



ಕರ್ನಾಟಕ ಲೋಕಾಯುಕ್ತ

ಸಂ: ಲೋಕ್/ಐಎನ್‌ಕ್ಯೂ/14-ಎ/459/2013/ಅನಿವಿ.11

ಬಹುಮಹಡಿ ಕಟ್ಟಡ,
ಡಾ.ಬಿ.ಆರ್.ಅಂಬೇಡ್ಕರ್ ವೀದಿ,
ಬೆಂಗಳೂರು, ದಿ.04.05.2023.

ಶಿಫಾರಸ್ಸು

ವಿಷಯ:- (1) ಶ್ರೀ ಕೆ.ಜಿ.ಅನಂತನಾರಾಯಣ, ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಸಹಾಯಕ ಆಯುಕ್ತರು, (ರದ್ದುಗೊಂಡಿರುತ್ತದೆ) ಮತ್ತು (2) ಶ್ರೀ ಬಿ.ಎಂ.ಪದ್ಮನಾಭ, ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಅಧಿಕಾರಿ, ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಚೆಕ್‌ಪೋಸ್ಟ್, ಧೂಳಖೇಡ, ಇಂಡಿ ತಾಲ್ಲೂಕು, ವಿಜಯಪುರ ಜಿಲ್ಲೆ, ಅವರ ವಿರುದ್ಧದ ಇಲಾಖಾ ವಿಚಾರಣೆ ಕುರಿತು.

ಉಲ್ಲೇಖ:-1. ಸರ್ಕಾರಿ ಆದೇಶ ಸಂ.ಆಇ 75 ವಾತೆತ 2008 ದಿ.25.10.2013 ಮತ್ತು ಸಮಸಂಖ್ಯೆಯ ತಿದ್ದುಪಡಿ ಆದೇಶ ದಿ.12.11.2013.

2. ನಾಮ ನಿರ್ದೇಶನ ಆದೇಶ ಸಂ.ಲೋಕ್/ಐಎನ್‌ಕ್ಯೂ/14-ಎ/459/2013 ದಿನಾಂಕ 16.11.2013.

3. ವಿಚಾರಣಾಧಿಕಾರಿಗಳು ಸಲ್ಲಿಸಿದ ವಿಚಾರಣಾ ವರದಿ ದಿ.26.04.2023.

ಸರ್ಕಾರವು ದಿ.25.10.2013ರ ಆದೇಶ ಮತ್ತು ಸಮಸಂಖ್ಯೆಯ ತಿದ್ದುಪಡಿ ಆದೇಶ ದಿ.12.11.2013ರನ್ವಯ (1) ಶ್ರೀ ಕೆ.ಜಿ.ಅನಂತನಾರಾಯಣ, ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಸಹಾಯಕ ಆಯುಕ್ತರು, ಮತ್ತು (2) ಶ್ರೀ ಬಿ.ಎಂ.ಪದ್ಮನಾಭ, (ನಿವೃತ್ತ), ಅಂದಿನ ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಅಧಿಕಾರಿ, ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಚೆಕ್‌ಪೋಸ್ಟ್, ಧೂಳಖೇಡ, ಇಂಡಿ ತಾಲ್ಲೂಕು, ವಿಜಯಪುರ ಜಿಲ್ಲೆ, (ಇನ್ನು ಮುಂದೆ ಕ್ರಮವಾಗಿ '1 ಮತ್ತು 2ನೇ ಆಪಾದಿತ ಸರ್ಕಾರಿ ನೌಕರರು' ಎಂದು

೧.

ಉಲ್ಲೇಖಿಸಲಾಗುವುದು) ರವರ ವಿರುದ್ಧ ಇಲಾಖಾ ವಿಚಾರಣೆ ನಡೆಸಲು ಪ್ರಕರಣವನ್ನು ಉಪಲೋಕಾಯುಕ್ತರಿಗೆ ವಹಿಸಿರುತ್ತದೆ.

2. ಈ ಸಂಸ್ಥೆಯು ನಾಮ ನಿರ್ದೇಶನ ಆದೇಶ ಸಂಖ್ಯೆ:ಲೋಕ್/ಐಎನ್‌ಕ್ಯೂ/14-ಎ/459/2013 ದಿನಾಂಕ 16.11.2013ರನ್ವಯ ಅಪರ ನಿಬಂಧಕರು ವಿಚಾರಣೆ-3 ಇವರನ್ನು ವಿಚಾರಣಾ ಅಧಿಕಾರಿಗಳನ್ನಾಗಿ ನೇಮಿಸಿ, ಆಪಾದಿತ ಸರ್ಕಾರಿ ನೌಕರರ ವಿರುದ್ಧ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿಯನ್ನು ತಯಾರಿಸಿ, ಸದರಿ ಆರೋಪಗಳ ಕುರಿತಂತೆ ಇಲಾಖಾ ವಿಚಾರಣೆ ನಡೆಸಲು ನಾಮ ನಿರ್ದೇಶನ ಮಾಡಿರುತ್ತದೆ. ತದನಂತರ ಪ್ರಕರಣದ ವಿಚಾರಣೆಯನ್ನು ಮುಂದುವರೆಸಲು ಅಪರ ನಿಬಂಧಕರು ವಿಚಾರಣೆಗಳು-11 ಅವರಿಗೆ ವರ್ಗಾವಣೆಗೊಂಡಿರುತ್ತದೆ.

3. ವಿಚಾರಣಾಧಿಕಾರಿಗಳು ಆಪಾದಿತ ಸರ್ಕಾರಿ ನೌಕರರ ವಿರುದ್ಧ ಈ ಕೆಳಕಂಡಂತೆ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿಯನ್ನು ತಯಾರಿಸಿರುತ್ತಾರೆ.

CHARGE

' That you DGO-2 Sri.B.M.Padmanabha, Commercial Tax Officer, working then at Commercial Tax Check Post, Dhoolakhed, Indi Taluk, Bijapur District, while discharging your duties;

- a) One Sri.Shivpal Anuragi, Driver, was transporting machines (worth Rs.40 Lakhs) (for which tax of Rs.80,000/- had been paid) in Lorry No.CG-04 DA 2645 from Raipur in Chattisgarh to Koppala District i.e., Halavarthi, for K.M.M.I. Ispath Limited on

02/12/2008. But when it came near Commercial Check Post situated near Dhoolakhed on N.H.-13 in Indi Taluk of Bijapur District on stopped it, demanding money to allow it to pass through said check post. So, the Driver contacted complainant Sri.Subramanian, S/o Sundaram, Project In charge, K.M.M.I.Ispath Limited over phone and informed about it. For that complainant asked the Driver to pay amount with Rs.2,000/- and get the vehicle released. Then said Driver told over phone that they are asking the complainant only to come. As such, that Driver requested complainant to come to that check post. So, complainant along with one Sri.K.Mani, Project Engineer, went to said check post on 8/12/2008 and met DGO-2, who had issued notice and enquired with DGO-2 and requested for the release of said lorry. Then DGO-2 demanded Rs.15 lakhs to release that lorry.

