

KARNATAKA - LOKAYUKTA

BEFORE ADDITIONAL REGISTRAR (ENQUIRIES -10)

PRESENT :

SRI. MASTER R.K.G.M.M. MAHASWAMIJI, MA., LL.M.,
ADDITIONAL REGISTRAR ENQUIRIES-10,
M.S. BUILDING,
KARNATAKA LOKAYUKTA,
BANGALORE - 560 001.

DEPARTMENTAL ENQUIRY NO. **LOK/DE/477/2015/ARE-10**

COMPLAINANT DISCIPLINARY AUTHORITY	SRI. N. VASANTH KUMAR GOVERNMENT OF KARNATAKA, URBAN DEVELOPMENT DEPARTMENT, (BBMP) (Through Presenting Officer)
V/s	
DELINQUENT GOVERNMENT OFFICIALS	1. SRI. B.T. RAMESH, Chief Engineer (now retired). 2. SRI. BASAVARAJU. M, Technical Assistant. 3. SRI. IDEYA VANDON, Executive Engineer. 4. SRI. NARASIMHA MURTHY K.B. Assistant Engineer. 5. SRI. MOHAN. S. Assistant Executive Engineer. 6. SRI. B.N. KANAKADAS, Executive Engineer (now retired). Bruhath Bengaluru Mahanagarapalike, Bengaluru. (DGOs-1 & 5 - placed exparte, DGOs 4 & 6 represented by Sri. Sudeep Bangera, Advocate, DGO-3 represented by Sri. Cheluvvaraju, Defense Assistant and DGO-2 party-in-person)

Subject : Departmental Inquiry against DGOs as noted in the cause title -reg.,

- Reference/s** :
1. *Report* u/S 12(3) of the Karnataka Lokayukta Act, 1984 in Compt/lok/BCD/3065/2014/ARE-1 dt. 02.05.2015.
 2. *Government Orders* No. UDD 582 MNU 2015 Bengaluru dated 02.07.2015 & No. UDD 582 MNU 2015 dated 03.11.2015 and Corrigendum dated 18.06.2016.
 3. *Nomination Order* No.LOK/DE/477/2015 Bengaluru dt. 01.02.2017 of Hon'ble Lokayukta.

- i. Nature of Case : Departmental Enquiry
- ii. Provision of law under which Article of charge/s framed. : U/R 3 (1) of Karnataka Civil Services(Conduct) Rules, 1966.
- iii. Date of Submission of report : 27th December 2018.

-: DEPARTMENTAL - ENQUIRY - REPORT :-

1. This is the departmental enquiry initiated and held against DGOs 1 to 6 as the complainant by name Sri. *N. Vasanth Kumar* has filed a complaint in Lokayukta Office against the Delinquent Government Officials-1 to 6 alleging their dereliction of duty amounting to misconduct.
2. The **Comments** of DGOs 1 to 6 on the report of Investigation Officer called, but, they failed to submit their comments in spite of given sufficient time and opportunity. Hence, a *Report* was sent to the Government

u/S 12(3) of the Karnataka Lokayukta Act, 1984 as per reference No. 1. In pursuance of the report, Government was pleased to issue the **Government Order** (G.O.) dated 02.07.2015, 03.11.2015 and corrigendum dated 18.06.2016 authorizing Hon'ble Lokayukta to hold an enquiry as per reference no. 2.

3. In pursuance of the Government Order, a **nomination order** was issued by Hon'ble Lokayukta on 01.02.2017 authorizing ARE-10 to frame Article of Charge/s against DGOs 1 to 6 and hold an enquiry to find out truth and to submit a report as per reference No. 3.
4. Accordingly, *Article of charge/s* framed/prepared under Rule 11(3) of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 and sent to the Delinquent Government Officials 1 to 6 on 15.03.2017
5. The article of **charge/s** and the statement of imputations of misconduct framed/prepared and leveled against the DGOs 1 to 6 are **reproduced as hereunder** :-

ANNEXURE NO. 1
CHARGE

5(1) That, you DGO (1) Sri. B.T. **Ramesh**, Chief Engineer, now retired), you DGO (2) Sri. **Basavaraju M**, Technical Assistant, you DGO (3)

Sri. **Ideya Vandon**, Executive Engineer, you DGO
(4) Sri. **Narasimha Murthy** K.B., Assistant
Engineer, you DGO (5) Sri. **Mohan S.**, Assistant
Executive Engineer and you DGO (6) Sri. **B.N.
Kanakadas**, Executive Engineer (now retired),
Bruhath Bengaluru Mahanagarapalike,
Bangalore, *have committed irregularities while
carrying out the following works : -*

