

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

NO: LOK/INQ/14-A/472/2011/ARE-11

Multi Storied Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001,
Date: 30/5/2017

RECOMMENDATION

Sub:- Departmental inquiry against Sri Laxman Mallapa
Vanaki, Village Accountant, Alagavadi, Raibagh Taluk,
Belagavi District - Reg.

Ref:- 1) Government Order No.ಕಂಇ 141 ಬಡಿಪಿ 2011, Bengaluru,
Dated 16/11/2011 and Corrigendum dated
8/12/2011.

2) Nomination order No.LOK/INQ/14-A/472/2011,
Bengaluru, dated 20/12/2011, of Hon'ble
Upalokayukta-1, State of Karnataka, Bengaluru

The Government by its Order dated 16/11/2011 read with its Corrigendum dated 8/12/2011, initiated the disciplinary proceedings against Sri Laxman Mallappa Vanaki, Village Accountant, Alagavadi Village, Raibag Taluk, Belagavi 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/472/2011, Bengaluru, dated 20/12/2011, nominated Additional Registrar of Enquiries-4, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct Departmental Inquiry against DGO for the alleged charge of misconduct, said to have been committed by him. Subsequently, by Order No. LOK/INQ/14-A/2014 dated 14/3/2014, 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, Additional Registrar of Enquiries - 11, Karnataka Lokayukta, Bengaluru was re-nominated as Inquiry Officer to conduct Departmental inquiry against DGO.

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

“That, you Sri Lakshmana Mallappa Vanaki, the DGO, while working as Village Accountant at Alagawada Village in Raibagh Taluk of Belgaum District, the complainant namely, Sri Sadashiv Siddappa Molagi had purchased 2 acres 5 guntas of land in the limits of Alagawadi Village and as its owner raised objection for entry of the name of the complainant, the Dy. Tahsildar of Kudachi had passed an order in favour of the complainant and afterwards when, the complainant approached you for mutation of his name, you demanded bribe of Rs.3,000/- from complainant and after request, asked the complainant at least to pay Rs.1,500/- as bribe and on 05/09/2008 received bribe of Rs.1,500/- from the complainant to show official favour, failing to maintain absolute integrity and devotion of 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 Service (Conduct) Rules, 1966.”

4. The Inquiry Officer (Additional Registrar of Enquiries-11) on proper appreciation of oral and documentary evidence has held that the charge against DGO that in the matter of extending official

favour to the complainant i.e., in order to attend mutation entries of the land purchased by the complainant the DGO demanded illegal gratification from the complainant subsequent to 30/7/2008 and thereafter, on 05/09/2008 at 8-00 P.M in the office cum residence of DGO at Alagawadi the DGO demanded and accepted illegal gratification of Rs.1,500/- from the complainant and thereby DGO is guilty of misconduct within the scope and ambit of Rule 3(1)(i) to (iii) of the Karnataka Civil Services (Conduct) Rules, 1966 is proved.

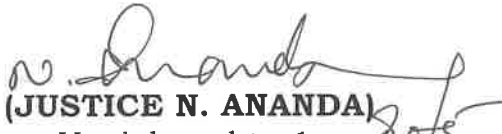
5. On re-consideration of the evidence, I do not find any reason to interfere with the findings recorded by the Inquiry Officer. It is hereby recommended to the Government to accept the report of Inquiry Officer.

6. As per the First Oral Statement submitted by DGO, he is due to retire from service on 30/6/2021.

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

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

Connected records are enclosed herewith.


(JUSTICE N. ANANDA)
Upalokayukta-1, 20/5
State of Karnataka, Bengaluru.

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BEFORE THE ADDITIONAL REGISTRAR, ENQUIRES-11

KARNATAKA LOKAYUKTA, BENGALURU

ENQUIRY NO: LOK/INQ/14-A/472/2011/ARE-11

ENQUIRY REPORT Dated: 29/05/2017

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

Delinquent Government Official: Sri Laxman Mallappa Vanaki (Name as written by him on the note sheet on 15-9-2016)

Discharged duties as Village Accountant, Alagavadi, Raibag Taluk, Belagavi District in the year 2008.

