

KARNATAKA LOKAYUKTA

No.UPLOK-1/DE/134/2015/ARE-4

M.S.Building,
Dr.B.R.Ambedkar Road
Bangalore-560 001
Date: 30/04/2018

ENQUIRY REPORT

Sub: Departmental Enquiry against,

Sri M.I. Budihal
The then Junior Engineer
Gyangabavadi Bus Depot No.2
Bijapura (Presently working
as Assistant Engineer, Irrigation
Sub-Division, Athani)

Ref:

- 1) Report u/s 12(3) of the K.L Act, 1984 in
Compt/Uplok/BGM/367/2014/PP
dated: 31/07/2014
- 2) Govt. Order. No.PWD/178/SeVE/2014,
Bangalore dated: 12/03/2015
- 3) Order No.UPLOK-1/DE/134/2015
Dtd.16/03/2015 of the Hon'ble
Upalokayukta

1. This Departmental Enquiry is directed against Sri M.I. Budihal, the then Junior Engineer, Gyangabavadi Bus Depot No.2, Bijapura (Presently working as Assistant Engineer, Irrigation Sub-Division, Athani) (herein after referred to as the Delinquent Government Official in short "DGO")

2. After completion of the investigation a report u/sec. 12(3) of the Karnataka Lokayukta Act was sent to the Government as per Reference No.1.

3. In view of the Government Order cited above at reference 2, the Hon'ble Upalokayukta, vide order dated: 16/03/2015 cited above at reference-3, nominated Additional Registrar of Enquiries-4 of the office of the Karnataka Lokayukta as the Enquiry Officer to frame charges and to conduct Inquiry against the aforesaid DGO. Additional Registrar Enquires-4 prepared Articles of Charge, Statement of Imputations of mis-conduct, list of documents proposed to be relied and list of witnesses proposed to be examined in support of Article of Charges. Copies of same were issued to the DGO calling upon him to appear before this Authority and to submit written statement of his defence.

4. The modified Articles of Charges framed by ARE-4 against the DGO is below;

ANNEXURE NO.I

MODIFIED ARTICLES OF CHARGE

That, you-DGO/Sri M.I. Budihal, while working as Junior Engineer, Gyangabavadi Bus Depot, NO.2, Bijapura, even after receipt of letter dated: 10/10/2013 from the Karnataka Lokayukta, Bangalore failed to submit your comments along with the documents and photos of the construction of percolation tank and even after receipt of show cause notice dated: 02/12/2013 has not replied or submitted any show cause for the same and further even after receipt of the observation note dated: 25/04/2014 failed to show cause as to why recommendation should not be made to the Competent Authority for initiation of the disciplinary proceedings against you and thereby committed misconduct as enumerated u/ Rule 3(1)(i) to (iii) of KCS (Conduct) Rules, 1966.

ANNEXURE NO.II
STATEMENT OF IMPUTATIONS OF MISCONDUCT

On the basis of a complaint filed by Sri Ramachandra B. Biradar r/o Budihal P.H. in Sindagi Taluk of Bijapur District (herein after referred to as complainant for short), against DGO, alleging that DGO has misappropriated Rs. 1.00 lakh granted for construction of percolation tank by not executing the said work and by producing bogus bills, an investigation was taken up under Section 9 of Karnataka Lokayukta Act 1984.

The brief facts of the case are:-

a) In that complaint, a letter dated: 10/10/2013 was issued to the DGO to submit his comments along with documents and photos of the construction of percolation tank, but the DGO did not submit his reply/comments.

b) As such, a show cause notice dated: 02/12/2013 was issued to the DGO calling upon him to show cause as to why action not be taken against his for his misconduct of not replying to the said letter. For that also, the DGO failed to submit his reply.

c) Since, the said act on the part of the DGO of not replying to the letter dated: 10/10/2013 and the show cause notice dated: 02/12/2013 in that file made out a case of misconduct making himself liable for disciplinary action, suo-moto investigation was taken up against the DGO invoking section 7(2) of Karnataka Lokayukta Act for his said misconduct.

