

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

NO: LOK/INQ/14-A/313/2011/ ARE-3

Multi Storied Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001,
Date: 2/2/2018

RECOMMENDATION

- Sub:- Departmental inquiry against;
- (1) Sri Venkatesh, Office Superintendent, Office of the Taluk Social Welfare Officer, Yadgir Taluk, Yadgir District; and
 - (2) Sri Zakir Hussain, First Division Assistant, Office of the Taluk Social Welfare Officer, Yadgir Taluk, Yadagir District.

- Ref:- 1) Government Order No.ಸಕಇ 329 ಪಕಸೇ 2011, Bengaluru dated 24/9/2011
- 2) Nomination order No.LOK/INQ/14-A/313/2011, Bengaluru dated 30/9/2011 of Upalokayukta-1, State of Karnataka, Bengaluru
 - 3) Inquiry Report dated 27/1/2018 of Additional Registrar of Enquiries-3, Karnataka Lokayukta, Bengaluru

The Government by its Order dated 24/9/2011, initiated the disciplinary proceedings against (1) Sri Venkatesh, Office Superintendent and (2) Sri Zakir Hussain, First Division Assistant, both of the office of the Taluk Social Welfare Officer, Yadgir Taluk, Yadgir District, (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/313/2011, Bengaluru, dated 30/9/2011, nominated Additional Registrar of Enquiries-3, Karnataka Lokayukta, Bengaluru, as 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 Venkatesh, Office Superintendent and DGO-2 Sri Zakir Hussain, First Division Assistant, both of the office of the Taluk Social Welfare Officer, Yadgir Taluk, Yadgir District, were tried for the following charge:-

“That you, Sri Venkatesh (hereinafter referred to as Delinquent Government Official-1, in short DGO-1), while working as Office Superintendent in O/o. Taluk Social Welfare Officer, Yadgir Taluk and District demanded and accepted bribe of Rs.1,000/- on 27/2/2006 and you Sri Zakir Hussain (hereinafter referred to as Delinquent Government Official-2, in short DGO-2) while working as FDA in O/o Taluk Social Welfare Officer, Yadgir Taluk demanded and accepted a bribe of Rs.500/- on 27/2/2006 and later kept it in the pocket of the shirt of the Complainant Sri Julphekar Ali S/o. Sher Ali Soudagar R/o. Gajarkot in Yadgir Taluk and District asking him to give it later to him for preparing bill and issuing cheque in respect of the arrears of rent of the building of the Complainant situated at Gajarkot Village of Yadgir Taluk and District lent to the Government for running Women’s Hostel that is for doing an official act and thereby both of you failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of a Government Servant and thus both of you are guilty of misconduct under Rule 3(1)(i) to (iii) of KCS (Conduct) Rules, 1966”.

4. The Inquiry Officer (Additional Registrar of Enquiries-3) on proper appreciation of oral and documentary evidence has held that the Disciplinary Authority has proved the above charges

against DGO-1 Sri Venkatesh, the then Office Superintendent and DGO-2 Sri Zakir Hussain, the then First Division Assistant, both of the office of the Taluk Social Welfare Officer, Yadgir Taluk, Yadgir District.

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 DGOs 1 & 2, DGO-1 Sri Venkatesh is due to retire from service on 31/5/2028 and DGO-2 Sri Zakir Hussain is due to retire from service on 30/9/2031.


7. Having regard to the nature of charge (demand and acceptance of bribe) proved against DGO-1 Sri Venkatesh and DGO-2 Sri Zakir Hussain,

(i) it is hereby recommended to the Government to impose penalty of compulsory retirement from service on DGO-1 Sri Venkatesh, the then Office Superintendent, Office of the Taluk Social Welfare Officer, Yadgir Taluk, Yadgir District;

(ii) it is hereby recommended to the Government to impose penalty of compulsory retirement from service on DGO-2 Sri Zakir Hussain, First Division Assistant, Office of the Taluk Social Welfare Officer, Yadgir Taluk, Yadgir District.

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

Connected records are enclosed herewith.


(JUSTICE N. ANANDA)
Upalokayukta-1, 2/2
State of Karnataka, Bengaluru

KARNATAKA LOKAYUKTA

No. LOK/INQ/14-A/313/2011/ARE-3

M.S.Building,
Dr. B.R.Ambedkar Veedhi,
Bengaluru - 560001.
Date: 27-01-2018

Enquiry report

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

Sub: Departmental Enquiry against Sriyuths:
(i) Venkatesh, Office Superintendent and (ii) Sri
Zakir Hussain, First Division Assisnat, O/o Taluk
Social Welfare Officer, Yadgir Taluk and District -
reg.

Ref: 1. Report under Section 12(3) of the Karnataka Lokayukta
Act, 1984, in No. Compt/Uplok/GLB/499/2007/ARE-6
dated 27.7.2011
2. G.O. No. ಸಕಇ 329 ಪಕಸೇ 2011 ದಿ: 24.9.2011
3. Nomination Order No.LOK/INQ/14-A/313/2011 dated
30.09.2011 of Hon'ble Upalokayukta-1, Karnataka State,
Bengaluru.

