

KARNATAKA LOKAYUKTA

No.UPLOK-2/DE/502/2015/ARE-13

M.S. Building,
Dr. B.R. Ambedkar Road,
Bangalore-560 001,
Date: 15-11-2021.**:: ENQUIRY REPORT ::**

Sub:- Departmental Inquiry against Sri. K.S. Gopalakrishna, Village Accountant, Hiriyyuru, 2nd Circle, Bhadravathi Taluk, Shivamogga District - reg.

Ref :- 1) Govt. Order No. ಕಂಇ 31 ಬಿಡಿಪಿ 2015, ಬೆಂಗಳೂರು, dated: 16/06/2015.

2) Nomination Order No.UPLOK-2/DE/502/2015, Bengaluru, dated: 21/10/2015.

This Departmental Enquiry is initiated against Delinquent Government Official Sri. K.S. Gopalakrishna, Village Accountant, Hiriyyuru, 2nd Circle, Bhadravathi Taluk, Shivamogga District (hereinafter referred as D.G.O. in short).

2. In view of Government Order cited at reference No.1, the Hon'ble Upalokayukta-2 vide Order cited at reference No.2, had nominated Additional Registrar (Enquiries-5) to frame Articles of Charge and to conduct enquiry against aforesaid D.G.O.

3. A Suo-moto investigation u/sec. 7(2) of Karnataka Lokayukta Act 1984 was taken up on the basis of material placed by the Police Inspector of Karnataka Lokayukta at Shivamogga, relating to alleged demand and acceptance of bribe by Sri. K.S. Gopalakrishna, Village Accountant of Hiriyyuru, 2nd Circle in Bhadravathi Taluk at Shivamogga District from Sri. Prasad S/o Late Lakshmaiah, Employee of Mysore Paper Mills Factory R/o 129, Paper Town, Bhadravathi who had filed the Complaint against DGO alleging that his son Sri. Miyanbabu was working as a Contract Labour in MPM Factory in Bhadravathi, and he had expired due to ill health on 31/12/2011 and his wife Smt. Susheelamma has submitted an application on 18/04/2013 before the Tahasildar, Bhadravathi for obtaining Survivorship Certificate for claiming PF and other benefits of her deceased son when the complainant approached DGO and enquired about the application given by his wife, he had demanded bribe amount.

4. Hon'ble Upalokayukta on perusal of materials on record found prima-facie case against D.G.O. and hence a Report dt:24/4/15 u/s. 12(3) of Karnataka Lokayukta Act, 1984, was sent to Government to initiate disciplinary proceedings against the D.G.O. The competent authority by order dt:16/06/2015 entrusted the matter to Hon'ble Upalokayukta. In turn, Hon'ble Upalokayukta has nominated ARE-5 as Enquiry Officer.

5. In pursuance of the nomination order, Articles of Charge with Statement of Imputations of Misconduct, list of witnesses and documents were prepared and served upon the D.G.O.

6. The Articles of Charge as framed by this A.R.E is as follows:

That, you DGO Sri. K.S. Gopalakrishna, Village Accountant, Hiriuru 2nd Circle, Bhadravathi Taluk, Shivamogga District while working in the said capacity one Sri. Prasad S/o Late Lakshmaiah, Employee of Mysore Paper Mills Factory R/o 129, Paper Town, Bhadravathi town has filed the Complaint against you DGO alleging that his son Sri. Miyanbabu was working as a Contract Labour in Mysore Paper Mills Factory in Bhadravathi, and he has expired due to ill health on 31/12/2011 and the wife of the complainant Smt. Susheelamma has submitted the application on 18/04/2013 before the Tahasildar of Bhadravathi for obtaining residential certificate for claiming PF and other benefits of her deceased son and thereafter the complainant approached you the DGO and enquired about the application given by his wife and at that time, you the DGO demanded the bribe amount and unwilling to pay the bribe amount, the complainant approached the Police Inspector, Karnataka Lokayukta, Shivamogga on 12/05/2013 at 10.30. am and informed the same and the I.O has given the voice recorder to the complainant for recording the said conversation of demand of bribe amount and on the same day the complainant at about 1.00 pm met you DGO and requested for issue of residential certificate of his

