



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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File No: SIC/CO/SA/95/2013

Decision No: SIC/CO/SA/95/2013/580

Title:- Dr. Amit Sharma

V/s

PIO Public Service Commission

Jammu

04.02.2014

This is a second appeal filed by Dr. Amit Sharma, a resident of the State against the order of PIO and FAA of J&K Public Service Commission before this Commission on 08.11.2013. The Registry of this Commission fixed the hearing for today. Dr. T.S. Ashok Kumar, Secretary-cum-FAA, Shri Fayaz Ahmed Sheikh, Additional Secretary-cum-PIO, J&K Public Service Commission and Dr. Amit Sharma, Appellant attended the hearing. The brief facts and grounds of the appeal are that the appellant filed an RTI application before the PIO, PSC on 6.5.2013 seeking certain information as per his RTI application. The PIO passed an order on 5.6.2013 refusing the information by stating that "whatever legitimate information was to be given to the information seeker has been given". It was further held by the PIO that "information seeker is in the habit of filing multiple applications which cannot be done". Being aggrieved with this order, the appellant filed first appeal before Secretary-cum-FAA of J&K PSC on 24.6.2013 received in the office of FAA on 28.6.2013. The FAA adjudicated this appeal on 7.8.2013. The disposal of the appeal has been done within time stipulated under the Act which is appreciated.

2. However, the appellant being aggrieved with the decision on his first appeal has filed second appeal before this Commission for seeking a direction to PIO to give information.

3. The main plea of the PIO in rejecting the appellant's application for information was that the relevant record which contained the desired information was lying with the Hon'ble J&K High Court in connection with SWP No:179/2008 filed by the appellant himself. The FAA in order to meet the principles of natural justice had given the opportunity to the appellant to appear before him. However, he chose not to appear before the FAA and the FAA after hearing the PIO ordered that as the information sought by the appellant was before Hon'ble High Court, therefore, the Commission was not in a position to provide said information. The appellant has contended that reasons given in the rejection are not uniformly applicable to all the nine queries seeking desired information in the RTI application. In the first appeal, it was further contended that the issue that any matter was sub-judice cannot be taken as a basis for denial of information unless information was exclusively forbidden to be disclosed by the Hon'ble Court. Moreover, there was no restriction under the RTI Act over the number of RTI applications made by any resident of the State during different intervals. It is further contended that all the nine points of information were not held up in the record submitted to the Hon'ble High Court. It would be relevant to reproduce hereunder the relevant grounds of appeal of the appellant in this order:-

"It may please be also noted that in many cases (out of 09 queries in the RTI application) a copy of the information as sought is lying in the PSC office also, may be in form of associated O/C (office copy) or in form of soft copy (in the computer record in concerned section) or in form of information as available in Application form of the respective candidate or in the rule book referred by the Competent Authority while appointing the interview board members and allotting interview marks distribution to each of them constituting the Board or in the record of the Competent Authority office/in the record of the office of interview board member/Secretary or in any other office as applicable (if any), hence same shall be provided by yourgoodself as Second Appellate Authority, please"

He has further averted before this Commission that on the day when PIO passed the order which was upheld by the FAA, a part of record was with the J&K Public Service Commission as is evident from the letter of Deputy Secretary of the Public Service Commission Commission under No: PSC/RTI/2010/132 dated: 22.3.2011

whereunder they communicated the information with regard to marks obtained by the appellant in different categories under Rule 51 of H&K Public Service Commission vide Notification No: 6-PSC of 2005 dated: 31.5.2005 and Notification No: 12-PSC of 2005 dated: 20.9.2005. Hence, it is averted that nothing could have stopped the PIO or FAA to give the said information. After failing to receive information from the PSC on the plea that record was sent to the Hon'ble J&K High Court, the appellant/ information seeker preferred an RTI application before PIO of Hon'ble J&K High Court on 14.10.2013 and in response to that application the Registrar Judicial-cum-PIO of Hon'ble High Court under No: 2152 dated: 19.10.2013 has informed the PIO PSC that information sought by the appellant in query No 3 and 4 i.e information mentioned at S.No 2,3,4,5 and 6 in Annexure "A" which is RTI application dated: 6.5.2013 filed before PIO and which is under adjudication in this appeal pertains to "your office" i.e PIO PSC. As such, that information be directly given to the applicant by your office. The PIO of Hon'ble High Court had further given the option to the PIO PSC to examine the record held in the Hon'ble High Court and thereafter send the information directly to the applicant Dr. Amit Sharma. It would be appropriate to reproduce the findings of Registrar Judicial-cum-PIO of Hon'ble High Court as under:

