

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

Subject: RDA against Er. Muneer Ahmad Sherwani, the then Assistant Executive Engineer, R&B Division, Baramulla, Er. Khursheed Ahmad Hakeem, the then Junior Engineer, R&B Division, Baramulla, Er. Mohammad Ashraf Dar, the then Junior Engineer, R&B Division Baramulla and Er. Zahoor Hussain Bukhari, the then Head Draftsman, R&B Division Baramulla (Accused in case FIR NO. 21.2012 P/S VOK).

Reference: No:- ACB-FIR-21/2012-K-17202 dated 06.10.2022 from ACB J&K.

Government Order No. 400 PW(R&B) of 2022 Dated: 14 .11.2022

Whereas, the General Administration Department accorded sanction for prosecution against the following Engineers of R&B Division Baramulla vide Government Order No.54-GAD (Vig.) of 2019 dated: 25.10.2019:-

- 1. Er. Muneer Ahmad Sherwani, then AEE,
- 2. Er.Khursheed Ahmad Hakeem, JE,
- 3. Er. Mohamamd Ashraf Dar, then JE
- 4. Mr.Zahoor Ahmad Bukhari, then Head Draftsman.

Whereas, the General Administration Department vide O.M.No. GAD(Vig) 34-SP/2016 dated 18.06.2021, forwarded a communication No. ACB-FIR-21/2012-K8732 dated: 27.04.2021, along with Article of Charges, Statement of imputations and gist of evidences of Anti Corruption Bureau for taking further necessary action in the matter.

Whereas, the ACB alleged that the case was registered on 31.08.2012, in P/S VOK (now ACB Kashmir) Srinagar on the outcome of verification conducted into the allegations that the above accused during the year 2007-08 and 2008-09 is appropriated Govt. funds by way of sub-standard works in construction of two roads under NABARD 1. Vizer-thindum-Kreeri-Tilgam Road and 2. Saloosa- Shrakwara Road. After making joint inspection of all the executed works of the said roads and as Port the report of the expert engineers, the investigation conducted were established that a loss to the tune of Rs. 414916/- was caused to state exchequer in respect of below mentioned four works:-

1. Earthwork and construction of Kacha drain in Km 5 th , 6 th , 7 th , 8 th and 9 th of Vizer-Thindum-Kreeri-Tilgam road, Baramulla.

A

- 2. Providing and Laying Nallah Muck to KM 2 nd (Length 975m) Saloosa Shrakwara Road Baramulla.
- 3. E/W, cutting, up-rooting of trees, Nallah Mukh filling, laying ofpipes, Const of CC Drain, Crate Wall,jR/Wall and laying of WBM G-I length 337 mtr Saloosa Shrakwara Road Baramulla.
- 4. E/W, Nallah Mukh filling, laying of RCC pipes, for X-drainage, KM-2nd RD-75-1000 Saloosa Shrakwara Road Baramulla.

Whereas, the case of the accused was examined in the department thoroughly and it was decided to serve article of charges to accused through concerned Chief Engineer.

Whereas charge sheets were served to the delinquent Engineer on 26-08-2021, thereafter they submitted reply to the article of charges on 27-09-2021 subsequently, vide Government Order No.313-PW(R&B) of 2021 dated 21.10.2021, Er. Javed Maqbool, I/c Superintending Engineer, PW(R&B) Circle Baramulla and Er. Muzzafar Jan, I/c Executive Engineer, Pubic Works(R&B), Div. Baramulla were appointed as Inquiry Officer and Presenting Officer respectively.

Whereas, the Inquiry Officer vide endorsement No.13329 dated 04.12.2021, concluded that:-

"out of total cost of two schemes under verification amounting to ((Rs 551.18 Lacs + Rs 71.41 Lacs) =Rs. 622. 59 Lacs an amount of Rs 82.38 lacs were taken up on approval basis which aggregates to 13.23 % of the total cost of two projects which in otherwise means 86.77% works were taken after invitation of proper tenders. As referred by VOK an amount of Rs 4,14, 916/- which works out to 5.03 % of the cost of objectionable works, however, the necessary approval from the next higher authority stands sought by the accused division. Regarding the reasons which forced to take up some components of these works on approval basis, was due to the reason that land owners and owners of trees (Fruit bearing) structures, walling which falls along the alignment of road resisted to spare the land without paying of compensation. It is in place to mention that there was no provision in the project on account of land compensation. The beneficiaries and public preventatives including concerned Hon'ble MLA / MLC managed spot inspection of the concerned Hon'ble Minister for Works J&K State who negotiated with the agitating land owners and they agreed with the condition that the department will engage local agencies and will get the components of work executed within the disputed portions. Accordingly Hon'ble Minister for Works J&K State impressed upon the concerned Worthy Chief Engineer, Superintending Engineer, Executive Engineer and other officers to take up the works on war footing basis through local resourceful agencies as demanded by the agitating locals of the two villages. In compliance to the orders of higher authorities including Chief Engineer, Superintending Engineer the accused officers took up these works verbally and meanwhile framed estimates and submitted to next higher authority through concerned Executive Engineer. Meanwhile, the concerned Superintending Engineer accorded the approvals and return the estimates after fixing