So an observation note dated: 25/04/2014 was also sent to the DGO giving him an opportunity to show cause on or before 22/05/2014, as to why recommendation should not be

made to the competent authority for initiating disciplinary proceedings against him for the said misconduct, failing which, it will be deemed that he has nothing to offer in the matter and action will be initiated in accordance with law. For the said observation note also, the DGO failed to submit his reply.

The said facts and material on record show that the DGO, being a public/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 made himself liable for disciplinary action.

Since said facts and material on record prima-facie show that DGO has committed misconduct Rule 3(1)(iii) of KCS (Conduct) Rules, 1966. Now, action u/sec, 12(3) of Karnataka Lokayukta Act, recommendation is made to the Competent Authority to initiate proceedings against the DGO and to entrust the enquiry to this Authority under Rule 14-A of KCS (CC&A) Rules, 1957. In turn Competent Authority entrust the enquiry to this institution vide ref(1) and Hon'ble Upalokayuka-1 nominated the enquiry authority to conduct enquiry and report vide ref(2). Hence, the charge.

5. Earlier charge was framed against the DGO as per the complaint of the complainant. But afterwards on the application of Presenting Officer for alteration of articles of charge by allowing the application after hearing both the sides modified articles of charge has been framed on 01/06/2017

and this enquiry is restricted only to the above said modified articles of charge.

6. DGO appeared before this Enquiry Authority on 06/05/2015 and on 06/05/2015, 01/06/2017 his First Oral statements was recorded U/R 11(9) of KCS (CC & A) Rules 1957. The DGO pleaded not guilty and claims to hold an enquiry.

7. DGO has filed his written statement to the modified articles of charge as follows:-

8. After the evidence of PW1 modified articles of charge has been framed. Modified articles of charge may kindly be given up in the interest of natural justice and enquiry may kindly be closed. The allegations are made after the transfer of DGO from Sindhgi. Complaint in Form No.1 itself do not show the name of the DGO. There is abnormal delay of 9 years in sending the copy of the complaint to the DGO. No particulars were furnished from the Lokayukta for the DGO to submit his reply. Hence, he prays to exonerate him from the charges leveled against him in this case.

9. In order to substantiate the charge leveled against the DGO, the Disciplinary Authority examined in all two witness as PW1 and PW2 and got marked documents at Ex.P1 to P20. After closing the evidence of the Disciplinary Authority, the Second Oral Statement of DGO being recorded as required u/Rule 11(16) of KCS (CC & A) Rules, 1957. After closing the evidence of the Disciplinary Authority, no defence witness examined. Hence, recorded the answers of DGO to questionnaire u/Rule 11(18) of KCS (CC&A) Rules.

10. The Disciplinary Authority has not submitted any written brief, but DGO has submitted his written brief. Oral arguments of the Presenting Officer was heard.

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

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

2) What order?

12. My finding on the above points are as follows

Point No.1: In the “ **AFFIRMATIVE**”

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

:: REASONS ::

13. **Point NO.1:** As stated above this enquiry is restricted to only the modified articles of charge stated above and it is to the effect that even after receipt of the letter dated: 10/10/2013 from Karnataka Lokayukta, Bangalore failed to submit your comments along with the documents and photos of the construction of percolation tank and even after receipt of show cause notice dated; 02/12/2013 calling upon the DGO to show cause why separate disciplinary enquiry should not be initiated against him for not responding to the letter dated: 10/10/2013 the DGO has not replied or submitted any show any cause and further even after the receipt of the observation note dated: 25/04/2014 failed to show cause as to why recommendation should not be made to the competent

authority for initiation of departmental enquiry and thereby committed misconduct.

14. Thus it is the case of the Disciplinary Authority that the DGO has failed to give his comments along with the documents to the letter of the Lokayukta dated: 10/10/2013, failed to reply the show cause dated: 02/12/2013 and also failed to show cause to the observation note dated; 25/04/2014. Earlier to the modified articles of charge PW1 has been examined and he is the complainant-Sri Ramachadra B. Biradar and he has deposed that he has not filed complaint as per Ex.P1 and the signatures found in Form No.1 and 2 are also not his signatures and hence he has been treated as hostile witness by the Presenting Officer and cross-examined and in his cross-examination also he has deposed that he has not given any complaint to the effect that there is misappropriation of an amount of Rs. 1,00,000/- by creating bogus bill without construction of percolation tank. According to Ex.P2 the complaint is filed against the Taluk Panchayath J.E., Sindhagi and his name is shown as Budihal and his designation is mentioned as Junior Engineer. This enquiry is not regarding the misappropriation alleged in Ex.P1.