son and at that time you DGO has demanded the bribe amount of Rs.1300-00 from the complainant and out of which you DGO received Rs.500/- and asked the complainant to pay the balance amount of Rs.800/- tomorrow and on 13/06/2013 the complainant at 10.00 am approached the Lokayukta Police Shivamogga and lodged the written complaint and on the basis of the same, the case in Cr.No.4/2013 u/s. 7 P.C. Act was registered against you the DGO, issued the FIR and after conducting pre-trap mahazar the Police Inspector, Panchas, Complainant on 13/06/2013 at about 2 pm prepared to go to the office of you DGO situated at Haladammanakeri, Bhadravathi and as per the instruction of the I.O the complainant has made a phone call to you DGO at 2.05 pm and you the DGO replied that you were on leave and directed the complainant to come on 14/06/2013 by making the phone call and on 14/06/2013 at about 11.30 am the I.O along with Lokayukta Police staff, panchas and the complainant went to Haladammanakeri to the office of you DGO and at about 12.00 noon reached the said office, and complainant and pancha witness Sri. Pushparaj were sent to your office and after 15 minutes they returned back intimating that you DGO was not present as per the instructions of your Assistant Sri. Kenchappa and Kenchappa told that you DGO has instructed him to receive the balance amount of Rs.800/- on your behalf from the complainant and after paying the amount to make a phone call to you DGO and the complainant did not pay the said amount to Kenchappa and wanted to pay the said amount to you DGO only and when the complainant made a phone

call to you DGO and asked your whereabouts and you DGO told the complainant that you were with your Saheb and also told the complainant to pay the amount to Kenchappa and though waited till 4 pm you DGO did not come there and Kenchappa closed the door of the office and again on 15/6/2013 the complainant, PI, staff and pachas went to your office situated at Bhadravathi at about 10.30 am but, the said office was closed and waiting till 4.00 pm, and at about 11.30 am the complainant made a call to you DGO informing about bringing the amount and waiting and you DGO told that you were with the Saheb on duty and told that he will not come and also informed doing the work of the complainant and asked him to take the certificate, but when the complainant asked you DGO to come to the office for giving the certificate, you DGO told to receive the certificate where the application is filed and cut the phone call and when the complainant told about bringing the bribe amount 2-3 times for paying to you DGO and you DGO repeated the same thing to the complainant and thereby you DGO has suspected and did not receive the bribe amount and from the foregoing facts, the conversation recorded in the Voice recorder and materials available on hand they discloses that you DGO demanded bribe amount of Rs.1300/- from the complainant and also received the part of bribe amount of Rs.500/- from the complainant thereby you DGO have failed to maintain absolute integrity and devotion to duty, and caused dereliction of duty and the said acts of you DGO is unbecoming of a Government Servant and thereby committed

official misconduct as enumerated u/r 3(1) (i) to (iii) of Karnataka Civil Service (Conduct) Rules 1966.

7. The Statement of Imputations of Misconduct as framed by this ARE is as follows:

A Suo-moto investigation u/s. 7(2) of Karnataka Lokayukta Act 1984 was taken up on the basis of material placed by the Police Inspector of Karnataka Lokayukta, Shivamogga relating to alleged demand and acceptance of part of bribe amount by Sri. K.S. Gopalakrishna, Village Accountant of Hiriyyuru, 2nd Circle in Bhadravathi taluk at Shivamogga (hereinafter referred to as Respondent/DGO-for short) from Sri. Prasad S/o Late Lakshmaiah, Labour working in MPM Factory, R/o 129, Paper Town in Bhadravathi town at Shivamogga District (hereinafter referred to as Complainant).

