



Jammu and Kashmir State information Commission
(Constituted under the Right to Information Act, 2009)
Old Assembly Complex, Srinagar. Tel/Fax No. 0194-2484269
Wazarat Road, Jammu. Tel/Fax No. 0191-2520947

File No. SIC-j/Comp-10 June/2011
File No. SIC-k/Comp/31/2010

Decision No. 11 – SIC of 2012
Dated:- 24 .01.2012

Title: Vilakshana Singh v/s 1st Appellate Authority & PIO of J&K Public Service Commission.

...

Penalty proceedings under Section 17 of the State RTI Act 2009 were initiated vide this Commission's order No. SIC-k/Comp/31/2010 dated 02.06.2011. The PIO was required to reply within 30 days from the receipt of this order. This period of 30 days has since expired and no reply was furnished by the PIO. Accordingly in order to be fair to PIO another opportunity vide this Commissions Registry letter No. SIC/j/Comp/ 10 June/2011/100 Dated 05.01.2012 was provided. In response to this opportunity notice the PIO Shri Gulzar Ahmad, Addl. Secretary/PIO J&K PSC has furnished his reply on 30.12.2011 which will be considered later on. The brief facts which led to the initiation of penalty under Section 17 are as under:

That the appellant Shri Vilakshana Singh who filed an RTI application under Section 6 of the Act before the PIO of J&K PSC on 1.1.2010 seeking following information:-

- a. Which officer of JKPSC is empowered to make corrections in the papers of KCS (Judicial) ? Please specify order or rule conferring this authority.
- b. Which officer of JKPSC is empowered to make changes in the papers of KCS? Please specify order or rule conferring this authority.
- c. Whether any authorized officer JKPSC ordered to change the word "Impossible" figuring in the third line of compulsory paper 1 (B&C) of KCS (Judicial) Exams and to replace it with word "possible". If yes, please specify order or rule conferring this authority.

- d. *Why the above said change was made in a few centers only ? For example this change was made in Centre at Govt. Polytechnic College but this change was not made at Centre located in Government College of Education?*
- e. *If the change was actually ordered, whether any and what action was taken / shall be taken against those who did not communicate such change to the superintendents of the centers or the examinees, as the case may be ?*
- f. *If the change was not ordered, whether any and what action was taken/shall be taken against those who unauthorized made the change or so communicated it ?*
- g. *Why were dilapidated answer sheets supplied in some of the papers of KCS (Judicial) ?*
- h. *Mode chosen by JKPSM to communicate changes and corrections to centers was through mobiles. As such Superintendents and also the other staff at centers kept their mobiles switched on and used their mobiles phones for private talks in the guise of official communication there by cause unlawful and unnecessary disturbance to the examinees. What action shall be taken in this regard in future so that the candidates appearing in any of the examinations conducted by JKPSM do not get disturbed from this kind of annoyance?*
- i. *The JKPSM has, in one of the notifications, printed in the Newspaper Daily Excelsior had notified that if any advocate who appears and is found cheating in the KCS (Judicial) Examination, JKPSM shall cancel his Advocate's License. Kindly specify Act/Rule/Notification/Order which empowers JKPSM to cancel the license of an Advocate?*
- j. *Compulsory Paper-IV was divided into three separate and distinct parts. They why in compulsory Paper IV B a question (i.e. Q No. 3) which pertained to part A of Paper IV was asked? Was it done under mistake or was it justified? If it was justified, what is the extent of such justification? Can all the questions from the other parts/papers be asked?*

As per the mandate of the Act the order on the application of the information seeker was to be passed within a maximum period of 30 days. This was not done. The present PIO woke up only on 25.05.2010 i.e. after 135 days and that also not with the purpose of passing an order but demanding an amount of Rs. 820/- for 82 pages @ Rs. 10/- per page. Thus the PIO has not only violated time limit for passing the order but also time limit for charging the copying charges as is provided under Section 7 (6) which provides for not demanding any charges, if the said demand is not made within 30 days of making the application for providing the information. Hence the order for demanding copying charges is against the provisions of Section 7 (6) of the Act.

