

BEFORE THE ADDITIONAL REGISTRAR, ENQUIRES-11

KARNATAKA LOKAYUKTA, BENGALURU

ENQUIRY NUMBER: LOK/INQ/14-A/50/2013

ENQUIRY REPORT Dated: 28/08/2018

Enquiry Officer: V.G.Bopaiah

Additional Registrar Enquiries-11

Karnataka Lokayukta Bengaluru.

Delinquent Government Official: Sri. Shivarudrappa
Son of Veerabhadrapa Kore

Discharged duties as Second Division Surveyor attached to the office of Tahasildar, Mundagoda Taluk, Uttara Kannada District in the year 2011.


Retired on superannuation on 31/01/2012.

1. Delinquent Government Official (in short, "DGO") by name Shivarudrappa was working as Second Division Surveyor attached to the office of Tahasildar, Mundagoda Taluk, Uttara Kannada District in the year 2011. He retired from service on superannuation on 31/01/2012.
2. Facts which necessitated to initiate the present inquiry proceedings may be set out in brief. One Ganesha Nagesha Bhandarakara (hereinafter will be referred to as "complainant") is the resident of Manchikere Kamply village, Yallapura Taluk, Uttara Kannada District. In respect of land bearing survey number 22 situated at Shyanavalli the complainant filed

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application in the office of Tahsildar Mudagoda on 19/04/2010 to delete the entry of Forest Department in the concerned revenue records. Two months thereafter the complainant enquired about the said application in the office of Tahasildar, Mundagoda. He was informed that the file has been sent to the office of the Assistant Commissioner, Sirsi. After coming to know of the same the complainant enquired in the office of the Assistant Commissioner, Sirsi and came to know that the file has been sent to the office of the Tahasildar, Mundagoda and that after completion of survey needful would be done. Thereafter, the complainant approached the DGO and enquired about his application. Two weeks thereafter DGO conducted survey of the adjoining land of complainant and despite request of complainant, DGO has not conducted survey of land of complainant and informed that expenditure of Rs.10,000/- will be incurred. Fifteen days thereafter, when complainant approached the DGO in the office of DGO, the DGO received a sum of Rs.5,000/- towards expenditure and subsequently has not turned up to conduct survey. On 05/01/2011 the complainant again approached the DGO in the office of DGO and requested to conduct survey. DGO replied that file is with him and that survey will be conducted in case of further payment of Rs.5,000/-. The complainant pleaded inability to fulfil the said demand. DGO scaled down the said figure at Rs.3,000/ .

3. Feeling aggrieved by the illegal demand of DGO, the complainant set law into motion by filing complaint on 06/01/2011 with the Police Inspector (hereinafter will be referred to as "Investigating Officer") attached to Lokayukta Police Station, Karawara. On the basis of the complaint the

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Investigating Officer registered case against the DGO in crime number 01/2011 of Lokayukta Police Station, Karawara 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 Court and secured shadow witness by name Simon Ferasik Fernandis and panch witness by name Sridhara K to Lokayukta Police Station, Karawara and informed them the purpose for which they are secured. The complainant placed total cash of Rs.3,000/- which consisted of two currency notes of denomination of Rs.1,000/- each and ten currency notes of denomination of Rs.100/- each. On the instructions of the Investigating Officer staff of Investigating Officer applied phenolphthalein powder on the above notes. On the instructions of the Investigating Officer the shadow witness placed the tainted notes in the left side pocket of shirt of complainant. The Investigating Officer got prepared solution with water and sodium carbonate powder and obtained sample of the said solution in a bottle. On the instructions of Investigating Officer, the shadow witness immersed fingers of both hands in the residual solution. The said wash 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 in case of demand by DGO and in case of acceptance of tainted notes by DGO, the same has to be communicated by wiping face with kerchief. The Investigating Officer instructed the shadow witness to accompany the complainant and to watch what transpires between the complainant and DGO. The Investigating Officer placed a digital voice recorder at the hands of the complainant

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with instructions to keep the same live at the time of approaching the DGO. With that process the Investigating Officer conducted pre-trap mahazar as primitive step of investigation.