1. The complainant Sri Julphekar Ali S/o Sher Ali Soudagar R/o Gajarkot in Yadagir Taluk and District has filed a complaint against (1) Sri Venkatesh, Office Manager and 2) Sri Zakir Hussain, First Division Assistant and case worker, O/o Taluk Social Welfare Officer, Yadgir Taluk and District (hereinafter referred to as 'DGOs 1 and 2' for short) and also against Sri Panduranga, Taluk Social Welfare Officer, making allegations against them that, the Taluk Social Welfare Officer and DGOs 1 and 2 are demanding him to pay Rs. 4000/- as bribe in order to prepare bill and disburse the amount to him, towards the rent payable to his house, which he has leased to Social Welfare department to run Girls Hostel.

2. On registering a case on the basis of the said complaint, a trap was held on 27.2.2006 in the O/o Taluk Social Welfare Officer and DGOs-1 and 2 were caught red handed along with Taluk Social Welfare Officer/Panduranga, while demanding and receiving bribe from the complainant. The tainted amount of Rs. 2500/- was recovered from Sri Panduranga, Taluk Social Welfare Officer and Rs. 1000/- from the left side pant pocket of DGO-1. Though no amount was seized from the possession of DGO-2, it was revealed that, he too demanded bribe from the complainant and since complainant paid him only Rs. 500/- instead of Rs. 1000/- as demanded by him, DGO-2 though received that amount of Rs. 500/- from the complainant, returned that amount to the complainant since the complainant did not give him Rs. 1000/- as per his demand. But, hand wash of DGO-2 gave positive result and hence, having come to the conclusion that, both DGO-1 and 2 and Taluk Social Welfare Officer-Panduranga have demanded and accepted the bribe amount form the complainant in order to show an official favour to him i.e., to prepare bill and disburse the amount to him towards the rent payable to his house which he has leased to Social Welfare department to run Girls Hostel, the Police Inspector Lokayukta Police Station, Yadgir having conducted investigation, charge sheeted both DGOs no.1 and 2 (showing them as accused nos. 2 and 3) and also Sri Panduranga, Taluk Social Welfare Officer (showing him as accused no.1).
3. The ADGP, Karnataka Lokayukta, Bengaluru has forwarded the copy of the charge sheet to the Hon'ble Upalokayukta. On the basis of the materials collected during investigation and materials placed before this authority, an investigation was taken up under Section 7(2) of the Karnataka Lokayukta Act. An observation note was

served on both the DGOs 1 and 2 and also observation note was sent to Panduranga, Taluk Social Welfare Officer providing them an opportunity to show-cause as to why recommendation should not be made to the Competent Authority for initiating departmental enquiry against them. But Panduranga, Taluk Social Welfare Officer reported to be dead on 8.7.2009. DGO no.1 and 2 have submitted their reply denying the allegations made against them and taken up a contention that, they are innocent and they have been falsely implicated. Since the explanation offered by the DGOs 1 and 2 were not satisfactory, a recommendation under Section 12(3) of the Karnataka Lokayukta Act was forwarded to the Competent Authority recommending to initiate disciplinary enquiry against them and to entrust the enquiry under Rule 14-A of KCS(CCA) Rules, to this authority to hold enquiry. Accordingly, the Government in the Social Welfare Department vide G.O. no. ಸಕಇ 329 ಸಕಸೇ 2011 ದಿ: 24.9.2011, initiated departmental proceedings against the DGOs 1 and 2 and entrusted the same to Hon'ble Upalokayukta to hold enquiry. The Hon'ble Upalokayukta issued a nomination order dated 30.9.2011 nominating ARE-3 to frame charges and to conduct enquiry against the DGOs 1 and 2. Accordingly, the then ARE-3 framed charges against the DGOs 1 and 2 as under.

"Charge:

That you, Sri Venkatesh (here in after referred to as Delinquent Government Official-1, in short DGO-1), while working as Office Superintendent in O/o Taluk Social Welfare Officer, Yadgir Taluk and District demanded and accepted a bribe of Rs. 1,000/- on 27/2/2006 and you Sri Zakir Hussain (here in after referred to as Delinquent Government Official-2, in short DGO-2) while working as FDA in O/o Taluk Social Welfare Officer, Yadgir Taluk demanded and accepted a bribe of Rs. 500/- on 27/2/2006 and later kept it in the pocket of the shirt of the complainant Sri Julphekar Ali S/o Sher Ali Soudagar R/o Cajarkot in Yadagir Taluk and

District asking him to give it later to him for preparing bill and issuing cheque in respect of the arrears of the rent of the building of the complainant situated at Gajarkot Village of Yadgir Taluk and District lent to the Government for running Women's Hostel that is for doing an official act, and thereby both of you failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of a Government Servant and thus both of you are guilty of misconduct under Rule 3(1)(i) to (iii) of KCS (Conduct) Rules 1966.

STATEMENT OF IMPUTATION OF MISCONDUCT:

