

Government of Jammu and Kashmir
Public Works(R&B) Department
Civil Secretariat, J&K, Jammu/Srinagar.
HRM Section


Subject: Initiation of Regular Departmental Action against Purshotam Kumar Phonsa, then Executive Engineer PWD (R&B) Division - Kathua (Verification No.JSK-80/2017).

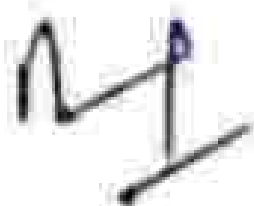
Government Order No. 193-PW(R&B) of 2023
Dated: 15.05.2023

Whereas, vide communication No.ACB/Veri-JSK-80/2017-E-163048/10444-47 dated 20.05.2022, the Anti Corruption Bureau J&K Jammu had recommended that Regular Departmental Action against Er. Purshotam Kumar Phonsa, the then Executive Engineer PW(R&B) Division, Kathua be initiated. The case received alongwith draft article of charges and other relevant information.

Whereas, the ACB has intimated that scrutiny of record revealed that the bills were drawn by Executive Engineer PWD(R&B) Division Kathua namely Er.Purshotam Kumar Phonsa, wherein excess works were executed at site and payments were made for these excess works over and above allotted amount, thus violated codal formalities in the below 20 works:-

- i. P/L 50 mm thick BM and 25mm thick SDBC on Mangloor to Jakhole road km 1st to km 15th and Jandore link road and Jandore Brow-Hote road .
- ii. Repair / Renovation of Govt. G.L. Dogra Degree College Hiranagar
- iii. P/L 50 mm thick BM and 25mm thick SDBC on Kharote Link Road.
- iv. P/L 50 mm thick BM and 25mm thick SDBC on Dayala Chak- Dinga Amb –Challan Road km 20th to km 25th.
- v. P/L 50 mm thick BM and 25mm thick SDBC on P-3 Road to Hiranagar Km 0/250-3/500.
- vi. P/L 50 mm thick BM and 25mm thick SDBC on Dayala Chak- Dinga Amb –Challan Road km 13th to km 19th
- vii. P/L 50 mm thick BM and 25mm thick SDBC on Dayala Chak -Jandi Road KM 1st RD 800 to KM 11th RD 500.
- viii. P/L 50 mm thick BM and 25mm thick SDBC on Mangloor to Jakhole road km 1st to km 15th and Jandore link road and Jandore Brow-Note road.
- ix. P/L WMM, 50 mm thick BM and 25mm thick SDBC on Parole- Maichak road km 1st to km 8th(L=7.50 km
- x. Construction of R/Wall on Dayala Dinga AMB Road in KM 20th RD 50-150 L=20mtr. And RD 400-500).
- xi. P/L 20 mm thick OGPC and 75 mm thick WBM Grade in Patches on Mela Link Road KM 3rd RD 0-1000.
- xii. P/L 20 mm thick OGPC on Barwal link road and Barwal Circular Road in patches


15.05.2023



- and stretches including cost of Bitumen.
- xiii. Construction of Bagial link road by way of construction of pucca drain and P/L 75 mm thick WBM grade- II RD 0/50-1/250.
 - xiv. Construction of pucca drain on Rajbagh Jakhole Road km 11th RD 250 to km 13th RD 250 (Agg. L= 430 mtr) Construction of Bagial link road by way of construction of pucca drain and P/L 75 mm thick WBM grade- II RD 0/50-1/250.
 - xv. Construction of pucca drain on Ambedkar Bridge to Dream land Park Road in km 2nd RD 100-150.
 - xvi. Construction of of road from Sunwan Moh. ,SC Basti and Gujjar Basti by way of P/L 75 mm thick WBM Gradell (in two layers) i.e link road from Sunwan Moh. Via Kissan nagar Mai Chak km 1st RD 450 to km 3rd RD 350(L=1900 mtr. Link to Gujjar basti (1=1060 mtr link to SC Basti (L= 450mtr.) and allied links(L= 200 mtr.
 - xvii. Construction of pucca drain in km 1st RD 800- 1000(L=150mtr.) and laying of 2 nos. 0.30 m dia hume pipes,2 nos. 0.45 m hume pipes and 2 nos. 0.90 m hume pipes in km 1st& km 5th on OSK road.
 - xviii. Construction of pucca drain in km 13th RD250-500 on OSK Road (L=100 mtr.).
 - xix. General Maintenance /Up-keeping of below mentioned roads during the year 2016-2017 upto ending March.
 - a. Lakhanpur Thein Road
 - b. Barni link road.
 - xx. P/L 50 mm thick BM and 25mm thick SDBC on old Samba Kathua road km 9th to km 15th (L=6.50 KMS)

Whereas, the accused charge sheeted through Chief Engineer, PW(R&B) Department, Jammu vide communication No.PWD-HRM1/207/2022-05-PWD R&B Department (7039167) dated 01.11.2022, the accused replied to the article of charges.

Whereas, the department examined the same and decided to conduct an inquiry against him by appointing Inquiry Officer and Presenting Officer as the department did not fully satisfied by the reply of the said Engineer.

Whereas, vide Government Order No. 436 (R&B) of 2022 dated 02-12-2022, Er. Mohit Mahajan, I/c SE, PMGSY, Jammu and Er. Vinod Kumar, I/c Executive Engineer PW (R&B) Division Kathua were appointed as Inquiry Officer and Presenting officer respectively. The Inquiry Officer vide communication No. SE/ PMGSY / J/4714 dated 28.12.2022 has submitted report of the case, the findings in each executed work by the Inquiry Officers is reproduced here as under:-

a. P/L 50mm thick BM and 25mm thick SDBC on Mangloor to Jakhole road km 1st to km 15th and Jandore link road and Jandore Brow-Hote road.