4. Subsequent to pre-trap mahazar the Investigating Officer along with his staff, complainant, panch witness and shadow witness left Lokayukta Police Station, Karawara and reached near the gate of the office of Tahasildar, Mundagoda at 11.30 A.M. Thereafter, the complainant and the shadow witness entered the office of Tahasildar, Mundagoda and came to know that DGO has left for Yallapura. Since the succeeding two days are Government holidays, the Investigating Officer thought of postponing laying of trap till 12/01/2011 and returned to Lokayukta Police Station, Karawara and took back the tainted notes and digital voice recorder from the complainant and instructed the complainant, shadow witness and panch witness to again appear on 12/01/2011.
5. On 12/01/2011 the complainant, shadow witness and panch witness appeared before the Investigating Officer in Lokayukta Police station, Karawara. The Investigating Officer again conducted pre-trap mahazar and thereafter left Lokayukta Police Station, Karawara along with his staff, complainant, shadow witness and panch witness and reached the premises of the inspection bungalow attached to Public Works Department, Mundagoda at 11.40 A.M. On the instructions of the Investigating Officer, the complainant and shadow witness entered the survey section office attached to the office of Tahasildar, Mundagoda. DGO was found seated on a chair in that office. On being asked about the survey by the complainant, DGO reiterated the earlier demand of Rs.3,000/-.

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In response, the complainant gave tainted notes to DGO. DGO accepted tainted notes with right hand and placed those notes in the left side pocket of shirt. The complainant came out of the said office and conveyed message to the Investigating Officer by wiping face with kerchief at 11.55 A.M. The Investigating Officer along with his staff and panch witness entered the office DGO where the panch witness informed the Investigating Officer that he witnessed acceptance of tainted notes by DGO. The Investigating Officer caused arrest of DGO. The Investigating Officer got prepared solution with water and sodium carbonate powder in two bowls and obtained sample of the said solution in a bottle. On the instructs of the Investigating Officer, DGO immersed fingers of right hand in the solution kept in a bowl and immersed fingers of left hand in the solution kept in another bowl. Finger wash of right hand of DGO turned to light pink colour. Finger wash of left hand of DGO has not turned to any colour. The Investigating Officer seized the said wash in separate bottles. On being questioned by the Investigating Officer about tainted notes the DGO took out tainted notes from the left side pocket of shirt. The Investigating Officer seized those tainted notes. After providing alternate shirt to the DGO, the Investigating Officer got removed the shirt of DGO and after getting prepared fresh solution with water and sodium carbonate powder the Investigating Officer got immersed the left side pocket of shirt of DGO in the said solution. The said solution turned to light pink colour. The Investigating Officer seized the said solution in a bottle and also seized the shirt of DGO. On being questioned by the Investigating Officer about tainted notes, DGO placed statement in writing stating that the complainant received a sum of Rs.

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5,000/- with assurance of providing accommodation to the daughter of DGO at Bengaluru and on 12/01/2011 the complainant managed the trap by paying cash of Rs.3,000/- but still the complainant owes a sum of Rs. 5,000/- and therefore DGO has not committed any act of misconduct. According to the Investigating Officer, the said explanation was not convincing. On being asked by the Investigating Officer about the file of the complainant DGO took out the file from the almira which was under the control of one T.D. Babu who then was working as Second Division Assistant in the office of DGO. The Investigating Officer obtained xerox copies of sheets of the said file and seized those xerox copies of sheets. The Investigating Officer conducted trap mahazar in the office of DGO. Further investigation disclosed prima facie case against the DGO and accordingly charge sheet has been filed against the DGO before the jurisdictional Court at Karawara.

6. On the basis of the report of the Additional Director General of Police, Karnataka Lokayukta enclosed with investigation papers filed by the Police Inspector, Karnataka Lokayukta, Karawara, Hon'ble Ipalokayukta-1, Karnataka took up investigation in exercise of the powers conferred upon under section 7(2) of The Karnataka Lokayukta Act, 1984 and on the basis of materials on record felt satisfied prima facie that DGO has committed misconduct within the purview of Rule 3 (1) of The Karnataka Civil Services (Conduct) Rules, 1966 and accordingly, in exercise of the powers conferred upon under section 12(3) of The Karnataka Lokayukta Act, 1984 recommended the competent authority to initiate disciplinary proceedings against the DGO under Rule 14-A of The Karnataka Civil Services (Classification,

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Control and Appeal) Rules, 1957 and since DGO retired from service, to accord sanction of the Government under Rule 214(2)(b)(i) of The Karnataka Civil Services Rules.

7. Subsequent to the report dated 25/10/2012 under section 12(3) of The Karnataka Lokayukta Act, 1984, Government Order bearing number ಕಂಞ 328 ಭೂದಾಸೇ(3)2012, ಬೆಂಗಳೂರು, ದಿನಾಂಕ 22/01/2013 has been issued by the Under Secretary to the Government of Karnataka, Department of Revenue (Survey) entrusting the inquiry against the DGO to the Hon'ble Upalokayukta, Karnataka under Rule 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 with permission under Rule 214(2)(b)(i) of The Karnataka Civil Services Rules.
8. Subsequent to the Government Order, Order number LOK/INQ/14-A/50/2013 Bengaluru dated 31/01/2013 has been ordered by the Hon'ble Upalokayukta-1, Karnataka nominating the Additional Registrar, Enquiries-4, Karnataka Lokayukta, Bengaluru as Inquiry Officer to frame charges and to conduct departmental inquiry against DGO.
9. Articles of charge dated 18/02/2013 at Annexure-I which includes statement of imputation of misconduct framed by the then Additional Registrar, Enquiries-4 is the following.


