

BEFORE THE ADDITIONAL REGISTRAR, ENQUIRES-11

KARNATAKA LOKAYUKTA, BENGALURU

ENQUIRY NO: LOK/INQ/14-A/26/2012/ARE-11

ENQUIRY REPORT Dated: 29/06/2017

Enquiry Officer: V.G.Bopaiah
Additional Registrar
Enquiries-11
Karnataka Lokayukta
Bengaluru.

Delinquent Government Official: Sri M.Shankar

Discharged duties as Group-D employee and Assistant to the Food Inspector attached to Ward number 49, Bruhath Bengaluru Mahanagara Palike, Basavanagudi, Bengaluru in the year 2006. Due for retirement on superannuation on 28-02-2025.

REPORT

In the year 2006 the Delinquent Government Official (in short "DGO") by name M.Shankar was working as Group-D employee and assistant to the Food Inspector attached to Ward number 49, Bruhath Bengaluru Mahanagara Palike, Basavanagudi, Bengaluru. He is due for retirement on superannuation on 28-02-2025.

2) Facts which necessitated to initiate the present inquiry proceedings may be stated in brief. One Girija, the wife of complainant by name N.T. Nanjegowda resident of number 34/8, Maruthi Complex, Ittamadu Main Road, Banashankari 1st Stage, Bengaluru was running bakery under name and style "VBB Bakery" at Ittamadu Main Road, 3rd

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Stage, Banashankarai, Bengaluru. According to the complainant, he obtained necessary licence from the concerned Health Department, Bruhath Bengaluru Mahanagara Palike (in short "BBMP") to run the above said bakery. When he approached the DGO for renewal of licence, according to the complainant, the DGO demanded illegal gratification of Rs.1,500/- in order to extend official favour. The complainant felt annoyed by the said demand approached the Police Inspector (hereinafter will be referred to as "Investigating Officer") attached to Karnataka Lokayukta Police Station, City Division, Bengaluru on 27-9-2006 at 11-00 AM and lodged written complaint against the DGO. On the basis of the said complaint the Investigating Officer registered case against the DGO in crime number 36/2006 for the offence punishable under section 7, for the offence defined under section 13(1) (d) which is punishable under section 13(3) of The Prevention of Corruption Act, 1988 and submitted FIR to the jurisdictional Court at Bengaluru. Thereafter, the Investigating Officer secured a shadow witness by name Beeraiah and panch witness by name Shankar.V to Lokayukta Police Station, City Division, Bengaluru. The complainant placed three currency notes of denomination of Rs.500/- each before the Investigating Officer. The Investigating Officer got entered numbers of the above notes on a sheet of paper and got applied phenolphthalein power on those notes. On the instructions of the Investigating Officer panch witness by name Shankar.V placed the tainted notes in the left side pocket of the shirt of the complainant. The Investigating Officer got prepared solution with water and sodium carbonate powder and thereafter, obtained sample of the said solution in a bottle. On the instructions of the Investigating Officer, panch witness Shankar.V immersed fingers of hands in the residual solution. The said finger wash of both hands of Shankar.V

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turned to pink colour. The Investigating Officer seized the said wash in a bottle and with that process conducted pre-trap mahazar in Lokayukta Police Station, City Division, Bengaluru. Thereafter, the Investigating Officer along with his staff, complainant, shadow witness and trap witness left Lokayukta Police Station, City Division, Bengaluru in the departmental Maruti Omni. The DGO informed the complainant over phone to meet in the above bakery. Accordingly, the Investigating Officer along with his staff, complainant, shadow witness and panch witness reached near that bakery at 2-30 PM. Afterwards, on the instructions of the Investigating Officer when the complainant contacted the DGO over phone the complainant was informed to meet the DGO in the evening hours. Since till 8-00 PM the DGO has not arrived at the said bakery, the Investigating Officer along with his staff, complainant, shadow witness and panch witness returned to Lokayukta Police Station, City Division, Bengaluru and conducted panchanama and instructed the complainant, shadow witness and panch witness to arrive at in Lokayukta Police Station, City Division, Bengaluru on 28-9-2006. In response, on 28-9-2006 at 10-00 AM the complainant, shadow witness and panch witness appeared before the Investigating Officer in Lokayukta Police Station, City Division, Bengaluru. Again, the Investigating Officer got applied phenolphthalein powder on the above notes and on the instructions of the Investigating Officer the above notes are placed in the left side pocket of the shirt of the complainant by the panch witness by name Shankar.V. Afterwards, when the complainant contacted the DGO over phone the DGO informed the complainant to arrive at near the office of DGO. In response, the Investigating Officer along with his staff, complainant, shadow witness and panch witness reached the BBMP office at Basavanagudi at 3-30 PM. The complainant and shadow witness


