

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

NO: LOK/INQ/14-A/314/2012/ARE-11

Multi Storied Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001,
Date: 24/10/2017

RECOMMENDATION

Sub:- Departmental inquiry against Ksheeraling Honawad, the then First Division Assistant in the office of the Special Land Acquisition officer, Upper Krishna Project, Devadurga, Camp at Amarapur Cross, Devadurga Taluk, Raichur District – Reg.

- Ref:- 1) Government Order No. ಕಂಇ 60 ಬಿಡಿಪಿ 2012, Bengaluru, dated 25/07/2012
- 2) Nomination order No. LOK/INQ/14-A/314/2012 Bengaluru, dated 4/8/2012 of Upalokayukta-1, State of Karnataka, Bengaluru
- 3) Inquiry Report dated 19/10/2017 of Additional Registrar of Enquiries-11, Karnataka Lokayukta, Bengaluru

The Government by its Order dated 25/7/2012, initiated the disciplinary proceedings against Sri Ksheeraling Honawad, First Division Assistant, Office of the Special Land Acquisition Officer, Upper Krishna Project, Devadurga, Camp Amarapur Cross, Devadurga Taluk, Raichur District (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/314/2012 Bengaluru dated 4/8/2012 nominated Additional Registrar of Enquiries-4, Karnataka Lokayukta, Bengaluru, as 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 DGO. Again, by Order No. UPLOK-1/DE/2016 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 Sri Ksheeraling Honawad, was tried for the following charge:-

“That you, Sri Ksheeraling S/o. Siddappa Honavad, the DGO, while working as First Division Assistant in the office of Special Land Acquisition Officer of Upper Krishna Project in Devadurga, Camp Amarapura Cross of Raichur District, the Complainant namely Sri Hanumantharaya S/o. Palagowda of Chadakalagudda in Devadurga Taluk approached you requesting for payment of compensation awarded towards acquisition of his land measuring 4.16 acres in Sy. No.52/A of Chadakalagudd and then you asked the Complainant for the payment of bribe of Rs.17,000/- and insisted to pay Rs.4,000/- in advance and on 4/7/2011 received the said bribe of Rs.4,000/- from the Complainant to show official favour, failing to maintain absolute integrity and devotion to duty, the act of which was unbecoming of a Government Servant and thereby committed misconduct as enumerated U/R. 3(1)(i) to (iii) of Karnataka Civil Services (Conduct) Rules, 1966”

4. The Inquiry Officer (Additional Registrar of Enquiries-11) on proper appreciation of oral and documentary evidence has held that the charges against DGO that in the matter of extending official favour to the Complainant, DGO demanded and accepted illegal gratification of Rs.4,000/- in the office of Special Land

Acquisition Officer, Upper Krishna Project, Devadurga, Amarpura Cross Camp on 04/07/2011 between 4.00 p.m. and 5.40 PM and failed to offer satisfactory explanation for possession of the said amount and thereby DGO is guilty of misconduct within the meaning of Rule 3(1)(i) to (iii) of the Karnataka Civil Services (Conduct) Rules, 1966 is proved.


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

6. As per the First Oral Statement submitted by DGO, the DGO Sri Ksheeralaing Honawad is due to retire from service on 30/4/2034.

7. Having regard to the nature of charge (demand and acceptance of bribe of Rs.4,000/-) proved against DGO Sri Ksheeraling Honawad, it is hereby recommended to the Government to impose penalty of compulsory retirement from service on DGO Sri Ksheeraling Honawad, First Division Assistant, Office of the Special Land Acquisition Officer, Upper Krishna Project, Devadurga, Camp at Amarpur Cross, Devadurga Taluk, Raichur District.

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

Connected records are enclosed herewith.


(JUSTICE N. ANANDA)
Upalokayukta-1, 24/10
State of Karnataka, Bengaluru

BEFORE THE ADDITIONAL REGISTRAR, ENQUIRES-11

KARNATAKA LOKAYUKTA, BENGALURU

ENQUIRY NUMBER: LOK/INQ/14-A/314/2012

ENQUIRY REPORT Dated: 19/10/2017

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

Delinquent Government Official: Sri.Ksheeraling Honawad (Name as mentioned by him on the note sheet on 16.1.2017). Discharged duties as First Division Assistant in the office of Special Land Acquisition Officer, Upper Krishna Project, Devadurga, Camp at Amarapur Cross, Devadurga Taluk, Raichur District. Due for retirement on superannuation on 30/04/2034.

In the year 2011 the Delinquent Government Official (in short, "DGO") was working as First Division Assistant in the office of the Special Land Acquisition Officer, Upper Krishna Project, Devadurga, Camp at Amarapur Cross, Devadurga Taluk, Raichur District. He is due for retirement on superannuation on 30/04/2034.

2. Facts which necessitated for initiation of the present enquiry proceedings may be stated in brief. Complainant by name Hanumantharaya is the resident of Chadakalagudda village, Devadurga Taluk, Raichur District. According to the complainant, land bearing survey no. 52/A totally measuring 5 acres 30 guntas was owned by him. Out of the said extent, an extent of 4 acres 16 guntas was acquired by the government. According to him, he is entitled to compensation of Rs.3,34,400/- towards acquisition of the land. About two months earlier to 4.7.2007 he approached the DGO in the office of Special Land