Due for retirement on 30-6-2021.

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REPORT

1. In the year 2008 Delinquent Govt Official (in short, "DGO") by name Laxman Mallappa Vanaki was working as Village Accountant, ^{Alagavadi} ~~Agalavadi~~, Raibag Taluk, Belagavi District. He is due for retirement on superannuation on 30.06.2021.
2. Facts leading to initiation of the present enquiry may be narrated in brief. The complainant by name Sadashiv Siddappa Molagi resident of a place called Nagarmunoli of Chikkodi Taluk, Belagavi District purchased at extent of 2 acres and 05 guntas of land situated at Agalavadi Village Raibag Taluk, Belagavi District in the month of December-2007. According to the complainant, subsequent to purchase of the said land, the

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vendor of that land raised dispute touching change of khatha. The said dispute which was pending before the Deputy Tahsildar, Kudachi came to be disposed off in favour of the complainant on 31-7-2008. Thereafter, the complainant approached the DGO and requested for causing mutation entry. According to the complainant, the DGO, in order to cause mutation entry demanded illegal gratification of Rs.3,000/-. The complainant requested to scale down the said demand at Rs. 1,000/-. The DGO insisted to pay at least a sum of Rs. 1,500/- as illegal gratification. Feeling offended by the said demand, the complainant approached the Police Inspector (hereinafter will be referred to as "Investigating Officer") attached to Lokayukta Police Station at Belagavi on 5-9-2008 at 1-00 PM and lodged written complaint. On the basis of the said complaint the Investigating Officer registered case against the DGO in crime number 18/2008 of Lokayukta Police Station Belagavi and after submission of FIR to the jurisdictional Court at Belagavi secured shadow witness by name Deepaka Rajarama Mane and panch witness by name Basappa Dundappa Kencharalavutha. The Investigating Officer got applied phenolphthalein powder on the cash of Rs.1,500/- placed before him by the complainant. Thereafter, the panch witness placed the tainted notes in the pocket of short of the complainant. Afterwards, the panch witness immersed fingers of hands in the solution prepared with water and sodium carbonate powder. The said solution turned to pink colour. The Investigating Officer

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seized the said solution in a bottle. With the above process the Investigating Officer conducted pre-trap mahazar in Lokayukta Police station, Belagavi. Thereafter, the Investigating officer along with his staff, complainant, shadow witness and trap witness proceeded towards a place called Alagavadi. DGO was not found in his office cum residence. At 8-00 PM the DGO returned to his office cum residence. The complainant along with shadow witness entered the office cum residence of the DGO and requested to attend the work. The DGO demanded Rs.1,500/-. In response, the complainant gave tainted notes. DGO received the tainted notes with right hand and after counting the same kept the same in his left hand. Afterwards, the complainant came out and offered signal by wiping the face with kerchief. Thereafter, the Investigating officer along with the trap witness entered the office cum residence of the DGO. The Investigating Officer got prepared solution with water and sodium carbonate powder in two containers. DGO immersed fingers of right hand in the solution kept in a container and immersed fingers of left hand in the solution kept in another container. Finger wash of both hands of DGO turned to pink colour. The Investigating officer seized the said wash. On being questioned about tainted notes the DGO placed those notes before the Investigating Officer. The DGO placed statement in writing before the Investigating Officer, The investigating Officer seized the file of complainant from the DGO. The Investigating Officer brought his staff, DGO, complainant, shadow witness and trap witness and to the

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inspection bungalow of Irrigation Department at Raibag and conducted trap mahazar. The Investigating Officer arrested the DGO and produced in the home office of the Special Judge at Belagavi. After conclusion of investigation the Investigating Officer obtained sanction for prosecution of DGO and filed charge sheet before the Special Court at Belagavi.

