



Jammu and Kashmir State Information Commission

شنیشن کمیٹی انفارمیشن ری اسٹیٹ انڈیا کشمیر جموں ا

(Constituted under the Right to Information Act, 2009)

Wazarat Road, near DC Office Jammu, 0191-2520947, 2520937

Old Assembly Complex, Srinagar, 0194-2506660, 2506661

Penalty Order

File No. SIC/CO/SA/437/2017

Decision No. SIC/CO/SA/437/2017/1080

Dated: 29.03.2018

Subject: Order in Penalty proceedings initiated under Section 17 of the J&K RTI Act, 2009 in 2nd Appeal titled Hamid Ali VS First Appellate Authority (FAA)/Public Information Officer (PIO), J&K Service Selection Board (SSB).

The penalty proceedings in the 2nd Appeal titled Hamid Ali Vs First Appellate Authority (FAA)/Public Information Officer (PIO), J&K Service Selection Board (SSB) were initiated in terms of the final order disposing of the said 2nd appeal (Hamid Ali Vs FAA/PIO, J&K SSB) on 09.05.2017.

The operative part of the final order disposing of the appeal issued on 09.05.2017 reads as under:-

'In the last order of this Commission, Sh. Abdul Rashid Dar and S.O Administration Sh. Ishwer Dutt were found fit to be proceeded against for imposition of penalty under Section 17 of the J&K RTI Act, 2009 and, therefore, were provided an opportunity to defend themselves in writing as well as through personal hearing. Whereas, Sh. Abdul Rashid Dar/PIO has retired from Government Service, Shri Ishwer Dutt, S.O Administration attended the hearing today. He didn't produce anything in writing in defense but stated that he was not able to give the requisite information to the PIO as the records were in the custody of record keepers.

The S.O (Adm.) Sh. Ishwer Dutt was heard in detail and it was found that this defense about records being with the record keepers and not with him is

superfluous and only a weak pretext for refusing to provide the information. It was also felt and understood from the records and from the statements of other officials who attended the hearing that there was no clear dereliction of duty on the part of the PIO Sh.Abdul Rashid Dar (now retired) as he had repeatedly sought the assistance from the APIO Sh.Ishwer Dutt (S.O) but there is inexplicable delay on the part of S.O Administration Sh.Ishwer Dutt to provide the requisite information to the PIO to enable the said PIO to provide the information to the RTI applicant. The S.O could not produce any documentary evidence to show that the record keepers or any other official of the SSB had not heeded his request for provision of requisite information. It was also revealed that about 145 files of RTI applications had been forwarded to the S.O and an overwhelming majority of them were still pending due to lack of appropriate action and response from the said S.O. Notwithstanding this, a final opportunity is provided to the S.O Sh. Ishwer Dutt to submit his denfense in writing alongwith documentary evidence, if any, in support of his contention within 15 days from the date of receipt of this order.

The case is accordingly disposed of subject to the above directions.

Registry is directed to fix the date of hearing in the penalty proceedings.'

Consequent upon this order, the hearing in the instant penalty proceedings were conducted on 28.06.2017, 14.07.2017, 07.08.2017, 9.11.2017 and finally on 24.01.2018. The following officers and officials were heard personally on these occasions:

- i. Sh. Hamidullah Shah, PIO,JKSSB.
- ii. Sh.Ab.Rehman, ADO/PIO,SSB.
- iii. Sh.Ishwer Dutt, SO (Admn.)
- iii. Sh.Javaid Ahmad, Sr.Asstt.(Selection Division)SSB,
- iv. Sh.Peer Mohd Shafi, Sr.Asstt.(RTI Section)SSB
- v. Sh.Ab.Gani Sheer Gojri. Jr.Asstt.(Selection Section)SSB.
- vi. Ms. Roohi Akhter, Jr.Asstt. (Receipt & Dispatch Section).
- vii. Ms. Mehmooda Jabeen, Jr.Asstt. (Receipt & Dispatch Section)
and
- viii. Sh. Amir Rashid (Receipt & Dispatch Section) of SSB.

