

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

No.UPLOK-1/DE/192/2018/ARE-10

Multi Storied Buildings,
Dr.B.R.Ambedkar Veedhi,
Bengaluru-560 001,
Date:25/04/2019

RECOMMENDATION

Sub:- Departmental inquiry against Sri G.S. Hadapada, the then Panchayath Extension Officer, Moratagi Range, Sindagi Taluk, Vijayapura District (now retired) – Reg.

Ref:- 1) Government Order No.ಗ್ರಾಅಪ 139 ಗ್ರಾಪಂಚಾ 2018 Bengaluru dated 24/03/2018.

- 2) Nomination order No.UPLOK-1/DE/192/2018 Bengaluru dated 07/04/2018 of Upalokayukta-1, State of Karnataka, Bengaluru.
- 3) Inquiry Report dated 23/04/2019 of Additional Registrar of Enquiries-10, Karnataka Lokayukta, Bengaluru

The Government by its Order dated 24/03/2018 initiated the disciplinary proceedings against Sri G.S. Hadapada, the then Panchayath Extension Officer, Moratagi Range, Sindagi Taluk, Vijayapura District (now retired) (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/192/2018 dated 07/04/2018 nominated Additional Registrar of Enquiries-10, 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 G.S. Hadapada, the then Panchayath Extension Officer, Moratagi Range, Sindagi Taluk, Vijayapura District (now retired) was tried for the following charge:-

“That, you DGO Sri G.S. Hadapada, the then Panchayath Extension Officer, Moratagi Zone, Sindagi Taluk, Vijayapura District (now retired) has committed the following dereliction of duty/misconduct:-

You DGO not taken to clear the building constructed encroaching over Grama Thana land by one Sri. Devalasab Imamsab Mulla and not taken possession of land inspite of letter by Executive Officer to take action and it is a continuous inaction as long as you DGO was holding the post and no action is taken since 2009 to take possession of land from Imamsab Mulla by you DGO. Further, you DGO was the Secretary during the relevant period that is 1999-2000 when the name of Imamsab Mulla was entered in the Tax Assessment Register.

Thus, you DGO being a Government/public servant has failed to maintain absolute integrity besides devotion to duty and acted in a manner unbecoming of a Government servant and thus committed misconduct as enumerated U/R 3(1) of Karnataka Civil Service (Conduct) Rules 1966”.

4. The Inquiry Officer (Additional Registrar of Enquiries-10) on proper appreciation of oral and documentary evidence has held that the Disciplinary Authority has proved the above charge against DGO Sri G.S. Hadapada, the then Panchayath Extension Officer, Moratagi Range, Sindagi Taluk, Vijayapura District (now retired).


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 Sri G.S. Hadapada, he has retired from service on 30/09/2014.

7. Having regard to the nature of charge proved against DGO Sri G.S. Hadapada, it is hereby recommended to the Government for imposing penalty of withholding 10% of pension payable to DGO Sri G.S. Hadapada, the then Panchayath Extension Officer, Moratagi Range, Sindagi Taluk, Vijayapura District (now retired) 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)
Upalokayukta-1, 25/4
State of Karnataka,
Bengaluru

KARNATAKA - LOKAYUKTA

BEFORE ADDITIONAL REGISTRAR (ENQUIRIES - 10)

PRESENT :

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

DEPARTMENTAL ENQUIRY NO. UPLOK-1/DE/192/2018/ARE-10

COMPLAINANT	SRI. BABAGOWDA KASHIRAYA BIRADAR
DISCIPLINARY AUTHORITY	GOVERNMENT OF KARNATAKA RURAL DEVELOPMENT & PANCHAYATH RAJ DEPARTMENT (Through Presenting Officer)
V/s	
DELINQUENT GOVERNMENT OFFICIAL	SRI. G.S. HADAPADA, <i>then Panchayath Extension Officer,</i> Moratagi Zone, Sindagi Taluk, Vijayapura District (now retired).
	(DGO represented by Advocates/ Defense Assistants Sri. G.A. Atanur & M. Veeresh)

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

Reference/s : 1. *Report* u/S 12(3) of the Karnataka Lokayukta Act, 1984 in Compt/Uplok/BGM/196/2009/ARE-5 dated 27.02.2018.
2. *Government Order* No. ಗ್ರಾಅಪ 139 ಗ್ರಾಪಂಕಾ 2018, Bengaluru dated 24.03.2018.
3. *Nomination Order* No.Uplok-1/DE/192/2018 Bengaluru dt. 07.04.2018 of Hon'ble Uplokayukta-1.