3. After placing of report of the Investigating Officer by the Additional Director General of Police, Karnataka Lokayukta before the Hon'ble Upalokayukta-1, the Hon'ble Upalokayukta-1, in exercise of the powers conferred upon under section 7(2) of The Karnataka Lokayukta Act, 1984, the Hon'ble Upalokayukta-1 conducted investigation and found that materials on record prima facie disclosed that DGO has committed misconduct within the ambit of Rule 3 (1) of The Karnataka Civil Services (Conduct) Rules,1966, and in exercise of the powers conferred upon under section 12(3) of The Karnataka Lokayukta Act, 1984, recommended the Competent Authority to initiate disciplinary proceedings against the DGO and to entrust the inquiry to the Hon'ble Upalokayukta-1 under Rule 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.
4. Subsequent to the report dated 10-10-2011 under section 12(3) of The Karnataka Lokayukta Act, 1984, of the Hon'ble Upalokayukta-1 Government Order No: ಕಂಇ 141 ಬಿಡಿಪಿ 2011 ಬೆಂಗಳೂರು, ದಿನಾಂಕ:16-11-2011 has been issued by the Under Secretary to the Government of Karnataka, Department of Revenue

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entrusting the enquiry to the Hon'ble Upalokayukta under Rule 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. Corrigendum dated 8-12-2011 has been subsequently issued by the Under Secretary to the Government of Karnataka Department of Revenue to the above Government Order. Thereafter, order No: LOK/INQ/14-A/472/2011 Bengaluru dated 20-12-2011 of the Hon'ble Upalokayukta-1 has been ordered nominating the Additional Registrar, Enquiries-4, Karnataka Lokayukta as Inquiry Officer to frame charge and to conduct departmental inquiry against the DGO.

5. Articles of charge dated 15-3-2012 framed by the Additional Registrar, Enquiries-4, Karnataka Lokayukta which includes articles of charge at Annexure-I and statement of imputation of misconduct at Annexure-II are the following :

“ ANNEXURE NO. I
CHARGE

That, you Sri. Lakshmana Mallappa Vanaki, the DGO, while working as Village Accountant at Alagawada village in Raibagh Taluk of Belgaum District, the complainant namely Sri.Sadashiv Siddappa Molagi had purchased 2 acres 5 guntas of land in the limits of Alagawadi village and as its owner raised objection for entry of the name of the complainant, the Dy.Tahsildar of Kudachi had passed an order in favour of the complainant and afterwards when, the complainant approached you for mutation of his name, you demanded bribe of Rs.3000/- from the complainant and after request, asked the complainant at least to


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pay Rs.1500 as bribe and on 05/09/2008 received bribe of Rs.1500/- from the complainant to show official favour, failing to maintain absolute integrity and devotion of 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.Sadashiv Siddappa Molagi fr/o Nagaramunavalli Village in Belgaum District had purchased 2 acres 5 gunts of land of Alakawadi village in Raibagh Taluk in the month of December 2007. Afterward, the previous owner raised objection for the entry of the name of the complainant in the revenue records. In that connection, a proceedings before the Deputy Tahasildar of Kundach was pending. Later, the Deputy Tahasildar of Kudachi passed an order on 31/07/2008 in favour of the complainant. Therefore, the complainant approached the DGO for mutation of his name in the revenue records. The DGO demanded bribe of Rs.3000/- from the complainant to attend the work of mutation in his favour. The complainant told the DGO that he will pay Rs.1000/-. But, the DGO did not agree and asked the complainant to pay at least Rs.1500/- as bribe. The complainant was not willing to pay bribe as demanded by the DGO. Therefore, on 05/09/2008, the complainant lodged a complaint before the Lokayukta Police Inspector of Belgaum

