

BEFORE THE ADDITIONAL REGISTRAR, ENQUIRES-11

KARNATAKA LOKAYUKTA, BENGALURU

ENQUIRY NUMBER: LOK/INQ/14-A/452/2014

ENQUIRY REPORT Dated:03/05/2018

Enquiry Officer: V.G.Bopaiah
Additional Registrar Enquiries-11
Karnataka Lokayukta Bengaluru.

Delinquent Government Official: Sri. B.M. Somashekhariah

Discharged duties as Surveyor in the
office of Tahasildar, Gangavathi from
20/05/2008 to 07/09/2012.

Due for retirement on
superannuation on 30/04/2034.

1. Delinquent Government Official (in short, "DGO") by name Sri. B.M. Somashekhariah was working as Surveyor attached to the office of Tahasildar, Gangavathi from 20/05/2008 to 07/09/2012 . He is due for retirement on superannuation on 30/04/2034.
2. Background of initiating the present inquiry proceedings may be stated in brief. Complaint dated 24/01/2011 in FORM NO.I of the complainant by name Virupakshappa resident of Jangamarakalgudi, Gangavathi Taluk, Koppala District against the DGO came to be registered in COMPT/UPLOK/GLB/33/2011/ARE-6. According to the complainant, land bearing survey number 64/23/21 measuring 1 acre 7 guntas at Jangamarakalgudi is owned by him. Since he noticed encroachment of the said land he applied for conducting survey in the office of the Tahasildar, Gangavathi on

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05/12/2009. According to the complainant, DGO has not evinced interest to conduct survey,

3. In exercise of the powers conferred upon under section 9 of The Karnataka Lokayukta Act, 1984, Hon'ble Upalokayukta, Karnataka took up investigation and prima facie felt satisfied that without any justifiable reasons the DGO failed to conduct survey and thereby DGO is prima facie found committed misconduct within the purview of Rule 3 (1)(ii) and (iii) of The Karnataka Civil Services (Conduct) Rules, 1966 and 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 to entrust the inquiry to the Hon'ble Upalokayukta under section 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.
4. Subsequent to the report dated 27/06/2014 under section 12(3) of The Karnataka Lokayukta Act, 1984, Government Order ಕಂಇ 82 ಭವದಾನೇ (3) 2014 ಬೆಂಗಳೂರು ದಿನಾಂಕ 24/07/2014 has been issued by the Deputy Secretary to the Government, Department of Revenue (Survey)(Services-1) entrusting the inquiry to the Hon'ble Uplaokayukta, Karnataka under 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. Subsequent to the Government Order, Order number LOK/INQ/14-A/452/2014 Bengaluru dated 07/08/2014 has been ordered by the Hon'ble Upalokayukta-1, Karnataka nominating the Additional Registrar, Enquiries-11, Karnataka Lokayukta, Bengaluru as Inquiry Officer to frame charges and to conduct departmental inquiry against the DGO.
5. Articles of charge dated 29/09/2014 at Annexure-I which includes statement of imputation of misconduct at Annexure-II

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framed by the then Additional Registrar, Enquiries-11, Karnataka Lokayukta, Bengaluru is the following:

"ANNEXURE-1

CHARGE:

That you DGO Sri. B.M. Somashekharaiiah, Taluk Surveyor, Office of the Tahasildar, Gangavathi Taluk, Koppal District while discharging your duties:

1. The complainant-Sri. Virupakshappa S/o Sri. Veerabhadrappa is the owner of land bearing Sy. No.64/B/B1 measuring 1 acre 7 guntas of Jangamarakalgudi Village in Marali Hobli of Gangavathi taluk and he found that there was encroachment of his land. Hence, he has applied for survey of land in the Tahsil office at Gangavathi on 05/12/2009;
2. Even though there is no any defect in the application filed by the complainant, you DGO failed to survey the land from 05/12/2009. In spite of his repeated visits to the Tahsil office, he has been harassed without giving the correct information about his application.
3. You DGO had sufficient time to survey the land of the complainant since 2009 to 2014. But, you DGO have failed to survey the land and thereby the complainant has been put to hardship;

and thereby you failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of Government Servants and thus you are

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guilty of misconduct under Rule 3 (1)(i) to (iii) of The Karnataka Civil Services (Conduct) Rules, 1966.

ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT

An investigation was taken up under section 9 of The Karnataka Lokayukta Act, on the basis of complaint filed by Sri. Virupakshappa S/o Sri. Veerabhadrrppa R/o Jangamarakalgudi in Gangavathi Taluk of Koppal District (hereinafter referred to 'complainant' for short), against DGO Sri. B.M. Somashekharaih, Taluk Surveyor, Office of the Tahsildar, Gangavathi Taluk, Koppal District, alleging corruption and dereliction of duty that the DGO, being a public/Government servant, has committed misconduct.

2. According to the complainant: He is the owner of 1 acre 7 guntas of land in Sy. No.64/B/1/B1 of Jangamarakalgudi Village in Marali Hobli of Gangavathi Taluka and as there was encroachment he had applied for its survey in the Tahsil office at Gangavathi on 05/12/2009. But, in spite of his repeated visits to the Tahsil office, has been harassed without giving the correct information about his application. If bribe is paid in the taluka office at Gangavathi, the said office has made arrangements to attend the work in advance and even the staff members mis-behave with general public. Hence, the complainant sought for justice and to order for survey and provide him the sketch of his said land.

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3. DGO filed his comments. According to him, complainant has applied for survey of land and that application is numbered at GM/MPR/200/2009-10 and is pending for survey since it is not possible to survey the land as Paddy crop is grown in the land and hence, survey will be done after the harvest of that paddy crop. He has also stated that there is shortage of surveyors at Gangavathi, due to which also there is delay.

4. Complainant filed his rejoinder stating that, the paddy crop is completely harvested and again in the month of July-August 2011, there will be sowing of paddy crop, but no survey is held in spite of his application dated: 05/12/2009, hence sought for necessary action against the DGO.

5. Consideration of the material on record shows that:


(i) The application for survey is pending from 05/12/2009. The DGO does not say any defect in the application or anything to be done on the part of the complainant. The say of the DGO that he will do or get done the survey after harvest of the paddy crop is unbelievable because since 2009 to 2014, the DGO has sufficient time to survey the land but survey has not been done. There cannot be any other reason on the part of the DGO for not surveying the land and thereby the complainant has been put to hardship.

(ii) Even though there is no any defect in the application filed by the complainant, DGO failed to

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survey the land from 05/12/2009 to 2014. In spite of his repeated visits to the Tahsil office, he has been harassed without giving the correct information about his application.

6. In view of the facts stated above and the material on record, reply of the DGO has not been found satisfactory to drop the proceedings.
7. The facts supported by the material on record prima facie show that the DGO, being a public / Government servant, has failed to maintain absolute devotion to duty and also acted in a manner unbecoming of Government servant, and thereby committed misconduct and made himself liable for disciplinary action.
8. Since the said facts and material on record prima-face show that DGO has committed misconduct as per Rule 3 (1)(ii) and (iii) of The KCS (Conduct) Rules, 1966 recommendation under section 12(3) of the Karnataka Lokayukta Act, is made to the Competent Authority to initiate disciplinary proceedings against the DGO and to entrust the inquiry to this Institution under Rule 14-A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.
9. The Government after considering the recommendation made in the report, entrusted the matter to the Hon'ble Uplokayukta to conduct departmental / disciplinary proceedings against the DGO and to submit report. Hence, the charge".


