

GOVERNMENT OF KARNATAKA**KARNATAKA LOKAYUKTA**

No.LOK/INQ/14-A/391/2014/ARE-11

Multi Storied Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560001
Date: 29th November, 2022.

RECOMMENDATION

Sub: Departmental Inquiry against Shri Umesh,
Village Accountant, Mailuru Circle, Bidar
Taluk Office, Bidar District-reg.

Ref: 1) Government Order No.ಕಂಇ 55 ಬಿಡಿಪಿ 2014,
Bengaluru, dated: 27/05/2014.

2) Nomination Order No.LOK/INQ/14-A/391/
2014, Bengaluru, dated: 01/07/2014 of
Upalokayukta, State of Karnataka, Bengaluru.

3) Inquiry Report dated: 23/11/2022 of
Additional Registrar of Enquiries-11,
Karnataka Lokayukta, Bengaluru.

The Government by its order dated: 27/05/2014 initiated the disciplinary proceedings against Shri Umesh, Village Accountant, Mailuru Circle, Bidar Taluk Office, Bidar 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/391/2014, Bengaluru, dated: 01/07/2014 nominated Additional Registrar of Enquiries-11, 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.
3. The DGO, Shri Umesh, Village Accountant, Mailuru Circle, Bidar Taluk Office, Bidar District was tried for the following charges:

ANNEXURE-1
CHARGE:

That you DGO Sri.Umesh, Village Accountant, Mailuru Circle, Bidar Taluk Office, Bidar District while discharging your duties:

- (a) To have educational facilities for his brothers namely, Sri. Gopal and Sri. Shivaputhrea were studying in S.S.L.C., the complainant had applied in the 'Nemmadi Kendra' at Bidar on 29/11/2012 with all documents requesting for caste certificate as 'S.T.Gonda Caste'. Thereafter, on 15/12/2012, when he met you DGO at you DGO's private office located near railway bridge at Bidar on 15/12/2012 and enquired, you DGO told him that his file has come (to DGO) and to prepare and submit report to you (DGO's) higher officer, he has to pay Rs.2,000/-.

- (b) When he told that Rs. 2,000/- will be more, you DGO told him that files of his two brothers are with you (DGO) and you (DGO) will send report in those files for that, he (Complainant) has to pay Rs.2,000/- for both the files.
- (c) But not willing to pay bribe to you DGO, after approaching Lokayukta Police on 20/12/2012, the complainant approached you DGO at your DGO's private office on the same day (20/12/2012) and enquired about his said work. Then also, you DGO reiterated saying that Rs.2,000/- has to be paid and the speed at which he brings and pays Rs.2,000/-, at that speed only, you DGO will attend his said work, asking to give the amount after coming to your (DGO's) private office.
- (d) Not only that, on 21/12/2012, you DGO had taken the tainted (bribe) amount from him in connection with his said work and kept in your (DGO's) shirt's left side pocket telling that in the same night, you (DGO) will write and submit it to the Revenue Inspector assuring that he will certainly get the certificates, when he requested you DGO to get those certificates early.
- (e) Added to that, you DGO failed to give any satisfactory reply or explanation or account for the said (tainted) bribe amount, found then, when questioned by the I.O.,
- (f) Thereafter, you DGO was caught hold as he was found with the tainted (bribe) amount on said date at said place.
- (g) Then the said tainted (bribe) amount was seized from you DGO under a mahazar by the I.O., on said date in the presence of panchas.
- (h) Even there are statements of witnesses, including complainant, besides collected records and material filed by the I.O., which show you DGO's said repeated misconduct.



and thereby you failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of Government Servants and thus you are guilty of misconduct under Rule 3(1)(i) to (iii) of KCS (Conduct) Rules 1966.

4. The Inquiry Officer (Additional Registrar of Enquiries-11) on proper appreciation of oral and documentary evidence has held that, the Disciplinary Authority has 'Proved' the charges leveled against DGO, Shri Umesh, Village Accountant, Mailuru Circle, Bidar Taluk Office, Bidar District.
5. On perusal of the Inquiry Report, in order to prove the guilt of the DGO, the Disciplinary Authority has examined four witnesses i.e., PW-1 to PW-4 and Ex. P-1 to P-36 documents were got marked.
6. On re-consideration of Inquiry Report and taking note of the totality of the circumstances of the case, I do not find any reason to interfere with the findings recorded by the Inquiry Officer. Therefore, it is hereby recommended to the Government to accept the report of the Inquiry Officer.
7. As per the First Oral Statement of DGO furnished by the Inquiry Officer, DGO, Shri Umesh will retire from service on 30/06/2041.

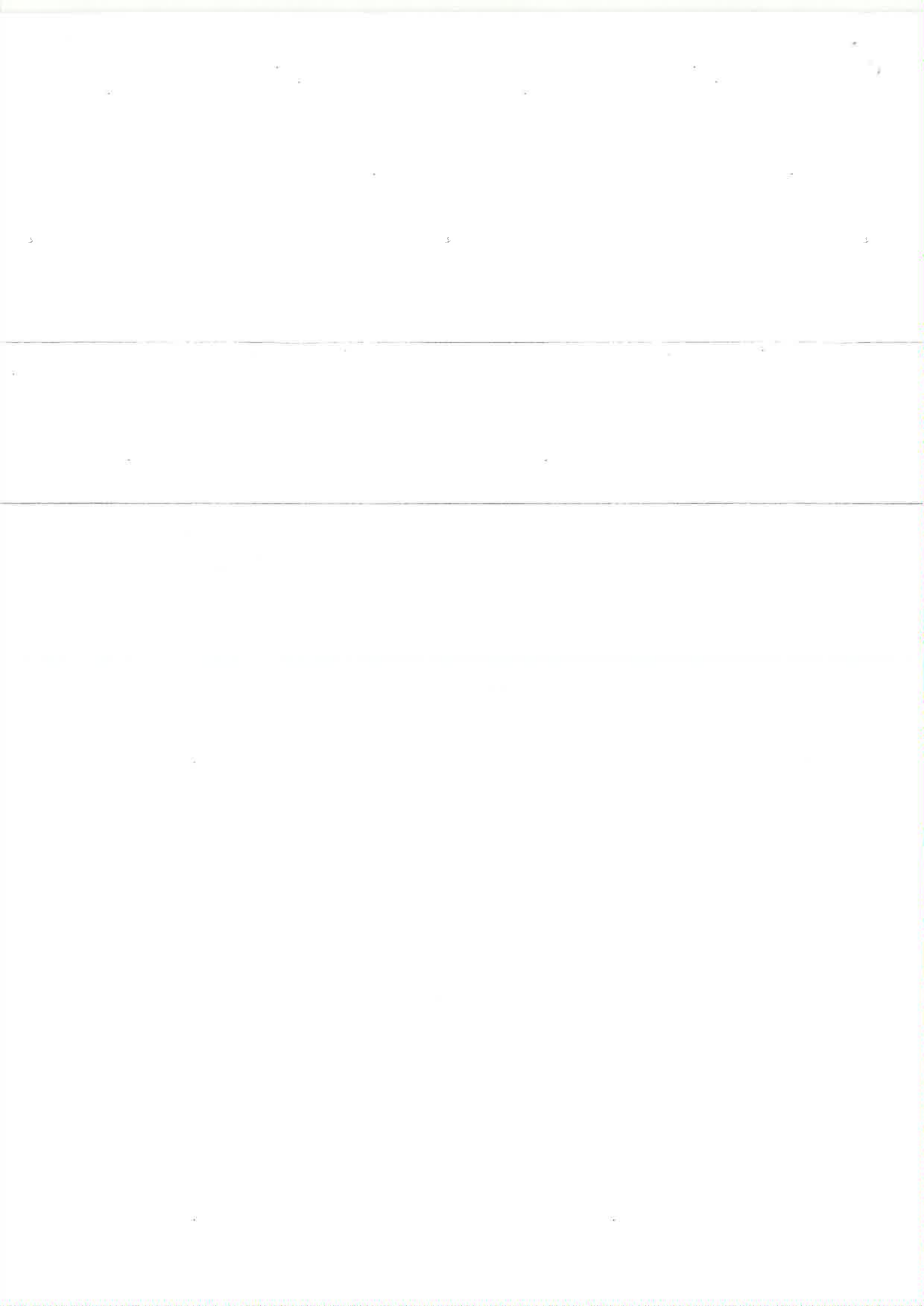
8. Having regard to the nature of charge '**Proved**' against DGO, Shri Umesh, Village Accountant, Mailuru Circle, Bidar Taluk Office, Bidar District and on consideration of the totality of circumstances:-