"This work was advertised for Rs. 2,40,92,000/- through e-tendering & allotted to M/S Triple "S" Associates by the Chief Engineer PWD(R&B) department Jammu for Rs. 2,48,53,500/-. The gross payment made was Rs. 2,79,33,595/-thus, there was an excess expenditure of Rs 30,80,095/- over & above the allotted cost. The statement of Er. Purshotam Kumar Phonsa & perusal of record reveals that by the time the execution



of this work commenced, there were some additional stretches which got damaged and these had to be repaired/rectified during the execution of the main work failing which, the damages would have got further aggravated requiring more expenditure by the time another tender is finally fixed. Further that, there were some chowks which were widened as per site necessity for better traffic movement and for which, there was also a public demand. It has also been stated that only the worst damaged stretches were repaired and the remaining damaged patches were repaired through separate tender. The statement of the officer appears justified as the excess work has been executed on the same road by the same contractor on his allotted rates & same terms & conditions as of the main contract, in the interest of the longevity of the road & for the safety and convenience of the general public/road users for which full & final payment has been made out of the funds released by the higher authorities against this work and there is no liability created and thus, there was no loss caused to the state exchequer. Further that, there is no diversion of funds as the full payment has been released out of the allotted funds for this work which were released vide SE's orders No. 230 dtd. 04.03.2017 & 312 dtd 29.03.2017. The additional work of Rs. 30,80,095/- was a variation in the allotted quantities of the BOQ & this work was executed within the scope of the original work and it did not change the scope/character and purpose of the original contract. Clause 6.5.1 of the Manual for Procurement of Works – 2022 stipulates that before the execution of this additional work, prior approval of the Procuring Entity was required who in this case was the Chief Engineer, PW(R&B) Jammu as being the allotting authority. But, no approval was sought and obtained from the Chief Engineer".

b. Repair/ renovation of Govt. G.L. Dogra Degree College Hiranagar:

"This work was e-tendered for Rs. 10,94,000/- & allotted to Sh. DheeraJ Gupta S/o Sh. Ravi Kiran R/o Hiranagar by Executive Engineer PW(R&B) Division Kathua for Rs.5,26,008/- which is nearly 52% below rate. The gross payment made was Rs.13,34,491/- thus, there was an excess expenditure of Rs. 8,26,483/- over & above the allotted cost. The statement of Er. Purshotam Kumar Phonsa & perusal of record reveals that the main scope of work was to repair and plug the leakage/seepage in the lecture halls of Govt. G.L Dogra Degree College, Hiranagar due to which these halls had become out of use because of their bad condition due to leakage. Further that, the estimate for this work was framed based on the funds released by the education department which were insufficient to execute the entire required works and thus, the scope of work was restricted based on which, the tenders were invited. The rate quoted by the contractor was nearly 52% below and therefore, on the request of the Principal, other lecture halls/ roof tops were got repaired through the same contractor on his allotted rates and terms & conditions of the main contract which resulted in execution of excess work due to which there was variation in the BOQ quantities amounting to Rs.8,26,483/-. Also that, there is no diversion of funds as the full payment has been released out of the allotted funds for this work which were released vide WDC bill dated 17.03.2016 & 02.03.2017. Since the additional works which is a variation in the allotted BOQ quantities, were executed at the behest of the indenting department at the rates of the contractor which were 52% below the advertised cost, which otherwise had to be executed through a separate tender and again getting such low rates was a remote


15.5.2023





possibility and thus, the action of the officer appears justified as there is no loss caused to the state exchequer but on the other hand, it caused savings to the government to the exchequer. The officer has made full & final payment for this additional work at the allotted rates out of the allotted funds and on the same terms & conditions of the main contract and there is no liability created in this case thus, there was no loss caused to the state exchequer. Further that, since this work was allotted by the then Executive Engineer, PW(R&B) Division Kathua and also full and final payment has been released for this work, therefore, in terms of Clause 6.5.1 of the Manual for Procurement of Works - 2022 prior approval of the Procuring Entity before execution of the additional works is deemed accorded as the Executive Engineer, PW(R&B) Division Kathua himself is the Procuring Entity as being the allotting authority. Also, the execution of additional works through the same contractor, did not change the scope/character and purpose of the original contract which is in consonance with the condition of Clause 6.5.1 of the Manual for Procurement of Works -2022".

c. P/L 50mm thick BM and 25 mm thick SDBC on Kharote link road:-

"The advertised cost of this work through e-tendering was Rs.1,16,53,000/- & allotted to M/S Kamla Hot Mix Plant Maggar Khad Kathua by the Superintending Engineer PW(R&B) Department Jammu Kathua Circle Jammu for an amounting of Rs. 1,06,87,900. The gross payment made was Rs. 1,24,56,264/- thus, there was an excess expenditure of Rs.17,68,364 /-over & above the allotted cost. The statement of Er.Purshotam Kumar Phonsa and perusal of record reveals that the excess work was executed by the field staff without his permission and knowledge. Further that, he did not allow the further execution of works on the remaining road length despite lot of public pressure and work on this length was executed through separate tender. The officer has made full & final payment for this additional work at the allotted rates and on the same terms & conditions of the main contract out of the allotted funds and there is no liability created in this case thus, there was no loss caused to the state exchequer. Also that, there is no diversion of funds as the full payment has been released out of the funds allotted for this work which were released vide CE's order No. 309 Plan of 2015-16 dtd. 29.03.2016, SE's orders No. 230 dtd. 04.03.2017 & 312 dated 29.03.2017. Hence as per above, the action of the officer appears justified. Further that, since this work was allotted by the then Superintending Engineer, PW(R&B) Jammu – Kathua circle therefore, in terms of Clause 6.5.1 of the Manual for Procurement of Works – 2022 prior approval of the Procuring Entity who in this case is the Superintending Engineer, PW(R&B) Jammu – Kathua circle as being the allotting authority, was required to be taken before execution of the additional works, which has neither been sought nor obtained by the officer. Also, the execution of additional works through the same contractor did not change the scope/character and purpose of the original contract which is in consonance with the provisions of Clause 6.5.1 of the Manual for Procurement of Works – 2022".

d. P/L 50mm thick BM and 25mm thick SDBC on PJ road to Hiranagar Km 0/250-1/500:-