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6. In response to due service of articles of charge, DGO entered appearance before the then Additional Registrar Enquiries-11, Karnataka Lokayukta, Bengaluru on 27/10/2014 on which day when first oral statement was recorded he pleaded not guilty. Subsequently he has engaged Advocate for defence.
7. In the course of written statement dated 22/07/2015 of DGO he has denied the alleged charge. According to DGO, he joined as Surveyor on 20/05/2004 in the office of Assistant Director of Land Records, Koppala which office merged with the office of Tahasildar, Koppala in the year 2005. It is contended that subsequent to merger, DGO was appointed as Taluk Surveyor exclusively to conduct survey of properties of Government. It is contended that application of the complainant pertains to conducting survey of patta land which has to be attended by different Surveyor. It is contended that DGO met with road traffic accident on 27/03/2013 and availed medical leave for six months and thereafter transferred to the Taluk office at Turvekere.
8. The disciplinary authority has been examined the complainant as PW1. During evidence of complainant xerox copy of his application dated 04/12/2009 in a single sheet addressed to the Tahasildar, Gangavathi is marked as per Ex P1, his original complaint dated 24/01/2011 in FORM NO.I in a single sheet is marked as per Ex P2, his signature found on Ex P2 is marked as per Ex P2(a), his original affidavit dated 12/01/2011 in a single sheet on stamp paper is marked as per Ex P3, his original application dated 11/11/2010 in a single sheet addressed to the Hon'ble Lokayukta, Karnataka is marked as per Ex P4, his original rejoinder dated 22/05/2011 in a single sheet addressed to the Additional Registrar, Enquiries-6, Karnataka Lokayukta,

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Bengaluru is marked as per Ex P4 (original rejoinder marked as per Ex P4 should have been marked as per Ex P5 but since, by oversight it is marked as per Ex P4 and as such the said rejoinder hereinafter will be referred to as Ex P5), attested copy of RTC extract dated 16/05/2015 in a single sheet is marked as per Ex P5 (since the original rejoinder will be hereinafter referred to as per Ex P5, the RTC extract will be hereinafter referred to as Ex P6).

9. PW1 was examined on 10/11/2016 on which day, as prayed by his advocate time was extended till 09/03/2017 for cross examination. On 09/03/2017 again time was sought for cross examination. In the absence of convincing grounds time was rejected on 09/03/2017. On 09/03/2017 when second oral statement of DGO has been recorded he has resorted to silence. Subsequently, PW1 has been recalled for cross examination and accordingly, PW1 has been subjected cross examination on 10/06/2017. During second oral statement of DGO recorded on 19/06/2017 he has stated that he will get examined himself as defence witness. He has not chosen to examine any independent defence witness.
10. DGO got himself examined as DW1. During his evidence xerox copy of office order in a single sheet dated 07/09/2012 of the Deputy Commissioner, Koppala is marked as per Ex D1, xerox copy of the office order dated 18/09/2013 in two sheets of the Tahasildar, Turuvekere is marked as per Ex D2, xerox copy of RTC extract in a single sheet is marked as per Ex D3. During cross examination of DGO, original comments dated 29/03/2011 in a single sheet of DGO is marked as per Ex P6 (in view of marking of the attested copy of RTC extract as per Ex

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P6, original comments dated 29/03/2011 will be hereinafter referred to as Ex P7).

11. Since DGO got himself examined as defence witness questionnaire is dispensed with.
12. In the course of written statement of Presenting Officer filed on 21/02/2018 it is mainly contended that evidence on record establishes the alleged misconduct.
13. In the course of written argument of DGO filed on 13/04/2018 it is contended that the complainant does not own land bearing survey number 64 and that the complainant has not mentioned the names of neighbouring land owners who encroached the land. It is contended that the complaint is aimed at grabbing an extent of 10 guntas of Government land. It is contended that the date on which the complainant approached the DGO is not forthcoming in the evidence of complainant. It is contended that DGO discharged duties as Surveyor in the office of the Tahasildar, Kustagi from 07/09/2012 to 11/09/2013 and subsequently has been transferred to the office of the Tahasildar, Turuvekere. It is contended that as on 24/01/2011 the official work of complainant was not pending with DGO. It is contended that since DGO has not obliged to prepare sketch in order to facilitate the complainant to encroach an extent of 10 guntas of Government land the present complaint has been filed.
14. In view of articles of charge, the sole point which arises for consideration is whether, while the DGO was working as Surveyor till 07/09/2012 in the office of the Tahasildar Gangavathi, without any valid reasons DGO failed to conduct survey of the land bearing survey number 64/2/21 measuring 1 acre 7 guntas at Jangamarakalgudi without any lawful excuse

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and thereby DGO is guilty of misconduct within the purview of Rule 3 (1)(ii) and (iii) of The Karnataka Civil Services (Conduct) Rules, 1966?