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went to the third floor of the building in which the office of DGO is situated. Since DGO was not found in that office, the complainant contacted the DGO over phone. Sometime thereafter, the DGO contacted the complainant over phone and informed that he is in the basement area of that building. Afterwards, the complainant along with the shadow witness got down from the third floor of that building. DGO was by the side of the nearby Bull Temple road. The DGO asked the complainant about money. The complainant gave the above tainted notes to DGO. The DGO accepted the tainted notes with right hand and after counting with both hands kept those notes in the left side front pocket of the pant. It was then about 4-45 PM. The complainant offered signal to the Investigating Officer by wiping face with kerchief. Immediately thereafter, the Investigating Officer along with this staff and panch witness Shankar.V. rushed there. The DGO was pointed out to the Investigating Officer by the complainant. The Investigating Officer disclosed his identity to the DGO and informed the purpose of his presence in that place. The Investigating Officer got prepared solution with water and sodium carbonate powder in two containers on the nearby foot path and obtained sample of that solution. On the instructions of the Investigating Officer the DGO immersed fingers of right hand in the solution kept in one container and immersed fingers of left hand in the solution kept in another container. Finger wash of both hands of DGO turned to pink colour. The Investigating Officer seized the said wash separately in two bottles. On being questioned by the Investigating Officer about tainted notes the DGO took out tainted notes from the left side front pocket of the pant. The Investigating Officer seized the said cash. By that time some public arrived at there and therefore the Investigating Officer found that the said place is not suitable for conducting further proceedings and

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thereafter the Investigating Officer along with his staff, complainant, shadow witness and panch witness brought the DGO to the office of DGO. After reaching the office of DGO, the Investigating Officer got prepared solution with water and sodium carbonate powder in two containers. The Investigating Officer provided alternate pant to DGO and got removed the pant of DGO. Thereafter, the Investigating Officer got immersed the left side front pocket of pant of DGO in the solution kept in one container and got immersed fingers of both hands of the complainant in the solution kept in another container. The above wash turned to pink colour. The Investigating Officer seized the said wash separately in two bottles. The Investigating Officer seized the pant of DGO. On being questioned about the above tainted currency notes the DGO gave statement in writing. The Investigating Officer conducted trap mahazar in the office of DGO. Further investigation disclosed prima facie case against the DGO and after obtaining sanction for prosecution the Investigating Officer filed charge sheet before the jurisdictional Court at Bengaluru.

3) On the basis of materials placed by the Additional Director General of Police, Karnataka Lokayukta, the Hon'ble Upalokayukta-1, Karnataka took up investigation under section 7(2) of The Karnataka Lokayukta Act, 1984 and at the conclusion of the investigation found that materials on record prima facie point out that DGO has committed misconduct within the meaning of Rule 3(1) of The Karnataka Civil Services (Conduct) Rules, 1966 and accordingly, in exercise of the powers conferred upon under section 12(3) of The Karnataka Lokayukta Act, 1984, recommended the Competent Authority to initiate disciplinary proceedings against the DGO and to entrust the inquiry to the Hon'ble

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Upalokayukta under Rule 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. Subsequent to report dated 5-9-2011 of the Hon'ble Upalokayukta, order No.ಸಂಖ್ಯೆ:ಬಿ12(4)ಪಿಆರ್/428/2011-12 ದಿನಾಂಕ:2-12-2011 has been issued by the Commissioner, BBMP entrusting the inquiry to the Hon'ble Upalokayukta under Rule 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. Thereafter, corrigendum dated 28-12-2011 to the above order has been issued by the Commissioner, BBMP that the earlier designation of the DGO as Group-D official attached to Health Officer (Basavanagudi) Sub-division Office be read as Group-D official and Assistant of the Food Inspector attached to ward number 49, BBMP, Basavanagudi. Subsequent to the above order and its connected corrigendum, order number LOK/INQ/14-A/26/2012, Bengaluru dated 12-01-2012 has been ordered by the Hon'ble Upalokayukta-1 nominating the Additional Registrar, Enquiries-4, Karnataka Lokayukta as Inquiry Officer to frame charges and to conduct departmental inquiry against the DGO.

