



J&K State Chief Information Commissioner
Old Assembly Complex, Srinagar. Fax ;0194-2484268,2484269
Wazarat Road, Jammu. Fax No: 0191-2520947, 2520927

File No. SIC/CO/SA/193 /2014/
Decision No. SIC/CO/ SA/193 /2014/ 705

Title: Syed Shakeel-ur-Rehman

V/S

PIO / FAA, J&K Academy of Art, Culture and Languages.

Jammu
22-12-2014

This is a 2nd appeal filed by Syed Shakeel-ur-Rehman, an official of the J&K Academy of Art, Culture and Languages against the order of PIO and FAA, J&K Academy of Art, Culture and Languages. The FAA and PIO attended the Commission. Appellant did not attend. Brief facts and grounds of the appeal are that the appellant filed an RTI application before PIO, Academy of Art, Culture and Languages on 19-04-2014 which claimed to have been received on 21-05-2014 by the PIO. The appellant sought following information in his RTI application;

Details about feeder cadre posts for the posts of Additional Secretaries in terms of existing and approved Recruitment Rules of the Academy, i.e., Service Recruitment Rules 2006 notified under Order NO. 22 of 2007 dated: 07-04-2007.

The information is required in the following format;

Name of the Officer,
Designation of the Officer with mention of Cadre to which the Officer belongs;
Category and Class of the Officer,

The Information is required only about the Officers who are in the feeding category under approval rules. No. other information is required.

The PIO passed an order on 07-07-2014, which otherwise was to be passed by or before 20-06-2014. As information has been provided late by a few days, PIO is required to explain what were the reasons for not passing order within 30 days as prescribed under the Act, so that Commission could decide whether any action under Section 17 of the Act is needed to be initiated or not. Not being satisfied with the order of PIO, appellant preferred first appeal before First Appellate Authority, J&K Academy of Art, Culture and Languages on 01-08-2014 which was disposed of by the FAA on 19-08-2014, wherein PIO's order was upheld. Again being aggrieved of the order of FAA, appellant filed 2nd appeal in the Commission on 29-08-2014 stating therein that PIO "knowingly and intentionally concealed the facts and conveyed that newly created non cadre posts of Chief Editor Urdu and Chief Editor Gojri created in 2009 are in the feeding category / cadre of Additional Secretary posts, which is totally incorrect, false and misleading as these posts do not at all figure in the feeding category/cadre of Additional Secretary posts as repeatedly accepted by Academy itself from time to time." There are some other arguments raised by the appellant in order to justify his plea that information so provided to him was false, incorrect and misleading. The PIO in his detailed counter has strongly supported his earlier order. It is stated that the information so provided was on the basis of record available at the time of filing of RTI application and there has not been any deliberate attempt by him to give false, incorrect or misleading information.

The Commission has heard parties from time to time and gone through the relevant provisions of the Act. The 2nd appeal filed by the appellant is to be dealt in accordance with provisions of Section 16 of the J&K RTI Act, 2009. It will be relevant to reproduce relevant provisions of law to explain the relevant provisions of law and the scope and procedure of Section 16 of the J&K RTI Act, 2009. The 2nd appeal before the Commission is provided under Sub Section 4 of Section 16 which reads as under;

" A Second appeal against the decision under Sub-section (1) shall lie within ninety days from the date of which the decision should have been made or was actually received with the State Information Commission:

Provided that the State Information Commission may admit the appeal after the expiry of the period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

It would be relevant to appreciate the jurisdiction of Section 16(4) and what issues the appellant raised in Section 16(4) and whether appellant's grounds of appeal are in accordance with said jurisdiction. The answer to this has been provided by the statute under Sub-section 6 of Section 16 which reads as under;

"In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Public Information officer who denied the request."

It is quite clear that in this section, statute has envisaged only a particular single situation for filing 2nd appeal and that is denial of information to the information seeker. Here in this case, both PIO and appellant have confirmed that there was not such denial. PIO has passed an order though late for which Commission has provided reasonable opportunity to PIO to explain what were the reasons for responding late to the RTI application. With regard to appellant's assertion that the information so provided was "false, incorrect and misleading", PIO's has submitted equally weighty arguments that whatever information was given is based on record available on the date of filing of RTI application. The issue of making enquiry whether information so provided is "false, incorrect or misleading" falls within the purview of Section 15 of the J&K RTI Act, 2009 wherein under Sub-Clause (e) of Clause 1, law has provided for imposition of penalty on the complaint of information seeker who believes that he or she has been given "incomplete, misleading or false" information under the Act; and for that one has to resort to the Section 15 of the Act and not Section 16. In absence of the appellant before the Commission to rebut detailed written reply submitted by the PIO that there was no deliberate attempt to provide false, incorrect or misleading information to the information seeker, it is not possible for the Commission to arrive at a definitive finding. It would be in accordance with the law if the appellant files

complaint under Section 15, which he is otherwise entitled on the plea that the information so provided is false, incorrect or misleading.

The Commission is of the opinion that as there is nothing in Section 16 with regard to this provision of law, Commission hence would not give its finding under Section 16 on the allegations of the appellant. Yes, once the complaint is filed under Section 15 of the Act, the proceedings will be initiated and appellant will be at liberty to prove before the Commission that information so provided was false, incorrect or misleading. Similarly, PIO will have full opportunity to defend his position by stating that the information so provided was complete and correct on the basis of record available to him on the date of filing RTI application.

The 2nd Appeal is accordingly disposed of.

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

Copy to the:-

1. First Appellate Authority, J&K, Academy of Art, Culture and Languages, Jammu.
2. Public Information Officer, J&K, Academy of Art, Culture and Languages, Jammu.
3. Syed Shakeel-ur-Rehman C/o H.No. 18/1, Hill View Colony, Rawalpura, Wanbal, Srinagar (Appellant).
4. Pvt. Secretary to HCIC.
5. Pvt. Secretary to HSICJ/HSICK for perusal of Hon'ble Information Commissioners.
6. Guard File.

(Khalid Abdullah)
Deputy Registrar,
J&K State Information Commission.