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Acquisition Officer, Upper Krishna Project Devadurga camp at Amarapura cross Devadurga Taluk, Raichur District in connection with compensation amount. According to the complainant, DGO demanded illegal gratification of Rs.14000/- in order to attend the said task. Thereafter, the complainant approached the DGO about twice or thrice. During those visits also DGO reiterated the said illegal demand. The complainant feeling annoyed by the said demand approached the Police Inspector (hereinafter will be referred to as "Investigating Officer") attached to Lokayukta Police Station Raichur and orally complained against the DGO. In order to ascertain the correctness or otherwise of the said oral complaint the Investigation Officer handed over tape recorder with instructions to the complainant to approach the DGO and to record the conversation between the complainant the DGO. In response, the complainant approached the DGO on 30.6.2011 at 12.30 PM in the office of DGO and spoke to the DGO in connection with the above task. DGO demanded a sum of Rs.4000/- towards advance and to pay balance of Rs.10,000/- subsequently. The complainant sought one week time and left the office of DGO. On 4.5.2011 the complainant appeared before the Investigating Officer and placed the tape recorder and orally complained against the DGO. The Investigating Officer got reduced the oral complaint into writing through the computer and after obtaining left thumb impression of the complainant on the complaint registered case against the DGO in crime no.9/2011 for the offence punishable under section 7, for the offence defined under section 13 (1) (d) which is punishable under section 13(2) of The Prevention of Corruption Act, 1988, and submitted FIR to the jurisdictional Special Court at Raichur. The Investigating Officer secured shadow witness by name Mohammad Aslam and panch witness by name Kariyappa A.N. The complainant placed total cash Rs.4000/- which consisted of four currency notes of denomination of Rs.1000/- each before the Investigating Officer. The Investigating Officer got applied phenolphthalein powder on the above notes through his staff. On the instruction of the Investigating Officer the panch witness placed the

 9.10.2011

tainted notes in the left side pocket of shirt of the complainant. The Investigating Officer got prepared solution with water and sodium carbonate powder. On the instructions of the Investigating Officer the panch witness immersed fingers of both hands in the solution. The said solution turned to pink colour. The Investigating Officer seized the said wash in a bottle. The Investigating Officer instructed the complainant to approach the DGO and to give tainted notes to DGO only in case of demand by DGO. The Investigating Officer also instructed the complainant to convey signal in case of acceptance of tainted notes by DGO. The Investigating Officer instructed the shadow witness to accompany the complainant and to watch as to what transpires between the complainant and DGO. With the above process the Investigating Officer conducted pre-trap mahazar as primitive step of investigation. Thereafter, the Investigating Officer along with his staff, the complainant, shadow witness and panch witness left Lokayukta Police Station Raichur destined at the office of DGO and reached near the office of DGO at 4-00 PM. The complainant along with shadow witness went to the office of DGO and came to know that DGO is out of office. Some time thereafter DGO returned to his office. The complainant along with shadow witness met the DGO in that office. DGO lifted the file of complainant and expressed that as per his recommendation DGO would get compensation of Rs.2,72,417/-. DGO demanded money. In response the complainant gave tainted notes of Rs.4,000/-. DGO accepted the said amount with right hand and after counting with both hands kept those notes in the rear pocket of the pant. DGO demanded balance of Rs.10,000/-. At that time the complainant along with shadow witness came out of that office and communicated the Investigating Officer. It was then 5-30 PM. Thereafter, the Investigating Officer along with his staff and panch witness entered the office of DGO and disclosed his identity. The Investigating Officer got prepared solution with water and sodium carbonate powder in two bowls and obtained sample of that solution in a bottle. On the instructions of the Investigating Officer DGO immersed fingers of right hand in the solution kept in one bowl. The

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said wash turned to pink colour. DGO immersed fingers of left hand in the solution kept in another bowl. The said wash turned to light pink colour. The Investigating Officer seized the above solutions in two separate bottles. On being questioned by the Investigating Officer about tainted notes DGO responded that those notes are in the rear side pocket of pant. On the instructions of the Investigating Officer, panch witness took out those notes from the hip pocket of pant of DGO. The Investigating Officer provided alternate pant to the DGO and after getting removed the pant of DGO got immersed the pocket of pant in the solution. The said wash turned to pink colour. The Investigating Officer seized the said wash and also pant of DGO. The Investigating Officer seized the file pertaining the complainant. DGO offered explanation in writing. Further investigation conducted by the Investigating Officer disclosed prima facie case against the DGO for the above alleged offences.

3. On the basis of report of the Additional Director General of Police, Karnataka Lokayukta and also the investigation papers placed by the Police Inspector attached to Karnataka Lokayukta Raichur investigation has been conducted by the Hon'ble Uplokayukta-1 in exercise of the powers conferred upon under section 7(2) of the Karnataka Lokayukta Act, 1984. Investigation disclosed that facts and materials on record prima-facie would show that DGO committed misconduct within the meaning of Rule 3(1) of The Karnataka Civil Services (Conduct) Rules, 1966 and therefore, the Hon'ble Uplokayukta-1 recommended the competent authority under section 12(3) of the Karnataka Lokayukta Act to initiate disciplinary proceedings against DGO and to entrust inquiry to the Hon'ble Upalokayukta-1 under Rule 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules 1957.
4. Subsequent to the report dated 19.5.2012 under section 12(3) of the Karnataka Lokayukta Act, 1984, Government Order No: ಕಂಇ 60 ಬಿಡಿಪಿ 2012 ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 25.07.2012 has been issued by the Under Secretary

 9.10.2012

attached to department of Revenue (Services-2) of Government of Karnataka entrusting the inquiry under rule 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 to the Hon'ble Upalokayukta-1. Thereafter, nomination order no: LOK/INQ/14-A/314/2012 BENGALURU, DATED 14/08/2012 has been passed by the Hon'ble Upalokayukta-1 nominating the Additional Registrar of Enquiries-4, Karnataka Lokayukta.