15.05.2023 

"This work advertised for Rs. 1,84,28,000/- through e-tendering & allotted to M/S Satish Singh Jamwal & Co. Private Limited, Jammu by the Superintending Engineer PW(R&B) Department Jammu Kathua Circle Jammu for an amounting of Rs. 1,50,43,437/-. The gross payment made was Rs. 1,70,05,617/- & thus, there was an excess expenditure of Rs. 19,62,180/- over & above the allotted cost. The statement of Er. Purshotam Kumar Phonsa & perusal of record reveals that the excess work was executed by way of providing & laying edge to edge blacktopping in Hiranagar Bazar on the existing paved surface which was not taken into account while framing the estimate. Hence, the quantum of work and consequently the cost of work got increased. Since, the officer has made full & final payment to the contractor at his allotted rates & on same terms & conditions as of the main contract out of the funds released by the concerned authorities against this work therefore, no liability is created in this case and thus, there is no loss caused to the government exchequer. Also that, there is no diversion of funds as the full payment has been released out of the funds allotted for this work which were released vide SE's orders No. 230 dtd. 04.03.2017, 312 dated 29.03.2017 & 13 Dated 27.04.2017. The action of the officer as above, appears justified as the excess quantities were executed as per the necessity at site. Further that, since this work was allotted by the then Superintending Engineer, PW(R&B) Jammu - Kathua circle therefore, in terms of Clause 6.5.1 of the Manual for Procurement of Works - 2022 prior approval of the Procuring Entity who in this case is the Superintending Engineer, PW(R&B) Jammu-Kathua circle as being the allotting authority, was required to be taken before execution of the additional works, which has neither been sought nor obtained by the officer. Also, the execution of additional works through the same contractor did not change the scope/character and purpose of the original contract which is in consonance with the provisions of Clause 6.5.1 of the Manual for Procurement of Works - 2022".

e. P/L 50mm thick BM and 25mm thick SDBC on Mangloor to Jakhole road km 1st to km 15th and Jandore link road and Jandore Brow-Hote road.

"The advertised cost of this work was Rs. 2,40,92,000/- & allotted to M/s Triple "S" Associates by Chief Engineer PW(R&B) Department, Jammu for an amount of Rs. 2,48,53,500/-. The gross payment made was Rs. 3,01,20,331/- thus, there was an excess expenditure of Rs. 52,67,477/- over & above the allotted cost. The statement of Er. Purshotam Kumar Phonsa & perusal of record reveals that this is the same work as mentioned at S.No. 6(a) above against which, two payments were released vide CC3rd in case of this work as mentioned at S.No. 6(a) above where as, in the instant case, payment vide CC4th has been released. The reasons for execution of excess work are same as already stated above. Since, the officer has made full & final payment to the contractor at his allotted rates & on same terms & conditions as of the main contract out of the funds released by the concerned authorities against this work therefore, no liability is created in this case and thus, there is no loss caused to the government exchequer. Also that, there is no diversion of funds as the full payment has been released out of the funds allotted for this work which were released vide SE's orders No. 230 dtd. 04.03.2017 & 312 dtd 29.03.2017. The action of the officer as above, appears justified as the excess quantities were executed as per the necessity at site. Further that, since this work was allotted by the Chief Engineer, PW(R&B) Jammu therefore, in


15.05.2023



terms of Clause 6.5.1 of the Manual for Procurement of Works - 2022 prior approval of the Procuring Entity who in this case is the Chief Engineer, PW(R&B) Jammu as being the allotting authority, was required to be taken before execution of the additional works, which has neither been sought nor obtained by the officer. Also, the execution of additional works through the same contractor did not change the scope/character and purpose of the original contract which is in consonance with the provisions of Clause 6.5.1 of the Manual for Procurement of Works - 2022".

f. P/L WMM, 50mm thick BM and 25mm thick SDBC on Parole-Maichak road km 1st to km 8th (L=7.50kms):-

"This work was advertised for Rs. 1,82,25,000/- and allotted to M/s Kamla Hot Mix Plant Maggar Khad Kathua by the Superintending Engineer, PW(R&B) Jammu Kathua Circle for an allotted cost of Rs. 1,57,50,000/-. The gross payment made was Rs. 1,79,36,563/- thus, there was an excess expenditure of Rs 21,86,563/-over & above the allotted cost. The statement of Er. Purshotam Kumar Phonsa perusal of record reveals that by the time the execution of work on this commenced, the condition of the road further deteriorated with the movement of heavily loaded trucks due to existing brick kilns on this road. As a result of this, additional quantities of BOQ mainly of Wet mix were executed on this road as per necessity at site. Since, the officer has made full & final payment to the contractor at his allotted rates & on same terms & condition of the main contract out of the funds released by the concerned authorities against this work therefore, no liability is created in this case and thus, there is no loss caused to the government exchequer. Also that, there is no diversion of funds as the full payment has been released out of the funds allotted for this work which were released vide SE's Orders No. 230 dtd. 04.03.2017, 312 dtd 29.03.2017 & 13 Dtd 27.04.2017. The action of the officer as above, appears justified as the excess quantities were executed as per the necessity at site. Further that, since this work was allotted by the then Superintending Engineer, PW(R&B) Jammu - Kathua circle therefore, in terms of Clause 6.5.1 of the Manual for Procurement of Works - 2022 prior approval of the Procuring Entity who in this case is the Superintending Engineer, PW(R&B) Jammu - Kathua circle was required to be taken before execution of the additional works, which has neither been sought nor obtained by the officer. Also, the execution of additional works through the same contractor did not change the scope/character and purpose of the original contract which is in consonance with the provisions of Clause 6.5.1 of the Manual for Procurement of Works - 2022".

g. Construction of R/Wall on Dayala Dinga Amb road in km 20 th RD 50-150 L=20mtr. and RD 400-500):-

"This work was e-tendered for Rs. 9,45,000/- and allotted to M/s Sri Ram Construction Co. by the Executive Engineer, PW(R&B) Division Kathua for Rs. 9,72,430/-. The gross payment made was Rs. 13,17,204/- thus, there was an excess expenditure of Rs. 3,54,774/- over & above the allotted cost. The statement of Er. Purshotam Kumar Phonsa and perusal of record reveals that this work was allotted to improve the blackspot/curve of the road besides, reconstruction of damaged wall, as lot of accidents have occurred at a particular location. During construction of retaining wall, an