the suitable rates as also agreed by the presenting officer. The version of accused officers regarding their denial for allotment of works and fixing of rates is proved thereof.

Although execution of works without fulfillment of codal procedures is objectionable and can neither be entertained nor justified. However, it cannot be construed as totally outside the ambit of procedures as per delegations of powers entrusted to Executive Engineer in light of Book of Financial Powers Chapter 5.13.36. Executive Engineer is empowered upto Rs 5.00 Lacs to sanction execution of works departmentally where competitive tenders due to varied reasons are not available or rates quoted are unreasonably high and the execution of work departmentally where mean economy provided that estimates for the individual work to be executed departmentally stands administratively approved and technically sanctioned by competent authority and provided further that rates are reasonable and within the market price level and have approval of next higher authority in the instant case the department have saved a huge amount on account of Compensation (Approximately 46.00 Lacs) and got the estimates approved and rates fixed by the next higher authority (Superintending Engineer).

In view of the circumstances explained and challenges associated with the execution of components of these works is recommended that the charges regarding allotment of works verbally and fixing of rates does not seem justified and needs to be dropped.

As pointed out by VOK a financial loss to the tune of Rs.4,14, 916/- was examined after thorough examination of available records viz-a-viz analysis of rates, allotment issued by Chief Engineer PWD R&B Kashmir Superintending Engineer PWD (R&B) Circle Baramula/Kupwara and other sisterly divisions with due deliberations with the accused officers / officials and Presenting Officer regarding each component of works as:-

1. Construction of drain in KM 5th, 6th, 7th, 8th, and 9th of Vizer thindum Kreeri, Tilgam road contract Rs.5.50 las approved works.

The VOK worked out a loss to the tune of Rs 49, 500.00 on account of partially non-existent, work i.e, Kacha drain it seems that the VOK had measured only silted up portions and worked out the value of same portion only and had not worked out the total work done / payment released in favour of the contractor. Although fair weather drains are temporary structures which get silted up during rains, it natural that after gap of about nine and halt years of construction when the measurement was taken by VOK Organization as a natural phenomenon some portions could have got silted up. After examination of M Book (963 / NH " Page — 35 to 38 and M Book 692 / NH Page 39 to 41) and other relevant documents, it is obvious that against payable amount of Rs. 7,65,270.00, the cumulative payment made upto CC 2nd including cost of departmental store (pipes) worked out to Rs.5,99,678.00. The net unpaid amount payable to the contractor remains Rs. 2,20,678. 00 even if these Rs, 49,500.00 are deducted from net payable amount of the contractor the unpaid amount still remains Rs.1,71,178.00. Hence the charges levelled are unjustified and may be dropped.

2. Up-gradation of Saloosa Shrakwara road by way of providing and laying of Nallah

M. J.

It has been alleged by VOK that a loss of Rs 33,159.00 occurred due to less thickness whereas loss of Rs.1,41,384.00 occurred due to exorbitance of rates for supply and filling of nallah muck thus aggregating the loss to the tune of Rs.1,74,543.00. After going throughthe records it was revealed that the detailed inspection of the site was conducted by VOK in 11/2017 after a lapse of more than nine and half years from the date of completion of the work. The calculations submitted by the accused in tabular form reveals that after afore mentioned the thickness of overall surface area of the road got reduced by 3.20 Cms on account of settlement/compaction due to pneumatic loading movement of heavy vehicular traffic (fruit bearing trucks) and under the influence of weathering effects. The settlement/ erosion to road surface occurred such type of village roads / flexible pavement which seems justified and is as per the established norms of newly constructed village roads is to mention here that in rural roads it is not possible to achieve 100 % compaction by using commonly available road rollers besides under the influence of rain and weathering during construction the subgrade absorbs some moisture and thereby gets further settlement under heavy vehicular load and resulting in reduction of depth of filled material. Not out of place to mention the compaction factor for gravel may not exceed 0.88 keeping a provision of 0.12 available voids for future settlement. Thus the allegations levelled does not seem justified and worth to mention that in our day to day life we witness sinking and settlement of high maintained roads and Highways occasionally. Regarding exorbitance of rates for supply and filling of nallah muck after examination of records available and analysis submitted by both parties including the rate structure for similar stems in the adjacent divisions it has been observed as under:-

