

BEFORE THE ADDITIONAL REGISTRAR, ENQUIRIES-11

KARNATAKA LOKAYUKTA, BENGALURU

ENQUIRY NUMBER: UPLOK-2/DE/770/2017

ENQUIRY REPORT Dated: 16/01/2020

Enquiry Officer: V.G.Bopaiah

Additional Registrar Enquiries-11

Karnataka Lokayukta Bengaluru.

Delinquent Government Official : Sri Eshwarappa

(Name written by him as Eswarappa
on the note sheet on 16/09/2017)

Discharged duties as Panchayath
Development Officer attached to
Oorukere Grama Panchayath,
Tumakuru District from
02/11/2011 to 28/02/2014.

Due for retirement on
superannuation on 31/10/2028.

1. Delinquent Government Official (in short, "DGO") by name Sri. Eshwarappa (name written by DGO as Eswarappa on the note sheet on 16/09/2017) was working as Panchayath Development Officer attached to Oorukere Grama Panchayath, Tumakuru District from 02/11/2011 to 28/02/2014. He is due for retirement on superannuation on 31/10/2028.
2. Background for initiating the present inquiry against the DGO needs to be set out in brief. Sri. M.P. Gangalingiah was working as Police Inspector attached to Lokayukta Police

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Station, Tumakuru from 17/10/2013 to 21/01/2015. On the basis of information received by him touching misappropriation of funds in some Grama Panchayaths within the jurisdiction of Tumakuru District he suo-motu registered case in crime number 22/2014 of Lokayukta Police Station, Tumakuru for the offences punishable under section 13(1)(c) and 13(2) of The Prevention of Corruption Act, 1988 and submitted FIR to the Court of 2nd Additional District and Sessions Judge, Tumakuru. Thereafter, he obtained search warrant from the Court of 2nd Additional District and Sessions Judge, Tumkur for search of the office of Oorukere Grama Panchayath and after securing panch witnesses conducted search of the said office. During his investigation he secured the audit report which revealed that tax of a sum of Rs.2,800/- is not remitted well in time. On his transfer, Sri. T.V. Manjunatha who discharged duties as Police Inspector attached to Lokayukta Police Station, Tumakuru from 07/10/2015 to 13/01/2016 conducted further investigation which revealed that tax of Rs.2,800/- collected during the years 2012-13 is not remitted by DGO well in time which act of DGO amounts to misconduct.

3. On the basis of the investigation report submitted by the Additional Director General of Police, Karnataka Lokayukta, Bengaluru along with the records made available by the Police Inspector attached to Lokayukta Police Station, Tumakuru, Hon'ble Upalokayukta, Karnataka in exercise of the powers conferred upon under section 9 of The Karnataka Lokayukta Act, 1984 conducted investigation which on the basis of records prima facie unearthed that DGO failed to remit the tax of Rs.2,800/- well in time and temporarily misappropriated and

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thereby has committed misconduct within the purview of Rule (3)(1) of The Karnataka Civil Services (Conduct) Rules, 1966 and accordingly, in exercise of the powers conferred upon under section 12(3) of The Karnataka Lokayukta Act, 1984 recommended the competent authority to initiate disciplinary proceedings against the DGO and entrust the inquiry to the Hon'ble Upalokayukta, Karnataka under Rule 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.

4. Subsequent to the report dated 11/04/2017 under section 12(3) of The Karnataka Lokayukta Act, 1984, Government Order bearing number ಗ್ರಾಅಪ/438/ಗ್ರಾಪಂಕಾ/2017 ಬೆಂಗಳೂರು, ದಿನಾಂಕ 05/06/2017 has been issued by the Deputy Director and Ex-Officio Under Secretary to the Government of Karnataka, Department of Rural Development and Panchayath Raj entrusting the inquiry to the Hon'ble Upalokayukta, Karnataka under Rule 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.
5. Subsequent to the Government Order ಗ್ರಾಅಪ/438/ಗ್ರಾಪಂಕಾ/2017 ಬೆಂಗಳೂರು, ದಿನಾಂಕ 05/06/2017 Order number UPLOK-2/DE/770/2017 Bengaluru dated 12/06/2017 has been ordered by the Hon'ble Upalokayukta, Karnataka nominating the Additional Registrar, Enquiries-11, Karnataka Lokayukta, Bengaluru as Inquiry Officer to frame charges and to conduct departmental inquiry against the DGO.
6. Articles of charge dated 17/08/2017 at Annexure-I which includes statement of imputation of misconduct at Annexure-II framed against the DGO is the following:

