

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

No:UPLOK-1/DE/505/2015/ARE-8

Multi Storied Building,
Dr.B.R.Ambedkar Veedhi,
Bengaluru-560 001,
Date: 24/09/2018

RECOMMENDATION

Sub:- Departmental inquiry against Sri Kammar K.S, the then Assistant Engineer, City Municipal Council, Sirsi, Uttara Kannada District, presently Assistant Executive Engineer, District Urban Development Cell, Dharwad – Reg.

- Ref:-1) Government Order No. ಸಅಇ/77/ಡಿಎಂಕೆ/2015 Bengaluru dated 06/08/2015 and its Corrigendum dated 09/10/2015;
- 2) Nomination order No. UPLOK-1/DE/505/2015 Bengaluru dated 26/10/2015 of Upalokayukta-1, State of Karnataka, Bengaluru;
- 3) Inquiry Report dated 20/09/2018 of Additional Registrar of Enquiries-8, Karnataka Lokayukta, Bengaluru

The Government by its Order dated 06/08/2015, read with its Corrigendum dated 09/10/2015 initiated the disciplinary proceedings against Sri Kammar K.S, the then Assistant Engineer, City Municipal Council, Sirsi, Uttara Kannada District, presently Assistant Executive Engineer, District Urban Development Cell, Dharwad (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/505/2015, dated 26/10/2015, nominated Additional Registrar of Enquiries-8, 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 Kammar K.S., the then Assistant Engineer, City Municipal Council, Sirsi, Uttara Kannada District, presently Assistant Executive Engineer, District Urban Development Cell, Dharwad was tried for the following charge:-

That you - Sri.Kammar K.S - DGO while working as the then Assistant Engineer, City Municipal Council, Sirsi constructed C.C. road at the junction point near Rayarapete Maruthi temple in Sirsi during 2006-07 and 2007-08, but even though normal expectancy of C.C. road is not less than 25 years, it worth down within a short period of about one year of executing the work because of you - DGO not undertaking proper reconnaissance survey/design of down gradient area and junction point before executing work of laying C.C. roads and you - DGO thereby failing to maintain absolute integrity and devotion to duty, the act of which is unbecoming of a Government Servant, committed misconduct as enumerated under Rule 3(i), (ii) and (iii) of Karnataka Civil Services (Conduct) Rules, 1966.

4. The Inquiry Officer (Additional Registrar of Enquiries-8) on proper appreciation of oral and documentary evidence has held that, the Disciplinary Authority has proved the above charge against DGO Sri Kammar K.S, the then Assistant Engineer, City Municipal Council, Sirsi, Uttara Kannada District, presently Assistant Executive Engineer, District Urban Development Cell, Dharwad.

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 31/07/2033.
7. Having regard to the nature of charge proved against DGO Sri Kammar K.S, it is hereby recommended to the Government for imposing penalty of withholding four annual increments payable to DGO Sri Kammar K.S., the then Assistant Engineer, City Municipal Council, Sirsi, Uttara Kannada District, presently Assistant Executive Engineer, District Urban Development Cell, Dharwad, 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

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KARNATAKA LOKAYUKTA

No:Uplok-1/DE-505/2015/ARE-8

M.S. Building,
Dr. Ambedkar Veedhi,
Bangalore, Dated: 20-09-2018**ENQUIRY REPORT**

Present: Sri.Mohamed Ashraf Aris,
Additional Registrar Enquiries -8,
Karnataka Lokayukta,
Bengaluru

Sub: Departmental Inquiry against
Sri Kammar K.S., then Assistant Engineer,
City Municipal Council, Sirsi presently
Assistant Executive Engineer, District
Urban Development Cell, Dharwad

Ref: (1) Government Order No.UDD 77 DMK 2015
Bengaluru dt.06-08-2015 read with Corrigendum
Dt.09-10-2015

(2) Nomination Order No.Uplok-1/DE-505/2015
Dated 26-10-2015

Preamble:

1. This is a Departmental Enquiry directed on the basis of Government Order No. UDD 77 DMK 2015 Bangalore dt. 06-08-2015 and Corrigendum dt.09-10-2015 against Sri Kammar K.S. then Assistant Engineer, City Municipal Council, Sirsi presently Assistant Executive Engineer, District Urban Development Cell, Dharwad.