The accused division framed the estimate and forwarded to the concerned Superintending Engineer vide their No. 3463 dated 03/06/2008 for accord of approval of verbal orders and fixing of rates. The same was granted by next higher authority (Superintending Engineer) vide No. 4013 dt 23/07/ 2008 which clearly indicates that accused officers / officials are not responsible for fixation of rates. Furthermore, the analysis of rates submitted by VOK is not based on genuine facts and real parameters were not adopted. The analysis of rates submitted by technical section of Executive Engineer R&B Division Baramulla justifies the rates fixed by next higher authority (Superintending Engineer) and are rather on lower side in view of rate analysis (copy placed on CF) and rates analyzed and adopted by PMGSY Kashmir it is obvious that the rates allowed by Superintending Engineer PWD (R&B) Circle Baramuila/ Kupwara were genuine and thereby the allegations leveled seems to be far-away from the reality and needs to be dropped therefore.

3. Construction of Saloosa Sharkwara Road by way of earth work cutting laying of pipes, construction of crate wall/R/Wall at required spots and laying of WBM G-I (length 337 Mtrs.).

It has been alleged by VOK that crate wall/ R-Wall which falls component to above said work has been allotted 80% above on SSR 2004 thus causing a loss of Rs 1,47,520.00

on account of exorbitance of rates. In the instant case it has been observed that there is no rate in SSR 2004 / 2008 for construction of the cons is no rate in SSR 2004 / 2008 for construction of crate wall in stone masonry in or Chief arrive at the rate for the particular item. A arrive at the rate for the particular item. A couple of allotments issued by Worthy Chief Engineer PWD (R&B) Kashmir Superinter in Chief Kupware in SSR 2004 / 2008 for construction of crate wall in stone masonry in Order Chief Chief Engineer PWD (R&B) Kashmir Superinter in Chief Chief Kupware in SSR 2004 / 2008 for construction of crate wall in stone masonry in Order Chief Ch Engineer PWD (R&B) Kashmir Superintending Engineer PVVD (R&B) Circle Baramulial Kupwara in the vicinity has been examined to the state of allotments issued by Worthy United Hamiltonian Country of the State of the Kupwara in the vicinity has been examined / considered. While deriving the rate using similar Component of work allotted by similar component of w similar Component of work allotted by Chief Engineer PWD (R&B) Kashmir vide his allotment No 27071-74 et 23/01/2007 (allotment No 27071-74 et 23/01/ 2007 for the work

"Construction of road from Lalpora to Nawalari Package No.JK 0315 addressed to Executive Engineer RRR Division To Executive Engineer R&B Division Tangmarg Rs. 1969.00/- Cum were worked out against allotted/allowed rates of B against allotted/allowed rates of Rs.1545.00/Cum by the accused division i.e Chief Division Baramulla. Furthermore Res. 1969.00/- Cum were worked R&B, Division Baramulla. Furthermore, it has been observed that rates allowed by Engineer which worked and the last terms and the second control of the control o Engineer which worked out to be 132 % above on SSR 2004 and 87.50 % above SSR 2008 while as referring to the state of the SSR 2008 while as rates allowed by accused division worked out to be 32.64 % above on SSR 2009 are included. on SSR 2008 against alleged 80% above. Similarly, while deriving the rates for said item after coins the rates of (D&R) item after going through the rates as allowed by Superintending Engineer PWD (R&B) Circle Baramulla/ Kupwara vide its allotment No. 4113-14 dated 25/07/ 2008 for "Upgradation of road from Larridora to Nowgam" for similar component of work, the rate of Rs. 2262.16 /Cum been worked out for comparison. The alleging agency seems not well versed with site location with respect to source of materials/ overheads / applicable taxes contractor's profit rate of skilled labour while working out analysis of the tem The rate of Rs 1545 00 /Cum allowed by accused division seems to be genuine and justified . After thorough discussions/ deliberations and examination of records it has been concluded that rates allowed are genuine and there is no loss to exchequer on the basis of exorbitance of rates

4. Construction of Saloosa Shrakwara road Km 2 nd 500-1000 Mtrs by way of earth work ad laying of pipes for X-drainages contrct of Rs.3.68 Lacs approved work.