4) Articles of charge dated 16-06-2012 framed by the then Additional Registrar, Enquires-4, Karnataka Lokayukta, which includes articles of charge at Annexure-I and statement of imputation of misconduct at Annexure-II is the following:

ANNEXURE-I

CHARGE

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"That, you Sri M.Shankar, the DCO, while working as Group 'D' Employee, Assistant to Food Inspector of Ward No.49, Basavanagudi BBMP Bangalore, the complainant namely Sri N.T. Nanjegowda approached you on 26/09/2006 for the purpose of renewal of licence for the year 2006 in respect of "VBB Bakery & Sweets" on Ittamadu Main Road of Banashankarai in Bangalore which was in the name of his wife and then you asked for bribe of Rs.1,500/- and on 28/09/2006 received the said amount of Rs.1,500/- as bribe from the complainant to show official favour, failing to maintain absolute integrity, devotion to duty and acted in a manner un-becoming of a Public Servant and thereby committed mis-conduct as enumerated U/R 3(1) (i) to (iii) of Karnataka Civil Service (Conduct) Rules 1966.

ANNEXURE-II
STATEMENT OF IMPUTATIONS OF MISCONDUCT


The complainant namely Sri N.T. Nanjegowda was running a bakery under the name and style "VBB Bakery & Sweets" at Ittamadu Main Road, Banashankari, Bangalore. The said Bakery was in the name of his wife. On 26/09/2006, the complainant approached the DCO for renewal of licence of the said bakery for the year 2006. Then, the DCO asked the complainant for payment of bribe of Rs.1,500/-. The complainant was not willing to pay the bribe as demanded by the DCO. Therefore, on 28/09/2006 complainant approached the Lokayukta Police Inspector of Bangalore City Division, Bangalore (herein after referred to as the Investigating Officer, for short "the I.O."). The I.O. registered the complaint in Cr.no.36/2006 for the offences punishable U/S 7, 13(1) (d) r/w 13(2) of the Prevention of Corruption Act 1988. During the course of investigation and on 28/09/2006 the DCO received bribe of Rs.1,500/- from the complainant near his office on Bull Temple Road in Bangalore and then the I.O. trapped the DCO. The I.O. seized bribe amount from the possession of the DCO under a mahazar. The I.O. took statement of DCO in writing and recorded statements of complainant and panch witnesses. The I.O. sent the articles seized under trap mahazar to the Chemical Examiner for examination and report. After obtaining the report from the

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Chemical Examiner, the I.O. completed investigation and filed report of investigation. The record of investigation and the materials collected by the I.O. showed that, the DBO had committed mis-conduct failing to maintain absolute integrity and devotion to duty and acted in a manner un-becoming of a Public servant. As the materials on record showed prima facie case about the DCO receiving bribe for discharging his official duty as a public servant, a suo-moto investigation was taken up U/S 7(2) of Karnataka Lokayukta Act against the DCO and an observation note was sent to the DCO calling for his explanation. The Explanation given by the DCO was not convincing and not satisfactory to drop the proceedings. As there was prima facie case showing that the DCO committed mis-conduct as per rule 3(1) of KCS (Conduct) Rules, 1966, a report U/S 12(3) of the Karnataka Lokayukta Act was sent to the Competent Authority with recommendation to initiate disciplinary proceedings against the DCO and to entrust the departmental enquiry to the Hon'ble Upalokayukta U/R 14-A of K.C.S. (CCA) Rules. Accordingly, the Commissioner, BBMP, Bangalore initiated disciplinary proceedings and entrusted the enquiry to the Hon'ble Upalokayukta. Hence, the charge".

5) In response to service of Articles of charge, DGO entered appearance before the Additional Registrar, Enquiries-4, Karnataka Lokayukta, Bengaluru on 20-07-2012. During first oral statement of DGO recorded on 20-07-2012 DGO pleaded not guilty. On 4-1-2013 DGO has filed written statement in which he has denied the charge levelled against him. On 17-4-2013 DGO has engaged advocate for his defence.