2. The Hon'ble Upalokayukta-1 has nominated Additional Registrar of Enquiries -8, of the office of the Karnataka Lokayukta, to frame charge and to conduct inquiry against the aforesaid DGO as per the nomination order dated 26-10-2015. Accordingly Articles of Charge was framed by Additional Registrar Enquires-6.

Summary of charge:-

That you - Sri Kammar K.S. - DGO while working as the then Assistant Engineer, City Municipal Council, Sirsi constructed C.C.road at the junction point near Rayarapete Maruthi temple in Sirsi during 2006-07 and 2007-08, but even though normal expectancy of C.C. road is not less than 25 years, it worn down within a short period of about one year of executing the work because of you - DGO not undertaking proper reconnaissance survey/design of down gradient area and junction point before executing work of laying C.C. roads and you - DGO thereby failing to maintain absolute integrity and devotion to duty, the act of which is unbecoming of a Government Servant, committed misconduct as enumerated under Rule 3(i), (ii) and (iii) of Karnataka Civil Services(Conduct) Rules, 1966.

STATEMENT OF IMPUTATION OF MISCONDUCT
IS AS FOLLOWS:-

An investigation was taken under Sec.9 of the Karnataka Lokayukta Act, on the basis of a complaint filed by Sri.Nagaraj Manjappa Murdeshwar Marathi Koppa, Puttana Mane Road at



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Sirsi in Uttar Kannada District (hereinafter referred to as 'complainant' for short) against 1) Sri.Ramadas G. the then Commissioner of C.M.C at Sirsi (now retired), 2) Sri.Gurava D.S. – the then A.E.E. in C.M.C., Sirsi (now retired), 3) Sri.Kammar K.S.- the then Assistant Engineer in C.M.C. at Sirsi (presently Assistant Executive Engineer in District Urban Development Cell in the office of Deputy Commissioner at Dharwad) – DGO, and 4) Sri.Ambar Khan – the then Junior Engineer in C.M.C. at Sirsi (presently Junior Engineer in T.M.C. Yelaburg of Koppal District) alleging their misconduct as mentioned therein.

According to the complaint: DGO, Sri.Ramadas G., Sri.Gurava D.S. and Sri.Ambar Khan have carried out sub standard work of construction of drain and C.C. road during the periods of 2006-07 and 2007-08.

When called for their comments, DGO, Sri.Ramadas G., Sri.Gurava D.S. have submitted comments denying the allegations of substandard work, but not Sri.Ambar Khan.

Thereafter, the matter was referred to Chief Engineer in Technical Audit Cell of our institution i.e., Karnataka Lokayukta. He, in turn, entrusted the investigation to the E.E.-2 (hereinafter referred to as I.O. for short). So, after investigation, I.O. has submitted report to the C.E. who, in turn, has submitted investigation report supporting the complaint allegations but in part.

DGO, Sri.Gurava D.S. and Sri.Ambar Khan were implementing officers of laying CC road. As Sri.Guruva D.S. has retired on



30/7/2010, copy of the investigation report was sent to DGO and Sri.Ambar Khan only calling for their comments. For that DGO has submitted his comments/reply to the investigation report denying allegation of substandard work, whereas Sri.Ambar Khan has not offered any comments/reply.

A careful consideration of the material on record shows that:

- i. The C.C. road at the junction point near Rayarapete – Maruthi Temple in Sirsi, laid/constructed during the period 2006-07 and 2007-08 was damaged though normal expectancy of CC road is not less than 25 years;
- ii. The DGO, Sri.Ramadas G., Sri.Gurava D.S. and Sri.Ambar Khan responsible for laying/execution of the CC road had failed to undertake proper reconnaissance survey/design of down gradient area and junction point before executing work of laying CC road.