- b) For that, when they told that, that is a huge amount, DGO-2 asked them to pay at least Rs.5 lakhs, but they did not agree and returned.
- c) Then, they informed said matter to one Sri.Shabbir Husaini of Koppal Thagginakeri, who does sand transportation to their factory and gave the phone number of the said check post to Sri.Shabbir Husaini and who spoke about release of said vehicle from the said check post. Sri.Shabbir Husaini spoke to you - DGO-2 who was on duty then in the said check post on 10/12/2008. Then you DGO-2 demanded Rs.10,20,000/- telling that said vehicle will be released only after said amount is paid.
- d) Later, you - DGO-2 told Sri.Shabbir Husaini to pay Rs.10 lakhs for releasing the lorry. For that, when the driver told over mobile that Rs.2lakhs will be paid, but you - DGO-2 did not agree to it telling that to release the lorry, amount requires not only to him but also to Sri.Dalwai and you - DGO-2 also and demanded Rs.5 lakhs, failing which lorry will not be released.
- e) Thereafter, in that night itself (i.e., in the night of 10/12/2008), you - DGO-2 contacted said Sri.Shabbir Husaini and asked him which they are leaving. For that, Sri.Shabbir Husaini told that Rs.3 lakhs is collected and within half an hour, further sum of Rs.2 lakhs will be arranged and thus, totally Rs.5 lakhs

will be collected and brought. Then you DGO-2 asked to reach by morning, saying that "otherwise things will be different".

- f) Not only that, after approaching Lokayukta Police, when the complainant met you DGO-2 at the said check post on 11/12/2008 in the early hours of morning, you DGO-2 demanded and took the tainted (bribe) amount of Rs.5 Lakhs from him for both of you DGO-1 and 2 besides for Sri.Dalwai also in connection with releasing of said lorry and kept it in a Godrej Almirah.
- g) That you DGO-2 on the same date, time and place were in possession of Rs.1,15,805/- and which amount was not towards tax, fine or fees and for the possession of which you did not furnish any reasonable explanation to the investigation officer and thereby you were in possession of collected bribe amount.
- h) Then you DGO-2 were caught hold by the I.O., as you DGO-2 were found with the tainted (bribe) amount, for which you DGO-2 failed to give any satisfactory reply or account, when questioned by the I.O.
- i) That you DGO-1 Sri.K.G.Ananthanarayana, Assistant Commissioner of Commercial Taxes, working then at Commercial Tax Check Post, Dhoolakhed, Indi Taluk, Bijapur District, while discharging your duties, detained the above said lorry, issued the notice but did not disposed off the matter legally and thereby exhibited your carelessness and irresponsibility in discharge of your official duties.

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

4. ವಿಚಾರಣಾಧಿಕಾರಿಗಳಾದ ಅಪರ ನಿಬಂಧಕರು, ವಿಚಾರಣೆ-11 ಇವರು ಸುದೀರ್ಘ

ವಿಚಾರಣೆ ನಡೆಸಿ, ಹಾಜರುಪಡಿಸಲಾದ ದಾಖಲೆಗಳನ್ನು ಹಾಗೂ ಸಾಕ್ಷಿಗಳ ಹೇಳಿಕೆಗಳನ್ನು

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ಕೂಲಂಕುಷವಾಗಿ ಪರಿಶೀಲಿಸಿ, 2ನೇ ಆಪಾದಿತ ಸರ್ಕಾರಿ ನೌಕರರಾದ ಶ್ರೀ ಬಿ.ಎಂ.ಪದ್ಮನಾಭ, (ನಿವೃತ್ತ), ಅಂದಿನ ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಅಧಿಕಾರಿ, ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಚೆಕ್‌ಪೋಸ್ಟ್, ಧೂಳಖೇಡ, ಇಂಡಿ ತಾಲ್ಲೂಕು, ವಿಜಯಪುರ ಜಿಲ್ಲೆ, ಅವರ ವಿರುದ್ಧ ಹೊರಿಸಲಾದ ಆರೋಪಗಳನ್ನು ಸಾಬೀತುಪಡಿಸುವಲ್ಲಿ ಶಿಸ್ತು ಪ್ರಾಧಿಕಾರವು 'ಸಫಲವಾಗಿರುತ್ತದೆ' ಎಂದು ವರದಿ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

5. ವಿಚಾರಣಾ ವರದಿ, ಸಾಕ್ಷಿದಾರರ ಹೇಳಿಕೆಗಳು ಹಾಗೂ ಹಾಜರುಪಡಿಸಿರುವ/ಗುರುತಿಸಿರುವ ಎಲ್ಲಾ ದಾಖಲೆಗಳನ್ನು, ಕೂಲಂಕುಷವಾಗಿ ಪರಿಶೀಲಿಸಿದಾಗ, ಶಿಸ್ತು ಪ್ರಾಧಿಕಾರವು 2ನೇ ಆಪಾದಿತ ಸರ್ಕಾರಿ ನೌಕರರ ವಿರುದ್ಧದ ಆರೋಪಗಳನ್ನು ಸಾಬೀತುಪಡಿಸಲು ಇಬ್ಬರು ಸಾಕ್ಷಿದಾರರನ್ನು ಪ್ರಾ.ಸಾ. 1 ಮತ್ತು 2 ಎಂದು ಸಾಕ್ಷಿ ನುಡಿಸಿದ್ದು, ಪಿ.1ರಿಂದ ಪಿ.5ರವರೆಗಿನ ದಾಖಲೆಗಳನ್ನು ಗುರ್ತಿಸಿಕೊಂಡಿರುತ್ತಾರೆ. ಆಪಾದಿತ ಸರ್ಕಾರಿ ನೌಕರರು ತಮ್ಮ ಪರವಾಗಿ ಯಾವುದೇ ಸಾಕ್ಷಿಗಳನ್ನಾಗಲೀ ದಾಖಲೆಗಳನ್ನಾಗಲೀ ಗುರ್ತಿಸಿಕೊಂಡಿರುವುದಿಲ್ಲ. 2ನೇ ಆರೋಪಿತ ಸರ್ಕಾರಿ ನೌಕರರು ತಮ್ಮ ಮೇಲಿನ ಆರೋಪಗಳನ್ನು ಅಲ್ಲಗಳೆದಿದ್ದರೂ ಸಹ ಶಿಸ್ತು ಪ್ರಾಧಿಕಾರದ ಪರವಾಗಿ ಗುರ್ತಿಸಿಕೊಂಡಿರುವ ದಾಖಲೆಗಳು ಹಾಗೂ ಸಾಕ್ಷಿಗಳ ಹೇಳಿಕೆಗಳಿಂದ 2ನೇ ಆಪಾದಿತ ಸರ್ಕಾರಿ ನೌಕರರು ಕರ್ತವ್ಯಲೋಪವೆಸಗಿರುವುದು ಕಂಡುಬರುತ್ತದೆ. ಆದುದರಿಂದ

೧.

ವಿಚಾರಣಾ ಅಧಿಕಾರಿಗಳ ವರದಿಯನ್ನು ಅಂಗೀಕರಿಸಲು ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಶಿಫಾರಸ್ಸು ಮಾಡಲಾಗಿದೆ.

6. ವಿಚಾರಣಾಧಿಕಾರಿಗಳು ಸಲ್ಲಿಸಿರುವ ದಾಖಲೆಗಳನ್ವಯ 2ನೇ ಆಪಾದಿತ ಸರ್ಕಾರಿ ನೌಕರ ಶ್ರೀ ಪದ್ಮನಾಭ ಅವರು ದಿನಾಂಕ 31.05.2015 ರಂದು ನಿವೃತ್ತಿ ಹೊಂದಿರುತ್ತಾರೆ.