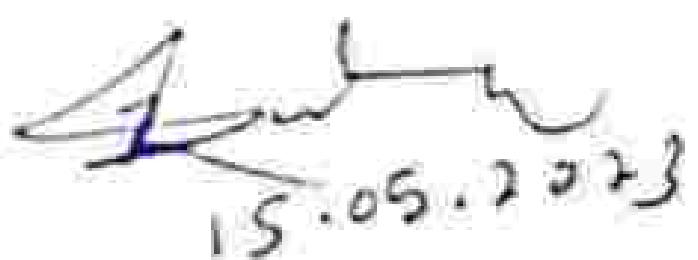




accident happened at this location which also damaged the adjoining retaining wall. Therefore, this damaged R/wall was got reconstructed through the same contractor on his allotted rates and on the same terms & conditions as of the main contract as an emergent nature of work as per site condition. Further that, the delay in construction of this wall would have put to risk the road users. Since, the officer has made full & final payment to the contractor at his allotted rates & on same terms & condition of the main contract out of the funds released by the concerned authorities against this work therefore, no liability is created in this case and thus, there is no loss caused to the government exchequer. Also, there is no diversion of funds as the full payment has been released out of the allotted funds for this work which were released under non Plan vide SEs order No. 8925-27 Dtd. 07.01.2017. The action of the officer as above, appears justified as the excess quantities were executed as per the necessity at site to safeguard the lives of the general public & road users. Further that, since this work was allotted by the then Executive Engineer, PW(R&B) Division Kathua and also full and final payment has been released for this work, therefore, in terms of Clause 6.5.1 of the Manual for Procurement of Works - 2022 prior approval of the Procuring Entity before execution of the additional works is deemed accorded as the Executive Engineer, PW(R&B) Division Kathua himself is the Procuring Entity as being the allotting authority. Also, the execution of additional works through the same contractor, did not change the scope/character and purpose of the original contract and thus, condition of Clause 6.5.1 of the Manual for Procurement of Works - 2022 has been complied with".

h. P/L 20 mm thick OGPC and 75mm thick WBM Grade-III in Patches on Mela link road km 3rd RD, 0-1000:-

"This work was e-tendered for Rs. 4,16,000/- and allotted to Sh. Kishori Lal S/o Sh. Chand R/o Billawar by the Executive Engineer, PW(R&B) Division Kathua for Rs.3,30,440/-. The gross payment made was Rs.8,12,763/-thus, there was an excess expenditure of Rs. 4,82,323/- over & above the allotted cost. The statement of Er. Purshotam Kumar Phonsa and perusal of record reveals that this work was allotted for repairing the road surface in patches and P/L 20 mm thick OGPC in one KM length only. The contractor executed the work upto his allotment but work on further road length up to Mela village was also executed on the directions of district administration as the wife of then Finance minister Govt. of India late Sh. Arun Jaitley visited her native village, Mela. Therefore, it was an emergent nature work which was executed through same contractor on the allotted rates to avoid execution of work Departmentally. Since the additional work which is a variation in the allotted BOQ quantities, was executed per the necessity at site at the allotted rates of the contract and on the same terms & conditions of the main contract on the same road leading up to Village Mela, the action taken by the officer appears justified as this was a work of urgent nature. As the officer has made full & final payment to the contractor at his allotted rates & on same terms & condition of the main contract out of the funds released by the concerned authorities against this work therefore, no liability is created in this case and thus, there is no loss caused to the government exchequer. Also, there is no diversion of funds as the full payment has been released out of the allotted funds for this work which were released under non Plan vide SE's order No. 8925-27 Dtd. 07.01.2017. The action of the officer


15.05.2023



as above, appears justified as the excess quantities were executed as per the necessity emerged due visit of VVIP. Further that, since this work was allotted by the then Executive Engineer, PW(R&B) Division Kathua and also full and final payment has been released for this work, therefore, in terms of Clause 6.5.1 of the Manual for Procurement of Works - 2022 prior approval of the Procuring Entity before execution of the additional works is deemed accorded as the Executive Engineer, PW(R&B) Division Kathua himself is the Procuring Entity as being the allotting authority. Also, the execution of additional works through the same contractor, did not change the scope/character and purpose of the original contract and thus, condition of Clause 6.5.1 of the Manual for Procurement of Works - 2022 has been complied with".

i. P/L 20mm thick OGPC on Barwal link road and Barwal Circular Road in patches and stretches including cost of Bitumen: -

"This work was e-tendered for Rs. 12,60,000/- and was allotted by the Executive Engineer, PW(R&B) Division Kathua to M/s Jai Jagdambey Road Builders for Rs 11,47,500/-. The gross payment made was Rs.39,70,305/-thus, there was an excess expenditure of Rs. 28,22,805/- over & above the allotted cost. The statement of Er. Purshotam Kumar Phonsa and perusal of record reveals that this work was allotted and executed before his joining in R&B Division Kathua and he has only made the payment against the work done. The payment involved maximum amount of departmental material as compared to labour cost. Only Rs. 9,36,972 have been paid against this work. Since, the officer has made full & final payment to the contractor against the work done at his allotted rates & on same terms & condition of the main contract out of the funds released by the concerned authorities against this work therefore, no liability is created in this case and thus, there is no loss caused to the government exchequer. Also, there is no diversion of funds as the full payment has been released out of the allotted funds for this work which were released under non Plan vide SE's order No. 8925-27 Dtd.07.01.2017. The action of the officer as above, appears justified as he has only released payment to the contractor on his allotted rates against the work got executed by his predecessor. Further that, since this work was allotted by the then Executive Engineer, PW(R&B) Division Kathua and also full and final payment has been released for this work, therefore, in terms of Clause 6.5.1 of the Manual for Procurement of Works - 2022 prior approval of the Procuring Entity before execution of the additional works is deemed accorded as the Executive Engineer, PW(R&B) Division Kathua himself is the Procuring Entity as being the allotting authority. Also, the execution of additional works through the same contractor, did not change the scope/character and purpose of the original contract and thus, condition of Clause 6.5.1 of the Manual for Procurement of Works - 2022 has been complied with".

j. Construction of Bagial link road by way of construction of pucca drain and P/L 75mm thick WBM grade-II RD 0/50-1/250:-


"This work was advertised for Rs. 5,10,000/- and allotted to Sh. Kuldeep Kumar S/o Late Sh. Kali Dass R/o Kathua by Executive Engineer PW(R&B) Department Division Kathua for Rs. 5,47,980/-. The gross payment made was Rs. 6,54,673/- thus, there was an excess expenditure of Rs.1,06,693/-. The statement of Er. Purshotam Kumar Phonsa and perusal of record reveals that the estimate was framed and tenders for this works

