombay for medical treatment and it was sanctioned and the copy of that document is at Ex.D6. Ex.D6 shows that DGO No.1 was given C.L. on 27/10/2007 and 29/10/2007 with permission to utilize general holiday on 28/10/2007 to go to Bombay for medical treatment. DW2 has further deposed that he was not at all in station on 27/10/2007 and he had never instructed DGO No.2 to receive the illegal gratification amount from PW2 on his behalf also. Ex.D7 is the copy of the laboratory report dated: 27/10/2007.Ex.D8 is the copy of the prescription dated; 29/10/2007 by the Dr. Uday Khopkar of Mumbai. He has deposed that on 26/10/2007 he left the office and boarded the train at 6 p.m. to go to Bombay. As stated above, even according to the case of the Disciplinary Authority

the DGO No.1 has not demanded any bribe from PW1 nor received any bribe amount from PW1. It is the case of the Disciplinary Authority that the DGO No.2 had demanded the bribe amount from PW1 on his behalf and also on behalf of DGO No.1. But there is no evidence to prove that DGO No.1 had instructed the DGO No.2 to demand and accept the bribe amount from PW1. In the absence of the same it has to be said that the Disciplinary Authority has failed to prove its case so for as DGO No.1 is concerned. But the Disciplinary Authority has proved its case regarding DGO No.2. The facts and circumstances of this case clearly supports the case of the Disciplinary Authority regarding DGO No.2 demanding and accepting the bribe amount from PW1.

30. The DGOs have produced the copy of the judgment passed in Special case No. 221/2009 by the Prl. Sessions Judge at Gulbarga, the same discloses that the Lokayukta Police had filed the criminal case against the DGO Nos.1 and 2 and after trial the DGO Nos.1 and 2 have been acquitted on 16/03/2012. 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.221/2009 on the Prl. Sessions Judge at Gulbarga, by itself is not sufficient to overlook the evidence placed on record by the Disciplinary Authority.

31. Thus the DGO No.2 has failed to maintain absolute integrity, devotion to duty and acted in a manner of unbecoming of a Government Servants. Hence, I answer above point in the **AFFIRMATIVE** regarding DGO No.2 and in the **"NEGATIVE"** in respect of DGO No.1.

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

:: ORDER ::

The Disciplinary Authority has failed to proved the charges against the DGO No.1- Sri Shivaji S/o Amboji Kavale, Assistant Executive Engineer, Panchayath Raj Engineering Sub-Division, Gulbarga (now retired).

The Disciplinary Authority has satisfactorily proved the charges against DGO No.2-Sri Khaja Sadduruddin s/o Mohd. Mahmood Ali @ Mohd. Mahaboob Ali, Junior Engineer, Panchayath Raj Engineering Sub-Division, Gulbarga.

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

Dated this the 24th day of October, 2019

-Sd/-

(Somaraju)

Additional Registrar Enquiries-4,
Karnataka Lokayukta,
Bengaluru.

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

- PW-1: Sri Tukaram Bavi doddy (complainant)
- PW-2: Sri Chandrakanth (pancha witness)
- PW-3: Sri Ashok (shadow witness)
- PW-4: Sri Maheshwara gowda (I.O.)

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE:

- DW-1: Sri Khaja Sadruddin (DGO No.2)
 DW-2: Sri Shivaji Ambaji Kavale (DGO No.1)

LIST OF EXHIBITS MARKED ON BEHALF OF DISCIPLINARY AUTHORITY

- Ex.P-1: Certified copy of the letter of District Social Welfare Officer, Gulbarga dated; 23/06/2007 addressed to A.E.E., PRED., Division, Gulbarga
 Ex.P-2: Certified copy of the investigation report
 Ex.P-2(a): Certified copy of the utilisation certificate
 Ex.P-2(a)(1): Relevant entry in Ex.P2(a)
 Ex.P-3: Certified copy of the complaint
 Ex.P-4: Certified copy of the Entrustment Mahazar
 Ex.P-5: Certified copy of the Trap Mahazar
 Ex.P-6: Certified copy of the Xeroxed photos on the white sheet
 Ex.P-7: Certified copy of the FIR
 Ex.P-8: Certified copy of the explanation of DGO No.2
 Ex.P-9: Certified copy of the sketch
 Ex.P-10: Certified copy of the chemical examination report
 Ex.P-11: Certified copy of the service particulars of DGO No.2
 Ex.P-12: Certified copy of the service particulars of DGO No.1
 Ex.P-13: Certified copy of the permanent employee attendance book with certified copies of the enclosures (total 15 sheets)
 Ex.P-14: Certified copy of the conversation takes place between complainant and the DGOs
 Ex.P-15: Original copy of the reply of DGO No.1 to the observation note dated: 16/06/2011
 Ex.P-15(a): Original copy of the reply of DGO No.2 to the observation note dated: 16/06/2011

LIST OF EXHIBITS MARKED ON BEHALF OF DGOs:

- Ex.D-1: Xerox copy of the order passed by CEO, Zilla Panchayath, Gulbarga
 Ex.D-2: Certified copy of the letter of District Social Welfare Officer, Gulbarga dated; 23/06/2002 addressed to A.E.E., PRED., Division, Gulbarga
 Ex.D-3: Certified copy of the letter dated: 16/10/2007 of President, Santha Kabir dasa, Education Society, Gulbarga addressed to A.E.E., Panchayath Raj Engineering Sub-Division, Gulbarga

- Ex.D-4: Certified copy of the letter dated; 23/10/2007 of A.E.E., PRED, Sub-Division, Gublarga, addressed to DGO No.2
- Ex.D-5: Certified copy of the letter of DGO No.2 addressed to A.E.E., Panchayath Raj Engineering Sub-Division, Gulbarga with certified copy of the enclosure
- Ex.D-6: Certified copy of the letter of A.E.E., PRED Sub-division Gulbarga dated: 26/10/2007 addressed to E.E. Panchayath Raj Engineering Sub-Division, Gulbarga
- Ex.D-7: Certified copy of the laboratory Report
- Ex.D-8: Certified copy of the prescription of Dr. Uday Khopkar, Dermatologist

Dated this the 24th day of October, 2019

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