The complainant Sri Julphekar Ali S/o Sher Ali Soudagar R/o Gajarkot in Yadagir Taluk and District lodged a complaint on 27/2/2006 before the Police Inspector, Karnataka Lokayukta, Yadgir alleging that he owns two houses at Gajarkot village of Yadgir Taluk of District and that one house he resides and he had lent the other house on 15/7/2004 to the Government for running Women's Hostel on behalf of the Social Welfare Dept on a monthly rental of Rs. 3,300/- and that till 27/02/2006 the arrears of rent was not paid to him and that after approaching and requesting the District Social Welfare Officer and the CEO, Zilla Panchayath, Gulbarga an order was passed for the payment of arrears of rent. It is further alleged in the said complaint that the CEO, Zilla Panchayath, Gulbarga had passed the order on 04/02/2006 and that on 14/02/2006 the complainant met Sri Zakir Hussain, FDA, O/o Taluk Social Welfare Officer (here in after referred to as Delinquent Government Official-2 in short DGO-2) and asked him about the payment of arrears of rent and DGO-2 asked the complainant to meet the then Taluka Social Welfare Officer Sri Pandurang and that the complainant went and met Sri Pandurang, the then Taluka Social Welfare Officer and requested him to prepare the bill and issue the cheque and Sri Pandurang called Sri Venkatesh, Office Superintendent in O/o Taluk Social Welfare Officer, Yadgir Taluk and District (here in after referred to as Delinquent Government Official-1 in short DGO-1) and DGO-2 held a consultation with them and thereafter told the complainant that a sum of Rs. 3,000/- to him and a sum of Rs. 2,000/- to DGO-1 and a sum of Rs. 1,000/- to DGO-2 thus in all a sum of Rs. 6,000/- will have to paid as bribe for preparing and issuing a cheque for Rs. 61,050/-, towards the arrears of rent and that after negotiation they agreed for a sum of Rs. 2,000/- to Pandurang, a sum of Rs. 1,000/- to DGO-1 and a sum of Rs.1,000/- to DGO-2 as bribe for preparing the bill and issuing the cheque for Rs. 61,050/- towards the arrears of rent.

As the complainant was not willing to pay any bribe to the DGOs, he went to Police Inspector, Karnataka Lokayukta Yadgir on 27/2/2006 and lodged a complaint. On the basis of the same a case was registered in Yadgir Lokayukta Police Station Cr. No. 2/2006 for offences punishable under sections 7, 13(1) (d) r/w section 13(2) of the P.C. Act, 1988 and FIR was submitted to the concerned learned special judge.

After registering the case, investigating officer observed all the pre trap formalities and entrustment mahazar was conducted and you, the DGOs 1 and 2 were trapped on 27/2/2006 by the Investigating Officer after DGO-1 demanding and accepting the bribe amount of Rs. 1,000/- and DGO-2 Rs. 500/- from the complainant in the presence of shadow witness and the said bribe amount which DGO-1 and DGO-2 had received from the complainant was seized under the seizure (trap) mahazar after following the required post trap formalities. During the investigation the I.O has recorded the statements of Panchas and other witnesses and further statement of the complainant. The I.O during the investigation has sent the seized articles to the chemical examiner and obtained and obtained the report from him and he has given the result as positive.

The materials collected by the I.O. during the investigation prima facie disclose that you, the DGO-1 and DGO-2 demanded accepted the bribe of Rs. 1,000/- and Rs. 500/- respectively from the complainant on 27/2/2006 for doing an official act i.e., for preparing bill and issuing cheque in respect of the arrears of the rent of the building of the complainant situated at Gajarkot Village of Yadgir Taluk and District lent to the Government for running Women's Hostel. Thus you, the DGOs 1 and 2, have failed to maintain absolute integrity and devotion to duty and this act on your part is unbecoming of a Government servant. Hence, both of you have committed an act which amounted to misconduct as stated under Rule 3 (1) (i) to (iii) of KCS (Conduct) Rules 1966.

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

4. The Articles of Charges and Statement of Imputation are duly served on the DGOs 1 and 2. They have appeared in response to the notice issued to them and First Oral Statement of the DGOs 1 and 2 was recorded. They have denied the charges framed against them. DGOs 1 and 2 have engaged the services of an advocate to appear on their behalf and to defend them in the enquiry.
5. DGOs 1 and 2 have filed their written statement on 04.06.2012 and denied the allegations made against them and taken up a contention that, they never demanded and received any money from the complainant by way of bribe and requested this authority to drop the proceeding against them.
6. During enquiry, on behalf of the Disciplinary authority, 3 witnesses have been examined as PW1 to 3 and 10 documents came to be marked as Ex-P1 to P10. After closure of the evidence on behalf of the disciplinary authority, second oral statement of the DGOs 1 and 2 was recorded. Since, DGOs no.1 and 2 submitted that, they have no defence evidence to lead, they have been questioned under Rule 11(18) of KCS (CCA) Rules with reference to the questionnaire prepared. They have denied the evidence given by PW1 to PW3 against them.
7. Thereafter, learned PO filed written arguments. Despite granting several opportunity, the learned counsel appearing for DGOs 1 and 2 has failed to submit his arguments on behalf of DGO 1 and 2. Hence vide order dated 29.12.2017 this matter is posted to submit report giving liberty to the learned counsel for DGOs 1 and 2 to file written arguments within two weeks. But despite granting such

opportunity, no written arguments is filed on behalf of DGOs. Hence this matter is taken up for consideration.

8. The following points would arise for my consideration.

Point No.1: Whether the charge framed against the DGO no.1 are proved by the Disciplinary Authority?

Point No.2: Whether the charge framed against the DGO no.2 are proved by the Disciplinary Authority?

Point No.3: What findings?

9. The above points are answered as under:

Point No.1: In the 'Affirmative'

Point No.2: In the 'Affirmative'

Point No.3: As per the findings.

REASONS

Points No. 1 & 2

10. DGO-1 was working as Office Manager and DGO-2 was working as First Division Assistant in the O/o Taluk Social Welfare Officer, Yadgir Taluk and one Panduranga was working as Taluk Social Welfare officer, in the said office during the relevant period.