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“ಅನುಬಂಧ-1

ದೋಷಾರೋಪಣೆ

2011 ರಿಂದ 2013ನೆಯ ಸಾಲಿನಲ್ಲಿ ಆಪಾದಿತ ಸರ್ಕಾರಿ ನೌಕರರಾದ ಈಶ್ವರಪ್ಪ ಆದ ನೀವು ತುಮಕೂರು ಜಿಲ್ಲೆ ಹಾಗೂ ತಾಲ್ಲೂಕಿನ ಊರುಕೆರೆ ಗ್ರಾಮ ಪಂಚಾಯತಿಯಲ್ಲಿ ಪಂಚಾಯತಿ ಅಭಿವೃದ್ಧಿ ಅಧಿಕಾರಿಯಾಗಿ ಕಾರ್ಯ ನಿರ್ವಹಿಸಿಕೊಂಡಿದ್ದ ಕಾಲದಲ್ಲಿ 2012-13ನೆಯ ಸಾಲಿನಲ್ಲಿ ಸಂಗ್ರಹಿಸಿದ ರೂ.2,800/- ಗಳ ತೆರಿಗೆಯನ್ನು ನಿಗದಿತ ಅವಧಿಯೊಳಗೆ ಜಮಾ ಮಾಡದೆ ಸ್ವಂತಕ್ಕೆ ಬಳಸಿಕೊಂಡು ತಾತ್ಕಾಲಿಕ ಹಣ ದುರುಪಯೋಗ ಪಡಿಸಿಕೊಂಡು ಲೆಕ್ಕ ನಿರ್ವಹಣೆಯಲ್ಲಿ ವಿಫಲರಾಗಿ ಸರ್ಕಾರಿ ನೌಕರರಿಗೆ ತಕ್ಕುದಲ್ಲದ ರೀತಿಯಲ್ಲಿ ನಡೆದುಕೊಂಡು ದುರ್ನಡತೆಯಿಂದ ವರ್ತಿಸಿ ಕರ್ನಾಟಕ ನಾಗರಿಕ ಸೇವಾ ನಿಯಮಗಳು (ನಡತೆ) 1966 ನಿಯಮ 3(1)ರಡಿಯಲ್ಲಿ ದುರ್ನಡತೆಯನ್ನೆಸಗಿರುತ್ತೀರಿ.

ಅನುಬಂಧ-2

ದೋಷಾರೋಪಣೆಯ ವಿವರ

ದೂರುದಾರರಾದ ತುಮಕೂರು ಲೋಕಾಯುಕ್ತ ಕಛೇರಿಯ ಆರಕ್ಷಕ ನಿರೀಕ್ಷಕರು ಸಂಗ್ರಹಿಸಿದ ಮಾಹಿತಿ ಹಾಗೂ ದಾಖಲಾತಿಗಳ ಆಧಾರದ ಮೇಲಿಂದ ಮತ್ತು ಊರುಕೆರೆ ಗ್ರಾಮ ಪಂಚಾಯತಿಯಲ್ಲಿ ದಾಖಲಾತಿಗಳನ್ನು ಸರಿಯಾಗಿ ನಿರ್ವಹಿಸದೆ ಇರುವುದು, ಬಿಲ್ಲುಗಳನ್ನು ಸೃಷ್ಟಿಸಿಕೊಂಡು ಸರ್ಕಾರದ ಹಣ ದುರುಪಯೋಗಪಡಿಸಿರುವುದು ಮತ್ತು ಸರ್ಕಾರಕ್ಕೆ ಸುಳ್ಳು ಮಾಹಿತಿಯುಗಳನ್ನು ನೀಡುತ್ತಿರುವ ಕುರಿತು ದೂರುಗಳು ಸಲ್ಲಿಕೆಯಾಗುತ್ತಿದ್ದ ಕಾರಣದಿಂದ ಶೋಧನಾ ಕಾರ್ಯವನ್ನು ದಿನಾಂಕ 30-07-2017ರಂದು ಬೆಳಿಗ್ಗೆ 11-35 ಗಂಟೆಯಿಂದ ರಾತ್ರಿ 9-00 ಗಂಟೆಯವರೆಗೆ ನ್ಯಾಯಾಲಯದಿಂದ ಪಡೆದುಕೊಂಡ ವಾರಂಟ್ ಆಧಾರದ ಮೇಲೆ ಕಛೇರಿಯ ಎಲ್ಲಾ ದಾಖಲಾತಿಗಳನ್ನು ಪರಿಶೀಲಿಸಿ ತರುವಾಯ ದಾಖಲೆಗಳನ್ನು/ರಿಜಿಸ್ಟರ್‌ಗಳನ್ನು ಜಪ್ತು ಮಾಡಿರುವುದು ಕಂಡುಬರುತ್ತದೆ.

ಸದರಿ ಆಪಾದನೆಗೆ ಸಂಬಂಧಿಸಿದಂತೆ, ತನಿಖಾಧಿಕಾರಿಯವರು ವಶಪಡಿಸಿಕೊಂಡ ದಾಖಲೆಗಳ ಆಧಾರದ ಮೇಲೆ ಹಾಗೂ ತನಿಖೆಯಿಂದ ಈ ಕೆಳಕಂಡ ಅಂಶಗಳು ಕಂಡು ಬರುತ್ತವೆ.