6) The disciplinary has examined the complainant by name N.T.Nanajegowda as PW1 and shadow witness by name Beeraiiah as PW2 before the Additional Registrar, Enquiries-4, Karnataka Lokayukta, Bengaluru. During evidence of the complainant, attested copy of the complaint dated 27-9-2006 in a single sheet is marked as per Ex P1, attested copy of pre-trap mahazar in four sheets is marked as per Ex P2,

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attested copy of mahazar in two sheets dated 27-9-2006 drawn in Lokayukta Police Station, City Division, Bengaluru between 8-30 PM and 9-00 PM is marked as per Ex P3, attested copy of statement of DGO in a single sheet is marked as per Ex P4, attested copy of trap mahazar in six sheets is marked as per Ex P5. As per order number LOK/INQ/14-A/2014 dated 14-03-2014 of the Hon'ble Upalokayukta-1 this file has been transferred to Additional Registrar, Enquiries-5, Karnataka Lokayukta, Bengaluru. Subsequent to transfer of file to the Additional Registrar, Enquires-5, Karnataka Lokayukta, Bengaluru the panch witness by name Shankar.V has been examined as Ex P3. During the evidence of PW3 his signature found on Ex P2 is marked as per Ex P2(a), his signature found on Ex P3 is marked as per Ex P3(a), his signature found on Ex P5 is marked as per Ex P5(a). As per order No. Uplok-1/DE/2016 Bengaluru dated 3-8-2016 of Hon'ble Upalokayukta-1 this file has been transferred to this authority i.e., Additional Registrar, Enquires-11, Karnataka Lokayukta, Bengaluru. Thereafter, the disciplinary authority has examined the Investigating Officer by name B.S. Ramamohan as PW4. During evidence of PW4 one attested copy of FIR in a single sheet is marked as per Ex P6, one attested single sheet containing numbers of tainted notes is marked as per Ex P7, one attested single sheet of attendance register maintained in the office of DGO is marked as per Ex P8, one attested copy of rough sketch in a single sheet of the place of trap is marked as per Ex P9, attested copy of report of chemical examiner in two sheets is marked as per Ex P10.


7) During second oral statement of DGO recorded on 6-3-2017 the DGO has stated that he does not intend either to get himself examined as defence witness or to examine any witnesses on his behalf.

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8) Incriminating circumstances which appeared against the DGO in the evidence of PWs 1 to 4 are put to DGO on 21-3-2017 by way of questionnaire. During questionnaire he has denied the material incriminating circumstances which appeared against him in the evidence of PWs 1 to 4. He contended that since he was working as Group-D official he was not empowered to renew the licence and that the said power is conferred upon the Food Inspector.

9) In the course of written argument filed by the Presenting Officer on 6-4-2017 it is mainly contended that oral and documentary evidence on record establishes the charge.

10) Heard the arguments addressed by advocate Sri. R.Satisha for DGO. During argument he ventured upon to emphasize that since DGO was not empowered to renew the licence it cannot be held that he is guilty of the alleged misconduct. He also contended that oral evidence on record instead of converging at corroboration runs contrary to each other and therefore oral evidence does not inspire confidence to arrive at conclusion that in order to extend official favour the DGO demanded and accepted tainted notes. He contended that the evidence of the complainant touching the alleged demand and acceptance of tainted notes is not corroborated by the testimony of shadow witness. He contended that cross examination of PW4 would show that PW4 was bent upon to see that charge sheet is filed against the DGO before the jurisdictional Court. Time was sought by the advocate for DGO to file written argument and accordingly time was granted to file written argument. Despite grant of time no interest has been evinced to file written argument on behalf of DGO.

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11) In the matter of renewal of the licence of "V.B.B. Bakery" of the wife of the complainant situated at Ittamadu main road, 3rd stage, Banashankari, Bengaluru, whether DGO demanded and accepted illegal gratification of Rs.1,500/- from the complainant on 28-09-2006 between 3-30 PM and 4-45 PM by the side of Bull Temple road near the office of DGO at Basavanagudi, Bengaluru and subsequently failed to offer satisfactory explanation for possession of the said tainted notes and thereby the DGO is guilty of misconduct within the ambit of Rule 3(1) (i) to (iii) of The Karnataka Civil Services (Conduct) Rules, 1966 is the sole point which arises for consideration.