5(2)(i) *An estimate amounting to Rs. 15 lakhs for
improvements to drains and footpath at 7th, 8th
and 9th cross in Ward No. 103 is administratively
approved and technically sanctioned by the Chief
Engineer (W), BBMP, on 19.8.2009. There is no
report explaining the necessity of work
accompanying the estimate. The estimate is
also not signed by the Assistant Engineer and
Assistant Executive Engineer and is signed by
only Executive Engineer, BBMP, Gandhinagar
Division.*

ii) *As per the tender agreement No. 356/09-10,
dt. 20.9.2009, the above work has been
entrusted to Sri. Narayana Gowda, at 9.97%
above SR (Standard Rate) of 2008-09.*

iii) *As per MB extract, improvement works
have been executed at 1st B Main Road, and 2nd*

Cross Road of Fireworks colony *instead of originally approved place at 7th, 8th and 9th Cross of Ward No. 103 and as per the 1st and final bill* claimed on 31.3.2010, an amount of Rs. 16,49,089/- is incurred for the said work and the Chief Engineer, West, BBMP, has issued an *inter-office note* dt. 27.10.2009 to take up the improvement works at 2nd Cross of Fireworks Colony instead of tendered work of 7th, 8th and 9th Cross in the same ward.

5(3) **Thus**, you DGOs 1 to 6, being Government /public servants have *failed* to maintain absolute integrity, besides devotion to duty and acted in a manner unbecoming of Government servants and thereby, committed *misconduct* U/R 3(1) of Karnataka Civil Service (Conduct) Rules, 1966.

ANNEXURE NO. II
STATEMENT OF IMPUTATIONS OF MISCONDUCT

5(4) The complaint is filed by Sri. N. *Vasanth Kumar* against the Assistant Engineer and Assistant Executive Engineer, Chickpet Sub Division, BBMP, Bangalore, and 6 others alleging improper execution of works and misappropriation of funds in respect of work of "improvements of drain and foot path at 7th, 8th, and 9th Cross, Hombegowdanagar, Bangalore."

5(5) After obtaining the *comments* from the DGOs and rejoinder from the complainant, the complaint was referred to the Technical Wing for investigation and for report. The Chief Engineer, TAC, after investigating the matter, has submitted the *report with observation as under:-*

5(5)(i) An estimate amounting to Rs. 15 lakhs for improvements to drains and footpath at 7th, 8th and 9th cross in Ward No. 103 is administratively approved and technically sanctioned by the Chief Engineer (W), BBMP, on 19.8.2009. There is no report explaining the necessity of work accompanying the estimate. The estimate is also not signed by the Assistant Engineer and Assistant Executive Engineer and is signed by only Executive Engineer, BBMP, Gandhinagar Division.

ii) As per the tender agreement No. 356/09-10, dt. 20.9.2009, the above work has been entrusted to Sri. Narayana Gowda, No. 59, Omkaranagar, Bannerghatta Road, Bangalore at 9.97% above SR of 2008-09.

iii) As per MB extract, improvement works have been executed at 1st B Main Road, and 2nd Cross Road of Fireworks colony instead of

originally approved place at 7th, 8th and 9th Cross of Ward No. 103.

iv) As per the 1st and final bill claimed on 31.3.2010, an amount of Rs. 16,49,089/- is incurred for the said work.

v) As per the incumbency statement furnished, Sri K B Narasimha Murthy, Assistant Engineer, Sri. Mohan, A.E.E, and Sri. B. N. Kanakadas, are implementing officers of alleged work.

vi) Chief Engineer, West, BBMP, has issued an inter-office note dt. 27.10.2009 directing Executive Engineer, BBMP, Gandhinagar, to take up the improvement works at 2nd Cross of Fireworks Colony instead of tendered work of 7th, 8th and 9th Cross in the same ward.

5(6) The I.O. has finally submitted that the estimate for improvement of 7th, 8th and 9th cross of ward No. 103 has been sanctioned for Rs. 15 lakhs by the Chief Engineer overlooking the signatures of A.E., A.E.E. and a detailed report explaining necessity of the work.

5(7) The following officers are responsible for the above lapses:-

5(7)(i) Sri. B T Ramesh, Chief Engineer (West), (who sanctioned the estimate)(now retired)

ii) Sri. M. Basavaraju, Tech. Asst. to CE(W), (who verified the estimate)O/o Town Planning North, BBMP.

iii) Sri. Idya Vandon, E.E. (who signed and submitted estimate), BBMP, RR Nagar Sub Division, Bangalore.

5(8) The work is executed at entirely different place under the nomenclature of original place approved in the tender without obtaining approval from Competent Authority. The E.E., BBMP, Chickpet sub division, has check measured the work without verifying whether the work is carried out at original approved place.

