

Award by the Ombudsman MGNREGA in accordance with Instructions on Ombudsman para 13 of instructions (under section 27 of MGNREGA Act, 2005) District Kangra, Vikas Bhawan, DRDA, Dharamsala (H. P.)

Award No. MGNREGA/2010/9-738

Dated:

16-02- 2011

Sh. Pankaj Kumar S/o Sh. Kuldeep Singh, Vill. Banda, P.O. & Tehsil Rakkar, District Kangra, Himachal Pradesh.

Complainant/ Applicant

Versus

1. Pradhan & Secretary, Gram Panchayat Rakkar (Dev. Block Pragpur) Tehsil Pragpur, Distt. Kangra, H.P.
2. Smt. Sudarshan Devi, w/o Kuldeep Singh ward Panch G.P. Rakkar, Tehsil Pragpur, Distt. Kangra, H.P.
3. The Block Development Officer-Cum-P.O. (MGNREGA), Dev. Block Pragpur, Distt. Kangra (H.P.)

Respondent/ Defendant

1 **Facts:-**

This complaint has been filed by Sh. Pankaj Kumar S/o Sh. Kuldeep Singh, Vill. Banda, P.O. & Tehsil Rakkar, District Kangra, Himachal Pradesh. As per contents of the complaint the main allegation is that the Deputy Commissioner Kangra has sanctioned Rs. 3.5 Lac. for the construction of path/ link road from main road to the house of Take Chand and protection wall for Kuldeep Singh landed property. The Panchayat instead of spending the sanctioned amount of the sanctioned work has utilised the amount for other work. The complainant has prayed that necessary inquiry may be conducted to find out the facts whether the sanctioned amount has been utilized for the sanctioned work or has been used for some other work. This complaint has been received in two parts, firstly from the office of Superintendent of Police Vigilance Dharamshala vide letter no. 6197 dated 25-08-2010, received in this office on 28-08-2010. Cognisance was taken and the same was sent to BDO-cum-PO (MGNREGA) Pragpur vide Ombudsman letter no. 65 dated 31-08-2010 for prelim fact finding inquiry and submission of report with in seven days from the receipt of this letter. Another copy of the same complaint addressed to Ombudsman (MGNREGA) was also received in this office on 20-09-2010. Since the report of the BDO-cum-PO (MGNREGA) Paragpur was not received till 15-11-2010, further proceeding in this complaint case was fixed on 03-12-2010 at 2:00 p.m . The complainant, Pradhan and Secretary, the concerned ward Panch and the BDO-cum-PO (MGNREGA) Paragpur were issued notices of presence to attend the proceedings vide no. Ombudsman-321 dated 16-11-2010.

2. **Statements of Parties**

On 03-12-2010 the statement of Sh. Pankaj Kumar (P-I), S/o Sh. Kuldeep Singh, Vill. Banda applicant / complainant was recorded who has stated that he presented a complaint to the Lokpal (MGNREGA) on 20-12-2010. Has further stated that Deputy Commissioner Kangra has sanctioned Rs. 3.50 Lac. for the construction of “**path/ link road from main road to the house of Take Chand Lamber Basti and protection wall for Kuldeep Singh landed property**”. But the Panchayat instead of utilizing the amount for the sanctioned scheme has spent the amount for other work (construction of dangas and repair work). **Sh. Rattan Singh Rathor Pradhan G.P. Rakkar, respondent (D-I)** has stated that the work construction of **path/ link road from main road to the house of Take Chand Lamber Basti and protection wall for Kuldeep Singh landed property** has been approved and passed by the Block Development Committee. The Panchayat started constructing the path as per sanctioned scheme but it was obstructed by Sh. Pankaj Kumar S/o Sh. Kuldeep Singh, complainant and the work was stopped. Has further stated that the spot was visited by Sh Kamlesh Kumar member BDC and decision was given by

him after listening the people of locality. In his cross examination the Pradhan has denied that he has knowledge about the work which was included in the Panchayat Samiti shelf. Has admitted that the protection wall has been erected towards the house of Sh. Kuldeep Singh who has expired. **Smt. Sudarshana Kumari w/o Kuldeep Singh ward panch ward no-2 (D-II)** has stated that she has supervised and executed the work as per entries made in the mustroll. In her cross examination she has admitted that she has executed the work as per entries in the mustroll. **Sh. Ajeet Pal Singh, J.E, Dev. Block Paragpur (D-III)** has stated that he has prepared the estimate of the construction work of **link road from main road to the house of Take Chand Lamber Basti and protection wall for Kuldeep Singh landed property** in accordance with sanctioned work. The estimate has been prepared according to the sanctioned work and the work has been got executed by him according to estimate. No diversion of funds as alleged has been made. In the cross examination the J.E. has confirmed that there is a provision in the estimate for the construction of protection wall for Kuldeep Singh but the protection wall work could not be executed as it was not allowed by Sh. Pankaj Kumar complainant. **Smt. Rekha Kumari, BDO-cum-PO Paragpur (D-IV)** has stated that the work, construction of **path/ link road from main road to the house of Take Chand Lamber Basti and protection wall for Kuldeep Singh** has been included in the MGNREGA shelf at Sr. no. 34, the estimate of which has been prepared by J. E. Sh. Ajeetpal Singh and the work has also been executed under his supervision,. Has further stated that she has no knowledge whether there has been any diversion of funds from the sanctioned amount or not. She also presented fact finding report relating to the present complaint which is placed on record.