8. Facts giving rise to the present proceedings are:-

a) It is alleged that, the son of the complainant viz., Sri. Miyanbabu was working as a Labour on contract basis at MPM Factory in Bhadravathi, the said son has expired due to ill health during the year 2011. The wife of the complainant viz, Smt. Susheelamma has submitted the application before Tahasildar of Bhadravathi to obtain residential certificate for claiming PF and other benefits of her deceased son on 18/04/2013 and thereafter

the complainant approached Respondent/DGO and enquired about the application given by his wife for issuance of residential certificate of his son and at that time, the Respondent/DGO has demanded the bribe amount.

b) Unwilling to pay the bribe amount, the complainant approached the Police Inspector, Karnataka Lokayukta at Shivamogga at his office on 12/06/2013 at about 10.30 a.m and informed the same. Then, the said I.O., has given a voice recorder to the complainant to record the voice of the Respondent/DGO demanding bribe from him;

c) Afterwards on the same day dated:12/06/2013 at about 1 pm the complainant met with the DGO and asked for issue of residential certificate of his son and the DGO demanded the bribe amount of Rs.1300/- and received Rs.500/- as advance and asked the complainant to pay the balance amount of Rs.800/- on tomorrow and on 13/06/2013 at about 10 am the complainant lodged the written complaint in Lokayukta Police Station, Shivamogga and on the basis of said complaint lodged by the complainant, the I.O has registered the case in Cr.No.04/2013 against the DGO for the offence u/s 7 of the P.C. Act 1988.

d) On 13/06/2013, after preparing the pre-trap mahazar, the I.O panchas, complainant and Police staff prepared to go to Haladammanakeri and the complainant gave a phone call to the

Respondent/DGO at 2.05 p.m and at that time the Respondent/DGO told that he had gone on leave on urgent work and asked the complainant to come on 14/06/2013 by giving a phone call to the Respondent/DGO.

e) On 14/06/2013 at about 12 noon, the complainant, panchas, I.O and police staff came to the office of Respondent/DGO and complainant and pancha Pushparaj were sent to the office of the Respondent/DGO and in the said office the complainant asked the Assistant of Respondent/DGO by name Sri. Kenchappa regarding the presence of the Respondent/DGO and the said assistant told the complainant to give the balance bribe amount Rs. 800/- to him as Respondent/DGO had informed him to receive the balance bribe amount of Rs.800/- on his behalf and to make a phone call to the Respondent/DGO and the complainant made a phone call to the Respondent/DGO and asked the Respondent/DGO about his whereabouts and the Respondent/DGO told that he is with his Saheb and told the complainant to give the amount to Kenchappa and the Complainant, panchas, I.O and staff waited till 4 pm and Kenchappa closed the office and DGO did not come to the said office and on 15/06/2013 at about 10.30 am again the complainant, panchas, I.O and staff went to Haladammanakeri for the purpose of raid and office of the Respondent/DGO was closed and complainant made a phone call to Respondent/DGO and informed about bringing the bribe amount and Respondent/DGO informed the complainant that he is with his Saheb and also told

the complainant to obtain the certificate where the application is filed and cut the phone call and 2-3 times when the complainant made phone calls to the Respondent/DGO, the Respondent/DGO told the complainant to receive the certificate from Meenakshi Madam and Revenue Inspector and cut the phone call and the amount was not paid to the Respondent/DGO.

f) Afterwards Respondent/DGO had suspected the complainant and informed the complainant over phone that, his work is completed and asked him to get the residential certificate from the office.

g) The demand to bribe amount and receiving the part of bribe amount of Rs.500/- by the Respondent/DGO was recorded by the complainant in the voice recorder given by the I.O.

h) There are statements of witness, including complaint, besides material and records find by the said I.O, in connection with said repeated misconduct.

9. Said facts supported by the materials on record show that the Respondent/DGO, being a Government Servant, has failed to maintain absolute integrity besides devotion to duty and acted in a manner unbecoming of a Government Servant and thereby repeatedly committed misconduct and liable for disciplinary action.

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

11. Since said facts and material on record prima facie show that DGO has committed dereliction of duty which amounts to misconduct under Rule 3(1) (ii) and (iii) of the KCS (Conduct) Rules, 1966 and the report of the Hon'ble Upalokayukta U/s 12(3) of Karnataka Lokayukta Act was made to the competent Authority to initiate proceedings against the above said DGO. Accordingly the Competent Authority initiated Disciplinary proceedings against DGO and entrusted the enquiry to the Hon'ble Upalokayukta u/s 14-A of KCS (CC&A) Rules 1957. Hence, the charge.

