



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

File No. SIC/J/A/121/2013

Decision No. SIC/J/A/121/2013/641

Title: Shri Suresh Kumar Sharma

V/S

- 1. First Appellate Authority, University of Jammu.**
- 2. Public Information Officer, University of Jammu.**

Srinagar

09-05-2014

In this case, a resident of State namely Shri Suresh Kumar Sharma had filed an RTI application before PIO, University of Jammu on 09-10-2012, seeking certain information listed in the application. The PIO in response to this application, intimated the information seeker vide his order dated: 15-11-2012 that information was not available, as the copy of enquiry report has not been yet accepted / approved by the competent authority. However, copies of minutes of selection committee and appointment orders in respect of Shri O.P. Bholra and Shri Mahesh Kumar Sharma, Executive Engineers were provided to the information seeker. Not being satisfied with the order of PIO, appellant preferred first appeal before First Appellate Authority, University of Jammu on 10-12-2012. The FAA disposed of this appeal vide his order dated: 22-05-2013, directing PIO to provide the remaining information with reference to query no. 1, 2 and 4 to the appellant, after collecting the same from the concerned offices, as it was revealed that the said information / report (which was the basis of information sought) was under the custody of Special Secretary to the Vice Chancellor. Even after these directions from FAA, it seems that the PIO did not respond and appellant accordingly filed 2nd Appeal in this Commission. It would be appropriate to observe that first appeal was filed on 10-12-2012, which was to be adjudicated upon by the FAA within a period of 30 days extendible by further 15 days, if there are reasons for such extension and these reasons

then have to be recorded in writing. But the FAA did not act in accordance with law and failed to adjudicate the appeal within time as laid down under section 16 of the State RTI Act. He passed order on 22-05-2013, when 2nd appeal was already filed in the Commission on 20-05-2013. The Commission adjudicated the 2nd appeal of appellant on 08-07-2013, after duly hearing PIO and the appellant. During the proceedings, the Commission found that the PIO did not strictly act in accordance with provisions of State RTI Act and therefore, PIO, University of Jammu, Shri Vivek Slathia was asked to explain why penalty proceedings may not be initiated against him. He was also required to explain why he had not complied with the directions of FAA for providing information to the information seeker.

During the hearing of penalty proceedings, the PIO, Shri Slathia consistently took the plea that most of the information asked for was not available with him, it was available with the office of Special Secretary to Vice Chancellor, Jammu University and therefore Special Secretary to vice Chancellor was requested many a time (copies of letters issued for seeking assistance of Special Secretary to VC perused) to lend his assistance to the PIO as provided under section 5 of the Act and thus to enable PIO to provide information to the information seeker. The attention of the said officer was brought to the provisions of section 5 (4) of the Act for providing assistance as sought by the PIO. The said officer was also informed about the implications of section 5 (4), i.e., declaring the officer / official, who does not provide assistance as a deemed PIO for the purpose of any contravention of the provisions of the act. The Special Secretary to Vice Chancellor was requested to treat the matter urgent. It is further seen that Assistant Registrar, Establishment, Jammu University had replied to PIO's letter for providing assistance, if any vide letter dated: 21-06-2013. Another reminder was sent to Special Secretary to Vice Chancellor by PIO vide letter dated: 29-08-2013, seeking his assistance for providing information. After penalty proceedings were initiated against the PIO and his reply was sought for explaining as to why penalty may not be imposed upon him, the PIO vide letter dated: 11-09-2013 informed the Commission that he had sought assistance from Sr. P.A. to Registrar, Jammu University, after he decided the RTI application. However, Sr. P.A. to Registrar had informed him that the relevant records were lying under the custody of Special Secretary to Vice Chancellor and accordingly PIO sought assistance of Special Secretary to V.C vide his letter dated: 13-06-2013, because the First Appellate Authority, Jammu University while deciding the first appeal had also confirmed that the information was under the custody of Special Secretary to Vice Chancellor. The PIO therefore pleaded that neither the information was in his position nor he was the holder of the information and thus delay in providing information is attributed to Special Secretary to Vice Chancellor. The PIO further submitted that he has fulfilled mandate given to him under section 5(5) of the Act, accordingly he requested for dropping the penalty proceedings. The Commission after perusing records was satisfied that the Special Secretary to Vice Chancellor, Jammu University, Shri J.K.Sharma had contravened the provisions of section 7 read with section 17 of State RTI Act, 2009, thus declared him as deemed PIO and initiated penalty proceedings against him. The Commission accordingly issued a show cause not

ice to Special Secretary to Vice Chancellor vide No. SIC/J/A/121/2013=13017-18 dated: 20-12-2013, declaring him as deemed PIO and holding him responsible for not providing information to the information seeker. He was accordingly directed to provide information to the information seeker and also explain as why penalty may not be imposed upon him under section 17 of the Act for failing to provide information. In response to the Commission's show cause notice, Shri J.K.Sharma, Special Secretary to Vice Chancellor vide his reply dated: 28-12-2013 submitted that he had never been asked for any assistance by the PIO and there was nothing on records whereby it can be established that PIO asked for assistance from him under section 5 at any time. However, in the same breath, he admitted that he had been verbally requested by Assistant Registrar, Establishment, Jammu University for providing information which he claims to have been provided. Shri Sharma accordingly pleaded that "undersigned has not done any act which tantamount to acting in derogation to the mandate and spirit of J&K RTI Act, 2009 and accordingly undersigned is not liable for any penalty under section 17 of the Act." Thus Special Secretary to Vice Chancellor categorically refused to have received any communication from PIO, Shri Slathia for seeking assistance in order to disclose information, the Commission decided to investigate the matter and registry of the Commission vide letter dated: 21-01-2014 asked the PIO to produce necessary documents and evidences like dispatch register from April 2013 till date and a acknowledgement, etc.