- 1) 2012-13 ನೆಯ ಸಾಲಿನಲ್ಲಿ ಸಂಗ್ರಹಿಸಿರುವ ರೂ.2,800/- ಗಳ ತೆರಿಗೆಯನ್ನು ನಿಗದಿತ ಅವಧಿಯೊಳಗೆ ಸರ್ಕಾರಕ್ಕೆ ಜಮಾ ಮಾಡದೆ ತಾತ್ಕಾಲಿಕವಾಗಿ ಬಳಸಿಕೊಂಡು ಹಣ ದುರುಪಯೋಗಯೋಗಪಡಿಸಿಕೊಂಡಿರುವುದು.
- 2) ನಿರ್ವಹಿಸಿರುವ ಕಾಮಗಾರಿಗಳ ಬಿಲ್ಲುಗಳಲ್ಲಿ ತೆರಿಗೆ ಕಟಾಯಿಸದೆ ಇರುವುದು.

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3) ಸಾಮಗ್ರಿಗಳ ಖರೀದಿ ಪ್ರಕ್ರಿಯೆಯಲ್ಲಿ ಸ್ಪರ್ಧಾತ್ಮಕ ದರಪಟ್ಟಿಗಳನ್ನು ಪಡೆಯದೆ ಸಾಮಗ್ರಿಗಳನ್ನು ಖರೀದಿಸಿರುವುದು.

ದೂರಿನಲ್ಲಿನ ಅಂಶಗಳಿಗೆ ಆಪಾದಿತ ಸರ್ಕಾರಿ ನೌಕರರಾದ ನೀವು ರೂ.2,800/-ಗಳ ತೆರಿಗೆ ಹಣವನ್ನು ನಿಗದಿತ ಅವಧಿಯೊಳಗೆ ಸರ್ಕಾರಕ್ಕೆ ಜಮಾ ಮಾಡದೆ ತಾತ್ಕಾಲಿಕ ಹಣ ದುರುಪಯೋಗಯೋಗಪಡಿಸಿಕೊಂಡಿರುವ ನಿಮ್ಮ ಈ ಕೃತ್ಯ ದುರ್ನಡತೆ ಎಂಬ ಪರಿಭಾಷೆಯಲ್ಲಿ ಬರುವುದರಿಂದ ಕರ್ನಾಟಕ ಸಿವಿಲ್ ಸೇವಾ (ನಡತೆ) 1966 ರಡಿ ನಿಯಮ 3(1)ರಡಿಯಲ್ಲಿ ರಡಿಯಲ್ಲಿ ದುರ್ವರ್ತನೆ ಮಾಡಿದ್ದಾರೆಂದು ಕಂಡುಬಂದಿದ್ದರಿಂದ ಎದುರುದಾರರ ವಿರುದ್ಧ ಶಿಸ್ತಿನ ಕ್ರಮ ಕೈಗೊಳ್ಳಬೇಕೆಂದು ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಕರ್ನಾಟಕ ಲೋಕಾಯುಕ್ತ ಕಾಯ್ದೆ ಕಲಂ 12(3) ರಡಿಯಲ್ಲಿ ವರದಿಯನ್ನು ಸಲ್ಲಿಸಿದ್ದು ಶಿಸ್ತು ಕ್ರಮವನ್ನು ಜರುಗಿಸಿ ಇಲಾಖಾ ವಿಚಾರಣೆಗೆ ಅನುಮತಿಯನ್ನು ನೀಡುವಂತೆ ಕೋರಿರುವುದನ್ನು ಪರಿಗಣಿಸಿ. ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರವು ಈ ಸಂಸ್ಥೆಯಿಂದ ಮಾಡಿರುವ ಶಿಫಾರಸ್ಸನ್ನು ಒಪ್ಪಿ ನಿಮ್ಮ ವಿರುದ್ಧ ಶಿಸ್ತು ಕ್ರಮಕೈಗೊಂಡು ವರದಿಯನ್ನು ಸಲ್ಲಿಸುವಂತೆ ಗೌರವಾನ್ವಿತ ಉಪಲೋಕಾಯುಕ್ತರವರಿಗೆ ವಹಿಸಲಾಗಿರುತ್ತದೆ. ಆದ್ದರಿಂದ ನಿಮ್ಮ ಮೇಲೆ ಈ ದೋಷಾರೋಪಣೆ”.

7. In response to due service of articles of charge, DGO entered appearance before this authority on 16/09/2017 and engaged defence assistant for his defence.
8. In the course of first oral statement of DGO recorded on 16/09/2017 he pleaded not guilty.
9. In the course of written statement of DGO filed on 24/10/2017 he has denied the allegations levelled against him in the articles of charge. It is contended that apart from the post of Panchayath Development Officer Government has established the post of Secretary, Bill Collector and other posts and in connection with the nature of duties Order number ಗ್ರಾಅಪ 313 ಗ್ರಾಪಂಕಾ 2013 ದಿನಾಂಕ 03/04/2014 has been issued according to which collection of tax is the duty assigned to the Secretary and Bill Collector of the Panchayath. It is contended that “ಕರ್ನಾಟಕ ಪಂಚಾಯತ್ ರಾಜ್ (ಗ್ರಾಮ ಪಂಚಾಯತಿಗಳ ಆಯವ್ಯಯ ಮತ್ತು ಲೆಕ್ಕಪತ್ರಗಳು) ನಿಯಮಗಳು, 2016” has been issued by the Government in which Rule number 18 has been incorporated according to which in the absence of