11. According to the complainant, he is having a house in Gajarkote village and Social Welfare Department has taken that house on lease from him on 15.7.2004 on a monthly rent of Rs. 3,300/- and running a Girls Hostel in the said house. But, rents have not been paid to the complainant since 15.7.2004. Though the complainant met the Taluk Social Welfare Officer on several occasions, and requested him for payment of rents to the said house, his request was not considered by him. Hence the complainant met Chief

Executive Officer, Zilla Panchayath, Yadgir and requested him for payment of arrears of rents at an earliest. His request was considered wherein, Chief Executive Officer has issued an order dated 4.2.2006 to Taluk Social Welfare Officer, directing him to pay the arrears of rent amounting to Rs. 61,050/- to the complainant. In that connection, the complainant met the Taluk Social Welfare Officer/Panduranga and requested him to prepare bill and disburse the amount of arrears of rent to him. Sri Panduranga Taluk Social Welfare Officer summoned his office Manager/DGO-1 and case worker/DGO-2 and having discussed with them, Sri Panduranga Taluk Social Welfare officer, demanded the complainant to pay Rs. 3000/- to him, Rs. 2000/- to DGO-1 and Rs., 1000/- to DGO-2, thus insisted the complainant to pay a total sum of Rs. 6000/- by way of bribe in order to prepare bill and to disburse the amount towards arrears of rent, payable to him. Complainant pleaded his inability to pay that much amount and requested him to reduce the demand. Hence, Taluk Social Welfare officer, Panduranga scaled down his demand and asked the complainant to pay Rs. 2000/- to him and Rs. 1000/- each to DGOs 1 and 2, asking the complainant to give them Rs. 4000/- as early as possible so that, his bill could be prepared and the amount will be disbursed to him. Since the complainant was not willing to pay bribe in order to get the arrears of rent from the Taluk Social Welfare officer, he approached Lokayukta police, Yadgir on 27.02.2006 and filed a complaint as per Ex-P1.

12. On the basis of this complaint, the Police Inspector, Karnataka Lokayukta, Yadgir has registered a case in Cr. No. 2/2006, under Sections 7,13(1)(d) R/w 13(2) of P.C Act, 1988 and took up investigation.

13. An entrustment proceedings was conducted in the Police Station in the presence of two panch witnesses viz., Sri Jagadish S/o Sharanappa Beli, FDA, O/o BEO, Yadgir and Sri Venugopal S/o Narasappa Bappanapalli, Junior Assistant, O&M Sub-Divison, GESCOM, Yadgir and in the said proceedings, the bait money of Rs. 4000/- consisting of 8 currency notes of Rs. 500/- denomination given by the Complainant, were smeared with phenolphthalein powder making it as tainted money and the said money was entrusted to the Complainant asking him to give the said money to the DGOs when he meets them in the office of the Taluk social Welfare Officer, Yadgir. Sri Venugopal has been sent as shadow witness along with the complainant. In this regard, a detailed entrustment mahazar was also prepared in the Police Station as per Ex-P2.
14. The Complainant accompanied with the shadow witness went to the office of the Taluk Social Welfare Officer, at about 1.00pm and met Sri Panduranga, Taluk Social Welfare Officer and enquired him about the amount of arrears of rent payable to him. Panduranga Social Welfare officer enquired him as to whether he has brought money as demanded. Complainant gave him Rs. 2000/- consisting of 4 currency notes of Rs. 500/- denomination, out of 8 such notes entrusted to him. Panduranga insisted him to pay another sum of Rs. 500/- to him and hence, complainant was forced to give one more currency note of Rs. 500/- denomination to Panduranga and thus he/Taluk Social Welfare Officer, Panduranga received Rs. 2500/- from the complainant by demanding him to pay the bribe amount. Thereafter, the complainant came to the chamber of DGO-1 and enquired him about his bill towards payment of the arrears of

rent to him. DGO-1 enquired him about the money that was demanded to him and the complainant gave him Rs. 1000/- consisting of 2 tainted notes of Rs. 500/- denomination each. Thereafter, the complainant met DGO-2/Case Worker and enquired about his bill. DGO-2 enquired him about the money that was demanded to him, complainant gave him ^{one} tainted note of Rs. 500/- which was left with him. As Social Welfare officer Panduranga insisted the complainant and received Rs. 2500/- and after paying Rs. 1000/- to DGO-1, the complainant since left with only Rs. 500/-, he paid that amount to DGO-2. Though- DGO-2 received the amount from the complainant, verified that amount and since there was only one note of Rs. 500/, instead of two notes, DGO-2 having got up from his chair, approached the complainant and returned that, Rs. 500/- note to him, by keeping that note in the shirt pocket of the complainant. Thereafter, the complainant on coming out of the office, gave pre-arranged signal to the Police Inspector.

15. On receiving signal, the Police Inspector approached the complainant who took him inside the chamber of Taluk Social Officer and showed Panduranga, the Taluk Social Welfare Officer claiming that, he has received Rs, 2500/- from him by receiving 5 currency notes of Rs. 500/- denomination. Thereafter, told the Police Inspector, telling him about DGO-1 claiming that, he has received Rs, 1000/- from him, by receiving 2 notes of Rs. 500/- denomination and also told about DGO-2/case worker claiming that, though he received Rs. 500/-, returned that amount to him.

16. The Police Inspector having introduced himself to Panduranga Taluk Social Officer and on explaining him, the purpose for which

he has come there, informed him about registration of a case against them. Also secured the presence of DGOs 1 and 2 to the chamber of Sri Panduranga and informed them also about registration of case against them.

