



J&K State Information Commission  
Old Assembly Complex, Srinagar : 0194-2484267  
Wazarat Road, Near DC office , Jammu: 0191-2520937.

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

\*\*\*\*\*

File No: SIC/CO/SA/204/2014  
Decision No: SIC/CO/SA/204/2014/722

Title:- Prof. Abdul Gani Bhat V/s PIO J&K Public Service Commission

Jammu  
31.12.2014

This is a second appeal filed by Prof. Abdul Gani Bhat, a resident of the State before this Commission on 13.10.2014. The Commission had informed the appellant regarding requirement of his presence before the Commission. However, he did not attend. Under Secretary-cum- PIO, PSC Shri Rais Ahmed attended and defended his order. The FAA has sent detailed written submissions. The Commission, after going through the records has found that following facts emerge from the second appeal:

That the appellant filed an RTI application before the PIO, PSC on 22.7.2014 seeking information on number of points. The PIO passed an order on 22.8.2014. Appellant has admitted of having received such order. Not being satisfied with the order, the appellant filed first appeal before the FAA on 25.8.2014 which was to be adjudicated within a maximum period of 45 days. Before the Commission, the appellant has raised the issue that FAA has not disposed of the appeal and the information sent by the PIO was "faulty, defective and illusive". The appellant has,

..2..

therefore, sought the directions from the Commission for providing information to the appellant and for providing compensation as provided under Section 16 of the Act and initiating penalty proceedings against the appropriate authority.

The Commission has heard the PIO who stated that order was passed on 22.8.2014 and provided the information to the appellant on 22.8.2014. First point of information was to know the criteria for fixing application fees for appointment to public posts. The PIO referred to J&K Public Service Commission Business and Procedure Rules, 1980 in this regard as amended from time to time. He has also given the account of application fees. Therefore, the information given by referring to the business rules of the Commission is explicitly clear. Such rules are printed and published and are also available on the official website of the PSC. Hence, this information is already in public domain. Therefore, there is no further need for the PIO to repeat the same. Information being specific, the Commission has not found any 'defect' in the information as alleged by the appellant. Regarding point No 2 the PIO has given the Annexure "D" to the appellant. Nothing has been established before the Commission that the information in the said annexures was incomplete, incorrect, misleading or false. Hence, this ground of appeal is dismissed. The information at point No 3 regarding payment of DA/TA to candidates called for interview has also been given. However, the part of information is with regard to a query of the appellant like (if not and why not). The questions in the shape of "if not" and "why not" do not fall under the definition of information given in Section 2(d) of the J&K State RTI Act, 2009. The Commission would further like to state that no opinion of any PIO can be sought by invoking RTI application for said information which is not part of record. No posers and questions can be put to the PIO and other public authorities whose replies have to be created at the time of passing the order

..3..

which again is not part of record at the time of filing of RTI application. The information seeker who is using the RTI Act as a resident of the State and who is interested in bringing transparency and accountability in the system is advised to refresh his knowledge and study the transparency law i.e J&K State RTI Act, 2009 by referring to the definition of information in Section 2(d) of the J&K State RTI Act, 2009 which is akin to the definition of information as given in the Central RTI Act, 2005 which has now been elaborated and developed by Hon'ble Supreme Court and various High Court decisions. The appellant may go through such decisions to understand the legislative intent and purpose of right to information.

The information on point No 4 as asked by the information seeker is the "rationale behind shifting the office from Jammu to Srinagar and vice versa after every five and half months or so". This information has also been given to the information seeker. The information seeker is informed that RTI Act gives a limited right of information to the appellant to obtain information which is on record. There is nothing in the Act which empowers the information seekers to challenge the rationale or justification of any government order or decision. The PIO has been liberal so much so that he gave him certain 'answers' which otherwise were not sought by the appellant in his RTI application. The second set of information is enumerated from point No 1 to point 11. Point No. 1 deals with providing number and names with full bio-date of candidates interviewed for the post of Lecturer Paediatrics in open merit for Government Medical College, Srinagar on 4<sup>th</sup> March 2008. PIO has sent Annexure "A" to the appellant which shows full names with addresses. In all 35 candidates were interviewed. The appellant has nowhere substantiated before this Commission how he treats such information as "faulty,

defective and illusive". The definition of the term data given in Information Technology Act reads as under:

**"data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, any may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer".**