12. The notice issued to D.G.O. was duly served and had appeared before Enquiry Officer. His First Oral Statement was recorded. The D.G.O. denied the charges and claimed to be enquired. He has stated in his First Oral Statement dated: 16/12/2015 that he is serving as Village Accountant in Hiriyyuru, 2nd Circle, Bhadravathi Taluk, Shivamogga District and his date of retirement is 31/01/2018.

13. The D.G.O. filed Written Statement dt: 11/02/2016 denying the allegations. He has admitted that wife of the complainant had submitted an application to obtaining Survivorship Certificate and that the complainant had also approached him and enquired about the application, however he has denied demanding any bribe. He has further admitted that the complainant met him on 12/6/2013 at about 1.00 pm, and requested to issue the Certificate. He has expressed his ignorance about complainant approaching Lokayukta Police and visited his office at Haladammanakeri. DGO has admitted that complainant had made calls to his mobile phone. He denies instructing the complainant to give the balance bribe amount to his assistant Kenchappa. Further, the fact that complainant had called him on his phone on 15/6/2013 he also admitted but he had informed that the work was done and he can collect his Certificate from the Office. It is his case that two applications submitted earlier came to be rejected since necessary documenters were not produced and for that reason the complainant in order to take revenge lodged complaint making false allegations that he had demanded bribe of Rs.1300/- and received part bribe amount of Rs.500/-. He innocent and prays to exonerate him from the charges.

14. As per order of Hon'ble Uplok-2/DE/2016 of Registrar, Karnataka Lokayukta, Bengaluru, dated :03/08/2016 this Enquiry file was transferred from ARE-5 to ARE-4.

15. Again as per order of Hon'ble Uplok-1 & 2/DE/Transfers/2018 of Registrar, Karnataka Lokayukta dated :06/08/2018 this Enquiry file was transferred from ARE-4 to ARE-13.

16. The Disciplinary Authority has examined four witnesses as P.W-1 to P.W-4 and got marked 17 documents as Ex. P1 to P17.

17. The D.G.O. was examined as D.W-1 and got marked three documents as Ex.D-1 to D-3.

18. Heard both sides and perused Written Arguments and other material on record.

19. Under the above circumstances, the points that arise for consideration are as follows:

(i) Whether the Disciplinary Authority proves that the D.G.O Sri. K.S. Gopalakrishna, Village Accountant, Hiriuru, 2nd Circle, Bhadravathi Taluk, Shivamogga District while working in the said capacity had demanded bribe amount of Rs.1300/- from the complainant to issue residential/Survivorship Certificate and also received part of bribe amount of Rs.500/- from the complainant and has committed misconduct, dereliction of duty, acted in a manner unbecoming of a Government servant and not maintained absolute

integrity, violating R.3(1)(i) to (iii) of K.C.S. (Conduct) Rules, 1966?

(2) What Finding?

20. My findings to the above points are :

i) In the Affirmative.

ii) As per finding,

REASONS

21. **Point No-1:-** One Sri. Prasad S/o Lakshmaiah is the Complainant. His son namely Miyanbabu was working as a Contract Labour in Mysore Paper Mills Factory, Bhadravathi. He had expired due to ill health on 31.12.2011. Wife of the Complainant namely Smt. Susheelamma filed an application in the Office of Tahasildar, Bhadravathi to obtain Survivorship Certificate for claiming PF and other death benefits of her son. DGO was in charge of concerned Section and when approached, he had demanded bribe to issue the said certificate. The complainant/Prasad is examined as PW-3. In his chief examination the witness has narrated the above facts and demand of bribe of Rs.1,300/- by the DGO. It is this case that on 12.06.2013, he had paid Rs.500/- to the DGO and took time the pay the balance has he did not have that much money with him. Evidence is given by the complainant that DGO had told him to call over phone before collecting the Certificate and to pay balance amount of Rs.800/-.