12) Evidence of the complainant that the above bakery stands in the name of his wife and that the licence was to be renewed in the year 2006 is not under challenge. Evidence of the complainant that since the DGO demanded illegal gratification of Rs.1,500/- from him on 26-9-2006 for the purpose of renewal of licence he lodged complaint the attested copy of which is at Ex P1 is not under challenge. Evidence of PW4 that on 27-9-2006 at 11-00 AM he received the complaint against the DGO from the complainant and on the basis of the same he registered the case against the DGO in crime number 36/2006 and submitted FIR the attested copy of the same is at Ex P6 has not been challenged during this cross examination. Evidence of PW4 that he secured panch witness and shadow witness since has remained unchallenged that portion of his evidence needs acceptance. Evidence of PW1 that the shadow witness and panch witness are secured is not under challenge and therefore that portion of his evidence needs acceptance. PW2 Beeraiah who is the shadow witness and PW3 Shankar.V who is the panch witness have categorically spoken to that they had been to Lokayukta Police Station is

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not under specific challenge and therefore their evidence that they appeared in Lokayukta Police Station, City Division, Bengaluru on 27-9-2006 needs acceptance.

13) Evidence of the complainant that he produced three currency notes of denomination of Rs.500/- each before PW4 stands corroborated by the evidence of PW4 who during his evidence has spoken to that fact. It is also in the evidence of PWs 2 and 3 that the complainant produced three currency notes of denomination of Rs.500/- before PW4. Nothing worthy is brought out during cross examination of PW2 and PW3 to disbelieve that portion of their evidence. Evidence of the complainant touching application of phenolphthalein powder on the above notes stands corroborated by the evidence of PWs 2 to 4 who have spoken to that fact. Evidence of the complainant that pre-trap mahazar was conducted stands properly corroborated by the evidence of PWs 2 to 4 who during their evidence have spoken to in detail about pre-trap proceedings. Evidence of PWs 2 to 4 would show that tainted notes are placed in the left side pocket of shirt of the complainant and thereafter when PW3 washed fingers of both hands in the solution prepared with water and sodium carbonate powder the said wash turned to pink colour. There is no serious challenge against the proceedings of pre-trap mahazar conducted by PW4 on 27-9-2006 and therefore it stands established that PW4 conducted pre-trap mahazar as primitive step of investigation.

14) It is in the evidence of PWs 1 to 4 that subsequent to pre-trap mahazar when they proceeded to meet the DGO the DGO was not available and therefore they returned to Lokayukta Police Station, City

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Division, Bengaluru where mahazar was drawn the copy of which is at Ex P3.

15) It is in the evidence of the complainant that on 28-9-2006 he had been to Lokayukta Police Station, City Division, Bengaluru. It is in his evidence that on that day PW3 again kept tainted notes in the left side pocket of his shirt. That portion of his evidence stands corroborated by the evidence of PW3 and PW4 whose evidence would show that the said process was conducted. There is no serious challenge against that portion of evidence of PWs 1 to 4.

16) It is in the evidence of the complainant that on 28-9-2006 when he contacted the DGO over phone he was informed by DGO to arrive at the office of DGO at 3-00 PM. This portion of his evidence is not under challenge and therefore it stands established that DGO informed to arrive at the office at 3-00 PM. During cross examination of the complainant it is brought out that on 28-9-2006 when the complainant along with Lokayukta Police staff went near bakery and contacted the DGO over phone the DGO informed to arrive at the office of DGO. If really the DGO had no intention to enrich himself, then, there was no need for him to call upon the complainant to arrive at his office. This would show that the DGO was aimed at accepting illegal gratification.

17) It is in the evidence of the complainant that on 28-9-2006 when he along with the shadow witness went to the office of DGO which is in the third floor of the building the DGO was not found and therefore when he contacted the DGO over phone he was informed by DGO that DGO would arrive at the office at 5-30 PM. This portion of his evidence is not under challenge which further leads to draw conclusion that the DGO

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was very much aimed at accepting illegal gratification. It is worthy to mention that during cross examination of the complainant it is elicited that till 28-9-2006 the complainant was under the impression that DGO was the Food Inspector and even at the time of trap also the same impression continued. Therefore, it is clear that the complainant was under bonafide impression that DGO was the Food Inspector on 28-9-2006 and even earlier to the said date.

