



KARNATAKA LOKAYUKTA

No.LOK/ARE-4/ENQ/203/2012

Multi Storied Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001.
Dated 20.08.2018

RECOMMENDATION

Sub:- Departmental inquiry against Shri S. Mahadevaswamy, the then Asst. Public Prosecutor, 4th JMFC Court, Mysuru - reg.

- Ref:- 1) Government Order No. HD 56 PPE 2012 dated 05.05.2012.
2) Nomination order No. LOK/INQ/14-A/203/2012 dated 16.05.2012 of Upalokayukta, State of Karnataka.
3) Inquiry Report dated 16.08.2018 of Additional Registrar of Enquiries-4, Karnataka Lokayukta, Bengaluru.

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The Government by its order dated 05.05.2012, initiated the disciplinary proceedings against Shri S. Mahadevaswamy, the then Asst. Public Prosecutor, 4<sup>th</sup> JMFC Court, Mysuru [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/203/2012 dated 16.05.2012 nominated Additional Registrar of Enquiries-3, Karnataka Lokayukta, Bengaluru, as the Inquiry

Officer to frame charges and to conduct departmental inquiry against DGO for the alleged charge of misconduct, said to have been committed by him. Subsequently, by order dated 14.03.2014, the Additional Registrar of Enquiries-8, Karnataka Lokayukta, Bengaluru was re-nominated as Inquiry Officer to conduct departmental inquiry against DGO. Finally, by Order No. UPLOK-2/DE/2016 dated 03.08.2016, the Additional Registrar of Enquiries-4, Karnataka Lokayukta, Bengaluru was re-nominated as Inquiry Officer to conduct departmental inquiry against DGO.

3. The DGO - Shri S. Mahadevaswamy, the then Asst. Public Prosecutor, 4<sup>th</sup> JMFC Court, Mysuru was tried for the following charge:-

“That you, Shri S. Mahadevaswamy (hereinafter referred to as Delinquent Government Official, in short DGO), while working as Asst. Public Prosecutor, 4<sup>th</sup> JMFC Court, Mysuru, demanded and accepted a bribe of Rs.1,000/- on 18.01.2007 from complainant - Shri Ranjan Shetty s/o Shri K. Narayana Shetty, No.5, 1<sup>st</sup> Cross, 3<sup>rd</sup> Stage, North of Gokulam, Mysuru for effectively presenting prosecution case and for arguing effectively in C.C. No.103/2006 on the file of learned 4<sup>th</sup> JMFC, Mysuru, i.e., for doing official act, and thereby you failed to maintain absolute integrity, devotion to duty and committed an act of misconduct

which is unbecoming of a Government servant under Rule 3(1)(i)to(iii) of KCS(Conduct) Rules, 1966.”

4. The Inquiry Officer (Additional Registrar of Enquiries- 4) on proper appreciation of oral and documentary evidence has held that, the Disciplinary Authority has '*proved*' the above charge against the DGO - Shri S. Mahadevaswamy, the then Asst. Public Prosecutor, 4<sup>th</sup> JMFC Court, Mysuru.


5. On re-consideration of report of inquiry, 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 Inquiry Officer.

6. As per the First Oral Statement of DGO furnished by the Inquiry Officer, the DGO - Shri S. Mahadevaswamy is due to retire from service on 31.05.2024.

7. Having regard to the nature of charge (demand and acceptance of bribe) '*proved*' against the DGO - Shri S. Mahadevaswamy, the then Asst. Public Prosecutor, 4<sup>th</sup> JMFC Court, Mysuru, it is hereby recommended to the Government to impose penalty of 'compulsory retirement from service on the DGO - Shri S. Mahadevaswamy'.

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

Connected records are enclosed herewith.

  
(JUSTICE N. ANANDA)  
Upalokayukta,  
State of Karnataka.

