



Jammu and Kashmir State Information Commission

جموں اینڈ کشمیر اسٹیٹ انفارمیشن کمیشن

(Constituted under the Right to Information Act, 2009)

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Old Assembly Complex, Srinagar, 0194-2506660, 2506661

www.jksic.nic.in

File No. SIC/J/A/152/2017

Decision No. SIC/J/A/152/2017/108-A

- Appellant: Shri Mohan Choudhry, IFS
DCF O/o FCA Cell, Van Bhawan,
Prem Nagar, Jammu
- Respondent: 1. Chief Conservator of Forests, Forest
Department, Jammu.
(First Appellate Authority)
2. Conservator of Forests, Chenab Circle,
Doda.
(Public Information Officer)

Date of Registration : 09-11-2017

Date of Decision : 04-01-2018

FINAL ORDER

The rejection of the RTI application of the appellant by the Public Information Officer of Forest Circle, Doda and non-disposal of his first appeal by the First Appellate Authority has given rise to this second appeal. The applicant Shri Mohan Choudhary, IFS, ACF Chinab Forest Circle, Doda filed an RTI

application on 22-08-2017 with PIO Forest Circle, Doda (Conservator of Forests, Chinab Circle, Doda) seeking information on 25 points mentioned therein. Claiming that the information sought by the applicant concerned his life and liberty and thus the PIO was supposed to provide the same within 48 hours, he filed the first appeal with the Chief Conservator of Forests, Jammu (First Appellate Authority) on 29-08-2017 i.e., within seven days of his filing the RTI application. The PIO vide his communication No. 3850/CFC dated 21-09-2017 rejected the application informing the applicant that the information asked for cannot be supplied to him. The first appeal filed by the appellant was not disposed of by the FAA. Aggrieved, the appellant filed this second appeal before the State Information Commission on 9-11-2017.

Proceedings before the Commission:

The appellant appeared before the Commission in person and pleaded that the information sought by him concerned his life and liberty and therefore, the PIO was under obligation in terms of proviso to sub-section (1) of section 7 of the Right to Information Act, 2009 to provide the same within forty-eight hours from the receipt of the request. The PIO, Conservator of Forests, Chenab Circle, Doda appeared before the Commission on 04-01-2018 and contested his claim. He stated that the information sought by him had nothing to do with his life or liberty and that his life or liberty was in no way threatened or in danger for want of the information. In his RTI application, the appellant had sought copies of his salary slips from December, 2016 to July, 2017, his personal file, leave records, TA bills submitted and sanctioned, reasons for non-payment of TA bills, reasons for deduction of his HRA, reasons for withholding his salary, copies of some enquiry reports relating to Bhalesh forest range, damages in the said forest compartment and constitution of the enquiry teams for the said purpose. The purport of proviso to section 7(1) of the RTI Act is to provide for obtaining an emergency response,

as against the normal time limit of 30 days, where the life and liberty of a person are in imminent danger of being curtailed. The onus rests on the applicant to prove that without the information being made available in 48 hours, there is a serious threat to his life or liberty. The **Central Information Commission** in its Decision No. CIC/SG/A/2012/000814/18825 in Appeal No. CIC/SG/A/2012/000814 titled Mr. Pratap Kumar Jena V/S Dr. D. Ram Public Information Officer & Professor of Psychiatry, Central institute of Psychiatry held as under:-

“Proviso of section 7(1) states that where the information sought concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request. This provision has to be applied only in exceptional cases and the norm is that information should be provided within thirty days from the receiving date. Whether the information sought concerns the life or liberty of a person has to be carefully scrutinized and only in a very limited number of cases this ground can be relied upon. The government machinery is not designed in a way that responses to all RTI Applications can be given within forty-eight hours. A broad interpretation of ‘life or liberty’ would result in a substantial diversion of manpower and resources towards replying to RTI Applications which would be unjustified. Parliament has made a very special exception for cases involving ‘life or liberty’ so that it would be used only when an imminent threat to life or liberty is involved.

The life or liberty provision can be applied only in cases where there is an imminent danger to the life or liberty of a person and the non-supply of the information may either lead to death or grievous injury to the concerned person. Liberty of a person is

threatened if she or he is going to be incarcerated or has already been incarcerated and the disclosure of the information may change that situation. If the disclosure of the information would obviate the danger then it may be considered under the proviso of section 7(1). The imminent danger has to be demonstrably proven. The Commission is well aware of the fact that when a citizen exercises his or her fundamental right to information, the information disclosed may assist him or her to lead a better life. But in all such cases, the proviso of section 7(1) cannot be invoked unless imminent danger to life or liberty can be proven.”

