

Government of Jammu and Kashmir
Jal Shakti Department
Civil Secretariat, Jammu/Srinagar

Subject:- Regular Departmental Action (RDA) against Shri Farooq Ahmad Lone, the then I/c Assistant Executive Engineer, PHE Sub-Division Watergam (now retired) – imposition of penalty.

Government Order No. 191-JK(JSD) of 2023
Dated:- 16.08.2023

Whereas, the General Administration Department vide O.M. No. GAD(Vig)66-RDA/2014 dated 04.12.2014 forwarded a copy of Vigilance Organization's (now ACB) letter No. VO/Veri-BK-34/09-14203-05 dated 12.11.2014 alongwith draft Article of Charges, Statements of Imputation and Gist of Evidences to this department with the recommendation to initiate Regular Departmental Action against the delinquent public servant namely Mr. Farooq Ahmad Lone, the then I/c Assistant Executive Engineer, PHE Sub-Division Watergam (retired on 28.02.2014); and

2. Whereas, the Vigilance Organization (now ACB) vide letter dated 12.11.2014 informed that a verification was conducted into the allegations of drawl of huge amount of money against fake Casual Labour Rolls (CLR) and Hand Receipt (HR) in PHE Sub Division Watergam of PHE Division Baramulla and allotment of works to the favourite contractors etc. They have further intimated that PHE Sub Division Watergam got executed 126 No. of works, through CLR, without putting them to tenders during 2008-09 and 2009-10 and during the course of verification, 07 Nos of works executed through Causal Labour Rolls randomly selected were put to inspection and in three of the said works it was found that the works have been taken-up/executed & paid for in violation of codal rules and also flouting the CLR mode adopted for execution thereof; and

3. Whereas, the details of cost of the 07 Nos of works selected for inspection by the VOK (now ACB) at that point of time, as intimated by the concerned Superintending Engineer, Hydraulic Circle Budgam is given as under:-

S. No.	Name of work	CV No. & dated	Cost
1.	Laying and Fitting of 150 mm Dia DI Pipe for feeding main to SR Rohama from RD 9000-10000 (SEE II WSS Reg Rohama).	137 of 08/2008	Rs. 2,43,250.00
2.	Laying and fitting of 150 mm Dia DI Pipeline from RD 10000 onwards Sec IIIrd including removal of old main Humdub to Balaham WSS Reg Rohama).	138 of 08/2008	Rs. 2,97,650.00
3.	Laying and fitting of 150 mm Dia DI Pipeline from Patusa onwards to main feeding lone to SR Rohama (Sec Ist) for Reg Rohama RD 9000-10000).	139 of 08/2008	Rs. 3,01,145.00
4.	Laying and fitting of Pipes for extension of distribution system for village Vampora and Batpora WSS Rohama.	140 of 03/2009	Rs. 10,480.00
5.	Shifting of Pipeline coming under newly constructed road by PMGSY at Venkura sec Ist of venkura Kamar road.	114 of 06/2009	Rs. 80,910.00
6.	Shifting of 65 mm Dia GI main near Middle School ground Malganipora at Pazalpura WSS Malanipora.	116 of 06/2009	Rs. 31,250.00
7.	Laying and fitting of Pipe for extension of S/lone and distribution system in Dangerpora Astan Mohalla village Chattoora WSS Watergam Behrampora.	55 of 08/2009	Rs. 12,690.00
G. Total			Rs.9,77,375.00

4. Whereas, the case was examined in the department and accordingly vide this Department's Memorandum No. PHE,IFC.HRM/Vig/25/2014 dated 27.01.2015, Article of Charges, Statement of Imputation and Gist of Evidence were served to Sh Farooq Ahmad Lone, the then I/c Assistant Executive Engineer, PHE Sub Division Watergam for violating Rule 3 of J&K Government Employees (Conduct) Rules, 1971; and

5. Whereas, the charged officer failed to submit his statement of defence to the charge sheet served upon him within the stipulated time and, thereafter, in terms of sub-rule (4) of Rule 33 of the J&K Civil Services (Classification, Control and Appeal), Rules 1956, Inquiry Officer was appointed in the matter to enquire into the charges framed against the charged officer vide Government order No. 210-PW (Hyd) of 2015 dated 04.08.2015 read with Government Order No. 322-PW (Hyd) of 2016 dated 09.11.2016. The Inquiry Officer was lastly appointed vide Government Order No.55-JK(JSD) of 2021 dated 01.03.2021; and

6. Whereas, the Inquiry officer submitted the enquiry report vide letter dated 20.04.2021 in the Department, relevant extracts of which are stated below:

“Conclusions of the IO: The procedural deviations, borne out of the compulsion, without any loss to the exchequer, have been more than compensated by the timely restoration of water supply to the affected areas. The final results are well established and not challenged by any enquiry proceedings till date. There is nothing on record to prove that the works have not been executed on ground or it has not served the desired purpose; the rates of quantities paid against work done are exaggerated; that there has been any wilful loss to the exchequer; that the then AEE has acted on its own without the written authority of the Ex. Engineer concerned; that the claim of events leading to the execution of these works was not in knowledge of the concerned superior officers; that the compulsion to execute the said works on the departmental mode was unjustified.