Shri Vivek Slathia, PIO, University of Jammu attended the Commission along with Assistant Registrar (Establishment) and produced the receipt / dispatch register as documentary proof for supporting his contention that he had made communications to the Special Secretary to the Vice Chancellor, University of Jammu for providing him the information as per section 5 of J&K RTI Act, 2009. The Commission examined the receipt / dispatch register and found that Shri Slathia, PIO, University of Jammu had duly forwarded the letters to Special Secretary to The Vice Chancellor. Even the documentary proof has been submitted before the Commission, wherein, it is reflected that the Special Secretary to Vice Chancellor, University of Jammu while acknowledging the receipt of the letter dated: 11-09-2013 from the PIO has marked the reference to the PIO and Assistant Registrar (Establishment) and directed them to discuss the matter with him which is also attached as annexure "A-1".

The photocopy of the receipt and dispatch register of the office of the PIO has been retained in the Commission The Commission vide its letter dated: 12-02-2014 directed Shri J.K.Sharma, Special Secretary to Vice Chancellor to explain as to why penalty under section 17 may not be imposed on him for not providing assistance to the PIO for providing information to the information seeker. In reply to this, Shri J.K.Sharma, Special Secretary to Vice Chancellor vide his letter dated: 20-02-2014 submitted that he was not custodian of the record and the PIO was in a habit of issuing letters for seeking information, which is not in his custody. He also produced receipt and dispatch register of his office pertaining to period April 2013 and also sought three weeks' time to submit complete reply. The receipt and dispatch register of the office of Special

Secretary to Vice Chancellor, University of Jammu clearly mentions that letters written by the PIO have been duly received by him. However, Shri J.K.Sharma, Special Secretary to VC has not submitted complete reply, as was already stated by him till date. Thus, from the above evidence brought on record, it is clear that he has refused to discharge his duties cast on him under section 5 of the State RTI Act, 2009 and thus refused to give information to the information seeker by not rendering necessary assistance to PIO, University of Jammu for disclosing information, which was in his custody, as was established above by the FAA, University of Jammu University vide his order dated: 22-05-2013.

The provisions of section 17 of State RTI Act makes it quite clear that if information has been denied without any reasonable cause, the Commission will impose penalty of Rs. 250/each day till application received or information is furnished, so far, however, the total amount of said penalty shall not exceed Rs. 25000/-

The provisions of the said section have also made it clear that the burden of proof that the PIO/deemed PIO acted reasonably and diligently shall be on the PIO which will include deemed PIO also. Shri J.K.Sharma, Special Secretary to Vice Chancellor, however has not proved before the Commission that he had acted reasonably and diligently. He has also not proved anything before this Commission to establish that for the default committed, he had any reasonable cause. He even failed to submit what he calls "complete reply" and accordingly asked three week's time, despite lapse of three months. Hence, the Commission is declaring him a deemed PIO and impose penalty of Rs. 20500/ (Rupees Twenty thousand and Five hundred only), as per below calculation;

1. Date of receipt of application from PIO, University of Jammu - 28-05-2013
2. Date within which, assistance / information, if any, should have been provided under section 5 - 02-06-2013
3. No assistance provided to PIO
4. Date of Information disclosed to information seeker - 03-09-2013

From above calculation, it is clear that there has been default of 92 days, w.e.f. - 02-05-2013 to 02-09-2013.

However, the case is somehow old, the Commission treats 15 days time to Special Secretary to Vice Chancellor to Jammu University for providing assistance to the PIO.

Thus, total number of default period comes to 82 days. As per section 17 of State RTI Act, an amount of Rs. 250/- is to be charged as penalty each day.

Thus, total penalty works out @ Rs. 250/- each day to Rs. 20500/- for 82 days.

The Drawing and Disbursing Officer, University of Jammu is directed to ensure deduction of said amount from the salary of concerned officer in three instalments, w.e.f. July, 2014 and remit said amount into the Government Treasury under Account Head " 0070-other administrative services."

The DDO, University of Jammu is further directed to furnish copy of the challan showing T.V. No and date under which said amount deducted and remitted into the Government Treasury.

Sd/-

(G. R. Sufi)

Chief Information Commissioner

Copy to the:-

1. First Appellate Authority, University of Jammu.
2. Shri J.K.Sharma, Special Secretary to Vice Chancellor, University of Jammu (Deemed PIO).
3. Public Information Officer, University of Jammu.
4. Drawing and Disbursing Officer, University of Jammu.
5. Pvt. Secretary to HCIC.
6. Pvt. Secretary to Vice Chancellor, University of Jammu for information of the Vice Chancellor.
7. Guard File.

(G.Q.Bhat)

Registrar,

J&K, State Information Commission