The appellant failed to prove how his life was in danger or how his liberty was likely to be curtailed in case the information sought was not provided to him within forty-eight hours. The information sought by the appellant was of normal character and did not in any way concern his life or liberty. The Commission is, therefore, of the view that this was not an exceptional case warranting invocation of life and liberty clause and hence the PIO was not obligated to provide the information to the appellant within forty-eight hours from the receipt of the request for such information. Consequently, the appellant could not have filed the first appeal before allowing the PIO the statutory period of 30 days to respond to his request for information.

Now reverting to the response of the PIO dated 21-09-2017, the PIO has rejected the request for providing information on four grounds, viz.,

- (i) the complete address of the applicant is not mentioned in the application;
- (ii) the applicant is not resident of Jammu and Kashmir State, so cannot seek information under RTI Act, 2009;

- (iii) the postal order is not drawn in favour of A/O of PIO; and
- (iv) the application is a questioner and therefore, answer to the questions cannot be made.

The applicant is an IFS officer allotted to J&K Cadre. He was posted as ACF in Chenab Forest Circle, Doda under the administrative command and control of the PIO, Conservator of Forests, Doda Circle. In his RTI application dated 22-08-2017, the applicant has mentioned his address as ACF O/o CF Chenab Forest Complex Doda with his e-mail address and telephone number. Therefore, ground number one cited by the PIO in his rejection order is unfounded and unsubstantiated.

As regards the second ground taken by the PIO for rejecting the request for information, section 3 of the J&K Right to Information Act, 2009 requires a person claiming right to information to be residing in the State. The Legislative intent is explicit, unequivocal and unambiguous in the expression 'residing in the State' used in section 3 of the J&K RTI Act, 2009 as against 'permanent resident of the State'. The State Legislature has intentionally and purposefully avoided the use of expression 'permanent resident of the State' so as not to restrict the right to information to only permanent residents of the State and allow this right to all those who are residing in the State. Section 3 of the J&K Right to Information Act, 2009 reads as under:-

“Subject to the provisions of the Act, every person residing in the State shall have the right to information.”

As per the rules of interpretation, the words used in an enactment but not defined shall have to be interpreted according to their ordinary and natural meaning. To do so, first one has to find whether any definition has been assigned to that word in the General Clauses Act in which case, this definition is used to

understand the meaning of that word. If it's not defined in the General Clauses Act, one has to ascertain the ordinary meaning of that word by consulting a standard dictionary.

The expression 'residing in the State' has not been defined in the Act or the rules framed thereunder. The word 'resident' or 'residence' has not been either defined in the General Clauses Act, Svt. 1977. Therefore, this word has to be understood and interpreted according to its ordinary and natural meaning as assigned in a dictionary. As per the dictionary meaning, the word 'residence' means abode, accommodation, address, inhabitancy, habitat, home, housing, place of residence, living place, lodging etc. Although the terms 'residence' and 'domicile' of a person are frequently used as if they have the same meaning, they are not synonymous. A person can have two or more places of residence, such as one in the city and one in the countryside, but only one domicile. Residence means living in a particular locality, but domicile means living in that locality with the intent to make it a fixed and permanent home. Residence merely requires bodily presence as an inhabitant in a given place, whereas domicile requires not only bodily presence in that place but also an intention to make it one's permanent home. This distinction between 'residence' and 'domicile' is more relevant in the context of the State of Jammu and Kashmir, whose citizens enjoy a unique status of being 'permanent residents' of the State. Section 3 of the J&K RTI Act, 2009 has not used the words 'permanent residents of the State' for that would have restricted the right of information in the State to only permanent residents of the State. The intention of the State Legislature is to give the right to information to every person residing in the State of Jammu & Kashmir at the time of seeking this right. One may not be a permanent resident of the State, but he can still be an ordinary resident of the State on account of his employment, trade, profession, business or some other reason. It would be enough for a person to claim residence

in the State and thereby right to seek information if he gives an address in the State to receive that information or some kind of proof of his abode, accommodation, habitat, home, housing, place of residence, living place or lodgment where he could be contacted or found whenever required. The appellant in the present case is an IFS officer allotted to the J&K Cadre and serving in connection with the affairs of the State and thus, residing in the State on account of his employment. He is very much entitled to seek information in the State under the J&K Right to Information Act, 2009. This ground taken by the PIO for rejecting the RTI application also fails.