The appellant is reminded that under law it is the appellant who has to substantiate his grounds of appeal before the appellate authorities by adducing evidence and rebuttal of facts. Simply by dismissing information as faulty, defective and illusive it cannot be said that the appellant has discharged his onus. However, inspite of his absence before the Commission, the Commission has made its efforts to see whether the information given by the PIO on point No 1 of second set of information was "faulty, defective and illusive". Nothing has come to the Commission's notice which could substantiate the appellant's assertions. The term used by him at point No 2 is "Bio Data". Under the RTI Act, this term has not been defined. As such, therefore, recourse has to be taken to relevant provisions of section 2(0) as used in Central Information Technology Act and the Commission is of the considered opinion that information given by the PIO does fall under this definition. The Commission could have come to the rescue of the appellant only if he proved that the information so provided to him was "incorrect, misleading or incomplete" the terms used in the J&K State RTI Act, 2009 (see Section 15 rws. 17). This ground of appeal is also dismissed.

With regard to point 2,3,4 and 5, the PIO has dismissed the appellant's request for information by holding that this constitutes "third party information which cannot be given without the consent of the candidates who have applied for the posts". The Commission holds that the PIO has not followed the procedure laid down in section 11 of the State RTI Act, 2009 which deals with issue of third party information. The

..5..

PIO cannot deny the information unilaterally deciding that it was third party information without fulfilling the mandate given to him in section 11. Section 11 has laid down a detailed procedure for deciding such issues like providing an opportunity to the third party for obtaining objections, if any. After obtaining the objections, it is the PIO who is to take a decision to the effect whether disclosure of such third party information would be serving larger public interest. The law has also laid down that "PIO has to disclose such information if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party". The Commission, therefore, directs the PIO to follow the procedure as laid down in section 11 of the State RTI Act, 2009 and decide this issue immediately after receiving objections and serve the order on the appellant. Point No 6 to 11 relates to names of the members and experts in the selection committee who conducted the interview, method adopted for conducting the interview, criteria adopted for awarding marks vis-à-vis marks etc; marks awarded to the candidates individually by each member and copy of the final merit list prepared by the Commission. The information given by the PIO in Annexure "A" in the considered opinion of the Commission does somehow fulfill the requirements of this definition. It was the appellant who should have substantiated his claim before the Commission that the data is not in accordance with the definition. Regarding point No 6, the PIO has informed the appellant that this information is confidential. As already stated above, the appellant has treated his appeal so lightly that he did not bother to substantiate his ground of appeal that the information so given is "faulty, defective and illusive". The issue of disclosing the names of experts who were on selection committee has been decided by the Commission in some earlier decision and the Commission has considered such information to fall within Section 8(i)(f) which reads as under:-

..6..

“Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes”.

The disclosure of name of experts on the interview panel will definitely compromise with their physical safety. The Commission, therefore, upholds the decision of the PIO on this point. The information on point No: 7 and 8 has been given by the PIO by referring to Rule 51 of J&K Public Service Commission Business and Procedure Rules, 1980. PIO has provided the copy of these rules to the appellant also. However, inadvertently he has referred to Annexure “D” in his order. The Commission has gone through this annexure and found that this annexure contains the criteria which are meant for conducting interview and awarding marks etc. This rule is thus already in public domain and the appellant could have accessed it even if it had not been provided by the PIO, though he has already provided it. Hence the grounds of appeal raised at point No 7 and 8 are dismissed. The information sought at Point No 9 and 10 has also been provided in Annexure B and C. The information at point No 9 which is with regard to marks awarded to the candidates individually by each member and copy of the panel list prepared for the Commission has not been given to the information seeker. PIO is directed to pass an order on this point of information and provide the same to the information seeker if information does not fall under section 8 of the State RTI Act. In point No 10 of information, the appellant wanted names of persons who were finally recommended by the PSC. This information has also been provided to the information seeker vide annexure “B”. The PIO verbally informed the Commission that appointment orders of selected persons are issued by the administrative departments. PIO is directed to invoke section 6 of the State RTI Act, 2009 on this point of information with intimation to the appellant. The appellant has asked for inspection of record. PIO is directed to ask the appellant to identify such record and allow the same.