**KARNATAKA LOKAYUKTA**

No.LOK/ARE-4/ENQ/203/2012

M.S.Building,  
Dr.B.R.Ambedkar Road  
Bangalore-560 001  
Date: 16/08/2018

**ENQUIRY REPORT**

**Sub:** Departmental Enquiry against,

- 1) Sri S. Mahadevaswamy  
Assistant Public Prosecutor  
Addl. Civil Judge (Jr.Dn) and  
JMFC, Court, Maddur  
(the then Assistant Public  
Prosecutor, 4<sup>th</sup> JMFC, Court,  
Mysore)

**Ref:**

- 1) Report u/s 12(3) of the K.L Act, 1984 in  
Compt/Uplok/MYS/175/2009/ARE-11  
dated: 19/01/2012
- 2) Govt. Order. No. HD 56 PPE 2012  
Bangalore dated: 05/05/2012
- 3) Order No.LOK/INQ/203/2012  
Dtd.16/05/2012 of the Hon'ble  
Upalokayukta

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1. This Departmental Enquiry is directed against Sri S. Mahadevaswamy, Assistant Public Prosecutor, Addl. Civil Judge (Jr.Dn) and JMFC, Court, Maddur, (the then Assistant Public Prosecutor, 4<sup>th</sup> JMFC, Court, Mysore) (herein after referred to as the Delinquent Government Official in short "DGO")

2. After completion of the investigation a report u/sec. 12(3) of the Karnataka Lokayukta Act was sent to the Government as per Reference No.1.
3. In view of the Government Order cited above at reference-2, the Hon'ble Upalokayukta, vide order dated: 16/05/2012 cited above at reference-3, nominated Additional Registrar of Enquiries-3 of the office of the Karnataka Lokayukta as the Enquiry Officer to frame charges and to conduct Inquiry against the aforesaid DGO. Additional Registrar Enquires-3 prepared Articles of Charge, Statement of Imputations of mis-conduct, list of documents proposed to be relied and list of witnesses proposed to be examined in support of Article of Charges. Copies of same were issued to the DGO calling upon him to appear before this Authority and to submit written statement of his defence.
4. When the matter was pending for enquiry in recording the evidence of the witnesses of Disciplinary Authority, this matter was transferred to Addl. Registrar of Enquiries-8 vide Order No.LOK/INQ/14-A/2014, Bangalore dated: 14/03/2014 of the Hon'ble Uplokayukta Addl. Registrar of Enquirie-8 proceeded with the enquiry in recording the evidence of PW1 and PW2. When the matter pending for recording of evidence of PW3, again transferred to this Addl. Registrar of Enquiries-4 vide O.M. No. Uplok-2/DE/2016 Bengaluru, dated: 03/08/2016 of the Hon'ble Registrar issued with the concurrence of the Hon'ble Upalokayukta. Hence, this enquiry case proceeded by this Addl. Registrar of Enquiries-4 in accordance with law.

5. The Articles of Charges framed by ARE-3 against the DGO is as below;

**ANNEXURE NO.I**  
**CHARGE**

*That you, Sri S. Mahadevaswamy, (herein after referred to as Delinquent Government Official, in short DGO), while working as the Assistant Public Prosecutor, 4<sup>th</sup> J.M.F.C., Court, Mysore demanded and accepted a bribe of Rs. 1,000- on 18/01/2007 from complainant Sri Ranjan Shetty s/o Sri K. Narayana Shetty, NO. 5, 1<sup>st</sup> Cross, 3<sup>rd</sup> stage, North of Gokulam, Mysore for effectively presenting prosecution case and for arguing effectively in C.C. NO. 103/2006 on the file of learned 4<sup>th</sup> JMFC, Mysore, that is for doing an official act, and thereby you 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.*