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(herein after referred to as the Investigating Officer, for short, "the I.O").The I.O. registered the complaint in Cr.No:18/2008 for the offences punishable U/S 7,13(1)(D) r/w 13(2) of the Prevention of Corruption Act 1988. During the course of investigation into the aid crime, when the tainted amount of Rs.1500/- was given by the complainant to the DGO, the IO trapped the DGO on 05/09/2008 in the presence of the complainant, the Panch witnesses and his staff at the Government Quarters in Alagawadi and seized the tainted amount from the DGO under mahazar after following post-trap formalities. The I.O. took statement of the DGO in writing and record statements of the complainant, the panch witnesses and others. After receiving report of the chemical examiner, the I.O submitted report of investigation. The facts and materials on the record of investigation of the I.O prima facie showed that, the DGO being a Government servant, failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant. Therefore, a suo-moto investigation was taken up U/S 7(2) of Karnataka Lokayukta Act and an observation note was sent to the DGO calling for his explanation. The DGO submitted his reply and the reply was not convincing and not satisfactory to drop the proceedings. As the facts and materials on record prima-facie showed that the DGO has committed mis-conduct as per rule 3(1)(i)&(iii) of KCS (Conduct) Rules, 1966, a report U/S12(3) of the Karnataka Lokayukta Act was sent to the Competent Authority with recommendation to initiate disciplinary proceedings against the DGO and to entrust

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enquiry to the Hon'ble Upalokyukta U/R 14-A of the Karnataka Civil Services (Classification, Control and Appeal) 1957. Accordingly the Competent Authority initiated disciplinary proceedings against the DGO and entrusted the enquiry U/R 14-A of the KCS (CCA) Rules 1957 to the Hon'ble Upalokayukta. Hence, this charge".

6. In response to service of articles of charge, the DGO entered appearance before the Additional Registrar, Enquiries -4 on 25-4-2012 and during his first oral statement recorded on that day pleaded not guilty. On 24-8-2012 the DGO engaged advocate for his defence and filed written statement. In the course of written statement it is contended that the complainant never approached him for causing mutation entry. It is contended that after the receipt of order of Deputy Tahsildar, Kudachi, the DGO, after getting the order certified by the Revenue Inspector handed over the same to " Bhumi Operator" who in turn caused mutation entry on 30-8-2008. Thus, according to the DGO, official work the complainant was not pending with him and as such, pre-trap proceedings, trap proceedings including change of colour of finger wash of the hands of DGO are of no consequence. The DGO has denied the alleged demand and acceptance of tainted currency notes.
7. 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.

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8. The complainant has been examined as PW 1 before the Additional Registrar, Enquiries-5. Shadow witness has been examined as PW 2 before the Additional registrar, Enquires -5, Karnataka Lokayukta. During evidence of the complainant, attested copy of complaint in a single sheet is marked as per Ex P 1, signature of PW 1 found on Ex P 1 is marked as per Ex P 1(a), attested copy of pre-trap mahazar dated 5-9-2008 consisting of five sheets is marked as per Ex P 2, signature of PW 1 found on Ex P 2 is marked as per Ex P 2(a), attested copy of trap mahazar dated 5-9-2008 consisting of six sheets is marked as per Ex P 3, signature of PW 1 found on Ex P 3 is marked as per Ex P 3(a), attested copy of file of complainant consisting of five sheets is marked as per Ex P 4. During evidence of PW 2 his signature found on Ex P 2 is marked as per Ex P 2(b), attested copy of statement of DGO given before the Investigating Officer in a single sheet is marked as per Ex P 5, signature of PW 2 found on Ex P 5 is marked as per Ex P 5(a), signature of PW 2 found on Ex P 3 is marked as per Ex P 3(b).
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 authority i.e., Additional Registrar, Enquires -11, Karnataka Lokayukta.
10. After the transfer of the file to this authority, the Investigating officer by name Ramappa Patil has been examined as PW 3. During evidence of PW 3, attested copy of FIR in a single sheet in crime number 18/2008 of Lokayukta Police Station Belagavi is

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marked as per Ex P 6, attested copy of sketch of place of trap in a single sheet is marked as per Ex P 7, attested copy of report of chemical examiner in two sheets is marked as per Ex P 8. During cross examination of PW 3 attested copy of a single sheet containing mutation entry is marked as per Ex D1.