5. Articles of Charge against DGO framed by the then Additional Registrar, Enquiries-04, Karnataka Lokayukta which includes Articles of Charge at Annexure-I and statement of imputation of misconduct at Annexure-II are the following:

"ANNEXURE NO. 1

CHARGE

That you, Sri Ksheeraling S/o Siddappa Honavad, the DGO, while working as First Division Assistant in the office of Special Land Acquisition Officer of Upper Krishna Project in Devadurga, Camp Amarapura cross of Raichur District, the complainant namely Sri Hanumantharaya S/o Palagowda of Chadakalagudda in Devadurga Taluk approached you requesting for payment of compensation awarded towards acquisition of his land measuring 4.16 acres in Sy. No. 52/A of Chadakalagudd and then you asked the complainant for the payment of bribe of Rs. 17,000/- and insisted to pay Rs.4,000/- in advance and on 04/07/2011 received the said bribe of Rs. 4,000/- from the complainant to show official favour, failing to maintain absolute integrity and devotion to duty, the act of which was un-becoming of a Government Servant and thereby committed mis-conduct as enumerated U/R 3(1)(i) to (iii) of Karnataka Civil Service (Conduct) Rules, 1966.

ANNEXURE NO. II

STATEMENT OF IMPUTATIONS OF MISCONDUCT

The complainant namely Sri Hanumantharaya S/o Palagowda, resident of Chadakalagudd in Devadurga Taluk of Raichur District. The

[Handwritten signature]
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land measuring 5.30 acres in Sy. No. 52/A of Chadakalagudd was belonged to him. Out of this land 4.16 acres was notified for acquisition for formation of Upper Krishna Project Canal. Then the complainant approached the DGO and he asked the complainant for bribe of Rs.17,000/- to release the awarded amount of Rs.3,34,400/-. The DGO further told the complainant to pay Rs.4,000/- in advance and to pay the remaining amount at the time of issuing cheque for the compensation amount. The complainant was not willing to pay bribe demanded by the DGO. Therefore, the complainant lodged a complaint before the Lokayukta Police Inspector of Raichur on 04/07/2011 (hereinafter referred to as the Investigating Officer, for short "the I.O."). The I.O. registered the complaint in Cr. No. 9/2011 for the offences punishable U/S 7, 13(1)(d) R/W 13(2) of Prevention of Corruption Act, 1988. The I.O. took up investigation and in the course of investigation, the I.O. trapped the DGO on 04/07/2011 at the office of the Land Acquisition Officer of Upper Krishna Project Canal while receiving tainted amount of Rs. 4,000/- from the complainant. The I.O. seized the tainted amount from the DGO after following post-trap formalities. The DGO failed to give satisfactory or convincing reply about possession of the tainted amount. The I.O. Recorded statement of the complainant and panch witnesses. The record of investigation and materials collected by the I.O. showed that, the DGO has committed mis-conduct failing to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of Government servant. As the materials on record showed, prima facie case about DGO receiving bribe for discharging his duty as Public Servant, a suo-moto investigation was taken up under section 7(2) of the Karnataka Lokayukta Act against the DGO. An Observation Note was sent to the DGO calling for his explanation. The reply given by the DGO was not convincing and not satisfactory to drop the proceedings. As there was a prima facie case showing that the DGO has committed mis-conduct as per Rules 3(1) of KCS (Conduct) Rules, 1966. A report under section 12(3) of the Karnataka Lokayukta Act was sent to the Competent Authority with recommendation to initiate the disciplinary

 4/17/2012

proceedings against the DGO. Accordingly the Competent Authority initiated Disciplinary Proceedings against the DGO and entrusted the enquiry to the Hon'ble Upalokayukta under Rule 14A of KCS (CCA) Rules. Hence, the charge".

6. In response to service of articles of charge DGO entered appearance before the Additional Registrar Enquiries-4, Karnataka Lokayukta Bengaluru and engaged advocate for his defence. On 24.1.2013 when the first oral statement of DGO was recorded the DGO pleaded not guilty. As per order No.LOK/INQ/14-A/2014 dated: 14.3.2014 of the Hon'ble Upalokayukta-1 this file has been transferred to the Additional Registrar Enquiries-5 Karnataka Lokayukta, Bengaluru.
7. In the course of written statement dated 03/06/2013 DGO has contended that he has not committed any misconduct and thus denied the alleged charge and stated that he may be permitted cross examine the witnesses who are going to be examined by the Disciplinary Authority.
8. The disciplinary authority has examined the complainant by name Hanumantharaya as PW-1, panch witness by name Kariyappa A.N. (name of witness is mentioned as Kariyappa A.M. by the then Registrar Enquiries -5 Karnataka Lokayukta, Bengaluru.) During evidence of PW-1 recorded before the then Additional Registrar Enquiries-5 Karnataka Lokayukta, Bengaluru, attested copy of complaint in a single sheet is marked as per Ex P 1, left thumb impression of the complainant found on Ex P 1 is marked as per Ex P 1(a), attested copy of pre- trap mahazar consisting of three sheets is marked as per Ex P 2, left thumb impression of the complainant found on Ex P 2 is marked as per Ex P 2(a), attested copies of photographs flashed during pre-trap proceedings are marked as per Exs P 3 to P 7, attested copy of trap mahazar consisting of six sheets is marked as per Ex P 8, left thumb impression of complainant found on Ex P 8 is marked as per Ex P 8(a), attested copy of statement consisting of six sheets of complaint recorded by the

 15/10/2017

Investigating Officer under section 162 of The Code of Criminal Procedure, 1974 is marked as per Ex P 9. During evidence of PW2 recorded before the then Additional Registrar, Enquiries-5 Karnataka Lokayukta, Bengaluru attested copy of a single sheet containing numbers of tainted notes is marked as per Ex P 10, signature of PW2 found on Ex P 2 is marked as per Ex P 2(b), attested copy of statement in a single sheet of DGO is marked as per Ex P 11, signature of PW2 found on Ex P 11 is marked as per Ex P 11(a), signature of DGO found on Ex P 11 is marked as per Ex P 11(b), signature of PW2 found on Ex P 8 is marked as per Ex P 8(b), attested copy of Gazette notification in a single sheet is marked as Ex P 12, attested copy of one more Gazette notification in a single sheet is marked as Ex P 13, attested copy of enclosure to Ex P 13 in a single sheet is marked as per Ex P 13(b), relevant portion of Ex P 13(b) pointing out the name of complainant is marked as per Ex P 13(a), attested copy of award dated 1.7.2011 of Special Land Acquisition Officer, Krishna Upper Project Devadurga in three sheets is marked as per Ex P 14, second unnumbered sheet of Ex P 14 is marked as per Ex P 15, attested copy of award in a single sheet of Special Land Acquisition Officer, Krishna Upper Project Devadurga is marked as per Ex P 16, attested copies of photographs flashed during trap mahazar totally consisting of three sheets are marked as per Ex P 17 to P 22, attested copy of two photographs in a single sheet is marked as per Exs P 23 and P 24.