The Appellant in his very first ground of appeal has made a prayer for payment of Rupees one lakh by the public authority to him for denying him his “constitutional right to information by not providing the information sought for and for the mental agony, pain and torture and for loss of time, energy and his hard earned money”. The J&K State RTI Act, 2009 in section 16(9)(b) has provided for such grounds of appeal by laying down that the Commission in its decision has the power to require the public authority to compensate the complainant (the complainant herein has been interchangeably used for appellant) for any “loss or other detriment suffered”. Though the appellant has not framed the grounds of appeal in accordance with Section 16(9) the Commission will adjudicate his ground of appeal in some detail with the purpose to elucidate the provisions of law so that the users of this Act are better educated about the legislative intent and circumstances under which the Commission can order for such compensation to be given by the public authorities to an information seeker who has been wronged and to whom “loss or other detriment” has been caused. Now, it would be relevant to mention how the superior judicial authorities have defined the terms “Loss and Detriment”. Encyclopaedic Law Lexicon by Justice C.K. Thakker has defined the word “Loss” by writing that this word has not a precise hard and fast meaning being generic and comprehensive term covering different situations. “Loss” occurs when a thing is destroyed. But it also is caused when the owner has been made to part with it although the thing remains intact. In the sense “Loss” means and implies a deprivation----- . It is also sometimes synonymous with damage resulting either in consequence of destruction, deprivation or even in depreciation. When anybody dispossessed of a thing, either if it can never be recovered or when it is withheld from him, he is deemed to suffer loss. Hon’ble Punjab High Court decision in the case of Chuni Lal V/s Hartford Fire

Insurance Company; AIR 1958, Punj 441 at 444. "Loss" has been further described to include any loss caused to a shipper or a consignee by reason of the inability of the ship or the carrier to deliver part or whole of the goods, to whatever reason such failure may be due. This has been held by Hon'ble Supreme Court in East and West Steamship Co V/s S.K Ramalingam AIR 1960 SC 1058 at 1065 (1960) 2 SCA 544. It has been further stated that the word "Loss" is only to include all cases where the goods are not forthcoming and therefore, includes a case of non delivery. But if the court on the evidence comes to the conclusion that there is any willful withholding of the goods by the company, then certainly it cannot be said to have been losst by the company ( Ardhanathi and Co V/s Union of India AIR 1956- Hon'ble Madras High Court 483 at 486: ILR 1957 Mad 195: 1956(2) MLJ 669: (1956) MLW 375 : 1956 MWN 435. It has further been stated that "Loss" or damage is a wider term used by the Legislature to include any loss or damage caused to shipper or consignee for which he makes the grievance and in respect of which he claims compensation. The courts have at length discussed the financial implications of the "Loss". As term "Loss" used in context and income tax act has to be understood and read as the amount arrived. For the purpose of carrier of goods Act 1925, the courts have held that the word "Loss" is intent to mean and include every kind of loss to the owner of the goods where it is the whole of the consignment that has not been delivered or part of the consignment which is not delivered and where such non delivery of the whole or part is due to the goods having been totally lost. Similarly, the word "Loss" means something which is prejudicial to others. In Moti Lal Padampat Sugar Mills Company Ltd V/s State of Uttar Pradesh and others, (1979) 2 SCC 409: AIR 1979 SC 621 it has been held that detriment is not same prejudice suffered by the promise by acting on the promise, but the prejudice, which would cause to the promise, if the promise

would allow to go back on the promises. Thus this discussion makes it quite clear that onus for proving that loss was caused to the appellant or detriment was suffered by him was on him. There is a heavy burden of proof on the appellant to prove that all the situations as discussed above had happened to him and this evidence is not only by verbal outburst but by non rebuttal evidence. When the appellant was provided an opportunity to attend this Commission and lead evidence, he flatly refused to do so. Rather he dictated the Commission that he should be given to and fro air ticket and five star facilities of boarding and lodging . Thus by making the huge demands on the state exchequer, he wants the Commission to award him a compensation of Rupees one lakh without proving how he suffered loss and detriment. From the foregoing paras, it can be seen that the PIO has passed an order on time and has provided him information on number of points. The appellant must bear in mind that as a litigant, onus is on him to prove beyond any shadow of doubt that loss was caused to him and he suffered. The loss in monetary terms has to be quantified and it cannot be left to the dictates, whims and caprices of an appellant. The very wording of the provisions of section 16(9) shows that it is the appellant who has to prove with sufficient evidence before the Commission that he suffered any loss or detriment by not providing the information. The appellant who is a literate person is expected to behave like a responsible citizen and be conscious that state exchequer is not meant to be thrown away by any public authority be it an executive authority or a judicial authority to satisfy pre conceived ideas of a citizen. As the claim for compensation has not been proved before the Commission, therefore, the grounds of appeal is dismissed. The appellant has also expressed his annoyance and anger against the Commission and its functionaries for issuing a notice of presence for leading evidence

before the Commission. It would be relevant to reproduce following from the reply of the appellant to the notice issued by the Registry of this Commission:-

“The appellant belongs to Srinagar and the appeal was filed in the Srinagar office. How come he is being asked to appear before the Commission at Jammu, perhaps because the public servants (Excel) of the Commission and the Respondents public servants have moved to Jammu to enjoy the warm climate there. The appeal should have been heard by the Srinagar wing where it was filed. Further you have not clarified as to what mode I should adopt in reaching your Jammu office and who is going to foot the bill.

