



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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File No: SIC/CO/SA/26/2013

Decision No: SIC/CO/SA/26/2013/440

Title:- Anuradha Gandral
V/s
FAA/PIO PSC

Jammu
25.04.2013

This is the second appeal filed by Ms. Anuradha Gandral a resident of the State which was received in the Commission's office on 20.3.2013. The notice for appearance before the Commission was issued by the Registry of the Commission to the First Appellate Authority and the PIO and the Appellant. Both the appellant and PIO attended this Commission. PIO Shri Dilshad Ahmed Baba is deposing before the Commission that the First Appellate Authority was busy in conduct of KCS Judicial interviews and has requested that Mr. Baba be allowed to represent him also.

The brief grounds of the appeal in this case are as under:-

That the appellant Ms. Anuradha Gandral filed an RTI application before PIO Public Service Commission on 26.12.2012 seeking the following information:-

“ Kindly provide the merit position of the candidates who participated in the selection process for the posts of Dental Surgeons in the Health Department advertised by the Jammu and Kashmir Public Service Commission vide advertisement notice No. 02-PSC of 2008 dated: 18.02.2008 and were selected by the Commission including the break-up of the marks awarded to each for academic qualification, experience and viva voce”.

The PIO was required to pass order under Section 7 of the State RTI Act on or before 30 days from the receipt of application. The PIO passed an order on 10.1.2013 stating therein that the matter was sub-judice before Hon'ble High Court of Jammu and Kashmir and entire record of instant selection was in a sealed cover and as such information could not be provided. The appellant being aggrieved with this

order filed first appeal before First Appellate Authority on 11.1.2013 who decided the appeal on 28.2.2013. Vide its order the First Appellate Authority had directed that "letters be issued to 32 candidates to give their consent and also advice of the standing council be obtained. Once it was done, the DR section will provide the information of all the 32 candidates to the appellant". Since then two months have lapsed and no information has been given so far to the appellant in consequence of First Appellate Authority's directions. In the second appeal filed by the appellant has contended that Public Service Commission has arbitrarily refused the information and has also requested for taking stringent action against the PIO for denying the information. It is further submitted that under J&K State RTI Act there is no provision which warrants taking prior consent of the persons to which information sought relates before providing the same except Section 11 which operates only in such cases where information or record intended to be disclosed by the PIO relates to or has been supplied by the third party and has been treated as confidential by third party. The said section cannot be pressed into service for withholding the information relating to selection process wherein appellant has also participated. With regard to sealed cover of the record the appellant has submitted as under:-

a) The J&K Public Service Commission in making recruitment to civil services and for civil posts performs a constitutional duty. Further, neither the merit obtained by the elected candidates in a selection process for any particular post in the State Services nor the information submitted by the candidates for seeking consideration in a selection process for any particular post advertised by the Commission can by any stretch of imagination be said to be confidential information. Also, none of the candidates named by the appellant in her application dated: 26.12.2012 has treated the information submitted by them in their respective application forms as confidential information. In these circumstances the exercise undertaken by the Respondent No. 1 to take prior consent of the 32 candidates named in the application before providing their merit position and experience certificates is totally illegal and arbitrary. The respondents have not only misunderstood the provisions of the above said Act but have also made every effort to somehow withhold the information from the appellant for reasons best known to the respondents.

b) That once the record of the selection was returned by the Hon'ble High Court after dismissal of the writ petition filed by the appellant, there was no legal impediment in providing the information to the appellant. Even otherwise, as duly urged by the appellant in the 1st appeal a copy of the record is always maintained in the Public Service Commission Office and even attested copies of the entire record are maintained in the PSC office to meet contingencies of such nature. However, a totally frivolous and arbitrary reason has been given by the respondent No.1 for withholding information sought by the appellant to the effect that advice of the Standing counsel is to be obtained for opening the sealed

cover. The Standing Counsel of the J&K Public Service Commission is not an authority under the J&K Right to Information Act, 2009 nor do any of the provisions empower the Commission to refuse or withhold information on the ground of legal opinion. Even if it is assumed that such an exercise could have been undertaken by the respondents yet the same was to be completed within the period prescribed under the Act for disposal of applications and appeals.