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authorisation by way of resolution by Grama Panchayath authorising the Bill Collector or other staff the Secretary of the Panchayath is responsible for collection of tax. It is contended that Panchayath Development Officer has not been assigned with the duty of collection and remittance of tax. It is contended that on 13/02/2014 the Bill Collector remitted a sum of Rs.2,800/-. It is contended that the Investigating Officer has filed report on 11/11/2015 and twenty three months earlier to the same the Investigating Officer has furnished false information in respect of amount which is remitted. It is contended that Second Division Assistant attached to the Panchayath used to maintain accounts branch and that it is the duty of the Second Division Assistant to remit tax. It is contended that in case any kind of tax is found not remitted, then, the same may be remitted subsequently and therefore there is no question of misappropriation of funds. It is contended that there is no provision to initiate disciplinary action on the basis of the objections raised in the audit. It is contended that in the audit report it is observed that out of total tax of Rs.29,41,341/- collected during the years 2012-13 a sum of Rs.29,38,541/- has been remitted and balance of Rs.2,800/- has to be recovered from the bill collectors by name Chethana Kumari, V. Manjunatha and also from DGO. It is contended that Ad hoc Committee has stated that since a sum of Rs.2,800/- has been remitted the same has been dropped. Law laid down in the decision in State of Punjab and Others V/S Ram Singh, Ex-Constable reported in AIR 1992 SC page 2188 and the law laid down in the decision in Vijay Singh V/S State of U.P and Others reported in (2012) 5 SCC page 242

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are relied upon in the course of written statement. It is thus sought to contend that DGO is not guilty of misconduct.

10. The disciplinary authority has examined Sri T.V. Manjunatha as PW1, Sri. M.P. Gangalingaiah as PW2. During evidence of PW1, xerox copy of FIR dated 28/07/2014 in a single sheet in crime number 22/2014 of Lokayukta Police Station, Tumakuru is marked as per Ex P1, xerox copy of complaint dated 28/07/2014 in a single sheet of PW1 enclosed to Ex P1 is marked as per Ex P2, xerox copy of audit report consisting of twelve sheets is marked as per Ex P3, portion of Ex P3 is marked as per Ex P3(a). During cross examination of PW1 attested copy of Government Order number ಗ್ರಾಅಪ 392 ಗ್ರಾಪಂಕಾ 2011 ಬೆಂಗಳೂರು, ದಿನಾಂಕ 04/01/2012 in two sheets is marked as per Ex D1. During evidence of PW2 xerox copy of mahazar dated 30/07/2014 conducted during search in eight sheets is marked as per Ex P4, xerox copy of statement dated 31/07/2014 in a single sheet of DGO is marked as per Ex P5, xerox copy of letter dated 22/08/2014 of the Chief Executive Officer, Zilla Panchayath, Tumakuru addressed to the Police Inspector attached to Lokayukta Police Station, Tumakuru is marked as per Ex P6, xerox copy of his letter dated 22/11/2014 in a single sheet addressed to the Chief Executive Officer, Zilla Panchayath Tumakuru is marked as per Ex P7.

11. In the course of second oral statement of DGO recorded on 27/06/2019 he has stated that he would get himself examined as defence witness. He has stated that he does not intend to examine defence witness.

12. DGO got himself examined as DW 1. During his evidence, attested copy of letter in a single sheet dated 27/01/2014 is marked as per Ex D2, attested copy of a single sheet

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containing two xerox impressions of bank challan is marked as per Ex D3, attested copy of statement of account dated 20/12/2016 in a single sheet of Cauvery Grameena Bank, Kora branch is marked as per Ex D4, attested copy of proceedings dated 22/08/2017 in a single sheet of Ad-hoc Committee of Executive Officer, Taluk Panchayath, Tumakuru is marked as per Ex D5.

13. Since DGO has adduced defence evidence incriminating circumstances which appeared against the DGO in the evidence of PWs 1 and 2 are not put to him by way of questionnaire.
14. In the course of written argument of the Presenting Officer 05/10/2019 she has referred to the articles of charge and also evidence on record. On the strength of the evidence of PWs 1 and 2 it is sought to contend that charge against the DGO stands established. With reference to the evidence of DGO it is sought to contend that in the course of examination-in-chief DGO has stated that it is his duty to remit tax. It is sought to contend that during cross examination DGO has stated that subsequent to service of Ex D2 he has not furnished any reply. It is contended that evidence on record establishes the alleged charge.
15. In the course of written argument of DGO filed on 17/09/2019 articles of charge are referred to and also evidence on record. With reference to cross examination of PW1 it is contended that he is not aware that the date of collection of tax of Rs.2,800/- and that date of remittance is not known to him. With reference to the decision in Narain V/S State of Punjab reported in AIR 1959 SC page 484 and the decision in AIR 1954 SC page 54 it is sought to contend that the person who unfolds the story of prosecution is essential and not the person

