



**Jammu and Kashmir State Information Commission**  
(Constituted under The Right to Information Act, 2009)  
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**Old Assembly Complex, Srinagar, 0194-2506660, 2506661**  
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File No. SIC/CO/SA/474/2017

Decision No. SIC/CO/SA/474/2017/**1006**

**Final Order:**

Appellant : Prof. Abdul Gani Bhat,  
H.N0-08, Pamposh Lane, Natipora, Srinagar.  
Respondent : First Appellate Authority/Public Information Officer,  
J&K High Court.  
Date of decision : **13-10-2017**  
Decision : Appeal disposed of.

**Background:**

Briefly the facts of this 2<sup>nd</sup> appeal are that the appellant filed RTI application dated 24-06-2016 with the Public Information Officer(PIO) J&K High Court, Srinagar seeking the following information:

1. Transfer policy/Rules, Regulations governing the Ministerial Staff of Lower Courts and High Court of the J&K State.
2. What is the rationale and 'Interest of Administration' in transferring an employee from one District to another District? What are the rules governing such transfers.
3. In recent mass transfer orders of Ministerial Staff of lower courts in the two provinces of the State ONB 7.5.2016, how many people have been transferred from their domicile districts to other districts and how many have been brought back to their domicile Districts.

4. Whether the employees have any say/are provided any options while transferring them.
5. Is it necessary that an employee should be transferred even if he is performing his duties at his place of posting diligently, faithfully and honestly?
6. What is the distance which each of the employee has to cover from his home to new posting in the other district?
7. Is there any mechanism for recalling the transfer of an employee? If yes please provide full information, also please inform if transfer of any employee has been revoked. Give their names and the reasons for the revocation.
8. When was the library shifted to the 1<sup>st</sup> floor of the High Court building? Who was the Chief Guest and who were the other dignitaries who attended the recent function of 'inauguration' of the new library in the High Court Wing of Srinagar perhaps on 4.6.2016? Where from the Chief Guest and other dignitaries came? How long they stayed in Srinagar? Who bore their expenses of travelling, boarding and lodging? How much expenditure was incurred on the function and on the Chief Guest and other dignitaries individually, what gifts were offered to the Chief Guest and any other dignitaries and by whom? Who bought the gifts, at what cost price and who footed the bill?
9. What is the policy/rationale of the Court Registry behind not acknowledging citizens reports applications and not replying back to them about action taken on them?
10. If in the High Court Rules it is laid that every petition should be duly received by affixing court stamp on another copy of the petitioner's/applicant's index, why the rules is not put into practice in the Registry and all petitions/applications are received without giving any receipt?
11. Who is responsible for not implementing the High Court Rules?

12. What action has been taken on my reports about incompetence/inefficiency of two Judges of the Lower courts- one Ist Additional Munsif (Magistrate Ist Class) Srinagar, Ms. Tabassum Qadir Parray, presented in the High Court Registry 14.7.2015; and another about Mr. Khursheed-ul-Islam the then Municipal Magistrate, Srinagar, presented in HC Registry on 11.8.2015. and also what action was taken by the Principal District & Sessions Judge, Srinagar to who also the reports were addressed during that time.
13. What costs were incurred in producing and laying the foundation stone of the Additional Block of Srinagar High Court by the then Chief Justice Dr. B.P.Saraf, perhaps on 18<sup>th</sup> Nov. 2000, who had supplied the foundation stone and when. Please provide copy of the bill.
14. How much one hour of the high court, and one hour of a judge costs the State Public Exchequer.
15. Copy of order changing amicus curie Bashir Ahmad Bashir to Khawaja Tassaduq in my petition 561-A No. 244/2013 titled Abdul Gani Bhat Vs Abdul Rashid Sahaf.
16. Copy of order of the court dated 22.3.2016 in cmp (c) OWP) 01/2015 in OWP 702/2003.
17. Copies of office reports and orders of the Chief Justice there on in my applications presented to the Chief Justice on 22.3.2016, 9.5.2016, 6.6.2016 (about assigning my place for addressing the courts; listing of 561-140/2013 and other petitions irrespective of roaster)
18. Please also allow examination of the files/documents containing the above information.

