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Government of Jammu and Kashmir
Public Works (R&B) Department
Civil Secretariat Jammu/Srinagar

Subject: Initiation of RDA against Er.Mohammad Rafeeq, Ex-Chief Engineer, Mechanical Engineering Department, Srinagar, and others..

Government order No: 308 -PW(R&B) of 2021
D a t e d: 13 -10-2021

Whereas, the General Administration Department vide O.M No. GAD(Vig)06-RDA/2015 dated 02.02.2015 forwarded a letter No. VO-Veri-BK-22/2012-298-300 dated 08.01.2015 of Vigilance organization (now Anti Corruption Bureau) along with allied documents viz. draft Article of Charges, Statement of Imputations and Gist of Evidence to this Department for Initiation of Regular Departmental Action against the following delinquent Public Servants, in terms of J&K Civil Services (Classification Control & Appeal) Rules, 1956 for engaging 52 casual labours in the different divisions i.e, Division Srinagar, Anantnag, Baramulla and Hospital Division Srinagar, in violation of norms and procedures:-

1. Er. Mohammad Rafeeq, the then Chief Engineer, MED, Kashmir.
2. Er.Din Mohammad Bhat the then Executive Engineer, MED, Srinagar.
3. Er.Shafat Ahmad Jeelani, the then Executive Engineer, MED Baramulla.
4. Er.Ravi Kumar, the then Executive Engineer, MED, Baraumulla.
5. Er.D.K Razdan, the then Executive Engineer, MED, Anantnag.
6. Er.N.N.Thusoo, the then Executive Engineer, MED, Hospital Division Srinagar.

Whereas, The Vigilance Organization vide letter No.VO-Veri-BK-22/2012-298-300 dated 08.01.2015 intimated that a verification was conducted by the organization into the allegations that Chief Engineer, Mechanical Engineering Department, Kashmir & others had engaged 52 casual labours in different divisions i.e Division Srinagar, Anantnag, Baramulla and Hospital Division Srinagar, in violation of norms and procedures. During verification, it was found that the mode of engagement in respect of casual labours adopted by subjects was that either the Chief Engineer received the applications directly or endorsed by the local MLA/Ministers & on the same application Chief Engineer has endorsed "Engage the incumbents as casual labours or may engage as casual labour". The plea taken by the department was the shortage of manpower and when asked about the authorization for making such engagements, they have relied upon the Govt, order No, 239 -F of 2005 dated 29.11.2005 & notification dated 24th of March 1994, SRO 64 of 1994. However, the name of the department does not figure in the above said Govt. Order. Verification further found that the department did not followed the transparent process while engaging these candidates and pick & choose method was

adopted. The number of casual labours engaged was found to be of relatives of the officials of the department. The matter was taken up with the administrative department prior to the engagements of casual labours. Neither, it was specified against which scheme the engagement was made and where from their pay dues were paid.

Whereas, vide letter No.PW(R&B) HRM/05/2015-Vig dated 09.03.2015, Article of charges were served to the concerned engineers through the Chief Engineer, MED, Kashmir. The delinquent officers submitted replies to article of charges to this department and case examined and vide Government Order No.93-PW(R&B) of 2016 dated 18.03.2016, Er. Naeem Ahmad, Chief Engineer, PW(R&B) Department was appointed as Inquiry Officer to hold enquiry into the matter and vide Government Order No.294-PW(R&B) of 2016 dated 22.09.2016 Er.V.K Raina, I/c Superintending Engineer(Mechanical), SKIMS was appointed as Co-opted member of the inquiry respectively to assist the inquiry officer.

Whereas, the Inquiry Officer submitted his report wherein he has reported that

"the article of charges served to the accused engineers vide various No.s. the replies stands submitted and recorded their statement except N.N Thusoo who was not available. He stated that from the perusal of the documents submitted by the Chief Engineer, MED Kashmir and statement of officials it is inferred that MED is part of PWD(R&B) and is under their administrative control as such the rules are applicable to MED as well and the same has been mentioned/stated by the official that the engagement has been made as per SRO 64 of 24.03.1994 read with G.O No.239-F of 29.11.2005.