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who comes immediately after the incident. It is contended that Exs P1 to P3 are not proved. With reference to the cross examination of PW2 it is sought to contend that fact that tax of Rs.2,800/- is not remitted came to his knowledge on the basis of the audit report the attested copy of which is at Ex P3 and further it came into light that Chethanakumari and V. Manjunatha were collecting tax. It is contended that cross examination of PW2 shows that he cannot say the date of which Chethanakumari collected tax of Rs.2,800/- and that he could not secure document to show that the said amount has been handed over to DGO. It is contended that evidence of PW2 establishes that Chethankumari remitted tax of Rs.2,800/- on 13/02/2014. It is contended that evidence of PW2 points out that he conducted investigation on the basis of Ex P3. It is contended that nothing is spoken to by PW2 during evidence that DGO temporarily misappropriated a sum of Rs.2,800/-. With reference to the evidence of DGO it is contended that Ex D1 establishes the duties of DGO and that Exs D3 and D4 establishes remittance of the said tax on 13/02/2014. It is contended that Ex D5 points out that matter with respect to tax of Rs.2,800/- has been dropped. It is contended that the Investigating Officer has furnished false information. It is contended that Exs D1 to D4 establishes the innocence of DGO. With reference to the decision in Shivananda.N V/S State reported in 1993 KSLJ page 977 and the decision in Palakshaiah V/S Secretary, Department of Education and Others reported in 1993 KSLJ page 388 it is sought to contend that on the basis of audit report it cannot be held that charge stands established. Decisions referred to in the course of written statement of DGO are also referred to in the course of written argument of DGO.

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16. In tune with the articles of charge, point which arises for consideration is:

Whether it stands established that during the tenure of DGO as Panchayath Development Officer attached to Oorukere Grama Panchayath, Tumakuru Taluk, Tumakuru District from 02/11/2011 to 28/02/2014 DGO failed to remit tax of a sum of Rs.2,800/- to the Government well in time which was collected during the years 2012-13 and temporarily misappropriated the said amount and thereby is guilty of misconduct within the purview of Rule 3(1) of The Karnataka Civil Services (Conduct) Rules, 1966?

17. Evidence of PW1 touching registration of case in crime number 22/2014 of Lokayukta Police Station, Tumakuru for the offences punishable under section 13(1)(c) and 13(2) of The Prevention of Corruption Act, 1988 is not under challenge. That portion of evidence of PW1 is also spoken to by PW2 during his evidence. Evidence of PW2 touching registration of case in crime number 22/2014 is not under challenge. In the course of evidence PW2 has spoken to search of the office of Panchayath Development Officer, Oorukere Grama Panchayath. That portion of his evidence is not under challenge. No incriminating evidence could be secured by PW2 during search with the aid of search warrant. Ex P4 is the xerox copy of the mahazar drawn during search of the office of Panchayath Development Officer, Oorukere Grama Panchayath. Evidence of PW2 that DGO appeared before him in Lokayukta Police Station, Tumakuru on 31/07/2014 and that on the said day DGO has given statement the attested copy of which is at Ex P5 has not been assailed during his cross examination. Ex P5

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would show that according to DGO he was under pressure of work and that local residents were raising quarrel very often and that he was threatened with dire consequences. Upon scanning the contents of Ex P5 nowhere it is found that DGO offered any explanation for delay in remitting tax of Rs. 2,800/-. Nothing is found mentioned in Ex P5 that it was not his duty either to collect tax or to remit tax to the Government well in time. Defence as put forward in the course of his written statement as well as in the course of his written argument is not found reflected in Ex P5 which was given by him at the earliest point of time.

18. It is in the evidence of PW2 that he received the audit report the xerox copy of which is at Ex P3. It is found in his evidence that he secured Ex P6 which is the xerox copy of letter dated 22/08/2014 addressed to him by the Chief Executive Officer, Zilla Panchayath, Tumakuru.

19. During cross examination of PW2 it is brought out that at the time of conducting mahazar the attested copy of which is at Ex P4 he came to know that Chethanakumari and V. Manjunath whose names are referred to at Ex P3(a) were working as Bill Collectors. Though it is brought out during cross examination of PW2 that he cannot say the date on which Chethanakumari collected tax of Rs.2,800/- that portion of answer will not lend assurance to the defence for the reason that collection of the said tax is not under challenge. Though it is also brought out during his cross examination that he could not secure document to show that Chethanakumari handed over cash of Rs.2,800/- to DGO it needs to be expressed that DGO being the then Administrative head of Oorukere Grama Panchayath it was his duty to collect information from the tax

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collectors as to how much tax is collected every day. It also needs to be expressed that even if Chethanakumari has not maintained any document touching handing over of the said quantum of tax to DGO, DGO is not expected to shirk his responsibility in not collecting information about the quantum tax collected.