In view of said facts and material on record, comments offered by DGO were not found satisfactory to drop the proceedings against DGO and Sri.Ambar Khan as noted/ordered in the order sheets, but the proceedings against Sri.Ramadas G. are dropped as per orders in the order sheet.

Since said facts and material on record prima facie show that DGO, Sri.Gurava and Sri.Ambar Khan have committed misconduct under Rule 3(i)(ii) and (iii) of KCS (Conduct) Rules, now, acting U/s 12(3) of Karnataka Lokayukta, was made of 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.

But, as Sri.Guruva had retired from service on 30/7/2010, he could not be proceeded against under KCS Rules. As such, recommendation was made to take action against him under Civil and Criminal law as is permissible by law.

So far as Sri.Ambar Khan, a daily wage employee since 12/09/1996 is concerned, recommendation was made to take action as provided in Government Circular No.ಸಿಆಸುಇ 17ನೇಇಡಿ 2002 ದಿ.24/11/2003. Therefore, acting under section 12(3) of Karnataka Lokayukta Act, recommendation was made to the Competent Authority to initiate disciplinary proceedings..

Accordingly, Competent Authority initiated disciplinary proceedings against DGO and entrusted the Enquiry to Hon'ble Upalokayukta and Hon'ble Upalokayukta nominated Additional Registrar Enquiries -8 to conduct enquiry. Hence, the charge.

3. DGO appeared before Enquiring Authority in pursuance of service of Articles of Charge.

4. First oral statement was recorded on 16-02-2016 wherein D.G.O. pleaded not guilty and claimed for conducting enquiry.



5. DGO has filed his written statement. In the written statement, DGO has contended as follows;

Contention of DGO in his written statement is as follows;

DGO denies the allegation of sub-standard work. From the report of the Investigating Officer it is proved that the work was executed in 2007-08 and that 7 years have lapsed since the execution of work and that the work is still in a satisfactory condition. At page 71 of the I.O. report, the Chief Engineer, Technical wing, under the column compliance has stated that the expectancy (life) of a cement concrete road should not be less than 25 years and therefore, in this context if the position of the road where the concrete is going to be provided has to handle heavy traffic abrasions/undergo impact, then definitely the executing officers should have considered these aspects. The said road was an inner road and not meant for heavy vehicles. The cost of the said road was Rs 7.30 lakhs. The estimate sketch and drawing were approved by the A.E.E. who is superior of the DGO. The work has been executed according to the approved estimate with proper reconnaissance survey/design of down gradient area and junction



point before executing work of laying C.C. roads and there was no complaint whatever. On the date of inspection it was noticed that at 1 or 2 points, the concrete was slightly damaged. That was due to the heavy traffic intensity with over loaded vehicles passing through the said road and not the defect of the execution of the work. I.O. has clearly stated that the execution of the work was satisfactory. DGO had executed the work under the supervision and guidance of his official superior, the A.E.E. who had denied the allegation that the work by the DGO is of sub-standard. The action taken by DGO is in good faith and will not amount to misconduct. Under section 283 of the Karnataka Municipalities Act, 1964 there is protection for actions taken in good faith. Complaint is barred by 'limitation'.

6. On behalf of the Disciplinary Authority, two witnesses have been examined as PW1 and PW2 documents have been marked as Ex.P-1 to P-29.