17. Thereafter, the hand wash of Panduranga, Taluk Social Welfare officer, DGOs 1 and 2 were obtained by making them to wash their hand fingers separately in two separate bowls containing sodium carbonate solution. When Panduranga, Taluk Social Welfare officer, washed his right hand fingers and left hand fingers separately in two separate bowls containing sodium carbonate solution, the solution in both the bowls turned into pink colour. Similarly, DGO-1 and 2 were asked to dip their hand fingers separately in two bowls each, containing sodium carbonate solution and on such dipping the solution in those bowls turned into pink colour. Thus, the hand wash of both the hands of all the 3 persons viz., Panduranga, Taluk Social Welfare officer, DGOs 1 and 2, gave positive result.
18. Police Inspector enquired Panduranga, Taluk Social Welfare officer, about the money he has received from the complainant. He/Panduranga on taking out money from his left side shirt pocket, produced Rs. 2500/- before the Police Inspector. Similarly, DGO-1 produced Rs. 1000/- on taking out from his left side pant pocket. The complainant has produced another note of Rs. 500/- claiming that, DGO-2 on receiving that note later returned that, amount to him. On cross checking those notes with reference to its serial numbers, the Police Inspector got confirmed that, those were the notes entrusted to the complainant in the entrustment proceedings and seized the same.

19. The shirt worn by Panduranga, Taluk Social Welfare officer and pant worn by DGO-1 were got removed by providing them alternate shirt and pant and the left side pocket portion of the said shirt and pant when dipped in two separate bowls containing sodium carbonate solution, it gave positive result and hence the said shirt of Panduranga and pant of DGO-1 were also seized.
20. Panduranga, Taluk Social Welfare officer and DGO-1 were asked to give their explanation in writing regarding recovery of tainted notes from their possession. They gave their explanation in writing as per Ex-P6 and P7. DGO-2 gave his written explanation as per Ex-P8. The complainant and the shadow witness having gone through the written explanation given by Panduranga, Taluk Social Welfare officer, DGOs 1 and 2, denied the correctness of the version of the written explanation given by them.
21. The relevant records pertaining to the bill for paying the arrears of rent to the complainant were also seized, since produced by Panduranga, Taluk Social Welfare officer on taking the said file from his table, as per Ex-P4. In this regard, a detailed trap mahazar was also got prepared in the office of the Taluk Social Welfare officer, as per Ex-P3.
22. The complainant when examined before this authority, has not supported the case of the disciplinary authority and turned hostile. He claimed in his evidence that, he approached Panduranga, Taluk Social Welfare officer and requested him for paying the amount of arrears of rent payable to him and further claimed that, since there was delay in passing his bill, he filed a complaint to Lokayukta

police as per Ex-P1. He claimed that, the Police Inspector saying that, he will get the bill prepared, wrote a complaint and obtained his signature. He further did not depose any details about the entrustment proceedings and the trap proceedings and pleaded his ignorance about these proceedings. He has admitted his signatures in the entrustment mahazar and trap mahazar but, failed to give the details of those proceedings conducted. Hence, he has been treated as an hostile witness and he has been thoroughly cross examined by the learned Presenting Officer. Even during his cross examination, he failed to support the case of the disciplinary authority and gave negative answers to all the suggestions put to him. When he was cross examined by the learned counsel for DGOs 1 and 2, he claimed that, he has not seen DGOs 1 and 2 on 14.2.2006 and he was not aware about the preparation of his bill on 18.2.2006 and sending the bill to Zilla Panchayath for counter signature.

23. Shadow witness Venugopal has been examined as PW2. He gave details regarding the conducting of entrustment proceedings in the Police Station and entrustment of Rs. 4000/- to the complainant. He further gave details regarding the trap proceedings claiming that, he has accompanied the complainant and went with him inside the office of the Taluk Social Welfare Officer. But he failed to give supporting evidence with regard to materials particulars of the trap proceedings claiming that, when he and the complainant entered the office, the police had already caught hold of the hands of Panduranga in his chambers and DGOs 1 and 2 were summoned to the chamber of Panduranga. He has stated that, hand wash of both the hands of Panduranga and DGOs 1 and 2 were obtained which gave positive result. He gave details regarding seizure of Rs.

2500/- which was found in the left side shirt pocket of Panduranga and seizure of Rs. 1000/- from the left side pant pocket of DGO-1. He also gave details regarding seizure of the shirt of Panduranga and pant of DGO-1 and the left side pocket portion of the said shirt and pant when dipped in sodium carbonate solution, gave positive result. He further gave details regarding giving of written explanation by Panduranga, DGOs 1 and 2 as per Ex-P6 to P8, giving their own explanation as to how the tainted notes came to their possession. He further gave details regarding seizure of documents as per Ex-P4 from the office of the Taluk Social Welfare Officer. Obtaining of photographs as per Ex-P9 during the trap proceedings and preparation of trap mahazar as per Ex-P3, have been spoken to by him.

24. Since PW2 failed to support the case of the disciplinary authority with regard to certain materials particulars, he has been treated as partly hostile witness and he has been cross examined with regard to those material particulars. During his cross examination he admitted all the suggestions put to him by giving positive answers thereby, supporting the case of the disciplinary authority with regard to those material particulars of trap proceedings.
25. PW2 has been cross examined by the learned counsel for DGOs 1 and 2. During his cross examination he has claimed that, he did not go along with the complainant inside the office and he was not with the complainant when the complainant gave signal to the Police Inspector. Various suggestions put to him have been answered by him wherein, he has reiterated his contention that, DGOs 1 & 2 and Panduranga gave their written explanation before the Police Inspector.