20. Though it is stated by PW2 during cross examination that on the day on which he conducted mahazar the xerox copy of which is at Ex P4 no evidence against DGO is secured he has spoken to during cross examination that on the basis of the audit report the attested copy of which is at Ex P3 he came to know about the tax of Rs.2,800/-. At this juncture Ex P3(a) which is the relevant portion of Ex P3 needs to be looked into. It is seen in Ex P3(a) that in the course of audit for the years 2012-13 a sum of Rs.29,41,341/- has been collected towards tax and out of the said amount a sum of Rs.29,38,541/- has been credited and a sum of Rs.2,800/- was found not remitted. Ex P3(a) also shows that during that period DGO was working as Panchayath Development Officer of Oorukere Grama Panchayath, Chethanakumari and V. Manjunatha were working as Bill Collectors. It is also found in Ex P3(a) that any amount collected towards tax has to be remitted on the very day. It is further found in Ex P3(a) that the Panchayath Development Officer has not effectively verified collection and remittance of tax. It is found mentioned in Ex P3(a) that suitable action has to be initiated against the concerned officers and staff for the above latches. Ex P3(a) is not under challenge and therefore the same needs to be accepted. It is brought out during cross examination of PW2 that at the relevant point of time Chethanakumari and V. Manjunatha were

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working as Bill Collectors. Though it is brought out during cross examination of PW2 that he cannot say the date on which Chethanakumari collected tax of Rs.2,800/- the same is of no avail to DGO for the reason that collection of the said tax is not under challenge. Though it is found in the cross examination of PW2 that he could not secure document touching handing over of tax of Rs.2,800/- to DGO Ex P3(a) unfolds entrustment of the said tax to DGO. Ex D3 which is the attested copy of the challan shows that Chethanakumari remitted tax of Rs.2,800/- on 13/02/2014. Remittance of the said amount is also found in Ex D4 which is the attested copy of statement of account maintained in Cauvery Grameena Bank, Kora branch. Though it is brought out during cross examination of PW1 that his investigation has not revealed remittance of Rs.2,800/- by the tax collector the said answer will not lend assurance to the defence in the presence of entries found in Exs D3 and D4. Though it is brought out during cross examination of PW1 that he does not know the date on which amount mentioned in Ex P3(a) is remitted and that the name of the official who collected the amount mentioned in Ex P3(a) is equally not known to him that portion of his answer also is of no assistance to the defence for the reason that collection and remittance of the said amount is not in dispute. Though it is brought out during cross examination of PW1 that after collection of tax the tax collector has to remit the tax that portion of his answer will not absolve the liability of DGO for the reason that DGO is the administrative authority of Village Panchayath and as such he is duty bound to see that tax collected is remitted well in time. Suggestion made to PW1 during cross examination suggesting that the tax collector has not handed over the tax has been

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denied by him. It is in the evidence of PW1 as could be seen from paragraph number 4 of his deposition that upon perusal of records it came into light that DGO was duty bound to remit tax of Rs.2,800/- but failed to remit the said amount. It is also in paragraph number 4 of his deposition that DGO failed to remit the said amount well in time. Upon appreciation of entire cross examination of PW1 I find no material infirmity and therefore I have no hesitation whatsoever to hold that his evidence is worthy of credence and acceptance.

21. As could be seen from the evidence of DGO he was working as Panchayath Development Officer attached to Oorukere Grama Panchayath from 02/11/2011 to 28/02/2014. During evidence he has spoken to Ex D1 which is the attested copy of Government Order bearing number ಗ್ರಾಅಪ 942 ಗ್ರಾಪಂಕಾ 2011 ಬೆಂಗಳೂರು ದಿನಾಂಕ 04/01/2012. DGO has spoken to during evidence that as per Ex D1 it is his duty to collect and remit tax. This portion of his evidence during his examination-in-chief establishes that he was bound to remit the said tax of Rs.2,800/-. During evidence DGO has referred to Ex D2 which is the attested copy of the letter addressed to him by the auditor. It is found in Ex D2 that with the aid of the original of the same it is brought into notice of DGO by the auditor that a sum of Rs.2,800/- is not remitted. It is also found in Ex D2 that DGO was called upon by the auditor to remit the said amount of Rs.2,800/- and to place compliance report. During cross examination DGO has stated that he has not furnished reply after receipt of Ex D2. Nothing is found in the evidence of DGO that he had any impediment to furnish compliance report after the receipt of the original of Ex D2. Nothing is found in the evidence of DGO that he has communicated the auditor that it was not his duty

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to remit the said tax of Rs.2,800/-. He admits during cross examination that tax of Rs.2,800/- collected during the years 2012-13 has been remitted on 13/02/2014. During evidence DGO has referred to Exs D3 and D4. Though he has stated during evidence that on the basis of Exs D3 and D4 it should not have been shown in the audit report that there was shortage of a sum of Rs.2,800/- there is no basis for the said portion of evidence of DGO. Though it is stated during evidence by DGO that a sum of Rs.2,800/- collected towards tax was not with him Ex P3(a) points out towards his liability. Though it is spoken to by DGO during evidence that responsibility of maintaining the accounts was vested with the Secretary of Panchayath and the concerned clerk his evidence as could be seen from second sentence of his evidence at paragraph number 1 of his deposition as already referred to above establishes that he has admitted that as per Ex D1 it was his duty to collect and remit tax. Upon appreciation of the entire evidence of DGO it is clear that his evidence instead of lending assurance to his defence lends assurance to the charge levelled against him.