7. Following documents were marked on behalf of Disciplinary Authority;

Ex.P-1	Form No.I dt.07-06-2008
Ex.P-2	Form No.II dt.07.06.2008
Ex.P-3	Complaint dt.07-06-2008
Ex.P-4	Complaint dt.10-01-2008
Ex.P-5	Letter dt.15-11-2010
Ex.P-6	Letter dt.05-05-2015 of AEE, Dharwad alongwith
Ex.P-7	Letter dt.21-03-2015 of Nagaraj M.Murdshwara
Ex.P-8	Meeting notice dt.14-11-2014
Ex.P-9	O.M. dt.15-11-2014
Ex.P-10	Tender Notification copies
Ex.P-11	Letter dt.05-09-2006 of D.C. alongwith enclosures
Ex.P-12	Letter dt.20-09-2014 of Commissioner, CMC, Sirsi alongwith enclosures
Ex.P-13	Details of works
Ex.P-14	Note sheet of complaint file no.Compt/Uplok/BGM-191/2008/EE-2 (Investigation Report of EE-2, TAC)
Ex.P-15	Spot mahazar dt.18-11-2014
Ex.P-16	Spot mahazar dt.19-11-2014
Ex.P-17	Spot mahazar dt.20-11-2014
Ex.P-18	Letter dt.06-06-2014 of EE-2, TAC
Ex.P-19	Letter dt.28-11-2013 of Nagaraja M.Murdeshwara
Ex.P-20	Letter dt.17-12-2012 of J.E., Pattana Panchayath, Yelburga
Ex.P-21	Letter dt.04-01-2013
Ex.P-22	Letter dt.18-11-2010
Ex.P-23	Letter dt.27-12-2010 of K.S.Kammar, CMC, Sirsi
Ex.P-24	Tender Notification dt.23-03-2007
Ex.P-25	Letter dt.15-11-2010 of K.S.Kammar
Ex.P-26	Letter dt.14-10-2008 of Nagaraj M.Murdeshwar
Ex.P-27	C.D.
Ex.P-28	Details of construction of Cement concrete road
Ex.P-29	Report of Chief Engineer

8. The following witnesses were examined on behalf of the Disciplinary Authority

- (1) PW1: T.N.Shivaram Samanth
- (2) PW2: B.R.Anil Kumar



9. Points that arise for determination are as follows:-

1. Whether the Disciplinary Authority proves that the C.C. road formed at the junction point near Rayarapete Maruthi temple in Sirsi during 2006-07 and 2007-08, was worn down within a short period of about one year of executing the work, though the normal expectancy of CC road is not less than 25 years and that the DGO is responsible for the same by not undertaking proper reconnaissance survey/design of down gradient area and junction point before executing the said work and thereby, DGO has failed to maintain absolute integrity, devotion to duty and committed the act which is of un-becoming of Public/Government servant and thereby DGO has committed misconduct as enumerated U/R 3(1)(i) to (iii) of K.C.S. (Conduct) Rules 1966?

2. What Order ?

10. Answer to the aforesaid points are as follows:

Point No. 1 - In the Affirmative

Point no. 2 - as per the final order for the following ;



REASONS**POINT No.1:-**

11. The Investigating Officer i.e. Executive Engineer-2 of the Technical Wing has been examined as PW-1. He has stated about conducting spot inspection in the presence of DGO and others. His report dt.03-02-2015 is marked as Ex.P-14. The three mahazars drawn by him on 18-11-2014, 19-11-2014 and 20-11-2014 are marked as Ex.P.-15 to Ex.P-17.

12. Action plan and Tender documents are marked as Ex.P-11. Tender Notification is marked as Ex.P-10 to P-24. Estimate copy is at Ex.P-28. The list and details of works is marked as Ex.P-13.

13. On 10-01-2008 the complainant had written a letter to the Assistant Engineer, Sirsi as per Ex.P-4, regarding sub-standard work of the R.C.C. drain at Sirsi.


14. On 07-06-2008, complainant filed this complaint before the Lokayukta office in Form No.I & II. They are marked as Ex.P-1 and

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2, in which he has alleged sub-standard work in respect of the concrete road and drain works within the limits of Sirsi City Municipality in the year 2006-07 and 2007-08. The detail complaint is marked as Ex.P-3. On 14-10-2008 the complainant had written another letter to the Lokayukta office as per Ex.P-26, wherein he has stated that Sri B.R.Anilkumar had collected information regarding the works.