18) It is in the evidence of the complainant that at about 5-30 PM the DGO informed that the DGO is in the basement of the office building and accordingly when he reached the basement area the DGO demanded money and in response he gave cash and that the DGO counted the cash and kept the same in the left side pocket of pant. This portion of the evidence of the complainant stands amply corroborated by the testimony of the shadow witness (PW2) who during his evidence has stated that when the complainant contacted the DGO over phone the DGO replied that the DGO is in the basement premises of that office and accordingly when he along with the complainant went to the basement area the DGO was found there and when the complainant asked the DGO about renewal of licence the DGO asked whether amount is brought and in response the complainant gave the above tainted notes and that after counting those notes the DGO kept those notes in the left side pocket of pant. It is in the cross examination of the complainant that on 28-9-2006 he met the DGO in the main gate of the office of DGO for the first time on that day. The complainant admits during cross examination that at the time when he met the DGO the shadow witness was at a distance of eight or nine feet. Though the complainant admits during cross examination that Bull Temple road will be dense with traffic and

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there used to be sound in that area one cannot disbelieve the evidence of the shadow witness that he could not hear the conversation between the complainant and the DGO from a distance about eight or nine feet. It is brought out during cross examination of the complainant that at the time of handing over of money he has not asked for renewal of licence. At this juncture it is worthy to mention that suggestion is made to the complainant during cross examination that payment of Rs.1,500/- was towards renewal fee and penalty. The said suggestion is denied by the complainant. Suggestion made to the complainant during his cross examination suggesting that though the DGO has not demanded illegal gratification the complainant volunteered to pay a sum of Rs.1,500/- towards fee and penalty has been denied by the complainant. The tenor of this suggestion would show that the DGO has not specifically denied the acceptance of tainted notes. Suggestion made to the complainant during cross examination suggesting that the complainant had mistaken that DGO is the Food Inspector and therefore complaint has been lodged has been denied by the complainant.

19) During cross examination of the shadow witness (PW2) it is brought out that when he got down from the third floor of the building the DGO was found talking to two others and after those two persons left that place the DGO was contacted by the complainant. This portion of answer elicited during cross examination of PW2 is suggestive of the fact that the complainant met the DGO in that place. Suggestion made to PW2 during cross examination suggesting that the complainant spoke to the DGO for two or three minutes. Though PW2 admits during cross examination that he could not specifically hear the conversation between the complainant and DGO the evidence PW2 touching payment of tainted

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notes cannot be disbelieved. Suggestion made to PW2 at the end of his cross examination suggesting that the DGO has not accepted money from the complainant has been denied by him. Though such a suggestion is made to PW2 during cross examination the same is of no consequence for the reason that as could be seen from the tenor of the suggestion made to the complainant, according to the DGO, payment was made towards penalty and licence fee. It is worthy to mention at this juncture that evidence of the complainant in the opening paragraph of his examination-in-chief that on 26-9-2006 the DGO demanded illegal gratification of Rs.1,500/- in the matter of renewal of licence has remained unchallenged and therefore that portion of evidence of the complainant needs to be accepted which portion of evidence of the complainant strengthens the tenor of suggestion referred to above and also the evidence of the complainant that the DGO demanded and accepted cash of Rs.1,500/-.

20) Evidence of the complainant touching the process of finger wash of both hands of DGO and change of the said wash into light pink colour has remained unchallenged which portion of evidence needs to be accepted which is suggestive of the fact that the DGO accepted tainted notes. The evidence of the complainant that the wash of pocket portion of the pant of DGO turned to light pink colour is suggestive of the fact that after acceptance of tainted notes the DGO placed those notes in the left side pocket of the pant. Evidence of PW2 touching change of colour of finger wash of hands of DGO and also change of colour of wash of pocket of pant of DGO has remained unchallenged. Evidence of PW2 equally would show change of colour of wash of hands of DGO.

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21) It is in the evidence of PW4 that on 28-9-2006 at about 2-45 PM he found the complainant, shadow witness and the DGO near Bull Temple road by the side of the office of DGO and that the complainant wiped the face with kerchief. It is in the evidence of PW4 that after communication by way of wiping face with kerchief he rushed there where the DGO was pointed out him by the complainant. That portion of his evidence is not under challenge and therefore presence of the DGO in that place along with the complainant and shadow witness cannot be disbelieved. PW4 has spoken to that when the DGO washed fingers of right hand in the solution kept in one bowl and fingers of left hand in the solution kept in another bowl the said wash turned to pink colour and that he seized the same. That portion of evidence of PW4 has not been meticulously assailed during his cross examination except posing suggestion that fingers of right hand are only washed. That suggestion has been denied. Evidence of PW4 that when he got washed the left side pocket of pant of DGO the said wash has turned to pink colour equally has remained unchallenged. Upon appreciation of the evidence of PWs 1 to 4 it stands established that finger wash of hands of DGO and the wash of left side pocket of pant of DGO turned to pink colour which lends further assurance that DGO was found in possession of tainted notes. PWs 1 to 4 has spoken to touching the trap mahazar in the office of DGO. Evidence of PW4 that since the place where he conducted process of wash of fingers of DGO was found not suitable for conducting further process he brought the DGO to the office of DGO where he conducted trap mahazar is convincing. Thus, evidence of PWs 1 to 4 touching trap mahazar has remained established.