11. During second oral statement of DGO recorded on 5-4-2017 he has not chosen either to get himself examined as defence witness or to examine any witnesses on his behalf.
12. Incriminating circumstances which appeared in the evidence of PWs 1 to 3 when put to the DGO by way of questionnaire, the DGO while admitting the complaint lodged against him denied the remaining incriminating circumstances which appeared against him. He contended that he has given statement before the Investigating Officer that official work of DGO was not pending with him. He has filed written statement of defence and produced one RTC extract in a single sheet pertaining to the land bearing survey number 108 at Alagavadi Village, Raibag Taluk. In the course of written statement of defence, while denying the charge it is contended that official work of the complainant was completed on 12-8-2008 and that RTC extract placed by him would reflect the then existed facts.
13. In the course of written argument it is contended mainly by the Presenting Officer that oral and documentary evidence on record establishes the alleged charge.

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14. In the course of written argument it is contended on behalf the DGO that order dated 31-7-2008 of the Tahsildar is found in Ex P 4 and that name of the complainant is found entered. It is contended that endorsement dated 12-8-2008 of the Revenue Inspector would show that direction has been issued to the DGO to cause mutation. It was thus sought to contend that official work of DGO was not pending with DGO as on the date of trap. It is contended that there is no evidence touching the conversation in relation to the alleged demand for bribe. It is contended that evidence of PW 1 is not free from doubt. It is contended that evidence of PWs 2 and 3 is also not worthy of acceptance. It is contended that entries in the trap mahazar would raise serious doubt. It is contended that law laid down by the Hon'ble Supreme Court touching misconduct is not attracted.
15. In the matter of extending official favour to the complainant i.e., in order to attend mutation entries of the land purchased by the complainant, whether the DGO demanded illegal gratification from the complainant subsequent to 30-7-2008 and thereafter, on 5-9-2008 at 8-00 P.M in the office cum residence of DGO at Alagavadi the DGO demanded and accepted illegal gratification of Rs. 1,500/- from the complainant and thereby DGO is guilty of misconduct within the scope and ambit of Rule 3 (1) (i) to (iii) of The Karnataka Civil Services (Conduct) Rules, 1966 is the sole point which arises for consideration.


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16. Fact that the file of the complainant was once pending with DGO is not in dispute. Evidence of DGO that he lodged complaint the copy of which is at Ex P 1 has not been assailed during his cross examination. Evidence of PW 3 that on the basis of the complaint he registered case against the DGO has not been assailed during his cross examination. It is in the evidence of the complainant that after lodging the complaint he placed cash of Rs. 1,500/- before PW 3 and that phenolphthalein powder was applied on the currency notes and thereafter the shadow witness placed tainted notes in the pocket of the complainant. It is in his evidence that when shadow witness washed hands in the solution the said wash turned to rose colour. It is in the evidence PW 2 that the complainant placed cash of Rs.1500/- in Lokayukta Police Station at Belagavai and that some powder was applied on the currency notes and that trap witness placed the tainted notes in the pocket of short of the complainant and with that process trap mahazar was conducted. It is in the evidence of PW 3 that the complainant placed cash Rs. 1500/- and that he got applied phenolphthalein powder on the currency notes. It is in his evidence that the trap witness placed tainted notes in the pocket of shirt of the complainant and that when the trap witness washed hands in the solution the said solution turned to rose colour and that with that process pre trap mahazar has been conducted. Suggestion made to him during his cross examination suggesting that he conducted pre-trap mahazar to suit his convenience has been denied. Upon appreciation of the cross examination of PWs 1 to 3 I find nothing to disbelieve their

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evidence in so far as pre-trap proceedings are concerned. Therefore, it needs to be held that PW 3 conducted pre-trap proceedings as primitive step of investigation.