15. PW-1 in his chief examination deposes that at 2 curved slopes in the C.C. road at Rayarapete Maruthi temple, Sirsi, to some extent the road was spoilt.

16. In the cross examination PW-1 has stated that he had asked the Quality Control authorities to examine the quality of the work, but they informed him that they do not have the required equipment to test the same. Further, he has stated that Reconnaissance survey/Design of down gradient and estimate is not done by him. He has stated that in the curve and in the slope



the surface layer was spoilt to a little extent. He has stated that it may be due to the movement of heavy vehicles.

17. The Chief Engineer of the Technical Wing of Karnataka Lokayukta and Sri B.R. Anilkumar has been examined as PW-2. He has stated that some clarifications were sought by the Hon'ble Upalokayukta in respect of the report submitted by PW-1 and that he has submitted his note sheet report as per Ex.P-29.

18. In the note sheet report Ex.P-29 of Chief Engineer (PW-2) of TAC wing has made the following clarification (at para 202):-

(i) Even without the Measurement books, quality of the C.C. works can be ascertained either through conducting non-destructive tests (i.e. through Rebound Hammer test) or by conducting the compression tests on the core taken out from the executed CC works or by taking some portion of the executed work and get the same analyzed for its composition. But measurement book is required to know the specifications of the C.C. works with which it should have been constructed (executed).



(ii) In the absence of information such as (1) what is the actual gradient of the road ? (2) How much is the Traffic intensity ? (3) How many vehicles negotiated the said curved portion everyday (4) How many of them were heavy vehicles?, it is difficult to opine whether the portion mentioned by the I.O. could be damaged within 10 years from the date of its completion.

(iii) The expectancy (life) of a cement concrete road should not be less than 25 years. If the portion of the road where the concrete is going to be provided, has to handle heavy traffic abrasions/undergo impact, then definitely the executing officers should have considered these aspects i.e. may be gradient or the curve portion or the heavy load which the road needs to handle and accordingly concrete road should have been designed and later executed. If the cement concrete road has failed within a span of 10 years, it means that proper reconnaissance survey/design has not been done by the implementing officers, before executing the said road work.

(iv) The Quality Control sub-division had the Rebound Hammer equipments to conduct the tools on such C.C. works, however, on



the date of inspection by the I.O., the equipment was under repair i.e. it was sent for calibration, it was not brought to the spot.

19. DGO has examined himself as DW-1. He has stated that CC road from Rayarapete, Maruti temple in Sirsi was constructed during the year 2007-08 and that the concrete road was a interior road of 168.80 meter length and 3.45 meter to 4.25 meter width and the total cost of the work was 7.30 lakhs. He has deposed that the interior road was constructed as per the approved estimates and the road was handed over to the City Municipality and that due to the passing of over loaded vehicles, there was little wear and tear at the curve portion of the road which has been attended to.

20. DGO has further deposed that Reconnaissance survey will not be taken for such small roads and that the I.O. has also not made any reconnaissance survey to show that there is defect in the design of the road. Further, he has deposed that the said road was functioning satisfactorily even after 8 years of its construction and




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that it has been handed over to the City Municipality and that the DGO was not maintaining the road.

21. Counsel for DGO has pointed out to the para 202(2) at page 70 of the report of PW-2, wherein PW-2 has reported as follows;

“However, this aspect, pointed out (noticed) by the Investigating Officer could have been clearly analyzed, if the Investigating Officer has furnished clear information regarding; what is the actual gradient of the road? How much is the Traffic intensity ? How many vehicles negotiated the said curve portion everyday, of which how many of them are heavy vehicles? and therefore, in the absence of the said details, it is difficult to opine, whether the portion mentioned by the I.O. could be damaged within 10 years from the date of its completion”.

22. Defence Assistant for the DGO has argued that the inspection was done after about 7 to 8 years and that due to lapse of time at some point there was wear and tear in the CC Road and



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that the work executed was in accordance with the estimates and the M.B. Book. He has argued that there are no materials to prove that there should not be any wear and tear for a period of 25 years from the date of execution of the work for small interior city municipal roads. Further, he has argued that Reconnaissance survey will not be done in respect of an existing road but will be done while forming a new road.