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22) During cross examination though the complainant pleads inability to state the procedure touching renewal of licence and admits that those procedures were made known to him by the BBMP authorities and that the licence was to be renewed earlier to 31-03-2006 will not take away the credibility of the testimony of the complainant. It is in the cross examination of the complainant that when notice was served in the year 2006 in relation to the bakery he came in contact with DGO. This portion of this evidence would lead to draw inference that since he came in contact with DGO at that time he must have thought that the DGO was working as Food Inspector. Though it is in the evidence of PW3 that shadow witness gave amount to DGO that portion of his evidence will not discredit the testimony of PWs 1 and 2 for the reason that it is brought out during his cross examination that when the complainant entered the office of DGO he was outside that office and that after the signal offered by the complainant he entered the office of DGO.


23) Attempts are bestowed during cross examination of PW4 to establish that DGO was not conferred upon with the powers of extending official favour. At this juncture it is worthy to focus attention at sections 7 and 13 (2) of The Prevention of Corruption Act, 1988. Law is settled that in a prosecution for the offences punishable under section 7 and 13(2) of The Prevention of Corruption Act, the prosecution is bound to establish that public servant has to demand and accept illegal gratification in order to extend official favour. The prosecution is also expected to establish that evidence of the complainant touching demand and acceptance of illegal gratification invariably has to be corroborated by the testimony of shadow witness and in the absence of corroboration by shadow witness presumption under section 20 of The Prevention of

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Corruption Act, 1988 cannot be raised. Law is settled that while appreciating the evidence in criminal trial proof beyond reasonable doubt is the yardstick which has to be applied. While appreciating evidence in any departmental inquiry, yardstick of preponderance of probabilities is to be applied. Acceptance of illegal gratification in order to extend official favour is of no relevance in the departmental inquiry. Keeping in mind Rule 3 (1) (i) to (iii) of The Karnataka Civil Services (Conduct) Rules, 1966 it needs to be appreciated whether the DGO has acted in the manner which is unbecoming of public servant. Evidence as discussed supra establishes that DGO accepted illegal gratification from the complainant and subsequent to recovery of tainted notes from his possession he has failed to offer any satisfactory explanation for possession of tainted notes. Failure on the part of DGO in not properly explaining the reason behind possession of tainted currency notes certainly would amount to misconduct within the scope and ambit of Rule 3 (1) (i) to (iii) of The Karnataka Civil Services (Conduct) Rules, 1966. For the reasons mentioned supra it needs to be held that the alleged misconduct as alleged in the articles of charge at annexure-I has remained established. Accordingly, I proceed with the following:


REPORT

Charge against DGO that in the matter of renewal of the licence of "V.B.B. Bakery" of the wife of the complainant situated at Ittamadu main road, 3rd stage, Banashankari, Bengaluru, the DGO demanded and accepted illegal gratification of Rs.1,500/- from the complainant on 28-09-2006 between 3-30 PM and 4-45 PM by the side of Bull Temple road near the office of DGO at Basavanagudi, Bengaluru and subsequently the DGO failed to offer satisfactory explanation for

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possession of the said tainted notes and thereby the DGO is guilty of misconduct within the ambit of Rule 3(1) (i) to (iii) of The Karnataka Civil Services (Conduct) Rules, 1966 is proved.

This report be submitted to the Hon'ble Upalokayukta-1 in a sealed cover forthwith.


(V.G. BOPAI AH)
Additional Registrar, Enquiries-11
Karnataka Lokayukta,
Bengaluru

ANNEXURE

List of witnesses examined on behalf of the Disciplinary Authority

- 1) PW-1:- N.T.Nanajegowda
- 2) PW-2: Beeraiah
- 3) PW-3: Shankar.V.
- 4) PW-4: B.S. Ramamohan

List of documents marked on behalf of the Disciplinary Authority

- 1) Ex P1: Attested copy of the complaint dated 27-9-2006 in a single sheet
- 2) Ex P2: Attested copy of pre-trap mahazar in four sheets
- 3) Ex P2(a): Signature of PW3 found on Ex P2
- 4) Ex P3: Attested copy of mahazar in two sheets dated 27-9-2006 drawn in Lokayukta Police Station, City Division, Bengaluru between 8-30 PM and 9-00 PM
- 5) Ex P3(a): Signature of PW3 found on Ex P3
- 6) Ex P4: Attested copy of statement of DGO in a single sheet given before PW4
- 7) Ex P5: Attested copy of trap mahazar in six sheets