7. 2ನೇ ಆಪಾದಿತ ಸರ್ಕಾರಿ ನೌಕರರ ವಿರುದ್ಧ ಸಾಬೀತಾದ ಆರೋಪ (ಲಂಚದ ಬೇಡಿಕೆ ಹಾಗೂ ಸ್ವೀಕಾರ)ದ ತೀವ್ರತೆಗನುಗುಣವಾಗಿ, '2ನೇ ಆಪಾದಿತ ಸರ್ಕಾರಿ ನೌಕರರಾದ ಶ್ರೀ ಬಿ.ಎಂ.ಪದ್ಮನಾಭ, (ನಿವೃತ್ತ), ಅಂದಿನ ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಅಧಿಕಾರಿ, ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಚೆಕ್‌ಪೋಸ್ಟ್, ಧೂಳಿಖೇಡ, ಇಂಡಿ ತಾಲ್ಲೂಕು, ವಿಜಯಪುರ ಜಿಲ್ಲೆ, ಅವರ ಪಿಂಚಣಿಯ ಶೇ.50%(ಐವತ್ತು)ರಷ್ಟನ್ನು ಶಾಶ್ವತವಾಗಿ ತಡೆಹಿಡಿಯುವ' ದಂಡನೆ ವಿಧಿಸಲು ಶಿಸ್ತು ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಶಿಫಾರಸ್ಸು ಮಾಡಲಾಗಿದೆ.


8. 1ನೇ ಆಪಾದಿತ ಸರ್ಕಾರಿ ನೌಕರರಾದ ಶ್ರೀ ಕೆ.ಜಿ.ಅನಂತನಾರಾಯಣ ಅವರು ವಿಚಾರಣೆಗೆ ವಹಿಸಿದ ಸರ್ಕಾರಿ ಆದೇಶವನ್ನು ಕರ್ನಾಟಕ ಆಡಳಿತ ಮಂಡಳಿಯ ಮುಂದೆ ಅರ್ಜಿ ಸಂ.2221/2014ರಲ್ಲಿ ಪ್ರಶ್ನಿಸಿದ್ದು, ಕರ್ನಾಟಕ ಆಡಳಿತ ನ್ಯಾಯಮಂಡಳಿಯು ತನ್ನ ದಿ.25.01.2018ರ ಆದೇಶದಲ್ಲಿ ಸರ್ಕಾರಿ ಆದೇಶವನ್ನು ರದ್ದುಪಡಿಸಿರುತ್ತದೆ. ಸದರಿ ಆದೇಶದ ವಿರುದ್ಧ ಈ ಸಂಸ್ಥೆಯು ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಸಲ್ಲಿಸಿದ ರಿಟ್ ಅರ್ಜಿ ಸಂ.29101/2018(ಎಸ್-ಕೆಎಟಿ) ದಿ.22.11.2018ರಂದು ತಿರಸ್ಕೃತಗೊಂಡಿರುತ್ತದೆ. ಸದರಿ

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ಆದೇಶವನ್ನು ಪ್ರಶ್ನಿಸಿದಿರಲು ಈ ಸಂಸ್ಥೆಯು ನಿರ್ಧರಿಸಿರುವುದರಿಂದ 1ನೇ ಆಪಾದಿತ ಸರ್ಕಾರಿ ನೌಕರರ ವಿರುದ್ಧದ ಪ್ರಕರಣವು ಮುಕ್ತಾಯಗೊಂಡಿರುತ್ತದೆ.

9. ಶಿಸ್ತು ಪ್ರಾಧಿಕಾರವು ಈ ಪ್ರಕರಣದಲ್ಲಿ ವಿಚಾರಣಾ ವರದಿ ಹಾಗೂ ಶಿಫಾರಸ್ಸಿನನ್ವಯ ಕೈಗೊಂಡ ಕ್ರಮದ ವರದಿಯನ್ನು ಸಲ್ಲಿಸಲು ಕೋರಲಾಗಿದೆ.

10. ಸಂಬಂಧಪಟ್ಟ ದಾಖಲೆಗಳನ್ನು ಲಗತ್ತಿಸಿದೆ.


(ನ್ಯಾಯಮೂರ್ತಿ ಕೆ.ಎನ್.ಫಣೀಂದ್ರ)
ಉಪಲೋಕಾಯುಕ್ತ,
ಕರ್ನಾಟಕ ರಾಜ್ಯ.

KARNATAKA LOKAYUKTA

NO. LOK/INQ/14-A/459/2013/ARE-11

M.S.Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001,
Date: 26/04/2023.**:: ENQUIRY REPORT ::**

Sub: Departmental Enquiry against
(1) Sri. K.G.Ananthanarayana, Assistant
Commissioner of Commercial Taxes and
(2) Sri. B.M.Padmanabha, Commercial Tax
Officer (working then at Commercial Tax
Check Post, Dhoolakhed, Indi Taluk, Bijapur
District) -reg.

Ref: 1. Order No. ಆಇ 75 ವಾತೆತ 2008, ಬೆಂಗಳೂರು,
ದಿ:25/10/2013.

2. Nomination Order No. LOK/INQ/14-A/
459/2013, Bengaluru, dated 16/11/2013.

The Departmental Enquiry is initiated against (1) Sri. K.G.Ananthanarayana, Assistant Commissioner of Commercial Taxes and (2) Sri. B.M.Padmanabha, Commercial Tax Officer (working then at Commercial Tax Check Post, Dhoolakhed, Indi Taluk, Bijapur District) (hereinafter referred to as the Delinquent Government Officials, in short DGO No.1 & 2 respectively) on the basis of the complaint dated:10/12/2008. The allegations in the complaint is that one Sri Subramanian S/o. Sundaram,

lodged a complaint with the Bagalkote Lokayuktha police on 10.12.2008 that complainant is the resident of Seetha Vihar in Chattisgad State and he is working in M/s.KMMI ISPAT Private Limited and incharge of Halavarthi, Koppal. On 2.12.2008, he had purchased equipments for KMMI Ispat factory for a sum of Rs.40 lakhs and he has paid Rs.80,000/- as tax and he was transporting the said equipment from Raipura to Koppal in a lorry bearing CG-04/DA-2645. The lorry reached Dhulkhed commercial tax check post on 7.12.2008 at about 2.00 p.m., The officers of the check post intercepted the vehicle and asked for illegal gratification which was intimated by the driver of the lorry to him. He has told the driver to settle with the officers by paying Rs.1,000/- or Rs.2,000/-. But, the driver replied that the officers are not agreeing for the small sum and they have told him to visit the check post. Accordingly, the complainant along with the Product Engineer Sri K. Mani visited the check post on 8.12.2008 and met Sri Ananthanarayana/DGO-1. He requested Sri Ananthanarayana DGO-1 but he demanded a sum of Rs.15 lakhs. Negotiations took place and the Commercial Tax Officer demanded minimum of Rs.5 lakhs and he was not agreeable for the same and therefore, he took the help of one Sabbir Huseni of Koppal. He assured that he would visit the check post and negotiate further. On 10.12.2008, one Padmanabha/DGO-2 was the in-charge of the check post. He demanded a sum of Rs.10,20,000/- and intimated the same to Sabbir Huseni. The said Padmanabha/DGO-2 intimated the same to Sabbir Huseni over telephone and he also told that the said amount will be


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shared among himself, Dalwai and Ananthanarayana and he demanded minimum of Rs.5 lakhs. The complaint averments also reveal that immediately, the amount of Rs.5 lakhs is to be arranged, for which Sabbir Huseni replied that he has arranged Rs.3 lakhs and another Rs.2 lakhs he would arrange and pay the same. The DGO-2 replied that the amount is to be paid before morning otherwise, things would be different.