23. But, the DGO has not furnished any reliable materials to support his contention that the Reconnaissance survey will not be done in respect of an interior road or that it will not be done in respect of an existing road. From the evidence of PW-1 and 2 and the records, it is established that the road was spoilt at 2 curves in the said CC road.

24. These arguments of the DGO ^{are} ~~is~~ not acceptable. When the DGO tries to defend that due to passing of heavy vehicles it has worn out, it is an admission of the fact that the concrete road has spoilt or worn out at those places. It is not the case of anybody that



the said road was not meant for movement of heavy vehicles. When that is the case, the DGO should have made a reconnaissance survey and accordingly, the concrete road should have been so designed, so as to withstand the heavy vehicles. The argument of the DGO that Reconnaissance survey is done only for formation of new roads is not acceptable. It is applicable even for formation of a new cement concrete road in an existing road. Route reconnaissance may be different from the road reconnaissance. Reconnaissance is nothing but a prior survey. If the DGO had done a prior survey he would have known that heavy vehicles move through that way and accordingly, the design of concrete road could have been made. Concrete roads cannot be expected to be damaged at least upto 25 years, but in the case on hand the road has been damaged within a short period.

25. For the aforesaid reasons, I am of the opinion that the Disciplinary Authority has been able to prove the charge. Hence, Point no.1 is answered in the Affirmative.



Point No.2:

In the result, the following order is passed;

FINAL ORDER

26. Disciplinary Authority has proved the charge against the DGO Sri Kammar K.S., then Assistant Engineer, City Municipal Council, Sirsi. Hence this report is submitted to Hon'ble Upalokayukta for further action.

Dated this 20th day of September 2018



(Mohamed Ashraf Aris)
Additional Registrar Enquiries-8
Karnataka Lokayukta,
Bangalore.

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ANNEXURE

List of witness examined on behalf of Disciplinary Authority.

1. PW1 : T.N.Shivaram Samanth
2. PW2 : B.R.Anil Kumar

List of Documents marked on behalf of Disciplinary Authority:

- | | |
|---------|---|
| Ex.P-1 | Form No.I dt.07-06-2008 |
| Ex.P-2 | Form No.II dt.07.06.2008 |
| Ex.P-3 | Complaint dt.07-06-2008 |
| Ex.P-4 | Complaint dt.10-01-2008 |
| Ex.P-5 | Letter dt.15-11-2010 |
| Ex.P-6 | Letter dt.05-05-2015 of AEE, Dharwad alongwith |
| Ex.P-7 | Letter dt.21-03-2015 of Nagaraj M.Murdshwara |
| Ex.P-8 | Meeting notice dt.14-11-2014 |
| Ex.P-9 | O.M. dt.15-11-2014 |
| Ex.P-10 | Tender Notification copies |
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| Ex.P-12 | Letter dt.20-09-2014 of Commissioner, CMC, Sirsi alongwith enclosures |
| Ex.P-13 | Details of works |
| Ex.P-14 | Note sheet of complaint file no.Compt/Uplok/BGM-191/2008/EE-2 (Investigation Report of EE-2, TAC) |
| Ex.P-15 | Spot mahazar dt.18-11-2014 |
| Ex.P-16 | Spot mahazar dt.19-11-2014 |
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| Ex.P-26 | Letter dt.14-10-2008 of Nagaraj M.Murdeshwar |
| Ex.P-27 | C.D. |
| Ex.P-28 | Details of construction of Cement concrete road |
| Ex.P-29 | Report of Chief Engineer |

List of witness examined on behalf of DGO:-

1. DW-1: K.S.Kammar

List of Documents marked on behalf of DGO:-
NIL

Dated this 20th day of September 2018



(Mohamed Ashraf Aris)
Additional Registrar Enquiries-8
Karnataka Lokayukta,
Bangalore.