**ANNEXURE NO.II**  
**STATEMENT OF IMPUTATIONS OF MISCONDUCT**

*The complainant Ranjan Shetty So Sri K. Narayana Shetty, No. 5, 1<sup>st</sup> cross, 3<sup>rd</sup> stage, North of Gokulam, Mysore filed a complaint on 17/01/2007 before the Police Inspector, Karnataka Lokayukta, Mysore alleging that a charge sheet (a police report) was filed in the court of the learned 4<sup>th</sup> JMFC, Mysore in connection with Smt. Reshma shetty, his daughter who had an inter-caste marriage and a Criminal Case was registered in C.C. No. 103/2006 in that court and in the said criminal case himself and his wife Smt. Kavitha Shetty and others were cited as witnesses and that himself and his wife had approached Sri S. Mahadevaswamy, Assistant Public Prosecutor, 4<sup>th</sup>*

*JMFC Court, Mysore (herein after referred to as Delinquent Government Servant, in short DGO) requesting him to get justice in the said case and at that time the DGO demanded bribe amount and that the DGO had asked them to come on 16/01/2007 and he also told them that they should go on paying him now and then for effectively arguing the case and that the DGO demanded a bribe of Rs. 1,000/- and asked them to pay the said amount before he enters the court hall on 18/01/2007 on which day the said case was posted and thus, the DGO demanded and insisted for the payment of bribe of Rs. 1,000/- .*

*As the complainant was not willing to pay any bribe to the DGO, he went to Police Inspector, Karnataka Lokayukta Mysore on 17/01/2007 and lodged a complaint. On the basis of the same a case was registered in Mysore Lokayukta Police Station Cr. NO. 01/2007 for offences punishable under Sections 7, 13(1)(d) r/w section 13(2) of the P.C. Act 1988 and FIR was submitted to the concerned learned special judge.*

*After registering the case, investigating officer observed all the pre-trap formalities and entrustment mahazar was conducted and you, the DGO was trapped on 18/01/2007 by the Investigating Officer after your demanding and accepting the bribe amount of Rs. 1,000/- from the complainant in the presence of shadow witness and the said bribe amount which you had received from the complainant was seized from your possession under the seizure/trap mahazar after following the required*



*post-trap formalities. During the investigation the I.O. has recorded the statements of panchas and other witnesses and further statement of the complainant. The I.O. during the investigation has sent the seized articles to the chemical examiner and obtained the report from him and he has given the result as positive.*

*The materials collected by the I.O., during the investigation prima facie disclose that you, the DGO, demanded and accepted bribe of Rs. 1,000- from the complainant on 18/01/2007 for doing an official act i.e., for effectively presenting prosecution case and for arguing effectively in C.C. No. 103/2006 on the file of learned 4<sup>th</sup> JMFC, Mysore. Thus you, the DGO have failed to maintain absolute integrity and devotion to duty and this act on your part is unbecoming of a Government Servant. Hence, you have committed an act which amounted to misconduct as stated under Rule 3(1)(i) to (iii) of KCS (Conduct) Rules, 1966.*

*In this connection an observation note was sent to you, the DGO and you have submitted your reply which, after due consideration, was found not acceptable. Therefore, a recommendation was made to the competent authority under Section 12(3) of the Karnataka Lokayukta Act 1984, to initiate departmental proceedings against you, the DGO. The Government after considering the recommendation made in the report, entrusted the matter to the Hon'ble Upalokayukta to conduct departmental/disciplinary proceedings against you, the DGO and to submit report. Hence, the charge.*

6. DGO appeared before this Enquiry Authority on 07/01/2013 and on the same day his First Oral statement was recorded U/R 11(9) of KCS (CC & A) Rules 1957. The DGO pleaded not guilty and claims to hold an enquiry.