15. PW2 is Sri B.S. Gopinatha and he has deposed that from August 2013 he is working in Lokayukta Institution as Scrutiny Officer and the complaint bearing No. COMPT/UPLOK/BGM/367/2014 was transferred from ARE-8 in April-May 2014. He has deposed that the DGO was given notice to submit his comments and to produce the documents. But he has not produced the documents and in that respect show cause notice was issued as per the order of Hon'ble

Upalokayukta and it was served on the DGO but he has not replied the same. He has deposed that Ex.P7 is the copy of the notice issued to the DGO dated: 23/02/2013. Ex.P7 is the notice calling upon the DGO to submit his comments in respect of the complaint marked as per Ex.P1 and the copy of the postal acknowledgment to show that the notice dated: 23/02/2013 was served on the DGO is at Ex.P8. PW2 has deposed that on 16/05/2013 show cause notice was issued to the DGO and copy of the same is at Ex.P10. In Ex.P10 it is stated that the DGO has not submitted his comments in respect of Ex.P1 and the Hon'ble Upalokayukta has directed to issue show cause notice as to why separate enquiry proceedings be not initiated against the DGO for not responding to the above said letter. PW2 has deposed that Ex.P19 is the postal acknowledgment to show that show cause notice as per Ex.P10 was served on the DGO.

16. PW2 has further deposed that in Ex.P11 is another letter dated: 10/10/2013 issued to the DGO. In Ex.P11 it is stated that the DGO has been directed to submit comments irrespective letter of the complainant withdrawing the complaint and to produce the documents and photos regarding the construction of percolation tank on or before 08/11/2013.

17. Ex.P12 the copy of the show cause notice issued to the DGO to the effect that inspite of notice Ex.P11 the DGO has not replied the same nor submitted the documents and photos regarding the construction of percolation tank and hence notice is issued as per Ex.P12 to show cause why separate disciplinary proceeding should not be initiated against the

DGO for not responding to the letter-Ex.P11. PW2 has deposed that Ex.P18 is the document to show that notice as per Ex.P12 was served on the DGO. Ex.P18 is the letter written by the Chief Post Master, GPO, Bangalore addressed to the Addl. Registrar of Enquiries-8, Karnataka Lokayukta, Bangalore where it is stated that, RL No. RK075596357IN a/t MI BUDIHAL OF ATHANI HAS BEEN DELIVERED ON 09/12/2013. As the postal acknowledgment in respect of Ex.P12 was not received the letter had been addressed to the postal department for which the reply is sent as per Ex.P18 stated above. Thus the show cause notice as per Ex.P12 has been served on the DGO as per postal reply-Ex.P18.

18. PW2 has deposed that Ex.P13 is the observation note dated; 25/04/2014 issued to the DGO to the effect that he has not replied the letter dated: 10/10/2013 and the show cause notice dated: 02/12/2013 and hence he is liable for disciplinary action on the above said ground itself and suo-motto case registered against DGO for the misconduct stated above and the observation note has been issued. PW2 has deposed that Ex.P15 is the copy of the observation note which discloses that the observation note has been served on the DGO on 19/05/2014 as there is a shara of the DGO to that effect in Ex.P15. PW2 has deposed that the DGO did not give any reply to the observation note also and hence report u/sec. 12(3) of the Karnataka Lokayukta Act was sent to the Government and it is at Ex.P14. He has further deposed that Ex.P17 is the Government order entrusting the enquiry to the Honb'le Upalokayukta.

19. The learned counsel for the DGO contends that there is no government order entrusting the enquiry in respect of the modified charge. But Ex.P17 is the Government Order in respect of modified charge only. Even though PW2 is cross-examined nothing is made out in his cross-examination to discard his evidence. It is not the contention of the DGO that he has replied the letter Ex.P11 dated: 10/10/2013. It is also not his contention that the notice as per Ex.P11 was not served on him. As per Ex.P11 DGO was required to submit his comments in respect of the complaint-Ex.P1 irrespective of the letter of the complainant withdrawing the complaint and to produce the documents and photos in respect of construction of the percolation tank. Hence it can be said that the DGO has not replied nor complied Ex.P11.