"Please find enclosed herewith copy of application under JK RTI Act 2009 sent to this office by Dr. Amit Sharma. The information sought by the applicant in query no. 3 and 4 pertains to your office, as such, the information be given directly to the applicant by your office. In case, the information sought by the applicant is with regard to the record which has been submitted in the Hon'ble High Court of J&K Jammu in SWP No.179/2008 titled Amit Sharma Versus State and ors, your office is at liberty to examine the record in the Hon'ble High Court and thereafter send the information directly to the applicant Dr. Amit Sharma."

This letter has been received in the PSC on 5.11.2013. The PIO has submitted before this Commission that in response to this direction of the Hon'ble High Court, the PSC sent two persons to Hon'ble High Court namely S/Shri Irshad Ahmed, Senior Stenographer and Ashok Kumar, Junior Assistant. There is no official report by these two officials with regard to the information seen by them. Though the letter addressed to information seeker inadvertently mentions 4.7.2013 informing the appellant that the record was seen but it transpires that the information sought by him was already provided to him. However, he was

further informed that no hand written award of the said expert is available in the records of the Commission.

2. The Commission has heard both the parties and perused the records. The Commission is constrained to observe that the PIO has passed an erroneous order. He has used the term "legitimate information" without appreciating that there was no such terminology used in the RTI Act. The State RTI Act has not left it to the PIO or any authority to decide "what is legitimate information" to be disclosed. The only prohibition for not disclosing the information is contained in section 8 and 9 of the State RTI Act. Similarly, the RTI rules referred by the PIO vide his order dated: 5.6.2013 have since been repealed w.e.f 2012 and there are new RTI Rules in operation. The PIO has also not fulfilled the mandate of State RTI Act by not informing the information seeker that he had a right to appeal as provided under section 7(8) of the State RTI Act. The points of information as sought by the appellant are all givable excepting disclosing the names of Experts and Members sitting in the interview board. It is now settled law that names of interview board members and experts cannot be disclosed in order to ensure the safety and security of their person. This prohibition is covered under section 8(f). However, with regard to other points of information the entire information is givable. Secondly, no information can be withheld on the plea that some record is in the possession of Hon'ble Court because section section 8(1)(b) of State RTI Act has prohibited disclosure of only that information which exclusively "forbidden to be published by any court of law or Tribunal or the disclosure of which may constitute contempt of court". The Commission, after careful consideration of all the facts before it has directed the disclosure of following information:

That information on point No 1 is givable excepting names of Experts and Members of the interview board. Similarly, information at point No 2 be disclosed as it is confirmed by FAA and PIO that this was not given earlier under any RTI application filed by him. Likewise, information at point No 3 has to be given without mentioning the names of member or expert. Information at point No 4 be given with modification or blacking out the names of the interviewer or the expert. However, the FAA and PIO insisted that the hand written information is not on record. If this information is available in any form either written by hand or in official record or printed in computer or any electronic medium of record it has to it has to be provided. This is strictly done in accordance with the definition of information provided under section 2(d) of the State RTI Act and if available on record anywhere in the office record whether paper record or electronic form or

in any form it has to be disclosed. In case this information is not available in any form do intimate the appellant accordingly. This order be implemented within 20 days of its receipt with a copy to this Commission. The appellant is also advised to inform the Commission about the compliance of this order and incase order is not complied, the information seeker is informed about his right to file a complaint as provided under section 15 of the State RTI Act. The FAA and PIO's attention is invited to provisions of section 2(b) (3) of the State RTI Act.

The second appeal is accordingly disposed of subject to above directions.

Sd/-

(G.R. Sufi)

State Chief Information Commissioner

Copy to:-

1. Secretary-cum-First Appellate Authority, J&K Public Service Commission, Jammu
2. Additional Secretary-cum-PIO, J&K Public Service Commission, Jammu
3. Dr. Amit Sharma S/o Shri Rajesh Sharma R/o Nai Basti, Kana Chak, Akhnoor Road, Jammu
4. Private Secretary to Chief Information Commissioner
5. Guard file.

(G.Q.Bhat)

Registrar

State Information Commission