26. Police Inspector B.A. Chandrakanth was the investigating officer and since he is dead, the Police Constable by name Kalappa who accompanied the Police Inspector and assisted him in the investigation of this case, has been examined as PW3. He gave details regarding the conducting of entrustment proceedings in the Police Station and entrustment of Rs. 4000/- to the complainant and preparation of entrustment mahazar as per Ex-P2. He further gave details regarding the trap proceedings conducted in the office of the Social Welfare Officer and obtaining of hand wash of Panduranga, Taluk Social Welfare officer, DGOs 1 and 2, which gave positive result and recovery of Rs. 2500/- from Panduranga, Taluk Social Welfare Officer and Rs. 1000/- from DGO-1 and recovery of Rs. 500/- from the complainant, which the complainant has claimed that, DGO-2 though on demanding the amount received that note of Rs. 500/- from him, later returned ^{that note} to him. He further gave details regarding giving of written explanation by Panduranga, Taluk Social Welfare officer, DGOs 1 and 2 and seizure of the relevant documents as per Ex-P4 and preparation of trap mahazar as per Ex-P3. He claimed that, he was with the Police Inspector all along and participated in both entrustment proceedings and trap proceedings and he typed the trap mahazar as per Ex-P3 since the Police Inspector got that mahazar prepared with his help. Though PW3 was cross examined by the learned counsel for DGO-1 and 2, nothing worth was elicited from him during his cross examination to disbelieve his evidence.

27. On considering the evidence of PW2/shadow witness and PW3/ the Police Constable who accompanied the IO and assisted him in the trap proceedings, they have categorically stated about entrustment of tainted notes of Rs. 4000/- to the complainant in the

entrustment proceedings conducted in the Police Station. They have further supported the case of the disciplinary authority about obtaining of hand wash of both the hands of Panduranga, Taluk Social Welfare Officer and also DGOs 1 and 2 which gave positive result. They have also stated about recovery of tainted notes of Rs. 2500/- from the possession of Panduranga, Taluk Social Welfare officer and Rs. 1000/- from DGO-1. According to their evidence, though no tainted notes were recovered from the possession of DGO-2, his right hand wash and left hand wash obtained during the trap proceedings when tested for presence of phenolphthalein, gave positive result as the presence of phenolphthalein is detected in both the right and left hand finger washes of DGO-2. Hence, it is for DGO-2 to offer his explanation as to how his both hand fingers came in contact with tainted notes. But, DGOs 1 and 2 did not choose to adduce any defence evidence and never bothered to offer their explanation to support their defence and to prove their innocence. During recording of his statement under Rule 11(18) of KCS(CCA) Rules, DGO-1 has claimed that, he never seen the complainant earlier to the date of his trap and he has seen the face of the complainant for the first time on the day of his trap. But DGO-1 has not come out with any explanation as to how tainted notes of Rs. 1000/- came to be kept in his pant pocket since the tainted notes of Rs. 1000/- came to be recovered from the left side pocket of his pant. In the absence of any explanation offered by DGO-1, I have to consider his written explanation, given by him at the time of his trap as per Ex-P7 which reads as follows:

“ ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ತಮ್ಮಲ್ಲಿ ಸಲ್ಲಿಸುವುದೇನೆಂದರೆ, ದಿ: 27.2.2006 ರಂದು ಸರಕಾರಿ ಬಾಲಕರ ವಸತಿ ನಿಲಯ ಗಾಜರಕೊಟ ಮನೆಯ ಮಾಲೀಕರು ಮಾನ್ಯ ತಾಲ್ಲೂಕು ಸಮಾಜ ಕಲ್ಯಾಣ ಅಧಿಕಾರಿಗಳು ಯಾದಗಿರಿ ರವರ ಮುಂದೆ ಕುಳಿತು ನನ್ನ ಮನೆಯ ಬಾಡಿಗೆಗಾಗಿ ಹಣ ತೆಗೆದುಕೊಳ್ಳಿ ಎಂದು ಹೇಳಿ ಒತ್ತಾಯ ಪೂರ್ವಕವಾಗಿ ನನಗೆ ಹಣ ಕೊಟ್ಟು ದುರುದ್ದೇಶದಿಂದ ಈ ರೀತಿ ಮಾಡಿರುತ್ತಾರೆ. ನಾನು ಅವರಿಗೆ ಯಾವತ್ತು ಹಣ ಕೇಳಲಿಲ್ಲ ಮತ್ತು ಅವರೇ ಒತ್ತಾಯ ಪೂರ್ವಕವಾಗಿ ಈ ರೀತಿ ಮಾಡಿರುತ್ತಾರೆ. ಸದ್ರಿ ವಿಷಯವನ್ನು ತಮ್ಮ ದಯಾಪರ ಮಾಹಿತಿಗಾಗಿ ಸಲ್ಲಿಸಿದೆ.”