17. It is in the evidence of PWs 1 to 3 that subsequent to pre-trap proceedings they proceeded to Alagavadi. That portion of evidence of PWs 1 to 3 is not under challenge. It is in the evidence of PWs 1 and 2 that DGO was not found in the office cum residence of DGO and subsequently DGO arrived at the office cum residence. Upon appreciation of the entire cross-examination of PWs 1 and 3 I find nothing worthy to hold that DGO has not arrived at his residence on that night. Evidence of the complainant that he along with shadow witness entered the office cum residence of DGO needs to be accepted since nothing worthy to disbelieve that portion of the complainant is brought out during cross examination of the complainant.
18. During evidence the complainant has stated that after his entry to the office cum residence of DGO he asked the DGO touching mutation entries and told that a sum Rs. 1500/- as demanded by DGO is brought . It is in the evidence of the complainant that in response to demand for bribe by DGO he paid amount to the DGO and thereafter DGO counted the amount which was put on the table and received the said amount. Suggestion made to the complainant during cross examination suggesting that the DGO expressed that work has been done and asked whether fee is brought. The said suggestion would show that the DGO asked for money. It is not the contention of DGO that fee was due.

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Since it is not the contention of DGO that fee was due, suggestion that DGO asked whether fee is brought is suggestive of the fact that DGO demanded illegal gratification. It is brought out during cross examination of the complainant that after payment of amount by the complainant the DGO received the same and placed in the drawer of the table. This answer would further strengthen the fact that DGO received tainted money. It is also brought out during cross examination of the complainant that after offering signal about 10 to 15 persons arrived at there and that DGO was found washing hands. Since, according to DGO, he was washing hands, it needs to be inferred that in order to screen the evidence DGO washed hands. It is also brought out during cross examination of the complainant that finger wash of hands DGO turned to rose colour. This portion of evidence elicited during cross examination of the complainant establishes that DGO touched tainted notes and therefore finger wash of hands turned to rose colour. It is brought out during cross examination of the complainant that DGO took out cash from the drawer of table and handed over the same to Lokayukta Police staff. Though it is in the cross examination PW 3 that on being questioned the DGO took out currency notes from the pocket the same is not a serious infirmity and therefore on the basis of the said infirmity it cannot be held that DGO was not found in possession of tainted notes.

19. It is in the evidence of PW 2 that the complainant asked the DGO about the work and that time DGO demanded balance of

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Rs.1500/- and in response the complainant paid cash Rs.1500/- to DGO and that DGO received the same and counted the notes. This portion of his evidence is in conformity with the evidence of the complainant. It is brought out during cross examination of PW 2 that he was very much with the complainant at the time when the complainant enquired the DGO. This portion of answer elicited during cross examination of PW 2 establishes the presence of PW 2 in the office cum residence of the DGO at the time of demand by DGO. Suggestion made to PW 2 that he has not heard the conversation between the complainant and the DGO has been equally denied. Upon appreciation of the entire cross examination of PWs 1 to 3 I find nothing worthy to hold that the complainant along with PW 2 has not entered the office cum residence of DGO. Evidence on record when appreciated would show that the complainant and PW 2 entered the office cum residence of DGO. Evidence of the complainant that DGO demanded and accepted tainted notes stands corroborated in all material particulars by the testimony of PW 2.