The Chief Engineer MED alongwith other officials have stated that engagement of casual labour was necessary to ply the Mechanical Machinery in light of snow clearance of important roads in various districts. Since there is dearth of human resource in the department to ply the machinery then only these casual labours were engaged who were well versed with plying of machinery and the funds under the head "OUTSOURCE OF UPKEEP" were earmarked for their wages. Moreover, over the years no recruitment has been made by the Government even against the retirees. Which lead to the shortage of staff, and therefore lead to the increasing demand to engage the casual labour.

The Inquiry Officer concluded that the intension of the officers/officials was not mala fide but in the interest of Government works to overcome the hardships of public. However, while engaging casual labour norms should have been adhered to".

Whereas, vide Government Order No.98-PW(R&B) of 2019 dated 07.02.2019 constituted a committee of two officers headed by DCW to examine the allegations and the committee submitted the report and following are the concluding remarks of the committee:-

- 1. The available records reveal that sizeable no of post of skilled persons like Snow Machine operators, Senior Mechanic, Roller Stocker, Roller Operator Chauffer Fitter, Welder, Tar Boiler attendant etc were lying vacant from 01/2009 to 12/2011, due to retirement /dearth of employees. This has reference to the information received from various Chief Engineers of MED Kashmir.*
- 2. Upon the retirement of any particular employee substitute man is usually posted well in time to ensure that any work / assignment does not come to a halt which in turn may cause inconvenience to the public or difficulty in running the official business.*

3. The machinery owned by MED can be utilized only with the help of skilled persons, be it snow clearance machine, Snow Cutters, Road Rollers, Excavators, Recovery Cranes or other earth moving equipments. These machine cannot remain ideal to incur loss to the Government exchequer.
4. In Kashmir valley heavy snow fall is witnessed during the winter season which stops the movement of all vehicular traffic and disrupts normal life. The access to any area becomes possible only after snow clearance takes place with the help of MED by deploying their men and Machinery round the clock. The importance of skilled person to operate snow clearance machine can be gauged in the hours of dire need and non availability of such skilled person can lead to complete chaos.
5. There is huge road network in valley where deployment of men and machinery from MED is made particularly for snow clearance and removal of Land Slides etc. and to take timely action MED has to be always equipped with required skilled manpower.
6. The available correspondence resting in the case file also reveals that very important Machinery / Plants are being run and operated by MED through its operators and in such cases non availability of any operator cannot be compromised. Some of the Equipments / Plants / Machine installed and commissioned in hospitals which are operated and maintained through MED are as under.
 - I. Central Heating, Air Conditioning & Ventilation Plant.
 - II. Diesel Generating Sets.
 - III. Lifts/ Elevators
 - V. Laundry Plants
 - VI. Oxygen Concentrator Plants
 - VII. Incinerator Sterilization Systems(CSSD)
 - VIII. Modular Operation Theatres.
 - IX. Fire fighting systems.
7. There has been made reference to SRO-64 dated 24.03.1994 read with Government Order No. 239 -Finance of 2005 dated 29.11.2005.

The Department, like PWD(R&B) was authorized to engage casual or seasonal labour from time to time on minimum need basis on muster rolls for payment of wages and the alleged engagement of the labours was justified on basis of referred order so that the important assignments given to MED were carried out smoothly.

The findings of the Inquiry Committee do not find fault with any alleged officer / Official or fix responsibility of any concerned authority and therefore in light of that report and other records including the communication from Chief Engineer Mechanical Engineering Department bearing No. CMK/Adm-50/ 1223-25 dated 26.06.2019, there is no authentic documentary evidence to cast aspersions on the integrity of the alleged officers.

The inquiry report as described above found that concerned officers had no malafide intention and this was done in the interest of the Government Work. The report of the Inquiry Committee no doubt puts question mark on the procedure/ engagement of labours but finally it is the intent that matters most. Had the competent authority initiated timely process to recruit skilled/unskilled persons against the available vacancies, this situation would not have cropped up. The Committee opined that the alleged officers may be exonerated with a warning not to overstep their jurisdiction of powers in future.