20. As stated above Ex.P12 is the show cause notice issued to the DGO as to why separate disciplinary proceedings should not be initiated against him for not complying the notice issued as per Ex.P11 and Ex.P18 is the postal acknowledgment to show that the show cause notice Ex.P12 was served on the DGO. It is not the case of the DGO that he has replied the show cause notice Ex.P12 ~~as~~ stated above. Hence it can be said that the DGO has not given any reply to Ex.P10, P11 and P12 inspite of service of the same and thereby committed misconduct.

21. The learned counsel for the DGO contends that in Ex.P11 the details of the documents to be produced are not mentioned and it is bald. It is pertinent to note that in Ex.P11 it is mentioned that the DGO has to produce the documents and photos in respect of the percolation tank referred in

Ex.P1. Even otherwise the DGO could have sent the reply to ARE-8 accordingly seeking for details of the documents and photos to be produced.

22. The learned counsel for the DGO has relied upon the decision of Hon'ble High Court in W.P.Nos. 26817-26821 of 1995 dated: 11/03/1996 between **Hanumanthappa V/s The Management of Karnataka State Road Transport and another** which states that the charge of misconduct after 12 years would be unfair and un reasonable. But this case is only regarding the DGO not producing the photos and documents called for and not replying the show cause notice also as stated above and the notice issued for production of documents and photos and to give his comments is dated: 10/10/2013 only and there is no inordinate delay in initiating the enquiry in this case.

23. Thus the DGO has failed to maintain absolute integrity, devotion to duty and acted in a manner of unbecoming of a Government Servant.

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

:: ORDER ::

The Disciplinary Authority has satisfactorily proved the charge in this case that, DGO/ Sri M.I. Budihal, the then Junior Engineer, Gyangabavadi Bus Depot No.2, Bijapura (Presently working as Assistant Engineer, Irrigation Sub-Division, Athani) committed mis-conduct as enumerated U/R 3(1) (i) to (iii) of Karnataka Civil Service (Conduct) Rules, 1966.

25. Hence this report is submitted to Hon'ble Upalokayukta
-1 for kind perusal and for further action in the matter.

Dated this the 30th day of April, 2018

-Sd/-
(Somaraju)
Additional Registrar Enquiries-4,
Karnataka Lokayukta,
Bangalore.

ANNEXURE

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

PW-1 :-Sri Ramachandra B. Biradara (complainant)
PW-2:Sri T.S. Gopinath (Scrutiny officer)

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

NIL

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

Ex.P-1: Original complaint
Ex.P1(a): Relevant entry in Ex.P1
Ex.P-2: Original Form No.1
Ex.P-2(a): Relevant entry in Ex.P2
Ex.P-3: Original Form No. 2
Ex.P3(a): Relevant entry in Ex.P3
Ex.P-4: Xerox copy of the Aadhar card of complainant
Ex.P-5: Xerox copy of the Pan Card of complainant
Ex.P-5(a): Relevant entry in Ex.P5
Ex.P-6: Original summons issued to complainant dated:
15/02/2017
Ex.P6(a,b): Relevant entries in Ex.P6
Ex.P-7: Original letter of ARE-8, KLA, Bangalore dated;
23/02/2013 (unsigned)
Ex.P-8,P9: Xerox copies of the postal acknowledgments
Ex.P-10: Xerox copy of the show cause notice of ARE-8, KLA,
Bangalore dated: 16/05/2013 issued to DGO
Ex.P-11: Xerox copy of the letter of ARE-8, KLA, Bangalore
dated: 10/10/2013 issued to DGO