28. DGO-1 has admitted in clear terms that, he has received Rs. 1000/- from the complainant and according to him the complainant forcibly gave that money to him, though he never demanded any money from the complainant. Therefore, while giving his written explanation as per Ex-P7, DGO-1 never bothered to dispute or deny the recovery of tainted notes of Rs. 1000/- from his possession. Even while filing his written statement he has not taken up any specific defence as to how the tainted notes of Rs. 1000/- came to his possession. Since he never bothered to adduce any defence evidence in this regard and never bothered to offer to give any plausible explanation regarding fact of his both hand wash detected with the presence of phenolphthalein and recovery of tainted notes from his possession, I have no hesitation to conclude that, he has received those tainted notes from the complainant since as per his own admission in Ex-P7 that, the complainant met him on that day. Though the complainant failed to support the case of the disciplinary authority, since he has admitted filing of complaint as per Ex-P1 which contains specific allegation of demand for bribe against DGO-1, I have no hesitation to conclude that, the DGO-1 has demanded and received Rs. 1000/- from the complainant to show an official favour to him, in order to process the bill pertaining to the complainant, for payment of arrears of rent payable to him.

29. Though no tainted note was recovered from the possession of DGO-2, the hand wash of both his hands obtained during the trap proceedings gave positive result, since as per the chemical examiner's report Ex-P10, presence of phenolphthalein detected in the hand wash of both the hands of DGO-2. But DGO-2 has not

come out with any specific defence while filing his written statement or while cross examining PW-2/shadow witness, as to how the hand wash of both his hands obtained during the trap proceedings gave positive result since the colourless sodium carbonate solution turned into pink colour. DGO-2 also never bothered to adduce his defence evidence to come out with any specific explanation regarding this aspect. The fact of DGO-2 giving his explanation in writing as per Ex-P8 is not disputed by him. Ex-P8 reads as follows:

“ದಿನಾಂಕ 27.2.2006 ರಂದ ಜುಲೈಕರ್ ತಂದೆ ಶೇರ್ ಆಲಿ ಸಾ.ಗಾಜರಕೋಟ ಇವರು ನನಗೆ ಹಣ ಕೊಡಲಿಕ್ಕೆ ಬಂದಿದ್ದ ಆದರೆ ನಾನು ಹಣ ಪಡೆಯಲಿಲ್ಲ ಮತ್ತು ತನಿಖಾ ಸಮಯದಲ್ಲಿ ತಾವು ನನ್ನ ಹತ್ತಿರದಿಂದ ಹಣ ಪಡೆದಿರುವುದೇ ಆದರೆ ಸದರಿ ಇವರು ಬಹಳ ಒತ್ತಾಯ ಮಾಡಿದ ಸಮಯದಲ್ಲಿ ನನ್ನ ಕೈ ನೋಟಿಗೆ ಹತ್ತಿರಬಹುದು ಆದರೆ ಹಣ ಸದರಿಯವರಿಂದ ತೋಗೊಂಡಿಲ್ಲಾ.”

30. As per this explanation given by DGO-2 in writing he came out with an explanation that, since the complainant forced him to receive money, during that time, the tainted notes must have come in contact with his hands. But, DGO-2 did not choose to enter into the witness box to take up such a defence, probably in order to avoid giving answers to the questions that may be put to him during his cross examination if he were to examine himself in support of his defence. Even while recording his statement under Rule 11(18) of KCS(CCA) Rules, he did not come out with any such explanation and failed to offer plausible explanation regarding circumstances under which his both hands coming in contact with the tainted notes. In the absence of any such specific defence taken by DGO-2, the contents of Ex-P3/trap mahazar can be looked into wherein, the complainant has narrated before the Police Inspector that, since Panduranga, Social Welfare Officer insisted and collected Rs. 2500/- (5 currency notes of Rs. 500/- denomination) though as per his earlier demand, he was to receive only Rs. 2000/- and after

paying Rs. 2500/- to him, he was left with only Rs. 1500/- out of which DGO-1 demanded and collected Rs. 1000/- from him and the amount of Rs. 500/- left with him, the complainant gave that note to DGO-2 and DGO-2 though received that note, checked the same and found that there was only one note of Rs. 500/- though the complainant was supposed to give him two notes of Rs. 500/- amounting to Rs. 1000/-, and since he/DGO-2 not willing to receive lesser amount from the complainant, returned that note of Rs. 500/- to the complainant by keeping that note in the shirt pocket of the complainant. The recovery of another tainted note of Rs. 500/- from the complainant during the trap proceedings has been spoken to by both PW2 and PW3. Since DGO-2 never bothered to offer any explanation, to explain the circumstance under which his both hands came in contact with tainted note, the explanation offered by the complainant during the trap proceedings which has been incorporated in trap mahazar Ex-P3 can be relied upon. Hence, I have no hesitation to conclude that, even DGO-2 having demanded bribe of Rs. 1000/- from the complainant, received tainted note of Rs. 500/- from the complainant on the day of trap and since not willing to receive lesser amount, as the complainant was supposed to give him Rs. 1000/-, he gave back that note to the complainant. Therefore, DGO-2 is also guilty of misconduct of demand and acceptance of bribe from the complainant in order to show an official favour of processing the bill pertaining to the complainant for payment of arrears of rent, payable to him.

31. It is also relevant to consider that, both DGOs 1 and 2 have been prosecuted along with Panduranga, Taluk Social Welfare Officer and due to the death of Panduranga, the case against him was abated and DGOs 1 and 2 have faced trial in Special Case No.