Since the complainant was not interested in parting away illegal gratification of Rs.5 lakhs, he lodged a complaint initially with Bagalkot Lokayuktha police, which was registered by the Lokayuktha Police in Crime No. 14/2008, which was transferred to the Vijayapur Lokayuktha and renumbered it as Crime No.13/2008 by Police Inspector, Karnataka Lokayukta Police Station, Vijayapur (hereinafter referred to as "Investigating Officer"). On the said complaint Investigating Officer registered case in Cr.No.13/2008 against the DGOs 1 and 2 for the offences punishable under section 7(2) of P.C.Act, 1988.

2. The Investigating Officer took up investigation and on 11/12/2008, in the early hours of morning DGO2 was caught red handed while demanding and accepting illegal gratification of Rs.5,00,000/- from the complainant in Dhulkhed Check post, the office of the DGO-2 and the said amount was seized under a mahazar after following post trap formalities by the Investigating Officer, Karnataka Lokayukta, Bagalkot. The DGOs 1 and 2 have failed to give satisfactory or convincing explanation for the said


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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-1 & 2 in the concerned jurisdictional Court.

3. 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 21/08/2013 U/s 12(3) of Karnataka Lokayukta Act, 1984 recommended the competent authority to initiate disciplinary proceedings against the DGO-1 & 2 and to entrust the enquiry to the Hon'ble Upalokayukta, Karnataka under Rule 14-A of the KCS (CC& A) Rules 1957. The Competent Authority by order dated 25/10/2013 entrusted the matter to the Hon'ble Upalokayukta.

4. The Hon'ble Upalokayukta by order dated 16/11/2013, nominated Additional Registrar Enquiries-3 to conduct the enquiry.

5. The Articles of charge as framed by Additional Registrar Enquiries-3 is as follows:


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ANNEXURE-1**CHARGE**

- i) That you DGO-2 Sri.B.M.Padmanabha, Commercial Tax Officer, working then at Commercial Tax Check Post, Dhoolakhed, Indi Taluk, Bijapur District, while discharging your duties;
- a) One Sri.Shivpal Anuragi, Driver, was transporting machines (worth Rs.40 Lakhs) (for which tax of Rs.80,000/- had been paid) in Lorry No.CG-04 DA 2645 from Raipur in Chattisgarh to Koppala District i.e., Halavarthi, for K.M.M.I. Ispath Limited on 02/12/2008. But when it came near Commercial Check Post situated near Dhoolakhed on N.H.-13 in Indi Taluk of Bijapur District on stopped it, demanding money to allow it to pass through said check post. So, the Driver contacted complainant Sri.Subramanian, S/o Sundaram, Project In charge, K.M.M.I.Ispath Limited over phone and informed about it. For that complainant asked the Driver to pay amount with Rs.2,000/- and get the vehicle released. Then said Driver told over phone that they are asking the complainant only to come. As such, that Driver requested complainant to come to that check post. So, complainant along with one Sri.K.Mani, Project Engineer, went to said check post on 8/12/2008 and met DGO-2, who had issued notice and enquired with DGO-2 and requested for the release of said lorry. Then DGO-2 demanded Rs.15 lakhs to release that lorry.


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- b) For that, when they told that, that is a huge amount, DGO-2 asked them to pay at least Rs.5 lakhs, but they did not agree and returned.
- c) Then, they informed said matter to one Sri.Shabbir Husaini of Koppal Thagginakeri, who does sand transportation to their factory and gave the phone number of the said check post to Sri.Shabbir Husaini and who spoke about release of said vehicle from the said check post. Sri.Shabbir Husaini spoke to you – DGO-2 who was on duty then in the said check post on 10/12/2008. Then you DGO-2 demanded Rs.10,20,000/- telling that said vehicle will be released only after said amount is paid.
- d) Later, you – DGO-2 told Sri.Shabbir Husaini to pay Rs.10 lakhs for releasing the lorry. For that, when the driver told over mobile that Rs.2lakhs will be paid, but you – DGO-2 did not agree to it telling that to release the lorry, amount requires not only to him but also to Sri.Dalwai and you – DGO-2 also and demanded Rs.5 lakhs, failing which lorry will not be released.
- e) Thereafter, in that night itself (i.e., in the night of 10/12/2008), you – DGO-2 contacted said Sri.Shabbir Husaini and asked him which they are leaving. For that, Sri.Shabbir Husaini told that Rs.3 lakhs is collected and within half an hour, further sum of Rs.2 lakhs will be

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arranged and thus, totally Rs.5 lakhs will be collected and brought. Then you DGO-2 asked to reach by morning, saying that "otherwise things will be different".

- f) Not only that, after approaching Lokayukta Police, when the complainant met you DGO-2 at the said check post on 11/12/2008 in the early hours of morning, you DGO-2 demanded and took the tainted (bribe) amount of Rs.5 Lakhs from him for both of you DGO-1 and 2 besides for Sri.Dalwai also in connection with releasing of said lorry and kept it in a Godrej Almirah.
- g) That you DGO-2 on the same date, time and place were in possession of Rs.1,15,805/- and which amount was not towards tax, fine or fees and for the possession of which you did not furnish any reasonable explanation to the investigation officer and thereby you were in possession of collected bribe amount.
- h) Then you DGO-2 were caught hold by the I.O., as you DGO-2 were found with the tainted (bribe) amount, for which you DGO-2 failed to give any satisfactory reply or account, when questioned by the I.O.
- ii) That you DGO-1 Sri.K.G.Ananthanarayana, Assistant Commissioner of Commercial Taxes, working then at Commercial Tax Check Post, Dhoolakhed, Indi Taluk, Bijapur District, while


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discharging your duties, detained the above said lorry, issued the notice but did not disposed off the matter legally and thereby exhibited your carelessness and irresponsibility in discharge of your official duties.

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

6. The statement of imputations of misconduct as framed by Additional Registrar Enquiries-3 is as follows:-

ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT:

On the basis of a report of the Addl. Director General of Police in Karnataka Lokayukta at Bengaluru, along with investigation papers filed by Dy.Superintendent of Police of Karnataka Lokayukta at Bagalkot (hereafter referred to as Investigating Officer – I.O. for short), alleging that 1) Sri. K.G.Ananthanarayan – Commercial Tax Officer at Commercial Check Post situated near Dhoolakhed in Indi Taluk of Bijapur District and 2) Sri.Bommanalli Milagiriappa Padmanabh – Commercial Tax Officer at Commercial Tax Check Post situated near Dhoolaked in Indi Taluk of Bijapur District, being public/government


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servants, have committed misconduct, when approached by Sri.Subramaniyan S/o Sundaram working as Project Incharge in K.M.M.I.Ispath Limited at Halavarthi in Koppala Taluk and District (hereinafter referred to as complainant for short), an investigation was taken up by the Hon'ble Upalokayukta after invoking Section 7(2) of the Karnataka Lokayukta Act, 1984.

