



**Jammu and Kashmir State Information Commission**

جموں اینڈ کشمیر سٹیٹ انفارمیشن کمیشن

(Constituted under The Right to Information Act, 2009)

**Wazarat Road Near D.C. Office, Jammu, Fax No. 0191-2520947, 2520927**

**Old Assembly Complex, Srinagar. Fax No. 0194-2484268, 2484269**

**www.jksic.nic.in**

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**File No. SIC/K/SA/26/2012**

**Decision No. SIC/K/SA/26/2012/235**

Appellant	Shri Qaiser Jamsheed Lone	
Respondent	1. Superintending Engineer, PHE, Kupwara.	FAA
	2. Executive Engineer, PHE Kupwara.	PIO

**Srinagar**

**20.12.2012**

**Order in Proceedings under Section 17 of J&K RTI Act, 2009**

- 1) The brief facts of the case are that the information seeker Shri Qaiser Jamsheed Lone, Ex. MLA Lolab filed an RTI application before Executive Engineer, PHE Division Kupwara, Kashmir under receipt No. 1007 dated 04.11.2011. Thereafter, he filed a First Appeal with Superintending Engineer, PHE Circle, Kupwara/ Handwara on 10.05.2012 on the grounds that information has not been provided by concerned PIO. This appeal has been acknowledged to have been received on 16.05.2012. Thereafter, he filed a 2<sup>nd</sup> Appeal before this Commission on 18.07.2012 alleging therein that both Executive Engineer, PHE Division Kupwara and Superintending Engineer, PHE Circle, Kupwara/ Handwara have failed to provide him information sought by him.

- 2) The Commission issued a notice No.SIC-K/SA/26/2012-8050-52 dated 24.07.2012 to the Executive Engineer, PHE Division Kupwara and Superintending Engineer, PHE Circle, Kupwara/ Handwara asking them to file a reply/ counter statement to the Commission and appear before the Commission on 13.08.2012 at 11.00 AM.
- 3) PIO Xen PHE Division Kupwara did not file any reply/ counter statement to the notice of Commission. First Appellate Authority, Er. Gh. Mohi-U-Din Rather, Distt. Superintending Engineer, Hydraulic Circle Kupwara HQ. Handwara submitted in his reply/ counter statement No. DSC/HH/Plg/2004 dated 11.08.2012 that he joined on 30.07.2012. He has admitted that the First Appeal dated 10.05.2012 was received in his office on 16.05.2012. He has further stated that his predecessor Mr. Mohammad Hanief Lone as District Superintending Engineer, Hydraulic Circle Kupwara HQ. Handwara, although had sought the information from the Executive Engineer, PHE Division Kupwara, by making necessary correspondence, but has not been able to collect the said information and provide it to the applicant. Concluding, the S.E. has stated that he ensured delivery of information on 06.08.2012. Necessary correspondence made by the office of Superintending Engineer in this regard was enclosed with the reply of SE (First Appellate Authority).
- 4) The case was heard by the Commission on 13.08.2012 and the appeal was disposed of vide order No. SIC/K/SA/26/2012-**184** dated 13.08.2012 with the following directions:-
- 1. FAA/SE Hydraulic Circle Kupwara will calculate the amount of copying charges for the information provided and seek explanation of Xen PHE Division Kupwara as to why that amount should not be deducted from him which has happened solely because of his negligence and not adhering to the provisions of the RTI Act.*

2. *In view of orders passed by the FAA, delay on part of Xen PHE Division Kupwara is obvious. Registry to issue show cause notice Xen PHE Division as to why penalty under Section 17 of J&K RTI Act, 2009, should not be imposed on him for delay.*
- 5) The Registry of the Commission issued a notice vide No. SIC/K/SA/26/2012/13036 dated 23.08.2012 calling upon the Executive Engineer, PHE Division, Kupwara to explain / show cause as to why penalty under Section 17 of J&K RTI Act, 2009 may not be imposed upon him for the delay.
- 6) The Executive Engineer, PHE Division, Kupwara Mr. Riyaz Ahmad Wani filed his reply/explanation vide No. 2943-47 dated 10.09.2012 stating therein as under:-
- I. *“That the information sought by the applicant from this division has already been conveyed to him by the PIO Hydraulic Circle Kupwara vide his letter No. DSE/HH/Plg/1876-78 dated 06.08.2012 when the undersigned was out of the state in connection with “UMRAH” intimating therein that any deficiency if noticed in the information supplied be communicated to this office.*
  - II. *That the APIO of this Division who was directed by the undersigned to provide the requisite information to the information seeker had reported to have delivered the information to the applicant vide No. TR-38 dated 03.05.2012.*
  - III. *That there has been no lapse on part of this office in providing requisite information which was sifted from bulky records of projects under implementation/ implemented and the applicant has therefore no sustainable ground for filing an appeal when he has already received the said information under his signatures on 08.07.2012 from the APIO PHE Division, Kupwara”.*

7) Thereafter, an opportunity of being heard in person was given to the PIO as provided under Section 17 (1) of J&K RTI Act, 2009 vide Commission notice No. SIC/K/SA/26/2012/25007 dated 05.11.2012. The PIO/ Executive Engineer PHE Division, Kupwara, Mr. Riyaz Ahmad Wani appeared in person and submitted as under:-