The complainant who happens to be an advocate professionally replied to the PIO vide his letter dated 2.6.2010 intimating him that the information was to be received free of charges in view of Section 7 (6) (b) of the State RTI Act. He had also intimated the PIO that in case information is provided late the law provides for imposition of penalty @ Rs. 250/- per day on erring Public Information Officer. He

also informed the PIO that he has filed 1st Appeal which has not been so far disposed. As no decision on the 1st Appeal was taken by the FAA which he was otherwise under legal obligation to do, the Commission remanded the matter to FAA for disposal of the Appeal.

On receipt of information after adjudication by the FAA of J&K PSC the complainant again filed a complaint before this Commission on 20.06.2011. This complaint has concentrated on the issue of incorrect statement of facts by the PIO in the sense that he initially had asked for a payment of Rs. 820/- as copying charges of 82 pages but later on provided only 4 pages. Similarly the complainant has made the following complaint against the FAA of J&KPSC

".....That it is pertinent to mention here that the whole information was contained in FOUR (04) pages only. Whereas the PIO, JKPSC vide his letter No. PSC/RTI/34/2010 dated 25.05.2010 had informed the complainant herein the information sought by him comprised of EIGHTY TWO (82) PAGES and as such the complainant was asked to deposit Rs. 820/- for getting that information. But the order of 1st Appellate Authority, JKPSC clearly reveals that the information sought by the complainant comprised only of FOUR (04) pages. Thus it is ample clear that the PIO, JKPSC had deliberately, with ulterior motives of harassing the complainant demanded Rs. 820/- instead of actual Rs. 40/- . Thus it is evident that the only motive of demanding the exorbitant fee was to deliberately delay the information and harass the complainant for filing application under RTI Act.

That it appears from the conduct of the 1st Appellate Authority, JKPSC that he was hands in glove with PIO, J&KPSC as he did not dispose of the 1st Appeal of the complainant herein until he was directed by the Hon'ble State Information Commission to do so.

That since there is a deliberate delay of more than hundred days in providing the required information, penalty amounting to Rs. 25000/- should be imposed on the PIO. In addition to that disciplinary action against the PIO should also be recommended as he had used every illegal means of denying and delaying the information to the complainant herein.....

That if the penalty is not imposed on the non-applicant No. 1 for not providing the information under Right to Information Act, 2009, the said Act shall be reduced to a mere mockery with the residents of the State.

That the PIO J&KPSC and the 1st Appellate Authority, JKPSC have by not performing their duties and by deliberately violating the law relating to disclosure of information have mentally harassed the complainant and have also caused loss of his precious time and money. As such, the non-applicants should be directed to pay compensation amounting to Rs. 10,000/- to the complainant.

The PIO and the FAA of J&K PSC have not rebutted the allegations of the complainant. They are advised to remain more cautious while discharging their statutory obligations cast on them under the State RTI Act.

The provisions of Section 17 have made it very clear for the Commission to initiate and impose penalty if there is no reasonable cause given by the PIO for not

imposing the penalty. Thus the Legislature has vested this discretion in the Commission with the mandate that the discretion has to be exercised judiciously. Hence nobody whether an individual or an RTI activist can direct or persuade the Commission to initiate the penalty.

However, the facts of the case justified to initiate penalty proceedings and dispose them in accordance with law. However, before any action is taken it is incumbent on the Commission to consider whether the PIO has been given opportunity to show that he had a reasonable cause in not providing information within the time stipulated under the Act. The PIO vide his reply dated 29.12.2011 has given the following reasons for not being penalized:

"The said application i.e. the RTI application inadvertently remained un-adjudicated as the undersigned also holding the charge of Deputy Secretary, Examinations at the point of time was busy with the conduct of KAS 2009 Main Examination at Srinagar. The application was disposed of on 25.05.2010 by Deputy Secretary Shri Sheikh Mukhtar who was looking after the charge of the undersigned. However, after the disposal of the appeal of the information seeker by the Chief Information Commissioner J&K State Information Commission in compliance his direction vide No. SIC-K/Camp/31/2010 dated 02.06.2011 I provided the relevant information to the information seeker vide his No. PSC/RTI/2011/14 dated 14.06.2011....."

The undersigned had not deliberately or unreasonably withheld any information which was supposed to be provided to the information seeker and has complied the directions of the Chief Information Commissioner As such invoking section 17 of the RTI Act for imitating proceedings against the undersigned shall not be appropriate."

