



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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File No: SIC/CO/SA/146/2014

Decision No: SIC/CO/SA/146/2014-646

Title: Shiv Shankar Sharma

V/s

PIO/FAA, office of The Commr/Secretary to Government
Public Works (R&B) Department

Srinagar

03.07.2014

This is a second appeal filed by Shri Shiv Shankar Sharma, a resident of the state received in this Commission on 13.5.2014 complaining therein that he had filed an RTI application in the office of Commr/Secretary to Government, Public Works Department which was sent through Registered Post bearing No: ARE829147021 dated: 7.10.2013 alleging that PIO had received the said application which is evident from the PIO's letter dated: 17.2.2014. He has further submitted that the PIO did not inform him that his application dated: 7.10.2013 was not received by him. As the PIO did not admit to have received RTI application dated: 7.10.2013, therefore, he preferred first appeal before the FAA. He has also made number of allegations in his complaint against the FAA and has accordingly prayed before the Commission for imposing penalty on the PIO and initiating necessary action against the FAA. He had also sought his appearance before the Commission. The Commission posted the complaint of the complainant from time to time seeking attendance of the FAA and PIO. The complainant was also asked to appear in person or through his authorized representative to enable the Commission to arrive at a decision in accordance with law. But, In spite of number of opportunities given to the complainant, he did not chose to attend the hearing nor sent any representative. Commission is, therefore, constrained to take a decision on the available material on record and submissions made by the FAA and the PIO, PWD(R&B) Department. The RTI application has emanated from the

appellant's complaint to Chief Engineer PW(R&B) Department, Jammu bringing to his notice several irregularities. As this representation was not replied, he preferred RTI application simultaneously to the office of the Chief Secretary of the State and the Commr/Secretary, Public Works Department. The RTI application made before the Chief Secretary was forwarded by the GAD to the PIO of Commr/Secretary PWD. The Commr/Secretary PWD is highest public authority who is controlling all the Chief Engineers. Minutely going through the RTI application, it is seen that the information seeker wanted the PIO of Commr/Secy PWD to supply him information in respect of complaint made by him vide his No: SSP/2325 dated: 29.07.2013. Therefore, the information was in the possession of PIO, Commr/Secy PWD. However, the PIO of Commr/Secy. R&B forwarded this RTI application to PIO Chief Engineer's office. Instead of forwarding it to Chief Engineer, the PIO in the office of Commr/Secy PWD should have passed an order u/s 7 as expeditiously as possible but not later than 30 days intimating the appellant about the status of his very sensitive and important complaint containing information about the alleged misuse of expenditure. Such types of complaints are direct concern of the State RTI Act because the Act lays down the duty on the public authorities to ensure transparency and accountability in their working. In view of these facts, the Commission holds the PIO to be in default for not passing order as per section 7 of the State RTI Act. He is, therefore, required to explain why penalty proceedings may not be initiated against him under section 17 of the State RTI Act. He should explain his position within 15 days from the receipt of this order.

As the appellant did not receive any order from the PIO of Commr/Secy. PWD, he preferred first appeal on 01.02.2014 before FAA which has been acknowledged by PIO informing the appellant that his appeal has been received and posted it for hearing on 14.3.2014 and asked for his appearance before Additional Secretary to Govt. PWD-cum First Appellate Authority. Though the PIO declined before the Commission to have received the RTI application which has been sent on 7.10.2013, it is evident from his letter dated: 17.2.2014 addressed to the appellant that his RTI application was indeed received because he informed the appellant that reply to his application has been disseminated to him). The appellant in his appeal in the Commission alleged that he attended the FAA's office on 14.3.2014 and made serious allegations about the alleged misbehaviour of the FAA. The appellant further alleged that even after lapse of one month from the date of hearing, no order of FAA was received. After perusing the record and hearing the FAA, the Commission has found that FAA indeed has not passed any order so far which she was under legal obligation to do. The Commission has number of times emphasized on the FAA(s) that under the State

RTI Act it is their public duty to adjudicate the appeals filed before them under section 16 of the State RTI Act within the time prescribed under section 16. The failure to discharge the public duty is actionable under the provisions of Ranbir Penal Code and Commission has inherent powers to refer the failure of the appellate authorities to the competent authority for taking suitable necessary action. The Commission would again urge the appellate authorities to discharge their duties cast on them under the State RTI Act.

Though the FAA and PIO in the office of Commr/Secretary PWD did not discharge the duties in accordance with law, but the PIO in the Commr/Secretary's office had forwarded the RTI application of the appellant to the PIO Chief Engineer Jammu's office vide his communication No: (R&B)PIO/RTI/88/2013 dated: 21.10.2013 with the direction to provide the requisite information to the appellant within the stipulated period of 30 days under RTI Act. PIO in the Chief Engineer's office vide his communication dated: 28.10.2013 has acknowledged that he received RTI application of the appellant from PIO Commr/Secy. PWD referred above. He has dismissed the appellant's RTI application by stating that he has not sought "access to any available and existing information from the office of the Chief Engineer, PW(R&B) Department, Jammu. As such, it is incomprehensible as to what information is to be provided to the applicant that pertains to this office". The PIO in the Chief Engineer's office namely Shri R.K. Sapru, Executive Engineer in his order under No: CEJ/14143 dated: 28.10.2013 refused to acknowledge that no such information was accessible and available in the office of Chief Engineer PW(R&B) Jammu. Hence rejected the RTI application. The said PIO has also sent written submissions to the Commission reiterating the same stand as taken by him in the order referred above. The Commission has considered both the order of the PIO passed under RTI Act and his submissions made to the Commission vide his letter dated: 29.5.2014. The Commission is of the considered opinion that both the communications are devoid of any merit and are misleading and incorrect. His plea that the appellant had sought information from the PIO of Chief Secretary's office and not from him is nothing but ignorance of RTI Act. The mechanism of State RTI Act is that any resident of the State may seek any information givable under the Act from any public authority and if the requisite information is not available with a particular public authority, same has to be transferred to any other public authority who holds and possesses such information. Therefore, the PIO in GAD looking after the office of Chief Secretary has correctly and in accordance with law forwarded this application of the complainant to the PIO of Commr/Secretary PWD. As this information was under the possession of Chief Engineer's office, therefore, the

