



Jammu and Kashmir State information Commission
(Constituted under the Right to Information Act, 2009)
Old Assembly Complex, Srinagar. Tel/Fax No. 0194-2484269
Wazarat Road, Jammu. Tel/Fax No. 0191-2520947

File No. SIC-J/Comp-13 Nov/2011

Decision No. 65- SIC-J/Comp-13 Nov/2011-J
Dated:- 11.04.2012

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Title: Dineshwar Singh Jamwal v/s Deputy Commissioner, Jammu.

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Penalty proceedings under Section 17 of the State RTI Act 2009 were initiated vide this Commission's Decision No. SIC/J/C/13 Nov 2011/57 dated 26.03.2012. The PIO was required to reply the show cause notice issued by this Commission on 26.03.2012. In response to this opportunity notice the PIO Shri Subash Singh Chib, the then Tehsildar/PIO, Tehsil Jammu has furnished his reply dated 04. 04.2012 received by this Commission on 09.04.2012, which will be considered later on. The brief facts which led to the initiation of penalty under Section 17 are as under:

That the appellant Shri Dineshwar Singh Jamwal, President, Universal Foundation, Jammu had filed an RTI application under Section 6 of the Act before the PIO of Deputy Commissioner, Jammu's office on 19.01.2011 seeking the following information:-

- 1. Kindly provide information and the action taken report by your department against the order issued by your office No. DCJ/SQ/07-03/01-03 dated 28.12.2007 against the encroachment/sale of public land of Shishu Samadian situated at Rehari (Pacca Talab), Jammu.**

2. In case the report has not been finalized, the reason thereof may be detailed and the time required for its submission be also indicated in response to this RTI.

As per the mandate of the Act the order on the application of the information seeker was to be passed within a maximum period of 30 days by the PIO. This was not done. The information seeker filed complaint before the Commission on 11.11.2011 against the PIO for not providing the information as per his RTI application filed on 19.09.2011. The Registry of the Commission issued 7 days notice to the PIO vide No. SIC/J/Comp/13 Nov 2011/1305 dated 19.12.2011. Despite lapse of 7 days there was no response from the PIO of Deputy Commissioner, Jammu's office. The case was then listed for hearing on 1st February, 2012 and hearing notice was issued vide No. SIC/J/Comp/13 Nov 2011/354-55 dated 24.01.2012 and served upon the PIO with a copy to the complainant. In response to the hearing notice the PIO/Asstt. Commissioner (Rev), Jammu submitted in writing vide his office No. DCJ/SQ/2011-12/8249 dated 31.01.2012 that the application was transferred to the concerned quarters (Tehsildar, Jammu) for providing the information as it pertained to his jurisdiction. As per the scheme of the Act Tehsildar Jammu is deemed to be the PIO under Section 5 (5) of the State RTI Act 2009.

The complaint was heard on 01.02.2012. Both the parties were present. The PIO/Asstt. Commissioner (R), Jammu submitted that he will provide the information relating to the eviction proceedings within 10 days from the date of hearing. However, he was not sure of the information of the eviction proceedings but still he was hopeful that it will be done expeditiously and the concerned officials will be directed to complete the process at the earliest. The PIO was directed to provide the tentative time period for the completion of eviction proceedings within 10 days. The case was adjourned for further listing.

Accordingly the Registry issued hearing notice vide No. SIC/J/Comp/13 Nov 2011/2068-69 dated 12.03.2012 and listed the case on 26.03.2012. Both the parties were present and were heard. During the hearing the PIO/Asstt.

Commissioner (Rev), Jammu informed the Commission that Shri Subash Singh Chib, the then Tehsildar Jammu (presently posed as Tehsildar Udhampur) was responsible for causing delay in providing information to the complaint/information seeker. Accordingly the Shri Subash Singh Chib, Tehsildar was directed to show cause as to why penalty under section 17 of the RTI Act 2009 may not be imposed for causing delay in providing the information.