Recommendations of the IO: RDA may be dropped and closed; viable mechanism be evolved for execution of emergency nature restoration and maintenance works especially in PHE department, the Administrative & Financial powers of AEE and Ex. Engineer need to be redefined in the light of field challenges to ensure speedy solution of public grievances within the best possible monitoring mechanism;” and

7. Whereas, while re-examining the case in the department, it has been observed that:-

- a) The report of the Inquiry Officer hold that violation of codal provisions was made but justifies the same on grounds of urgency, quoting Rule 199(h) of the Public Works Account Code which mentions "*exceptional and urgent cases such as Urgent silt clearance of canals or closing breaches*" be executed through "*labourers employed for short periods.*" The urgency is said to be to supply water but the kind of works indicated by ACB do not have restoration of supply as the objective which could have qualified under urgency clause.
- b) The reason advanced by the charged officer that the then Minister for PHE and IFC directed immediate execution and XEN office staff complied and hence the execution took place departmentally without following the due process is flawed argument as directions of a superior authority does not, under any circumstances, become basis to violate the prescribed codes and procedures devised for spending public money prudently.
- c) A civil servant, holding responsible position cannot take shelter under illegal directions of any authority; in fact, it is incumbent upon him to inform all

concerned, and also the concerned authority, of the legal process involved and, in the instant case, the reasonable time likely to be taken for execution. It is precisely due to such officers, holding even gazetted rank in the official hierarchy, who make it impossible for upright officers to perform.

- d) Yet another often repeated excuse is that departmental execution was the norm at that time; this is the fallacious argument; one wrong doesn't make another wrong right, a wrong deed is wrong irrespective of how many others are doing the same wrong. Moreover, an officer who is held responsible for any wrong gets penalised because that is the law.
- e) The vehement argument that the XEN is being allowed to go scot free though he was principally responsible, is flawed too since it was not that there was no intent to proceed against him but the government rules did not permit to proceed against him as he retired more than a year before.
- f) Further, it is not just the decision maker but also those who participate in an illegal act, executing a work knowingly, who are held responsible for any violation and hence, accountable.
- g) The only ameliorating factor is that the charged officer has retired in February 2014 while since 2015, the inquiry is lingering on.

8. Whereas, the case file has been placed before the Competent Authority for deciding whether the charged officer is guilty of misconduct, who, holding that the charges have been proved against the charged officer, decided to impose penalty of "withholding of three increments and promotion thereof" in terms of Rule-30 (iii) of J&K Civil Services (Classification, Control & Appeal) Rules 1956;

9. Now, therefore, it is hereby ordered that a penalty of "withholding of three increments and promotion thereof" is imposed upon Mr. Farooq Ahmad Lone, the then Assistant Executive Engineer, PHE Sub-Division Watergam (now retired) in terms of Rule-30 (iii) of J&K Civil Services (Classification, Control & Appeal) Rules 1956.

By order of the Government of Jammu and Kashmir.

Sd/-

(Shaleen Kabra) IAS

Financial Commissioner (Additional Chief Secretary)

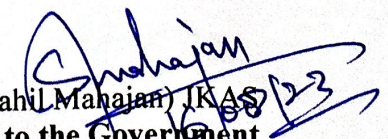
Jal Shakti Department

No: JSD-HRM04/3/2021-A (CC.No. 30373)

Dated:- 16.08.2023

Copy to the:-

1. Principal Accountant General, Jammu & Kashmir.
2. Joint Secretary (J&K), Ministry of Home Affairs, Government of India.
3. Commissioner/Secretary to the Government, General Administration Department.
4. Director, Archives, Archaeology and Museums, J&K.
5. Director, Anti Corruption Bureau, J&K.
6. Secretary, J&K Public Service Commission.
7. Chief Engineer, Jal Shakti (PHE) Department, Kashmir *with the request to affect the recovery from respective charged officers under an intimation to this department accordingly with proof.*
8. OSD to Advisor (B) to the Hon'ble Lieutenant Governor, J&K.
9. Senior Law Officer, Jal Shakti Department.
10. Pvt. Secretary to the Financial Commissioner (Additional Chief Secretary), Jal Shakti Department.
11. Concerned.
12. I/c Website.
13. Government Order file (w.2.s.cs).


(Sahil Mahajan) IAS
Under Secretary to the Government
Jal Shakti Department