



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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File No: SIC-CO-SA-133/2014

Decision No: SIC-CO-SA-133/2014/626

Title: Sh. Z.A. Qazi, Advocate

V/s

PIO Financial Commissioner, Revenue

Jammu

15.04.2014

This is a second appeal filed by Shri Z.A. Qazi, a resident of the State in this Commission on 26.2.2014. Dr. M.S Sood, Joint Financial Commissioner-cum-First Appellate Authority attended. The appellant Shri Z.A Qazi was also present. The brief grounds of the appeal are that the appellant filed an RTI application before PIO, Financial Commissioner Revenue, J&K Jammu which was sent by speed post on 11.12.2013 and which was received by the PIO on 1.1.2014. The PIO had to pass an order under section 7 of the State RTI Act within 30 days from the receipt of the application. The PIO passed order on 28.1.2014 which is within time. Aggrieved with this order, appellant preferred first appeal before FAA on 3.2.2014. The FAA disposed of this first appeal on 11.2.2014 i.e ahead of the statutory period which is appreciated. Again, being aggrieved with this order, the appellant preferred second appeal before this Commission on 26.2.2014. In the second appeal, the appellant has raised the following grounds of appeal:-

1. That PIO of FCR has not provided the information within specified period of time intentionally and deliberately.
2. The 1st appellate authority has also not decided the 1st appeal of the appellant herein on merits and upheld the order of PIO.

Commission has gone through the RTI application, order of PIO and the order of the FAA, the grounds of appeal raised by the appellant and the pleas being made by him. The grounds of appeal are adjudicated as under:

The first ground of appeal is that the PIO has not provided information within specified period of time intentionally and deliberately. The Commission has considered this ground of appeal. The appellant has sent his RTI application by way of speed post on 11.12.2013. The PIO states that this application has been received in his office on 1.1.2014 and he has passed order on 28.1.2014. The appellant has no evidence at all with him that his RTI application was delivered to and received by PIO before 1st January, 2014. The PIO can be proceeded under section 17 of the State RTI Act, if Commission is satisfied that the order passed under section 7 was passed beyond the statutory period of 30 days. As there is no material before the Commission with regard to the actual date of receipt, hence the contrary date shown by the PIO has to be accepted as date of receipt. It was for the appellant to lead evidence before the Commission to prove that the order passed by PIO was passed beyond the due date “intentionally and deliberately”. It was for the appellant who is a lawyer by profession to prove that the information was delayed intentionally. The term “intention” is defined as the fixed direction of mind to a particular subject, or a determination to act in a particular manner, and it is distinguishable from “motive” that which incites or stimulates action. Thus, this definition places a heavy onus on the appellant to prove otherwise which has not been done. The appellant who is an advocate, is thus advised to desist from prolonging on necessary litigation.

The second and last ground appeal is with regard to FAA’s order which is alleged to have not been passed on merits. The Commission has gone through the FAA’s order. Initially he states that an opportunity of being heard was given to the appellant, but he did not attend his office. However, after hearing the appellant and FAA, the Commission is satisfied that sufficient time was not given to the appellant for appearing before the FAA. The first appeal was decided by the FAA upholding the order of PIO on the reasoning that information provided by the PIO was correct and held that information sought by the appellant could not be provided because same was not lying with the PIO’s office. Actually it is seen that in the first appeal the ground of appeal was that the FAA has “malafidely” concealed the information which amounts to refusal to provide the information. Second ground raised before the FAA was for imposition of penalty under section 17 on PIO @ Rs.250/ and the appellant had also calculated the amount of penalty at Rs. 7750/ to be imposed on the PIO. The appellant had requested the FAA that his appeal may be allowed and impose penalty on PIO. FAA did not take cognizance of the request of the appellant of imposing the penalty as FAA is nowhere empowered under sections of the State RTI Act to impose penalties. FAA is only authorized under section 16(3) of the State RTI Act to make a

reference to that effect to the State Information Commission. When the Commission asked the appellant to substantiate under what provisions of State RTI Act FAA has power to impose penalty, in response to this query the appellant withdrew this ground of appeal. The appellant has nowhere proved before this Commission that the PIO has given any incorrect information and that also intentionally and deliberately. Nothing was brought before the FAA and the Commission to prove that the PIO has “malafidely” provided the information late. The FAA during the hearing has also produced a copy of SRO 102 dated: 2nd April, 2014 where under Government has appointed all the Additional Deputy Commissioners as Commissioners within their respective jurisdiction excluding the areas notified and taken up for settlement operation for purposes of hearing of appeals under the said Act. FAA is advised to act accordingly. The appellant is also advised that before invoking RTI Act he should go through the provisions of RTI Act to establish his right of information in accordance with law. The appellant is by profession an Advocate, therefore, it becomes imperative for him to appreciate the provisions of law. The second appeal is accordingly dismissed.

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

Copy to:-

1. First Appellate Authority, office of the Financial Commissioner, Revenue J&K Jammu.
2. Public Information Officer, office of the Financial Commissioner, Revenue J&K Jammu.
3. Shri Z.A. Qazi, Advocate C/o Bar Association, J&K High Court Complex, Janipur, Jammu.
4. Private Secretary to Chief Information Commissioner
5. Guard file.

(G.Q. Bhat)
Registrar
State Information Commission.