The language of the notice is not parliamentary and democratic. You are a servant of the public and cannot issue direction to the master, the citizen sovereign simply because he has filed appeal before the Commission to make it functional and make your earnings legitimate. Since our bureaucracy is the legacy of the slavery era and during slavery the bureaucracy was representing the king and all the souls were slaves to the king. So any letter to any subject was of the nature of order or direction. Request to the subject-slaves was a taboo. Though the State has thrown off the yoke of slavery but the people seem to be still the slaves of the bureaucracy and the institutions, who are continue issuing directions and orders to the people.

The proper way of writing to me was: “ he may please produce copy of the proof of fee deposited along with his RTI application”. Instead of the slavery legacy practice of writing: He is directed to produce copy of proof of fee deposited along with his RTI application. Where from you have got the power to direct me so? Perhaps the bureaucracy is reluctant to get itself acclimatized, dyed and moulded in the new emancipated and democratic era of civilised and sophisticated culture, and is reluctant to leave the old harsh and hard habits of slavery era and is unwilling to adopt the new democratic culture. “Habits die hard” is truly applicable to the State Bureaucracy/institutions. Please note this in your correspondence with the appellants and the public in future-----

If the hearing is insisted to be held at Jammu, the Commission should arrange for my to and fro air travel to Jammu and boarding and lodging expenses for my attending the hearing at that far off place to which the ‘Kindly Darbaries’ have moved to enjoy warm and salubrious climate there. Further before calling me for a hearing in the appeal, the Commission should ensure that the reply of the respondents reaches me well before the hearing date so that the hearing becomes fruitful and meaningful and decisive in one go and not an

occasion for just, sitting, adjourning and leaving. (Nishtan, guftan, burkhastan). If the hearing is held the commission should ascertain whether the respondents have dispatched their reply to me and when. If not they may not be left scot free. They may be penalized by saddling costs on them.”

The appellant seems to have been agitated over the word “direction” in hearing dated: 18.11.2014 and has stated that “language of the notice was not parliamentary and democratic. The Registrar being “government servant cannot issue directions to the masters, the citizen sovereign simply because he has filed appeal before the Commission”. The appellant has rather taken in his own hands to lay down how the Registrar and the Commission should work and what phraseology be used by the Commission. The appellant has missed the point that he has been provided a legal right by the Legislature of the State to obtain information held and possessed by the public authorities under the Act. For enforcing this right, the legislature has ensured that there will be a Commission which will function autonomously without being subjected to directions by any other authority under the Act. As the Commission is an autonomous statutory body, it has to ensure that all the appeals and complaints filed before it and the procedure adopted is regulated by the principles of adjudication and natural justice. One of the important ingredients of a statutory body like Information Commission which is conferred with the powers of compelling the public authorities to provide the information is that the Commission will function within the four walls of statutory requirements. One of the salient features of judicial and quasi judicial bodies is that they have the powers to enforce the attendance of public authorities and also the parties seeking a decision as per law. The individual or a person or an appellant shall ensure that he produces all the evidence, documents, annexures etc which the Commission feels are necessary to be produced for adjudicating any point of law. Once a judicial or quasi judicial

autonomous body is having such powers, it is analogues and corollary to this power that it must be vested with the power of direction and command, not only to the defendant but also to the respondent. It would be relevant and interesting and also adding to the legal guidance of the appellant to know how the word "direction" has been defined. The Oxford English Dictionary has defined the word "Direction" as under:-

So far as interpretation of that word is concerned would be covered by item No 4(b) in Oxford English Dictionary Volume III page 389 which says "Direct means to inform, instruct or guide a person as to the way, to show (any one) the way and the real meaning is that "Direct" means to give instructions. To order or appoint ( a person) to do a thing (not to be done-----) to give directions; to order. It has also been held that a direction is a command which the authority or the court is empowered to give while deciding the case before it (see Rajender Nath V/s CIT 1979) 4SCC 282 (see also Bashir-ud-Din Ashraf v/s Bihar Subai Suni Majlis Awqaf, AIR 1965 SC1206). The Commission is a quasi judicial authority and while hearing an appeal or complaint, it is competent to direct production of records or production of any person for determining an issue and bringing evidence on record". The appellant is, therefore, advised that whenever he pursues legal right, he should be ready to Co-operate with a legally constituted body to ensure that his legal right is protected. As we all live in a civilized society, everyone has to ensure that he or she conforms to the requirements of rule of law. The appellant who has been pursuing RTI Act since its introduction in the J&K has remained so far oblivious to various provisions of RTI Act. Had he taken pains to fully understand various provisions of Act, he would have found that in the Act. The Commission is empowered to "enforce attendance of

persons and compel them to give oral or written evidence and to produce the documents or things”.