5(9) For the above lapse, the following officers are responsible:-

(iv) Sri. K. B. Narasimhamurthy, the then A.E., (who recorded the measurements in MB), Ward

No. 73, Kottigepalya, Laggere Sub Division,
BBMP, Bangalore

v) Sri. S. Mohan, the then A.E.E. (who has
check measured the work), presently working in
PWD, Bangalore.

vi) Sri. B.N. Kanakadasa, the then EE, (who
has check measured and passed the bill),
Karnataka Neeravari Nigama Limited, HBC
Division., Athani, Belgaum.

5(10) *The copy of the Investigation Officer's report*
was sent to the DGOs for submitting their
comments, if any. In spite of sufficient
opportunity given, the *DGOs have not submitted*
any reply to the I.O. report. Therefore, it is taken
as they have nothing to say in the matter.

5(11) *Hence*, there are sufficient *prima facie*
materials for recommending to the Competent
Authority for initiating departmental enquiry
against above mentioned 6 officials/officers for
the alleged misconduct.

5(12) *The facts supported by the materials on*
record show that, the DGOs, being Government
servants, have *failed* to maintain absolute

integrity, devotion to duty and also acted in a manner unbecoming of Government servants and thereby committed misconduct and made themselves liable for disciplinary action.

5(13) Since, the said facts and material on record prima-facie show that the DGOs have committed misconduct as per Rule 3(1) of the KCS (Conduct) Rules, 1966, a report u/s 12(3) of Karnataka Lokayukta Act, 1984 was sent to the Competent Authority with a recommendation to initiate disciplinary proceedings against the DGOs Under Rule 14-A of Karnataka Civil Services (Classification, Control and Appeals) Rules 1957 with sanction as per Rule 214(2)(b)(i) of KCSRs against DGOs 1 and 6.

5(14) *In turn*, Competent Authority/Government initiated disciplinary proceedings against the DGOs and entrusted the enquiry to this Institution and *Hon'ble Lokayukta* nominated this enquiry Authority, to conduct enquiry and to submit report. *Hence*, the above said **charge/s**.

6. The aforesaid **'article of charge/s** served upon the DGOs 1 to 6 and DGOs 2, 3, 4 & 6 appeared before this enquiry authority and their **first oral statement/s** under Rule 11(9) of KCS (CCA) Rules, 1957 recorded and they pleaded not

guilty and claimed to be enquired about the charge/s.

7. DGO-1 and 5 are placed **exparte** by my learned predecessor in office, as they did not appear in spite of service of Article of Charge/s/notice duly.
8. The DGOs 3, 4 & 6 have filed their **written statement of defence** by denying the charge/s, whereas DGO-2 has not filed his Written Statement of defence. Hence, statement of defence of DGO-2 is taken as not filed by the order dated 30.11.2017.
9. The DGOs have been given an opportunity by this Enquiry Authority for verification / inspection of records/Documents and for discoveries, if any.
10. *In this enquiry*, to establish the *charge/s* against DGOs the presenting officer has examined (1) Sri. Vasanth Kumar (complainant) as **pw-1** and (2) Sri. Srinivas K.(Assistant Executive Engineer, TAC, Lokayukta, Bangalore & Investigation Officer) as **PW-2** and produced and got marked, in all, **16** documents as Ex P1 to 16 on behalf of Disciplinary Authority.
11. After the closure of the evidence of the Disciplinary Authority, *second oral statement/s* of DGOs-2, 3, 4 & 6 as per Rule 11(16) of Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 recorded. They have submitted that they will examine

themselves. Accordingly, the delinquent government official-3, 4, 6 & 2 are examined themselves as DW-1 to 4 respectively and got marked 7 documents as Ex D-1 to D-7 and closed their side. As such, the questionnaire/s of DGOs 2, 3, 4 & 6 u/R 11(18) of KCS (CCA) Rules, 1957 are dispensed with as they examined themselves.

12. The respective learned defense assistant/Advocate for DGOs- 3, 4 & 6 have filed their *written brief/s* and I have heard learned Presenting Officer and defense assistants and DGO-2 *in person*.
13. Now, the points that emerge for my consideration and conclusion are *as follows* :-
 - 1 : *Whether the charge/s against DGOs 1 to 6 as noted at para No. 5 (2) (i) to (iii) is proved by the Disciplinary Authority through its presenting officer?*
 - 2 : *What finding/conclusion ?*
14. I have heard and carefully perused the enquiry papers and analyzed and appreciated the oral and documentary evidence placed on record.
15. My *findings* on aforesaid points are *as under*.

POINT No. 1 : PARTLY IN THE AFFIRMATIVE

(i.e. *proved* against DGO-1 and 3 to 6 and *not proved* against DGO-2).