Rule 4 of the Jammu and Kashmir Right to Information Rules, 2012 provide that the fee for obtaining information shall be paid by the applicant by way of cash against proper receipt or by demand draft or bankers cheque or Indian Postal Order payable to the Accounts Officer of the Public Authority. The applicant in the present case has paid the fee through Indian Postal Order in the name of Accountant, Forest Department. Forest Department is the Public Authority in the present case. It does not make any difference whether the IPO is payable to Accounts Officer or the Accountant so long as the fee has been paid. Some offices have Accounts Officers while some have only Accountants. The fee is credited to the State finances in either way. Even if the PIO felt that there was any discrepancy in the mode of payment of fee by the applicant, he could have asked the applicant to make good the deficiency or discrepancy within a specified period. The PIO can in no case deny information on minor technicalities. Therefore, this ground too is unsustainable and untenable.

Lastly, the PIO has rejected the application on the ground that it is a questionnaire seeking answers rather than an application for seeking information. The perusal of the RTI application filed by the applicant would indicate that through most of the queries, the applicant has sought copies of documents like

salary slips, order withholding his salary, TA bills sanctioned and denied, deduction of HRA, orders initiating enquiry in respect of damage to a forest compartment, enquiry reports submitted etc. However, through certain queries, the applicant has sought reasons and justification for not sanctioning certain allowances or answers to certain hypothetical questions raised in the application. The PIO had the option to sever the part of information, which was givable from the part of information, which the PIO thought to be inquiries or questionnaires and thereafter, provide the givable information to the applicant. All the 25 points raised by the applicant were not enquiries and most of these points pertained to supply of copies of certain documents which by no stretch of imagination can be termed as exempted information. The PIO has erred in denying the entire information on the ground of being questionnaires.

The above discussion would reveal that the PIO has disposed of the RTI application casually and mechanically without applying his mind. The grounds on which the PIO has rejected the RTI application are not only untenable and unsustainable in law but also an exhibition of uncomfotability of the PIO to disclose the information sought for. The PIO has denied the information to the appellatant unjustifiably and has shied away from the responsibilities cast on him under the provisions of the J&K RTI Act, 2009.

During the hearing, the PIO stated that the attitude of the appellatant has been belligerent and confidential all through his posting in Doda Forest range and that he was not taking his job seriously forcing the authorities to stop his salary. He also stated that instead of devoting his attention towards discharging his duties, the appellatant is busy in filing different applications and complaints threatening his superior officers. The appellatant stated that Pr. Chief Conservator of Forests has got an enquiry conducted in to his complaint of harassment against the PIO, the immediate head of the appellatant, and the report in this regard has just been

submitted. Be that as it may, these are discipline and administrative issues and fall within the domain of the administrative head of the department. The State Information Commission cannot take cognizance of, or adjudicate on, such issues.

Accordingly, the communication No. 3850/CFC dated 21-09-2017 of Public Information Officer (Conservator of Forests, Chenab Circle, Doda) rejecting the RTI application of the appellant is set aside for the reasons mentioned hereinabove. The grounds taken by the PIO in his rejection order are held to be untenable, unsustainable and invalid. The PIO is directed to provide the following information to the appellant within fifteen days from the receipt of this order:-

- (i) salary details of the applicant from December, 2016 to July, 2017;
- (ii) leave records from 1st January to 31st July, 2017 with details of leave credited, availed and balance for this period;
- (iii) status of TA bill dated 26-04-2017;
- (iv) details of TA bills sanctioned by CF Chenab office after 26-04-2017;
- (v) deductions made in the HRA of the applicant;
- (vi) copy of the order stopping the salary of the applicant; and
- (vii) details of enquiry into the matter of damages to forest crop in Comptt. 14/Bhalesh with the name of officers enquiring the matter and the status of enquiry report, if any, submitted in this regard and in respect of SFC coupe.

Should the PIO fail to comply with this order and fail to provide the information discussed hereinabove to the appellant within the specified 15 days or should the appellant feel that the information provided to him is incomplete, misleading or false, the appellant shall be at liberty to file a complaint with this

Commission in terms of clause (e) of sub-section (1) of section 15 of the Jammu & Kashmir Right to Information Act, 2009. With these directions, the appeal is disposed of.

Registry shall send a copy of this order also to the Pr. Chief Conservator of Forests, J&K so that he sensitizes the officers working under his command and control about the provisions of the RTI Act and impresses upon them to discharge the statutory duties cast on them under the Act efficiently, professionally and within the timelines specified under the Act.

(Mohammad Ashraf Mir)
State Information Commissioner