9. As per Order No. UPLOK-1/DE/2016 Bengaluru Dated 3.8.2016 of the Hon'ble Upalokayukta-1 this file has been transferred to this section i.e., Additional Registrar, Enquires-11, Karnataka Lokayukta Bengaluru. Thereafter DGO has entered appearance before this section.
10. Thereafter, the Disciplinary Authority has examined the shadow witness by name Mohammed Aslam as PW3. During evidence of PW3 xerox copy of transmitted version of the conversation in two sheets dated

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30/06/2011 between DGO and the complainant is marked as per Ex P 25.

11. During second oral statement of DGO recorded on 16/01/2017 DGO has contended that he would get himself examined as defence witness and stated that he does not intend to examine any witness on his behalf.
12. DGO got himself examined as DW1. During his evidence RTC extract in a single sheet of the land bearing survey number 52/1A situated at Chadakalagudda village is marked as per Ex D 1, another RTC extract in a single sheet of the land bearing survey number 52/1A situated at Chadakalagudda village is marked as per Ex D 2, xerox copy of letter dated 27/10/2009 in a single sheet addressed to the Land Acquisition Officer, Upper Krishna Project, Amarapura cross by the Executive Engineer Krishna Bhagya Jala Nigama (Niyamitha) Chikkahonnakuni in a single sheet is marked as per Ex D 3, xerox copy of form no.1 in a single sheet of Krishna Bhagya Jala Nigama (Niyamitha) is marked as per Ex D 4, original printed requisition in three sheets is marked as per Ex D 5, original letter dated 06/09/2011 in a single sheet of Shiddaiah is marked as per Ex D 6, certified copy of deposition in three sheets of PW5 in Special CC No. 1/2012 on the file of Principal District and Sessions Judge, Raichur is marked as per Ex D 7, office copy of letter in two sheets bearing signature of DGO in a single sheet maintained by DGO the original of which is addressed to Special Land Acquisition Officer, Upper Krishna Project, Devadurga is marked as per Ex D 8, office copy of letter in a single sheet containing signature of DGO the original of which is addressed to Special Land Acquisition Officer, Krishna Upper Project, Devadurga is marked as per Ex D 9, Office copy of letter in two sheets bearing signature of DGO the original of which is addressed to Chief Accounts Officer, Land Acquisition, Upper Krishna Project, Bagalakote is marked as per Ex D 10, original letter in a single sheet dated 04/07/2016 of Special Land Acquisition Officer, Upper Krishna Project, Devadurga is marked as per Ex D 11, original letter in a

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single sheet dated 10/05/2016 of Chief Accounts Officer, Land Acquisition, Upper Krishna Project, Nava Nagara, Bagalakote addressed to DGO is marked as per Ex D 12, attested copy of acknowledgement in a single sheet touching payment of compensation is marked as per Ex D 12 (a), attested copy of challan in a single sheet is marked as per Ex D 12(b), office copy of letter in three sheets dated 12/09/2016 containing the signature of DGO the original of which is addressed to the Commissioner, Land Acquisition and Rehabilitation, Upper Krishna Project, Bagalakote is marked as per Ex D 13, attested copy of letter dated 20/09/2016 of State Gazetted Manager, Office of the Commissioner, Rehabilitation and Land Acquisition, Upper Krishna Project and Public Information Officer, Nava Nagara, Bagalakote addressed to Special Land Acquisition Officer, Upper Krishna Project, Devadurga is marked as per Ex D 14, office copy of letter dated 03/01/2017 in a single sheet of DGO the original of which is addressed to the Commissioner, Rehabilitation and Land Acquisition, Upper Krishna Project, Bagalakote is marked as per Ex D 15, xerox copy of letter dated 04/02/2017 in a single sheet of State Gazetted Manager, Office of the Commissioner, Rehabilitation and Land Acquisition, Upper Krishna Project and Public Information Officer, Nava Nagara, Bagalakote addressed to Special Land Acquisition Officer, Upper Krishna Project, Devadurga is marked as per Ex D 16, original letter dated 25/10/2016 in a single sheet addressed to DGO by Special Land Acquisition Officer, Upper Krishna Project, Devadurga is marked as per Ex D 17, xerox copy of letter in two sheets dated 28/5/2012 of DGO addressed to Deputy Inspector General of Police, Karnataka Lokayukta, Bengaluru is marked as per Ex D 18, xerox copy of endorsement in a single sheet dated 20/06/2012 of Deputy Inspector General of Police, Karnataka Lokayukta, Bengaluru is marked as per Ex D 19, xerox copy of letter in two sheets dated 13/05/2013 of DGO addressed to the Hon'ble Lokayukta, Karnataka is marked as per Ex D 20, xerox copy of letter dated 22/08/2014 in a single sheet of DGO addressed to the Hon'ble Upalokayukta-1, Karnataka is marked as per Ex D 21, certified copy of

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judgment in ten sheets in Special (Corruption) Case number 01/2012 on the file of Principal District and Sessions Judge, Raichur is marked as per Ex D 22, certified copy of deposition of PW1 in four sheets in Special (Corruption) Case number 01/2012 on the file of Principal District and Sessions Judge, Raichur is marked as per Ex D 23, certified copy of deposition in four sheets of PW4 in Special CC number 01/2012 on the file of Principal District and Sessions Judge, Raichur is marked as per Ex D 24.

