



Jammu and Kashmir State information Commission
(Constituted under The Right to Information Act, 2009)
Wazarat Road, Near DC office Jammu, 0191-2520947, 2520937
Old Assembly Complex, Srinagar. 0194-2484269, 2484262
www.jksic.nic.in

File No: SIC/K/SA/50/2012
Decision No: SIC/K/SA/50/2012/37

Title: Dr. Burhan Shaukat, v/s CMO Baramulla,
r/o Kanlibagh Baramulla, (Respondent)
(Complainant)

Present: 1. Sh. Showkat Ahmad Dar (Rep. of complainant) .
2. Shri Parvez Ahmad Lone (Assistant Director)

Srinagar
17.04.2013

The Commission received a complaint from Dr. Burhan Shaukat r/o Kanlibagh, Baramulla on 20.11.2012 against PIO/Chief Medical Officer Baramulla under section 15 of J&K RTI Act, 2009 for alleged incomplete and misleading information. The grounds of complaint are i) that he filed RTI application on 11.10.2012 seeking information regarding Grade-Conversion Formula applied by a Selection Committee of which the CMO was a Member Secretary and Selection Criteria under NRHM, India (Annexure 1), ii) That the RTI application was responded to by the PIO vide letter dated 20.12.2012 (Annexure 2), iii) That upon studying the contents of information, the complainant concluded that he had been furnished incomplete and misleading information.

Therefore using the provisions of the J&K RTI Act, 2009, complainant filed First Appeal with the FAA on 02.11.2012 (Annexure 3) and that a reply from the FAA vide letter dated 09.11.2012 (Annexure 4) was received by the complainant

wherein the PIO was directed to provide information in person, free of cost and within 7 days from issuance of the said order. Thereafter he submitted an application in the office of PIO on 14.11.2012 (annexure -5) regarding furnishing of information after reply of FAA, that he was not provided the information within 07 days nor was given any reason for rejection. It is thus alleged that either PIO is negligent or is denying information for mala-fide intention even after directions of FAA. The complainant has accordingly requested the Commission to initiate penalty and disciplinary action against the PIO for not working to the best of his abilities which is against the spirit of the J&K RTI Act, 2009 and deliberately and intentionally providing incomplete and misleading information.

Documents brought on record reveal that an RTI application was filed by the complainant before PIO/CMO Baramulla on 11.10.012 seeking following information: -

1. "Authenticated copies of procedure followed by the J&K Public Service Commission and applied by you reportedly for determination of grading – Percentage conversion in case of candidates who have passed from Foreign Medical Universities.
2. Selection criteria followed under NRHM India for posts of Assistant Surgeons/Medical Officer on contractual basis".

This RTI application has been responded to by the PIO/CMO Baramulla vide letter dated 30.10.2012 as under: -

1. "The procedure/formula followed by Chairman District Rural Health Society Baramulla for recruiting Assistant Surgeons under NRHM is same as is followed by J&K Public Service Commission, copies of which can be obtained from J&K Public Service Commission".
2. In response to query two, terms and conditions have been given.

It is therefore obvious that RTI application has been disposed of within stipulated period of 30 days which has also been admitted by the complainant in his complaint.

During hearing on 07.01.2013, representative of the complainant submitted that he received information vide communication of FAA dated 06.12.2012. Dr.

Mohd. Younus CMO Baramulla appeared before the Commission on 07.01.2013 and sought two weeks time for filing his reply/counter statement, which was granted. On the next date of hearing i.e., 19.02.2013, Dr. Abdul Rashid i/c CMO Baramulla appeared before the Commission and submitted that he has taken charge of CMO Baramulla on 01.02.2013. As the complainant was not present, 10 days time was granted to CMO Baramulla for filing reply/counter statement to the complaint with copy to the complainant through Registered Post.

Response of the PIO dated 17.01.2013 was received in the Commission on 23.01.2013, however, it was noted that copy of this document was not sent to the complainant by the PIO. Thereafter CMO Baramulla under letter dated 25.02.2013 submitted that requisite documents have been provided to the applicant vide their office No. 606 dated 30.10.2012 i.e., initial disposal of the RTI application and also certified that no misleading information has been provided to the concerned applicant.

