



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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www.jksic.nic.in

File No. SIC/CO/SA/13/2013

Decision No. SIC/CO/SA/13/2013/434

Title

Shri Kovid Khosla, Advocate

(Appellant)^(Present)

V/S

1. PIO, Department of Law, Justice & Parliamentary Affairs,
Civil Secretariat, Jammu.

2. First Appellate Authority, Department of Law, Justice & Parliamentary Affairs,
Civil Secretariat, Jammu.

(Respondents) ^(Present)

8th April, 2013

Jammu.

A communication was received in this Commission on 23-01-2013 which was acknowledged in the Commission's registry on the same date. In this communication, Shri Kovid Khosla, Advocate, a resident of State and user of RTI Act did not specifically mention, whether by filing this communication, he wanted to file a complaint or an appeal against the order of PIO and the First Appellate Authority. The Commission vide its registry notice dated: 18-02-2013 treated it as a 2nd Appeal and hearing of the case was started accordingly. First Appellate Authority, Mr. Irshad Ahmad, Special Secretary-cum-First Appellate Authority, Law Department and Shri Achal Sethi, Additional Secretary-cum-PIO, Law Department attended the Commission from time to time. Shri Khosla also attended the Commission and both the parties defended their actions. It was during the last hearing that FAA and PIO raised an important issue that Shri Khosla's communication to the Commission should not be treated as 2nd Appeal, similarly it should not be treated as a complaint. In this communication, Shri Khosla in a detailed narration of facts has prayed that Commission may direct an

enquiry under Rule 31 of RTI Rules, 2010 and strict action like imposition of penalty may be taken against the defaulting officers and also awarding compensation for any loss or other detriment suffered. However, there was not any effective grievance mentioned anywhere against the order of FAA, excepting a limited grievance that FAA decided the appeal in a hasty manner without hearing the appellant.

The Commission would like first to consider the point, whether the first appeal was decided in haste or after duly providing an opportunity of being heard to the appellant. The FAA issued a notice to Shri Khosla on 23-08-2012, wherein he was given opportunity to be heard by FAA at any working day between 9:30 AM to 5:00 PM to decide the appeal. It was also brought to his notice that he should provide documentary evidence that the information provided to him by PIO was wrong or false, as the onus for the same was on him. Shri Khosla said that he has received this notice on 31-08-2012. The First Appellate Authority vide his above referred order has mentioned that the appellant was again informed vide letter dated: 03-09-2013 that he should attend the FAA's office on any working day during the time 9:30 AM to 5:00 PM. However, in respect of this communication, appellant made a written submission before the FAA that he could not attend the office of FAA as "he is a practising Advocate." First Appellate Authority relied on this written submission on 07-09-2012 and acknowledges the same. Under the circumstances, the First Appellate Authority faulted of having decided the appeal in haste. Giving an option to appellant to attend the office on any working day is enough proof that First Appellate Authority was serious to hear the appellant in person. The order of FAA also makes it quite that he carefully adjudicated the appeal of Shri Khosla and dealt that the information provided by PIO and considered averments made by Shri Khosla that such information was incomplete or incorrect. The FAA has accordingly concluded that appellant did not establish his averments that information provided to him was false and incorrect. Now, coming to the issue whether the communication made before the Commission by Shri K.Khosla could be treated as complaint, as Shri Khosla alternatively prayed that if his request is not taken as 2nd Appeal, it may be treated as complaint. The PIO, Shri A.Sethi and First Appellate Authority strongly opposed and said that treating the communication as complaint or appeal on the plea that information provided to information seeker is false or incorrect is not proven anywhere. Shri K.Khosla insisted that as he had received the information in respect of his separate RTI application filed before the Chief Engineer, PHE, Jammu and PIO had confirmed of having allowed an Advocate to be Standing Counsel was an evidence to prove that PIO Law Department has given incorrect information. The Learned First Appellate Authority has further made a legal submission that there is no provision in the State RTI Act, which gives an option to any person approaching before the Commission to take the plea that

communication be treated as appeal or a complaint. The Commission noted this argument and after going through the records and documents brought on file, it is established that Shri K.Khosla did not produce evidence to prove that PIO Law Department has provided incorrect/false or incomplete information. He has passed order on 22-03-2012 providing therein list of Advocates engaged as Standing Counsels for various districts of Jammu Province and was also given other relevant information as per RTI applications. The main plea of Shri Khosla consistently has been that a particular Advocate has been made Standing Counsel in PHE Department, Jammu and he was given assignment from Health Department, Reasi District, which was informed to Law Department. However, First Appellate Authority and PIO stated that the appointment to that particular Advocate was superseded by an order dated: 08-01-2010 by the Law Department. This was the information on record of Law Department, which was provided to the information seeker. The information seeker has not been in a position to prove that the continuation of that particular Advocate with Chief Engineer, PHE, Jammu was in known and having express approval of the Law Department. The information seeker insisted that the said Advocate was also working as Standing Counsel in Health Department, Reasi, though no evidence has been produced before the Commission that the Law Department was aware about the fact that Standing Counsel was working for CMO, Reasi also, Commission would like to observe that as the information has come on record and has been observed by officers of Law Department claiming to take necessary action as per the rules. Shri K.Khosla has also made a plea for providing compensation as provided under section 16 not in section 15. Shri Khosla has withdrawn his plea for granting compensation. During the hearing, he has agreed not to press for such claim.

The complaint is accordingly disposed of.

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

Copy to the:

1. Special Secretary/FAA, Department of Law, Justice & Parliamentary Affairs, Civil Secretariat, Jammu.
2. Additional Secretary/PIO, Department of Law, Justice & Parliamentary Affairs, Civil Secretariat, Jammu.
3. Shri Kovid Khosla, Advocate, Opposite Eicher Showroom, Main Road, Sidhra Jammu.

(Mohammad Syed Shah)
Registrar
J&K State Information Commission