13. In the course of written argument dated 29/07/2017 it is mainly contended by the Presenting Officer that oral and documentary evidence produced on behalf of Disciplinary Authority establishes the charge against the DGO and that oral and documentary evidence of DGO cannot take away the credibility of the case of Disciplinary Authority.
14. DGO has filed written argument in the format of booklet enclosing documents totally consisting of fifty two sheets which are xerox copies of Ex. D 1 to D 24 obtained before making of D-1 to D-24. On behalf of DGO decision in G.R.Swamy V/S The Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court (Writ Petition number 17902/2009 decided on 13/03/2012 by the Hon'ble High Court Of Madras), decision in G.M.Tank V/S State of Gujarat and another (Appeal(Civil) 2582 of 2006 decided on 10/05/2006 by the Hon'ble Supreme Court), Decision in Nanhey Singh @ Dinesh Singh V/S State of UP and others (Criminal Mis Application Defective (Leave to Appeal) number 83 of 2013 decided on 22/07/2013 by the Hon'ble High Court of Alahabad) are relied upon. Synopsis of written argument of DGO is that oral and documentary evidence relied upon by Disciplinary Authority does not establish that alleged charges.
15. In tune with articles of charge at Annexure-I the sole point which arises for consideration is whether in the matter of extending official favour to the complainant DGO demanded and accepted illegal

 29/07/2017

gratification of Rs. 4,000/- in his office i.e., in the office of Special Land Acquisition Officer, Upper Krishna Project, Devadurga, Amarapura cross Camp on 04/07/2011 between 4 PM and 5-30 PM and failed to offer satisfactory explanation for possession of the said amount and thereby DGO is guilty of misconduct within the meaning of Rule 3(1)(i) to (iii) of The Karnataka Civil Services (Conduct) Rules 1966.

16. PW-1 who is the complainant states during evidence that nobody demanded bribe in connection with payment of compensation touching acquisition of an extent of 4 acres 16 guntas of land bearing survey number 52/B. According to him, one Basavaraj took him to Raichur and he subscribed left thumb impression in Lokayukta Office, Raichur. He states that he is not aware of contents of the complaint. He has not supported the complaint, pre-trap mahazar and trap mahazar. He has turned hostile and when subjected to cross-examination by the Presenting Officer he has denied the suggestions posed to him suggesting the alleging complicity of DGO. For the reasons well within his knowledge he has disowned his own cause. Suffice to express that his evidence does not incriminate the DGO and therefore his evidence is of no avail to establish the alleged charge.

17. Evidence of PW2 who is the panch witness that on 04/07/2011 he along with shadow witness PW3 went to Lokayukta police station at Raichur where PW1 placed cash of Rs.4,000/- and that phenolphthalein powder was applied on that cash is not under challenge. That portion of his evidence stands corroborated by the testimony of PW3 who during his evidence has stated that he went to Lokayukta Police Station at Raichur on 04/07/2011 where PW1 placed cash of Rs.4,000/- and that phenolphthalein powder was applied on those notes. That portion of his evidence has not been assailed during his cross-examination. It is brought out during his cross examination as could be seen from paragraph number 9 of his evidence that PW1 had placed cash of Rs.4,000/- in Lokayukta Police Station at Raichur. Evidence of PW2

 9.10.2017

that he placed tainted notes in the pocket of shirt of complainant is not under challenge. Though PW3 states during evidence that Lokayukta Police staff placed tainted notes in the pocket of shirt of complainant it needs to be remembered that evidence of a witness would depend upon his power of observation, power of reception and power of reproduction what he witnessed coupled with memory. Evidence of witness need not be appreciated with mathematical precession. This is the yardstick to be applied while appreciating the evidence of PW2 and PW3. Evidence of PW2 that after handling the tainted notes he washed the hands in sodium carbonate solution and that the said solution turned to pink colour has not been assailed during his cross examination. Evidence of PW3 that hand wash of PW2 turned to pink colour equally has not been assailed during his cross examination. PWs 2 and 3 have thus spoken to proceedings of pre trap mahazar. Nothing worthy is suggested to PW2 and PW3 during their cross examination to assail pre-trap proceedings and thus, on the strength of evidence of PW2 and PW3 pre-trap proceedings stands established which is the primitive step of investigation conducted by the Investigation Officer.

18. Evidence of PW3 that subsequent to pre-trap proceedings he along with PW1 went to the office of DGO and that as per instructions of DGO he came out of the office of DGO is not under challenge. During his cross-examination as could be seen from paragraph number 8 of his evidence he affirms that when he entered the office of DGO he was instructed by DGO to move out of office. He states further during cross-examination that he was at a distance of about five to six feet from the place where DGO was placed. He further states during cross-examination that he has not heard the demand for money by DGO. This portion of his evidence affirms that he has not witnessed what transpired between the DGO and PW1 in the office of DGO.