2. The brief facts of the case are:

- a. One Sri.Shivpal Anuragi, Driver of Lorry No.CG-04 DA 2645 was bringing machines (worth Rs.40 Lakhs) (for which tax of Rs.80,000/- had been paid) from Raipur in Chattisgarh to Koppa District i.e., Halavarthi, for factor on 02/12/2008. But when it came near Commercial Check Post situated near Dhoolakhed on N.H.-13 in Indi Taluk of Bijapur District on 07/12/2008, the officers at the said check post stopped it, demanding money to allow it to pass through said check post. So, that Driver contacted complainant over phone and informed about it. For that complainant asked that Driver to pay amount within Rs.2,000/- and get the vehicle released. Then said Driver told over phone that they are asking the complainant only to come. As such, that Driver requested complainant to come to that check post. So, complainant along with one Sri.K.Mani, Project Engineer, went to said check post n 08/12/2008 and met DGO-1, who had issued notice and enquired with DGO-1 and requested for the release of said

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- lorry. Then DGO-1 demanded Rs.15 lakhs to release that lorry.
- b. For that, when they told that, that is a huge amount, DGO-1 asked them to pay at least Rs.5 lakhs, but they did not agree and returned.
- c. Then they informed said matter to one Sri.Shabbir Husaini of Koppal Thagginakeri, who does sand transportation to their factory and gave the phone number of the said check post to that Shabbir Husaini and speak about getting released said vehicle from the said check post. So that Sri.Shabbir Husaini spoke to you DGO-2 who was on duty then in the said check post on 10/12/2008. Then you DGO-2 demanded Rs.10,20,000/- telling that said vehicle will be released only after said amount is paid.
- d. Later, you DGO-2 told that Sri.Shabbir Husaini to pay Rs.10 lakhs for releasing the lorry. For that, when the driver told over mobile that Rs.2 lakhs will be paid, but you DGO-2 did not agree to it telling that to release the lorry, amount requires not only to him also to Sri.Dalwai and you DGO-1 also and demanded Rs.5 lakhs, failing which lorry will not be released.
- e. Thereafter, in that night itself (i.e., in the night of 10/12/2008), you DGO-2 contacted said Sri.Shabbir


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Husaini and asked him when they are leaving. For that, Sri.Shabbir Husaini told that Rs.3lakhs is collected and within half an hour, further sum of Rs.2 lakhs comes and thus, totally Rs.5 lakhs will be collected and brought. Then you DGO-2 asked to reach by morning, saying that otherwise things will be different.

- f. Not only that, after approaching Lokayukta Police, when the complainant met you DGO-2 at the said check post on 11/12/2008 in the early hours of morning, your DGO-2 took the tainted (bribe) amount from him for both of you DGO-1 and 2 besides for Sri.Dalwai also in connection with releasing of said lorry and kept it in a Godrej Almirah.
- g. That you DGO-2 on the same date, time and place was in possession of Rs.1,15,805/- and which amount wa not towards tax, fine or fees and for the possession of which he did not furnished any reasonable explanation to the investigation officer and thereby he was in possession of collected bribe amount.
- h. Then you DGO-2 were caught hold by the I.O. as you DGO-2 were found with the tainted (bribe) amount, for which you DGO-2 failed to give any satisfactory reply or account, when questioned by the I.O.


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- i. Even there are statements of witness, including complainant, Sri.K.Mani, Sri.Shabbir Husaini and Sri.Shivpal Anuragi, besides the material and records collected and filed by the I.O., which show said repeated misconduct committed by DGO-1 and 2.
3. The said facts and material on record show that the DGO-1 and 2, being public/government servants, have failed to maintain absolute integrity besides devotion to duty and acted in a manner unbecoming of a public/government servants, and thereby repeatedly committed misconduct and made themselves liable for disciplinary action.
4. Therefore, investigation was taken up against the DGO-1 and 2 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 Enquiry against them in the matter. For that, the DGO-1 and 2 gave their 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-1 and 2 have committed misconduct under 3(1) of KCS (Conduct) Rules 1966, recommendation under section 12(3) of the Karnataka Lokayukta Act, was made to the Competent Authority to initiate disciplinary proceedings against the DGO-1 and 2 and to entrust the inquiry to this institution under Rule


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14-A of Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.

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.

7. As per order of Hon'ble Upalokayukta dated 14/03/2014 file is transferred to this ARE-11.

8. Notice of Articles of charge, statement of imputation of misconduct with list of witnesses and documents was served upon the DGOs 1 & 2. In response to the service of articles of charge, DGOs 1 & 2 entered appearance before this authority on 08/04/2014 and engaged their respective advocates for defence. In the course of first oral statement of the DGO-2 recorded on 08/04/2014, he pleaded not guilty and claimed to be enquired.
The date of Retirement of DGO No.2 is 31/05/2015.

9. It is pertinent to note here that DGO No.1 Sri. K.G.Ananthanarayana, Assistant Commissioner of Commercial Taxes preferred Application No.2221/2014 before Hon'ble KSAT, Bengaluru to quash the entrustment order. The same was allowed by the Hon'ble KSAT on 25/01/2018 and the Hon'ble KSAT set aside the entrustment order dated


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25/10/2013 (Annexure-A8) passed by the 1st respondent in A.No. 2221/2014 issued by the 3rd respondent. Later on the the Hon'ble Lokayukta preferred Writ Petition No.29101/2018(S-KSAT) before Hon'ble High court of Karnataka against the orders passed in Application No.2221/2014 passed by Hon'ble KSAT, Bengaluru and the said writ petition was rejected on 22/11/2018. The Chairman, Legal Cell, Karnataka Lokayukta referred the matter for opinion to ARE-2 & CLC on 26/07/2019. The ARE-2 & CLC gave opinion that the aforesaid order of Hon'ble High court of Karnataka cannot be questioned before Hon'ble Supreme Court by filing Special Leave petition. The said opinion was approved by Hon'ble Upalokayukta on 29/07/2019 and by Hon'ble Lokayukta on 30/07/2019. The Chairman CLC sent letter dated 31/07/2019 to ARE3 stating that it is opined that it is not a fit case to challenge the aforesaid order before Hon'ble Supreme Court by filing Special Leave petition.

10.The DGO No.2 has not filed written statement on his behalf.

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

- 1. Whether the disciplinary authority proves that DGO-2 on 10.12.2008 while**


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working as the Commercial Tax Officer in Dhulkhed Check Post, Bijapur District demanded bribe of Rs.5.00 Lakhs from the complainant for releasing the KMMI Ispat loaded lorry bearing No.CG-04/DA-2645 stopped by him in the said check post and the complainant not willing to pay the said amount, lodged complaint before Police Inspector, Karnataka Lokayukta Police Station, Bagalkot who registered case in Cr.No.13/2008 and took up investigation and on 11/12/2008, in the early hours of morning, DGO-2 was caught red handed while demanding and accepting illegal gratification of Rs.5,00,000/- from the complainant in his office in Dhulkhed Check post, the office of the DGO-2 on the instructions of DGO-1 and the said amount was seized by the Investigating Officer and the DGOs 1 and 2 have failed to give satisfactory or convincing explanation for the said tainted amount found then, when questioned by the said I.O, and by this the DGO-2 has committed misconduct, dereliction of

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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?