"ANNEXURE NO.I

CHARGE

2.That, you Sri Shivarudrappa- the DGO, while working as Second Division Surveyor in Tahsil office at Mundagod in Uttara Kannad District, now retired and residing at House No.78 in Sadashivanagar in Bhyridevarakoppa at Hubli, Sri Ganesh s/o Nagesh Bhandarkar r/o Manchikere Kampi in Yellapur Taluka of Uttara Kannad

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District (herein after referred to as the 'complainant') approached you-DGO stating that he, being a permanent "Lagani" holder of plot No.3 in Sy.No.22 of Shanavalli village, had submitted an application to Tahsil office at Mundagod on 19-04-2010 to reduce forest right mentioned in revenue records of the said land. But, for more than 2 months also, that application was not attended. So, when he approached you-DGO and enquired about his said application, you-DGO told that you-DGO will survey the land and fix its boundaries. Thereafter, you-DGO had come twice to the said land and surveyed nearby forest, but not his land. So, when the complainant requested you-DGO to survey the said land, you-DGO asked him to pay expenses for that and, when asked by him the quantum of expenses, you-DGO told it as Rs.10,000/-. After 15 days thereafter, when the complainant had approached, you-DGO took Rs.5,000/- from him then, telling it as office expenses and agreed to come for survey. When the complainant approached you-DGO on 05-01-2011 and made request about the said work, you-DGO demanded further bribe of Rs.5,000/- saying that otherwise survey will not be made of said land. When the complainant pleaded his inability to pay that much amount, you-DGO asked him to pay minimum of Rs.3,000/ . On 12 02 2011 you DGO received the tainted (bribe) amount of Rs.3,000/- in your office i.e. survey section of Tahsil office at Mundagod in connection with said work, thereby failing to maintain absolute integrity and devotion to duty, the act of which unbecoming of a Government Servant and thereby

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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 Sri Ganesh, being a permanent "Lagani" holder of plot No.3 in Sy.No.22 of Shanavalli village, had submitted an application to Tahsil office at Mundagod on 19-04-2010 to reduce forest right mentioned in revenue records of the said land. But, for more than 2 months also, that application was not attended. So, when he approached the DGO and enquired about his said application, the DGO told that he will survey the land and fix its boundaries. Thereafter, the DGO had come twice to the said land and surveyed nearby forest, but not his land. So, when the complainant requested the DGO to survey the said land, the DGO asked him to pay expenses for that and, when asked by him the quantum of expenses, the DGO told it as Rs.10,000/-. After 15 days thereafter, when the complainant had approached , the DGO took Rs.5,000/- from him then, telling it as office expenses and agreed to come for survey. When the complainant approached the DGO on 05-01-2011 and made request about the said work, the DGO demanded further bribe of Rs.5,000/- saying that otherwise survey will not be made of said land. When the complainant pleaded his inability to pay that much amount, the DGO asked him to pay minimum of Rs.3,000/-. The complainant was not willing to pay the bribe demanded by the DGO. Therefore, the complainant lodged a complaint before the Lokayukta Police Inspector of Karwar (Herein after referred to as the

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Investigating Officer, for short "the I.O.") The I.O. registered the complaint in Cr.No.1/2011 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 the investigation and on 12-01-2011, the DGO was trapped in his office while receiving the tainted (bribe) amount of Rs.3,000/- from the complainant at his office i.e., survey section of Tahasil office at Mundagod. The I.O. seized the tainted (bribe) 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 un-becoming of Government servant. As the materials on record showed prima facie case about DGO receiving bribe for dis-charging duty as Government Servant a suo-motu investigation was taken up U/S 7(2) of the Karnataka Lokayukta Act against the DGO. An Observation Note was sent to the DGO calling for his explanation. DGO submitted his reply to the observation note, but the same was not convincing to drop the proceedings. As there is a prima-facie showing that the DGO has committed mis-conduct as per Rule 3(1) of KCS (Conduct) Rules, 1966, a report U/S 12(3) of the Karnataka Lokayukta Act was sent to the Competent Authority with recommendation to initiate the disciplinary proceedings against the DGO U/R 14-A of KCS (CCA) Rules, 1957 with sanction as per rule 214(2)(b)(i) of Karnataka Civil Service Rules as the DGO had already retired

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from service on 31/01/2012. Accordingly, the Competent Authority initiated Disciplinary Proceedings against the DGO and entrusted the enquiry to the Hon'ble Upalokayukta U/R 14-A of the KCS (CCA) Rules with sanction as per rule 214(2)(b)(i) of Karnataka Civil Service Rules. Hence, this charge".

