



J&K State Information Commission
Wazarat Road, Near D.C. Office, Jammu /
Old Assembly Complex, Srinagar.

File No. SIC/CO/Comp/126/2015
Decision No. SIC/ CO/Comp/126/2015/833

Appellant : Mohammad Hussain Bhat
Respondent : United Nations Military Observer Group India/Pakistan,
(UNMOGIP).

Date of Institution : 06-08-2015

Date of Decision: 11-12-2015/

Chief Information Commissioner: G.R.Sufi

Referred Sections: Section 3, 15 of the J&K RTI Act, 2009.

Result: Complaint disposed of.

1. Mr. Mohammad Hussain Bhat, complainant attended the Commission along with his intervener Dr. Raja Muzaffar Bhat. No one attended from UN-Military Observer Group of India/Pakistan in J&K.

FACTS:

2. Mr. Mohammad Hussain Bhat, a resident of the State while exercising his right conferred on him under Section 15 of the J&K RTI Act, 2009, filed a complaint in this Commission on 06-08-2015, stating therein that he had filed an RTI application in the office of Chief Human Resources Officer/Administrative Head/PIO, O/o UN-Military Observer Group in India

& Pakistan (UNMOGIP), Shankar Villa, Gupkar Road, Sonawar, Srinagar, India/Islamabad, Pakistan, seeking following information;

- a) Whether it is a fact that UNMOGIP advertised the vacancy position of Administrative Assistant (GL-7) for Srinagar duty station twice during the year 2014-15.
- b) If reply of (a) is affirmative, what was the minimum requirements as far as qualification and experience is concerned. Provide copies of advertisement notices with full job details.
- c) How many candidates were shortlisted for written assessment and competency based interview. Provide list of candidates invited for interview along with their qualification and experience details.
- d) Whether it is a fact that Ms. Sehar Riyaz D/o Syed Riyaz R/o Hawal, Srinagar has been appointed against the said position.
- e) If reply of (d) is affirmative, provide the copy of appointment letter.
- f) Whether the final selection of Ms. Sehar Riyaz was published in local print media along with weightage given to various qualifications and experience.
- g) If reply of (f) is negative, reasons thereof.
- h) Whether the status of the Runner0Ups (waiting list) published in the local print media.
- i) If reply of (h) is negative, reasons thereof.

3. The Chief of Mission Support, UNMOGIP responded to the request of the complainant vide his email sent to the complainant on 30-07-2015. The concerned officer in UNMOGIP informed the complainant that the internal procedure of the agency for recruitment cannot be shared with the information seeker, because same is against the working procedure of the UN works. Complainant was further informed that selection of the said post has been made in accordance with rules and incase applicant is

having any grievances regarding the same, he may approach appropriate forum. Not being satisfied with the response of the PIO (UNMOGIP), complainant filed a complaint in this Commission stating therein that concerned authority/PIO has categorically refused to provide any information as sought by him and instead has been advised to approach any other authority for redressal of his grievances. The complainant further submitted that in accordance with United Nations Staff Rules and Staff Regulations 1.2(b), the staff members of UNMOGIP must comply with local laws and honour their private legal obligations, including, but not limited to, the obligation to honour orders of competent courts and violation of local laws may, therefore, result in the imposition of a disciplinary action. The complainant referred to Regulation 4.3 of UN Staff Rules which provides that selection of staff members, shall be made without distinction as to race, sex or religion. So far as practicable, selection shall be made on a competitive basis.

DECISION:

The Commission has perused the records and considered the submissions of the complainant and found that only question before the Commission for determination is that whether the UNMOGIP is a public authority or not interms of Section 2(f) of the J&K State RTI Act, 2009. It would be relevant to reproduce relevant provisions of the law, which define a public authority as under;

"Public authority" means any authority or body or institution of self-government established or constituted-

- I. by or under the Constitution of India or the Constitution of Jammu and Kashmir;
- II. by any other law made by Parliament;
- III. by any other law made by the State Legislature;
- IV. by notification issued or order made by the Government, and includes any-
 - A. body owned, controlled or substantially financed;
 - B. non-Government organization substantially financed, directly or indirectly by funds provided by the Government;

4. During the last hearing, complainant was asked to substantiate under what limb of the J&K State RTI Act, 2009, the UNMOGIP can be declared as a public authority. The complainant vide his letter dated: 04-12-2015 has submitted that to highlight the matter at national and international level he wants closure of the said case in Commission. The Commission has gone through the submissions of the complainant and relevant provisions of the law. The Commission also perused the communication of Ministry of External Affairs, Government of India dated: 15-10-2015, which was received by the Commission on 26-10-2015 after the respondents had made a reference to the said Ministry. Vide this communication, Commission has been informed that the UNMOGIP is a part of the UN Organization, in which India is a member, as such Government of India has taken certain obligations to it under the convention of the Privileges and Immunities of the United Nations, 1949 to which India has been a party since 1948. UN officials are immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. It was further informed that Assistant Secretaries-General enjoys the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law, including immunity from criminal, civil and administrative jurisdiction. A copy of the UN (P&I) Act, 1947 was also annexed with the communication. Commission was

accordingly requested to take into consideration that the officials of UNMOGIP are immune from legal processes under the UN (P&I) Act, 1947.

5. Commission considered the submission of Ministry of External Affairs, Government of India and response of the Chief of Mission Support, UNMOGIP provided to the complainant in consonance with his RTI application. As nothing contrary has been produced before the Commission by the complainant which would have substantiated and proved that the said organization is a public authority and comes under the purview of J&K RTI Act, 2009, therefore, Commission holds that the UNMOGIP working in J&K is not a public authority as prescribed under Section 2(f) of the J&K State RTI Act, 2009. The said group is appointed and is working under the administrative control of United Nations Organization. Therefore, no action lies before the Commission against the refusal of the group for providing information to the information seeker. The genesis of various transparency laws introduced and prevalent in number of Asian, African and European countries in recent years can be traced from United Nations General Assembly Resolution 59 adopted in 1946, supplemented by Article 19 of Universal Declaration of Human Right (1948) which states that the fundamental right of freedom of expression “encompasses the freedom to seek, receive and impart information and ideas through any media and regardless of frontiers.” The concept of freedom of information is corollary of freedom of expression in other major international instruments which include International Convention on Civil and Political Rights (1966) and the American Convention on Human Rights (1969). It is upto the information seeker to see whether UNO Secretariat

has devised any such mechanism by which citizens of the world can have access to the information, possessed, obtained and developed by the Secretariat of UNO, under whose administrative control, the various groups, organizations are working under the aegis of UNO and stationed in the different countries of the world like UNESCO, UNICEP, WHO, UNMOGIP, ILO. Then how come, the United Nations Secretariat and its various administrative and executing bodies can deny such information to the citizens of the world, when it has itself passed a resolution urging upon the member states to provide a right to information or freedom of information to their people. Therefore, information seeker may be at liberty to approach the organization directly for getting the information.

6. With these observations, complaint is accordingly dismissed.

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

No. SIC/CO/Comp/126/2015

Dated: -12-2015

Copy to the:-

1. Chief Human Resource Officer, UNMOGIP, Srinagar, J&K.
2. Pvt. Secretary to HCIC.
3. Mr. Mohammad Hussain Bhat R/o Arabal, Shalimar, Srinagar (Complainant).
4. Guard file.

(G.Q. Bhat)
Registrar,
J&K State Information Commission