12. (a) The disciplinary authority has examined Sri.S.Subramaniyan/complainant as PW-1, Sri. Sangamesh Bhimshi/shadow witness as PW2 and got exhibited Exp1 to 5 on it's behalf. It is pertinent to note here that on 27/10/2022 CW9/ I.O. is reported to be dead and as such the evidence of I.O. is not available.

(b) The DGO-2 who is the accused in Spl. C.C. Case (LOK) No.11/2010 on the file of Principal Session Judge, Vijayapura has been convicted for the offence punishable under sec.7, 13(1)(d) of P.C. Act and same is confirmed by Hon'ble High Court of Karnataka Kalburgi Bench in Criminal Appeal No.200043/15 and accused/DGO No.2 has preferred Special Leave Appeal No 5285/2022 before Hon'ble Supreme Court of India against the judgement passed by Hon'ble High Court of Karnataka Kalburgi Bench in Criminal Appeal No.200043/15. The said Special Leave Petition is dismissed by Hon'ble Supreme Court of India on 15/07/2022 as per the case status taken out of the website of Hon'ble Supreme Court of India. The DGO No.2 who is accused in Spl. C.C. Case (LOK) No.11/2010 is undergoing sentence in

A handwritten signature in blue ink, followed by the date '26/4' written below it.

Vijayapura Darga prison and the judgment in Criminal Appeal No.200043/15 of Hon'ble High Court of Karnataka Kalburgi Bench has attained finality. In view of 2nd proviso to Article 311(2)(a). Since accused is guilty of charge framed against him by the Criminal Court, of which he was convicted in the inquiry held by the Criminal Court, is treated as equivalent to the finding in a departmental inquiry required to be held under 2nd proviso to Article 311(2)(a). As such the DGO No.2 has not appeared before this authority and remained absent and since he is undergoing sentence, the Second Oral Statement was dispensed with.

13. Heard arguments of P.O. The Advocate for DGO-2 remained absent and has not submitted arguments on behalf of DGO No.2 and same is taken as nil.

14. The answers to the above points are:

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

REASONS

15. Point No.1:- (a) P.W.1/complainant Sri.S.Subramaniyan has deposed in his evidence that he was working as project engineer in KMMI Ispath private limited from 2010 to December 2012 and again says that he was working from 2007 to December 2008 in said company. That his company's equipments had come from Raipur, Chattisgad.


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On 02/12/2008, a vehicle, lorry bearing number CG-04 DA2645 had come from Raipur, Chathisgarh District to Halavarthi in Koppal. The value of the materials i.e., ash handling system, was Rs. 40 lakhs. The tax of Rs. 80,000/- was paid on the said value of Rs. 40 lakhs. On the way to Halavarthi, the said lorry was stopped at Indi check post, Bijapur District, on 07/12/2008. The driver, Sripal informed him about this and he told him to pay Rs. 2,000/- and come and later he called him and asked him to come. The distance from Halavarthi to Indi is about 150 kilometers. That he went to Indi on 08/12/2008 and met DGO No. 1 and he was ACTO there. That he asked him to release his vehicle and DGO No.1 asked him about the project and he told him that the material is worth Rs. 40 lakhs and the project is of Rs. 40 crores. That he asked for work order, and he gave the same to DGO No.1 and told that he will pay Rs.4,000/-, and then finally agreed to pay Rs.40,000/-. The DGO No.1 did not agree and so he returned, with the lorry standing there only.

PW1 further deposed that on 10/12/2008, his sand supplier, Sri.Shabir Hussaini was asked to speak to DGO No.1 and he spoke to DGO number 2, working as CTO there. DGO No.2 demanded Rs. 15 lakhs to release the lorry. After bargaining, the DGO No.2 agreed for Rs.10,20,000/- and they again bargained, saying that they cannot pay such huge amount and then finally DGO No.2 agreed for Rs. 5 lakhs. That he, Shabir Hussaini, another Engineer, Mani went to Lokayukta Police station and there they directed them to Bagalkot

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Lokayukta police station on 10/12/2008. That he lodged complaint as per ExP1 and gave Rs. 5 lakhs to the police to lay the trap. That Ex.P-1 was written by Shabir Hussaini in Kannada, and Shabir Hussaini read the contents of it and told him in Hindi language. The contents in Ex.P-1 were correct.

PW1 further deposed that at that time, at about 7:00 p.m on 10/12/2008, the DGO No. 2 asked about the money and Shabir Hussaini said that Rs. 3 lakhs is arranged and 2 lakhs will be arranged in another half an hour. The said conversation was got recorded in voice recorder given by the police by keeping the voice recorder close to the speaker of mobile phone. PW-1 further deposed that, the police secured 2 panch witnesses, Sri.Sangamesh and Shankar, CW-5 and 6. That he gave 450 notes of Rs. 1,000/- each and 100 notes of Rs. 500/- each, total Rs. 5 lakhs to the police to lay the trap. The police applied powder to both sides of all the notes. That he and Shankar and Sangamesh counted the same and Sangamesh kept the amount containing 5 bundles of Rs. One lakh each, in his laptop bag. The police got their hands washed in solution. The solution turned to pink colour. The police gave him instructions to give the amount only on demand by DGO No. 2. That his colleague, Mani, CW-2 was given voice recorder for recording conversation at the time of meeting the DGO No. 2. That their sand supplier, Sri.Shabir, CW-4 was asked to give signal by wiping face with kerchief. CW-5/Sri.Sangamesh, panch witness was instructed to act as shadow witness. The voice recorder was played and the

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conversation was transcribed and burnt to CD. The police took photographs of the proceedings and drew pre-trap panchanama as per Ex.P-2.

PW-1 further deposed that, they all left the police station to Indi check post and reached there at 5:00 a.m. The said check post was about 65 kilo meters from Bagalakot Lokayukta police station. That he, Shabbir, Mani and Sangamesh went to meet DGO No.2 and Sangamesh was watching from outside. That he, Shabbir and Mani went inside the room and Mani spoke to DGO No. 2 and DGO No. 2 demanded Rs. 5 lakhs and the conversation was in Kannada language and Mani told him that DGO No.2 is demanding Rs. 5 lakhs and he gave the said amount, by giving each bundle at a time, as he was instructed by the police to give each bundle separately. The DGO No. 2 took each bundle and started counting the same. The DGO No.2 counted with his hands and kept all the 5 bundles, total Rs. 5 lakhs in his cupboard which was near to him. The DGO No. 2 asked all of them to go out and all the three of them came out, and he peeped from the door and saw DGO No. 2 keeping all the 5 bundles in the said cupboard. Shabbir gave signal and DGO No.2 came outside i.e., in the corridor, and sat there. The police came there and surrounded DGO No.2. The Police Inspector showed his identity card, and the Deputy Superintendent of Police also came there. The police asked me about the money, and I told that I have given it to DGO No.2, on his demand. The DGO No.2 said that he has not taken any money and he took the

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police to the said cupboard, and told them that DGO No.2 has kept the amount in it. Prior to that, the police had asked DGO No.2 to place his hands on the table, so that, his hands should not come in contact with anything else. The hands of DGO No.2 was washed in solution. The solution turned to pink colour. PW-1 further deposed that the police got the amount from the cupboard removed through DGO No.2. On checking the amount, the said Rs. 5 lakhs given by him was found and also additional Rs. 1,15,000/- was also found. The police drew panchanama. The Deputy Superintendent of Police took all the documents pertaining to their lorry from DGO No.2. The police took the explanation from DGO No.2 and he gave false explanation. That their vehicle was released by DGO No.1. The police also asked about the happenings with Shabbir, Mani, Sangamesh and Shankar. They too said the same as he said.