POINT no. 2 : As per my *FINDINGS/CONCLUSION*

for the following ;

*** REASONS ***

16. **POINT NO. 1** : *It is the case of the Disciplinary Authority that DGO-1 being Chief Engineer, DGO-2 being Technical Assistant, DGO-3 & 6 being Executive Engineers and DGO-4 being Assistant Engineer and DGO-5 being Assistant Executive Engineer, BBMP, Bengaluru, have committed irregularities namely :- (i) an estimate amounting to Rs. 15 lakhs for improvements to drains and footpath at 7th, 8th and 9th cross in Ward No. 103 is administratively approved and technically sanctioned by the Chief Engineer (W), BBMP, on 19.8.2009. There is no report explaining the necessity of work accompanying the estimate. The estimate is also not signed by the Assistant Engineer and Assistant Executive Engineer and is signed by only Executive Engineer, BBMP, Gandhinagar Division. ii) As per the tender agreement No. 356/09-10, dt. 20.9.2009, the above work has been entrusted to Sri. Narayana Gowda, at 9.97% above SR (Standard Rate) of 2008-09. iii) As per MB extract, improvement works have been executed at 1st B Main Road, and 2nd Cross Road of Fireworks colony*

instead of originally approved place at 7th, 8th and 9th Cross of Ward No. 103 and as per the 1st and final bill claimed on 31.3.2010 and an amount of Rs. 16,49,089/- is incurred for the said work and the Chief Engineer, West, BBMP, has issued an inter-office note dt. 27.10.2009 to take up the improvement works at 2nd Cross of Fireworks Colony instead of tendered work of 7th, 8th and 9th Cross in the same ward.

17. *In order to prove the charge/s leveled against DGOs 1 to 6, the presenting officer has examined 2 witnesses and got marked **16** documents and closed the side.*
18. *Now, I shall proceed to appreciate and analyze the oral and documentary evidence of the disciplinary authority viz.,(PW1, PW-2 and Ex P1 to 16) which are as follows:-*
19. *PW-1 SRI VASANTHA KUMAR (complainant) he has deposed that, in Wilson garden 7th, 8th & 9th Cross, footpath and Drainage work are not done and same is executed in some other place.*
20. *PW-1 has further deposed that, therefore, he submitted my complaint and Form No. I & II to Lokayukta as per Ex. Ex P -1 to 3. Engineer is the responsible for not doing the work.*

21. PW-2 SRI SRINIVAS K. (Assistant Executive Engineer, TAC, Lokayukta, Bangalore and Investigation Officer) he has deposed that, on 22.02.2014, he received complaint file from Chief Engineer and verified the file. In pursuance of letter dated 28.02.2014, he received copies of 1) estimate 2) tender agreement, 3) extract of measurement book 4) contract certificate/bill 5) quality control test reports 6) completion report, 7) 4 Xerox photos of the works and 8) Incumbency/details of officials as per Ex P-4 to Ex P-11 respectively.
22. PW-2 further deposed that, he perused the documents and found that the work was executed in the different location than in the approved location. In pursuance of his letter, he received reply, Internal office note, Answers to questions along with office order, Further answers to questions letter as per Ex. P -12 to 15 respectively.
23. PW-2 says that, after perusal of relevant documents, he made observations at para 62 of his investigation report dt:27.08.2014 as per Ex. P-16. On verification of records it is seen that, **estimate** is sanctioned by Chief Engineer (DGO-1) without verifying the signatures of Assistant Engineer and Assistant Executive Engineer and detailed report explaining the necessity of the work. For this lapse, DGO-1 B.T.Ramesh, Chief Engineer (west), DGO-2 Basavaraju, Technical Assistant, DGO-3 Ideya Vandon, Executive Engineer, BBMP are responsible.

24. *PW-2 further says that, the work is executed at entirely different place under the nomenclature of the original place approved in the tender without obtaining approval from the competent authority. The change of place from original 7th, 8th and 9th cross of ward No.103 to 2nd cross of fireworks colony is not reflected in the replies submitted by respondents/DGO-4 & 5 dt:13.10.2010 or in the Ex P -8 quality control report or in Ex P-9.*
25. *PW-2 states that, the then Executive Engineer, Kanakadas (DGO-6) has check measured the work without verifying whether work is carried out at the original approved place. For the above lapses, DGO -4 K.B.Narasimhamurthy, Assistant Engineer, DGO-5 Mohan.S Assistant Executive Engineer and DGO -6 B.N.Kanakadas, Executive Engineer are responsible.*
26. *PW-2 further states that, with above findings and opinion, he submitted his report as per Ex P-16.*
27. *In the cross-examination of PW-1 & 2 made by learned defense assistants appearing for DGOs- 3, 4, and 6, I find that no worth mentioning points are elicited in favour of DGOs/defense.*
28. *In the cross-examination of PW-1 made by DGO-2 in person, it is elicited and PW-1 has categorically admitted as true that, he has not given any complaint against*

DGO-2 and his work will be in the office and not field work and there is no nexus to him.