Whereas, as per available records in the file the RDA case in respect of 06 Engineers as mentioned above was received from the GAD on 02.02.2015 along communication of



Vigilance Organization(Now ACB). However, at that time some engineers have already been retired from the Government Service, Article 168-A of CSR is applicable in their cases. Details are as under as communicated by Chief Engineer, MED, Kashmir vide communication No.MED/K/Adm/1345-50 dated 08.09.2020:-

S.No.	Name of the officer involved(Er.)	Present status of the officer
1.	Rafeeq Ahmad Wani, the then Chief Engineer, MED, Sgr.	Retired on superannuation on 31.07.2011
2.	Din Mohammad Bhat, the then Executive Engineer, MED, SGR	Active as on date
3.	Shafat Ahmad Jeelani, the then Executive Engineer, MED, Baramulla	Active as on date
4.	Ravi Kumar the then Executive Engineer, MED, Baramulla	Retired on superannuation on 30.09.2013
5.	D.K. Razdan, the then Executive Engineer, MED, Anantnag	Retired on superannuation on 31.01.2017
6.	N.N Thusu, the then Executive Engineer, MH&CH-Divn, Srinagar	Retired on superannuation on 31.03.2013

Whereas, during the course of the case the report of Enquiry Officer/Committee was also shared with the GAD vide OM PW(R&B)HRM/05/2021-Vig dated 23.12.2020 however, GAD in return advised vide their communication No.GAD(Vig)06-RDA/2015 dated 31.03.2021 as under :-

- impose appropriate penalty in respect of serving officials as also in respect of such of retired official(s) where action under Article-168 CSR is possible.
- terminate 43 casual labourers who are still on the rolls of the PW(R&B) Department.

Whereas, vide this department's letter No PWD-RDA/4/2021-01-Dept of PWD R&B(e-office) dated 19.05.2021, the Chief Engineer, MED, Kashmir was asked in respect of (ii) above, in response, the Chief Engineer, MED, Kashmir vide his communication No. MED/K/Adm/1352-57 dated 05.07.2021 has intimated that the legality of engagement of these daily wagers as perused from the records and their utility for the department at present in cleared up as under:

The daily wagers have been engaged during the year 2011-12 in compliance to Finance department Circular No.239-F of 2005 dated 29.11.2005 in line with the engagement of daily wagers as engaged in Public Works Department (R&B), Public Works Department(Hydraulics) or any other engineering Department. Due to engagement of these daily wagers before March 2015, their engagement is in no way violation of Finance Department Circular No.43-F of 2015 dated 17.03.2015. These engagements have been made purely in the interest of Government Work and over the years they have been become so well versed in operation of Departmental machinery for Snow Clearance, road construction and even hospitals of GMCs and Directorate of Health Services Kashmir, their continuity has become indispensable. There is acute shortage of regular establishment drivers for operation of Snow Clearance machinery of the department and most of these daily wagers are presently entrusted with operation of heavy snow clearance machinery during winter. Their expulsion from service/engagement will render a sizable portion of the snow clearance fleet



without operators and embarrassments to the department due to non-operation of such machinery being handled by them. This department can't afford to cut a sorry figure in its area of activity granted by the Government i.e, first disaster response by road clearance in the face of snowfall. The wages of these daily wagers are regularized under Major Head 2059-PW(NP), Sub Head-364, "Outsource and upkeep and are properly budgeted and approved for release by the Finance/Administrative departments each year, since their engagement and no fresh financial implications is to be accrued by their continuity. As these daily wagers are involved in the thick of action in a disaster response activity and their sudden disbandment is likely to result in loss of service guarantee to public and loss of employment to these personnel in particular.

Whereas, the Chief Engineer, MED Kashmir has requested to allow this department to continue with their services purely in public interest.