"It is hereby recommended to the Government to impose penalty of compulsory retirement of DGO, Shri Umesh, Village Accountant, Mailuru Circle, Bidar Taluk Office, Bidar District".

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

Connected records are enclosed herewith.


(JUSTICE K.N.PHANEENDRA)
UPALOKAYUKTA-2,
STATE OF KARNATAKA.



KARNATAKA LOKAYUKTA

NO. LOK/INQ/14-A/391/2014/ARE-11

M.S.Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001,
Date: 23/11/2022.**:: ENQUIRY REPORT ::**

Sub: Departmental Enquiry against Sri. Umesh,
Village Accountant, Malluru Circle, Bidar
Taluk Office, Bidar District -reg.

- Ref: 1. Government Order No. ಕಂಇ 55 ಬಿಡಿಪಿ
2014 Bengaluru, dated 27/05/2014.
2. Nomination Order No. LOK/INQ/14-
A/391/2014, Bengaluru, dated
01/07/2014.

1. The Departmental Enquiry is initiated against Sri. Umesh, Village Accountant, Malluru Circle, Bidar Taluk Office, Bidar District (hereinafter referred to as the Delinquent Government Official, in short DGO) on the basis of the complaint dated 21/12/2012 filed by the complainant, Shri. Ganapathi S/o Hanumanthappa Bathamurge, Advocate, r/o New KEB



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Colony, Gumpa, Bidar, the allegations in the complaint is that to have educational facilities for his brothers namely, Sri. Gopal and Sri. Shivaputhrea who were studying in S.S.L.C., the complainant had applied requesting for caste certificate as 'S.T.Gonda Caste' in the 'Nemmadi Kendra' at Bidar on 29/11/2012 with all documents. Thereafter, on 15/12/2012, when he met DGO at his private office located near railway bridge at Bidar on 15/12/2012 and enquired, DGO told complainant that his file has come and to prepare and submit report to his higher officer, complainant has to pay Rs.2,000/-. When the complainant told that Rs. 2,000/- will be more, DGO told complainant that files of his two brothers are with him and he will send report in those files for that, complainant has to pay Rs.2,000/- for both the files. That the complainant was not willing to pay the bribe amount he approached the Lokayukta Police Station, Bidar on 20/12/2012, in turn Police Inspector had given one voice recorder to record the conversation between him and complainant and on the same day on contacting the DGO at DGO's private office he enquired about his said work. Then also, DGO reiterated saying that Rs.2,000/- has to be paid and the speed at which he brings and pays Rs.2,000/-, at that speed only, DGO will


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attend his said work and told him to give the amount coming to his private office.

2. As the complainant was not willing to pay the amount, lodged complaint before Police Inspector, Karnataka Lokayukta Police Station, Bidar on 21/12/2012 (hereinafter referred to as "Investigating Officer"). On the said complaint Investigating Officer registered case in Cr.No.10/2012 against the DGO for the offences punishable under section 7,13(1)(d) r/w 13(2) of P.C.Act, 1988.

3. The Investigating Officer took up investigation and on 21/12/2012, DGO was caught red handed while demanding and accepting illegal gratification of Rs.2,000/- from the complainant in his private office situated near Bidar Railway bridge in 3rd floor of Vishveswaraiah Tower, Bengaluru at 5.30 p.m. After following post trap formalities Investigating Officer secured DGO. DGO has failed to give satisfactory or convincing explanation for the said tainted amount found then, when questioned by the said I.O. After completion of investigation the investigating officer has filed charge sheet against the DGO in the concerned jurisdictional Court.


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4. The Hon'ble Upalokayukta invoking power vested under section 7(2) of the Karnataka Lokayukta Act, 1984, took up investigation and on perusal of complaint, FIR, Mahazars, FSL report and other documents, found prima facie case and forwarded report dated 24/04/2014 U/s 12(3) of Karnataka Lokayukta Act, 1984 recommended the competent authority to initiate disciplinary proceedings against the DGO and to entrust the enquiry to the Hon'ble Upalokayukta, Karnataka under Rule 14-A of the KCS (CC& A) Rules 1957. The Government by order dated 27/05/2014 entrusted the matter to the Hon'ble Upalokayukta.

5. The Hon'ble Upalokayukta by order dated 01/07/2014, nominated Additional Registrar Enquiries-11 to conduct the enquiry.