29. *In the cross-examination of PW-2 made by DGO-2 in person, it is elicited that, PW-2 does not know whether DGO-2 was working as Technical Assistant as on 19.08.2009 and he was technical assistant from 12.01.2010 to 07.01.2011 and he cannot say whether, DGO-2 has committed dereliction of duty or not.*
30. It is the case of DGOs-3, 4 & 6/Defence *that* they did not commit dereliction of duty amounting to misconduct, whereas, the case of DGO-2 is, he was not working at relevant period.
31. *In this regard, DW 1 SRI IDEYA VANDON, (Executive Engineer,/DGO-3), DW 2 SRI NARASIMHA MURTHY K.B (Assistant Engineer/DGO-4), DW 3 SRI B.N. KANAKADAS (Executive Engineer/DGO-6) and DW 4 SRI. BASAVARAJU M (Technical Assistant/DGO-2) have examined themselves as DW-1 to 4 by filing affidavit evidence and stated by reiterating their defense case and got marked concerned 7 documents, as Ex. D-1 to 7.*
32. *In the cross-examination of DW-1 (DGO-3), DW-2 (DGO-4), DW-3 (DGO-6), it is elicited and they have clearly admitted as true that, they have made work in fireworks colony instead of 7th, 8th and 9th Cross in Ward No. 103.*

33. *In the cross-examination of DW-4 (DGO-2), he says that, he does not know/unaware of the facts.*
34. *DGOs 1 and 5 did not choose to cross-examine PW-1 and 2 and they are placed **exparte**.*
35. *In so far as **argument**/s in this enquiry is concerned, the learned presenting officer has submitted that, in this departmental enquiry, PW-1 & 2 are examined and Ex. P-1 to P-16 have been got marked and on the basis of depositions of PW-1 & 2 and relevant documents, affirmative finding can be given as *charge/s against the DGOs are proved*.*
36. *Per contra, the learned defense assistant/s for DGOs-3, 4 & 6 have filed their written brief/s, whereas, DGO-2 did not filed written brief.*
37. *Having heard and on careful perusal and appreciation of oral and documentary evidence of disciplinary authority placed on record, it is obviously clear that the disciplinary authority has placed sufficient and satisfactory oral and documentary evidence to prove its case/enquiry against the DGOs 1 and 3 to 6 as per the standard of preponderance of probabilities to warrant my finding/s on the charge/s against said DGOs in the affirmative as proved. Whereas, charges against DGO-2 is not proved, as he was not worked at relevant period.*

38. On perusal of depositions of PW-1 Sri. Vasanth Kumar and PW-2 Sri. Srinivas K, it can be seen that, PW-1 being the complainant, PW-2 being Investigation Officer have supported the case of disciplinary authority and this enquiry authority has believed their versions against DGOs except DGO No. 2.

39. It is significant to note that nothing worth mentioning points are elicited from the evidence of PW-1 & 2 by the learned defense assistants appearing for Delinquent Government Officials-3, 4 and 6. As such, the evidence of PW-1 & 2 is worthy of acceptance, believable and reliable against DGOs except DGO-2.

40. It is relevant to note that the depositions of Pw-1 & 2 are consistent, corroborative and same are strengthened and fortified by the relevant documents i.e. Ex P -1 to 16 and incumbency certificates, as afore said.

41. I find that, there is no substance and considerable force in the line of argument/contention/s taken by the learned defense assistants appearing for DGOs 3, 4 & 6 in the Written brief/s.

42. It is the contention of some of the DGOs that, as per Ex. P -13 internal Office Note of DGO-1, they took up work in other place.

- 42(1) *In this regard, it can be said that, since, DGO-1 being the Chief Engineer, has no power to order for change of place and that power is vested with Regional/Additional/Joint Commissioner as per office order dated 25.01.2018. Moreover, since there is no sanction/approval from the concerned authority and due to lapses/irregularities, DGO-1 is also made as DGO in this departmental enquiry and he has been placed exparte for his non appearance and he failed to appear before this enquiry authority to justify his acts. Hence, I don't find merit in the above contention.*
43. *As for as the case/contention of the DGO-2 that, he was not working at the relevant period is concerned, this DGO has produced and got marked Ex. D-6 & D-7 stating that he was not worked in the field office of Chickpet Sub-Division. The DGO-2 has failed to file comments at the stage of complaint and not opted to file Written Statement of Defense.*
- 43(1) However, on perusal of *Ex. D-6 Office order* dated 08.01.2010 *it is seen that, order appointing the DGO-2 Sri. M. Basavaraju, in-charge Assistant Executive Engineer is modified and one Sri. Ashok.S. Chithrok is appointed as Technical Assistant to Chief Engineer (widening of road).*