15. Evidence of the complainant that he is the owner of the land to an extent of 1 acres 7 guntas and that the neighbouring land owner had encroached the said land has not been attempted to be challenged during his cross-examination. His evidence that he has filed application the xerox copy of which is at Ex P1 for conducting survey equally has remained unchallenged during his evidence. Ex P1 shows that the original of the same was received in the office of Tahasildar, Gangavathi on 05/12/2009. Evidence of complainant that on the date filing of the said application DGO was the concerned Surveyor has not been assailed during his cross examination and therefore contention put forward in the course of written statement as well as written argument of DGO contending that DGO was not duty bound to conduct survey necessarily has to rest on the ground. It is brought out during cross examination of complainant that the complainant lodged application on 15/02/2009. This portion of his answer will not lend assurance to the DGO in the presence of Ex P1. Though it is brought out during cross-examination of complainant that the complainant has not filed application for conducting survey of the land bearing survey number 64/B1 and the land bearing survey number 64/P1 the said answer will not lend support to the defence for the reason that as could be seen from paragraph number 1 of the evidence of DGO, according to DGO he received the application on 05/12/2009 for conducting survey of the

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land bearing survey number 64. It is in paragraph number 1 of the evidence of DGO that since crop was found raised in the land bearing survey number 64 when he visited the said land he could not conducted survey. This portion of his evidence establishes that DGO was duty bound to conduct survey of the said land and therefore his contention that he was not duty bound to deal with the application of the complainant and his further contention that work of complainant was not pending with him cannot be accepted. During cross examination he admits that he has mentioned his comments at Ex P7 that survey will be conducted after harvest of the paddy crop. It is in paragraph number 1 of his evidence that he was working as survcyor in the office of the Tahasildar, Gangavathi from 20/05/2008 to 07/09/2012. This portion of his evidence would show that right from 20/01/2010 till 07/09/2012 he had ample time to conduct survey. Therefore, fact remains thus establish that without reasonable excuse he has failed to conduct survey. Much is attempted during cross examination of complainant and during evidence of DGO that complainant has nothing to do with the land bearing survey number 64/B /P1. The said defence has no relevance for the reason that DGO is not conferred upon with the powers of declaring the title of the said land.

16. Upon appreciation of the entire evidence on record it stands established that without any sufficient cause the DGO failed to conduct survey of the land of complainant mentioned in Ex P1. Intentional failure on the part of

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DGO to conduct survey is an act amounting to misconduct within the purview of Rule- 3 (1)(ii) and (iii) of The Karnataka Civil Services (Conduct) Rules, 1966 and being of this view I proceed with the following:

R E P O R T

Charge against DGO B.M. Somashekhariah who discharged duties as Surveyor from 20/05/2008 to 17/09/2012 in the office of Tahasildar, Gangavathi, Koppala District who is due for retirement on superannuation on 30/04/2034 that during his tenure as Surveyor attached to the office of Tahasildar, Gangavathi, Koppala District failed to conduct survey of the land bearing survey number 64/ಬಿ/1 measuring 1 acre 7 guntas at Jangamarakalgudi without any lawful excuse and thereby is guilty of misconduct within the purview of Rule 3 (1)(ii) and (iii) of The Karnataka Civil Services (Conduct) Rules, 1966 is proved.

Submit this report to the Hon'ble Upalokayukta-1, Karnataka in a sealed cover forthwith along with connected records.


(V.G. BOPAI AH)

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

ANNEXURE

List of witness examined on behalf of the Disciplinary Authority

PW 1:- Sri. Virupakshappa

List of witness examined on behalf of DGO:-

DW 1:- Sri. B.M.Somashekharaiiah (DGO)


List of documents marked on behalf of DisciplinaryAuthority:-

- Ex P 1 Xerox copy of application dated 04/12/2009 in a single sheet of the complainant addressed to the Tahasildar, Gangavathi.
- Ex P 2 Original complaint dated 24/01/2011 in FORM NO.I in a single sheet of the complainant.
- Ex P 3 Original affidavit dated 12/01/2011 in a single sheet on stamp paper of the complainant.
- Ex P 4 Original application dated 11/11/2010 in a single sheet of the complainant addressed to the Hon'ble Lokayukta, Karnataka .
- Ex P 5 Original rejoinder in a single sheet dated 22/05/2011 of complainant addressed to the Additional Registrar, Enquiries-6, Karnataka Lokayukta, Bengaluru.
- Ex P 6 Attested copy of RTC Extract in a single sheet
- Ex P 7 Original rejoinder dated 29/03/2011 in a single sheet of complainant.