During hearing on 10.04.2013 the complainant submitted his response to the counter statement of the PIO, wherein he has reproduced allegations made in his complaint dated 20.11.2012 stating that PIO gave a very vague reply in response to RTI application which was incomplete as well as misleading and that mere response doesn't mean compliance to the provisions of the J&K RTI Act, 2009, unless the information provided is correct, complete and provided within the stipulated time. Further submitting that he filed a complaint with the State Information Commission, and when the Commission intervened he was provided the information but intentionally and deliberately delayed the information because of which he lost crucial time. The complainant has requested the Commission to initiate proceedings against the CMO Baramulla according to the provisions of the J&K RTI Act, 2009. The complainant has given reference to a decision of SIC in case Dr. Burhan Shaukat v/s FAA and PIO, JKPSC wherein SIC has initiated proceedings against PIO for denial to provide information.

Upon perusal of the records submitted by both the parties as brought on record, it is held that RTI application filed by the complainant on 16.10.2012 has been disposed on 30.10.2012 by the CMO Baramulla. This has been admitted by

the complainant. Therefore RTI application has been disposed of within the prescribed period under section 7(i) of the Act.

Aggrieved by the order/decision of the PIO/CMO Baramulla, information seeker filed First Appeal under section 16 of the Act before FAA on 02.11.2012 Directorate of Health Services Kashmir. FAA disposed of the First Appeal on 09.11.2012 with the following directions: -

“First Appeal is disposed of with directions to the PIO, Baramulla to be vigilant and prompt while dealing with RTI matter and also ensure that information to the appellant/information seeker is provided in person free of costs within 7 days from issuance of this order. The PIO is further directed to call the applicant in person during these days and simplify the RTI application/queries to the satisfaction of both the parties to conserve the time, if required”.

In his reply/counter statement dated 19.12.2012, FAA has ordered as under:

“That the First Appeal has been disposed of by this office vide No. DHSK/RTI/99/877-78 dated 09.11.2012 with the directions to the CMO (PIO) Baramulla to provide information to the appellant within a period of seven days free of costs, with further direction to be vigilant and prompt while dealing with RTI matter. Furthermore a letter of oblige and gratitude to the First Appellate Authority i.e., PIO Directorate of Health Services Kashmir and complaint against the CMO (PIO) Baramulla received by this office from the appellant by virtue of ID No. 13201 dated 20.11.2012 (copy enclosed). However, CMO (PIO) Baramulla has sent the reply vide their office letter No. 5347-48 dated 16.11.2012 for favour of information (copy enclosed). The information has been send to the appellant through registered post vide No. DHSK/RTI/99 908 dated 06.12.2012”.

From the reply of FAA quoted above it is clear that orders of the FAA dated 09.11.2012 asking PIO/CMO to provide information within 7 days have been complied with. However, PIO has not marked copy of information dated 16.11.2012 to the information seeker which is why information seeker filed a complaint on 20.11.2012 after expiry of period of 7 days granted by FAA.

Therefore the issue before the Commission is limited to determine whether order passed by FAA under section 16 of the Act in the appeal filed by information seeker have been complied with by the PIO. It is established from records that order passed by FAA on 09.11.2012 for providing information within 7 days from issuance of his order have been complied to by the PIO as is evident from communication of PIO dated 16.11.2012 and facts given in reply of FAA stated above. Further the complainant has admitted to have received the same.

As per Section 16(3) of the J&K RTI Act, 2009, if the FAA at the time of the disposal of the appeal is of the opinion that the PIOhas knowingly given incorrect, incomplete or misleading information which was the subject of the request, he or she shall make a reference to that effect to the State Information Commission. In the order passed by the FAA and also in the counter statement filed by him in the Commission, no such reference has been made which would warrant further action by the Commission.

The Commission therefore holds that order passed by the FAA has been complied with and no further action is warranted in the case.

Since rejoinder was submitted by the complainant in the Commission during hearing on 10.04.2012, decision was reserved and pronounced today on 17.04.2013 after going through material on record.

Sd/-
(Nazir Ahmed)
State Information Commissioner

Copy to the: -

1. Chief Medical Officer Baramulla.
2. PIO Office of Directorate of Health Services Kashmir.
3. Dr. Burhan Shaukat s/o Showkat Ahmad Dar r/o Kanlibagh, Baramulla.

(Mohammad Shafi)
Assistant Registrar,
J&K State Information Commission