20. It is in the evidence of PW 3 that on 05/09/2008 he reached Alagavadi at 6-30 P.M along with his staff, complainant, shadow witness and panch witness. This portion of his evidence has not been assailed during his cross examination and therefore fact that he went there stands established. His evidence that since shadow witness and trap witness returned from the office cum residence of DGO on the ground that DGO was not found there is also not under challenge. His evidence that after the

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complainant wiped face at 8-00 P.M he along with trap witness and shadow witness entered the office cum residence of DGO equally has not been assailed during his cross examination. It is in the evidence of PW 3 that when DGO immersed fingers of right hand in the solution kept in a container and when DGO immersed fingers of left hand in the solution kept in another container finger wash of both hands turned to pink colour. Suggestion made to him during cross examination suggesting that DGO has not washed fingers of hands and that finger wash of hands has not turned to any colour has been denied. When the evidence of PW 3 is appreciated along with the evidence of PWs 1 and 2 touching the change of colour of finger wash of DGO it needs to be expressed that finger wash of hands of DGO turned to pink colour which is suggestive of the fact that DGO touched tainted notes.

21. It is in the evidence of PW 3 that when he questioned the DGO about cash the DGO took out tainted notes from the pocket and that he seized the tainted notes. It is brought out during his cross examination that when he entered the office cum residence of DGO he noticed currency notes in the right hand of DGO. It is in the cross examination of PW 1 that DGO took out amount from the drawer of table and placed before Lokayukta Police staff. It is in the cross examination of PW 2 that DGO gave cash to the panch witness. Thus, there are infirmities and slender variations touching the place where exactly tainted notes were found in the office cum residence of DGO. At this juncture it

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needs to be borne in mind that while appreciating evidence in a criminal trial proof beyond reasonable doubt is the yardstick which is to be applied. While appreciating evidence in disciplinary proceedings i.e., in the case on hand preponderance of probabilities is the yardstick which needs to be applied. Therefore, when the evidence of PWs 1 to 3 is appreciated keeping in mind the yardstick of preponderance of probabilities slender variations as mentioned above will have to be ignored and brushed aside. Since it is brought out during cross examination of PW 3 that when he entered the office cum residence of DGO tainted notes were found in the right hand of DGO nothing more is required to hold that DGO has not attempted to deny the cash which was found in his possession. Suggestion made to PW 3 that he noticed currency notes on the surface of the table and that he forcibly placed those notes in the right hand of DGO has been denied. The tenor of the said suggestion would further show that DGO has not ventured upon to deny the possession of tainted currency notes. Evidence of PW 3 that he seized cash has not been assailed during his cross examination and therefore seizure of tainted notes from the possession of DGO stands established.

22. PW 3 has stated during evidence that DGO placed written statement before him the copy of which is at Ex P5. That portion of evidence of PW 3 has not been challenged during his cross examination and therefore that portion of his evidence stands established. As against question numbers 35 and 42 of the

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questionnaire, DGO has answered that he give statement to the effect that the work of complainant was not pending with him. These answers are not in full conformity with Ex P5 in which it is found stated by DGO that on 05/09/2008 at about 8-00 P.M the complainant placed cash on the surface of table in his residence and asked to receive the same and at that time Lokayukta Police staff arrested him and that work of complainant was not pending with him. Though later portion of statement at Ex P5 would show that DGO stated that work of complainant was not pending with him the earlier portion of statement that complainant placed notes on the surface of table is not in conformity with the suggestion put to PW 3 during cross examination suggesting that PW 3 forcibly placed the notes in the right hand of DGO after taking out from the surface of table.

23. During cross examination of PW 3 it is brought out that Village Accountant is not empowered to effect change of khatha and that sheet number 4 of Ex P4 shows that on 12/08/2008 the Revenue Inspector recommended change of mutation entry and that sheet number 2 of Ex P4 shows that mutation entry has been ordered on 31/07/2008 which has been brought into effect on 25/08/2008 and ultimately on 30/08/2008 the Revenue Inspector accepted mutation. Ex D1 shows that mutation order was ordered on 31/07/2008. Thus, on the basis of the above portion of evidence in cross examination of PW 3 though it needs to be held that the DGO moved the file of the complainant the reason behind movement of the file can be