6. The Articles of charge as framed by Additional Registrar Enquiries-11 is as follows:-

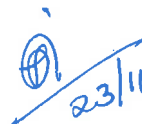
ANNEXURE-1

CHARGE:

That you DGO Sri.Umesh, Village Accountant, Mailuru Circle, Bidar Taluk Office, Bidar District while discharging your duties:

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- (a) To have educational facilities for his brothers namely, Sri. Gopal and Sri. Shivaputhrea were studying in S.S.L.C., the complainant had applied in the 'Nemmadi Kendra' at Bidar on 29/11/2012 with all documents requesting for caste certificate as 'S.T.Gonda Caste'. Thereafter, on 15/12/2012, when he met you DGO at you DGO's private office located near railway bridge at Bidar on 15/12/2012 and enquired, you DGO told him that his file has come (to DGO) and to prepare and submit report to you (DGO's) higher officer, he has to pay Rs.2,000/-.
- (b) When he told that Rs. 2,000/- will be more, you DGO told him that files of his two brothers are with you (DGO) and you (DGO) will send report in those files for that, he (Complainant) has to pay Rs.2,000/- for both the files.
- (c) But not willing to pay bribe to you DGO, after approaching Lokayukta Police on 20/12/2012, the complainant approached you DGO at your DGO's private office on the same day (20/12/2012) and enquired about his said work. Then also, you DGO reiterated saying that Rs.2,000/- has to be paid and the speed at which he brings and pays Rs.2,000/-, at that speed only,


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you DGO will attend his said work, asking to give the amount after coming to your (DGO's) private office.


(d) Not only that, on 21/12/2012, you DGO had taken the tainted (bribe) amount from him in connection with his said work and kept in your (DGO's) shirt's left side pocket telling that in the same night, you (DGO) will write and submit it to the Revenue Inspector assuring that he will certainly get the certificates, when he requested you DGO to get those certificates early.

(e) Added to that, you DGO failed to give any satisfactory reply or explanation or account for the said (tainted) bribe amount, found then, when questioned by the I.O.,

(f) Thereafter, you DGO was caught hold as he was found with the tainted (bribe) amount on said date at said place.

(g) Then the said tainted (bribe) amount was seized from you DGO under a mahazar by the I.O., on said date in the presence of panchas.

(h) Even there are statements of witnesses, including complainant, besides collected records and material filed by the I.O., which show you DGO's said repeated misconduct.


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and thereby you failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of Government Servants and thus you are guilty of misconduct under Rule 3(1)(i) to (iii) of KCS (Conduct) Rules 1966.

7. The statement of imputations of misconduct as framed by Additional Registrar Enquiries-11 is as follows:-

ANNEXURE NO.II

STATEMENT OF IMPUTATIONS OF MISCONDUCT

On the basis of a report of the Additional Director General of Police in Karnataka Lokayukta at Bangalore, filed with papers of investigation made by the Police Inspector in Karnataka Lokayukta at Bidar District (herein after referred to as Investigating Officer-'I.O.' for short), stated that Sri.Umesh, Village Accountant, Mailuru Circle, Bidar Taluk Office, Bidar District, being a public/Government servant, has committed misconduct, when approached by Sri.Ganapathi S/o Hanamanthappa Bhathamurge R/o New K.E.B. Colony, Gumpa at Bidar District (herein after referred to as 'Complainant' for short) an investigation was taken up U/s 9 of the Karnataka Lokayukta Act, after invoking power vested U/s 7 (2) of that Act.

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2. Brief facts of the case are :-

(a) According to the complainant : To have educational facilities for his brothers namely, Sri. Gopal and Sri. Shivaputhrea were studying in S.S.L.C., the complainant had applied in the 'Nemmadi Kendra' at Bidar on 29/11/2012 with all documents requesting for caste certificate as 'S.T.Gonda Caste'. Thereafter, on 15/12/2012, when he met you DGO at DGO's private office located near railway bridge at Bidar on 15/12/2012 and enquired, you DGO told him that his file has come (to DGO) and to prepare and submit report to (DGO's) higher officer, he has to pay Rs.2,000/-.

(b) When he told that Rs. 2,000/- will be more, you DGO told him that files of his two brothers are with he (DGO) and he (DGO) will send report in those files for that, he (Complainant) has to pay Rs.2,000/- for both the files.

(c) But not willing to pay bribe to you DGO, after approaching Lokayukta Police on 20/12/2012, the complainant approached DGO at DGO's private office on the same day (20/12/2012) and enquired about his said work. Then also, DGO reiterated saying that Rs.2,000/- has to be paid and the speed at which he brings and pays Rs.2,000/-, at that speed only, DGO will attend his said work, asking to give the amount after coming to his (DGO's) private office.


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(d) Not only that, on 21/12/2012, DGO had taken the tainted (bribe) amount from him in connection with his said work and kept in his (DGO's) shirt's left side pocket telling that in the same night, (DGO) will write and submit it to the Revenue Inspector assuring that he will certainly get the certificates, when he requested DGO to get those certificates early.

(e) Added to that, DGO failed to give any satisfactory reply or explanation or account for the said (tainted) bribe amount, found then, when questioned by the I.O.,

(f) Thereafter, DGO was caught hold as he was found with the tainted (bribe) amount on said date at said place.

(g) Then the said tainted (bribe) amount was seized from DGO under a mahazar by the I.O., on said date in the presence of panchas.

(h) Even there are statements of witnesses, including complainant, besides collected records and material filed by the I.O., which show DGO's said repeated misconduct.

3. Said facts supported by the material on record show that the DGO, being a public servant, has failed to

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maintain absolute integrity besides devotion to duty and acted in a manner unbecoming of a Government servant, and thereby committed misconduct and made himself liable for disciplinary action.

4. Therefore, an investigation was taken up against the DGO and an observation note was sent to them to show cause as to why recommendation should not be made to the Competent Authority for initiating departmental inquiry against them in the matter. For that, the DGO gave his reply. However, the same has not been found convincing to drop the proceedings.

5. Since said facts and material on record prima facie show that the DGO has committed misconduct under Rule 3 (1) of the KCS Conduct Rules, 1966, recommendation is made under Section 12(3) of the Karnataka Lokayukta Act, to the Competent Authority to initiate disciplinary proceedings against the DGO and to entrust the inquiry to this Institution under Rule 14-A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.

6. The Government after considering the recommendation made in the report, entrusted the matter to the Hon'ble Upalokayukta to conduct departmental/disciplinary proceedings against the DGO and to submit report. Hence the charge.


