



Jammu and Kashmir State Information Commission

جموں اینڈ کشمیر ریٹ انفارمیشن کمیشن

(Constituted under The Right to Information Act, 2009)

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www.jksic.nic.in

File No SIC/ICK/Comp-49/2011/

Decision No. SIC/ICK/Comp-49/2011/134

Title

Shri Abdul Hamid Paul
Son of Late Ghulam Hassan Paul
Resident of Dangerpora, Shopian

(Complainant)

V/S

Mr. Rafiq Ahmad Fafoo,
Assistant Commissioner Development-Cum-
Public Information Officer, Shopian.

(Respondent)

11.05.2012

1. The brief facts of the case are that the Complainant namely Abdul Hamid Paul Son of Late Ghulam Hassan Paul Resident of Village Dangerpora, Shopian had filed RTI Application under section 6 of the Act on 29.10.2011 before Assistant Commissioner Development -Cum- Public Information Officer Shopain through registered post vide receipt No. 538 dated 14.11.2011 which as per the statement of the complainant had been received by the PIO on 17.11.2011, for providing some information which as per the records has not been provided to him so far by the Assistant Commissioner Development-Cum- PIO Shopain Mr. Rafiq Ahmad Fafoo. Due to non-providing of information to the Information Seeker/ Complainant, he filed a Complaint alongwith other relevant records before this Commission. In response to the complaint of the Complainant a notice vide No.SIC / ICK /

Comp-49 /2011/2783 dated 06.01.2012 had been issued by the Registry of this Commission to the Assistant Commissioner Development-Cum-PIO, Shopain Mr. Rafiq Ahmd Fafoo wherein he was directed to file counter statement/reply within the period of seven days positively which apparently had not been filed by the PIO/ACD Shopian Mr. Rafiq Ahmad Fafoo.

2. On 06.03.2012 another notice vide No.SIC/ICK/Comp-49/2011/3203-4 was issued to the Assistant Commissioner Development-Cum-Shopian Mr. Rafiq Ahmad Fafoo wherein he was directed to appear before the Commission on 15th March, 2012 (12 Noon) at Srinagar in connection with hearing of the complaint under J&K Right to Information Act, 2009 alongwith counter statement/reply.

3. Accordingly, the case was listed for hearing before the Commission on 15th March, 2012, but as per the records the Assistant Commissioner Development-Cum- PIO Mr. Rafiq Ahmad Fafoo was not present before the Commission, whereas the Complainant made his presence before the Commission.

4. On 15th March, 2012, the Commission issued a direction vide decision No.SIC/ICK/Comp-49/2011-32034/73 dated 15.03.2012 to the PIO/ACD Shopian Mr. Rafiq Ahmad Fafoo. The operative part of the decision is as under:-

***“.....The Commission holds that the application of the Complainant filed u/s 6 of the Act has been received by the PIO and PIO has failed to provide the information within maximum time of 30 days. He has, therefore, attracted the provisions of Section 17 of the State RTI Act, 2009 which provides for imposition of penalty on the defaulting PIO from the date when information was to be given till the date when information is actually provided. He is, therefore, directed to give his reasons, if any, for not imposing penalty on him. His reply should reach this Commission within 10 days from the date of receipt of this Order. The Registrar of this Commission is also directed to issue notice u/s 33/34 of CPC read with Section 15 of the State RTI Act, 2009 to the defaulting PIO for not responding to this Commission’s notice i.e. for failing to appear in this Commission personally.*”**

The PIO is also required to explain why Commission may not consider recommending of initiation of disciplinary action against him under the Service Rules applicable to him as provided u/s 17(2) of the State Right to Information Act, 2009....”

5. In order to give a fair and just trial, the Commission gave last and final opportunity to the Public Information Officer / Assistant Commissioner Development Shopian vide No. SIC/ICK/Comp-49/2011-32034/568-69 dated 26.04.2012 wherein the PIO/ACD Shopian was directed to furnish his reply as to why penalty u/s 17 of the Act may not be imposed on him. He was also directed to explain why Commission may not consider recommending of initiation of disciplinary proceedings under the Service Rules against him. The reply was to reach this Commission within eight days from the receipt of this notice but the PIO/ACD Shopian did not bother either to appear before the Commission or send his reply in his defense which clearly reflects the disobedience of the orders passed by this Commission and disregard to the provisions of State Right to Information Act, 2009.

6. After the perusal of the entire record available on the file and other aspects of the case as well, it is held that the PIO/ACD Shopian Mr. Rafiq Ahmad Fafoo has squarely failed to pass an order under section 7 of the Act to within the time stipulated under the Act. The PIO/ACD Shopian has also shown scant respect to the provisions of the State Right to Information Act to comply with the directions of the Commission from time to time. Accordingly, the Assistant Commissioner Development-Cum- PIO Shopian Mr. Rafiq Ahmad Fafoo is found guilty of not passing an order u/s 7 of the Act deliberately and intentionally, therefore, attracted the provisions of Section 17 of the J&K Right to Information Act which provides for imposition of penalty on the defaulting PIO from the date when order was to be passed till the date when the order is actually passed. Section 17 of J&K RTI Act, 2009 has made it quite clear that if the delay is without any reasonable cause, the Commission is duty bound to impose a penalty of Rs. 250/- per day from the first day of delay till the date information is provided.

7. Under the facts and circumstances, this is a fit case to invoke Section 17 of the Act because by consistently failing to implement the Act, the PIO/ACD Shopian Mr. Rafiq Ahmad Fafoo has proved to an impediment to promote transparency and accountability in the administration. Thus by bringing the erring and defaulting Public Information Officer under the ambit of Section 17 of the Act, the intention and aim of the legislature expressed in the preamble of the Act is fulfilled. The penalty of **Rs. 25000/- (Rupees Twenty Five Thousand)** only is accordingly imposed against the defaulting Assistant Commissioner Development-cum-Public Information Officer, Shopian Mr. Rafiq Ahmad Fafoo which is calculated as under:-

a.	Date of receipt of RTI Application through registered post :	17.11.2011
b.	Due Date when order u/s 7 was : actually to be passed:	16.12.2011
c.	Date when order is actually passed:	No order passed as yet
d.	No. of days in default w.e.f. 17.11.2011 to till date i.e.11.05.2012	116 days
d.	Penalty to be imposed for each day:	Rs. 250/-
e.	Therefore, the imposition of penalty is restricted to 100 days only which each 100 x 250 per day:	<u>Rs.25000/-</u>

8. The defaulting PIO may file a review petition before this Commission for review of this order as provided under Rule 36 Clause (4) of J&K State Right to Information Rules, 2010.

9. The Drawing and Disbursing Officer of Assistant Commissioner Development Shopian will ensure deduction of penalty amount of **Rs. 25000/- (Rupees Twenty Fiv**

e Thousand) only from the salary of Mr. Rafiq Ahmad Fafoo, Assistant Commissioner Development-Cum-Public Information Officer, Shopian in two consecutive monthly installments commencing from the Month of May, 2012 and remit it to Government Account with an intimation to this Commission. The DDO is further directed to furnish the copy of deduction certificate/challan with T.V No. and date. In case of any default committed by DDO, he will be personally liable for making the payment. This Order has to be complied within 15 days from its receipt.

With these observations the complaint is accordingly disposed of.

Sd/-
(G .R. Sufi)
Chief Information Commissioner, J&K