7. DGO has filed his written statement as follows:-

The investigation is done by the Lokayukta police and enquiry also conducted in Lokayukta office. Enquiry is barred by law of limitation since the date of alleged incident is 17/01/2007 and the articles of charge is dated:26/10/2012. The DGO has been acquitted in Special Case No. 41/2008 by the Prl. District and Session Judge, at Mysore by its judgment dated: 16/06/2011 clearly shows that the DGO has been falsely implicated in the case and the departmental enquiry on the very same charge would be an abuse of the process of law. The allegations made against the DGO are all false and baseless. The DGO neither demanded nor accepted any illegal gratification. The charges in the criminal case and the charge in the proposed domestic enquiry are identical. In the criminal case the DGO has been acquitted and hence as per the decision in G.M Tank's case reported in 2006(5) SCC 446 and other decisions stated in the written statement, this departmental enquiry is barred. The complainant has no locostandi to file the complaint since he is not at all an aggrieved party. The complainant is not the husband of Smt. Kavitha shetty and Sri Kavitha is the wife of Sri Sirajjuddin and they are residents of Madikere. No tape-recorder was produced regarding the alleged demand by

the DGO for the bribe amount. No work of the complainant was pending and there was no demand and acceptance of the bribe by the DGO. The DGO has been made scapegoat and the victim of the circumstances. Hence he has prayed for discharging him from the charges framed against him.

8. In order to substantiate the charge leveled against the DGO, the Disciplinary Authority examined in all three witnesses as PW1 to PW3 and got marked documents at Ex.P1 to P13. The order sheet further discloses that even though PW3 was present on numbers of the hearing dates for cross-examination time was prayed by the learned counsel for the DGO for cross-examination and the enquiry was posted to 18/06/2018 as a last chance for cross-examination of PW3 on that day PW3 was present but the DGO and his counsel remained absent and there was no representation on the side of the DGO. Hence, the cross-examination of PW3 was taken as nil and the DGO was also placed *exparte* as per Rule 11 and Sub-Rule 20 of KCS (CCA) Rules, 1957. The order sheet also shows that PW2 was also not cross-examined on the side of the DGO but in view of the DGO placed *exparte*, witness summon was not issued to PW2 for cross-examination on the side of the DGO in the cross-examination of PW1, Ex.D1 has been marked. As the DGO placed *exparte* recording of the answers of the DGO to questionnaire u/Rule 11(18) of KCS (CC&A) Rules was dispensed.

9. Oral arguments of the Presenting Officer was heard and as stated above the DGO has remained *exparte*.

10. Upon consideration of the oral and documentary evidence placed on record, the defence of DGO, the only points, that arises for the consideration of this enquiry authority is:-

1) Whether the Disciplinary Authority satisfactorily proved the charge framed against DGO?

2) What order?

11. My finding on the above points are as follows

Point No.1: In the “ **AFFIRMATIVE**”

Point No.2: As per the final order for the following:

**:: REASONS ::**

12. **Point NO.1:** As stated above it is the case of the disciplinary authority that the DGO while working as Assistant Public Prosecutor, 4<sup>th</sup> JMFC, Court, Mysore, demanded and accepted the bribe of Rs. 1,000/- on 18/01/2007 from the complainant Sri. Ranjanshetty for effectively presenting the prosecution case and for arguing effectively in C.C. No. 103/2006 on the file of 4<sup>th</sup> JMFC, Mysore and thereby committed misconduct.

13. Complainant has been examined as PW3 and the copy of the complaint lodged by him before the Lokayukta Police station is at Ex.P5. The gist of Ex.P5 is to the effect that the daughter of the complainant by name Sri Reshma Shetty died on 01/01/2006 and earlier to that she had married a boy by way of inter-caste marriage and she had also written a letter to the Tahasildar regarding the cause of her death and in that respect a case was registered in “Udaya giri police station” and

that case was pending before the 4<sup>th</sup> JMFC court, Mysore in C.C.No. 103/2006 and in the above said case the complainant and his wife name Smt. Kavitha shetty are the witnesses and they approached the DGO who was working as the Assistant Public Prosecutor, and the DGO insisted for money and the DGO instructed them to come on 16/01/2007 and told the complainant that for putting forth arguments he should give him money from time to time and further told that hearing date is 18/01/2007 and on that day he should pay Rs. 1,000/- before he leaves for the court. The complaint has been lodged by the complainant on 17/01/2007 at 5 p.m. as per Ex.P5.