PIO in PWD Secretariat forwarded this communication to PIO Chief Engineer's office on 21.10.2013. It seems that there has been no proper appreciation of section 5 and 6 of the State RTI Act in the office of Commr/Secy. PWD. The PIO in the PWD Secretariat should have invoked section 5 and sought the assistance of PIO Chief Engineer's office so that the RTI could have been replied promptly. In any case this information was in the possession of office of the Chief Engineer and the complainant has also addressed the complaint to Chief Engineer, PWD(R&B) Jammu with copies to Chief Secretary and Commr/Secretary PWD for information. The complaint addressed to Chief Secretary, Commr/Secretary PWD and Chief Engineer PWD contained the detailed allegations about the "embezzlement of Government exchequer at the hands of R&B engineers in criminal connivance with contractors and ministerial staff, a copy of this complaint is attached with this order as **Annexure 'A'.**" This complaint has been received by all authorities i.e Chief Secretary's office, Commr/Secretary PWD and Chief Engineer's office which is evident from the fact that the office of Commr/Secy. PWD has forwarded the same to Chief Engineer vide office letter No: PW(R&B)HRM/30/2013-comp dated: 13.8.2013 issued by the Additional Secretary to Government, Public Works (R&B) Department wherein the senior officer clearly mentioned that copy of this detailed complaint highlighting alleged embezzlement of exchequer was attached and a report from the Chief Engineer was sought. However, it is seen from this letter that no time limit was set for Chief Engineer for submitting the report. The Commission is constrained to observe that allegations of corruption and embezzlement have not been dealt with the seriousness it deserved. It is seen that till this date there is no report from the Chief Engineer and a reminder has also been sent on 23.6.2014 when the RTI complaint is already under consideration of the Commission. Again this reminder does not lay down any time limit for the Chief Engineer to submit the report and the Commission is informed that till the date of passing the order by the Commission i.e today 3.7.2014, no report has been received. Commission would like to bring to the kind notice of the respected officers of the state Government that the preamble of the State RTI Act places a duty on the State Information Commission to ensure transparency and accountability among all the public authorities.

Coming to the main issue of whether the reply given by PIO Shri Sapru in his order on complainant's RTI application is correct or not, Commission is holding Shri R.K. Sapru responsible for giving a false and incorrect information to the information seeker. His order is brazenly false as on the date of passing the order, the office of Chief Engineer was in possession of original complaint dated: 29.7.2013. Therefore, Shri R.K. Sapru, Executive Engineer-cum-PIO, Chief Engineer's office

is directed to provide the information to the information seeker within eight days from the receipt of this order with an intimation to this Commission and also explain why penalty under section 17 of the State RTI Act 2009 may not be imposed on him for providing false, incorrect and wrong information to the information seeker. His reply, if any, must reach this Commission within 15 days from the receipt of this order.

Before concluding this order, the Commission would like to advise the complainant that being a literate person it is his constitutional duty to use his fundamental right in accordance with law. But he should refrain from filing multiple applications. He has also not substantiated his allegations against the senior officer of the government i.e Special Secretary to Government, Public Works Department which he has levelled in his appeal in the Commission. The concerned officer is at liberty to initiate any legal action against the appellant for leveling unsubstantiated charges and allegations. His charges have remained unsubstantiated because he has not produced any evidence before the Commission in support of his charges as he has consistently absented himself from the proceedings of the Commission.

In accordance with the preamble of the State RTI Act, 2009, appellant is required to inform the Commission for what use and purpose he has put the information which is ordered to be disclosed. He is reminded that the purpose and aim of the State RTI Act is to bring transparency in the working of public authorities and not to settle personal scores and not to use information for the purposes other than specified in the State RTI Act, 2009. From the records of the Commission, it is seen that the appellant has made number of RTI applications with different public authorities and obtained the information. The user of this information be also intimated to the Commission so that the Commission would see whether the same has been used for the purpose stated above.

Sd/-

(G.R. Sufi)

Chief Information Commissioner

Copy to:-

1. Chief Secretary, J&K State, Civil Secretariat, Srinagar
2. Commr/Secretary to Govt. Public Works Department, Civil Sectt. Srinagar
3. Chief Engineer, PW(R&B) Department, Jammu
4. Special Secretary-cum-
First Appellate Authority, Public Works Deptt. Civil Sectt. Sgr.
5. Executive Engineer-cum-PIO Chief Engineer PW(R&B) Deptt. Jammu.

6. Under Secretary-cum-PIO, Public Works Deptt. Civil Sectt. Srinagar
7. Shri Shiv Shankar Sharma R/o Village Karayara, P/O/District Hiranagar-184142.
8. Private Secretary to Chief Information Commissioner
9. Guard file.

(G.Q. Bhat)
Registrar
State Information Commission