Thereafter the appellant filed 1<sup>st</sup> appeal with Registrar General/FAA, J&K High Court, stating therein that the PIO vide his letter dated 19-10-2016 has sent him unattested copy of reply from Joint Registrar, High Court, giving confusing reply to points 1-7 of his one

application and that the PIO has failed to provide the information and Joint Registrar has given false, misleading and faulty reply.

As per the records, the FAA passed the order in 1<sup>st</sup> appeal on 17-02-2017 with the directions to the registry to disseminate the requisite information supplied by the Joint Registrar, O/o the Principal Secretary to Hon'ble Chief Justice vide No. 1061/PSY-227 dated 20-01-2017 to the appellant through registered post.

The appellant filed 2<sup>nd</sup> appeal with the State Information Commission (SIC) which was admitted in the Commission on 15-06-2017. In his 2<sup>nd</sup> appeal the appellant alleged that he has not got the requisite information despite the directions of the FAA passed in 1<sup>st</sup> appeal on 17-02-2017.

**Proceedings before the Commission:**

1. The 2<sup>nd</sup> appeal came up for hearing before the Commission on 08-08-2017. The hearing was attended by the counsel Sh. Sofi Manzoor, Advocate on behalf of the respondents. To that extent the SIC interim order dated 08-08-2017 wherein it has been mistakenly stated that Sh. N.A. Beig, Advocate appeared on behalf of the respondents, stands modified. The appellant was also present.

During the hearing the appellant informed that he had not received the information sought by him vide his RTI application dated 24-06-2016. He also stated that the PIOs and FAAs of the Hon'ble J&K High Court do not respond to the RTI application within time.

The counsel for the respondents stated that the respondents be given more time to file counter reply and also to send the reply to the RTI application if the PIO has not sent any reply to the appellant. He also stated that RTI Law lays down that only that information is to be provided which is available on records and PIO/FAA is not expected to create or collate the non-available information.

The plea of the counsel for respondents for providing him more time for filing counter statement was accepted and hearing was adjourned with directions to the PIO to file counter statement in the 2<sup>nd</sup> appeal.

2. The 2<sup>nd</sup> appeal came up for hearing again on 14-09-2017, which was attended by the counsel Sh. Sufi Manzoor (Advocate) on behalf of the respondents. The appellant did not attend. During the hearing the counsel for the respondents again sought more time to file the counter statement to the 2<sup>nd</sup> appeal and to ascertain whether the PIO has furnished any information to the appellant in response to his original RTI application dated 24-06-2016.

In view of the submission of the counsel for the respondents, the hearing was adjourned allowing 07 days more to the respondents for filing counter reply in the 2<sup>nd</sup> appeal from the date of receipt of the order of the Commission.

During the hearing the counsel for the respondents also produced an order of the Hon'ble High Court directing stay of the SIC's order dated 12-09-2017 in which SIC had sought personal attendance of the PIO and the FAA in the hearings before the SIC.

3. The 2<sup>nd</sup> appeal was again listed for hearing on 04-10-2017. The respondents were represented by the counsel Sh. Sufi Manzoor (Advocate). The appellant however did not attend the hearing. The counsel representing PIO/FAA submitted that the information has been despatched to the appellant vide endorsement No. 31023/RTI dated 17-02-2017 from registry of the High Court enclosing the copy of the order of FAA/Registrar General dated 17-02-2017 and copy of the letter from Joint Registrar (Chief Justice Secretariat) addressed to PIO/Joint Registrar (Admn.) J&K High Court vide No. 1061/PSY/227 dated 20-01-2017.