 15.05.2023 

were invited before his joining as Executive Engineer PW(R&B) Division Kathua. The scope of work was to dispose-off the drain water into the near by existing pond. But during construction of drain, the villagers didn't allow the department to dispose-off the drain water into this pond. Therefore, the outlet of this drain was changed at the other location identified by the locals which resulted in variation in the allotted BOQ quantities due to increase in the length of the drain and thus, there was increase in the cost of work as the work had to be properly finished as it couldn't be left incomplete without proper disposal of drain. Since, the officer has made full & final payment to the contractor at his allotted rates & on same terms & condition of the main contract out of the funds released by the concerned authorities against this work therefore, no liability is created in this case and thus, there is no loss caused to the government exchequer. Also, there is no diversion of funds as the full payment has been released out of the allotted funds for this work which were released under non Plan vide SE's order No. 8925-27 Dtd.07.01.2017. The action of the officer as above, appears justified as the excess quantities were executed as per the necessity at site and to meet the public demand. Further that, since this work was allotted by the then Executive Engineer, PW(R&B) Division Kathua and also full and final payment has been released for this work, therefore, in terms of Clause 6.5.1 of the Manual for Procurement of Works - 2022 prior approval of the Procuring Entity before execution of the additional works is deemed accorded as the Executive Engineer, PW(R&B) Division Kathua himself is the Procuring Entity as being the allotting authority. Also, the execution of additional works through the same contractor did not change the scope/character and purpose of the original contract and thus, condition of Clause 6.5.1 of the Manual for Procurement of Works - 2022 has been complied with".

k. Construction of pucca drain on Rajbagh Jakhole road km 11th RD 800 to km 12th RD 250(Agg.L=430 mtr)

"This work was advertised for Rs. 6,26,000/- and allotted to M/s Rajpoot Earth movers & Construction Co. Kathua by Executive Engineer PW(R&B) Department Division Kathua for Rs. 6,55,294/-. The gross payment made was Rs. 10,85,300/- thus, there was an excess expenditure of Rs.4,30,006/-. The statement of Er. Purshotam Kumar Phonsa and perusal of record reveals that the estimate/ rate list was framed by the field staff by taking into account the drain section only. But during construction, the hill side drain height was raised as per site condition as land owners did not allow the execution of work along their land with the originally planned height. Also, some additional slabs over the drain were provided at the entry points in front of the villager's houses located along the drain which resulted in variation in the BOQ quantities and also increase in the cost of work beyond the allotted cost after the drain was constructed up to the proper disposal location. Since, the officer has made full & final payment to the contractor at his allotted rates & on same terms & condition of the main contract out of the funds released by the concerned authorities against this work therefore, no liability is created in this case and thus, there is no loss caused to the government exchequer. Also, there is no diversion of funds as the full payment has been released out of the allotted funds for this work which were released under non Plan vide SE's order No. 8925-27 Dtd.07.01.2017. The action of the officer as above, appears justified as the excess quantities were executed as per the necessity at site and to meet the public


15.05.2023



demand. Further that, since this work was allotted by the then Executive Engineer, PW(R&B) Division Kathua and also full and final payment has been released for this work, therefore, in terms of Clause 6.5.1 of the Manual for Procurement of Works - 2022 prior approval of the Procuring Entity before execution of the additional works is deemed accorded as the Executive Engineer, PW(R&B) Division Kathua himself is the Procuring Entity as being the allotting authority. Also, the execution of additional works through the same contractor did not change the scope/character and purpose of the original contract and thus, condition of Clause 6.5.1 of the Manual for Procurement of Works - 2022 has been complied with".

l. Construction of pucca drain on Ambedkar Bridge to Dream land Park Road in km 2nd RD 100-150:-

"This work was advertised for Rs. 2,04,000/- and allotted to Sh. Deepak Kumar Gupta S/o Sh. Ram Rattan Gupta R/o Kathua by Executive Engineer PW(R&B) Department Division Kathua for an amount of Rs. 1,42,623/-. The gross payment made was Rs. 2,30,904/- thus, there was an excess expenditure of Rs. 88,281/-. The statement of Er. Purshotam Kumar Phonsa and perusal of record reveals that the estimate for construction of drain was framed as the existing road surface used to remain in damaged condition due to stagnation of water on road at a particular location. During construction of this drain, the residents adjoining this drain raised objections over disposal of drain water. Finally, after deliberations with locals, the out let of the drain was fixed at changed location which increased the BOQ quantities and thus, the cost of work as execution of this work was of urgent nature to protect the road surface from damages. After execution of this work, further damages on the road at this location stopped permanently and ultimately the government money was saved. Since, the officer has made full & final payment to the contractor at his allotted rates & on same terms & condition of the main contract out of the funds released by the concerned authorities against this work therefore, no liability is created in this case and thus, there is no loss caused to the government exchequer. Also, there is no diversion of funds as the full payment has been released out of the allotted funds for this work which were released under non Plan vide SE's order No. 8925-27 Dtd. 07.01.2017. The action of the officer as above, appears justified as the excess quantities were executed as per the necessity at site and to meet the public demand. Further that, since this work was allotted by the then Executive Engineer, PW(R&B) Division Kathua and also full and final payment has been released for this work, therefore, in terms of Clause 6.5.1 of the Manual for Procurement of Works - 2022 prior approval of the Procuring Entity before execution of the additional works is deemed accorded as the Executive Engineer, PW(R&B) Division Kathua himself is the Procuring Entity as being the allotting authority. Also, the execution of additional works through the same contractor, did not change the scope/character and purpose of the original contract and thus, condition of Clause 6.5.1 of the Manual for Procurement of Works - 2022 has been complied with".

m. Construction of road from Sunwam Moh., SC Basti and Gujjar basti by way of P/L 75mm thick WBM Grade-II (in two layers) i.e link road from Sumwan Moh. Via Kissan nagar Mai chak km 1st RD 450 to km 3rd RD 350 (L=1900 mtr. Link to Gujjar basti (L=1060 mtr) link to SC Basti (L=450mtr.) and allied links (L=200 mtr): -



15.05.2023



"This work was advertised for Rs. 9,47,000/- and allotted to M/s Riddhi Engineers and Developers R/o Kathua by Executive Engineer PW(R&B) Department Division Kathua for an amount of Rs. 10,41,637/-. The gross payment made was Rs. 1,78,497/- thus, there was an excess expenditure of Rs. 1,36,860/-. The statement of Er. Purshotam Kumar Phonsa and perusal of record reveals that during execution of the road work, there was some land dispute at site wherein, both the parties involved wanted the road alignment as per their demand. In this context, one party approached the court also. Finally, this dispute was resolved with the intervention of district administration and local representatives and the alignment had to be changed which resulted in execution of excess quantities of BOQ as the work could not be left midway and had to be completed. Options to Foreclose the tender or putting the additional work to further separate tenders were explored and found not feasible. Since, the officer has made full & final payment out of the funds released by the concerned authorities against this work at the allotted rates and at same terms & conditions of the main contract, there is no liability created in this case and thus, there is no loss caused to the government exchequer. Also, there is no diversion of funds as the full payment has been released out of the allotted funds for this work which were released under non Plan vide SE's order No. 8925-27 Dtd.07.01.2017. The action of the officer as above, appears justified as the excess quantities were executed as per the necessity at site and to meet the public demand. Further that, since this work was allotted by the then Executive Engineer, PW(R&B) Division Kathua and also full and final payment has been released for this work, therefore, in terms of Clause 6.5.1 of the Manual for Procurement of Works - 2022 prior approval of the Procuring Entity before execution of the additional works is deemed accorded as the Executive Engineer, PW(R&B) Division Kathua himself is the Procuring Entity as being the allotting authority. Also, the execution of additional works through the same contractor did not change the scope/character and purpose of the original contract and thus, condition of Clause 6.5.1 of the Manual for Procurement of Works-2022 has been complied with".