19. Evidence of PW3 that two or three minutes after he came out of the office of the DGO PW1 came out of the office of DGO and offered signal to

9.10.2007

Lokayukta Police Staff and thereafter he along with PW2 and Lokayukta Police staff entered the office of DGO where PW1 pointed out the DGO and informed that DGO accepted bribe amount and placed the same in the right side hip pocket of the pant and thereafter PW2 lifted tainted notes and subsequently when DGO washed both hands separately in the solution prepared with water and sodium carbonate powder the said wash turned to pink colour and that tainted notes are seized by Lokayukta Police staff has not been assailed during his cross-examination and therefore the said portion of his evidence needs acceptance. His evidence that when right side hip pocket of pant of DGO is washed in the solution the said wash turned to pink colour is equally not assailed during his cross examination and therefore that portion of his evidence needs acceptance. His evidence that DGO offered written explanation the attested copy of which is at Ex P 11 has equally remained unchallenged and therefore that portion of his evidence is also worthy of acceptance. During cross examination of PW3 as could be seen from paragraph number 9 of his evidence he has not stated that before getting removed the pant of DGO a lungi was provided to DGO. This portion of his answer lends assurance that right side hip pocket of pant of DGO was washed. It is also elicited during cross examination of PW3 as could be seen from paragraph number 9 of his evidence that DGO offered explanation in writing. This portion of his answer lends assurance that DGO offered explanation in writing. It is in the evidence of PW3 that trap mahazar the attested copy of which is at Ex P8 is drawn. As could be seen from his cross examination at paragraph number 9 of his evidence, evidence of PW3 that trap mahazar is conducted is attempted to be challenged. Suggestion posed to PW3 as could be seen from paragraph 9 of his evidence that after providing lungi mahazar was drawn in police station at Raichur and further suggestions that all mahazars are drawn in the office of DGO are denied. These two suggestions run contrary to each other. Suggestions that all panchanamas are drawn in the office of DGO is suggestive of the fact that DGO has not denied trap mahazar drawn in the office of DGO. This

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would further get assurance from the answer of PW3 as could be seen from paragraph 8 of his evidence that he subscribed signatures on some records in Lokayukta police station, Raichur and subscribed some signatures on some records during trap.

20. Evidence of PW2 that PW1 and PW3 went to the office of DGO is not under challenge. His evidence that after some time PW1 offered signal is also not under challenge. Evidence of PW2 that DGO washed hands gets strengthened from his answer during cross examination as could be seen from paragraph number 15 of his evidence that it was about 6:00 P.M. when DGO washed hands in the office of DGO. His evidence touching change of colour of hand wash of DGO, change of colour of wash of pocket of DGO, seizure of tainted notes are not seriously assailed during his cross examination and therefore needs acceptance. That portion of unchallenged evidence of PW2 runs against the DGO. Suggestion made to PW2 suggesting that hands are washed on the next day in the police station has been denied. The said suggestion has no substratum to adhere. There is no serious challenge against the evidence of PW2 that tainted notes are seized from the possession of DGO.

21. Evidence of PW2 in his cross examination at paragraph 12 of his evidence that after he entered the office of DGO the DGO has not demanded bribe is quite natural for the reason that according to Disciplinary Authority he is not shadow witness. As found in his cross examination at paragraph number 13 of his evidence he entered the office of DGO at 5:30 P.M. and left that office at about 8:30 P.M. This portion of his evidence in cross examination is in conformity with unnumbered paragraph 3 and concluding portion of attested copy of trap mahazar at Ex P8.

22. Attempts are bestowed during cross examination of PW2 at paragraph numbers 6 to 8 of his cross examination focussing at title of the land

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acquired, share of PW1, officer empowered to disburse compensation amount. These attempts are nothing but futile exercise for the reason that PW2 being panch witness is not expected to be aware of all these particulars.

23. During evidence, DGO while stating that an extent of 430 acres of land has been acquired for Narayanapura right bank canal has stated that a mediator by name Channabasappa was threatening him over phone in the matter of compensation amount and that the said Channabasappa is instrumental for trap. This portion of his evidence cannot be believed for the reason that though PW1 has turned hostile nothing is found in the evidence of PW1 that Channabasappa took him to Lokayukta Police Station, Raichur. In addition to the same, Ex P11 which is the attested copy of the statement of DGO in writing may be looked into. Name of Channabasappa does not find place in Ex P11.
24. Evidence of DGO that land of PW1 is not acquired cannot be accepted for the reason that name of PW1 is found in sheet number 2 of Ex D5 that an extent of one acre thirty guntas and an extent of 1 acre 26 guntas of land of PW1 is acquired. Evidence of DGO that compensation is not awarded to PW1 and that payment is not yet made cannot be believed. The same is also found in Ex P13(a) which is similar to that of sheet number 2 of Ex D5. Evidence of DGO that compensation is not awarded to PW1 and that payment is not yet made cannot be believed since name of PW1 is found entered in Exs D11, 12(a), 12(b) and 17. On the basis of Exs D1 to D6 DGO sought to assert during evidence that PW1 has nothing to do with compensation amount. In the presence of Ex D3, D11, 12, 12(a), 12(b) and 17 no credence can be attached to the said portion of evidence of DGO. DGO states during evidence that he was not attending to the task of land acquisition proceedings. He states further that he was placing records before the concerned officers of his office after collecting documents from various offices and from the persons whose lands are acquired. He further states that he was not

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assisting his higher officers who are three in number. Therefore, on the basis of evidence of DGO himself it needs to be held that he was dealing with the file touching land acquisition proceedings.

25. DGO though states during evidence that PW1 never approached him he states at subsequent stage that without bringing the contents of the complaint left thumb impression of PW1 has been obtained. Basis for such a statement is not found in his evidence. It is the evidence of PW1 that he does not know the purpose for which he was taken to Raichur and that his left thumb impression was obtained. If it were to be the evidence of DGO that he was informed by PW1 that without informing the contents of the complaint left thumb impression of PW1 was obtained, then, evidence of DGO that without informing the contents of complaint left thumb impression of complainant was obtained could have been accepted. From the portion of evidence of DGO that without informing the contents of complaint left thumb impression of PW1 was obtained on the complaint would necessarily lead to draw inference that subsequent to lodging of complaint by PW1 DGO had occasion to have access with PW1 and for that reason PW1 turned hostile.
26. Evidence of DGO that the Investigating Officer has falsely alleged that during search a sum of Rs. 4,000/- was found cannot be accepted for the reason that evidence of PW2 and PW3 touching seizure of tainted notes has remained unchallenged. Evidence of DGO that despite several attempts by the Investigating Officer there was no change of colour of water cannot be accepted for the reason the evidence of PW2 and PW3 is convincing and establishes that hand wash of DGO turned to pink colour.
27. Regarding Ex P11 it is the evidence of DGO that original of Ex P11 has been obtained by posing threat. Correctness or otherwise of this portion of evidence needs to be probed into. During evidence PW2 has stated that on being enquired by the Investigating Officer DGO has stated that PW1