Since the complainant was not interested to pay the bribe amount and he had lodged Ex.P-1 complaint with the Lokayukta Police Station Shivamogga on 13.06.2013.

22. The complainant has given evidence that on 13/6/2013 the Lokayukta Police had summoned two witnesses namely Sri. Pusharaju and Sri. Rajanna and after informing them about the complaint given against the DGO and demand of bribe made by him, necessary instructions were given to him and the above said independent witnesses regarding the mode of trap.

23. Initially the balance bribe amount of Rs.800/- (8 notes of Rs.100 denomination) was obtained from the complaint, handed over to independent witness Sri. Rajanna after applying Phenolphthalein Powder and the amount was kept in the shirt pocket of the complainant. Thereafter, the Lokayukta Police had washed the hands of the said witness Sri. Rajanna with Sodium Carbonate liquid which had turned into pink colour and the same was seized in a bottle and sealed. The Lokayukta Inspector had provided a voice recorder to the complainant to record his conversation with the DGO at the time of paying the balance bribe amount and to give signal by wiping his face in case DGO received the bribe amount. After giving necessary instructions to the complainant and independent witnesses, Ex.P-2 Entrustment panchanama was prepared in the Lokayukta Police Station.

24. The above evidence of PW-3/Sri. Prasad is corroborated by independent pancha witnesses namely PW-1/Sri. Pushparaj and PW-2/Sri. Rajanna. PW-4/Sri. K.C. Purushotham is the Police Inspector, Lokayukta Police Station, Shivamogga. This witness has given evidence in detail regarding receiving Ex.P-1 Complaint and registration of Ex.P-15/FIR in Crime No.4/2013 for offences punishable U/s 7 of Prevention of Corruption Act 1988. He has also given evidence regarding Ex.P-2 Entrustment Mahazar and instructions given to complainant and independent witnesses regarding the modalities of the trap when balance bribe amount is received by the DGO.

25. All the above witnesses have given evidence that on 13/6/2013 when the complainant had called the DGO over phone, he was informed that he was on leave and asked him to come near the Office on 14/6/2013. On that day when the complainant had gone to the Office along with shadow witness/Sri. Pushparaju, they were informed the DGO had gone out with the Tahasildar. When called, DGO had informed the complainant to hand over the bribe amount to his Assistant Sri. Kenchappa. The complainant had not paid/given the amount to the said Sri. Kenchappa but instead waited for the DGO till 4 pm, but he had not come to the Office. On the next day also i.e 15/6/2013 when complainant and shadow witness had gone near the Office, they did not find DGO and he did not come to the Office till 4.00 pm. All the witnesses have deposed that DGO might have entertained doubt that he would be trapped

and therefore avoided to come to the Office and had informed the complainant that his work is done and he could collect the Certificate from one Meenakshi who was a clerk in Taluk Office. Though the Counsel appearing for DGO had cross examined PWs-1 to 4 at length, nothing unbelievable is elicited.

26. The Disciplinary Authority in order to prove that, the DGO had made a demand of bribe and had received part of the same and conversation to that effect was recorded, reliance is placed on the evidence of PW-4/ Sri. K.C. Purushotham. He has given evidence that on 13/6/2013 after giving necessary instructions and introducing the complainant, the independent mahazar witnesses i.e PW-1 and 2 were made to hear the conversation recorded in a Digital Voice Recorder. The fact that Complainant and DGO own mobile phones having Nos. 8880964331 and 9449686476 respectively is not in dispute. On 13/6/2013 at about 2.00 pm when the complainant had called the DGO over phone, he was informed that he was on leave and instructed to come to the Office after his leave period. On the next day when complainant had called DGO he was instructed to give the bribe amount to one Kenchappa and cut the phone. As observed about, the complainant had not given the amount to said Sri. Kenchappa but again came back near the DGO's Office on 15/6/2013 and called him over phone. On that day, DGO after suspecting that he might be trapped had informed the complainant that his work was done. In the course of investigation PW-4/ Sri. K.C. Purushotham had collected the Call

Detail Records (CDR) of both phone numbers. The CDR is marked as Ex.P-17.