- i. Nature of the 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 : 23rd April 2019.

:- DEPARTMENTAL - ENQUIRY - REPORT :-

1. This is the departmental enquiry initiated and held against DGO as the complainant by name Sri. *Babagowda Kashiraya Biradar* has filed a complaint in Lokayukta Office against the Delinquent Government Official alleging dereliction of duty amounting to misconduct.
2. The *Comments/reply* of DGO called and unsatisfied with the same, 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 24.03.2018 authorizing Hon'ble Upalokayukta-1 to hold an enquiry as per reference no. 2.
3. In pursuance of the Government Order, a *nomination order* was issued by Hon'ble Upalokayukta-1 on 07.04.2018 authorizing ARE-10 to frame Article of Charge against DGO and hold an enquiry to find out truth and to submit a report as per reference No. 3.
4. Accordingly, *Article of charge* framed/prepared under Rule 11(3) of the Karnataka Civil Services



(Classification, Control and Appeal) Rules, 1957 and sent to the Delinquent Government Official on 28.04.2018.

5. The article of *charge* and the statement of imputations of misconduct framed/prepared and leveled against the DGO are reproduced as hereunder :-

ANNEXURE NO. 1

CHARGE

5(1) That, you DGO Sri. G.S.HADAPADA, the then *Panchayath Extension Officer*, Moratagi Zone, Sindhagi Taluk, Vijayapura District (now retired) has committed following *dereliction of duty/misconduct* :-

5(2) You DGO has not taken action to *clear* the building constructed, *encroaching* over Grama thana land by one Sri. *Devalasab Imamsab Mulla* and not taken possession of land in spite of *letter* by Executive Officer to take action and it is a *continuous inaction* as long as you DGO was holding the post and no action is taken since 2009 to take possession of land from Imamsab Mulla by you DGO. *Further*, you DGO was the Secretary during the relevant period i.e. 1999-2000 when the name of Imamsab Mulla was *entered* in the Tax Assessment Register.



5(3) Thus, you DGO, being a Government /public servant has *failed* to maintain absolute integrity besides devotion to duty and acted in a manner unbecoming of a Government servant 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) On the basis of *complaint* filed by Sri. Babagowda Kashiraya Biradar, Gabasavalagi, Sindhagi Taluk, Bijapur District, against Sri. G.S.Hadapada, the then Panchayath Extension Officer, Moratagi Range, Sindhagi Taluk Panchayath, Bijapur District (now retired) alleging misconduct, an *investigation* was taken up after invoking Section 9 of Karnataka Lokayukta Act, 1984.

According to the Complainant: -

5(5) One *Devalsabamulla* has encroached over the Gramathana land of Gabasavalagi Grama Panchayath and he is constructing building in Grama Thana land and no action has been taken by the DGO to prevent encroachment.



5(6) DGO has submitted comments stating that he is Panchayath Extension Officer and he has no authority to clear the encroachment.

5(7) The Executive Officer has submitted *letter* stating that one Davalsab Imamsab Mulla is residing in the house after constructing house and the documents are also standing in his name.

5(8) A *Report* was called for, from Police Inspector, Karnataka Lokayukta, Bijapur, who submitted *report* dt: 23.1.2015 stating that he has obtained report dt: 19.1.2015 of P.D.O. wherein it is stated that, the property is in the name of Davalsab Imamsab Mulla since 1999-2000 and the said land is Grama Thana land. That Executive Officer and PDO were directed to take possession of the property and submit report. But, no action taken report has been received from them.

5(9) The Chief Executive Officer was called upon to state about the action taken to clear the encroachment and to furnish the names of the officers responsible for entering the name of Davalsab Imamsab Mulla in the relevant revenue registers.

5(10) For that, Executive Officer has submitted *reply* that, the property has been entered in the



demand register during 1999-2000 and G.S.Hadapad was the Secretary of Gabasavalagi Grama Panchayath during the said period and he has retired.

5(11) The Chief Executive Officer, Vijayapura Z.P was called upon to submit what action has been taken to evict/clear encroachment over property No. 233/1 which is occupied by Davalasab Imamsab.

5(12) The Chief Executive Officer has submitted *reply* stating that he had directed the Executive Officer, Sindhagi Taluk Panchayath to submit report and Executive Officer, Taluk Panchayath, Sindhagi has submitted report and the report of Executive Officer is that the P.D.O. has issued notice to Davalasab E Mullah.