The counsel was reminded that the appellant has alleged in his 2<sup>nd</sup> appeal that he has not received the information despite FAA's order dated 17-02-2017, so

the PIO must confirm from the PIO's office records as to whether the information has actually been delivered to the appellant.

Respondents were asked to file the counter statement to the 2<sup>nd</sup> appeal which they had not filed despite grant of opportunity during previous hearings. The hearing was adjourned.

4. The 2<sup>nd</sup> appeal was listed for its final hearing on 13-10-2017. The hearing was attended by the counsel Sh. Sofi Manzoor (Advocate) on behalf of the respondents. The appellant did not attend.
5. During the hearing, the counsel for the respondents stated that the requisite information has been despatched to the appellant. He filed the counter statement along with enclosures, which inter alia stated that the PIO High Court Main Wing vide letter no. 21172/RTI dated 19-10-2016 forwarded the information received from Joint Registrar, Chief Justice Secretariat to the appellant. That FAA upon receipt of 1<sup>st</sup> appeal, directed the Joint Registrar O/o the Chief Justice vide his letter dated 16-11-2016 to provide information to his office within 5 days. There after Joint Registrar, O/o Chief Justice Secretariat vide his letter dated 20-01-2017 furnished the information to the office of the FAA. That FAA vide order dated 17-02-2017 directed the registry to disseminate the requisite information supplied by Joint registrar O/o the Principal Secretary to Hon'ble Chief Justice vide letter dated 21-01-2017 to the appellant. That the said information was forwarded to the appellant vide No. 31023/RTI dated 17-02-2017 under registered post. That the appellant in his 1<sup>st</sup> appeal has stated that he is aggrieved by the response of the PIO and in 2<sup>nd</sup> appeal he has stated that he has not received any information from the PIO, which is contradictory. That in response to the query No 8, 9, 10, 12, 13 and 15 the information supplied vide No 68892, dated 15-12-2016 along with the reply of Chief Librarian, High Court Wing, Srinagar vide No. Fi/HLS/2016/84-67181 dated 30-11-2016 has already

been supplied by the PIO, High Court Wing, Srinagar to the appellant with response received from Joint Registrar, O/o Chief Justice Secretariat with regard to other points vide No. 1061/PSY/227 dated 20-01-2017.

6. The Commission asked counsel for the respondents to substantiate his contention that the information received from the Joint Registrar O/o Chief Justice, vide letter dated 20-01-2017 was actually despatched to the appellant vide No 31023/RTI dated 17-02-2017 by the registry as prima facie a doubt has cropped up on this because the PIO does not seem to have passed any separate order in this regard after the FAA passed directions on 17-02-2017 while disposing of the 1<sup>st</sup> appeal. In reply the counsel for the respondents stated that they have actually sent the information to the appellant comprising of two leaves along with the order of the FAA vide their communication No 31023/RTI dated 17-02-2017 which according to him can be enquired from the postal authorities. The counsel relied upon the various communications enclosed with the counter statement filed by him.

The Commission perused the record and considered the submission made by the parties.

**Decision:**

***The 'Right to Information' is a facet of 'fundamental right of freedom of speech and expression' as enshrined in Article 19(1)(a) of the Constitution of India. This right has also been recognized by the Apex Court of the Country as early as 1975 in the State of UP Vs Raj Narain followed by S.P Gupta Vs President of India (1982) and the process is on. This right to information is not only a right of an individual, but a vital weapon to protect the public interests. In fact by the provisions of the J&K Right to Information Act, 2009, the people of the State have been emboldened to hold the various instrumentalities of the State accountable for their duties and responsibilities under this sunshine Law. The preamble of the Act***

*longs for a set up in which government is made accountable to the governed. It aims at transparent, accountable and corruption free government.*