c) That the right to obtain information is not merely a legal right as provided under the provisions of the above said act but is also a constitutional right, being an aspect of the right to freedom of speech and expression, which includes right to receive and collect information. Further, one of the cherished objectives behind the promulgation of the above said Act and providing the right to citizens to obtain information is to promote transparency and accountability in the working of every public authority. The respondents on the contrary have adopted an approach which defeats the above said objectives are also the right to information secured to the appellant under the above said Act.

d) That although the appellant is not obliged under law to disclose the reasons for obtaining the information sought yet it is submitted that the appellant has strong reasons to believe that she has been wrongly ignored in the selection process and requires the information sought for asserting her right to selection and appointment and to work out remedy available to her under law.

The Commission has considered the orders passed by the First Appellate Authority and the PIO. It is strange to find that the First Appellate Authority has virtually conceded the right of appellant to receive the information, however, he has confused the issue by linking it to Section 11 of the RTI Act. Before going into the details of provisions of Section 11 of the Act, the Commission would like to observe that there is a set procedure laid down in Section 11 to forward any RTI application within 10 days to a third party and then to seek consent within 10 days and if there is no consent or if there is consent then the PIO who has to make ultimate decision regarding the disclosure of the information. The third party has not been given any absolute veto for withholding any information which otherwise would be in public interest. Even in the teeth of strong objection by third party, the information has to be disclosed if larger public interest justifies the information. This is the essence of the RTI Act. In this case no such procedure has been adopted notwithstanding the fact whether Section 11 is applicable or not. The Commission agrees with the contentions of the information seeker that no third party information was to be obtained. All the information was sought to be obtained is the information created by the Commission itself. The information seeker wanted merit position of certain candidates. The merit position is decided and deliberated upon by the Commission. This information is not provided by the third party at all. Hence the PIO should have disclosed this information and if PIO failed to discharge his statutory duties cast upon him under law, the First Appellate Authority was duly duty

bound by a statute i.e State RTI Act to direct the PIO to disclose the information which unfortunately has not been done. The First Appellate Authority and PIO represent a constitutional body i.e State Public Service Commission. It would in the interest in the constitutional body to generate confidence and trust of the people in the system.

Coming to the issue of being sub-judice, the First Appellate Authority and PIO have also failed in appreciating the essence of the State RTI Act in this regard. Section 8(1)(b) has provided that no **information should be given which is extremely forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court.** Nothing has been brought before this Commission to show that the disclosure of the information sought by the appellant comes in this category. As per the contentions of the appellant whatever dispute was there with regard to this selection has since been settled. The PIO in his rejoinder to the Commission's notice dated: 23.4.2103 has nowhere mentioned that there was a specific and expressed direction with regard to non disclosure of information which the appellant wants. The Commission, therefore, holds that Section 8(1)(b) is not applicable to the facts of the case just like non-applicability of Section 11. With regard to the decision of keeping record in sealed cover, it is submitted by the PIO before this Commission that it was the Public Service Commission's decision to keep the records under a sealed cover and not on any instant directions by any court of law. Under the circumstances the appeal of the appellant is allowed and the PIO is directed to disclose the information on the same lines as sought by the appellant. The Commission wanted the disclosure of the information within 15 days but as the appellant insisted for prior disclosure of information as enough time has already elapsed, however, considering the submissions of the PIO that the offices are being closed on account of Darbar Move, it has been considered reasonable to allow time of 25 days to PIO to disclose the information from the date of receipt of order. The PIO is further directed to intimate the compliance with the directions of the Commission otherwise Commission would be constrained to take action as provided under State RTI Act and relevant provisions of the law and Ranbir Penal Code. The appellant is also advised to file a complaint before this Commission in case Commission's directions are not complied with.

(G.R. Sufi)
J&K State Chief Information Commissioner