In his written reply submitted vide No.SSB/Secy/ appeal/137/16/201 dated 23.05.2017 Sh.Ishwer Dutt S.O (Admn) /APIO stated as under:

- a. *That the RTI application filed on 22.09.2016 was moved by the RTI Section to the concerned Record Keepers only on 15.11.2016.*
- b. *The Record keeper has returned the file on 20.02.2017 with the remarks that the award file of Hamid Ali has been received by the secrecy section and not returned till date.*
- c. *That it was on the directions of FAA that ' the merit of type test and viva voce of the Hamid Ali has been provided by the secrecy wing on 15.02.2017 and delivered to the applicant vide No.SSB/Adm/RTI/Appeal/137/2016/143/17 dated 16.02.2017.'*
- d. *It is submitted that the file has not been routed through the S.O(Adm.) nor remain pending with undersigned.*

In his written reply dated 10.07.2017, the Senior Assistant, RTI Section Peer Muhammad Shafi stated as under:

- i. That the appellant had filed an application on 22.09.2016 before the PIO, SSB under RTI Act vide receipt No.1195, but unfortunately there was unrest in the valley and case was not processed in the month of October due to the unrest in the valley, there was Annual Darbar Move in the month of October and immediately after opening of offices in the winter Secretariat at Jammu in November,2016 case was processed on 15.11.2016. After that RTI section start processing this case and file was sent to Selection Division Kashmir on 15.11.2016 and was not received back up to 20.02.2017. By which we cannot give any answer to the said candidate as such, there is no deliberate or intentional delay in processing the RTI application.
- ii. That delay in entertaining the application filed by the applicant is not intentional but due to cause/circumstances already explained above was beyond the control or deliberate of the dealing staff.

Shri Amir Rashid, Jr. Assistant RTI Section submitted in writing dated 8.11.2017 as under:

That the said application has been received by applicant on 22.09.2016 and the same was handed over to Mr. Peer Mohd Shafi, Senior Assistant, Incharge RTI Section. As such reasons for

delaying in processing the application may be/can be explained by Shri Peer Mohd Shafi, Senior Assistant as the applicants job/assignment in the RTI Section is only to type the information after same are placed before the applicant and there is no delay on behalf of the applicant.

Ms. Roohi Jan and Ms.Mehmooda of Receipt Section stated through their written reply that the RTI application was not received in the general Receipt and Despatch Section and that the said application was received in the RTI Section which can be got verified from the Receipt Section of the RTI Section.

Sh.Javid Ahmad Bhat, Sr.Astt. and Sh. Ab.Gani Sheer Gojri, Jr.Astt. in their written statement dated 04.08.2017 stated as under:

1. That the said file (of RTI application filed on 22.9.2016) has been marked to the Record Keeper on 15.11.2016 for providing necessary information.
2. That the relevant record of the instant case was not received by the Record Keeper from Secrecy Section and the file has been returned back to RTI Section with the remarks that the selection file of the instant case has not been received as yet, therefore the requisite information may be obtained from Secrecy Section.
3. That after some passage of time the said file was also marked with the same remarks to provide the requisite information to the information seeker as already requested by him.
4. That after the relevant record was received by the Record Keeper, the requisite information has been provided to the information seeker on the said date.

The FAA/PIO, J&K SSB in their counter reply submitted on 04.08.2017 have stated as under:

- i. That during examination of records, it transpired the delay in processing the case has occurred in the RTI Section because of deteriorating conditions prevailing in the valley in 2016. During this period even staff members were not able to attend the respective office due to non availability of transport facility, strikes curfews, imposed by the Government to maintain law and order in the valley.

However, immediately after reopening of offices in the winter secretariat, at Jammu in November, 2016 the case was processed on 15.11.2016, as such there is no deliberate or intentional delay in processing the RTI application.

- ii. That the 1st Appellate Authority conducted the hearing in the 1st Appeal and part information (individual merit) was finally provided to the applicant vide communication dated 16.02.2017
- iii. That the Selection Division has now provided the information as sought by the applicant/appellant i.e, the Xerox copy of type test paper of 8 candidates including the applicant and the individual details of marks awarded by Board Members in respect of all shortlisted candidates which has been provided to the appellant vide letter No.SSB/Secy/Appeal/137/16/453\ dated 04.08.2017.
- iv. In the premises it is therefore prayed that Counter reply may kindly be taken on record and penalty proceedings may be dropped to meet the ends of justice.

Hearings were first conducted in the instant Penalty proceedings on 28.06.2017,14.07.2017,07.08.2017 and 09.11.2017 and all the concerned officials heard in person. In the hearing on 9.11.2017 it was decided to give an opportunity of being heard to the then PIO, Shri Abdul Rashid Dar, who retired at the end of the March,2017. Accordingly, the hearing was fixed for 24.01.2018 and all the concerned officials including the then PIO Sh.Abdul Rashid Dar (now retired), the new PIO who succeeded him Shri Hamidullah Shah attended the hearing and were heard. Other junior officials as mentioned earlier were also heard at length and their written statements perused.