Whereas, the case was referred to Additional Secretary, Legal, for point No. (i) of the GAD. He opined that as the appointing authority has no jurisdiction to take disciplinary action against an effectively retired Government servant. Article 168 A of J&K civil Service Regulations provides as under:-

" the Govt. reserves to itself the right to order the recovery from the pension of an Officer of any amount on account of losses found in Judicial or Departmental proceedings to have been caused to Government by the negligence or fraud of such Officer during his Service provided that

- a) such Departmental proceedings if not instituted while the Officer was on duty*
 - i. Shall not be instituted save with the sanction of Government*
 - ii. Shall be instituted before the Officer's retirement from service or within a year from the date on which he was last on duty, whichever is later.*
 - iii. shall be in respect of an event which took place not more than one year before the date on which the Officer was last on duty and*
 - iv. Shall be conducted by such authority and in such places as the Government may direct.*
- b) All such departmental proceedings shall be conducted if the officer concerned so requested in accordance with the procedure applicable to departmental proceedings on which an order of dismissal from service may be made and*
- c) such judicial proceedings if not instituted while the Officer was on duty, shall have been instituted in accordance with sub-clauses 9(ii) and (iii) of clause (a) above"*

Action has to be taken against the delinquent retired Government Servants strictly as per the above provisions of Article 168-A of the J&K CSR. However in respect of the serving Govt. Servant an appropriate punishment as provided in Rule 30 of the Classification, Control and Appeal Rules, 1956 may be imposed as per the procedure provided in the said rules. Further disengagement of the Casual Labours as desired by the GAD may be considered by adhering to principal.

Whereas, the case file referred to the DCW for comments in the matter, he returned the file with the following comments:-



Upon perusal of the file, it has been observed that the delinquent officers had engaged casual labours in various divisions of Mechanical Engineering Department. The Casual Labours had been engaged in pursuance to the notification issued under Government Order No.239-F of 2005 Dated:-29.11.2005 by the Finance Department, wherein following departments were authorised to engage Casual/Seasonal Labours from time to time on minimum need basis on muster rolls for payment of wages.

1. Agriculture Production Department.
2. PW(R&B) Department.
3. PHE, Irrigation and flood control Department
4. Power Development Department.

Mechanical Engineering Department being part of PW(R&B) department had engaged the casual labours to operate/maintain machinery/equipment and other systems of the department. The engagements had been made as per basic minimum requirement, in accordance with the authorization issued by the Finance Department. Therefore it is recommended not to impose any penalty in favour of delinquent officers.

Now, therefore, in view of the above, the charges levelled against Er.Mohammad Rafeeq, Ex-Chief Engineer, Mechanical Engineering Department, Kashmir and others are hereby dropped and case is closed with the prior approval of the competent authority in respect of following Engineers:-

1. Er.Din Mohammad Bhat, the then Executive Engineer, MED, Srinagar.
2. Er.Shafat Ahmad Jeelani, the then Executive Engineer, MED, Baramulla and
3. D.K.Razdan, the then Executive Engineer, MED, Anantnag.

The cases in respect of the following Engineers are closed in terms of Article 168-A of CSR:-

1. Rafeeq Ahmad Wani, the then Chief Engineer, MED, Kashmir.
2. Ravi Kumar the then Executive Engineer, Baramulla.
3. N.N Thusu, the then Executive Engineer, MH&CH Division, Srinagar.

By order of the Government of Jammu and Kashmir.

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

No:PWD-RDA/4/2021-01-Deptt of PWD R&B

Dated: 13.10.2021

Copy to the:-

1. Commissioner/Secretary to the Government, General Administration Department. This is with the reference to his O.M No. GAD(Vig)06-RDA/2015 dated 02.02.2015.
2. Development Commissioner (Works), PW(R&B) Department.
3. Director, Anti Corruption Bureau, J&K.
4. Director Archaeology & Archives, J&K.
5. Chief Engineer, MED, Kashmir.
6. Private Secretary to Principal Secretary to Government, Public Works (R&B) Department.
7. I/c Website.
8. Government Order file/Stock file.

Copy also to:

Joint Secretary (J&K), Ministry of Home Affairs, Government of India.

(Shahid Mahmood)JKAS
Additional Secretary to the Government
Public Works (R&B) Department.