10. In response to due service of articles of charge, DGO has entered appearance before the Additional Registrar, Enquiries-4, Karnataka Lokayukta, Bengaluru on 17/04/2013 on which day when first oral statement of DGO was recorded DGO has pleaded not guilty. Subsequently, DGO has engaged Advocate for his defence.
11. As per Order number LOK/INQ/14-A/2014 dated 14/03/2014 of Hon'ble Upalokayukta-1, Karnataka this file has been transferred to Additional Registrar, Enquiries-5, Karnataka Lokayukta, Bengaluru.
12. Index dated 20/10/2014 signed by the DGO is filed on 20/10/2014 enclosing written statement dated nil signed by the DGO and also xerox copy of application dated 24/12/2008 in a single sheet of the complainant filed before the Tahasildar, Mundagoda, xerox copy of a letter dated 03/01/2009 in a single sheet of the Tahasildar, Mundagoda addressed to the Assistant Commissioner, Sirsi, xerox copy of endorsement in a single sheet, xerox copy of statement in a single sheet of DGO placed before the Investigating Officer.
13. In the course of written statement, the DGO while refuting the charge levelled against him, contended that the complainant filed application on 24/12/2008 in the office of Tahasildar, Mundagoda for deleting the entry which stood in the name of Forest Department in respect of the land bearing survey number 22/3 to an extent of four acres and that the said application was placed before the Assistant Commissioner, Sirsi and after return of the file

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to the office of Tahasildar, Mundagoda the file was assigned to DGO for conducting survey. It is contended that thereafter, as per the direction of the Tahasildar, Mundagoda DGO conducted survey and placed report before the Tahasildar, Mundagoda reporting that an extent of twenty two guntas was under cultivation and rest of the extent as shown in the will of the mother of complainant was not under cultivation. It is contended that the complainant became close to DGO and collected a sum of Rs.5,000/- from the DGO in order to see that accommodation at Bengaluru is provided to the daughter of DGO who was to attend examination conducted for banking service. It is contended that the complainant brought pressure to include the entire extent of four acres for which the DGO has not obliged and therefore DGO insisted the complainant to return cash of Rs.5,000/- which was collected earlier. It is contended that on 12/01/2011 the complainant returned a sum of Rs.3,000/- out of Rs.5,000/- which was received earlier. Thus according to DGO, he is not guilty of the alleged misconduct.

14. During the pendency of this file before the Additional Registrar, Enquiries-5, Karnataka Lokayukta, Bengaluru the disciplinary authority has examined the complainant as PW1. During evidence of complainant true copy of complaint dated 06/01/2011 in a single sheet is marked as per Ex P1, signature of the complainant found on Ex P1 is marked as per Ex P1(a), true copy of pre trap mahazar dated 06/01/2011 in three sheets is marked as per Ex P2 (upon going through the said true copy of pre trap mahazar marking of the same as Ex P2 by the then Additional Registrar, Enquiries-5, Karnataka Lokayukta, Bengaluru is not found and as such on the basis of evidence recorded by the then Additional Registrar, Enquiries-5, Karnataka Bengaluru I have noted marking of the said document as Ex P2), signature of complainant found on

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Ex P2 is marked as per Ex P2(a), true copy of mahazar dated 07/01/2011 in two sheets is marked as per Ex P3, signature of complainant found on Ex P3 is marked as per Ex P3(a), true copy of trap mahazar dated 12/01/2011 in four sheets is marked as per Ex P4, signature of complainant found on Ex P4 is marked as per Ex P4(a), true copies of thirty seven sheets of the file of the complainant are together marked as per Ex P5, true copy of pre trap mahazar dated 07/05/2011 in two sheets are marked as per Ex P6, signature of the complainant found on Ex P6 is marked as per Ex P6(a).