Sh. Abdul Rashid Dar, the then PIO stated that the RTI application filed on 22.09.2016 had never been put up to him by the RTI Section and so he was completely out of the picture and it was only after the FAA started hearings in 1st Appeal in January,2017 that he came to know of this RTI. He further stated that finally he dispatched the available information to the appellant on 16.02.2017. Oral and written submission of all the concerned officials of J&K SSB including the PIOs were considered and perused respectively.

From the detailed inquiry held during many hearings conducted and on the basis of available documents and record, it transpires as under:-

- a. That Sh.Peer Mohd Shafi, Sr.Asstt., RTI Section failed to process the RTI application between 22.-09.2016 upto 15.11.2016 which indicates negligence and dereliction of duty on his part. His defence that situation in the valley during that time was disturbed does not fully justify the long delay of nearly 55 days in putting it up to the PIO or the APIO.
- b. Amir Rashid, Jr.Asstt. in the RTI Section cannot be held responsible for this delay as his work is restricted to typing and it was not his responsibility to initiate the note on the RTI file. Sh.Peer Mohd Shafi didn't deny having seen the RTI application immediately after it was received on 22.09.2016
- c. That two record keepers Shri Javaid Ahmad Bhat and Shri Ab.Gani Sheer Gojri sat over the file received from RTI Section for over 03 months between 15.11.2016 and 20.02.2017 and returned the file without information on the ground that the Secrecy Section had not provided the information. But non-response from the concerned Section cannot be the ground for inaction on the part of the two in a time bound matter like RTI and these two record keepers also failed to bring the matter to the notice of the PIO and the APIO. The records don't show that they have tried to agitate the matter before the APIO or PIO about non-cooperation from the Secrecy Section which implies that they have simply slept over the matter showing negligence and dereliction of duty on their part. Records also don't show that Peer Mohd Shafi, Sr. Assistant, RTI Section pursued the RTI file marked by him to the Record Keeper although he was aware of the delay already occurred in the RTI Section itself.
- d. The APIO, Shri Ishwer Dutt who is SO(Admn.) and APIO is also not without blame. He has claimed innocence on the grounds that the RTI Section did not mark the RTI file to him nor did the record keepers inform him about the delay in the procurement of information from the concerned Section. But being incharge of Clerical staff and their working he has failed to monitor their work with the result they continued in default for months. As APIO, Sh.Ishwer Dutt was supposed to receive RTI applications as mandated under Section 5(2) of the RTI Act which states as under:-

'Without prejudice to the provisions of the sub-section, every public authority shall designate an officer within one hundred days of the commencement of the Act, at each sub-divisional level or other sub-district level as an Assistant Public Information Officer to receive the application for information or appeals under the Act for forwarding the same forthwith to the Public Information Officer or senior officer specified under sub-section(1) of Section 16 or the State Information Commission, as the case may be.'

Sh.Ishwer Dutt failed to give any plausible reason as to why he was not performing his duties as such APIO and why he failed to receive the RTI applications including the RTI application of Shri Hamid Ali. It is clear that he was not performing the duties of an APIO, despite having being appointed as such and was negligent even as a Section Officer incharge of RTI Section.

Shri Abdul Rashid Dar, the then PIO (now retired) has also failed in his duty as a PIO. It seems that he had not issued any specific guidelines for dealing with RTI applications in the RTI Section. Had he issued guidelines and directions as a PIO, the delay between 22.9.2016 to 15.11.2016 and then between 15.11.2016 to 16.02.2017 may not have occurred.

The J&K RTI Act,2009 lays down clearly the responsibilities and duties of a PIO in a Public Authority. In fact he/She is the pivot around which the RTI revolves. Without the PIO, the RTI Act will be rendered unimplementable. PIO has been defined under Section 2(g) as under:-

"Public Information Officer" means the Public Information Officer designated under sub-section(1) and includes an Assistant Public Information Officer designated as such under Sub-Section (2) of Section 5."

Sections 5,6,7,8,9 and 11 of the Act exclusively deal with the role of the PIO and the procedure to be adopted by him in providing information to the RTI applicant. Section 17 prescribes imposition of penalty only on PIO which

however, includes APIO in terms of Section 2(g) and other connected officials to be declared as PIOs in terms of Sections 5(4) and 5 (5) of the RTI Act.

The contention of the then PIO, J&K SSB Sh. Abdul Rashid Dar that he was unaware of filing of the instant RTI application in his office is not sustainable at this point of time, when he has already deposed before the Commission in the previous hearings in the second appeal titled Hamid Ali v/s J&KSSB from which this penalty proceedings have originated that he had sought assistance from Sh. Ishwar Dutt, S.O./APIO for disposal of all pending RTI applications.