14. PW3 has deposed that regarding the death of her daughter Reshma shetty in the year 2006 he had lodged the complaint in Udayagiri police station. He has further deposed that there was a counter case in that respect in Ontikoppalu police station. He has deposed that he was meeting the DGO in his office situated behind the court complex. He has further deposed that the DGO demanded for bribe amount of Rs. 1,000/- and he informed the matter to his wife and afterwards he lodged the complaint in Lokayukta police station and Ex.P5 is the copy of his complaint. He has deposed that the I.O. secured two panchas and introduced them to him. He has deposed that he also produced the amount of Rs. 1,000/- and the denomination and numbers of the notes were noted by one of the panchas in a sheet and the copy of the same is at Ex.P7. According to Ex.P7 PW1 has produced one note of the denomination of Rs. 500/- and five notes of the denomination of Rs. 100/-. He has further deposed that his wife had

accompanied him to the Lokayukta police when he lodged the complaint. He has deposed that the Lokayukta staff got smeared the phenolphthalein powder to the notes. He has deposed that the notes were given to one of the panch witness and afterwards the notes were kept in the almirah and the hands of that pancha witness when washed in the solution, that solution turned to purple colour. He has deposed that, I.O. gave him a voice recorder and told him to record the conversation when he meets the DGO and after the DGO receives the amount to give the signal by touching his head with his hands. He has deposed that the writing was made at that time in Lokayukta office and the copy of the same is at Ex.P2 and himself and the panchas have signed the same. He has deposed that himself and panchas were directed to come on the next day at 9 a.m.

15. PW3 has further deposed that on the next day himself and panchas had been to the Lokayukta police station and the tainted currency notes were removed from the almirah and they were kept in his left side shirt pocket. He has deposed that the micro tape-recorder was also given to him and afterwards they went in three vehicles to the office of the DGO. He has deposed that the vehicles were stopped near the office of the DGO and it was 10 a.m. and himself and his friend Sri Jagadeesh were asked to meet the DGO by going to the office of the DGO. He has deposed that panchas did not come with him to the office of the DGO. He has deposed that himself and Sri Jagadeesh went inside the office of the DGO and the DGO asked them to sit and also asked PW1 has to whether he has brought the money and he said yes and gave the tainted

currency notes and the DGO received the same with his right hand and kept the same in his left shirt pocket and asked the DGO and Sri Jagadeesh to go and they came out of the office of the DGO and he gave the signal and immediately the police inspector and his staff came inside the office of the DGO. He has deposed that the right hand of the DGO when washed in the solution, that solution turned to purple colour. He has deposed that panchas removed the amount which was in the shirt pocket of the DGO and those notes were the same notes mentioned in Ex.P7. He has deposed that his left side pocket portion of the shirt of the DGO was immersed in the solution and that solution also turned to purple colour. He has deposed that the photos were also taken from time to time and copy of the trap mahazar is at Ex.P4. He has deposed that the police inspector also seized some documents and Ex.P11 and Ex.P12 are the copies of the documents. He has deposed that the DGO gave his explanation and the copy of the same is at Ex.P3. He has deposed that he gave the voice-recorder to the I.O. and when it was played the demand made by the DGO was recorded in the same. He has deposed that Ex.P13 are the copies of the photos.

16. There is no cross-examination of PW3 and the evidence of PW3 has remained unchallenged there is no reason to discard the evidence given by PW3.

17. PW1 is one of the pancha witness by name Sri Narendra Babu, and he has deposed that from 2000 to 2009 he was working as FDA in the office of the Regional Joint Director of Collegiate Education at Mysore. He has deposed that on 17/01/2007 at 4 p.m. he went to the Lokayukta police and