3. Issues for consideration

On the basis of statement of complainant, respondents (D-I to D-IV), documents placed on record and fact finding report of BDO-Cum-PO (MGNREGA), Pragpur, the following issues are hereby framed :-

Issue-I:- Whether there is diversion of funds from the sanctioned work viz construction of path/ link road from main road to the house of Tek Chand Lamber Basti and protection wall for Kuldeep Singh ? If, yes how much amount has been diverted for other work?

4. Issue-wise Findings

Before issue wise findings with reasons are discussed and concluded, it is of utmost importance to discuss the prelim fact finding report submitted by BDO-cum-PO (MGNREGA), Paragpur vide letter no. DVP/35-36 dated 01-12-2010. In brief the report says that in this case the SDO (Civil) Dehra through the Assistant Engineer Development Dehra and Pragpur has already conducted inquiry and submitted report to the Deputy Commissioner Kangra. The Deputy Commissioner on the basis of this report has issued show cause notice to the Panchayat Secretary and the BDO Office has been directed to take action against the contractual J.E. Sh. Ajeetpal Singh. Perusal of the A.E. Dev. Dehra report which states as “at site it is found that executive agency started the work of wall at sr. no.4. They also carried out repair work by providing cement concrete lining in about 45 mtr. length from RD 110/0 to onwards of existing link road without any provision in the shelf as well as in the sanctioned estimate prepared by the BDO office Pragpur. Complainant has objected to this repair and retaining wall construction. The Junior Engineer concerned said that the wall is constructed as per provision of estimate prepared by him. After inquiry it is revealed that the construction of wall is proposed and executed as per the demand of public and based on the estimate prepare in consultation with the concerned BDC Member and ward Panch. This will help to control the erosion of the side of road already constructed. As far as matter of repair work done by the executive agency mentioned above from RD 110/0 to onwards i.e. about 45 mtrs. in length is without any approval and provision both in shelf and sanctioned estimate.”

On 10th January, 2011 the alleged disputed work site was also visited by the Ombudsman (MGNREGA) Kangra along with A.E. Dev. DRDA. The concerned J.E., BDO-cum-PO MGNREGA, Pragpur, Pradhan, members of Panchayat and complainant were also

present. After visiting the alleged disputed work site and listening to the version of the complainant and explanation given by him regarding diversion of funds by the executing agency including member of the Panchayat (ward Panch) under whose supervision the work was got executed, the concerned J.E. through BDO-cum-PO MGNREGA, Pragpur was asked to provide (i) details of expenditure incurred till date on the sanctioned work. (ii) expenditure incurred on the original sanctioned work as per shelf approved (iii) expenditure incurred on repairs (iv) expenditure incurred on the retaining wall erected in Banda Basti which has been alleged as diversion of funds (v) resolution of the Panchayat for modification/diversion of funds to other work than the sanctioned one. As per information provided by the Block (J.E.) (i) the total expenditure incurred on the sanctioned work is Rs. 2,88,342/- (ii) Expenditure incurred on the original sanctioned work as per shelf and estimate is Rs. 1,92,172/- (iii) Expenditure incurred on the repair work is Rs. 41,853/- (iv) expenditure incurred on the retaining wall erected is Rs. 54,314/- Total expenditure incurred on repair on path and construction of retaining wall without approval of the competent authority comes to Rs. 41,853+54,314 = Rs. 96,167/-. Perusal of the resolution passed by the Panchayat which is placed on record reveals that the Panchayat vide resolution no. 6 dated 10-06-2010 has resolved to constitute construction committee under the chairmanship of ward member to execute the work according to the sanctioned shelf and the Panchayat has nowhere passed resolution for modification / diversion of funds to other work. Thus, on the basis of information and facts as ascertained after making detailed inquiry in to the allegations, it is found that the executing authorities (Block) have taken up the repair and construction work of retaining wall in Banda Basti and path without the approval of the competent authority which amounts to diversion of funds from the sanctioned work. The plea of the Block authorities that the construction of retaining wall in Banda Basti was carried out as per the instructions of the BDC member is not tenable as it is only sanctioning authority of the original work which can allow modification/ diversion of the sanctioned work. It has also been proved that the work was stopped by the complainant at point RD 110/0 and it was because of this that the construction of retaining wall to the landed property of Sh. Kuldeep Singh could not be taken up for execution. Therefore, it can be concluded that the Block executing agency has diverted the funds for repair as well as for the construction of retaining wall in Banda Basti without the approval of the competent authority to the tune of Rs. 96,167/- out of Rs. 3.50 lacs sanctioned.

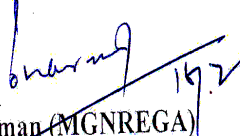
5. Conclusion

In view of foregoing reasons and findings, the allegations as alleged in the present complaint regarding diversion of sanctioned funds for the construction of "path/ link road from main road to the house of Take Chand house Bands Lamber Basti and protection wall for Kuldeep Singh" stands proved partially i.e. the expenditure incurred on the repair work and construction of retaining wall viz Rs. 41,853 + 54,314 = Rs. 96,167/- out of the sanctioned amount Rs. 3.50 lac., amounts to diversion.

Copy of the award be sent to the complainant Sh. Pankaj Kumar S/o Sh. Kuldeep Singh, Vill. Banda, P.O. & Tehsil Rakkar, Ex-Pradhan Sh. Rattan Singh Rathor, Panchayat Secretary, Gram Panchayat Rakkar, BDO-Cum-PO (MGNREGA), Pragpur and Deputy Commissioner-cum-District Programme Coordinator (MGNREGA) Kangra at Dharamshala for information and further necessary action.

Copy of the award may be sent to the Secretary (Rural Development) to the Government of Himachal Pradesh for information and further necessary action.

Announced


19.2
Ombudsman (MGNREGA)
Vikas Bhawan, DRDA,
District Kangra, Dharamshala (H. P.)