22. In the decision reported in AIR 1992 SC page 2188 relied upon in the course of written argument of DGO law is laid down by the Hon'ble Apex Court touching the acts which amount to misconduct. It is laid down :

"5. Thus it could be seen that the word "misconduct" though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or

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wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to be scope of the statute and the public purpose it seeks to serve.”

Law laid down in the above decision instead of supporting the defence of DGO supports the case of the disciplinary authority. Likewise, law laid down in the decision reported in (2012) 5 SCC page 242 relied upon in the course of written argument of DGO equally does not lend support to the defence. Law is not laid down in the decision reported in AIR 1959 SC page 484 and also in the decisions reported in AIR 1954 SC page 54, 1993 KSLJ page 977 and in the decision in 1993 KSLJ page 388 that acts complained of in the articles of charge against the DGO will not attract the word misconduct. Rule 25 of “ಕರ್ನಾಟಕ ಪಂಚಾಯತ್ ರಾಜ್ (ಗ್ರಾಮ ಪಂಚಾಯತಿಗಳ ಆಯವ್ಯಯ ಮತ್ತು ಲೆಕ್ಕಪತ್ರಗಳು) ನಿಯಮಗಳು, 2016” relied upon by DGO would show that either the Secretary or the authorised person of the Panchayath has to collect tax for which he is responsible. Nothing is found in Rule 25 of “ಕರ್ನಾಟಕ ಪಂಚಾಯತ್ ರಾಜ್ (ಗ್ರಾಮ ಪಂಚಾಯತಿಗಳ ಆಯವ್ಯಯ ಮತ್ತು ಲೆಕ್ಕಪತ್ರಗಳು) ನಿಯಮಗಳು, 2016” that the Panchayath Development Officer is not duty bound to remit tax. As already referred to above, in the course of evidence DGO has specifically admitted that it is his duty to collect and remit tax as found in Ex D1.

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23. In the presence of overwhelming evidence as referred to above I am not persuaded to accept the contentions put forward by DGO in the course of his written statement as well as in the course of his written argument.

24. To sum up, evidence of PWs 1 and 2 and also Ex P3(a) as excerpted hereinbefore establishes that DGO was duty bound to remit tax well in time. Nothing worthy is found elicited during cross examination of PWs 1 and 2 to disbelieve their evidence. Evidence of DGO with reference to Ex D1 would show that DGO himself has admitted that it was his duty to remit tax. Subsequent to the receipt of original or Ex D2 DGO has not responded to furnish his reply. On the strength of these materials it needs to be concluded that DGO has not ventured to remit tax of Rs.2,800/- well in time which omission attracts the alleged misconduct and being of this view I proceed with the following:

R E P O R T

Charge against the DGO by name Sri. Eshwarappa that during his tenure as Panchayath Development Officer attached to Oorukere Grama Panchayath, Tumakuru Taluk, Tumakuru District from 02/11/2011 to 28/02/2014 he failed to remit tax of a sum of Rs.2,800/- to the Government well in time which was collected during the years 2012-13 and temporarily misappropriated the said amount and thereby is guilty of misconduct within the purview of Rule 3(1) of The Karnataka Civil Services (Conduct) Rules, 1966 is proved.

DGO is due for retirement on superannuation of 31/10/2028.

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Submit this report to the Hon'ble Upalokayukta-2, Karnataka in a sealed cover forthwith along with the connected records.


(V.G. BOPALIAH)

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

ANNEXURE

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

PW 1:- Sri. T.V. Manjunath

PW 2:- Sri. M.P.Gangalingaiah

List of witness examined on behalf of DGO:-

DW1:- Sri. Eshwarappa (DGO)

List of documents marked on behalf of Disciplinary Authority:-

- Ex P 1: Xerox copy of FIR dated 28/07/2014 in a single sheet in crime number 22/2014 of Lokayukta Police Station, Tumakuru.
- Ex P 2 Xerox copy of complaint dated 28/07/2014 in a single sheet of PW1 enclosed to Ex P1.
- Ex P 3 Xerox copy of audit report consisting of twelve sheets.
- Ex P 4 Xerox copy of mahazar dated 30/07/2014 conducted during search in eight sheets.
- Ex P 5 Xerox copy of statement dated 31/07/2014 in a single sheet of DGO.

- Ex P 6 Xerox copy of letter dated 22/08/2014 of the Chief Executive Officer, Zilla Panchayath, Tumakuru addressed to the Police Inspector attached to Lokayukta Police Station, Tumakuru.
- Ex P 7 Xerox copy of his letter dated 22/11/2014 in a single sheet addressed to the Chief Executive Officer, Zilla Panchayath Tumakuru.

List of documents marked on behalf of DGO:

- Ex D1 Attested copy of Government Order number 392 ಗ್ರಾಪಂಕಾ 2011 ಬೆಂಗಳೂರು, ದಿನಾಂಕ 04/01/2012 in two sheets.
- Ex D2 Attested copy of letter in a single sheet dated 27/01/2014.
- Ex D3 Attested copy of a single sheet containing two xerox impressions of bank challan.
- Ex D4 Attested copy of statement of account dated 20/12/2016 in a single sheet of Cauvery Grameena Bank, Kora branch.
- Ex D5 Attested copy of proceedings dated 22/08/2017 in a single sheet of Ad-hoc Committee of Executive Officer, Taluk Panchayath, Tumakuru.

