



Jammu and Kashmir State information Commission
(Constituted under The Right to Information Act, 2009)
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Old Assembly Complex, Srinagar. 0194-2484269, 2484262
www.jksic.nic.in

File No: SIC-K/SA/14/2013

Decision No: SIC-K/SA/14/2013/**51**

Title: Sh. Abdul Rashid Parray, v/s PIO/BDO Khag
s/o Sonallah Parray, ACD Budgam
r/o Zoogipora Halqa Khanpora Khag **(Respondents)**
(Appellant)

Present: 1. Shri Syed Zahoor, BDO Khag.
2. Shri Mohammad Iqbal, Rep. of FAA/ACD Budgam.
3. Shri Abdul Rashid Parray, Appellant.

Srinagar
04.06.2013

The Commission at its Jammu office received Second Appeal from Shri Abdul Rashid Parray s/o Sonallah Parray r/o Zoogipora Halqa Khanpora Khag on 23.04.2013 against PIO/BDO Khag. As the case pertained to Kashmir wing of the Commission, same was transferred/received at Srinagar on 10.05.2013 and appeal registered on 16.05.2013. The appellant has stated that BDO has not responded to his application and after that he submitted First Appeal in the office of Project Officer Wage & Employment (ACD) Budgam but despite his directions BDO has not responded.

Shri Syed Zahoor Safvi PIO/BDO Khag and Shri Mohammad Iqbal Stenographer (Representative of ACD) appeared before the Commission.

Documents enclosed with the appeal reveal that the appellant filed an RTI application before PIO/BDO Khag seeking written documents of works under MGNREGA, IAY of Halqa Khanpora from the year 2010 to 2012. In foot note the appellant also sought date of inspection. RTI application has been marked by BDO for necessary action and shown to have been received on 05.11.2012.

Subsequently, the appellant filed First Appeal before FAA/ACD Budgam on 07.01.2013 stating that no information has been provided to him by the BDO Khag in response to his RTI application filed on 05.11.2012 and has requested ACD Budgam to take action against the officer for not providing information within stipulated time and date & time for inspection of records but no such date has been fixed as yet.

FAA vide letter dated 07.01.2013 has asked BDO Khag to appear before him with the counter statement on 12/01/2013, followed by another communication dated 24.01.2013 asking BDO to file counter statement/reply and also attend on 31.01.2013 at 11.00 am as BDO failed to attend his office 12.01.2013.

Representative of the FAA/ACD submitted that he has no evidence in possession wherein FAA has adjudicated the appeal First Appeal has been filed on 07.01.2013. As per provisions of the Act, FAA/ACD Budgam had to adjudicate the appeal within 30 days extendable to 45 days i.e., upto 22.02.2013. It is obvious that the FAA/ACD Budgam has not disposed of the appeal filed before him within stipulated period as envisaged under J&K RTI Act, 2009 and therefore he has failed to discharge the duties cast o him under Section 16 of the Act.

In reply to the Second Appeal, PIO/BDO Khag submitted counter statement dated 31.05.2013, relevant portion pertaining to RTI application under reference is reproduced as under: -

2. **“Taking the undue advantage of RTI Act the information seeker submitted the request for information under J and K RTI Act 2009 on 1.1.2013 under proper receipt endorsed properly in the office receipt register. When in his application addressed to Assistant Commissioner Development Budgam he has mentioned that he gave application on 05.11.2013 which is wrong and again he has done a mischievous act by tempering the photostate copy of the application by inserting the date 5.11.2013 and by this way he has misled the FAA (ACD Budgam).**
3. **The applicant when filed appeal before FAA and we were asked to file counter statement/reply within five days and also to attend the office of AA on 31.1.2013 at 11.0 am and accordingly counter statement along with the required information was prepared and submitted vide letter No. KB/RTI/7051-52 dated 30.1.2013 on 31.01.2013. The undersigned personally attended the office of FAA on 31.1.2013 but the applicant failed to attend. Copy of the information was also provided to the information seeker personally in this office as he was off and on visiting this office, but he denied to receive the information as he was insisting for physical verification/inspection of the works which was not possible at that time due to area remaining snow bound and he was accordingly told to take the information and after clearing the weather/snow we will have the spot verification and refused to take the information. He has also mentioned a line in his application that “please give me date of inspection”.**

During hearing PIO/BDO denied to have received the RTI application on 05.11.2012 and stated that it was received on 01.01.2012 and in support of his claim produced Receipt Register as evidence wherein RTI application of the

appellant is entered on 01.01.2013 at S. No. 511-A. However, it was intriguing to note that except for this entry shown to have been entered at –A, all other entries are in serial order. Therefore, prima facie, it appears that this entry is an insertion at a later date unless proved otherwise by the PIO.

In the RTI application, the applicant has essentially sought date of inspection of the records given in the RTI application of Halqa Khanpora for the year 2010-2012.

BDO produced copy of letter dated 30.1.2013 addressed to the Project Officer wherein it has been stated that he was asked to attend office of ACD on 12.01.2013 which has not been received by him. It is further stated that information has been prepared and stands enclosed herewith. Copy of this communication has been marked to the RTI applicant who denied to have received this document. On being asked, PIO could not produce evidence of mode of service. Accordingly Information enclosed with this letter comprising of 3 pages is given to the information during hearing.

With regard to date of inspection, BDO submitted that the appellant was insisting on physical inspection of works which could not happen due to the area remaining snow bound. This argument is acceptable if the inspection of works were specially asked for. However as per RTI application, the appellant has sought certain information and in the foot note of his application, he has sought date of inspection, which clearly implies date of inspection of records. The appellant also clarified that he sought inspection of records.

As per section 2(i) of the J&K RTI Act, 2009 “**right to information**” means the right to – inspection of work, documents, records etc. Therefore PIO is duty

bound to provide access to the records for the period mentioned under RTI application. BDO submitted that he shall keep records ready for inspection on 08.06.2013 during working hours which is also acceptable to the appellant.

Appeal is disposed of with the following directions: -

- 1) PIO shall explain as to why penalty shall not be imposed against him for apparent delay in disposing of the RTI application. His explanation should reach the Commission within 3 weeks from issue of this judgment along with compliance report of having provided opportunity of inspection to the information seeker.
 - 2) FAA has failed to dispose of the appeal filed before him and the appeal has not been adjudicated by him within prescribed period as per RTI Act. ACD will therefore explain the reasons for his failure to adjudicate the appeal as mandated under rules.
 - 3) During hearing PIO/BDO Khag denied to have received the letter dated 07.01.2013 from ACD Budgam. ACD Budgam shall at his level inquire and take necessary action in the matter.
- The appeal is disposed of with above directions.

sd/-
(Nazir Ahmed)
State Information Commissioner

Copy to the: -

1. Commissioner/Secretary to Govt. Rural Development Department, Civil Secretariat, Srinagar.
2. Director Rural Development Department Kashmir.
3. Assistant Commissioner Development Budgam.
4. Block Development Officer Khag.
5. Shri Abdul Rashid Parray s/o Sonallah Parray r/o Zoogipora Halqa Khanpora Khag.

(Mohammad Sayed Shah)
Registrar,
J&K State Information Commission