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gathered from the evidence of PW 1 who states in the opening unnumbered paragraph of his evidence that subsequent to 30/07/2008 when he approached the DGO there was demand for Rs.3,000/- and without alternative he paid Rs.1,000/- to DGO. This portion of his evidence that subsequent to filing of complaint by the complainant with PW 3 the complainant already paid a sum of Rs.1,000/- towards part of demand of DGO when appreciated with the fact that DGO moved the file of the complainant the only inference which could be drawn is that with fond hope of getting balance of demand the DGO handled the file of the complainant and subsequent to handling of the file of the complainant demanded and accepted a sum of Rs.1,500/- towards balance of the amount which was demanded earlier. Evidence of complainant that he paid a sum of Rs.1,000/- has not been assailed during his cross examination. Nothing is in the record to show that the complainant was very much aware that as on the date of lodging of complaint his file was handled by DGO. Inference needs to be drawn that DGO demanded balance without informing that mutation entry was caused already. Evidence of the complainant in the opening unnumbered paragraph of his evidence that the complainant had approached the DGO has not been denied and therefore contention of DGO in the written statement that the complainant never approached him cannot be accepted. The defence that official work of complainant was not pending with DGO will not absolve the DGO for the reason that evidence as discussed above

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establishes that without informing the fact that file was attended by DGO the DGO demanded and accepted balance amount. Upon meticulous appreciation of the entire oral and documentary evidence on record I am not inclined to accept the contentions put forward on behalf of DGO in the course of written argument. Contention put forward by the Presenting Officer in the course of written argument that evidence on record establishes the alleged misconduct is well founded. Therefore, for the reasons mentioned supra I proceed with the following:

REPORT

Charge against DGO that in the matter of extending official favour to the complainant i.e., in order to attend mutation entries of the land purchased by the complainant the DGO demanded illegal gratification from the complainant subsequent to 30/07/2008 and thereafter, on 05/09/2008 at 8-00 P.M in the office cum residence of DGO at Alagawadi the DGO demanded and accepted illegal gratification of Rs.1,500/- from the complainant and thereby DGO is guilty of misconduct within the scope and ambit 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 in a sealed cover forthwith along with the concerned records.


(V.G. Bopaiah)

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


ANNEXURE

List of witnesses examined on behalf of Disciplinary Authority:-

1. PW 1:- Sadashiva
2. PW 2:- Deepak
3. PW 3:- Ramappa Patil

List of documents marked on behalf of Disciplinary Authority:-

1. Ex P1:- Attested copy of complaint in a single sheet
2. Ex P1(a):- Signature of PW 1 found on Ex P1
3. Ex P2:- Attested copy of pre-trap mahazar dated 05/09/2008 consisting of five sheets.
4. Ex P2(a):- Signature of PW 1 found on Ex P2.
5. Ex P2(b):- Signature of PW 2 found on Ex P2.
6. Ex P3:- Attested copy of trap mahazar dated 05/09/2008 consisting of six sheets.
7. Ex P3(a):- Signature of PW 1 found on Ex P3.
8. Ex P3(b):- Signature of PW 2 found on Ex P3.
9. Ex P4:- Attested copies of the file consisting of five sheets of the complainant.
10. Ex P5:- Attested copy of statement of DGO given before PW 3 in a single sheet.
11. Ex P5(a):- Signature of PW2 found on Ex P5.
12. Ex P6:- Attested copy of FIR in a single sheet in crime number 18/2008 of Lokayukta Police station, Belagavi.

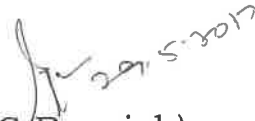
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13. Ex P7:- Attested copy of sketch of place of trap in a single sheet.
14. Ex P8:- Attested copy of report of chemical examiner in a single sheet.

List of witnesses examined on behalf of DGO:- Nil

List of documents marked on behalf of DGO:-

1. Ex D1:- Attested copy of the report in a single sheet touching mutation entry of the land bearing survey number 108.



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