*The State Legislature has enacted the RTI Law for the above said purpose in the year 2009 by the name of J&K RTI Act, 2009. The Act gives a right to information to the residents of the State in terms of section 3 r/w section 6 of the Act. The information sought under the Act cannot be denied except under the exemptions falling under sections 8 & 9 of the Act. The J&K RTI Act, 2009 is a self contained code which provides both substance and procedure for provision of information that is held by the Public Authorities and is givable. The Act provides for three tier mechanism for the said purpose. The Public Information Officer (PIO) is the first in line, followed by the First Appellate Authority (FAA) and the State Information Commission (SIC) is the 2<sup>nd</sup> Appellate Authority.*

*The PIO is the main actor in the scheme of things for providing information to the applicants filing applications under the J&K RTI Act. The Act provides for the time limitation for the PIO under section 7(1) of the Act for disposal of the RTI application. The PIO has to dispose of the RTI application as soon as possible but not later than 30 days from the date of receipt of the application. He has to respond to the RTI application even when he has to reject the request for information and give the reasons for such rejection and particulars of the First Appellate Authority (FAA) in terms of section 7(8) of the Act. Under section 5(3) of the Act, it is the duty of every PIO to "deal" with the requests for information and render reasonable assistance to the persons seeking such information.*

*To "deal" with the request for information means that PIO has to apply his mind while disposing of the RTI application. The PIO cannot act merely as a "Post Office" without himself dealing with the application.*

*The contention of the PIO that he as a PIO was merely required to forward the application for information to the officer concerned and upon receipt of such information from the concerned officer 'despatch' the same onwards is not*

***acceptable. The RTI Act expects the PIO to apply his mind to the contents of the RTI application and ensure that the reply is specific and based on held information and available records.***

***The Act having required the PIO, to 'deal' with the request for information and to 'render reasonable assistance' to the information seeker cannot be said to have intended the PIOs to be merely 'post offices'.***

***Under sections 6(1) and 7(1) of the RTI Act, it is the PIO to whom the application is submitted [section 6(1)] and it is he who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act [section 7(1)]. Section 5(4) is incorporated to strengthen the authority of the PIO within the Public Authority to enable him to seek assistance of others in collecting the information.***

***As already stated above, the RTI Act makes the PIO the pivot for enforcing the implementation of Act. The PIO is expected to apply his mind, duly analyze the material before him and then either disclose the information sought or give grounds for non disclosure. At the end of the day it is the PIO who has to ensure that the information is disseminated to the information seeker and cannot shrug off his/her stipulated responsibility.***

***In the instant 2<sup>nd</sup> appeal, the PIO has erred in not formulating a proper reply to the RTI application. As stated and assured by the counsel, information has been sent to the appellant after receipt of orders of the FAA in the first appeal. He has however, failed to despatch the requisite information para-wise under his seal and signature, which resulted in the filing of the 2<sup>nd</sup> appeal by the appellant.***

***The State Information Commission as the second appellate authority under the J&K RTI Act has to be objective in its approach and understanding while dealing with the appeals and has to ensure that the Public Authority is not unjustifiably faulted for blocking information under the RTI Act if the information***

***sought is not available and accessible or is so voluminous that the provision of information will result in diversion of limited human and financial resources of the Public Authority away from the responsibilities and functions assigned to such Public Authority thereby adversely affecting the Public interest.***

***The Hon'ble Supreme Court of India has in number of cases deliberated on this issue. In a celebrated case titled CBSE Vs Aditya Bandopadya (2011), the Hon'ble Supreme Court has held as under:***

*"The Right to Information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. But in regard to other information, (that is information other than those enumerated in section 4(1)(b) and (c) of the Act), equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and fiduciary relationships, efficient operation of government, etc.). indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritizing 'information furnishing' at the cost of their normal and regular duties."*

***In another decision in Bihar Public Service Commission Vs Saiyed Hussian Abbas Rizvi (2012) the Hon'ble Supreme Court has considered the purpose, scheme of the RTI Act and found that the "right to Information" is not uncontrolled***

