



Jammu and Kashmir State Information Commission
(Constituted under Right to Information Act 2009)
Old Assembly Complex, Srinagar, Fax No. 0194-2484269 , 2484262
Wazarat Road Near DC Office, Jammu, Fax No. 0191-2520947, 2520937
www.jksic.nic.in

File No. SIC/J/A/07/2014
Decision No. SIC/J/A/07/2014/58

Title

Shri B.R.Manhas,
C/o Shri Kuldeep Kumar (Appellant)

V/S

1. PIO/XEN, Hydraulic Division, Kishtwar.
2. First Appellate Authority / SE, Hydraulic Division, Doda.

(Respondents)

**20th February, 2014
Jammu.**

The Commission received a 2nd Appeal under J&K RTI Act, 2009 on 16-01-2014 from Shri Kuldeep Kumar C/o Shri Ranjit Singh R/o 227, Extensions, Housing Colony, Jammu. Brief background of the case are that an RTI application has been filed before PIO, PHE Division, Kishtwar by Shri Kuldeep Kumar C/o Shri Ranjit Singh R/o 227, Extensions, Housing Colony, Jammu on 05-08-2013 seeking following information;

- 1. The year, in which, the land as mentioned against each donar, who was engaged was donated by the owner.**
- 2. How many of these 181 persons engaged on HR basis and consolidate basis have been regularized in the PHE Department. Kindly provide to the applicant, copies of the regularization orders issued in favour of these persons.**
- 3. Kindly inform the applicant, how many persons have been engaged / appointed in PHE Division, Kishtwar in (a) Class IV post and (b) in other**

than Class IV posts during the last 05 years, i.e., from January 2008 to December, 2012.

The RTI application has been sent through registered post on 05-08-2013 along with postal order of Rs. 10/- as fee. Thereafter, First Appeal has been filed before Chief Engineer, PHE Department, Jammu (FAA) on 30-09-2013. This appeal has been forwarded to Superintending Engineer, Hydraulic Circle, Doda (FAA) by Technical Officer to Chief Engineer, PHE, Jammu on 04-10-2013, requesting the First Appellate Authority (SE, Hydraulic Circle, Doda) to supply requisite information to the appellant under intimation to O/o Chief Engineer, PHE, Jammu as well as State Information Commission. Copy of the same was sent to the information seeker. The Superintending Engineer, Hydraulic Circle, Doda (FAA) vide his letter No. SED/H/3110-12 dated: 15-10-2013 has disposed of the first appeal received from the office of Chief Engineer, PHE, Jammu by asking the Executive Engineer, Hydraulic Division, Kishtwar to provide information on its merits to the appellant at the earliest under intimation to his office as well as J&K State Information Commission.

The 2nd appeal filed before the Commission has been filed by the appellant, justifying its maintainability on following grounds;

1. The respondent No. 1 has delierately, intentionally, willfully and with malafied intention withheld the information sought by the Appellant.
2. The respondent No. 1 has not complied with the order dated: 15-10-2013 passed by respondent No. 2 in first appeal.
3. The respondet No. 1 has without any reasonable cause, not furnshied the information within the time specified under section 7(1) of the RTI Act and has not even obeyed the order passed in first appeal.
4. The appellant has not filed any other application of similar nature before any court or tribunal or authority and that no case on the same subject matter is pending in any court, authority or Tribunal.

The appellant has therefore prayed as follows;

1. The respondent No. 1, PIO be kindly directed to provide the requisite information forthwith without any further delay.
2. That disciplinary action be kindly directed to initiated against the respondent / PIO for deemed refusal to provide the requisite information as non supply of information within the period specified u/s 7(1) of the Act is treated under section 7(2) of the Act, as deemed refusal for which there is provision under section 17 of penalty and disciplinary action against the PIO.

3. That penalty @ Rs. 250/- per day for every day of delay beyond the period of 30 days be imposed on the respondents under section 17.

The case initially heard in the Commission on 12-02-2014, however, the PIO, Executive Engineer, Hydraulic Division, Kishtwar requested exemption from appearance, in view of the bad weather conditions in Kishtwar and was represented by Shri Tariq Zargar, Technical Officer to Executive Engineer, who was already at Jammu. As the Technical Officer did not have any document with regard to disposal of RTI application, the case was adjourned and fixed for hearing on 20-02-2014.

During the proceedings in the Commission today, Shri Nisar Ahmad, Store Officer to Executive Engineer, Hydraulic Division, Kishtwar (PIO) appeared before the Commission along with information signed by Executive Engineer, Hydraulic Division, Kishtwar (PIO) on 18-02-2014. A set of said information is given to the Learned Council, Shri B.R.Manhas, appearing on behalf of the appellant.

After going through information, the Learned Council for the appellant submitted that in point No. 02 of RTI application, number of persons regularized and their regularization order has not been provided.

After going through response of the PIO with regard to point No. 2 of RTI application, it was found that while the list of land donars engaged on HR basis / consolidated basis have been given, the number of persons regularized and copies of regularization orders have not been given.

In view of the above, the plea of the appellant is upheld and respondent Executive Engineer, Hydraulic Division, Kishtwar (PIO) is directed to provide copies of regularization orders issued in favour of person / persons, who were earlier engaged on HR / consolidated basis, as per records. This information should be provided within 10 days from the receipt of this order. This disposes of para (1) of prayer of the appellant.

With regard to para 2 & 3 of the prayer of the appeal, prima facie, it is observed that RTI application has been sent through registered post on 05-08-2013 to the

address of PIO, PHE Division, Kishtwar. Thereafter, first appeal has been filed before Chief Engineer, PHE Department, Jammu on 30-09-2013, which has been forwarded to Superintending Engineer, Hydraulic Circle, Doda (Deemed FAA) vide his letter No. PHE/J/PS/9215-16 dated: 04-10-2013. This appeal has subsequently been forwarded by First Appellate Authority, SE, Hydraulic Circle, Doda to Executive Engineer, Hydraulic Division, Kishtwar vide letter No. SED/H/3110-12 dated: 15-10-2013. However, the Executive Engineer has not filed his reply / counter statement to the appeal, which has been sent to him by the Commission on 23-01-2014. The information has been signed by Executive Engineer, Hydraulic Division, Kistwar (PIO) on 18-02-2014. Therefore, prima facie, the RTI application has not been disposed of within period prescribed under section 07 of the Act, and thus attracts provision of section 17 (Penalty). Section 17 of the Act also provides that PIO shall be given a reasonable opportunity of being heard before any penalty is imposed on him and the burden of proving he acted reasonable and diligently shall be on PIO.

In view of the above, Executive Engineer, Hydraulic Division, Kishtwar is directed to explain as to why provisions of section 17-penalties shall not be invoked against him for delay in disposing of the RTI application within period stipulated under section 7 of the Act. His explanation should reach the Commission within 03 weeks.

Registry to issue notices accordingly.

The appeal filed before the Commission is disposed of with above directions.

Sd/-

(Er. Nazir Ahmad)

State Information Commissioner

Dated: -02-2014

No. SIC/J/A/07/2014

Copy to the:

1. First Appellate Authority O/o Sem Hydraulic Division, Doda.
2. Public Information Officer / Executive Engineer, Hydraulic Division, Kistwar.
3. Shri B.R.Manhas, Learned Council to Shri Kuldeep Kumar C/o Ranjt Singh, 227 Extensions, Housing Colony, Jammu (Appellant).

(Khalid Abdullah)

Deputy Registrar

J&K State Information Commission