It has been alleged that a loss of Rs 43.353. 00 on account of engagement of JCB wrongly paid and nonexistent trenches. After going through the records made available by the officers/ officials through Presenting Officer the following observations were made by the concerned:-

As per record of M:Book it has been observed that an amount of (Rs 8800 +Rs 4200) Rs.13,000.00 has been made for engagement of JCB and tippers for removal of dismantled stone walling removal of debris disposal of stems away from site of work against an amount of Rs.23400/- as alleged by VOK and on account of trench excavation for kacha drain an amount of Rs. 10935 /-has been made against Rs. excavation is aggregating total amount of (Rs.13000 /-+10935 /-) Rs.23935/- against 19953/- thus aggregating total amount of (Rs.13000 /-+10935 /-) Rs.23935/- against alleged amount of Rs. 43,353 /-as pointed out by VOK. While examining the records the VOK seems to have entered wrong figures due to oversight and similar mistake has made in the checked estimate (which forms part of seized document by VOK) and is supported with other documents which clearly indicates that the officer has no ill VOK seems to middle has also been committed by concerned JE while framing the bill although the incomplete also been committed by concerned in M Book, yet complete mention of item.

intentions. Thus, allegations levelled therefore do not seem justified and be dropped but the accused be warned to remain cautious in future while framing the bills.

In view of the above and as emerged from the inquiry it transpires that no willful or deliberate attempt seems to have been made to incur any loss to the Government exchequer rather exchequer has been saved by a handsome amount in the shape of nonpayment of compensation and by arresting cost overrun of project. There is considerable tangible and in-tangible benefits to the state by making the road through well in time."

The Inquiry Officer also recommended to close the RDA against accused on merits of case as discussed above.

Whereas, the case was referred to the Development Commissioner (Works) for echnical views/ comments. The DCW returned the case with the following remarks:-

"From the perusal of documents on file, it is observed that the instant case pertains to execution of two projects under NABARD, viz. up-gradation of road from Vizer-Thindum-Kreeri upto Tilgam via Frestnar for Rs. 551.18 lacs and construction of road from Saloora to Shrakwara for Rs. 71.41 lacs, amounting to a total cost of Rs. 622.59 lacs. As reported by Inquiry Officer, 18 No. of work components have been allotted to contractors on approval basis at an estimated cost of Rs. 82.38 lacs which works out to about 13.23% of the total cost of two projects. It is in place to mention that there was no provision of providing compensation to the land / structure / tree owners in the project and it was a challenge to acquire land under such circumstances. The work was approved under RIDF in year 2006 but could not be started till 2008 due to the same reason. Though execution of works without fulfillment of codal procedures is objectionable but same seems to have been necessitated after intervention of the then Hon'ble Minister for Works, who convinced the agitated land owners to hand over land to the department on the condition that local agencies shall be engaged for execution of works at disputed portions. Consequently, the delinquent officers framed estimates for work components in disputed portions and submitted to the higher authorities for approval and fixation of rates. The post facto approval to the estimates / rates from higher authorities is available on file. Further, the vigilance organization has alleged a loss of Rs. 41,496.00 to the state exchequer against four work components on accounts of non-existant works and exorbitance of rates. This aspect has been thoroughly examined by the Inquiry officer and following observations are made against each allegation:-

1. Earthwork and construction of Kacha drain in Km 5 th , 6 th , 7 th , 8 th and 9 th of Vizer-Thindum-Kreeri-Tilgam road, Baramulla. The VOK has worked out a loss of Rs. 49,500 on account of partially non- existent work, i.e., Kacha drain. It may be noted that fair weather drains are temporary structures which get silted up during rains and natural phenomenon. As per records available and as stated by the Inquiry Officer, the measurements have been taken by the VOK about nine and a half years after the

14.11

execution of work and it is possible that some portions could have got silted up during this period and rendered non-verifiable this period and rendered non-verifiable.