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8. Notice of Articles of charge, statement of imputation of misconduct with list of witnesses and documents was served upon the DGO. In response to the service of articles of charge, DGO entered appearance before this authority on 04/08/2014 and engaged advocate for defence. In the course of first oral statement of the DGO recorded on 04/08/2014 he pleaded not guilty and claimed to be enquired. **The date of Retirement of DGO as per First Oral Statement is 30/06/2041.**

9. The DGO has filed written statement dated 05/12/2014 denying the allegations made against him in the articles of charge and statement of imputation. Further contended that since the very same charge in Spl.C.C.No. 33/2013 is pending on the file of the Principal District and Sessions Judge at Bidar, complicated question of law are involved if the departmental enquiry were to proceed along with the criminal case, it would cause great prejudice and injustice to the DGO. That the Hon'ble Upalokayukta has no power under the act of the Karnataka Lokayukta to make any recommendation regarding departmental enquiry or direct the enquiry officer to conduct the enquiry, hence the present enquiry is illegal without authority of law. That the allegation made in the article of



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charges are all false and baseless at no point of time the DGO neither demanded nor accepted any illegal gratification and the essential ingredients of the offence under sections 7, 13(1)(d) are totally lacking in the case. That the Lokayukta police just for statistical purpose have registered the case and concocted trap panchanama for the purpose of the case. Further the DGO submits that he has been made a scapegoat and victim of circumstance for no fault of his and even though the material collected by the I.O. clearly shows that the DGO never abused his position in discharge of duty, the said fact has been deliberately suppressed only for statistical purpose and concocted story has been built up knowing fully well that at no point of time the DGO demanded any money nor there was any occasion to demand and accept amount from the complainant. That the trap mahazar discloses that there is no clinching evidence placed by the prosecution department to show that the DGO has demanded or accepted any illegal gratification to show official favour, there is absolutely no any criminal intent or mensrea or dishonest intention made out against the DGO. That no official favour was pending with him and he had no power and no work of the complainant for which he could have shown official favour, hence there was absolutely no motive on the part of the DGO, when such is the case then abusing position of public servant


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is lacking, question of misconduct under the facts of the case and in view of the law on the point legally and factually does not arise and absolutely no case of misconduct would ever be made out against the DGO. That since the Lokayukta police have investigated the case, the question of conducting suo moto enquiry into an investigation already done by Lokayukta police in law under facts does not arise and no such power is vested under the Karnataka Lokayukta Act. That the essential ingredients to constitute misconduct under the facts of the case are official favour, demand and acceptance of money for doing a favour in discharge of official duty is sin-quo-non (condition precedents) for constituting misconduct, which is totally lacking in the case on hand.

The DGO further contended that since the case is registered by the Lokayukta Police the investigation, trap mahazar, everything is prepared by the Lokayukta Police only to make out a case, the departmental enquiry is also conducted by the officers of the Lokayukta and also in the office of the Lokayukta the atmosphere and the surrounding circumstances. Since the entire enquiry including service of the summons to witness are by constable of the Lokayukta Police and Lokayukta officials it is hard to expect fair enquiry and principals of natural justice and fair enquiry will be violated. Hence


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the DGO does not have confidence in the manner in which an incompetent officer who ordered an enquiring and the circumstances and the manner in which enquiry is started and going to proceed does not at all inspire any confidence in the mind of DGO.

The DGO further contended that since regarding, the very same charge Spl.C.C.No.33/2013 is pending on the file of the Principal District and Sessions Judge at Bidar, if the DGO were to disclose all the defence then there is every likelihood and tampering with the evidence and threatening the DGO with a fear of departmental enquiry and also prevent him from disclosing the truth. Hence there is no congenial atmosphere to conduct a fair and impartial departmental enquiry, which may ultimately effect the on going trial and future of DGO will be affected and he will be prevented from proving his defence. That as per the Karnataka Civil Service Rules to hold or not to hold an enquiry completely vests with the Government no power is vested in the Lokayukta act, to step into the shoes of disciplinary authority and tried to clutch at the jurisdiction not vested in the act, which is legally impermissible. The DGO denies article of charges and annexure of statement of imputation of misconduct

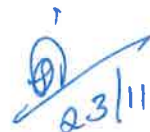

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and other annexure as false, baseless and one got up for the purpose of the case.

The DGO further contended that no case of misconduct at all is made out and the present departmental enquiry is not clothed with the legal authority to conduct the enquiry and since the DGO as always acted with absolute integrity and devotion to duty and never behaved in a manner of unbecoming of a public servant. Hence question of committing misconduct much less under rule 3(1)(i) and (iii) of KCS (Conduct) Rules, 1966 or any other rules will not arise. That there is no misconduct on his part and he prayed that he may be exonerated from the imputation of charges levelled against him in the interest of justice and equity.

10. The points that arise for consideration are as follows:-

1. Whether the disciplinary authority proves that the DGO while working as Village Accountant, Mailuru Circle, Bidar Taluk Office, Bidar District, when the complainant had applied in the 'Nemmadi Kendra' at Bidar on 29/11/2012 with all documents requesting for caste certificate as 'S.T.Gonda Caste' which was required for his brothers education purpose, the

A handwritten signature in blue ink, followed by the date '23/11' written below it.

DGO demanded Rs 2000/- bribe to prepare and submit report to his higher officer and as the complainant was not willing to pay the amount, he lodged complaint before Police Inspector, Karnataka Lokayukta Police Station, Bidar and the Investigating Officer registered case on 21/12/2012 in Cr.No.10/2012 against the DGO and the I.O. took up investigation and on 21/12/2012, DGO was caught red handed while demanding and accepting illegal gratification of Rs.2,000/- from the complainant in his private office situated near Bidar Railway bridge in 3rd floor of Vishveswaraiah Tower, Bengaluru at 5.30 p.m. After following post trap formalities Investigating Officer secured DGO. The DGO has failed to give satisfactory or convincing explanation for the said tainted amount found then, when questioned by the said I.O. and thereby the DGO has committed misconduct, dereliction of duty, acted in a manner unbecoming of a Government Servant and not maintained absolute integrity, violating Rule 3(1)(i) to (iii) of K.C.S.(conduct) Rules, 1966?

2. What findings?


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11. (a) The disciplinary authority has examined 4 witnesses i.e., Sri. Ganapathi, complainant as PW1, Sri. Vijayakumar, Shadow Witness as PW-2, Sri. Martin, Panch witness as PW3 and Sri. Basu Chowhan, Investigating Officer as PW4 and got exhibited 36 documents on its behalf.

(b) Since DGO has not adduced evidence by examining himself, incriminating circumstances which appeared against him in the evidence of PWs 1 to 4 are put to him by way of questionnaire.

12. Heard both side arguments and perused all the documents.

13. The answers to the above points are:

1. In the Affirmative.
2. As per final findings, for the following

REASONS

14. **Point No.1:-** (a) PW1/complainant Sri. Ganapathi has deposed in his evidence that he was practicing as Advocate from past 4 years in Bidar. That DGO was working as Village Accountant of Malluru Circle, Bidar Town in the year 2012. That Gopal and Shivaputraiah are his brothers and they studied SSLC in the year


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2012. That they belong to ST caste. That he filed application for issue of caste certificate on 28/11/2012 in Nemmadi Kendra and it was computerized. That the said center issued slip for filing the application and he was also given the said slip. That on 15/12/2012 he went to the DGO and the record was with the DGO and he enquired him in this regard. That the DGO told that it has to be sent to higher officer and he demanded Rs.2000/- bribe. That as he was not willing to pay the bribe amount after 5 days he has gone to Lokayukta Police Station, Bidar and informed I.O. about demand of bribe by the DGO. That I.O. has given him a voice recorder at 3.15 p.m. That the DGO was working in the private office situated near railway bridge. That the I.O. has switched on the voice recorder and he took the same to the office of the DGO. That he bargained with DGO that Rs.2000/- is excess amount and he cannot pay it. That the DGO told him that there are two files to be attended and he recorded the conversation in voice recorder and returned to police station and the Lokayukta police have heard the conversation recorded in the voice recorder. That he has lodged complaint in this regard as per Ex.P1.