5(13) On 6.5.2006 itself the Executive Officer, Sindhagi, Taluk Panchayath has written a letter to the Secretary of Gabasavalagi Grama Panchayath to take action to stop construction with a copy to Panchayath Extension Officer, Sindagi Taluk to take action on unauthorized construction and submit report.

5(14) The DGO has not taken action to clear the building and take possession of land in spite of letter by Executive Officer to take action. Not taking action to clear the encroachment is a



continuous inaction as long as DGO was holding the post. The letter of P.D.O. dt:9.6.2017 shows that G.S.Hadapad, who was the Secretary during the relevant period and in the year 1999-2000 the name of imamsab Mulla was entered in the Tax Assessment Register. No action is taken since 2009 to take possession of land from Imamsab Mulla by the DGO.

5(15) In view of the above, the comments submitted by the DGO is not acceptable to drop the proceedings against him.

5(16) *Since, the said facts and materials on record prima facie show that, the DGO G.S.Hadapada, the then Panchayath Extension Officer, Moratagi Range, Sindhagi Taluk Panchayath, Bijapur District (retired as PDO) has committed misconduct under Rule 3(1) of KCS (Conduct) Rules, 1966, a recommendation under section 12(3) of Karnataka Lokayukta Act, 1984 was made to the Competent Authority to initiate disciplinary proceedings against DGO under Rule 214(2)(b) of KCSRS as the DGO has been retired from service.*

5(17) *In turn, the Competent Authority/Government initiated disciplinary proceedings against the DGO and entrusted the enquiry to this Institution and Hon'ble*



Upalokayukta nominated this enquiry Authority to conduct enquiry and to submit a report.

Hence, the above said charge.

6. The aforesaid '*article of charge*' served upon the DGO and he appeared before this enquiry authority and his *first oral statement* under Rule 11(9) of KCS (CCA) Rules, 1957 recorded. The DGO has pleaded not guilty and claimed to be enquired about the charge.
7. The DGO has filed his *written statement of defense* by denying the charge.
8. The DGO has been given an opportunity by this Enquiry Authority for verification / inspection of records/ Documents and for discoveries, if any.
9. *In this enquiry*, to establish the *charge* against DGO, the presenting officer has examined (1) Sri. Babagowda K. Biradar (complainant) as *pw-1* and (2) Sri. S.M. Kedagi (then Executive Officer, Sindagi Taluk) as *PW-2* and (3) Smt. K.A. Lalitha (Scrutiny Officer, Lokayukta, Bangalore) as *PW-3* and produced and got marked, in all, 7 documents as Ex P1 to 7 on behalf of Disciplinary Authority.
10. After the closure of the evidence of the Disciplinary Authority, *second oral statement* of DGO as per Rule 11(16) of Karnataka Civil Services (Classification,



Control and Appeal) Rules, 1957 recorded. The DGO has submitted that he has no defense evidence on his behalf. Hence, the *questionnaire* of DGO u/R 11(18) of KCS (CCA) Rules, 1957 recorded and he has denied the evidence/circumstances against him.

11. The learned Advocate/defense assistant appearing for DGO has filed *written brief* and I have heard learned Presenting Officer and Advocate/defense assistant.

12. Now, the points that emerge for my consideration and conclusion are *as follows* :-

1 : *Whether the charge against DGO as noted at para No. 5(2) of the report is proved by the Disciplinary Authority through its presenting officer?*

2 : *What finding/conclusion ?*

13. I have heard and carefully perused the enquiry papers and analyzed and appreciated the oral and documentary evidence placed on record.

14. My *findings* on aforesaid points are *as under*:-

POINT No. 1 : In the AFFIRMATIVE

POINT no. 2 : As per my *FINDING/CONCLUSION* for the following ;



* REASONS *

15. POINT NO. 1 : *It is the case of the Disciplinary Authority that DGO being then Panchayath Extension Officer, Mortagi Zone, Sindagi Taluk, Vijayapura District, has committed dereliction of duty amounting to misconduct as mentioned in the charge at para 5(2) of the report.*
16. *In order to prove the charge leveled against DGO, the presenting officer has examined 3 witness and got marked 7 documents and closed the side.*
17. *Now, I shall proceed to appreciate and analyze the oral and documentary evidence of the disciplinary authority viz.,(PW1 to 3, and Ex P1 to 7) which are as follows:-*
18. PW- 1 SRI. BABAGOWDA K. BIRADAR (complainant) *he has deposed that, DGO Sri. Hadapada G.S. was working as Panchayath Extension Officer/secretary, Moratagi Zone, Sindhagi Taluk and one Davansab Mullah had constructed a building on the land of Government/Gramatana land situated in Gabasavalagi village and now, stopped.*



