



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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File No: SIC/CO/SA/82/2013

Decision No: SIC/CO/SA/82/2013-577

Title:- Abdul Manan Bukhari

V/s

PIO Home Department

Jammu

03.02.2014

This is a second appeal filed by Shri Abdul Manan Bukhari, a resident of the State in this Commission on 11.11.2013. S/Shri Ashok Sharma, Deputy Secretary appeared on behalf of the First Appellate Authority and Mohit Sharma, Under Secretary Home Department appeared on behalf of the PIO who could not attend the Commission as they were away being occupied in some other engagements. The appellant was heard through video conferencing.

2. The brief facts and grounds of the appeal are that the appellant filed an RTI application before PIO, Home Department on 4.7.2013 seeking the following information:

- i) How many PSA's have been slapped so far since 1988
- ii) How many times a person/s has/have been bracketed under PSA at the same time since 1988
- iii) How many FIR's have been so far filed/registered against the Juveniles since 1988

iv) How many complaints/FIR's have been so far lodged against Army, CRPF,BSF, STF/Police and other paramilitary troops for the civilian killings, rapes etc since 1988

v) What has been done regarding the enquiries conducted against the Army, CISF, CRPF and other paramilitary forces etc. Whether any enquiry has been conducted, if yes, whether any forces personnel/s has/have been found involved, if yes what strict measures have been taken against him/them so far e.g cases like Tahir Sofi killing Case at Baramulla by Army, Altaf Ahmad Sood killing case at Boniyar, Uri Baramulla by CISF, Ashiq Hussain Rather killing case at Refiabad Baramulla by 32 RR. Hilal Ahmad killing case at Bandipora by Army,Irfan Ahmad and Tahir Ahmad killing cases at Markundal Hajin Baramulla by Army.

Deputy Secretary (P&S)-cum-PIO Home Department passed an order on 30.7.2013. The order is passed within time which is appreciated. PIO rejected the application of the appellant simply by stating that the information sought is in the form of questionnaire which does not come under the definition of information in the RTI Act. Aggrieved by this decision, the appellant filed first appeal before Special Secretary-FAA Home Department on 29.8.2013. The FAA disposed of this first appeal vide her order No: Home/RTI/PBV/2013 dated: 16.09.2013. The FAA simply concurred with the view of PIO and rejected the appeal. FAA has not acted strictly in accordance with law. Before dismissing the appeal, she should have provided an opportunity of being heard to the appellant in order to fulfill the principles of natural justice. The term adjudication itself means that there is a dispute between two parties and disputes cannot be unilaterally settled without hearing both the parties. Being aggrieved with the order of the FAA, appellant filed second appeal before this Commission on 11.11.2013 contending therein that the FAA has passed order in haste. In the appeal the appellant has further contended that the information sought by him does strictly fall under the definition of information as given in section 2 of the State RTI Act. It is further stated that the appellant nowhere did use words or phrases like "why". He has

also not asked any reasons or justification for a particular thing or as to why a certain thing was done or not done in the sense of justification. His right to file application for seeking information and first appeal are maintainable under law. As the information is within the domain of the PIO and FAA, it should have been disclosed. The PIO Shri Ashok Sharma during the hearing did not seriously object the validity of the information so sought. However, he maintained that certain points of information as contained in RTI application may be hit by section 8 of the State RTI Act and, therefore, prayed the Commission for not directing the disclosure of information without examining whether any limb of information in the RTI application was hit under any provision of section 8 of the Act.

3. The Commission has heard both the parties, given due thought to the submissions made before the Commission and perused the record. Commission is of the considered opinion that all the points of information do fall under the definition of information as provided under section 2(d) of State RTI Act which has even brought under its ambit the term "opinions". However, the term "opinion" is such opinion which is based on the official record i.e is somehow recorded somewhere in the government records. If the opinion is not recorded at all then seeking information with regard to that opinion will definitely be not maintainable under the Act. The information sought by the appellant is as recordable information in the government records because it concerns the information with regard to the subjects of the State. This is the prime and sovereign duty of the State to protect and safeguard its subjects. Again it is the power and function of the State to put its subjects under detention if legally and lawfully done and the State is required to maintain the entire information and record with regard to any kind of detention, arrest and confinement. It is again

the duty of the State to maintain the full record with regard to killing of any civilians and the injuries caused to their body. The Commission is accordingly directing the PIO to pass a speaking order on the basis of record available. The Commission upholds the view of the PIO that certain aspects of the information sought may be hit by section 8 of the State RTI Act. The appellant during the hearing also agreed and rightly contended that if any part of information is hit under section 8 there has to be a speaking order i.e detailed reasons and justification for denying any information under section 8 have to be done. The appellant has, therefore, agreed to let the PIO be allowed to pass a fresh order providing information which are not hit under section 8 giving his own findings with regard to application of section 8, if any, on any limb of information. The PIO insists that as the nature of information is such which is spread all over the Districts of the State and it would take considerable time to collect and collate the information and provide the same to the appellant has, therefore, requested for a minimum period of 45 days. However, the Commission has observed that much time has already elapsed and both the PIO and FAA have passed order in a very very mechanical fashion, therefore, it will not meet the ends of justice to delay this information considerably. However, keeping in view the magnitude of the information, Commission directs that the information which is already in possession of and obtained by the Home Department be disclosed to the appellant within 10 days from the date of the pronouncement of this order i.e today 03.02.2014 and the information which is to be collected from various other agencies/Police Stations/District Magistrates etc; be disclosed within 30 days. PIO is also directed to submit the copy of said information as confirmation of the compliance of the order to this Commission. The appellant is also advised to

inform this Commission about the compliance or otherwise of the directions of the Commission.

The appeal is accordingly disposed of subject to above observations.

Sd/-

(G.R. Sufi)

State Chief Information Commissioner

Copy to:-

1. Principal Secretary to Govt. Home Deptt. Civil Sectt. Jammu
2. First Appellate Authority, Home Deptt. Civil Sectt. Jammu
3. Public Information Officer, Home Deptt. Civil Sectt. Jammu
4. Shri Abdul Manan Bukhari, S/o Syed Ab. Rashid, R/o Bagat Kani Pora, Sgr.
5. Private Secretary to Chief Information Commissioner
6. Guard file.

(G.Q. Bhat)

Registrar

State Information Commission