PW1 further stated that the Investigation Officer has secured two panch witness i.e., Vijayakumar from


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Agricultural Department and Martin from Education department and the panchas read the complaint lodged by him and I.O introduced them to him and they agreed to act as panch witnesses. That he has given Rs.2000/- to the I.O. which were 3 notes of Rs.500/- denomination each and 5 notes of Rs.100/- denomination each. That the I.O. noted the numbers of the notes and prepared solution in two bowls. The solution was colourless and the I.O. has taken sample of it. That the I.O. demonstrated that if the powder and solution are mixed, the solution will turn to pink colour. That the said notes were smeared with phenolphthalein powder and I.O. gave it to panch witness Martin. Later on his hands were washed and solution turned to pink colour. That the I.O. instructed him that if he gives the tainted notes to DGO and if his hands are washed in the solution, it will also turn to pink colour. That the I.O. has drawn pre-trap mahazar for all the above proceedings as per Ex.P2 and he has signed it.

PW1 further deposed that all of them left the police station in private jeep and reached the DGO's private office. That a voice recorder was kept in his pocket. That Vijayakumar was sent with him. That the DGO was present in his private office and he went inside and asked whether the work is completed for which the


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DGO demanded Rs.2000/- bribe. That he gave tainted notes to the DGO and he received the same and kept it in the left side shirt pocket. That the I.O. had instructed him to give signal after the receipt of amount and he came out of the office and gave signal by wiping his face with kerchief. That police staff and other panch witness came inside and the I.O. asked the DGO whether work is pending for which DGO told yes.. That he informed the I.O. about giving amount. That file pertaining to his brothers was with DGO and the I.O. has seized the file. That the higher office of the DGO was called and register pertaining to the application was with him and he gave it to the I.O. That the I.O. washed the hands of the DGO in the solution and it turned to pink colour. That I.O. seized the tainted notes from the DGO and got it tallied with the numbers already noted in the sheet and they were tallied. That photographs were taken and the I.O. has drawn trap mahazar with respect to the proceedings as per Exp.3 and he and panchas have signed on it.

P.W1 further deposed that since it was crowded the I.O. has taken them to I.B. which was near Ambedkar circle from the private office of the DGO and there the I.O. has washed the portion of shirt pocket of the DGO in the solution and it turned to pink colour. That the I.O. seized the shirt. That the I.O. received voice


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recorder and converted it in to C.D. and the Tahasildar was called to I.B and the I.O. has played the voice recorder before him in a lap-top and the Tahsildar identified the voice of the DGO in the conversation. That said conversation was transcribed and they have signed it as per Ex.P4. That I.O. has taken copy of the application submitted for issuance of caste certificate. That I.O. enquired DGO about the bribe amount. Further he has identified the documents submitted by him along with the application submitted by him pertaining to his brothers as per Ex.P5 to 24 and application as per Ex.P17. Further he has deposed that the I.O. seized the same and conducted mahazar in this regard as per Ex.P25.

(b) Nothing material is elicited from the cross examination of PW1 by the DGO counsel to discredit his testimony.

15. (a) PW-2/Shadow Witness, Vijayakumar has deposed in his evidence that on 21/12/2012 the Lokayukta Police called him to act as panch witness and another pancha Martin was also called. The I.O. introduced the complainant Ganapathi to them and the complainant gave Rs.2000/- i.e., 3 notes of Rs.500/- and 5 notes of Rs.100/- denomination each and police have smeared powder to the said notes and kept it in the


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pocket of PW1 and that the police have taken them to the spot. That all of them went to the private office of the DGO which was near railway gate of Bidar Town and police parked their vehicles from 100 to 200 feet away. That PW1 went inside the office alone and returned from the office and made signal and all of them entered the office and the DGO was enquired about tainted notes and he produced it and the hands of DGO were washed in a solution which turned to pink colour. That later on the tainted notes was removed from the pocket of the DGO which tallied with notes which was given by the Lokayukta police and police have seized the said notes. That from there they went to I.B. and Lokayukta police have drawn mahazar in this regard as per Ex.P3. Police have seized documents related to the complainant Gangapathi. .

(b) At this stage learned Presenting Officer treated PW2 as partly hostile and cross examined him and in his cross examination by learned Presenting Officer, PW2 has admitted that pre-trap mahazar was drawn in the office as per Ex.P2 and he signed it. Further he has stated he does not remember that the I.O. has got the tainted notes kept in the pocket of the complainant through Martin, panch witness and his hands were washed in the solution and it turned to pink colour.


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Further he has stated that he does not remember that I.O. has given voice recorder to the complainant and before going to the trap the I.O. has played the recordings given by the complainant which contains conversation between complainant and DGO with respect to demand of bribe. Further he has denied that he has witnessed the complainant giving Rs. 2,000/- tainted notes to the DGO and the DGO after receiving it, counted it and kept in his shirt pocket. Further he has stated that he does not remember that he has removed the bribe amount from the pocket of the DGO.

16. (a) PW3 /Sri. Martin, panch witness has deposed that he was working as composer in the office of Education department in the year 2012. Lokayukta police called him and another witness Vijayakumar was also called and I.O. introduced him and said Ganapathi has given complaint related to bribe. That Police have given 3 notes of Rs.500/- denomination each and 5 notes of Rs.100/- denomination each which were smeared with powder. That after counting he gave the said notes to Ganapathi and washed his hands in the solution and the said solution turned to pink colour. That for all these proceedings pre-trap mahazar was written and he has signed it as per Ex.P2 and proceedings of said mahazar


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took place up to 2.00 p.m. Thereafter he, Lokayukta Police, Ganapathi and Vijayakumar all of them went to private office of Village Accountant which is situated near Deepak Theatre in Bidar Town and all of them got down surrounding the office. Vijayakumar and Ganapathi went to office of Village Accountant. Ganapathi came outside and gave signal. That he and police went inside. Police washed both hand fingers of the DGO and the said solution turned to pink colour. That Rs.2,000/- was found in DGOs pocket and Vijayakumar removed the said amount. The said notes contained 3 notes of Rs.500/- denomination each and 3 notes of Rs.100/- denomination each and noted the numbers of said notes and police seized the said notes. That portion of shirt pocket of the DGO was washed in the solution and the said solution turned to pink colour. That the said shirt was seized by by I.O. by providing alternate shirt. The police got confirmed whether the voice in the conversation in the voice recordings is of the complainant or not and thasildhar identified the voice and the I.O. has drawn mahazar in this regard and he has signed it as per Exp3.