(V.G. BOPAIAH)

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



KARNATAKA LOKAYUKTA

No. UPLOK-2/DE.770/2017/ARE-11

Multi Storied Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001.
Dated 17.01.2020.

RECOMMENDATION

Sub:- Departmental inquiry against Sri Eeshwarappa,
Panchayath Development Officer, Urukere
Grama Panchayath, Tumkur Taluk and District
- reg.

Ref:- 1) Government Order No. RDP 438 GPS 2017
dated 05.06.2017.

2) Nomination order No. UPLOK-2/DE.770/2017
dated 12.06.2017 of Upalokayukta, State of
Karnataka.

3) Inquiry report dated 16.01.2020 of Additional
Registrar of Enquiries-11, Karnataka
Lokayukta, Bengaluru.

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The Government by its order dated 05.06.2017,  
initiated the disciplinary proceedings against Sri Eeshwarappa,  
Panchayath Development Officer, Urukere Grama Panchayath,  
Tumkur Taluk and District, [hereinafter referred to as  
Delinquent Government Official, for short as 'DGO'] and  
entrusted the departmental inquiry to this Institution.

2. This Institution by Nomination Order No. UPLOK-2/DE.770/2017 dated 12.06.2017 nominated Additional Registrar of Enquiries-11, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct departmental inquiry against DGO for the alleged charge of misconduct, said to have been committed by him.

3. The DGO - Sri Eeshwarappa, Panchayath Development Officer, Urukere Grama Panchayath, Tumkur Taluk and District, was tried for the following charges :-

“2011ರಿಂದ 203ನೆಯ ಸಾಲಿನಲ್ಲಿ ಆಪಾದಿತ ಸರ್ಕಾರಿ ನೌಕರರಾದ ಈಶ್ವರಪ್ಪ ಆದ ನೀವು ತುಮಕೂರು ಜಿಲ್ಲೆ ಹಾಗೂ ತಾಲ್ಲೂಕಿನ ಊರುಕೆರೆ ಗ್ರಾಮ ಪಂಚಾಯತಿಯಲ್ಲಿ ಪಂಚಾಯತಿ ಅಭಿವೃದ್ಧಿ ಅಧಿಕಾರಿಯಾಗಿ ಕಾರ್ಯ ನಿರ್ವಹಿಸಿಕೊಂಡಿದ್ದ ಕಾಲದಲ್ಲಿ 2012-13ನೆಯ ಸಾಲಿನಲ್ಲಿ ಸಂಗ್ರಹಿಸಿದ ರೂ.2,800/-ಗಳ ತೆರಿಗೆಯನ್ನು ನಿಗದಿತ ಅವಧಿಯೊಳಗೆ ಜಮಾ ಮಾಡದೆ ಸ್ವಂತಕ್ಕೆ ಬಳಸಿಕೊಂಡು ತಾತ್ಕಾಲಿಕ ಹಣ ದುರುಪಯೋಗ ಪಡಿಸಿಕೊಂಡು ಲೆಕ್ಕ ನಿರ್ವಹಣೆಯಲ್ಲಿ ವಿಫಲರಾಗಿ ಸರ್ಕಾರಿ ನೌಕರನಿಗೆ ತಕ್ಕುದಲ್ಲದ ರೀತಿಯಲ್ಲಿ ನಡೆದುಕೊಂಡು ದುರ್ನಡತೆಯಿಂದ ವರ್ತಿಸಿ, ಕರ್ನಾಟಕ ನಾಗರಿಕ ಸೇವಾ ನಿಯಮಗಳು (ನಡತೆ) 1966 ನಿಯಮ 3(1)ರಡಿಯಲ್ಲಿ ದುರ್ನಡತೆಯನ್ನೆಸಗಿದ್ದೀರಿ.”

4. The Inquiry Officer (Additional Registrar of Enquiries-11) on proper appreciation of oral and documentary evidence

has held that the Disciplinary Authority has proved the above charge against DGO Sri Eeshwarappa, Panchayath Development Officer, Urukere Grama Panchayath, Tumkur Taluk and District.'

5. On re-consideration of report of inquiry and on consideration of all the materials on record, 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 - Sri Eeshwarappa, is due for retirement from service on 31.10.2028.

7. Having regard to the nature of charge '*proved*' against the DGO - Sri Eeshwarappa, Panchayath Development Officer, Urukere Grama Panchayath, Tumkur Taluk and District, and considering the totality of circumstances, it is hereby recommended to the Government to impose penalty of 'withholding 4(four) annual increments payable to DGO - Sri Eeshwarappa, with cumulative effect'.

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

Connected records are enclosed herewith.

Bs\*

*Patil* 17-1-20  
(JUSTICE B.S.PATIL)  
Upalokayukta,  
State of Karnataka.