The Commission has considered this explanation. It is an admitted fact that the order was not passed within the statutory time of 30 days from the receipt of RTI application. Deputy Secretary Sheikh Mukhtar did not dispose of application within time as claimed by the PIO, he just informed the information seeker that he has to pay Rs. 820/- as copying charges. The second contention of the PIO that he was busy in KAS Main Examinations is also not convincing as the due date of passing an order has been violated not only in this cases but in number of cases considered by this Commission since its appointment on 28th Feb, 2011. The PIO had also verbally informed the Commission that Central Information Commission had held against the disclosure of the information with regard to the examinations, etc. conducted by the Union Public Service Commission. The PIO's contention that the information was given immediately after the undersigned passed the order on 2.6.2011 is also not convincing because it is found that even this dead-line laid down in that order was not adhered to by the PIO.

The PIO and other functionaries of J&K PSC were informed in earlier decisions by this Commission that the Hon'ble Supreme Court has considered in detail the issue of disclosure of answer books of the big organization of the country in charge of conducting examinations etc. of numerous varieties i.e. Central Board of School Education in Civil Appeal No. 6454 of 2011 (Arising out of SLP (C) No. 7525/2009 in the case titled Central Board of Secondary Education & Anr v/s Aditya Bandopadhyay & ors. The said organization is saddled with a responsibility of evaluating answer books of various examinations numbering more than 60 lakhs per year. And the Hon'ble Supreme Court considering all the issues, even the issue of whether stretching of resources as provided under Section 7 of the Act could be the reason, the Apex court has come to the conclusion that under the Central Information Act and the J&K State RTI Act, being the replica of the Central Act, the disclosure is generally a rule and the contrary i.e. non disclosure is an exception.

It is found that even today the functionaries of this constitutional authority are still reluctant to honour the provisions of this Act and are showing total disregard not only to the State Information Commission orders but also to the orders of Hon'ble Supreme Court. The Commission is still in receipt of large number of applications from various information seekers who have been refused access to information. Therefore, it becomes the responsibility and duty of the Commission to ensure that J&K State RTI Act 2009 is implemented if not possible by persuasion then by coercive means. To ensure strict compliance of the Act, the Commission is constrained to resort to Section 17 of the State RTI Act, 2009. After considering inordinate delay and all the reasons advanced by PIO, it would be reasonable to treat a period of 20 days as an unexplainable default and impose penalty on the defaulting PIO.

Thus, the total period of default is calculated as under:-

1. Date of application u/s 6 of J&K RTI Act, 2009 for seeking information is **01-01-2010.**
2. Due date of passing order under Section 7 is **31.01.2010.**
3. Actual date of passing order is **14.06.2010.**
4. Penalty to be imposed for each day is Rs. **250/-.**
5. Unreasonable period of default is **20 days.**

Therefore an amount of Rs. **5, 000/-** is worked out as penalty which is calculated as under:

20 days X Rs. 250 (per day) = Rs. 5,000/- .

The Drawing and Disbursing Officer (DDO) of the office of J&K Public Service Commission will ensure deduction of Rs. 5,000/- from the salary of Mr. Gulzar Ahmad, Addl. Secretary/ PIO, J&K PSC in 3 equal installments as provided in Rule 36 (3) of J&K State RTI Rules, 2010 and remit it to the Government Account with an intimation to this Commission. In case of any default committed by the DDO in this regard, he (DDO) will be personally liable for making the payment towards the Government account. This order has to be complied within fifteen days from the date of receipt of the order.

Shri Gulzar Ahmad, Addl. Secretary/ PIO, J&K PSC is at liberty to file a Review Petition before this Commission for review of this order as provided under Rule 36 Clause (4) of J&K RTI Rules, 2010.

-sd-

(G. R. Sufi)

State Chief Information Commissioner

Copy to :-

1. Secretary cum 1st Appellate Authority , J&K PSC.
2. Sh. Gulzar Ahmad , Additional Secretary Cum PIO J&K PSC.
3. DDO , J&K PSC.
4. Guard File.

(Mohammad Sayed Shah)
Registrar,
State Information Commission