27. The Investigation Officer PW-4/ Sri. K.C. Purushotham has given evidence that on 06/7/2013 the Complainant and the DGO had appeared in the Lokayukta Police Station and in the presence of pancha witnesses his voice sample was recorded and the contents from the voice recorder was transferred to a Compact Disc. Ex.P-13 Mahazar was prepared and Ex.P-14 photographs were taken at the time of recording the voice sample of DGO. Two Compact Discs containing pre-trap conversation and the voice sample recorded on 6/7/2013 were sent in a sealed envelope to Truth Labs Forensic Science Laboratory, Bangalore for voice analysis and recognition. After analyzing the questioned recording and standard recording, the Assistant Director (Cyber and Audio and Video), Truth Labs Forensic Science Laboratory, has issued Ex.P-16/Report with the following inferences and opinion :

INFERENCES

1. The formant values of the utterances "entnuru", "Kodi" and "nodona" by the speaker 'Q1/1' were found to be within the permissible range with those uttered by the speaker 'S1' to 'S6'.

2. LPC peak values of the utterances **“entnuru”, “Kodi”** and **“nodona”** by the speaker ‘Q/1’ were found to be identical with those uttered by the speakers ‘S1’ to ‘S6’.

REPORT

Based on the above examinations, observations, findings and inferences, it is opined that:

1. The voice characteristics of the speaker ‘Q/1’ in the recording ‘Q’ contained in the CD-R marked ‘Item-1’ are similar with the speaker in the recordings ‘S1 to ‘S6’ contained in the CD-R marked ‘Item-2’.
2. Hence, it is concluded that the speaker in the recording ‘Q’ contained in the CD-R marked ‘Item-1’ is the same person whose specimen voice is recorded in the recordings ‘S1 to ‘S6’ contained in the CD-R marked ‘Item-2’.

28. The DGO examined him as DW-1 and denied the charges and allegations of demand of bribe as alleged by the complainant. He was working as Village Accountant, Circle 2, Hiriyyuru, Bhadravathi Kasaba Hobli, Bhadravathi Taluk at the relevant point of time. He has admitted that wife of the complainant Smt. Susheelamma had filed an application on 23/3/2013 seeking Survivorship Certificate

in order to get benefits accrued due to death of her son. The application was rejected as the documents annexed to the application and the family tree were not proper. Similar applications were filed on 18/4/2013 and 6/6/2013 seeking issue of aforesaid Certificate. In his evidence DGO as stated that, complainant was having grudge on him since the first two applications were rejected and therefore he had given complaint to the Lokayukta Police by making false allegations that demand for bribe was made. Be that as it may, the evidence given by DGO/DW-1 clearly reflects that he was handling the applications find by the wife of the complaint.

29. Admittedly he had faced trial in Spl. (P.C.) Case. No.6/2014 before the Special Judge, Shivamogga for the offences U/s 7,13(1)(d) r/w 13(2) of Prevention of Corruption Act 1988. Ex.D-3 is the certified copy of Judgment dated : 8/5/2019 passed by the above Court in which DGO came to be acquitted U/s 235(1) of Cr.P.C. In para 46, at page 23 of the said judgment, the following observation is made

46. Even though charge is framed for the offence punishable U/s 13(1) (d) of the Prevention of Corruption Act, in view of non support by PW-1 and above said appreciation evidence of PW-1, his evidence is not sufficient to prove demand and acceptance of Rs.500/- on 12/06/2013 by the

*accused. Therefore, the accused is entitled for benefit of doubt. For the above said reasons, Point No-1 and 2 are answered in the **Negative**.*

30. In the Written Arguments the above fact of acquittal of DGO in the criminal case is highlighted and prayed to consider the said aspect and discharge him from the charges. In this context, it is relevant to note the law laid down by the Hon'ble Supreme Court and Hon'ble High Court.