(b) Nothing material is elicited from the cross examination of PW3 by the DGO counsel to discredit his testimony.


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17. (a) PW4/Sri. Basu Chowhan, Investigating Officer, has deposed in his evidence that he has worked as Police Inspector in Bidar Lokayukta Police station from 26/11/2010 to 02/10/2013. That on 20/12/2012, one Sri.Ganapathi son of Hanumathappa came to his police station and said that he had filed an application for caste certificate of his brothers, Sri.Gopal and Sri.Shivaputhrappa and he said that he had filed application in Bidar Nemadi Kendra on 29/11/2012. That he said that on 15/12/2012, he met the DGO, who was working as Village Accountant then in Myluru village, Bidar taluk. That the DGO demanded bribe of Rs.2,000/-, for furnishing report. That on the said day i.e., 20/12/2012, on hearing the complainant/PW-1 about the demand of bribe by the DGO, he gave him voice recorder to record the conversation.

P.W.4 further deposed that on 21/12/2012, PW-1 came to his police station and gave him computerized complaint as per Ex.P-1. That he registered the said complaint as crime number 10/2012 for offence u/s 7 of P.C.Act, 1988 and prepared FIR as per Ex.P-26. That he sent the said complaint and FIR in closed envelope to the jurisdictional court. That he secured 2 panch witnesses, PW-2 and 3, for the said purpose and they reported before him at 4:25 p.m on 21/12/2012 and he


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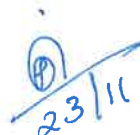
introduced himself and PW-1 to them. That he also briefed them about the contents of the complaint and gave copy of complaint to them to read and verify the same. That the said witnesses, PW-2 and 3 have agreed to act as witnesses. That he also introduced his staff to PW-1 to 3. PW-1 gave him 3 notes of Rs. 500/- each and 5 notes of Rs. 100/- each, total Rs. 2,000/- to lay the trap. That he got the number of the currency notes noted through his staff and he got sodium carbonate solution prepared through his staff. That he took sample of the same and also sample of the sodium carbonate powder. That he also took sample of the phenolphthalein powder. That he got phenolphthalein powder applied to both sides of all currency notes by his staff. That he got the left side shirt pocket of PW-1 checked through PW-2 and PW-2 confirmed that there is no money in the pocket. That he got the said amount of Rs.2,000/- counted by PW-3 and got it kept in the left side shirt pocket of PW-1 through PW-3. That he got the hands of PW-3 washed in sodium carbonate solution. That the solution turned to pink colour and he took sample of the same. That he told PW-1 to 3 about the reaction between phenolphthalein powder and sodium carbonate solution.

P.W.4 further stated that he took the voice recorder from PW-1 and played the same and burnt it to CD and transcribed the same. That the said conversation

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contained about the demand of bribe of Rs. 2,000/-. Further he identified the attested copy of the same, which is in 2 sheets, and contains his signature and signatures of PW-1 to 3, as per Ex.P-27. That he gave the said voice recorder again to PW-1, and instructed him to switch on while meeting the DGO and he also instructed him to pay the amount only on demand by the DGO and after acceptance to give signal by wiping the head with his hand. That he instructed PW-2 to follow PW-1 and act as shadow witness. That all of them washed their hands thoroughly with soap and took photographs of all these proceedings as per Ex.P-28. That he drew pre-trap mahazar from 4:30 p.m to 5:10 p.m. as per Ex.P-2. That all of them left to the office of the DGO, situated about half a kilometer from his police station.

PW4 further stated that they reached there at about 5:20 p.m. and he repeated the instructions to PW-1 to 3 and PW-1 and 2 went to meet the DGO and they were watching from a distance. That at 5:30 p.m, PW-1 gave signal by wiping his head with hand and he reached there with his team. That PW-1 showed the DGO and told him that the DGO demanded and accepted the tainted amount of Rs. 2,000/-. That he got the hands of the DGO caught through his staff and he introduced himself and his staff to the DGO and told him about the registration of complaint against him and asked him to


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co-operate. That the DGO told that he knows PW-1. That PW-2 also told him that the DGO demanded the bribe and PW-1 has given the same and the DGO has received the same with his right hand and counted with both hands and kept in his left side shirt pocket.

P.W.4 has further stated that he got sodium carbonate solution prepared through his staff. That he took sample of the same and he got the hands of the DGO washed in the solution separately. That the solution turned from colourless to pink colour. That he took samples of the same. That he got the amount removed from left side shirt pocket of the DGO through PW-2. That on checking the notes, he found the same tallying with the one given for laying the trap. That he seized the same. That the DGO was asked to furnish the documents of PW-1. That the DGO furnished the documents as per Ex.P-5 to Ex.P-25. That he got rough sketch prepared through his staff as per Ex.P-29. That as the gathering of public had become more, he conducted the further panchanama in I.B., situated about half a kilometer from the office of DGO.

P.W.4 has further stated He got the sodium carbonate solution prepared through his staff. That he seized the shirt of the DGO, by making alternate arrangement of shirt to him and got the portion of pocket


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dipped in the solution. That the solution turned to pink colour and he took sample of the same. That he took the voice recorder from PW1 and he called the Tahasildar, Sri.Mallikarjun Y.S. and played the same, even in his presence. That the said Tahasildar identified the voice of the DGO recorded during trap and prior to trap. That he burnt the conversation to CD and transcribed the same as per Ex.P-4. That he got the documents attested from the Tahasildar and he also collected documents from Revenue Inspector, Sri.Gopalkrishna, and got it attested by Tahasildar as per Ex.P-30. That he took the statement of the DGO as per Ex.P-31. That the complainant and PW-2 and 3 have denied the contents of the statement of the DGO and he took photographs of the trap proceedings as per Ex.P-32. That he drew trap panchanama from 5:35 p.m to 7:45 p.m as per Ex.P-3 and he followed the arrest procedure. That he sealed all the articles using letter 'FN' and gave the seal to PW-3. That he sent the articles to FSL for examination and received the report from FSL on 04/02/2013 as per Ex.P-33. That he recorded the statement of witnesses and he got the sketch prepared from PWD Engineer as per Ex.P-34. That he also got documents with respect to office of DGO and service details of DGO as per Ex.P-35 and Ex.P-36 respectively. That he filed the charge sheet against the


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DGO, after obtaining sanction. Further he identified the DGO present before this authority.