***right but subject to dual check, mainly inbuilt restrictions within the statute itself and secondly constitutional limitation emerging from Article 21 of the Constitution.***

***The relevant observations are as under:***

- *"12. Right to information is a basic and celebrated fundamental/basic right but is not uncontrolled. It has its limitations. The right is subject to a dual check. Firstly, this right is subject to the restrictions inbuilt within the Act, and secondly, the constitutional limitations emerging from Article 21 of the Constitution. Thus, wherever in response to an application for disclosure of information, the public authority takes shelter under the provisions relating to exemption, non-applicability or infringement of Article 21 of the Constitution, the State Information Commission has to apply its mind and form an opinion objectively if the exemption claimed for was sustainable on facts of the case."*
- *"14. Section 2(f) again is exhaustive in nature. The legislature has given meaning to the expression "information" and has stated that it shall mean any material in any form including papers, samples, data material held in electronic form, etc. Right to Information under section 2(j) means the "right to information" accessible under this Act which is held by or under the control of any public authority and includes the right to inspection of work, documents, records, taking notes, extracts, taking certified sample of materials, obtaining information in the form of diskettes, floppies and video cassettes, etc. The right sought to be exercised and information asked for should fall within the scope of "information" and "right to information" as defined under the Act."*
- *"15. Thus, what has to be seen is whether the information sought for in exercise of the right to information is one that is permissible within the framework of law as prescribed under the Act. If the information called for falls in any of the categories specified under section 8 or relates to the organizations to which the Act itself does not apply in terms of section 24 of the Act, the public authority*

*can take such stand before the Commission and decline to furnish such information. Another aspect of exercise of this right is that where the information asked for relates to third-party information, the Commission is required to follow the procedure prescribed under section 11 of the Act."*

***It is in this back drop, that the RTI application in the instant matter is analyzed. A careful reading of this RTI application leads to an inference that the appellant has sought voluminous information which in respect of certain queries appears unrelated to any larger public interest. It is not clear as to the rational or objective behind seeking information, at S. Nos 2 (asking for rules when rules have already been sought at S. No. 1), 4,5,6,8(part), 9, 11and 14 as these queries do not automatically fall under the definitions of information under section 2(d).***

***Therefore, keeping in view the type and amount of information sought by the appellant and notwithstanding the replies despatched earlier to the appellant, the PIO J&K High Court is directed to provide information under RTI Rules on queries S. Nos 1,3,7,8(part)10, 12 and 13 from available record.***

***Before concluding, the State Information Commission in terms of powers vested in it under section 16(9)(a)(iii) of the J&K RTI Act, 2009 enjoins upon the Public Authority i.e J&K High Court as defined under section 2(b)(ii) of the Act to take requisite steps for implementation of the provisions of section 4 of the J&K RTI Act, 2009 for the J&K High Court as expeditiously as possible. The Public Authority is also enjoined upon, in terms of section 16(1)(iv) to take requisite steps for maintenance and management of records so that these are easily accessible when information, past and current, is sought by the RTI applicants.***

**The 2<sup>nd</sup> appeal is disposed of accordingly, subject to above directions/observations.**

The copy of order be provided free of cost to the parties.

**-sd/-**

(Khurshid A. Ganai) *IAS Retd.*,  
Chief Information Commissioner,  
J&K State Information Commission.  
\*/imi/\*

Copy to the:

1. First Appellate Authority (FAA) J&K High Court for information and compliance.
2. The Registrar General, J&K High Court, Srinagar for information.
3. Public Information Officer (PIO), J&K High Court for information and compliance.
4. PS to CIC for information of HCIC.
5. Prof Abdul Gani Bhat, H.No. 08, Pamposh Lane Natipora, Srinagar-190015.
6. Guard file.

(Dr. Ghulam Mohi-ud-din)  
Joint Registrar,  
J&K State Information Commission.