30.1 In the case of **Inspector General of Police V/s S. Samuthiram (2013) 1 SCC 598**, it was a case of eve-teasing of a woman by police official. He was found guilty in the Departmental Enquiry but was acquitted in the criminal case. The question before the Hon'ble Supreme Court was whether he was entitled for reinstatement as a result of acquitted in criminal case. It was observed by the Apex Court that proof beyond reasonable doubt in criminal proceedings and preponderance of probabilities in departmental proceedings are respective standards and acquittal in criminal case may be outcome of higher level of proof which the prosecution could not meet, yet an employee may be found guilty in departmental proceedings on account of relatively lower standard of proof. It is specifically laid down that mere acquittal of an employee by criminal court has no impact on the disciplinary proceedings initiated by department.

30.2 In the case of ***Divisional Controller, KSRTC V/s M.G. Vittal Rao 2012 1 SCC 442*** also Hon'ble Supreme Court has held that Departmental Enquiry is independent of criminal proceedings and acquittal in a criminal court is of no help. It is observed that even if a person stands acquitted by criminal court, domestic enquiry can be held since standard of proof required in a domestic enquiry and in a criminal case are different.

30.3 Hon'ble High Court in ***Division Bench*** judgment ***Mehiboobsab V/s Upalokayukta, ILR 2002 KAR 2535***, it is held that where the criminal court acquits an accused on a technical ground (for example on the ground of failure to obtain requisite sanction for prosecution or on the ground of limitation) or where the accused is acquitted for want of sufficient evidence or non-examination of material witnesses or on account of material witnesses turning hostile or on account of conflict in evidence or where the accused is acquitted by extending the benefit of doubt on the ground that the prosecution had failed to establish its case beyond responsible doubt, then such acquittal is not an exoneration of the accused by an acquittal. In such cases, the management is at liberty to proceed with the enquiry or initiate an enquiry on the very same charges, even after the acquittal.

31. In the case of hand it is clear from the aforesaid observation made in para 46 of the judgment in Spl. Case (P.C.) 6/2014 that accused was acquitted by giving benefit of doubt. Therefore, the fact

that he was acquitted in the criminal case has no bearing on this departmental proceeding. In other words, charges against the DGO cannot be cleared merely because he was acquitted in the criminal case.

32. In this evidence as well as in the plea taken in the Written Statement, DGO admits that complainant had spoken over phone and he had discussed about the application filed by his wife. He also admits that on 12/6/2013, he had spoken to the complainant in the Office. It is pertinent to note that the complainant along with panch witness had visited the private office of the DGO in Haladammanakeri of Bhadravathi. During his cross examination, DGO/DW-1 has admitted that he had taken the private office in the above area on rent Rs.500/- per month and he was having his assistant namely Kenchappa. He has admitted that he had not obtained permission from the Tahasildar to have the said private office or to maintain unofficial Ex.D-1 Tapal Register. During the cross examination of complainant/PW-3, no suggestion was put denying receiving Rs.500/- bribe from him and asking him to pay balance amount of Rs.800/-. DGO has not denied that his voice samples was collected by the Investigation Officer on 6/7/2013. He has also not denied preparation of Ex.P-13 panchanama and contents of Ex.P-14 photographs taken when his voice sample was collected by the Investigation Officer.

33. As observed above, the trap was not successful since DGO by apprehending some action from the complainant did not turn up to receive the balance bribe amount of Rs.800/-. However, his conversation with the complainant on 12/6/2013 was recorded in Ex.P-2/Entrustment Mahazar and the voice sample collected on 6/7/2013 were transferred to two separate CDs and sent for voice analysis. In the arguments it is pointed out that there is no proper evidence of demanding bribe and that he was not trapped by the Lokayukta Police and therefore the allegations made against him are false. In this context, it is necessary to look into Sec.13 Prevention of Corruption Act 1988.

Sec. 13 - Criminal misconduct by a public servant:-

1. A public servant is said to commit the offence of criminal misconduct:-

a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

b) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate

from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do: or

d) if he-

i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage ; or

ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

iii) while holding office as a public servant obtains for any person any valuable thing or pecuniary advantage without any public interest ; or

e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactory account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation: For the purpose of this section, "Known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisional of any law, rules or orders for the time being applicable to a public servant.