The J&K RTI Act makes the PIO a pivot for provision of givable information to the information seekers. The very designation of the PIO entails vesting the responsibility for providing information on the said PIO. The Act having required the PIO to deal with the request for information and to render reasonable assistance to the information seeker under the provisions of section 5(3) of the Act cannot be said to have intended the PIO's role as superficial. The expression "deal with" would mean everything from receipt of application till its disposal. Section 5(4) is to strengthen the authority of the PIO within the department for collecting the information.

The Hon'ble High Court at Delhi in case titled J.P. Agarwal v/s UOI and ors 2011 has held as under:

"Under section 6(1) and 7(1) of the Act it is the PIO to whom the application is submitted and it is he who is responsible for ensuring that information as sought is provided to the applicant within the statutory requirements of the Act."

Similarly in Vivek Mittal v/s B.P. Srivastva 2009, same Court has held that PIO cannot escape his obligations and duties by stating that persons appointed under him had failed to collect documents and information and that Act, as framed, casts obligations upon the PIO to ensure that the provisions of the Act are fully complied.

Therefore, the argument of the PIO/Sh. Abdul Rashid Dar that he was not aware of the RTI application and had not seen the file cannot be accepted as an excuse for not discharging the duties of a PIO. A reasonable PIO can't escape his responsibility by saying that he depends solely on the work of his subordinates. The Act has bestowed clear responsibility upon the PIO to ensure that givable information is provided to the information seeker.

In the penalty proceedings, under section 17 (1) of the J&K RTI Act, 2009 the burden of proof of having acted reasonably and diligently is always on the PIO. Therefore, considering the duties and responsibilities assigned to the PIO by the RTI Act and taking an overall view, the PIO's defense that he was unaware of the RTI application filed in his office cannot be accepted as a ground to absolve him of the penalty under section 17 (1).

Section 17 (1) reads as under:

"Where the State Information Commission at the time of deciding any complaint, appeal or reference is of the opinion that the Public Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under the sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Public Information Officer shall be given a reasonable opportunity of being heard and penalty is imposed on him:

Provided further that, the burden of proving that he acted reasonably and diligently shall be on the Public Information Officer."

Section 5 (4) reads as under:

"The Public Information Officer may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties."

Section 5(5) reads as under:

"Any Officer, whose assistance has been sought under Sub-Section (4), shall render all assistance to the Public Information Officer seeking his or her

assistance and for the purposes of any contravention of the provisions of the Act, such other officer shall be treated as Public Information Officer."

Therefore, the State Information Commission finds the then PIO/Sh. Abdul Rashid Dar (now retired) in default along with following subordinate officials who were part of RTI section in the J&KSSB to assist the PIO, liable for penalty under section 17 (1) of the J&K RTI Act, 2009 read with sections 5 (4) and 5 (5) of the Act:

1. Sh. Ishwer Dutt, Section Officer.
2. Sh. Peer Mohd Shafi, Senior Assistant.
3. Sh. Javaid Ahmad, Record Keeper.
4. Sh. Ab. Gani Sheer Gojri, Assistant Record Keeper.

Accordingly, a penalty of Rs. 250/day is imposed on them for the delay between 23.10.2016 [i.e. from the last date by which information should have been provided in terms of section 7 (1)] upto 16.02.2017 subject to a maximum of Rs. 25000/- to be shared by them in equal proportion.

The Drawing and Disbursing Officer (DDO), J&KSSB shall deduct the proportional amount (Rs. 5000/- only) from the salary of each of the in-service officials namely Sh. Ishwer Dutt, Section Officer, Sh. Peer Mohd Shafi, Senior Assistant, Sh. Javaid Ahmad, Record Keeper, and Sh. Ab. Gani Sheer Gojri, Assistant Record Keeper and deposit in the appropriate Account Head of the State Government in terms of standing rules on the subject. In respect of the retired the then PIO/ Sh. Abdul Rashid Dar, the DDO of J&K SSB shall take up the matter of proportional deduction of Rs. 5000/- only with the concerned pension disbursing authority for doing the needful.

With the above directions, the penalty proceedings initiated in the 2nd appeal are hereby disposed of.

Sd/-
(Khurshid A. Ganai)
Chief Information Commissioner
J&K State Information Commission

(P.A. Ajay)

No: SIC/CO/SA/437/2018_____

Dated:

Copy to the:-

1. Chairman, J&K Service Selection Board for information and necessary action.
2. Drawing and Disbursing Officer (DDO), J&K SSB for information and necessary action under intimation to the Commission.

3. Pvt. Secy. to CIC for information of the HCIC.
4. Concerned officials.
5. Office Order file.

(Sheikh Fayaz Ahmed)
Registrar
J&K State Information Commission