- 2. Providing and Laying Nallah Muck to KM 2 nd (Length 975m) Saloosa Shrakwara Road Baramulla. In the instant work Road Baramulla. In the instant work, loss to the tune of Rs. 174543 has been worked out by VOK on account of exorbitant out by VOK on account of exorbitant rates and less thickness laid. The Inquiry Officer has attributed the reduced thickness has attributed the reduced thickness of 3.2 cm (than charged) to the settlement of t consolidation of material due to movement of heavy fruit bearing trucks and weathering effects over the period of almost to effects over the period of almost ten years. Further, in order to arrive at a conclusive judgment regarding quality of judgment regarding quality of road, the investigating agency must have thoroughly established the representative established the representations and statistical representations and statistical representative quality of road based on multiple sampling will and laboratory testing / cyclindian scientific sampling method as per codal mandate and laboratory testing / evaluation of samples, which is not forthcoming from the available records. The evertile and scientific samples, which is not forthcoming from the available records. The exorbitance of rates cannot be attributed to the delinquent officers as the rates have been first letter rates have been fixed and approved by the then Superintending Engineer vide his letter No. 4013 Dated: 20/07/2006 Telegraphics of rates cannot be attributed to the delinquent officers letter No. 4013 Dated: 23/07/2008. Further, the Inquiry officer has enclosed rate analysis for the said item and item and item. the said item and copy of rates adopted by PMGSY during that time indicating that the rates allowed by Superintending Engineer, PWD (R&B) Circle Baramulla / Kupwara were genuine.
- 3. Construction of Saloosa Shrakwara Road by way of Earthwork cutting, laying of pipes, construction of crate wall / R.Wall at spots and laying of WBM Grade-I (length 337m). The loss to the tune of Rs. 1,47,520.00 has been worked out by VOK on pretext of exorbitant rates. As already stated the rates have been approved by higher authorities and cannot be attributed to the delinquent officers. Further, the Inquiry officer has provided the analysis of said item and observed that the rates allowed by the accused officers are justified and genuine. Also the copies of contracts of similar nature of works executed in the vicinity and awarded by the Chief Engineer and respective Superintending Engineer have been provided, indicating there-in that the rates allowed by the delinquent officers were much lower than the allotted rates.
- 4. Construction of Saloosa Sharkwara road Km 2 nd RD 500-1000Mtrs by way of earth Work and laying of pipes for x-drainages contract of Rs. 3.68 Lacs approved work. An amount of Rs. 23,935/- has been charged for engagement of JCB and tippers for removal of dismantled stone walling, debris, disposal of stems from site of work and excavation of kacha drain, against Rs. 43,353/- as alleged in the vigilance report. The complete detail of items is provided in the approved estimate.

Whereas, the DCW intimated that no loss has been caused to the state exchequer on accounts of non-existent works or exorbitance of rates and recommended the charges against the delinquent officers to be dropped with a warning to remain cautious of codal provisions and vigilant while framing the bills in future.

requested to share the present status of the case vide this department's letter dated 11.08.2022 (C.No.43383). In response, the ACB vide letter No.ACB-FIR-21/2012-K-

17202 dated 06.10.2022 has intimated that the trial court has discharged accused public servants in terms of order dated 02.07.2022. However, GAD has been approached for assailing the said order and response thereto is awaited.

Now, therefore, in view of the above and by upholding the recommendation of Development Commissioner (Works) and the Court Order, having approval of competent authority charges against Er. Muneer Ahmad Sherwani, then Assistant Executive Engineer, Er. Khursheed Ahmad Hakeem, then Junior Engineer, Er. Mohammad Ashraf Dar, then Junior Engineer and Mr. Zahoor Ahmad Bukhari, then Head Draftsman are dropped and RDA is hereby closed.

This order is without prejudice to any court order and the final verdict of the Court in the case shall be final and binding on the department.

By order of the Government of Jammu and Kashmir.

Sd/-

(Shailendra Kumar) IAS Principal Secretary to the Government

No.PWD-RDA/53/2021-05-Department of PWD R&B(C.No.43383) D a t e d : 1.11.2022

Copy to the:-

- 1. Secretary to the Government, General Administration Department. This is with the reference to his O.M dated: 18-04-2021.
- 2. Development Commissioner (Works), PW(R&B) Department.
- 3. Director, Anti Corruption Bureau, J&K.
- 4. Director Archives, Archaeology & Museum, J&K.
- 5. Chief Engineer, Public Works (R&B) Department, Jammu/Kashmir.
- 6. OSD to Advisor (B) to the Hon'ble Lieutenant Governor.
- Concerned Engineer.
- 8. Private Secretary to Principal Secretary to the Government, Public Works (R&B) Department.
- 9. I/c Website.
- 10. Government Order file/Stock file.

Copy also to the:-

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

(Dr.Zeba Suleman) KAS

Under Secretary to the Government