



**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](http://www.jksic.nic.in)

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File No: SIC/CO/SA/115/2014

Decision No: SIC/CO/SA/115/2014/625

Title: Abdul Gani Khan V/s PIO GAD

Jammu:

21.04.2014

This is a second appeal filed by Shri Abdul Gani Khan, a resident of the State through his representative Shri Mohammad. Latif Malik, an Advocate. Shri Bashir Ahmed Dar, Special Secretary-cum FAA and Shri Manzoor Ahmed, Undersecretary-cum PIO General Administration Department attended the hearing alongwith representative of the appellant. The brief grounds of appeal are that the appellant filed an RTI application seeking the following information:-

1. The detailed information/grounds regarding denial of sanction for prosecution of the public servants w.r.t FIR No 2/07 VOJ and 14/08 VOJ.
2. Reasons for accord of sanction for prosecution of the accused public servants w.r.t FIR Nos 17/06 VOK, 18/06 VOK and 21/06 VOK.

The PIO passed order on 18.7.2013. Vide this order the information was denied in the first case without giving reasons and in second case with reasons for such sanction. Being aggrieved with the PIOs reply, the appellant filed first appeal before FAA on 1.8.2013 which was decided on 9.9.2013. The FAA has directed the PIO to furnish the available information to the appellant regarding the denial of sanction of prosecution and it is further importantly observed by the FAA that obviously the prosecution would have been denied on the basis of certain reasons which would be the part of record. The appellant filed second appeal on 18.11.

2013 stating therein that the certain vigilance proceedings were going on against some senior officers of R&B Department for purchase of construction material on very exorbitant rates. Number of FIRs were filed in Srinagar as well as Jammu on the same basis against the concerned officials and therefore Vigilance Organization of the State took cognizance as the statement is made that Vigilance Organization has sought prosecution clearance. Therefore, it is presumed that State Vigilance Organization has completed the investigations. It is surprising to note that competent authorities have given sanction for prosecution vide Govt. Order No: 37 dated: 7.5.2008 in FIR No: 17/206/ VOK and Govt. Order No: 37 dated: 7.5.2008 in FIR No: 17/206/VOK and Govt. order No: 28 dated: 7.5.2008 in FIR No: 21/206 . The annexures attached with this order are disclosing the names of officials against whom sanction for prosecution has been sought giving details stating reasons on 22 pages for launching such prosecution. The Commission in on loss to understand why sanction has not been denied in the remaining cases at Govt. Order No: GAD/Vig/-11RTI/2013 dated: 18.7.2013 when the facts are almost identical. These investigations were started vide FIR No: 2/2007 and 14/2008 i.e the same in the above case where information has been disclosed. The Commission is pained to observe that the PIO has not appreciated the legal provisions of the State RTI Act and establish legal precedence on the same, similar and identical facts, therefore there cannot be two yard sticks for applying justice and applying law of the land. The facts are that in one instance the information seeker wants the reasons why prosecution was sanctioned for certain officers and on the same analogy sanction of prosecution was denied. In brief, the information seeker wanted to know the reasons and grounds of denial of sanction for prosecution by the competent authority with respect to the public servants mentioned FIR No: 2/2007/VOJ and FIR No: 14/2008/PS/VOJ. The FAA directed both the information to be given. PIO passed an order in response to FAA's order which had explicitly directed for disclosure of information. The PIO, however, partially followed the order invoking section 8(g) of the State RTI Act in the case of denial of prosecution i.e information at point no; 1 of RTI application. This order was not in consonance with FAA's order. As per the State RTI Act, the FAA is a senior authority.

Therefore, his directions and decision has to be complied by the PIO. As there is no reason why such section 8(g) has been invoked which deals with the impeding the process of investigation or apprehension or prosecution of offenders. First of all there are no reasons given by the PIO as to under what reasons and circumstances , the process of investigation will be impeded and the disclosure of names of officers will be endangered. As the facts of the case are similar that of above mentioned persons whose names have been declared, therefore, the Commission finds no justification for the PIO not to disclose the information as sought by the appellant because nothing has been brought before the Commission to establish

that provisions of section 8(g) are applicable. Therefore, the information is to be disclosed. The PIO GAD is directed to implement this order by 15<sup>th</sup> of May 2014 and inform the Commission accordingly.

Sd/-  
( G.R. Sufi )  
Chief Information Commissioner

Copy to:-

1. First Appellate Authority, General Admn. Deptt. Civil Sectt. Jammu
2. Public Information Officer, General Admn. Deptt. Civil Sectt. Jammu
3. Shri Abdul Gani Khan, S/o Gh. Mohd. Khan, R/o Beer Hamdan, Tehsil Anantnag.
4. Private Secretary to Chief Information Commissioner
5. Guard file.

( G.Q. Bhat )  
Registrar  
State Information Commission