The appellant is a litigant before this Commission with the purpose of getting his right to information enforced through a direction by this Commission. Unfortunately, the appellant in his uncontrolled temperament has not appreciated that if the Commission is not empowered and authorized with the authority of direction and command how can it ensure to enforce appellant’s right to information. If he thinks that Commission can issue directions only to the PIO(s) and FAA(s) and other public authorities and cannot issue directions to a litigant, appellant or a complainant before this Commission then he is better advised to take the necessary lessons in understanding the law and procedures established and developed for the functioning and working of judicial and quasi judicial institutions. The appellant knows that the Commission is empowered to exercise all such powers and do all such acts and things which may be exercised by it autonomously without being subjected to directions by any other authority under the Act”. In order to exercise its power to decide the appeal and investigate into the complaints, obviously being a quasi judicial authority, it has all the authority and powers to enforce attendance and appearance of the complainants and appellants if it considers necessary to investigate the complaints and confront the public authorities with the evidence, oral or documentary which the appellants and complainants have to produce.

Before concluding this order, the Commission would like to advice the appellant to show due regard and respect to the legally and constitutionally constituted institutions. He is an enthusiastic citizen interested in transparency and accountability in the society. The Commission expects him to behave as a decent and conscious citizen towards his duties and not express his anger and outburst which

may tantamount to showing disregard and disrespect to these institutions. The Commission would remind the appellant that the Madras State Information Commission has passed certain orders disqualifying the recalcitrant, scornful and unruly persons from using the RTI Act and the said orders have been upheld by the Hon'ble Madras High Court in Writ Petition Nos: 3376 and 3777 and 3778 of 2013 titled P. Jayasankar v/s Chief Secretary of Tamil Nadu. The Commission hopes that after enlightening the appellant about the statutory powers, functions and duties of the Commission coupled with the responsibilities and requirements of law to be fulfilled by an appellant, he would in future adopt the legal course and not the rhetoric or outburst like an angry young man. The Commission would also remind the appellant that in case the Commission comes to a conclusion that time of the Commission and Public authorities is being wasted by not pursuing his litigation in connection with enforcement of his right, the Commission may order for imposing costs on him. The appeal is accordingly disposed of.

The appellant has raised one more ground of appeal wherein he wants Commission to impose penalty on respondents and has also prayed for recommending disciplinary proceedings against the Respondent No 1. The Commission has considered this ground of appeal and has found that the appellant's ground of appeal is infructuous as under Section 16, the appeal before the Commission is provided against decision under section 16(1). Hence the grounds of appeal raised is dismissed. Ground of appeal for recommending disciplinary proceedings under section 17 is also dismissed as being not maintainable because in section 16, there is no provision for such ground of appeal. After careful consideration of provisions of section 16, the Commission is of the considered opinion that these grounds of appeal are not maintainable as they come beyond the

scope of right of appeal conferred on the appellant under section 16. However, without prejudice to this finding of the Commission, the Commission would like to state that the PIO has passed order on time and has fulfilled the requirements of law. The penalty has to be initiated and concluded only “if in the opinion of the Commission, the PIO has without any reasonable cause refused to receive an application for information or has not furnished information within the time specified under sub section (1) of section 7 of J&K State RTI Act, 2009 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed the information which was the subject of the request or obstructed in any manner in furnishing the information”. The Commission is legally bound to establish all these ingredients of law. Thus, it can be seen that the concept of evidence to be produced by the appellant/complainant is inbuilt in these provisions of the Act. The case under consideration is that of an appellant who wants to lead this evidence only when he is given to and fro air ticket and five star arrangements are made for his boarding and lodging by the Commission. These outbursts don't need any further adjudication.

In view of the detailed discussions made in this order and the provisions of section 16 r/w section 17 of the J&K State RTI Act, 2009 the appeal is accordingly dismissed.

Sd/-

( G.R. Sufi )

Chief Information Commissioner

Copy to:-

1. First Appellate Authority, J&K Public Service Commission, Jammu
2. Public Information Officer, J&K Public Service Commission, Jammu
3. Prof. Abdul Gani Bhat, H.No: 08, Pamposh Lane, Natipora, Srinagar.
4. Private Secretary to Chief Information Commissioner
5. Guard file.

( G.Q. Bhat )

Registrar

State Information Commission