- i. That information sought was voluminous/bulky and had to sift through records, with was not possible within the prescribed period.*
- ii. That RTI was marked to APIO who is his Technical Officer to Xen, for compilation / providing information to RTI applicant.*
- iii. That RTI application has been disposed of on 03.05.2012 by asking RTI applicant to deposit Rs. 1000/- and that information was provided to the RTI applicant.*

8) The grounds for delay stated/submitted by the PIO are considered and Commission observes as under:-

- i. The explanation furnished vide para 6(i) reiterates facts and does not state any reasons for the delay in the disposal of the RTI application beyond the stipulated statutory period of 30 days.*
- ii. As per Section 5 (2) the J&K Right to Information Act, 2009, an APIO is designated to receive application for information or appeal under the Act for forwarding the same forth with to the PIO or to the FAA. Under Section 7 (1) of J&K RTI Act 2009, it is the duty of the PIO to pass an order within the period of 30 days from the date of receipt of request. The plea that he marked the RTI application to APIO, who is his Technical Officer cannot absolve him of his responsibility as PIO in view of the fact that Technical Officer is his staff officer and not a*

separate public authority.

- iii. The explanation that information asked for is voluminous and bulky carries some merit as information seeker has sought the information about execution of works for the year 2008-09, 2009-10, 2010-11 and 2011-12 with mode of allotment, name of allottees, Tanker supply, cost involved on each work under all schemes, besides engagement of daily rated workers under different heads during the said period undertaken by PHE Division Kupwara. Yet no evidence was produced to show that he passed such an order as is required under Section 7 (1) of J&K RTI Act, 2009.

- 9) The Commission has received an application on 29.11.2012 from the Appellant stating therein as under:-

*“The information sought by the undersigned from the Public Information Officer PHE Division Kupwara was received by me after expiry of the stipulated time which after going through is believed to have taken much time in sifting and copying of voluminous information from the bulky records of the division. As such, I withdraw the appeal filed before the Hon’ble State Information Commissioner J&K for not providing of information by the Public Information Officer.”*

However, the withdrawal application has been filed after the Commission passed an order on 13.08.2012 initiating penalty proceedings against the defaulting PIO/ Executive Engineer PHE Division, Kupwara and copy of which was marked to appellant as well. As such withdrawal application at this stage cannot be considered.

- 10) It has been established that the application under RTI Act, filed on 04.11.2011 has been disposed on 03.05.2012 by informing the applicant

that he can collect information on payment of Rs. 1000/- as cost of information. Finally information has been delivered on 06.08.2012. Under the facts and circumstances, as stated above, the Commission holds it a fit case to invoke Section 17 of the Act and impose penalty on PIO/ Executive Engineer PHE Division, Kupwara, Mr. Riyaz Ahmad Wani

11) As per Section 16 (1) of the Act the Appellant was required to file a 1<sup>st</sup> Appeal before FAA within 30 days from the expiry of such period by which the PIO was required to pass an order under Section 7 of J&K RTI Act, 2009 i.e. 30 days. Accordingly, he was required to file an Appeal latest by 02.01.2012. Instead, the 1<sup>st</sup> Appeal has been filed in 10.05.2012 after a delay of 129 days. This 1<sup>st</sup> Appeal has been admitted by the FAA despite delay and has ensured that information has been provided. Therefore the Commission feels it prudent to exclude the period of delay in filing 1st Appeal for the purpose of calculating the period of default. The default period is as such restricted to 30 days (i.e. from 03.12.2011 upto 02.01.2012).

12) Accordingly, penalty of **Rs. 7500/- (Rupees Seven Thousand Five Hundred)** only is imposed against the defaulting PIO/ Executive Engineer PHE Division, Kupwara, Mr. Riyaz Ahmad Wani which is calculated as under:-

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|--|---|------------|
| a. No. of days of default  | : | 30 days.   |
| b. Penalty to be imposed for each day                              | : | Rs. 250/-  |
| c. Total amount of penalty imposed for 30 days @ Rs. 250/- per day | : | Rs. 7500/- |

**(Seven thousand and five hundred only)**

13) The Drawing and Disbursing Officer of Executive Engineer PHE Division, Kupwara will ensure deduction of penalty amount of Rs. 7500/- (Rupees Seven Thousand Five Hundred only) from the salary of Mr. Riyaz Ahmad Wani, PIO/ Executive Engineer PHE Division, Kupwara in two equal installments from the Month of December, 2012 and January, 2013 and remit it to Government Account head "0070-Other administrative Services" with an intimation to this Commission. The DDO is further directed to submit a compliance report alongwith a copy of deduction certificate/ Challan with T.V. No. and date to this Commission.

14) With these observations the Appeal is accordingly disposed of.

-Sd/-  
(Nazir Ahmad)  
State Information Commissioner, J&K.

Copy to the:-

1. Chief Engineer, PHE Department Engineering Complex, Rajbagh, Srinagar for necessary action.
2. Er. Gh. Mohi-U-Din Rather, Distt. Superintending Engineer, Hydraulic Circle Kupwara HQ. Handwara (1<sup>st</sup> Appellate Authority).
3. Mr. Riyaz Ahmad Wani, Executive Engineer PHE Division, Kupwara (Public Information Officer).
4. Drawing & Disbursing Officer office of Executive Engineer PHE Division, Kupwara.
5. Sh. Qaiser Jamsheed Lone Ex. MLA, Lolab, Kupwara (Appellant).
6. Guard File.

(Waseem Ahmad Lone)  
Assistant Registrar,  
J&K State Information Commission  
Srinagar.