another pancha witness by name Sri Venkatesh also came to the Lokayukta police station and the complainant and Police inspector were also present. He has deposed that the complainant was introduced to himself and another panch witness. He has deposed that some powder was smeared to the notes and the hand wash of the panch witness Sri Venkatesh was conducted and he has also deposed that the amount was kept in the cover and the cover was kept in the almirah and mahazar was prepared and copy of the same is at Ex.P2 and he has also signed the same. He has deposed that he was asked to come on the next day and accordingly on 18/01/2007 at 9 a.m. he went to the Lokayukta police station. He has deposed that witness Sri Venkatesh and complainant were present in the police station and the amount which was kept in the almirah was removed and it was given to the pancha witness Sri Venkatesh and thereafter the amount was kept in the shirt pocket of PW3/complainant. He has deposed that thereafter himself and the complainant went near the court on a bike and others also came there. He has deposed that himself and the complainant went to the chambers of the DGO and the complainant spoke to DGO and at that time he was standing at a distance of 10 feet from the complainant. He has deposed that the complainant gave the bribe amount to DGO and the DGO received it and kept the same in his left side shirt pocket. He has deposed that the complainant gave the signal to him and he gave the signal to the police and immediately the police inspector and his staff came there and the right hand of the DGO was immersed in the solution and that solution turned to pink colour. He has deposed that shirt pocket of the DGO when immersed in the solution that



solution also turned to pink colour. He has deposed that the staff the police inspector removed the bribe amount from the shirt pocket of the DGO and the notes found in the same were the same notes mentioned in Ex.P7. He has deposed about the Ex.P3 is the copy of the explanation given by the DGO and Ex.P4 is the copy of the trap mahazar. He has been treated as hostile witness and cross-examined by the presenting officer and in his cross-examination he has deposed that at that time he was standing near the door of the office of the DGO and he was not able to hear the conversation between the DGO and the PW3 he was able to see the DGO. PW1 has been cross-examined at length by the learned counsel for the DGO and even then his evidence to the effect that he was able to see PW3 giving the amount and the DGO receiving the same and keeping in his shirt pocket has remained unshaken. He has been cross-examined on minor aspects which cannot be given much weight.

18. PW2 is the police inspector and he has deposed that from January 2005 to October 2009 he was working as police inspector, Karnataka Lokayukta, Mysore. He has deposed about PW1 lodging the complaint as per Ex.P5 on 17/01/2007. He has deposed that Ex.P6 is the copy of the FIR. He has deposed about securing the two panchas and conducting the entrustment mahazar the copy of which is at Ex.P2. He has deposed about the contents of the Ex.P2 also. He has also deposed that on 17/01/2007 notes were kept in the cover and that cover was kept in the almirah of the police station and the complainant and the pancha witnesses were asked to come on the next day at 9 a.m. He has also deposed

that on the next day the complainant and the panchas came to the police station and the notes were taken out from the almirah and those notes were given to pancha No.1 and he confirmed those notes as the same notes mentioned in Ex.P7 and afterwards he kept those notes in the shirt pocket of PW3 as per his instructions. He has deposed that afterwards pancha No.1-Sri Venkatesh washed his hands. He has deposed that he gave a voice-recorder to PW3 and asked him to record the conversation between himself and the DGO. He has deposed that at about 10 a.m. they went near the office of the DGO and PW3 and pancha No.2 namely PW1 were sent inside the office of the DGO. He has deposed that after some time PW1 and PW3 came outside the office of the DGO and gave the signal and immediately himself and his staff went to the office of the DGO and the complainant (PW3) told him that the DGO received the amount of Rs. 1,000/- by asking for the same and kept the same in his left side shirt pocket. He has deposed that the hands of the DGO were washed separately in sodium carbonate solution and the solution regarding right hand wash turned to pink colour. But there was no change in the solution in respect of left hand wash. He has deposed that the DGO produced Rs. 1,000/- from his left side shirt pocket and those notes were the same notes mentioned in Ex.P7. He has deposed that alternative arrangement was made and the shirt worn by the DGO was got removed and the pocket portion of the same when immersed in the sodium carbonate solution, that solution also turned to pink colour. He has deposed that he seized the shirt, solution and also the amount. He has deposed that the DGO produced two files bearing C.C. No. 103/2006 and C.C. No. 125/2006 and he

seized the certified copies of the same. He has deposed that the complainant gave the tape-recorder but the conversation was not clearly recorded in the same.