n. Construction of pucca drain in km 1 st RD 800-1000(L=150mtr.) and laying of 2nos. 0.30 m dia hume pipes, 2 nos. 0.45m hume pipes and 2 nos. 0.90 m hume pipes in km 1st& km 5th on OSK road:-

"This work was advertised for Rs. 4,97,000/- and allotted to Sh. Tarsem Chand S/o Sh. Dhian Chand R/o Kathua by Executive Engineer PW(R&B) Department Division Kathua for an amount of Rs. 3,50,395/-. The gross payment made was Rs. 5,53,148/- thus, there was an excess expenditure of Rs. 2,02,753/-. The statement of Er. Purshotam Kumar Phonsa and perusal of record reveals that the work involved construction of pucca drain as the road surface used to remain in damaged condition and required regular maintenance from time to time due to improper disposal of surface run-off. Further that, during the execution, there was dispute amongst locals regarding outlet of drain for disposal of drain water. After the location for disposal of the drain water was decided mutually by locals, there was an increase in the length of the drain. This apart, few more slabs were laid over drain at entry points of the houses located along this drain on the demand of the inhabitants and all this resulted in the execution of increased quantum of work. After the construction of this drain, the road surface got stabilised with

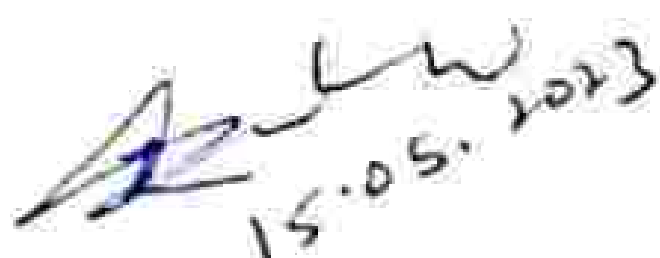

15.05.2023



proper disposal of water without requiring any frequent maintenance. Since, there is no liability created in this case as full & final payment has been made at the allotted rates and on the same terms & conditions of the main contract out of the funds released by the concerned authorities against this work and thus, there is no loss caused to the government exchequer. Also, there is no diversion of funds as the full payment has been released out of the allotted funds for this work which were released under non Plan vide SE's order No. 8925-27 Dtd. 07.01.2017. The action of the officer as above, appears justified as the excess quantities were executed as per the necessity at site and to meet the public demand. Further that, since this work was allotted by the then Executive Engineer, PW(R&B) Division Kathua and also full and final payment has been released for this work, therefore, in terms of Clause 6.5.1 of the Manual for Procurement of Works - 2022 prior approval of the Procuring Entity before execution of the additional works is deemed accorded as the Executive Engineer, PW(R&B) Division Kathua himself is the Procuring Entity as being the allotting authority. Also, the execution of additional works through the same contractor did not change the scope/character and purpose of the original contract and thus, condition of Clause 6.5.1 of the Manual for Procurement of Works - 2022 has been complied with".

o. Construction of pacca drain in km 13 th RD 250-500 on OSK Road (L=100mtr.)

"This work was advertised for Rs. 1,85,000/- and allotted to Sh. Vinod Sharma S/o Sh. Roop Lal R/o Kathua by Executive Engineer PW(R&B) Department Division Kathua for an amount of Rs. 2,03,960/-. The gross payment made was Rs. 3,91,017/- thus, there was an excess expenditure of Rs. 1,87,057/-. The statement of Er. Purshotam Kumar Phonsa and perusal of record reveals that the construction of drain was proposed as road at this location used to get frequently damaged due to stagnation of water over the road surface during rains thus requiring recurring expenditure for its repairs/maintenance from time to time. Further that, during construction of this drain, there was one siphon structure for irrigation purpose below the road surface whose top slab was at higher level than the bed of this drain which remained un-noticed earlier by the field staff while framing the estimate. Therefore, to maintain the slope & bed level of the drain as this drain was to cross over this siphon, the bed & also the height of the drain had to be raised which resulted in the execution of excess quantities. Consequently, with the raising of the height of the drain, the road level at this location was also raised by way of extra earth filling, WMM etc. to drain out surface water into the drain. The execution of extra work was as per the necessity at site which was got executed through the same contractor on his allotted the rates and on the same terms & conditions of the main contract. Since, there is no liability created in this case as full & final payment has been made at the allotted rates out of the funds released by the concerned authorities against this work and thus, there is no loss caused to the government exchequer. Also, there is no diversion of funds as the full payment has been released out of the allotted funds for this work which were released under non Plan vide SE's order No. 8925-27 Dtd. 07.01.2017. As per above, the action of the officer appears justified as the excess quantities were executed as per necessity at site. Further that, since this work was allotted by the then Executive Engineer, PW(R&B) Division Kathua and also full and final payment has been released for this work, therefore, prior approval of the Procuring Entity before execution of the additional works


15.05.2023




is deemed accorded. Also, the execution of additional works through the same contractor, did not change the scope/character and purpose of the original contract and thus, condition of Clause 6.5.1 of the Manual for Procurement of Works -2022 has been fulfilled".

p. General Maintenance/Up-Keeping of below mentioned roads during the year 2016-2017 upto ending march 2017. a) Lakhanpur Thein road b) Barni link road:-