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had earlier availed loan and that PW1 returned the said loan. This portion of evidence of PW2 is neither attempted to be denied nor attempt is made to suggest that statement of DGO has been obtained by posing threat. Even evidence of PW3 in cross examination at paragraph number 9 of his evidence would show that DGO offered explanation in writing. Nothing is suggested to PW3 that explanation in writing of DGO is the outcome of force. Therefore, it needs to be held that DGO volunteered to place explanation in writing which cannot be characterized as the one obtained by the Investigating Officer by force.

28. In the decision in G.M.Tank V/s State of Gujarat and Another relied upon on behalf of DGO charge against the accused therein is acquisition of assets disproportionate to known source of income. The accused therein was acquitted holding the charge is not proved. Hon'ble Apex Court in the said decision at last but one paragraph has been pleased to observe that accused therein was honourably acquitted. Ex D22 which is not certified copy of judgment in Special (Corruption) case No: 1/2012 would show that DGO herein was accused in that case and the said case ended in acquittal. It is found observed in Ex D22 that acquittal resulted on the ground that prosecution has failed to establish the guilt beyond reasonable doubt. Acquittal was not honourable acquittal. As could be seen from paragraph number 26 of Ex D22 evidence on record established recovery of cash of Rs. 4,000/- from the accused therein. While holding that evidence existed that a sum of Rs. 4,000/- is recovered it is found observed in paragraph number 26 of Ex D22 that in the absence of proof of demand and acceptance of bribe mere recovery of tainted amount will not establish the charge beyond reasonable doubt.

29. It is well settled that in any criminal trial proof beyond reasonable doubt is the yardstick while appreciating evidence. In the inquiry of this nature, preponderance of probabilities is the yardstick which needs to be applied while appreciating evidence. Evidence on record in the case on hand establishes recovery of tainted notes amounting to Rs.4,000/- from

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the possession of DGO. It is brought out during cross examination of DGO that PW1 had no financial dealings with him and therefore explanation as found in Ex P11 cannot be accepted. It also needs to be borne in mind that without prior permission of Competent Authority DGO cannot indulge in financial transaction. Possession of unaccounted cash attracts misconduct within the ambit of Rule 3(1)(i)(iii) of the Karnataka Civil Services (Conduct) Rules, 1966.

30. In the decision in G.R.Swamy V/s the Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court relied upon on behalf of DGO law is laid down that punishment of compulsory retirement shall not be sustainable unless it is proved in the domestic enquiry that worker is found guilty of the offence. Scope of section 372 of the Code Of Criminal Procedure, 1973 is laid down in the decision in Nanhan Singh @ Dinesh Singh V/s Staff of U.P. and others relied upon on behalf of DGO. For the reasons mentioned above law laid down in the above three decisions, in my view is not applicable to the case on hand.
31. To sum up, evidence relied upon by Disciplinary Authority establishes demand of illegal gratification by DGO in order to extend official favour. Possession of tainted each of Rs.4,000/- by DGO stands established. DGO has failed to offer satisfactory explanation for possession of tainted notes. Oral and documentary evidence adduced by DGO is not worthy of credence and acceptance. Contention put forward by DGO in the course of written argument cannot be accepted.
32. For the reasons mentioned supra, I proceed with the following:

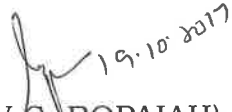
REPORT

Charges against DGO that in the matter of extending official favour to the complainant DGO demanded and accepted illegal gratification of Rs.4,000/- in the office of Special Land Acquisition Officer, Upper Krishna

 19.10.2017

Project, Devadurga, Amarapura Cross Camp on 04/07/2011 between 4:00 P.M. and 5:40 P.M. and failed to offer satisfactory explanation for possession of the said amount and thereby DGO is guilty of misconduct within the meaning of Rule 3(1)(i) to (iii) of the Karnataka Civil Services (Conduct) Rules, 1966 is proved.

Submit this report to the Hon'ble Upalokayukta-1 forthwith in a sealed cover along with connected records.


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

ANNEXURE

List of witness examined on behalf of the Disciplinary Authority:-

1. PW1:- Hanumantharaya
2. PW2:- Kariyappa A.N.
3. PW3:- Mohammed Aslam

List of documents marked on behalf of Disciplinary Authority:-

Sl. No.	Particulars	
1.	Ex P 1	Attested copy of complaint in a single sheet
2.	Ex P 1(a)	Left thumb impression of the complainant found on Ex P 1
3.	Ex P 2	Attested copy of pre- trap mahazar consisting of three sheets
4.	Ex P 2(a)	Left thumb impression of the complainant found on Ex P 2
5.	Exs P 3 to P 7	Attested copies of photographs flashed during pre-trap proceedings
6.	Ex P 8	Attested copy of trap mahazar consisting of six sheets
7.	Ex P 8(a)	Left thumb impression of complainant found on Ex P 8
8.	Ex P 9	Attested copy of statement consisting of six sheets of complaint recorded by the Investigating Officer under section 162 of The Code of Criminal Procedure.
9.	Ex P 10	Attested copy of a single sheet containing numbers of tainted notes
10.	Ex P 11	Attested copy of statement in a single sheet of DGO