In response to this Commission Order No. SIC/J/Comp/13 Nov 2011/57 dated 26.03.2012 Shri Subash Singh Chib has submitted his reply dated 04.04.2012 received in the commission on 09.04.2012 as under:

"There has been an inordinate delay in providing the information to the complainant as the concerned field staff i.e. Naib Tehsildar, Girdawar and Patwari Halqa being busy in other works did not provide the requisite information within stipulated time. The complaint was forwarded to the concerned Naib Tehsildar after receipt of the same from the PIO without any delay. It is pertinent to mention here that the field staff often remains busy in various works viz-a-viz issuance of revenue extracts, demarcation of land, framing of revenue papers for acquisition purposes and many misc. works like law and order problem, updating of electoral rolls etc. The information to the complainant got delayed because of the above cited reasons despite every endeavour was made to provide the information to the complainant within the stipulated period. I assure your goodself that in future every effort shall be made to provide the information within the stipulated period of RTI Act not merely to satisfy the complainant but to honour the provisions and spirit of the RTI Act. It is submitted that I was transferred from the post of Tehsildar Jammu to the post of Tehsildar Udhampur on 15.12. 2011."

The Commission has considered this explanation. It is an admitted fact that the order was not passed within the statutory time of 30 days from the receipt of RTI application from Asstt. Commissioner (Rev) Jammu. The contention of the PIO Shri Subash Singh Chib, Tehsildar that the field staff is busy in many important works is not the reasonable cause in delaying the information. The PIO's contention that he was transferred from the post of Tehsildar Jammu on 15.12.2011 is also not convincing because it is found that even to this date the information was not provided to the information seeker. There is a delay of 51 days on the part of

PIO/the then Tehsildar Jammu Shri Subash Singh Chib for passing an order on the RTI application transferred by the PIO o/o Deputy Commissioner, Jammu.

It is found that the functionaries of the public authorities are still reluctant to honour the provisions of this Act and are showing disregard to the State Information Commission orders. The Commission is still in receipt of large number of applications from various information seekers who have been refused access to information. Therefore, it becomes the responsibility and duty of the Commission to ensure that J&K State RTI Act 2009 is implemented if not possible by persuasion then by coercive means. To ensure strict compliance of the Act, the Commission is constrained to resort to Section 17 of the State RTI Act, 2009. After considering inordinate delay and all the reasons advanced by PIO, it would be reasonable to treat a period of 51 days as an unexplainable default and impose penalty on the defaulting PIO.

Thus, the total period of default is calculated as under:-

1. Date of application u/s 6 of J&K RTI Act, 2009 for seeking information is **19.09.2011 plus 5 days of transferring the same to the Tehsildar Jammu.**
2. Due date of passing order under Section 7 is **23.10.2011**
3. Actual date of passing order is **Nil**
4. Penalty to be imposed for each day is Rs. **250/-.**
5. Unreasonable period of default is **51 days.**

Therefore an amount of Rs. **12,750/-** is worked out as penalty which is calculated as under:

51 days X Rs. 250 (per day) = Rs. 12, 750/- .

The Drawing and Disbursing Officer (DDO) of the office of Tehsildar, Udhampur will ensure deduction of Rs. 12,500/- from the salary of Shri Subash Singh Chib, Tehsildar, Udhampur in 3 equal instalments as provided in Rule 36 (3) of J&K State RTI Rules, 2010 and remit it to the Government Account with an intimation to this Commission. In case of any default committed by the DDO in this regard, he (DDO) will be personally liable for making the payment towards the Government account. This order has to be complied within fifteen days from the date of receipt of the order.

Shri Subash Singh Chib, Tehsildar Udhampur (the then Tehsildar Jammu) is at liberty to file a Review Petition before this Commission for review of this order as provided under Rule 36 Clause (4) of J&K RTI Rules, 2010.

Sd/-
(Dr. S. K. Sharma)
State Information Commissioner

Copy to :-

- 1- Deputy Commissioner, Jammu.
- 2- Public Information Officer/Assistant Commissioner (Revenue) Jammu.
- 3- Shri Subash Singh Chib, Teshildar Udhampur (the then Tehsildar Jammu).
- 4- Drawing and Disbursing Officer, Office of Tehsildar, Udhampur.
- 5- Guard file.

(Khalib Abdulah Shah)
Assistant Registrar
State Information Commission