15. As per order number UPLOK-1/DE/2016 Bengaluru dated 03/08/2016 of Hon'ble Upalokayukta-1, Karnataka this file has been transferred to this section, i.e., Additional Registrar Enquiries-11, Karnataka Lokayukta, Bengaluru.
16. Subsequent to transfer of the file to this section the disciplinary authority has examined the shadow witness Sri. Simon Ferasik Fernandis as PW2 and the panch witness as PW3. During second oral statement of DGO recorded on 21/09/2017 he has stated that he does not intend to get examined as defence witness and that he does not intend to examine any defence witness.
17. Incriminating circumstances which appeared against the DGO in the evidence of PWs 1 to 3 are put to DGO by way of questionnaire and his answers are recorded. He has denied the incriminating circumstances which appeared against him.
18. In the course of written argument filed by the Presenting Officer on 07/12/2017 it is mainly contended that evidence of PWs 1 to 3 establishes the alleged misconduct.
19. In the course of written argument filed on 12/07/2018 by the DGO it is contended that the Investigating Officer remained absent and therefore, evidence of PWs 1 to 3 will not assume importance.

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It is contended that since the Investigating Officer is not examined the report is biased and that since procedure is not followed principals of natural justice are effected.

20. In tune with the nucleus of articles of charge, point which arises for consideration is whether in order to extend official favour to the complainant i.e., in connection with deleting the entry of Forest Department in the revenue record touching the land bearing survey number 22 situated at Shyanavalli, the DGO who was working as Second Division Surveyor in the office of Tahasildar, Mundagoda Taluk, Uttara Kannada District in the year 2010 demanded illegal gratification of Rs.10,000/- earlier to 12/02/2011 and accepted a sum of Rs.5,000/- towards part of the said demand and thereafter on 12/01/2011 between 11.40 A.M and 11.55 A.M the DGO demanded and accepted a sum of Rs.3,000/- towards part of illegal gratification in the office of DGO attached to the office of the Tahasildar, Mundagoda and during investigation DGO failed to offer satisfactory explanation for possession of tainted cash of Rs.3,000/- and thereby DGO is guilty of misconduct within the purview of Rule 3 (1)(i) to (iii) of The Karnataka Civil Services (Conduct) Rules, 1966?
21. Evidence of the complainant touching filing of application in the office of Tahasildar on 19/10/2010 for conducting survey of the land is not under challenge. His evidence that after he enquired in the office of the Tahasildar, Mundagoda he came to know that the file is sent to the office of Assistant Commissioner, Sirsi and that again he was made known that the file has returned to the office of the Tahasildar, Mundagoda is not under challenge.
22. Evidence of complainant that DGO has not conducted survey of the above land but measured the hill which is situated by the side of his village and when he enquired the DGO, DGO asked for


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payment of a sum of Rs.10,000/- towards expenditure is also not under challenge. The demand towards expenditure, in the circumstances unerringly would lead to draw inference that the said demand is nothing but demand for illegal gratification in order to extend official favour. His evidence that he expressed inability to fulfil that much of demand and that on the day when demand was for Rs.10,000/- he paid a sum of Rs.5,000/- is not under specific challenge.

23. Evidence of the complainant is recorded on 21/07/2015 on which day, on the prayer on behalf of DGO for cross examination time is granted and date for cross examination is scheduled to 05/01/2016 on which day also time was sought for cross examination. On 03/08/2016 DGO and PW1 were present on which day Advocate for DGO remained absent but however cross examination was deferred on payment of batta of Rs.2,000/- to the complainant payable by DGO. Since DGO refused to pay batta further time is not granted. Thus, entire evidence of the complainant has remained unchallenged.

24. Since the evidence of the complainant that he paid a sum of Rs.5,000/- to DGO on the day on which there was demand for a sum of Rs.10,000/- has remained unchallenged it stands established that towards part of illegal gratification the DGO accepted a sum of Rs.5,000/- and as such that portion of charge levelled against the DGO stands proved.

25. It is in the evidence of the complainant that he lodged complaint the true copy of which is at Ex P1. It is in his evidence that after lodging of complaint Lokayukta Police staff secured the shadow witness and the panch witness and that he placed total cash of Rs.3,000/- in Lokayukta Police Station, Karawara. It is in his evidence that some powder was applied on the notes and that pre-

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trap mahazar was drawn His evidence touching pre-trap mahazar stands amply corroborated by the testimony of PW2 who is the shadow witness and by the testimony of PW3 who is panch witness. PWs 2 and 3 have stated that the complainant placed cash of Rs.3,000/- on Lokayukta Police Station and that phenolphthalein powder has been applied on the above notes. It is in evidence of PW2 that he placed tainted notes in the left side pocket of shirt of the complainant and thereafter he immersed fingers of hands in the solution prepared with water and sodium carbonate powder and as consequence the said wash turned to pink colour. It is in the evidence of PW3 that numbers of currency notes are entered on a sheet of paper and thereafter some powder was applied on the notes. PWs 2 and 3 have spoken to during evidence that pre-trap mahazar has been conducted. Entire evidence of PWs 2 and 3 touching pre-trap proceedings has remained unchallenged and therefore on the strength of evidence of PWs 1 to 3 it needs to be held that the Investigating Officer conducted pre-trap mahazar as primitive step of investigation.