- 8) Ex P5(a): Signature of PW3 found on Ex P5
- 9) Ex P6: Attested copy of FIR in a single sheet
- 10) Ex P7: Attested single sheet containing numbers of tainted notes
- 11) Ex P8: Attested single sheet of attendance register maintained in the office of DGO
- 12) Ex P9: Attested copy of rough sketch in a single sheet of the place of trap
- 13) Ex P10: Attested copy of report of chemical examiner in two sheets

List of witnesses examined on behalf DGO:-

Nil

List of documents marked on behalf of DGO:-

Nil


(V.G. BOPAI AH)
Additional Registrar, Enquiries-11
Karnataka Lokayukta,
Bengaluru.

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

NO: LOK/INQ/14-A/26/2012/ARE-11

Multi Storied Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001,
Date: 1/7/2017

RECOMMENDATION

Sub:- Departmental inquiry against Sri M. Shankar, Group-D employee and Assistant to the Food Inspector, Ward No.49, Bruhat Bengaluru Mahanagara Palike, Basavanagudi, Bengaluru - Reg.

Ref:- 1) Order No.B12(4) PR/428/2011-12 dated 2/12/2011 read with Corrigendum dated 28/12/2011 of the Commissioner, Bruhat Bengaluru Mahanagara Palike, Bengaluru.

2) Nomination order No.LOK/INQ/14-A/26/2012, Bengaluru, Dated 12/1/2012.

3) Inquiry Report dated 29/6/2017 of Additional Registrar of Enquiries-11, Karnataka Lokayukta, Bengaluru

The Commissioner, Bruhat Bengaluru Mahanagara Palike, Bengaluru by Order dated 2/12/2011 read with its Corrigendum dated 28/12/2011, initiated the disciplinary proceedings against Sri M. Shankar, Group D employee and Assistant to the Food Inspector, Ward No.49, Bruhat Bengaluru Mahanagara Palike, Basavanagudi, Bengaluru (hereinafter referred to as Delinquent Government Official, for short as **'DGO'**) and entrusted the Departmental Inquiry to this Institution.

2. This Institution by Nomination Order No.LOK/INQ/14-A/26/2012 dated 12/1/2012 nominated Additional Registrar of Enquiries-4, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct Departmental Inquiry

against DGO for the alleged charge of misconduct, said to have been committed by him. Subsequently, by Order No. LOK/INQ/14-A/2014 dated 14/3/2014 the Additional Registrar of Enquiries-5, Karnataka Lokayukta, Bengaluru was re-nominated as Inquiry Officer to conduct departmental inquiry against the DGO. Again, by Order No. UPLOK-1/DE/2016, Bengaluru dated 3/8/2016 the Additional Registrar of Enquiries-11, Karnataka Lokayukta, Bengaluru was re-nominated as Inquiry officer to conduct departmental inquiry against DGO.

3. The DGO was tried for the following charge:-

“That, you Sri M.Shankar, the DCO, while working as Group ‘D’ employee, Assistant to Food Inspector of Ward No.49, Basavanagudi BBMP Bengaluru, the complainant namely Sri N.T.Nanjegowda approached you on 26/09/2006 for the purpose of renewal of licence for the year 2006 in respect of “VBB Bakery & Sweets” on Ittamadu Main Road of Banashankari in Bangalore which was in the name of his wife and then you asked for bribe of Rs.1,500/- and on 28/09/2006 received the said amount of Rs.1,500/- as bribe from the complainant to show official favour, failing to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a public servant and thereby 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-11) on proper appreciation of oral and documentary evidence has held that the Disciplinary Authority has proved the above charge against DGO.


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

6. As per the first oral statement submitted by DGO, he is due to retire from service on 28/2/2025.

7. Having regard to the nature of charge (demand and acceptance of bribe) proved against DGO Sri M. Shankar, it is hereby recommended to the Government to impose penalty of compulsory retirement from service on DGO Sri M.Shankar.

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

Connected records are enclosed herewith.


(JUSTICE N. ANANDA) 1/7
Upalokayukta-1,
State of Karnataka,
Bengaluru