43(2) On reading Ex. D-7 CTC (Charge Transfer Certificate) dated 02.02.2010 it *discloses that*, as on 02.02.2010, DGO-2 Sri. M. Basavaraju has taken charge as Technical Assistant from Sri. Ashok S. Chithroke. Prior to 02.02.2010, Sri. Ashok.S. Chithroke was working as Technical Assistant to Chief Engineer. Therefore, as on 19.08.2009 i.e. the date of technical sanction by the Chief Engineer (DGO-1), the estimate was verified by Sri. Ashok S. chithroke and not DGO-2 *in person*. Hence, the case of DGO-2 that he was not worked at the relevant period as on the date of commission of misconduct, is *acceptable*.

44. *It is worthwhile to note that, DW-1 to 3 have vividly admitted as true that, they have made work in fireworks colony instead of 7th, 8th and 9th Cross in Ward No. 103. So, it is clear that, important factual aspect covered in the charge viz 5(2)(i) to (iii) against DGOs (except DGO-2 in person) is admitted by them showing that they have committed dereliction of duty amounting to misconduct.*

45 *So far as, charge No. 5(2)(i) is concerned, a perusal of Ex. Ex P -4 estimate amounting to 15 Lakhs pertaining to improvement of drains and footpaths at 7th, 8th and 9th Cross, in Ward No. 103, it is seen that, it is administratively approved and technically sanctioned by the Chief Engineer, West, BBMP on 19.08.2009, but the concerned DGOs have failed to produce any report explaining the necessity of the said work along with estimate.*

45(1) *Further, Ex. P -4 estimate discloses that, it does not bear signatures of Assistant Engineer and Assistant Executive Engineer and same are left blank and it is only signed by Executive Engineer. Hence, it is held that, charge No. 5(2)(i) leveled against concerned DGOs (except DGO-2) is proved by the Disciplinary Authority.*

46. *In so far as charge No. 5(2)(ii) is concerned,* on plain reading of Ex. P-5 tender agreement dated 30.09.2009 amounting to 15 Lakhs pertaining to improvements of drains and footpaths at 7th, 8th & 9th Cross in Ward No. 103, it can be seen that, this agreement is entered in between Executive Engineer (DGO-1) and Contractor Sri. Narayana Gowda and thereby, said works have been entrusted to Sri. Narayana Gowda, the contractor offering to execute the said works at itemwar rates mentioned in the schedule 'B' at 9.97 above the standard rate of 2008-09.

46(1) *Moreso, Ex. P -5 tender agreement reveals that, it does not bear signatures of witnesses and said spaces are left blank and it is only signed by Executive Engineer and the Contractor. Therefore, I can safely hold that, the charge No. 5(2)(ii) leveled against concerned DGOs (except DGO-2) is proved by the Disciplinary Authority.*

47. On bare reading of Ex. P -1 to 16 coupled with depositions of PW-1 & 2, it is very clear that, concerned DGOs (except

DGO-2) have committed irregularities/lapses as mentioned in the concerned charge/s at para 5(2)(i) to 5(2)(iii) of this report, amounting to misconduct.

48. *On careful analysis and appreciation of oral and documentary evidence placed on record, it is manifestly clear that the evidence of PW-1 & 2 is fully corroborated consistent and fortified by the relevant exhibits/documents and the same are inspiring confidence of this enquiry authority to rely and to act upon and there is nothing brought on record to disbelieve the same. In my considered view, case of Disciplinary Authority is acceptable and the case of the defense of DGOs-4, 3 & 6 is unacceptable and depositions of DW-1 to 3 are unworthy of credence and Ex. D-1 to 5 are not helpful to the concerned DGOs/them. Whereas, defense case of DGO-2 in person is acceptable and Ex. D-6 and 7 are reliable.*
49. *For the reasons stated above and observations made in the light of depositions of PW-1 & 2 and DW-1 to 4 and relevant exhibits and relevant provision of law and under the given set of facts and circumstances of this enquiry, I have arrived at inevitable conclusion to hold that, the Disciplinary Authority through its Presenting Officer is **unsuccessful** in proving the concerned charge/s against DGO-2 in person and **successful** in proving the concerned charges leveled against DGOs 1 & 3 to 6 up to the standard of preponderance of probabilities and to the*

satisfaction of this enquiry authority, to record my finding in the affirmative as *proved* against them Hence, I record my findings partly in the affirmative.