PW-1 further deposed that Mani gave the voice recorder to the police. The conversation was recorded with respect to demand and acceptance of Rs. 5 lakhs. The police transcribed and burnt the same to CD and the police drew trap panchanama as per Ex.P-3. That the police had taken photographs of the as per Ex.P-4.

16. (a) PW2/shadow witness Sri Sangamesh Bhimshi has deposed in his evidence that on 10/12/2008 he was called to Lokayukta police station and he went there at 5:00 p.m. In the Lokayukta police station one Shankar Matt, FDA of Tahasildar


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office was present. The complainant, Shabbir and Mani were also present. The I.O introduced them to him and CW-2. The I.O. told that they should be panch witnesses to a trap. The complainant told that his truck loaded with machinery had come from Chathisgad and it was caught near Dholkhede check post by Commercial Tax officer. Further the complainant told that the officer demanded Rs. 5 lakh bribe to release the truck, not willing to pay the bribe amount he has lodged the complaint. The complainant produced the voice recorder which contained the conversation between him and officer and it was played by the I.O. in their presence. The I.O. converted it into CD and got it transcribed. The complainant produced Rs. 5 lakhs of Rs. 500/- and Rs. 1,000/- denomination. It was in 5 bundles. The I.O. got the number and denomination written in a sheet. The I.O. got smeared chemicals on the notes and gave it to CW-6 to count the same. Later on the I.O. got prepared some chemical solution and washed the hands of CW-6 in the solution and it turned to pink colour. The I.O. seized the solution. The I.O. instructed the complainant to give the tainted notes only if demanded by the officer and gave a voice recorder to record the conversation. The I.O. instructed Shabbir, Mani and him to accompany the complainant. The I.O. has drawn pre-trap mahazar in this regard as per Ex.P-2. The I.O. took them to the check post and it was 3:00 to 4:00 a.m when they reached the spot.

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P.W-2 further stated that the complainant had brought Rs. 100/- 15 notes and Rs. 500/- 57 notes and the I.O. got the serial number of the notes entered in the computer and got printout of the said sheet as per Ex.P-4. That the I.O. smeared phenolphthalein powder on the notes and asked the other panch witness to count it and asked him to keep the tainted notes in the right side pant pocket of the complainant. Later on the I.O. got prepared sodium carbonate solution and washed the hands of the panch witness and the solution turned to pink colour and the I.O. seized the sample of the same and conducted mahazar in this regard. That the I.O. gave voice recorder to the complainant and gave instructions to switch on the recorder while entering the office of DGO and also told him not to touch the amount and give it to the DGO. Further the I.O. instructed him to accompany the complainant and watch the proceedings. The I.O. played the recorder produced by the complainant before them and got it burnt to CD and transcribed the recordings. That the I.O. conducted mahazar in this regard and he has identified his signature in the mahazar as per Ex.P-5.

PW2 further stated that, he, Shabbir, Mani and complainant went to the Commercial Tax office of Dholkhede. The DGO-2 was sitting inside the office. DGO-2 asked complainant whether he has brought the money and took him inside the room and sat on a chair. The complainant, Shabbir and Mani sat on a cot and he was watching near the door. The complainant gave the money to DGO No.2 and he received the


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tainted notes and kept it in his cupboard. The complainant came out and gave signal to the I.O by wiping his face with hand kerchief. The I.O. came inside the office and complainant showed DGO No.2 to the I.O. and the I.O. arrested the DGO no.2.

PW2 further deposed that the I.O. got prepared chemical solution in 2 bowls and washed both the hands of DGO No.2 separately in each bowl. The solution in both the bowls turned to pink colour. The I.O. seized samples of the solution. The I.O. took a cotton swab and swiped the bag and white paper in which the tainted notes were kept and dipped it into the chemical solution. The solution turned to pink colour. The I.O. seized the paper, bag and the solution. The I.O. seized the tainted notes which was in the locker of DGO No.2. The I.O. tallied the number of the notes with sheet in which the number of the notes given by the complainant was written. It got tallied and I.O. seized the notes. PW2 further stated that the I.O. enquired about the documents pertaining to the work of the complainant and seized it from DGO No.2 and has taken the explanation of DGO No.2. The I.O. has drawn trap mahazar in this regard as per Ex.P-3.

PW2 further deposed that on 09/01/2009 the I.O. had called him and Shankar to the police station. DGO-2 was also present in the station. The I.O. took sample voice of DGO-2 and burnt it to CD and seized the CD. The I.O. has drawn mahazar in this regard as per Ex.P-5.

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17. On perusal of the evidence of PW-1/Complainant and PW-2/ Shadow Witness, it reveals that the DGO-1 and 2 have demanded bribe for release of lorry bearing No.CG-04 DA 2645 which was intercepted by DGO-1 on 07/12/2018 at the check post and DGO-2 on bargain demanded Rs.5 lakhs bribe from the complainant and the said conversation was recorded in the mobile and complainant was not willing to pay the said bribe amount and lodged complaint before Police Inspector, Karnataka Lokayukta, Bagalakote as per Ex.P.-1 and produced the voice recorder. Further their evidence reveals that I.O. has registered the case and called for two panchas i.e., PW-2 and CW-2 and briefed them about the complaint and asked them to act as panch witness. Further their evidence reveals that PW-1 has produced Rs.5 lakhs to I.O. to lay the bribe and the number of the notes were noted in the sheet and the I.O. applied phenolphthalein powder to them and got the same put in the bag of the complainant through CW-2 after counting them with his hands and got the hands of the CW-2 washed in sodium carbonate solution and colour of the solution turned to pink colour and the I.O. explained the chemical reaction of phenolphthalein powder and sodium carbonate solution to PW-1, PW-2 & CW2 and also instructed PW-1 to give the amount only on demand by DGO and after receiving the same to give signal by wiping his face. Further their evidence reveals that I.O. has instructed PW-2 to act as shadow witness and has played the voice recorder containing the conversation between PW-1

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and DGO before panchas and got it transcribed and burnt it to CD and has taken photos of the proceedings and has drawn pre trap mahazar as per Ex.P.-2.

18. Further their evidence reveals that all of them left the Lokayukta Police Station, Bagalakote and reached the check post situated near Dhoolakhed and PW-1 and PW-2 along with other witnesses went to the office of DGO-2 and DGO-2 took PW-1 inside the office and demanded Rs.5 lakhs bribe amount from him and PW-2 shadow witness as also deposed in this regard and stated that he was watching the same at little distance. Further PW-1 gave tainted notes to DGO-2 and he has counted them with his both hands and kept them in Almarah and later PW-1 gave signal to I.O. and I.O. has come there and introduced himself to him and washed hands of DGO-2 in sodium carbonate solution and it turned to pink colour and I.O. has seized the sample of solution and also seized the documents of PW-1 from the office of DGO-2 and also taken explanation of DGO-2 and on enquiry to PW-1 and PW-2, they have categorically denied it as false.

19. Further their evidence reveals that, the I.O. took a cotton swab and wiped the bag and white paper in which the tainted notes were kept and dipped into the solution and solution turned to pink colour and I.O. has seized the same. I.O. seized the tainted notes which was in the cupboard of DGO-2 which


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tallied with notes which was produced by PW1 at the time of pre trap mahazar and since they allied he seized them and has drawn trap mahazar as per Ex.P.-3.