26. It is in the evidence of the complainant that subsequent to pre-trap mahazar DGO was not found in the office and therefore he along with the Investigating Officer, PWs 2 and 3 returned to Lokayukta Police Station, Karawara where a mahazar was drawn the attested copy of which is Ex P3. Evidence of PWs 2 and 3 would show that on 07/01/2011 DGO was not found in the office of DGO and therefore both of them along with the complainant and Lokayukta Police staff returned to Lokayukta Police Station, Karawara. Evidence of PWs 2 and 3 that DGO was not found in the office of DGO on 7/01/2011 has remained unchallenged.

27. It is in the evidence of the complainant that on 07/01/2011 he along with PWs 2 and 3 went to the office of DGO where he paid

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a sum of Rs.3,000/- to DGO. He has not fully supported the date on which he paid tainted notes and therefore he has been subjected to cross examination by the Presenting officer after treating hostile. After treating hostile he admits certain portions of Exs P2, P4 and P6. Upon appreciation of answers elicited after treating hostile it can be gathered that he gave tainted notes to DGO on 12/01/2011 but not on 07/01/2011 as stated by him during his examination-in-chief. It needs to be remembered that evidence of any witness need not be appreciated with mathematical precision. Memory of individual differs and therefore keeping in mind the said yardstick evidence of the complainant needs appreciation and therefore, merely for the reason that he has spoken to that cash of Rs.3,000/- is paid to DGO on 07/01/2011 that portion of his evidence will not drive to hold that his evidence is not worthy of credence and acceptance.

28. It is in the evidence of the complainant that after he paid cash of Rs.3,000/- the DGO received the same with right hand and kept in the left side pocket of shirt. It is in his evidence that Lokayukta Police staff seized the said cash from the pocket of shirt of DGO. It is spoken to by him during evidence that DGO has given statement stating that in connection with the appointment of the daughter the complainant received a sum of Rs.5,000/- and that he denied the said defence of DGO. He has spoken to seizure of his file and also trap mahazar drawn in the office of DGO. Since the entire evidence of the complainant has remained unchallenged the same needs acceptance which establishes that DGO accepted tainted cash of Rs.3,000/- towards illegal gratification. I do not find any inherent infirmity in the evidence of the complainant.

29. Evidence of PWs 2 and 3 that on 12/01/2011 they had been to the office DGO is not under challenge. Evidence of PW2 that on

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12/01/2011 he along with the complainant entered the office of DGO where he found the DGO seated on a chair is though has been assailed during cross examination by posing suggestion to the contrary which suggestion has been denied and as such entry of PW2 to the office of DGO along with the complainant stands established.

30. Regarding the factum of the alleged demand and acceptance of tainted notes, it is in the evidence of PW2 that the complainant was asked by the DGO whether amount is brought for which the complainant responded in the affirmative and gave tainted notes to DGO and that DGO received those notes with right hand and placed those notes in the left side pocket of shirt. That portion of his evidence has remained unchallenged and therefore the said portion of his evidence needs acceptance. It is significant to note that during cross examination of PW2 on behalf of DGO it is elicited that DGO lifted notes from the left side pocket of shirt. This answer further strengthens the evidence of PW2 touching demand and acceptance of tainted notes by DGO.
31. During evidence, PWs 2 and 3 have categorically spoken to that finger wash of right hand of DGO turned to pink colour but finger wash of left hand of DGO has not turned to any colour. This portion of their evidence has remained unchallenged and therefore change of colour of finger wash of right hand of DGO stands established which lends assurance to the fact that DGO received tainted notes with right hand. Evidence of PW3 that DGO lifted tainted notes from the left side pocket of shirt and that Lokayukta Police staff seized those notes has not been assailed during his cross examination. During cross examination of PW2 it is elicited that DGO lifted tainted notes from the left side pocket of shirt. Thus, evidence of PWs 2 and 3 unerringly establishes seizure of

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tainted notes soon after trap. Defence of DGO as mentioned by him in the statement given by him before the Investigating Officer is not put to PWs 2 and 3 during cross examination and therefore the said defence stands not established. Therefore, it stands proved that DGO has failed to offer satisfactory explanation for possession of tainted notes soon after trap.