50. **POINT NO.2** : *In view of my findings on point No. 1, for foregoing reasons and discussions, I proceed to submit the enquiry report as under :-*

: ENQUIRY - REPORT :

- i. *From the oral and documentary evidence and materials placed on record, I hold and record my findings that the Delinquent Government Official-1 Sri. **B.T. Ramesh**, Chief Engineer (Now Retired), DGO-3 Sri. **Ideya Vandon**, Executive Engineer, DGO-4 Sri. **Narasimha Murthy K.B.**, Assistant Engineer, DGO-5 Sri. **Mohan S**, Assistant Executive Engineer and DGO-6 Sri. **B.N. Kanakadas**, Executive Engineer (Now Retired), Bruhath Bengaluru Mahanagarपालike, Bangalore have *failed* to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of Government servants and they are *found guilty* of misconduct under Rule 3(1) of Karnataka Civil Service (Conduct) Rules, 1966.*

- ii. *Whereas*, DGO-2 Sri. **Basavaraju M**, Technical Assistant, BBMP, Bengaluru has *not failed* to maintain absolute integrity and devotion to duty and *not committed* an act which is unbecoming of a Government servant and he is *not found guilty* of misconduct under Rule 3(1) of Karnataka Civil Service (Conduct) Rules, 1966.
- iii. *Accordingly*, I hold and record my findings on point No. 1/*charge/s* i.e. 5(2)(i) to (iii) leveled by the disciplinary authority against Delinquent Government Officials No. 1 & 3 to 6, as **Proved and not proved against DGO-2**. Thus, *partly-proved*.
- iv. *Hence*, this Enquiry Report is hereby submitted/placed before Hon'ble Lokayukta for kind *consideration*.

Dated 27th **December** 2018.

(Master RKGMM Maha Swamiji)
Additional Registrar Enquiries-10
Karnataka Lokayukta
Bangalore.

Date : 27.12.2018
Place : Bangalore.

::ANNEXURE::**I. LIST OF WITNESS/S EXAMINED ON BEHALF OF DISCIPLINARY AUTHORITY:**

- PW-1 :- Sri. Vasantha Kumar (Complainant)
PW-2 :- Sri. Srinivas K (Assistant Executive Engineer,
TAC, Lokayukta, Bangalore &
Investigation Officer).

II. LIST OF DOCUMENTS MARKED/EXHIBITED ON BEHALF OF DISCIPLINARY AUTHORITY :

- Ex.P-1 : Complaint dated 16.06.2010
Ex.P-2 : Form No. II (Affidavit) dated
17.06.2010

Ex.P-3 : Form No. I (Complaint) dated
16.06.2010

Ex.P-4 : Attested Copy of estimate

Ex P-5 : Attested copy of tender agreement
dated 30.09.2009

Ex P-6 : Attested extract of Measurement Book
Ex P-7 : Attested Contract Certificate/bill

Ex P-8 : Attested Quality Control test reports
(5 sheets)
Ex P-9 : Attested Completion Report
Ex P-10 : Attested 4 xerox photos of the works
(2 sheets)
Ex P-11 : Attested Incumbency/details of
officials who worked
Ex P-12 : Reply of Executive Engineer, Chickpet
Division, BBMP who furnished
relevant document dated 05.04.2014.

Ex P-13 : Internal Office Note of Chief Engineer
BBMP Dated 27.10.2009.
Ex P-14 : Letter of EE, BBMP, Chickpet Division,
dated 12.05.2014 answer for clarification
of Investigation Officer
Ex P-15 : Further reply to questions of Investigation
Officer by EE, BBMP, Chickpet Division
dated 14.08.2014.

Ex. P-16 : Investigation Report of I.O. from 57 to 66 of office order sheet)

III. LIST OF WITNESS/S EXAMINED ON BEHALF OF DGOs/DEFENSE

- DW-1 :- Sri. Ideya Vandon (Executive Engineer/DGO-3)
DW-2 :- Sri. Narasimha Murthy K.B.
(Assistant Engineer/DGO-4)
DW-3 :- Sri. B.N. Kanakadas (Executive Engineer/DGO-6)
DW-4 :- Sri. Basavaraju M (Technical Assistant/DGO-2)

IV LIST OF DOCUMENTS MARKED/EXHIBITED ON BEHALF OF DGOs/DEFENSE:

- Ex.D-1 : Copy of office order dated 29.12.2009
Ex.D-2 : Copy of Memorandum letter dated 06.01.2010
Ex D-3 : Copy of office order dated 31.05.2010
Ex D-4 : Copy of letter dated 29.05.2015
Ex D-5 : Copy of CTC dated 30.05.2015
Ex D-6 : True copy of order dated 29.05.2015
Ex D-7 : True copy of CTC dated 02.02.2010

(Master RKGMM Mahaswamiji)
Additional Registrar Enquiries-10
Karnataka Lokayukta
Bangalore.