1/2010 before Special Court, Yadgir wherein, the learned Special Judge vide judgment dated 28/7/2011 convicted both DGOs 1 and 2 (accused no.2 and 3) holding them guilty of the offence under Section 7,13(1)(d) R/w 13(2) of P.C Act, 1988 by imposing sentence of imprisonment and fine against him. DGOs 1 and 2 have challenged this judgment of conviction and sentence passed against them by the Special Court, Yadgir, by preferring appeal before the Hon'ble High Court of Karnataka, Gulbarga Bench in Criminal Appeal No. 3617/2011 wherein, the Hon'ble High Court of Karnataka vide order dated 28.2.2014 allowed the said appeal and set aside the judgment of conviction and sentence passed against DGOs 1 and 2 by the Special Court, Yadgir and acquitted both DGOs 1 and 2 on the ground that, prosecution has not proved the case against them beyond reasonable doubt. Though DGOs 1 and 2 have been dismissed from service vide order dated 17.3.2012 in pursuance of the judgment of conviction and sentence passed by the Special Court subsequently they have been reinstated into service vide order dated 25.11.2014 consequent to the orders of Hon'ble High Court and DGO-1 has been posted to O/o Taluk Social Welfare Officer, Sedam Taluk of Gulbarga District and DGO-2 has been posted as FDA in the O/o Taluk Social Welfare Officer, Raichur Taluk and hence both DGOs 1 and 2 continued to be in Government service, due to their reinstatement.

32. Even during the trial before the Special Court, the complainant/ Julphekar Ali and shadow witness/Venugopal since turned hostile, the Court directed the Registree to file a complaint against them for having given false evidence. This order appears to be not challenged by them. Even the Special Judge during the course of his judgment had come to a conclusion that, both complainant and shadow

witness have been won over by DGOs 1 and 2 and hence they failed to support the case of the prosecution. Even the complainant in this enquiry has fully turned hostile whereas, the shadow witness partly turned hostile. The Hon'ble High Court set aside the judgment of conviction and sentence passed against DGOs 1 and 2 only on the ground that, the prosecution has failed to establish the case against DGOs 1 and 2 beyond reasonable doubt and hence their acquittal by the Hon'ble High Court, is not an honourable acquittal.

33. It is a settled principle that, the standard of proof in a departmental proceedings is quite different as in an enquiry, the case of the disciplinary authority has to be considered on the touch stone of preponderance of probability and not on the touch stone of proof beyond reasonable doubt. Hence, the decision of the Hon'ble High Court acquitting DGOs 1 and 2 giving them benefit of doubt, has no bearing on the departmental enquiry, as standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases (prosecution case and departmental proceedings) are entirely distinct and different.

34. In the present case, DGOs 1 and 2 have not taken any specific defence and have not come out with any explanation during the enquiry proceedings except denying everything. They did not choose to enter into the witness box to give their explanation in support of their defence. Considering the materials made available on behalf of the disciplinary authority and also the explanation offered by DGOs 1 and 2 as per Ex-P7 and P8 during the trap proceedings and the hand wash of both the hands of DGO-1 and 2 collected during the trap proceedings since gave positive result regarding presence of

phenolphthalein and also recovery of tainted note of Rs. 1000/- from DGO-1, are sufficient to conclude that, DGOs 1 and 2 are guilty of misconduct in demanding bribe from the complainant and DGO-1 receiving bribe from the complainant. Moreover, Panduranga, Taluk Social Welfare Officer who is now dead, also gave his explanation in writing as per Ex-P6 claiming that, complainant had approached him on that day and despite his refusal to receive any money, the complainant himself intentionally touched the notes to his hands and kept the money in his pocket. Considering the fact that, Rs. 2500/- / tainted notes was recovered from the shirt pocket of the DGO which fact has been established by the evidence of PW2 and PW3, I am of the opinion that, this is also another factor which strengthens the case of the disciplinary authority, in establishing the misconduct of DGOs 1 and 2.

35. Hence, I hold that, the disciplinary authority was able to establish the charge against DGOs 1 and 2 and accordingly, I answer points no.1 and 2, in the affirmative.

Point No.3:

36. Having regard to the discussion made above, and in view of my findings on points no.1 and 2 as above, my finding is as below

FINDINGS

- i. The Disciplinary Authority has proved the charges as framed against the DGOs (i) Venkatesh the then Office Superintendent and (ii) Sri Zakir Hussain the then First Division Assistant, O/o Taluk Social Welfare Officer, Yadgir Taluk and District

ii. As per the first oral statement, the date of Birth of DGO no.1 Sri Venkatesh is 04.05.1968 and his date of retirement is 31.05.2028 and the date of birth of DGO no.2 Sri Zakir Hussain is 04.9.1971 and his date of retirement is 30.9.2031.



(S. Renuka Prasad)

Additional Registrar of Enquiries-3
Karnataka Lokayukta,
Bengaluru.


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

PW-1	Sri Julphekar Ali (complainant)
PW-2	Sri Venugopal (shadow witness)
PW-3	Sri Kalappa (Investigating officer)

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

Ex.P-1	Certified copy of the complaint
Ex.P-2	Certified copy of entrustment mahazar
Ex.P-3	Certified copy of trap mahazar
Ex.P-4	Certified copy of the records seized
Ex.P-5	Certified copy of statement of PW1 before IO
Ex.P-6	Certified copy of written statement of Panduranga
Ex.P-7	Certified copy of written statement of Venkatesh
Ex.P-8	Certified copy of statement of Zakir Hussain
Ex.P-9	Certified copy of photographs
Ex.P-10	Certified copy of chemical examiner report

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


(S. Renuka Prasad)
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