- Ex.P-12: Xerox copy of show cause notice of ARE-8, KLA, Bangalore dated: 02/12/2013 issued to DGO
- Ex.P-13: Xerox copy of the observation note dated: 25/04/2014
- Ex.P14: Xerox copy of the 12(3) report dated: 24.31/07/2014
- Ex.P15: Xerox copy of the served observation note dated: 25/04/2014 (signature of the DGO is only original)
- Ex.P16: Original letter of Police Inspector, Karnataka Lokayukta, Bijapura dated: 19/05/2014
- Ex.P17: Original G.O. dated: 12/03/2015
- Ex.P18: Original letter of Chief Post master, Bangalore GPO addressed to ARE-8, KLA, Bangalore
- Ex.P19: Original postal acknowledgment
- Ex.P20: Xerox copy of the letter of the DGO addressed to the ARE-8,KLA, Bangalore

LIST OF EXHIBITS MARKED ON BEHALF OF DGO:

NIL

Dated this the 30th day of April, 2018

-Sd/-

(Somaraju)

Additional Registrar Enquiries-4,
Karnataka Lokayukta,
Bangalore.

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

NO:UPLOK-1/DE/134/2015/ARE-4

Multi Storied Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001,
Date: 21/05/2018

RECOMMENDATION

Sub:- Departmental inquiry against Sri M.I. Budihal, the then Junior Engineer, Gyangabavadi Bus Depot No.2, Vijayapura (presently working as Assistant Engineer, Irrigation Sub Division, Athani);

Ref:- 1) Government Order No. 178 ಸೀಡಿಇ 2014, Bengaluru dated 12/3/2015

2) Nomination order No.UPLOK-1/DE/134/2015, Bengaluru dated 16/3/2015 of Upalokayukta-1, State of Karnataka, Bengaluru

3) Inquiry Report dated 30/4/2018 of Additional Registrar of Enquiries-3, Karnataka Lokayukta, Bengaluru

The Government by its Order dated 12/3/2015, initiated the disciplinary proceedings against Sri M.I. Budihal, the then Junior Engineer, Gyangabavadi Bus Depot No.2, Vijayapura, (Presently working as Assistant Engineer, Irrigation Sub Division, Athani) (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-1/DE/134/2015, Bengaluru dated 16/3/2015 nominated Additional Registrar of Enquiries-4, 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 M.I. Budihal, the then Junior Engineer, Gyangabavadi Bus Depot No.2, Vijayapura, was tried for the following charge:-

“That, you – DGO Sri M.I.Budihal while working as Junior Engineer, Gyangabavadi Bus Depot No.2, Bijapura even after receipt of letter dated 10/10/2013 from the Karnataka Lokayukta, Bangalore failed to submit your comments along with the documents and photos of the construction of percolation tank and even after receipt of show cause notice dated 02/12/2013 has not replied or submitted any show cause for the same and further even after receipt of the observation note dated 25/4/2014 failed to show cause as to why recommendation should not be made to the Competent Authority for initiation of disciplinary proceedings against you and thereby committed misconduct as enumerated u/Rule 3(1)(i) to (iii) of Karnataka Civil Services (Conduct) Rules, 1966.”

4. The Inquiry Officer (Additional Registrar of Enquiries-4) on proper appreciation of oral and documentary evidence has held that the Disciplinary Authority has proved the above charge against DGO Sri M.I. Budihal, the then Junior Engineer, Gyangabavadi Bus Depot No.2,Vijayapura.

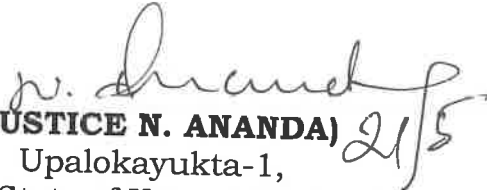
5. On re-consideration of inquiry report, I do not find any reason to interfere with the findings recorded by the Inquiry Officer. It is hereby recommended to the Government to accept the report of Inquiry Officer.

6. As per the First Oral Statement submitted by DGO, he is due to retire from service on 31/5/2018.

7. Having regard to the nature of charge proved against DGO Sri M.I. Budihal and the time that may be required for issuance of I & II Show cause notices before passing the final order, it is hereby recommended to the Government for imposing penalty of withholding 10% of pension payable to DGO Sri M.I. Budihal, the then Junior Engineer, Gyangabavadi Bus Depot No.2,Vijayapura for a period of 5 years.

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

Connected records are enclosed herewith.


(JUSTICE N. ANANDA) 21/5
Upalokayukta-1,
State of Karnataka,
Bengaluru