Date : 27.12.2018
Place : Bangalore.



KARNATAKA LOKAYUKTA

No:LOK /ARE-10/Enq-477/2015

Multi Storied Building
Dr.B.R.AmbedkarVeedhi
Bengaluru – 560 001
Date: 05-09-2020

MODIFIED RECOMMENDATION

Sub: Departmental Enquiry against Sriyuths:

- 1) BT. Ramesh, Chief Engineer (now retired)
- 2) Basavaraju. M, Technical Assistant
- 3) Ideya Vandon, Executive Engineer
- 4) Narasimhamurthy K.B., Asst. Engineer
- 5) Mohan.S, Assistant Executive Engineer &
- 6) B.N.Kanakadas, Executive Engineer (Now Retired), all of them then working at Bruhath Bengaluru Mahanagara Palike, Bengaluru.

Ref: 1) Government Order No. UDD 582 MNU 2015 Dated 02-07-2015 and 30-11-2015 and Corrigendum dated 18-06-2016.

- 2) Letter bearing No: 235 2019, dated 22-07-2020 of the Under Secretary to Government, Public works, Ports & Inland Water Transport Department (Services-C)

1. By means of my recommendation dated 11-03-2019, I had recommended to impose penalty of denying 2 (two) annual increments to DGO-5 Sri Mohan S, the then Assistant Executive Engineer,

Bruhath Bengaluru Mahanagara Palike, Bengaluru with cumulative effect for a period of 5(five) years from the date of such denial.


2. Subsequent to the receipt of my recommendation dated 11-03-2019, the Additional Chief Secretary to Government, Public works, Ports & Inland Water Transport Department, Bengaluru, by means of his letter dated 22-07-2020 addressed to the Registrar, Karnataka Lokayukta, Bengaluru, had informed that the DGO-5, Sri Mohan S, the then Assistant Executive Engineer, Bruhath Bengaluru Mahanagara Palike, Bengaluru had already retired from the service and as such it is not possible to impose the penalty on DGO-5 in terms of the recommendation made by me referred to above and he has requested for recommending any other penalty.

3. In my recommendation referred to above, I had recommended to deny 20% (twenty percent) of the monthly pension payable to DGO-6 for a period of 5 (five) years from the date of such denial as he has



already retired from service. In the present case the disciplinary authority has established that the DGO-4 to 6 have made wrong entries in the M.B. books while executing the work relating to improvement of drains and footpath at 7th, 8th and 9th cross in Ward No.103. Therefore, having regard to the facts and circumstances of the case, I am of the view the ends of justice would be met if a recommendation is made to impose the penalty on DGO-5 similar to the penalty recommended to impose on DGO-6.

4. It is necessary to mention that, in the said letter dated 22-07-2020, the recommendation made by me has been referred to as the recommendation made by Hon'ble Upalokayukta-2. Obviously concerned officer/official has not seen the order of recommendation as to who has made the recommendation. However, in the light of what is stated above, in modification of my earlier recommendation dated 11-03-2019, so far as DGO-5, Sri Mohan S, the then Assistant Executive Engineer, Bruhath Bengaluru Mahanagara Palike, Bengaluru is

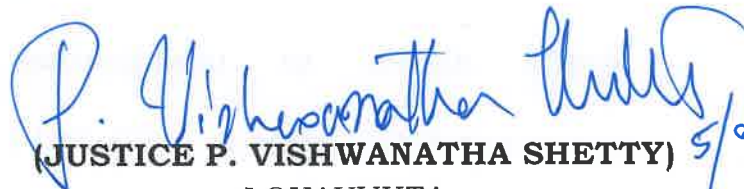


concerned, I hereby modify my earlier recommendation regarding the penalty livable on DGO-5, is as under:

“the DGO-5, Sri Mohan S, the then Assistant Executive Engineer, Bruhath Bengaluru Mahanagara Palike, Bengaluru, may be denied 20% (twenty percent) of monthly pension payable to him for a period of 5 (five) years from the date of such denial”.

5. In terms stated above, this modified recommendation is made to the Competent Authority against DGO-5, Sri Mohan S, the then Assistant Executive Engineer, Bruhath Bengaluru Mahanagara Palike, Bengaluru.

6. Action taken in the matter be intimated to this Authority within three months from the date of receipt of the recommendation.


(JUSTICE P. VISHWANATHA SHETTY) 5/9/2020
LOKAYUKTA
STATE OF KARNATAKA, BENGALURU

ck*