



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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www.jksic.nic.in

File No: SIC/CO/SA/116/2014

SIC/CO/SA/117/2014

Decision No: SIC/CO/SA/116/117/2014/584

Title:- Zahoor Ahmad Tantray
V/s
Director ISM, Jammu

Jammu
11.02.2014

There are two second appeals filed by Shri Zahoor Ahmad Tantray, a resident of the State, received in this Commission on 21.1.2014 against the inaction of PIO and FAA of Directorate of Indian System of Medicines (ISM) for not providing information and adjudicating the appeals filed by him before the above mentioned authorities. Shri Rakesh Shan, District Medical Officer-cum-PIO, Indian system of Medicines (ISM) and the appellant Shri Zahoor Ahmad Tantray attended the hearing. They have been heard.

2. The brief grounds of the appeals are that the appellant filed two RTI applications on 11.10.2013 received by the PIO on same day seeking information as listed in the RTI applications. The PIO failed to dispose of the RTI application by passing order as provided under section 7 of the RTI Act. Being aggrieved with the deemed refusal of information, the appellant filed first appeals before Director-cum-First Appellate Authority, Indian System of Medicines J&K Jammu on 3.12.2013. First Appellate Authority was under legal obligation to adjudicate the appeal within a period of 30 days with an extendable period of 15 days if reasons so warrant. However, he also failed to pass the order. Being aggrieved with the inaction of FAA, he preferred second appeals before this Commission in both the

cases on 10.1.2014 received in this Commission on 21.1.2014. The FAA sought exemption from being present in the Commission because of back ache which has been allowed. The present PIO Shri Rakesh Shan has confirmed that the PIO did not pass order in the case of appellant neither appeals filed by the appellant were adjudicated by the FAA on the plea that same type of information was requisitioned by some other person. However, no documentary proof in support of his argument was produced before the Commission. In the written rejoinder furnished in this Commission by the PIO, the submissions made are irrelevant. There are allegations against the appellant that he is impersonating and is seeking information in different names. The allegations against the information seeker are not an impediment in disclosing information if information is givable as per Act information can be denied only if it falls under any limb of section 8. However, If the information seeker has violated any other act or committed a crime which is actionable under any provisions of any other law, action has to be taken under relevant law and rules. The appellant is a government employee and nobody can stop competent authority to take any action against the officer working under him if it is proved that he has violated Conduct Rules. But that does not mean that the right which has been conferred to him under section 3 read with section 6 of the RTI Act will be denied to him. As the then PIO Shri Rakesh Raina has failed to pass order within 30 days, he is directed to explain why penalty proceedings under section 17 of the State RTI Act may not be initiated against him for refusing to provide information to the appellant. His reply, if any, must reach this Commission within 15 days from the pronouncement of this order as already much time has elapsed. Information sought by the appellant falls under the definition of information under section 2 of the State RTI Act. Therefore, present PIO of Directorate of ISM Shri Rakesh Shan is directed to provide information to the appellant within 7 days from the pronouncement of this order. He is also directed to serve a copy of this order to the then PIO Shri Rakesh Raina. The First Appellate Authority under the Act is a public authority assigned with the job of adjudicating first appeals. It is his statutory duty to discharge his duties in accordance with section 16 of the State RTI Act. He is advised not to fail in discharge of his public duty. There are serious allegations leveled against the appellant by the PIO vide his letter No: DISM/PS/565-66 dated: 09.01.2014. He is advised to not to make multiple applications. Under the Act, whatever information has to be obtained from the same public authority, it should be done in one application so that precious time of government functionaries is not wasted and they are not being kept engaged in replying RTI applications. The

appellant is also advised to inform the Commission whether he has received the required information or not.

3. It has been observed during the proceedings that the public authority has not complied with the provisions of Section 4 of the State RTI Act 2009 which obliged him to make a suo moto disclosure of the information held and possessed by him as such public authority. This information was to be uploaded and disseminated within 120 days from the enactment of State RTI Act 2009 w.e.f 20th March, 2009. Unfortunately, inspite of lapse of four years no compliance has been made. As per Section 4 (2)(b) the public authority had to make a suo moto disclosure of information contained in said provisions of law. The website of ISM does not reflect any link for RTI. As enough time has been given for compliance, therefore, Commission directs that this information be uploaded and disseminated in the official website of ISM within 15 days from the date of receipt of this order. As per Section 4 read with Section 15 any resident of the State can file a complaint before the public authority and later on before this Commission if compliance with the provisions of Section 4 is not made. These directions are issued by the Commission in accordance with Section 16(8) of the State RTI Act. The suo moto disclosure of the following information has to be made:

(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under the Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the State on different systems so that access to such records is facilitated ;

(b) publish within one hundred and twenty days from the commencement of the Act.-

- (i) the particulars of its organization functions and duties;
- (ii) the powers and duties of its officers and employees :
- (iii) the procedure followed in the decision making process, including channels of supervision and accountability;
- (iv) the norms set by it for the discharge of its functions ;

(v) the rules, regulations instructions m. manuals and records, held by it or under its control or used by its employees for discharging its functions ;

(vi) a statement of the categories of documents that are held by it or under its control ;

(vii) the particulars of any arrangement that exists for consultation with, or representation by the members of the public in relation to the formulation of its policy or implementation thereof;

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more person constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public ;

(ix) a directory of its officers and employees ;

(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

(xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made

(xii) the manner of execution of subsidy programmes, including the amounts allocated and details of beneficiaries of such programmes. (xiii) particulars of receipts of concessions, permits or authorizations granted by it;

(xiv) details of receipt of the information, available to or held by it, reduced in an electronic form.

(xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;

(xvi) the names, designations and other particulars of the Public Information Officer;

(xvii) such other information as may be prescribed; and thereafter update these publications every year.

The appeals are accordingly disposed of subject to above directions.

Sd/-

(G.R. Sufi)

State Chief Information Commissioner

Copy to:-

1. Director-cum-First Appellate Authority, Director of Indian System of Medicine (ISM) Jammu
2. Shri Rakesh Raina, Ex-Public Information Officer, Directorate of ISM, Jammu.
3. Shri Rakesh Shan, Public Information Officer, Directorate of ISM, Jammu

He is requested to serve a copy of this order on Shri Rakesh Raina, Ex-Public Information Officer, ISM.

4. Shri Zahoor Ahmad Tantray, S/o Late Gh. Ahmad Tantray, R/o Bohipora, Tehsil & District Kupwara.
5. Private Secretary to Chief Information Commissioner.
6. Guard File.

(G.Q. Bhat)
Registrar
State Information Commission