2. Any public servant, who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extended to 7 years and shall also be liable to fine.

34. In case on hand the DGO was not trapped while accepting any bribe amount. He is facing the Enquiry for having received part of the bribe amount of Rs.500/- from the complainant/PW-3 on 12/6/2013. Though DGO was not trapped, the above provision makes it clear that if any Public Servant accepts or obtains or agrees to accept or attempts to obtain any illegal gratification, he will be liable for fine. From the aforesaid facts, evidence on record, particularly the conversation recorded in the voice recorder, the report given


by Truth Lab and material available on record clearly disclose that the DGO demanded bribe amount of Rs.1300/- from the complainant and also received the part of bribe amount of Rs.500/-. The Disciplinary authority has proved beyond probability that the complainant had paid Rs.500/- as bribe amount to the DGO 12/6/2013 who had demanded to pay balance amount of Rs.800/-. It is established that even though complainant attempted to give the balance bribe amount demanded by the DGO twice near his private office in Haladammanakeri, Bhadravathi he had suspected that he might be trapped and did not receive the balance bribe amount. It is also proved beyond probability that DGO has failed to maintain absolute integrity and devotion to duty, and caused dereliction of duty unbecoming of a Government Servant and thereby committed official misconduct as enumerated u/r 3(1) (i) to (iii) of Karnataka Civil Service (Conduct) Rules 1966. Therefore, this A.R.E. finds that Disciplinary Authority has proved the charges against the D.G.O. Accordingly, this point is answered in the **Affirmative**.

35. **Point No.2** : For the aforesaid reasons, this A.R.E. proceeds to record the following :

FINDING

The Disciplinary Authority has proved the charge against the D.G.O.

Submitted to Hon'ble Upalokayukta-2 for kind approval and further action in the matter.


(C.CHANDRA SEKHAR)
(I/c) Additional Registrar (Enquiries-13)
Karnataka Lokayukta,
Bengaluru.

: ANNEXURE ::

File 3	Witness examined on behalf of the Disciplinary Authority
	PW-1: Sri. Pushaparaj (Original)
	PW-2: Sri. M.V. Rajanna (Original)
	PW-3: Sri. Prasad (Original)
	PW-4: Sri. K.C. Purushotham (Original)
	Witness examined on behalf of the Defence
	DW-1: Sri. K.S. Gopalakrishna (Original)
File 4	Documents marked on behalf of the Disciplinary Authority
	Ex. P-1: Complaint (Xerox copies)
	Ex.P-2: Entrustment Mahazar (Xerox copies)
	Ex. P-3: Panchanama dated: 13/06/2013 (Xerox copies)
	Ex. P-4: Panchanama dated: 14/06/2013 (Xerox copy)
	Ex. P-5: Panchanama dated:14/06/2013 (Xerox copies)
	Ex. P-6: Panchanama dated: 15/06/2013 (Xerox copy)
	Ex. P-7: Panchanama (Xerox copies)
	Ex. P-8: Photographs(11 pages of xerox copies)
	Ex. P-9: Voice Identification Panchanama (Xerox copies)
	Ex. P-10: List of documents relating to the complainant (Xerox copies)

	Ex. P-11: Photographs (Xerox copies)
	Ex. P-12: Explanation of DGO (Xerox)
	Ex. P-13: Voice Identification Panchanama of DGO (Xerox copy)
	Ex. P-14: Photographs (2 pages of xerox copies)
	Ex. P-15: FIR in Crime No.4/2013 ((Attested copies)
	Ex. P-16: The report of Truth Labs Forensic Science Laboratory (Xerox copies)
	Ex.P-17: CDR (Xerox copies)
	Documents marked on behalf of the DGO
	Ex.D-1: Extract of register showing dispatch of application (Original)
	Ex.D-2: C.Copy of deposition of Prasad in Spl. Case(PC) 6/2014.
	Ex.D-3: C.Copy of Judgment in Spl.Case (PC) 6/2014.


15/11/21
(C. Chandra Sekhar)

(I/c) Additional Registrar Enquiries-13
Karnataka Lokayukta,
Bangalore.