"This work was advertised for Rs. 4,77,000/- and allotted to Sh. Harminder Singh S/o Sh. Teja Singh R/o Kathua by Executive Engineer PW(R&B) Department Division Kathua for Rs. 1,45,000/-. The gross payment made was Rs. 2,03,624/- thus, there was an excess expenditure of Rs. 58,624/-. The statement of Er. Purshotam Kumar Phonsa and perusal of record reveals that this is a contract for General Maintenance and Upkeep of two roads namely: Lakhanpur - Thein Road and Barni Link Road during the year 2016-17 upto 31-03-2017. The quantities worked out during estimation were tentative as the exact estimation could not be done due to unforeseen damages. Therefore, the cost of work depended on the nature, extent & frequency of damages occurred during the allotment period and this work was thus, executed as per necessity at site and hence, there has been the execution of excess quantities. The officer has made full & final payment to the contractor at his allotted rates out of the funds released by the concerned authorities against work done and there is no liability created in this case thus, there is no loss caused to the government exchequer. Also, there is no diversion of funds as the full payment has been released out of the allotted funds for this work which were released under non Plan vide SE's order No. 8925-27 Dtd. 07.01.2017. Therefore, as per above, the action of the officer in the execution of excess quantities appears justified as it was necessary as per the site requirement. Further that, since this work was allotted by the Executive Engineer, PW(R&B) Division Kathua and also full and final payment has been released for this work therefore, prior approval of the Procuring Entity as per Clause 6.5.1 of the Manual for Procurement of Works - 2022 before execution of the additional works is deemed accorded as in this case, the Executive Engineer being the Allotting authority is the Procuring Entity. Also, the execution of additional works through the same contractor did not change the scope/character and purpose of the original contract and thus, condition of Clause 6.5.1 of the Manual for Procurement of Works - 2022 has been complied with".

q. P/L BM and 25 mm thick SDBC on old Samba Kathua road Km 9th to Km 15th (6.5Kms)

"The above noted work has been executed without inviting tenders after approval for the same was accorded by Superintending Engineer PW(R&B) Department Jammu- Kathua circle, Jammu in favour of M/s Jai Jagdambey Road builders for Rs. 1,78,20,000/- on the recommendation of then Executive Engineer, PW(R&B) Division Kathua who was predecessor of Er. Purshotam Kumar Phonsa. The gross payment amounting to Rs. 1,77,56,867/- has been released. The statement of Er. Purshotam Kumar Phonsa and perusal of record reveals that the approval for this work without inviting tenders was accorded as also, the work was executed before his joining as Executive Engineer PWD(R&B) Division Kathua and the officer has only released payment to the contractor against the work done which is well within the allotted amount. The officer has only


15.05.2023



released full & final payment for this work at the approved rates against the work executed by his predecessor and there is no liability created in this case thus, there was no loss caused to the state exchequer therefore, the action of the officer appears justified. Also that, there is no diversion of funds as the full payment has been released out of the funds allotted for this work which were released vide SE's orders No. 230 dtd. 04.03.2017 & 312 dtd 29.03.2017".

Further, the Inquiry Officer concluded the case as under:

A. "Article-I: That being a public servant and holding the charge of then Executive Engineer PW (R&B) Division, Kathua, ACB vide JSC No. 80/2017 has intimated that this officer has violated the codal formalities wherein, excess works have been executed at site and payment have made for these excess works over and above the allotted amount.

As per the Article of Charges, there are total 17 works as described above, which were executed by the then Executive Engineers PW(R&B) Department Division Kathua out of which:

I. 02 works mentioned at S.No. (a & e) are same and single work which was allotted by the Chief Engineer PW(R&B) Department Jammu,

II. 03 works mentioned at S.No. (c, d & f) were allotted by the Superintending Engineer PW(R&B) Department Jammu – Kathua Circle,


III. 01 work mentioned at S.No.(q) was executed without inviting tenders after approval for the same was accorded by the then Superintending Engineer PW(R&B) Department Jammu – Kathua Circle on the recommendation of the then Executive Engineer PW(R&B) Division Kathua who was predecessor of Er. Purshotam Kumar Phonsa.

iv. Out of the remaining 11 works, 09 works mentioned at S.No. (b, h, j, k, l, m, n, o & p) were allotted by the said officer as the then Executive Engineer PW(R&B) Department Division Kathua and 02 works mentioned at S.No. (g & i) were allotted by the then Executive Engineer PW(R&B) Division Kathua (predecessor of Er. Purshotam Kumar Phonsa) before this officer (Er. Purshotam Kumar Phonsa) had joined in the PW(R&B) Department Division Kathua.

v. Out of the above 16 works mentioned at S.No. (a to p), the actual works are effectively 15 only (please refer S.No. i above) and this officer has executed 135 works whereas, the remaining 02 works mentioned at S.No. (g & i) were executed by his predecessor and this officer (Er. Purshotam Kumar Phonsa) has only released the payment against the work done.

vi. For the 11 works mentioned at S.No. (b, g, h, i, j, k, l, m, n, o & p) prior approval of the procuring Entity before the execution of the additional works in light of Cl. 6.5.1 of the Manual for Procurement of Works – 2022 is deemed accorded as these works were allotted and executed by the Executive Engineer, PW(R&B) Division, Kathua who in these cases is the Procuring Entity. Hence the provisions of the Cl. 6.5.1 of the Manual for Procurement of Works – 2022 have been complied with.

vii. For the remaining 04 works, out of which, 01 work {mentioned at S.No. (a & e) is same} was allotted by the Chief Engineer, PW(R&B) Department, Jammu & 03 works {mentioned at S.No. (c, d & f)} allotted by the Superintending Engineer PW(R&B) Department Jammu – Kathua Circle, prior approval of the Procuring Entity before the


15.05.2023

A-I

execution of the additional works in light of Cl. 6.5.1 of the Manual for Procurement of Works – 2022 was neither sought nor obtained from the respective Procuring Entities which is violation of this clause whereas, for 01 work, at S.No. (q) approval of the Superintending Engineer PW(R&B) Department Jammu – Kathua Circle was accorded for its execution without inviting tenders before joining of Er. Purshotam Kumar Phonsa. viii. In brief, out of the 17 works, the gross payment has exceeded the allotted amount for 16 works mentioned at S.No. (a to p) whereas, the gross payment for 01 work mentioned at S.No. (q) is within the allotted amount. ix. For the additional works executed in excess of the respective allotments, full justification has been provided in the fore-going paras.



x. Whereas, Clause 6.5.1 of the Manual for Procurement of Works – June 2022 pertaining to Variations/Extra/Substituted items "provides for any increase or decrease in the quantities of any work included in BOQ of the contract for the completion of work provided that such variations or additional works must be a necessary part within the scope of the original works and should not completely change the scope/character and purpose of the original contract".