32. Regarding non-examination of the Investigating Officer which is emphasised in the course of written argument of DGO, it needs to be remembered that non-examination of the Investigating Officer is fatal only in criminal trial but not in the inquiry of this nature. Intentional withholding of any witness is attracted by section 114(e) of The Indian Evidence Act, 1872. Strict rules of The Indian Evidence Act, 1872 are not applicable in the inquiry of this nature and therefore the said argument canvassed by the DGO cannot be accepted. It is well settled that in the charge for the offence punishable under section 7 of The Prevention of Corruption Act, 1988, in a criminal trial the prosecution is bound to establish that the accused therein demanded and accepted illegal gratification in order to extend official favour. It is equally well settled that in the absence of corroboration of the testimony of the complainant by the shadow witness guilt of the accused in the prosecution for the offence punishable under section 7 of The Prevention of Corruption Act, 1988, cannot be fastened. It is also well settled that mere possession of tainted money alone is not sufficient to establish the charge for the offence punishable under section 7 of The Prevention of Corruption Act, 1988. It is equally well settled that while appreciating evidence in a criminal trial proof beyond reasonable doubt is the yardstick which needs to be applied. While appreciating evidence in the inquiry of this nature preponderance of probabilities is the yardstick which needs to be

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applied. Possession of unaccounted cash by DGO attracts misconduct within the purview of Rule 3 (1)(i) to (iii) of The Karnataka Civil Services (Conduct) Rules, 1966. Since DGO has not offered satisfactory explanation for possession of tainted cash of Rs.3,000/- the said act and conduct of DGO is the act of misconduct and being of this view I proceed with the following:

R E P O R T

Charge against the DGO by name Sri. Shivarudrappa son of Veerabhadrappa Kore that in order to extend official favour to the complainant i.e., in connection with deleting the entry of Forest Department in the revenue record touching the land bearing survey number 22 situated at Shyanavalli, the DGO who was working as Second Division Surveyor in the office of Tahasildar, Mundagoda Taluk, Uttara Kannada District in the year 2010 demanded illegal gratification of Rs.10,000/- earlier to 12/02/2011 and accepted a sum of Rs.5,000/- towards part of the said demand and thereafter on 12/01/2011 between 11.40 A.M and 11.55 A.M the DGO demanded and accepted a sum of Rs.3,000/- towards part of illegal gratification in the office of DGO attached to the office of the Tahasildar, Mundagoda and during investigation DGO failed to offer satisfactory explanation for possession of tainted cash of Rs.3,000/- and thereby DGO is guilty of misconduct within the purview 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, Karnataka in a sealed cover forthwith along with connected records.

(V.G. BOPAIAH)

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

ANNEXURE

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

PW1:- Sri. Ganesh
 PW2:- Sri. Simon Ferasik Feraanandis
 PW3:- Sri. Sridhar K. Honnavara

List of witnesses examined on behalf DGO:- Nil

List of documents marked on behalf of Disciplinary Authority:-

1. Ex P1 True copy of complaint dated 06/01/2011 in a single sheet of the complainant.
 Ex P1(a) Signature of complainant found on Ex P1.
2. Ex P2 True copy of pre-trap mahazar dated 06/01/2011 in four sheets.
 Ex P2(a) Signature of complainant found on Ex P2.
3. Ex P3 True copy of mahazar dated 07/01/2011 in two sheets.
 Ex P3(a) Signature of complainant found on Ex P3.
4. Ex P4 True copy of trap mahazar dated 12/01/2011 in four sheets.
 Ex P4(a) Signature of complainant found on Ex P4.
5. Ex P5 True copies of thirty seven sheets of the file of the complainant.
6. Ex P6 True copy of pre-trap mahazar dated 07/01/2011 in two sheets.
 Ex P6(a) Signature of complainant found on Ex P6.

(V.G. BOPALAH)

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

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

NO: LOK/INQ/14-A/50/2013/ARE-11

Multi Storied Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001,
Date: 30/08/2018

RECOMMENDATION

Sub:- Departmental inquiry against Sri Shivarudrappa S/o. Veerabhadrappe Kore, the then Second Division Surveyor, office of the Tahsildar, Mudagoda Taluk, Uttara Kannada District;

Ref:- 1) Government Order No.ಕಂಇ 328 ಭೂದಾಸೇ (3) 2012, Bengaluru dated 22/1/2013

2) Nomination order No.LOK/INQ/14-A/50/2013, Bengaluru dated 31/1/2013 of Upalokayukta-1, State of Karnataka, Bengaluru

3) Inquiry Report dated 28/8/2018 of Additional Registrar of Enquiries-11, Karnataka Lokayukta, Bengaluru