11.	Ex P 11(a)	Signature of PW2 found on Ex P 11
12.	Ex P 11(b)	Signature of DGO found on Ex P 11
13.	Ex P 12	Attested copy of Gazette notification in a single sheet
14.	Ex P 13	Attested copy of Gazette notification in a single sheet
15.	Ex P 13(a)	Relevant portion of Ex P 13(b) pointing out the name of complainant
16.	Ex P 13(b)	Attested copy of enclosure to Ex P 13 in a single sheet
17.	Ex P 14	Attested copy of award dated 1.7.2011 of Special Land Acquisition Officer, Krishna Upper Project Devadurga in three sheets
18.	Ex P 15	Second unnumbered sheet of Ex P 14
19.	Ex P 16	Attested copy of award in a single sheet of Special Land Acquisition Officer, Krishna Upper Project Devadurga
20.	Ex P 17 to P 22	Attested copies of photographs flashed during trap mahazar totally consisting of three sheets
21.	Exs P 23 and P 24	attested copy of two photographs in a single sheet

List of witnesses examined on behalf of DGO:-

1. DW-1 :- Sri.Ksheeraling Honawad (DGO)

List of documents marked on behalf of DGO:-

Sl. No.	Particulars	
1.	Ex D 1	RTC extract in a single sheet of the land bearing survey number 52/1A situated at Chadakalagudda village
2.	Ex D 2	RTC extract in a single sheet of the land bearing survey number 52/1A situated at Chadakalagudda village
3.	Ex D 3	Xerox copy of letter dated 27/10/2009 in a single sheet addressed to the Land Acquisition Officer, Upper Krishna Project, Amarapura cross by the Executive Engineer Krishna Bhagya Jala Nigama (Niyamitha) Chikkahonnakuni in a single sheet
4.	Ex D 4	Xerox copy of form no.1 in a single sheet of Krishna Bhagya Jala Nigama (Niyamitha)
5.	Ex D 5	Original printed requisition in three sheets
6.	Ex D 6	Original letter dated 06/09/2011 in a single sheet of Shiddaiah
7.	Ex D 7	Certified copy of deposition in three sheets of PW5 in Special CC No. 1/2012 on the file of Principal District and Sessions Judge, Raichur

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8.	Ex D 8	Office copy of letter in two sheets bearing signature of DGO in a single sheet maintained by DGO the original of which is addressed to Special Land Acquisition Officer, Upper Krishna Project, Devadurga
9.	Ex D 9	Office copy of letter in a single sheet containing signature of DGO the original of which is addressed to Special Land Acquisition Officer, Krishna Upper Project, Devadurga
10.	Ex D 10	Office copy of letter in two sheets bearing signature of DGO the original of which is addressed to Chief Accounts Officer, Land Acquisition, Upper Krishna Project, Bagalakote
11.	Ex D 11	Original letter in a single sheet dated 04/07/2016 of Special Land Acquisition Officer, Upper Krishna Project, Devadurga
12.	Ex D 12	Original letter in a single sheet dated 10/05/2016 of Chief Accounts Officer, Land Acquisition, Upper Krishna Project, Nava Nagara, Bagalakote addressed to DGO
13.	Ex D 12(a)	Attested copy of acknowledgement in a single sheet touching payment of compensation
14.	Ex D 12(b)	Attested copy of challan in a single sheet
15.	Ex D 13	Office copy of letter in three sheets dated 12/09/2016 containing the signature of DGO the original of which is addressed to the Commissioner, Land Acquisition and Rehabilitation, Upper Krishna Project, Bagalakote
16.	Ex D 14	Attested copy of letter dated 20/09/2016 of State Gazetted Manager, Office of the Commissioner, Rehabilitation and Land Acquisition, Upper Krishna Project and Public Information Officer, Nava Nagara, Bagalakote addressed to Special Land Acquisition Officer, Upper Krishna Project, Devadurga
17.	Ex D 15	Office copy of letter dated 03/01/2017 in a single sheet of DGO the original of which is addressed to the Commissioner, Rehabilitation and Land Acquisition, Upper Krishna Project, Bagalakote
18.	Ex D 16	Xerox copy of letter dated 04/02/2017 in a single sheet of State Gazetted Manager, Office of the Commissioner, Rehabilitation and Land Acquisition, Upper Krishna Project and Public Information Officer, Nava Nagara, Bagalakote addressed to Special Land Acquisition Officer, Upper Krishna Project, Devadurga
19.	Ex D 17	Original letter dated 25/10/2016 in a single sheet addressed to DGO by Special Land Acquisition Officer, Upper Krishna Project, Devadurga
20.	Ex D 18	Xerox copy of letter in two sheets dated 28/5/2012 of DGO addressed to Deputy Inspector General of Police, Karnataka Lokayukta, Bengaluru

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21.	Ex D 19	Xerox copy of endorsement in a single sheet dated 20/06/2012 of Deputy Inspector General of Police, Karnataka Lokayukta, Bengaluru
22.	Ex D 20	Xerox copy of letter in two sheets dated 13/05/2013 of DGO addressed to the Hon'ble Lokayukta, Karnataka
23.	Ex D 21	Xerox copy of letter dated 22/08/2014 in a single sheet of DGO addressed to the Hon'ble Upalokayukta-1, Karnataka
24.	Ex D 22	Certified copy of judgment in ten sheets in Special (Corruption) Case number 01/2012 on the file of Principal District and Sessions Judge, Raichur
25.	Ex D 23	Certified copy of deposition of PW 1 in four sheets in Special (Corruption) Case number 01/2012 on the file of Principal District and Sessions Judge, Raichur
26.	Ex D 24	Certified copy of deposition in four sheets of PW4 in Special CC number 01/2012 on the file of Principal District and Sessions Judge, Raichur


(V.G. BOPAI AH)

Additional Registrar, Enquiries-11,
Karnataka Lokayukta, Bengaluru.