19. PW3 has deposed that Ex.P3 is the explanation of the DGO and Ex.P4 is the copy of the trap mahazar. He has deposed that Ex.P9 is the copy of the FSL report and Ex.P10 is the sketch prepared by the engineer. He has deposed that Ex.P11 is the face sheet of C.C.No. 103/2006 and Ex.P12 is the face sheet of C.C. No. 125/2006. Ex.P11 and P12 shows that both the cases stated above were pending before 4<sup>th</sup> Addl. JMFC Court, Mysore. Ex.P11 shows that the Accused of C.C. No. 103/2006 is Sri Shivaprakasha @ Prakasha. Ex.P12 shows that the name of the accused is Sri Sathish Kumar. It is not the case of the DGO that, the complainant (PW3) is not at all concerned in C.C. No. 103/2006 or C.C.No. 126/2006. The charge is also to the effect that the complainant had met the DGO in connection with C.C. No. 103/2006 and the DGO had demanded for the bribe amount.

20. FSL report-Ex.P9 shows that the presence of phenolphthalein is deducted in both the right and left hand fingers washes of the DGO. As stated above Ex.P3 is the copy of the explanation given by the DGO. In the same it is stated as follows:-

“ಪದೇ ಪದೇ ಎಷ್ಟು ಸಾರಿ ಬರುತ್ತೀರಾ ಎಂದು ಹೇಳಿದ್ದಕ್ಕೆ ಬಲವಂತವಾಗಿ ಕೈಗೆ ತುರುಕಿದರು ಜೇಬಿಗೆ ತುರುಕಿದರು ಹೊರಗೆ ಹೋಗಿ ಬಿಟ್ಟರು”.

21. Thus in Ex.P3 in one breath it is stated that the amount was thrust to the hands and in another breath it is mentioned

that the amount was thrust to the pocket, which are contrary to each other. There is no evidence of DGO also to prove his stand taken in the written statement or in Ex.P3.

22. In the written statement the DGO has contended that he has been acquitted in the criminal case filed against him on the same set of facts. Only because the DGO has been acquitted in the criminal case it cannot be held that, the disciplinary authority has not proved its case in this departmental enquiry. It is well established principle of law that, in the criminal case the prosecution has to prove its case beyond all reasonable doubt. Where as in the departmental enquiry the evidence has to be scrutinised on the basis of the preponderance of probabilities. In the decision reported in **1997(2) SCC 699 in case of Depot Manager, APSRTC V/S Mohammed Yosuf Miya and others, (2005)7 SCC 764 between Ajit Kumar Nag v/s General manager (P) Indian Oil Corporation Limited, Haldia and others** and recent decision of Hon'ble Supreme Court in **(2012)13 Supreme Court Cases 142 in a case of Avinash Sadashiv Bhosale (dead) V/S Union of India and others** made out very clear that, the purpose of departmental enquiry and the prosecution are too different and distinct aspect though the two proceedings relates to the same set of facts. The nature of evidence in criminal case is entirely different from the departmental proceedings and in a criminal case the prosecution is required to prove the guilt of the accused beyond all reasonable doubt on the touch-stone of human conduct and where as the evidence required in a departmental enquiry is not regulated by the Evidence Act. Therefore,

misconduct of the DGO required to be taken into consideration on the basis of preponderance of probabilities and merely the DGO has been acquitted in the criminal case by the judgment in Special Case No. 41/2008 on the file of Sessions and Special Judge, Mysore by itself is not sufficient to overlook the evidence placed on record by the Disciplinary Authority.