(b) Nothing material is elicited by the learned defence counsel during the cross examination of PW4 to discredit his testimony or put forth his defence.

18. On perusal of documents, evidence of P.W.1 /complainant,P.W.2/ Shadow witness, PW3/panch witness and P.W.4/Investigating Office, it is seen that on 21/12/2012 the complainant lodged complaint against DGO that he is demanding bribe to put up applications submitted by his brothers to issue caste certificate as per Exp1 and produced 3 currency note of Rs.500/- denomination and 5 currency notes of Rs.100/- denomination to lay the trap and their numbers were noted in a sheet and phenolphthalein powder was smeared to them and complainant was instructed to give the tainted notes only if demanded by DGO and after doing so to give signal to P.W.2 by wiping his head with his hand and pre-trap proceedings were conducted as per Exp2 and thereafter they left the Lokayukta Police station and reached the private office of DGO.

Further PW1,PW3 & PW4 evidence also reveals that, PW1 & PW2 went inside the office of DGO and at about 5.30 p.m. PW1 gave signal by wiping his head with hand and immediately PW4 along with PW3 and his staff

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entered the private office of DGO and PW1 showed DGO and told DGO that he demanded and accepted tainted amount Rs.2,000/- with his right hand, counted with both hands and kept in his left side shirt pocket.

PW-1 has deposed about demand and acceptance of tainted notes by DGO on enquiry of his work. PW-2 shadow witness stated that he has not accompanied PW-1 inside the office of DGO and has not seen demand and acceptance of bribe of DGO. He is treated partly hostile and cross examined by learned Presenting Officer but he has denied the above suggestion that he accompanied PW1 and has seen the demand and acceptance of tainted notes by DGO. But PW1, PW3 & PW4 have categorically deposed that PW2/ shadow witness accompanied PW1 to the private office of DGO. Nothing is elicited from the cross examination of PW1 by the DGO counsel to discredit his testimony with respect to demand and acceptance of bribe amount by the DGO in his office.

Further the evidence of PW1 to PW4 reveal that they went into the office of DGO and I.O. enquired PW1 and he told that he has given the tainted notes to DGO and the I.O. got prepared Sodium Carbonate solution and got both hands of DGO washed in the said solution separately in 2 bowls and it turned pink colour. Further

A handwritten signature in blue ink, consisting of a stylized symbol, followed by the date '23/11' written below it.

the evidence of PW1, PW3 & PW4 reveals that PW4/I.O. has got the tainted notes removed through PW2 and they were tallying with the notes given to PW-1 at the time of pre trap mahazar and the I.O has seized the same. Further the evidence of PW-2/Panch witness and PW-4/I.O. reveal that I.O has seized the shirt of DGO and got prepared Sodium Carbonate Solution and has dipped the pocket of the shirt in said solution and it turned to pink colour and I.O. has seized the solution and the shirt of DGO by making alternate arrangement to DGO.

Further their evidence reveal that PW4/I.O. prepared rough sketch and seized the documents pertaining to brother's of PW1/ complainant as per Ex. P5 to P25. Further there evidence also reveals that PW4/I.O. played the voice recorder before one Sri. Mallikarjun Y.S. Tahasildar and the Tahsildar identified the voice of DGO recorded during trap and prior to trap. PW4 burnt the conversation to C.D. and transcribed it as per Ex.P4 and he got the documents attested from one Sri. Gopal Krishna, Revenue Inspector and attested by Tahsildar as per Ex.P30 and took the statement of DGO as per Ex.P31 and the said statement is denied by PWs 1 & 2 and took photographs of trap proceedings.

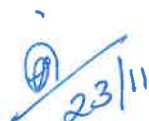
19. The defence of DGO is that PW1 came to his office and shaken his hands with him and while doing so he

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has kept the tainted notes in his hand and immediately left the office and he has given explanation as per Exp31 with respect to possession of tainted notes as stated above. This fact is specifically denied by PW1 in his cross examination by the DGO counsel and nothing is elicited from him in support of the defence of the DGO and to disbelieve the evidence of PW1. The DGO has not stepped into the witness box and has not adduced evidence to prove his defence.

20. It is pertinent to note here that DGO has admitted that he has received Rs 2000/- tainted notes from PW1 on that day, but contends that it was kept in his hands by PW1 while shaking his hands. PW1 has specifically denied his suggestion put forth by DGO counsel in his cross examination. Further DGO has not adduced any evidence on his behalf. As such his defence cannot be believed. The explanation/contention of DGO i.e., Exp31 is not proved and substantiated by leading cogent convincing evidence by DGO. P.W.1 has specifically denied the explanation given by DGO.

21. It is sought to contend in the course of argument of DGO that there was no work pending before DGO and therefore the question of demand and acceptance of illegal gratification from the complainant is out of

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picture. Further it is the contention of the DGO that the application filed by the complainant was rejected earlier for want of document. Hence, no work of the complainant was pending with him and as such demand and acceptance of illegal gratification will not arise. PW4 I.O. has seized the documents pertaining to the work of the complainant from the custody of the DGO in his office at the time of trap as per Exp5 to Exp25. There is no explanation given by the DGO as to how he was in the custody of the document. Further on perusal of Exp17 & Exp24 it is the Form A (Rule 3(A)), it is pertaining to brothers of the complainant with respect to application submitted for issue of caste certificates that they belong to ST Gonda caste. In the said application there are some information which have to be submitted by the village accountant with his report and after that it has to be placed before Revenue Inspector who has to submit his report. On perusal of Exp17 & 24 the columns showing the information which have to be collected and submitted by village accountant and the column where he has to put the sign is blank. This goes to show that the said work was pending before the DGO who is the concerned village accountant before whom the file was pending. This clearly goes to show that the work of the complainant was pending before the DGO.


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22. It is pertinent to note here that the complainant/PW-4 has produced the recordings of the conversation taken place between complainant and DGO on 20/12/2012 at the time of pre-trap mahazar conducted on 21/12/2012 which is marked as Ex.P-27. On perusal of the transcription of the voice recorder the conversation clearly goes to show the demand of bribe of Rs 2000/- by the DGO from the complainant with respect to put up the file for issue of caste certificate of brothers of the complainant. Further the recordings at the time of trap proceedings is transcribed as ExP4. This also reveal the demand of bribe by DGO from the complainant. The said recordings have been played before panchas and one Sri. Mallikarjun Y.S. Tahasildar and the said Tahsildar has identified the voice of DGO recorded during trap and prior to trap. As such all these proceedings goes to show that the DGO has demanded bribe for getting the work of putting up the file of the brothers of the complainant to issue caste certificate and as accepted the bribe amount.