The Government by its Order dated 22/1/2013, initiated the disciplinary proceedings against Sri Shivarudrappa S/o. Veerabhadrappe Kore, the then Second Division Surveyor, Office of the Tahsildar, Mundagod Taluk, Uttara Kannada 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/50/2013, Bengaluru dated 31/1/2013 nominated Additional Registrar of Enquiries-4, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct Departmental Inquiry against DGO for the alleged charge of misconduct, said to have been committed by him. Subsequently by Order No.LOK/INQ/14-A/2014 dated 14/3/2014, the Additional Registrar of

Enquiries-5 was re-nominated as Inquiry Officer to conduct Departmental inquiry against DGO. Again, by order No.UPLOK-1/DE/2016, Bengaluru dated 3/8/2016, the Additional Registrar of Enquiries-11, Karnataka Lokayukta, Bengaluru was re-nominated as Inquiry officer to conduct Departmental inquiry against DGO.

3. The DGO Sri Shivarudrappa S/o. Veerabhadrappe Kore, the then Second Division Surveyor, Office of the Tahsildar, Mudagoda Taluk, Uttara Kannada District was tried for the following charge:-

“That, you Sri Shivarudrappa – the DGO, while working as Second Division Surveyor in Tahsil office at Mundagod in Uttara Kannad District, now retired and residing at House No.78 in Sadashivanagar in Bhyridevarakoppa at Hubli, Sri Ganesh S/o. Nagesh Bhandarkar R/o. Manchikere Kampi in Yellapur Taluka of Uttara Kannad District (hereinafter referred to as ‘the Complainant’) approached you – DGO stating that he, being a permanent “Lagani” holder of Plot No.3 in Sy. No.22 of Shanavalli Village, had submitted an application to Tahsil office at Mundagod on 19-04-2010 to reduce forest right mentioned in revenue records of the said land. But, for more than 2 months also, that application was not attended. So, when he approached you – DGO and enquired about his said application, you-DGO told that you-DGO will survey the land and fix its boundaries. Thereafter, you-DGO had come twice to the said land and surveyed nearby forest, but not his land. So, when the complainant requested you-DGO to survey the said land, you-DGO asked him to pay expenses for that and, when asked by him the quantum of expenses, you-DGO told it as Rs.10,000/-. After 15 days thereafter, when the

complainant had approached, you-DGO took Rs.5,000/- from him then, telling it as office expenses and agreed to come for survey. When the complainant approached you-DGO on 05-01-2011 and made request about the said work, you-DGO demanded further bribe of Rs.5,000/- saying that otherwise survey will not be made of said land. When the complainant pleaded his inability to pay that much amount, you-DGO asked him to pay minimum of Rs.3,000/-. On 12.02.2011 you DGO received the tainted (bribe) amount of Rs.3,000/- in your office i.e., survey section of Tahsil office at Mundagod in connection with said work, thereby failing to maintain absolute integrity and devotion to duty, the act of which 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 charge against the DGO by name Sri Shivarudrappa son of Veerabhadrapa Kore that in order to extend official favour to the complainant i.e., in connection with deleting the entry of Forest Department in the revenue record touching the land bearing survey number 22 situated at Shyanavalli, the DGO who was working as Second Division Surveyor in the office of Tahsildar, Mundagoda Taluk, Uttara Kannada District in the year 2010 demanded illegal gratification of Rs.10,000/- earlier to 12/02/2011 and accepted a sum of Rs.5,000/- towards part of the said demand and thereafter on 12/02/2011 between 11.40 A.M.

and 11.55 A.M the DGO demanded and accepted a sum of Rs.3,000/- towards part of illegal gratification in the office of DGO attached to the office of the Tahasildar, Mundagoda and during investigation DGO failed to offer satisfactory explanation for possession of tainted cash of Rs.3,000/- and thereby DGO is guilty of misconduct within the purview of Rule 3(1)(i) to (iii) of the Karnataka Civil Services (Conduct) Rules, 1966 is proved.

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 DGO, he has retired from service on 31/1/2012.

7. Having regard to the nature of charge (demand and acceptance of bribe) proved against DGO Sri Shivarudrappa S/o. Veerabhadrappe Kore it is hereby recommended to the Government for imposing penalty of permanently withholding 50% of pension payable to DGO Sri Shivarudrappa S/o.Veerabhadrappe Kore, the then Second Division Surveyor, Office of the Tahsildar, Mundagod Taluk, Uttara Kannada District.

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

Connected records are enclosed herewith.


(JUSTICE N. ANANDA)

Upalokayukta-1,
State of Karnataka,
Bengaluru