23. As stated above there is evidence of PW1 to PW3 in support of the case of the disciplinary authority. As stated above the evidence of PW2 and PW3 has remained unchallenged. As stated above this enquiry has to be decided on the basis of preponderance of probability and not on the basis of the proof beyond all reasonable doubt as in criminal case. There is nothing on record to disbelieve the evidence given by PW1 to PW3. Admittedly there is no ill-will between PW1 to PW3 and the DGO and there is nothing on record to discard or disbelieve the evidence given by PW1 to PW3. For the reasons stated above the evidence of PW1 to PW3 is probable and believable rather than the contention of the DGO taken in his written statement or in Ex.P3. Ex.P1 and P7 are one and the same document. But Ex.P7 is the attested certified copy where as Ex.P1 is only the xerox copy.

24. Thus the DGO has failed to maintain absolute integrity, devotion to duty and acted in a manner of unbecoming of a Government Servant. Hence, I answer this point in the **AFFIRMATIVE.**

**25. Point NO.2:-** For the reasons discussed above, I proceed to pass the following:-

**:: ORDER ::**

*The Disciplinary Authority has satisfactorily proved the charge in this case that, DGO-Sri S. Mahadevaswamy, Assistant Public Prosecutor, Addl. Civil Judge (Jr.Dn) and JMFC, Court, Maddur, (the then Assistant Public Prosecutor, 4<sup>th</sup> JMFC, Court, Mysore) committed mis-conduct as enumerated U/R 3(1) (i) to (iii) of the Karnataka Civil Service (Conduct) Rules, 1966.*

26. Hence this report is submitted to Hon'ble Upalokayukta -2 for kind perusal and for further action in the matter.

Dated this the 16<sup>th</sup> day of August, 2018

-Sd-

(Somaraju)

Additional Registrar Enquiries-4,  
Karnataka Lokayukta,  
Bangalore.

**ANNEXURE****LIST OF WITNESSES EXAMINED ON BEHALF OF DISCIPLINARY AUTHORITY:**

PW-1 :Sri Narendra Babu K.N. (pancha witness)  
PW-2:Sri D. Jayaram (I.O.)  
PW-3:Sri Ranjan shetty (complainant)

**LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE:**

NIL

**LIST OF EXHIBITS MARKED ON BEHALF OF DISCIPLINARY AUTHORITY**

Ex.P-1: Xerox copy of the notes value and denomination mentioned white sheet  
Ex.P-1(a):Relevant entry in Ex.P1

- Ex.P-2: Certified copy of the entrustment mahazar  
Ex.P-2(a to d): Relevant entries in Ex.P2  
Ex.P-3: Certified copy of the explanation of DGO  
Ex.P-3(a to d): Relevant entries in Ex.P3  
Ex.P-4: Certified copy of the trap mahazar  
Ex.P4(a to f): Relevant entries in Ex.P4  
Ex.P-5: Certified copy of the complaint  
Ex.P5(a,b): Relevant entries in Ex.P5  
Ex.P-6: Certified copy of the FIR  
Ex.P6(a): Relevant entry in Ex.P6  
Ex.P-7: Certified copy of the notes value and denomination  
mentioned white sheet  
Ex.P7(a to c): Relevant entries in Ex.P7  
Ex.P-8: Xerox copy of the attendance register  
Ex.P-8(a to c): Relevant entries in Ex.P8  
Ex.P-9: Certified copy of the chemical examination report  
Ex.P-9(a): Relevant entry in Ex.P9  
Ex.P-10: Certified copy of the sketch  
Ex.P-11: Certified copy of the face sheet of C.C. No. 103/2006  
Ex.P11(a to c): Relevant entries in Ex.P11  
Ex.P-12: Certified copy of the face sheet of C.C. NO. 125/2006  
Ex.P-13: Xerox photos on the white sheet (containing 8  
photos)

**LIST OF EXHIBITS MARKED ON BEHALF OF DGOs:**

- Ex.D-1: Original trapped notice letter  
Ex.D-1(a): Relevant entry in Ex.D1

Dated this the 16<sup>th</sup> day of August, 2018

-Sd-

(Somaraju)

Additional Registrar Enquiries-4,  
Karnataka Lokayukta,  
Bangalore.