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List of documents marked on behalf of DGO:-

- Ex D1 Xerox copy of office order in a single sheet dated 07/09/2012 of the Deputy Commissioner, Koppala .
- Ex D2 Xerox copy of the office order dated 18/09/2013 in two sheets of the Tahasildar, Turuvekere .
- Ex D3 Xerox copy of RTC extract in a single sheet .


23.5.2018
(V.G. BOPALIAH)
Additional Registrar, Enquiries-11,
Karnataka Lokayukta, Bengaluru.

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

No:LOK/INQ/14-A/452/2014/ ARE-11

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

RECOMMENDATION

Sub:- Departmental inquiry against Sri B.M.
Somashekharaiiah, Surveyor, Office of the Tahsildar,
Gangavathi, Koppal District - Reg.

Ref:- 1) Government Order No. ಕಂಇ 82 ಭೂದಾಸೇ (3) 2014
Bengaluru dated 24/7/2014

2) Nomination order No.LOK/INQ/14-A/452/2014,
Bengaluru dated 7/8/2014 of Upalokayukta-1, State
of Karnataka, Bengaluru

3) Inquiry Report dated 3/5/2018 of Additional
Registrar of Enquiries-11, Karnataka Lokayukta,
Bengaluru

The Government by its Order dated 24/7/2014, initiated the disciplinary proceedings against Sri B.M. Somashekharaiiah, Surveyor, Office of the Tahsildar, Gangavathi, Koppal 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. LOK/INQ/14-A/452/2014 dated 7/8/2015, 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 B.M. Somashekharaiiah, Surveyor, Office of the Tahsildar, Gangavathi, Koppal District was tried for the following charge:-

“That you DGO B.M.Somashekharaiiah, Taluk Surveyor, Office of the Tahsildar, Gangavathi Taluk, Koppal District while discharging your duties:

1. The Complainant – Sri Virupakshappa S/o. Sri Veerabhadrappa is the owner of land bearing Sy. No. 64/B/B1 measuring 1 Acre 7 Guntas of Jangamarakalgudi Village in Marali Hobli of Gangavathi Taluk and he found that there was encroachment of his land. Hence, he applied for survey of land in the Tahsil office at Gangavathi taluk on 05/12/2009;
2. Even though there is no any defect in the application filed by the complainant, you DGO failed to survey the land from 05/12/2009. In spite of his repeated visits to the Tahsil office, he has been harassed without giving the correct information about his application.
3. You DGO had sufficient time to survey the land of the complainant since 2009 to 2014. But, you DGO have failed to survey the land and thereby the complainant has been put to hardship;

and thereby you failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of Government Servants and thus you are guilty of misconduct under Rule 3 (1)(i) to (iii) of the Karnataka Civil Services (Conduct) Rules, 1966”.

4. The Inquiry Officer (Additional Registrar of Enquiries-11) on proper appreciation of oral and documentary evidence has held that the charge against DGO B.M. Somashekharaiiah who

discharged duties as Surveyor from 20/5/2008 to 17/9/2012 in the office of the Tahasildar, Gangavathi, Koppal District who is due to for retirement on superannuation on 30/4/2034 that during his tenure as Surveyor attached to the office of Tahsildar, Gangavathi, Koppal District failed to conduct survey of the land bearing Survey number 64/2/31 measuring 1 acre 7 guntas at Jangamarakalgudi without any lawful excuse and thereby is guilty of misconduct within the purview of Rule 3 (1)(ii) and (iii) of the Karnataka Civil Services (Conduct) Rules, 1966 is proved.


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 30/4/2034.

7. Having regard to the nature of charge proved against DGO Sri B.M.Somashekharaiyah, it is hereby recommended to the Government for imposing penalty of withholding four annual increments payable to DGO Sri B.M. Somashekharaiyah, Surveyor, Office of the Tahsildar, Gangavathi, Koppal District, with cumulative effect.

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

Connected records are enclosed herewith.


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