23. During evidence PW4 he has referred to Ex P2 to 4 & ExP27. It is in his evidence that on 21/12/2012 he conducted trap mahazar the attested copy of which is at Ex.P3 and during the said mahazar, he took the voice recorder from PW1 and he called the Tahasildar,

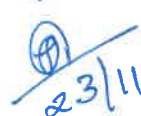

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Sri.Mallikarjun Y.S. and played the same, even in his presence and the said Tahasildar identified the voice of the DGO recorded during trap and prior to trap. That he burnt the conversation to CD and transcribed the same as per Ex.P-4. Cross examination of PW4 would show that he has not complied with the mandate of section 65-B of The Indian Evidence Act, 1872. It needs to be remembered at this juncture that while appreciating evidence in the inquiry proceedings of this nature strict compliance of the provisions of The Indian Evidence Act, 1872 is not required. Therefore, in the absence of compliance of the provisions of section 65-B of The Indian Evidence Act, 1872 contents of Ex P4 & 27 can be pressed into service in which it is seen that DGO demanded illegal gratification. Therefore, it needs to be inferred that acceptance of cash by the DGO when the work of the complainant was pending attracts misconduct. It needs to be inferred that since the file of the complainant i.e., applications filed for issue of caste certificate of brothers of the complainant was attended by DGO he must have insisted to fulfill the demand for illegal gratification. In these circumstances, the DGO has not placed any material to lend assurance to the defence put forward by him.


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24. Nothing is found in the evidence of PW1 to PW4 that DGO herein was not found in possession of tainted cash. In these circumstances, the DGO has not lead any oral or documentary evidence to lend assurance to the defence put forward by him and would not lend support to his defence.

25. It is well settled that in the criminal trial proof beyond reasonable doubt is the yardstick which needs to be applied while appreciating evidence. Preponderance of probabilities is the yardstick which needs to be applied while appreciating evidence in the inquiry of this nature. In order to establish the charge 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, prosecution has to establish demand and acceptance of illegal gratification in order to extend official favour. Mere possession of tainted cash in the absence of demand will not attract the charge 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. Evidence of PW1 & PW4 establishes demand of bribe by DGO. Evidence of PWs 1 to 4 establishes possession of tainted cash by DGO. Evidence of PWs 1 to 4 establishes change of


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colour of finger wash of DGO and also recovery of tainted cash from the possession of DGO. Mere possession of tainted cash in the absence of satisfactory explanation attracts misconduct within the purview of Rule 3 (1)(i) to (iii) of The Karnataka Civil Services (Conduct) Rules, 1966. In the presence of evidence of PWs 1 to 4 as discussed above I am not persuaded to accept the defence put forward in the course of written statement and also contentions raised in the course of written argument of DGO.

26. From the evidence of P.W.1 complainant PW2 shadow witness, P.W.3 Panch witness and PW4 Investigating Officer, the disciplinary authority has proved the pre-trap mahazar proceedings as per Ex.P2 and trap proceedings as per Ex.P3. Except minor discrepancies which does not go to the root of the Disciplinary Authority case, nothing material is elicited from the cross examination of PW1,2 and P.W.3 to discredit their testimony with respect to conducting of trap proceedings i.e., Pre-trap mahazar Ex.P2 and post trap mahazar Ex.P3.

Thus, this Additional Registrar Enquiries, finds that, the evidence of P.W1 to PW4, Ex.P1 to ExP36, as reasoned above, proves that the DGO had demanded and accepted bribe of Rs.2,000/- from P.W.1/complainant on


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21/12/2012. The disciplinary authority has proved the charges against this DGO. The DGO has committed misconduct, dereliction of duty acted in a manner unbecoming of a Government Servant and not maintained absolute integrity violating Rule 3(1)(i) to (iii) of K.C.S. Conduct) Rules, 1966. Accordingly, this point is answered in the **Affirmative**.

27. **Point No.2** :- For the aforesaid reasons, this Additional Registrar (Enquiries) proceeds to record the following.

FINDINGS

The disciplinary authority has proved the charges against the D.G.O.

Submitted to Hon'ble Upalokayukta for kind approval, and necessary action in the matter.


(J.P. Archana)

Additional Registrar (Enquiries-11),
Karnataka Lokayukta,
Bangalore.

ANNEXURES

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

PW1:- Sri. Ganapathi
PW2:- Sri. Vijayakumar.


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PW3:-

Sri. Martin.

PW4:-

Sri. Basu Chowhan.

List of witnesses examined on behalf DGO:-NIL

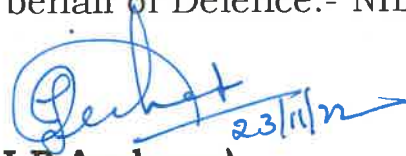
List of documents marked on behalf of Disciplinary Authority:-

Ex P1	Certified copy of complaint of PW1 dated 21/12/2012.
Ex P2	Certified copy of pre-trap panchanama dated 21/12/2012.
Ex P3	Certified copy of trap panchanama dated 21/12/2012.
Ex P4	Certified copy of Transcription version of PW1 and DGO dated 21/12/2012.
Ex.P5 to Ex.P10	Certified copies of documents related to complainant's work submitted along with application.
Ex P11 to 16	Certified copies of documents related complainant's work submitted along with application.
Ex P17	Certified copy application in Form-A of Gopal Bin Hanumanthappa dated 29/11/2012.
Ex P18 to Ex.P20	Certified copies of documents of e stamp, Adhar Card, Ration Card of father of PW1.
Ex P21 to Ex.P23	Certified copies of documents related to Gopal.
Ex.P24	Certified copy application submitted in the name of Shivaputhra dated 28/11/2012.
Ex.P25	Certified copy of seizure panchanama before RI, Bidar Hobli and Taluk dated 28/11/2012.

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Ex.P26	Certified of FIR dated 21/12/2012 in cr.No.10/2012.
Ex P27	Certified copies transcription of voice recorder to C.D. in Cr.No.10/2012
ExP28	Certified copy of photographs in 7 sheets.
Ex P29	Certified copy of sketch in Cr.No.10/2012.
Ex P30	Certified copies of documents seized from Revenue Inspector Sri. Gopal Krishna attested through Tahasildar.
Ex P31	Certified copy of statement of DGO dated 21/12/2012.
Ex P32	Certified copies of photographs of trap proceedings.
Ex P33	Certified copy of FSL Report dated 04/02/2013.
Ex P34	Certified copy of sketch of PWD Engineer in cr.No.10/2012.
Ex P35 and Ex.P36	Certified copies of khatha extract of office of DGO and service particulars of DGO.

List of documents marked on behalf of Defence:- NIL.



(J.P. Archana)

Additional Registrar (Enquiries-11),
Karnataka Lokayukta, Bangalore.