19. *PW-1 has further deposed that, he gave Form No. I (complaint) and Form No. II (Affidavit) and another Affidavit as per Ex. P -1 to 3 respectively. He has also given representation to Executive Officer and Tahasildar as per Ex. P -4.*
20. *PW-1 states that, the DGO did not take steps to clear the building constructed 4 feet encroaching, over gramatana land and not taken possession of the said government land, in spite of letter dated 06.09.2013 by Executive Officer of Sindhagi Taluk Panchayath as per Ex. P5.*
21. *PW-1 further states that, in the year 1999-2000, the DGO has entered the name of Sri. Imamsab Mulla in the tax assessment register.*
22. *PW-2 SRI. S.M. KEDAGI (Incharge Executive Officer, Sindagi Taluk) he has turned *hostile* by stating that, he was working as incharge Executive Officer in the year 2013 for about 1 ½ months and he does not know anything about the facts/case.*
23. *PW-3 SMT. K.A. LALITHA (Scrutiny Officer, Lokayukta, Bengaluru) she deposed that, she perused and scrutinized the complaint and other relevant documents and *found that*, during the period of DGO one Sri. Davansab Mulla has constructed a building by encroaching gramatana land, but, it was not clear by the DGO by taking suitable action.*



24. PW-3 further deposed that, Ex. P -6 a letter of PDO dated 9.6.2017 shows that, DGO was working as Secretary at relevant period.
25. PW-3 says that, Executive Officer, Sindagi Taluk Panchayath Office, has issued a letter dated 06.05.2006 as per Ex. P-7 and directed to take action to prevent illegal construction
26. In the cross-examination of PW-1 and 3 made by learned Defense assistant/Advocate appearing for DGO, I find that nothing worth mentioning points are elicited in favour of DGO/defense, to disbelieve/discredit their depositions.
27. On behalf of DGO/Defense, DGO did not lead any rebuttal/defense evidence, although, he has taken some irrelevant and unacceptable contention/s in the Written Statement of Defense.
28. In so far as argument/s in this enquiry is concerned, the learned presenting officer has submitted that PW-1 to 3 are examined and Ex. P-1 to 7 have been got marked and on the basis of depositions of PW-1 & 3 and relevant documents, affirmative finding can be given as *charge against the DGO is proved*.
29. *Per contra*, the learned defense assistant has *filed*



written brief.

30. *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 DGO as per the standard of preponderance of probabilities to warrant my finding on the charge against DGO in the affirmative as proved.*
31. *On perusal of depositions of PW-1 Sri. Babagowda K. Biradar, PW-2 Sri. S.M. Kedagi & PW-3 Smt. Lalitha, it can be seen that, PW-1 being the complainant and PW-3 being Scrutiny Officer, have fully supported the case of disciplinary authority. Further, PW-2 being incharge Executive Officer turned hostile as he was worked only for 1 ½ months.*
32. *It is significant to note that, nothing worth mentioning points are elicited from the evidence/depositions of PW-1 & 3 by the learned defense assistant/Advocate appearing for Delinquent Government Official in favour of DGO. As such, the depositions of PW-1 & 3 are worthy of acceptance, believable and reliable against DGO.*
33. *It is relevant to note that the depositions of Pw-1 & 3 are consistent, corroborative and same are strengthened by the relevant documents i.e. Ex P -1 to 7.*



34. *At this juncture*, it is necessary to note that, it is settled position of law that if the opposite party did not choose to lead rebuttal evidence, then, an adverse inference can be drawn against him.

35. *In this context*. It is relevant to refer a decision in case of ESHWAR BAI C. PATEL V/S. NARIHAR BEHERA reported in AIR 1999 SC 1341, wherein, the Hon'ble **Apex Court** has *held that*;

“When a person fails to enter into witness Box to state his case on oath, the adverse inference can be drawn as per Sec.114 of Indian Evidence Act, 1872 against such person”.

36. *In this connection*, it is also profitable to refer another decision in case of VIDHYADHAR V/S. MANIKRAO AND ANOTHER (1999) 3 SCC 573, wherein, the Hon'ble **Apex Court** has *held thus*:-

“ Evidence Act, 1872 – S.114 III (g) – Presumption – If a party abstains from entering the witness box, an adverse inference would arise against him ”.

“ Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would



arise that the case set-up by him is not correct”.

37. *In the present case*, though, the DGO filed Written Statement of Defense by taking some irrelevant and unacceptable contention/s to prove the same, he did not lead the rebuttal/defense evidence to show that, the case of disciplinary authority is false. *Hence*, the presumption of an adverse inference can be drawn against DGO, as per section 114 of The Indian Evidence Act, 1872.
38. I don't find any substance and considerable force in the line of argument/contention/s taken by the learned defense assistant appearing for DGO in the Written Brief, and those are devoid of merits, irrelevant and unacceptable. Moreover, as already observed, DGO has failed to lead rebuttal/defense evidence to substantiate his contention/s.
39. *It is pertinent to note that*, on plain perusal of Ex. P-6 copy of letter dated 09.06.2017 it is seen that, it is issued by Panchayath Development Officer, Gabasavalagi Gram Panchayath, to Executive Officer, Taluk Panchayath, Sindagi stating that, the property/construction No. 233/1 was inspected by PDO and Taluk Officer on 09.06.2017. *Further*, Ex. P-6 also reveals that, the property No. 233/1 is entered in Tax Demand Register extract in the year 1999-2000, during the period of DGO Sri. G.S. Hadapad, who was working as Secretary at that time.



40. *It is worthwhile to note that, Ex. P -7 a letter dated 06.05.2006 discloses that, it is issued by Executive Officer, Sindagi Taluk Panchayath, addressed to Secretary, Gavasavalagi Grama Panchayath, directing to take action to prevent the illegal construction by Davalsab Mulla.*
41. *It is worth mentioning to note that, on bare reading Ex. P -1 to 7, coupled with depositions of PW-1 and 3, it is very clear that, DGO being the Panchayath Extension Officer/Secretary of Gabasavalagi/Mortagi Zone, Sindagi Taluk, has committed dereliction of duty amounting to misconduct as mentioned in the charge at para 5(2) of the report.*
42. *On careful analysis and appreciation of oral and documentary evidence placed on record, it is manifestly clear that the depositions of PW-1 & 3 are fully corroborated, consistent and fortified by 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.*
43. *For the reasons stated above and observations made in the light of depositions of PW-1 and 3 and relevant documents and relevant provisions 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 successful in proving the charge framed and leveled against DGO 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.

44. POINT NO.2 : *In view of my finding on point No. 1/charge, 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 finding that the Delinquent Government Official Sri. G.S. HADAPADA, the then Panchayath Extension Officer, Moratagi Zone, Sindagi Talk, Vijayapura District, (Now retired), has failed to maintain absolute integrity besides devotion to duty and committed an act which is unbecoming of a Government servant and he is found guilty of misconduct under Rule 3(1) of Karnataka Civil Service (Conduct) Rules, 1966.*



- ii. *Accordingly*, I hold and record my finding on the *charge i.e. para 5(2)* of the report, leveled by the disciplinary authority against Delinquent Government Official as *Proved.*
- iii *Hence*, this Enquiry Report is submitted/placed before Hon'ble Upalokayukta-1 for kind *consideration.*

Dated 23rd April 2019.

M.S. 23/04/2019

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

Date : 23.04.2019
Place : Bangalore.

::ANNEXURE::

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

- PW-1 :- Sri. Babagowda K. Biradar (Complainant)
PW-2 :- Sri. S.M. Kedagi (Executive Officer, Taluk Panchayath, Sindagi Taluk).
PW-3 :- Smt. K.A. Lalitha (Scrutiny Officer, Lokayukta, Bengaluru).

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

- Ex.P-1 : Form No. I (complaint) dated 28.06.2009
- Ex.P-2 : Form No. II without notarized affidavit
- Ex.P-3 : Notarized Affidavit dated 27.06.2009
- Ex.P-4 : Copy of representation of complainant to Executive Officer dated 20.02.2009 and Tahasildar dated 15.05.2006
- Ex P-5 : letter of Executive Officer, Sindagi Taluk, dated 26.09.2013.
- Ex P-6 : Copy of letter of PDO dated 09.06.2017
- Ex P-7 : Copy of letter dated 06.05.2006 issued by Executive Officer, Sindagi




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

- NIL -

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

- NIL -

 23/04/2019

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

Date : 23.04.2019
Place : Bangalore.