xi. In all the afore stated 16 works for which the gross payment has exceeded the allotted amount due to variation in the BOQ quantities, the additional works executed were within the scope of the original works and did not completely change the scope/character and purpose of the original contract. Therefore, the above provisions of above clause are complied and fulfilled in all the above referred cases/works from S.No. (a to p).

xii. Further that, in case of 04 works mentioned at S.No. (a/e,c,d,&f) where the gross payment has exceeded the allotted amount due to variation in the BOQ quantities, prior approval of the respective Procuring Entity before execution of the additional works was not taken by the officer which is violation of Clause 6.5.1 of the Manual for Procurement of Works – June 2022 and also the violation of the codal procedure but since these works were completed and full & final payment has been made for all these works out of the funds allotted against each work by the competent authority and these additional works were executed in the interest of the government works without creating any liability and without causing any loss to the government exchequer as all these excess works were got executed through the same contractor at his quoted rates and on same terms & conditions as of the main contract, it is thus, recommended that the charges against the officer Er. Purshotam Kumar Phonsa be dropped with a Warning to him.

B. Article-II: For his failure to maintain absolute honesty and integrity and acted in a manner unbecoming of a public servant, since all the 16 works out of the 17 works (01 work at S.No. (q) were executed without inviting tenders after the approval for the same was accorded by the then Superintending Engineer PW(R&B) Department Jammu – Kathua Circle) were allotted after inviting e-tenders and these works have been executed satisfactorily, there cannot be any doubt about the honesty of the officer.

In view what has been elucidated above for all the 17 works, it is established that these works were executed with sincerity and honesty and the ACB has also not adversely commented on the quality of these works therefore, the officer be acquitted of all the charges by giving him a Warning for violating the codal procedure in case of 04 works


15.05.2023 

where the additional works were executed without taking prior approval from the respective competent authorities."

Finally, the inquiry officer has reported and recommended that on the basis equer in the instant case and as such the initiation of RDA against Er. Purshotam Kumar Phonsa, the then Executive Engineer PW(R&B) Division, Kathua be dropped with warning to the accused engineer.

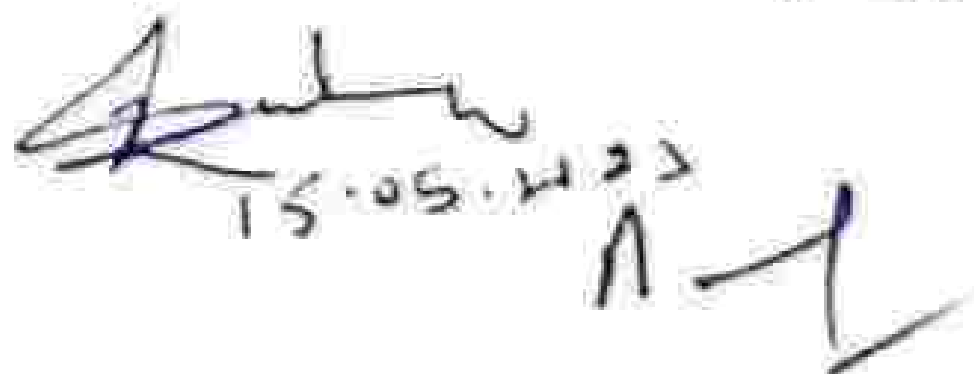
Whereas, the instant file was referred to DCW for comments in the matter .

The DCW returned the file with the following comments:-

"The work wise report as well as the recommendations of the enquiry officer have been provided. Out of the 20 works as per the enquiry report one work was allotted by Chief Engineer and three works were allotted by the Superintending Engineer, Jammu Kathua Circle. Nine works were allotted by the delinquent officer and the rest by the then Exen (His predecessor) and one work was executed on approval basis by the then SE, prior to the joining of delinquent officer. From the perusal of the enquiry report, it has been observed that variations have occurred on account of increase in quantities and execution of additional works required at site during execution. The variations and execution of additional works have been necessitated as per the necessity at site or the circumstances prevailing due to the public demand. The works have been got executed through the same contractors on the same rates as quoted them through e-tendering. The Manual for procurement of works clause 6.5.1, i.e., variations / extra / substituted items stipulates that the variations mean increase or decrease in quantity of any work included in the BOQ of the contract, change in character or quality or kind of any such work, change in levels and dimensions in any part of the work or additional work of any kind necessary for completion of the works. The additional work or variation must be a necessary part within the scope of original work and should not completely change the character and purpose of the original contract. Before a variation is instructed by the engineer to the contractor, prior approval of the procuring entity is needed. In the instant case, sixteen works have been allotted by the Exen itself, and approval is deemed to be accorded as being the procuring entity / allotting authority, one work allotted by CE and three by the SE and prior approval has not been obtained for the variation which is a violation of this clause. The works have been completed upto the extent of availability of funds and no liability on this account has been created causing no loss to the state exchequer. The ACB in its communication have also stated that during the course of verification, of all the bills received were found genuine, indicates no malafide on the part of the delinquent officer. The codal violations as indicated above have been observed for which a strong warning may be issued to the officer to remain vigilant in future."

Whereas, the Development Commissioner (Works) also recommended that the RDA against the delinquent officer be dropped.

Now, therefore, in view of the above, and by upholding the findings of Inquiry Officer and Development Commissioner (Works), with the approval of Competent Authority the


15.05.22

allegations leveled against Er. Purshotam Kumar Phonsa, then Executive Engineer PW (R&B) Division –Kathua (Verification No. JSK-80/2017) are dropped and case is hereby closed with the warning to remain cautious in future.


By order of the Government of Jammu and Kashmir.

Sd/-
(Shailendra Kumar)IAS
Principal Secretary to the Government.

No. PWD-HRM1/207/2022-05-PWD R&B DEPARTMENT (CC:7039167) Dated: 15.05.2023

Copy to the:

1. Commissioner/Secretary to the Government, General Administration Department.
2. Development Commissioner (Works), PW(R&B) Department, J&K.
3. Director Anti Corruption Bureau, J&K.
4. Director Archives, Archaeology & Museum, J&K.
5. Chief Engineer, PW(R&B) department, Jammu.
6. OSD to Advisor (B) to the Honble Lieutenant Governor.
7. Concerned Engineer.
8. Private Secretary to Principal Secretary to the Government, PW(R&B) Department.
9. I/c Website.
10. Government Order file/Stock file.


15.05.2023
(Dr.Zeba Suleman)JKAS
Under Secretary to the Government