20. PW-1 and PW-2 are not subjected to cross examination by the DGO No.2 counsel. As such their evidence remained unchallenged. It is pertinent to note that the evidence of I.O is not available as he is reported to be dead. However, there is no reason to disbelieve the unchallenged testimony of PW-1 and PW-2 with respect to drawing of pre trap mahazar as per Ex.P.-2 and trap mahazar as per Ex.P.-3 and recovery of tainted notes from DGO-2.

21. In this case the DGO No.2 who is accused in Spl. C.C. Case (LOK) No.11/2010 on the file of Spl. Judge Principal Session Judge, Vijayapur has been convicted and is sentenced to undergo simple imprisonment for two and half years and to pay fine of Rs.1 lakh and in default to undergo simple imprisonment for one year for offence the punishable under sec.7 of P.C. Act. Further the DGO No.2 is sentenced to undergo simple imprisonment of four years and to pay fine of Rs.1.5 lakh for the offence punishable under sec. 13(1)(d) of P.C. Act. and the same has been confirmed by Hon'ble High Court of Karnataka Kalburgi Bench in Criminal Appeal No.200043/15. The DGO No.2 preferred Special Leave Appeal No 5285/2022 before Hon'ble Supreme Court of India against the judgement passed by Hon'ble High Court of Karnataka Kalburgi Bench in Criminal


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Appeal No.200043/15. The said Special Leave Petition is dismissed by Hon'ble Supreme Court of India on 15/07/2022 as per the case status taken out of the website of Hon'ble Supreme Court of India. The DGO No.2 who is accused in Spl. C.C. Case (LOK) No.11/2010 is undergoing sentence in Vijayapura Darga prison and the judgment in Criminal Appeal No.200043/15 of Hon'ble High Court of Karnataka Kalburgi Bench has attained finality.

22. At this stage it is relevant to note provisions of Article 311(2) which is as follows:

Article 311(2) :-

“No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.”

And provisions of Article 311(2)(4) reads as follows:

“The second proviso to clause (2) of Art.311, however, incorporates three exceptions to the requirement of holding an enquiry prescribe under clause (2) of Art.311, before imposing any one of the three major penalties against a civil servant. The three exceptions are incorporated in clauses(a), (b) and (c) of the second proviso to Art.311(2) they read:

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“Provided further that this clause shall not apply-

- a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
- b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonable practicable to hold such enquiry; or
- c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry.”

23. A careful reading of the three clauses would show that the scope, purpose and intendment of the three clauses are qualitatively different from each other.

7(i) Under clause (a), the enquiry is dispensed with by the force of the clause itself in the case of a civil servant against whom a finding that he is guilty of a charge framed against him by a criminal court is given by the Court. Thus under this clause, the conduct of the civil servant which constituted the criminal charge framed against him by a Criminal Court, of which he was convicted in the inquiry held by the Criminal Court, is treated as equivalent to the finding in a departmental inquiry required to be held under clause (2) of Art.311 and the relevant rules framed


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under Article 309 and the disciplinary authority is empowered to impose the penalty taking the finding recorded by the Criminal Court as the basis. In other words, what clause (a) provides is that the holding of a departmental inquiry is that the holding of a departmental inquiry is unnecessary and superfluous when the civil servant concerned has already been found guilty of a criminal charge by a Court of law.

24. In the instant case since DGO No.2 who is the accused in Spl. C.C. Case (LOK) No.11/2010 on the file of Principal Session Judge, Vijayapura has been convicted for the offence punishable under sec.7, 13(1)(d) of P.C. Act and same is confirmed by Hon'ble High Court of Karnataka Kalburgi Bench in Criminal Appeal No.200043/15 and accused/DGO No.2 has preferred Special Leave Appeal No 5285/2022 before Hon'ble Supreme Court of India against the judgement passed by Hon'ble High Court of Karnataka Kalburgi Bench in Criminal Appeal No.200043/15. The said Special Leave Petition is dismissed by Hon'ble Supreme Court of India on 15/07/2022 as per the case status taken out of the website of Hon'ble Supreme Court of India. The DGO No.2 who is accused in Spl. C.C. Case (LOK) No.11/2010 is undergoing sentence in Vijayapura Darga prison and the judgment in Criminal Appeal No.200043/15 of Hon'ble High Court of Karnataka Kalburgi Bench has attained finality. In view of 2nd proviso to Article 311(2)(a). Since accused is guilty of charge framed against him by the Criminal Court, of which he was convicted in the inquiry held by the Criminal Court, is

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treated as equivalent to the finding in a departmental inquiry required to be held under 2nd proviso to Article 311(2)(a). As such the DGO No.2 has not appeared before this authority and remained absent and since he is undergoing sentence, the Second Oral Statement was dispensed with. As discussed earlier the DGO-2 has not filed any Written Statement and has not taken any defence in this enquiry and has not subjected PW-1 and PW-2 to cross examination. As such there is no reason to disbelieve the unchallenged testimony of PW-1 and PW-2 corroborated by Ex.P.1 to 5.

25. Nothing is found in the evidence of PW1 & PW2 that DGO No. 2 herein were not found in possession of tainted cash. In these circumstances, the DGO No.2 has not taken any defence or not lead any evidence in support to his case.

26. 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


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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 establishes demand of bribe by DGO No. 2. Evidence of PWs 1 & 2 establishes possession of tainted cash by DGO No.2. Evidence of PWs 1 & 2 establishes change of colour of finger wash of DGO No.2 and also recovery of tainted cash from the possession of DGO-2. Further FSL report dated 16/12/2008 reveals the presence of phenolphthalein in the right and left hand wash of DGO-2 and currency notes which corroborates the case of the disciplinary authority. 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 & 2 as discussed above and in the absence of any defence of DGO No.2 by way of written statement or defence evidence there is no reason to disbelieve the unchallenged evidence adduced by the disciplinary Authority.

27. From the evidence of P.W.1 complainant and PW2 shadow witness the disciplinary authority has proved the pre-trap mahazar proceedings as per Ex.P2 and trap proceedings as per Ex.P3. Nothing is elicited from the cross examination of PW1 & PW2 to discredit their testimony with respect to conducting of trap proceedings i.e., Pre-trap mahazar Ex.P2 and post trap mahazar Ex.P3.

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28. Thus, this Additional Registrar Enquiries, finds that, the evidence of P.W1 & PW2, Ex.P1 to Exp5, as reasoned above, proves that the DGO No.2 had demanded and accepted bribe of Rs.5,00,000/- from P.W.1/complainant on 11/12/2008. The disciplinary authority has proved the charges against the DGO No.2. The DGO No.2 have 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**.

29. **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.No 2.

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. S.Subramaniyan.
PW2:- Sri. Sangmesh Bhimshi

List of documents marked on behalf of Disciplinary Authority:-

Ex P1	Xerox copy of complaint dated 10/12/2008.
Ex P2	Xerox copy of pre-trap mahazar dated 10/12/2008.
Ex P3	Xerox copy of trap mahazar dated 11/12/2008.
Ex P4	Xerox copy of Photos.
Ex.P5	Xerox copy of sample voice collection panchanama dated 09/01/2009.


(J.P.Archana)

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