



## **Jammu and Kashmir State Information Commission**

(Constituted under Right to Information Act 2009)

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File No.SIC/CO/SA/17/2013

Decision No.SIC/CO/SA/17/2013/449

Title:- Ms. Iram Kabuli D/o Shri Abdul Rashid Kabuli R/o 168 Sanant Nagar  
Housing Colony, Srinagar(9086395150).

V/s

1. First Appellate Authority,  
Public Service Commission,  
J&K, Srinagar.
2. Public Information Officer,  
Public Service Commission,  
J&K, Srinagar.

Srinagar

15-5-2013

This is a 2<sup>nd</sup> appeal filed by Ms. Iram Kabuli, a resident of the State and a candidate to KCS (Judicial) Examination, 2012. The 2<sup>nd</sup> appeal was to be adjudicated upon initially within 60 days from the date of receipt. However, because of adjournments taken by the FAA it was considered appropriate to extend the date of limitation which was done vide commission's order dated 09-04-2013 on record.

Shri Dilshad Ahmad Baba, Addl. Secretary-Cum-PIO, J&K Public Service Commission attended and Ms. Iram Kabuli appellant also attended. They have been heard.

The brief grounds in this appeal are that the appellant had filed an RTI application before PIO on 11-12-2012 for seeking following information:-

1. Whether my attendance has been marked in all the papers (6 Compulsory plus 3 Optional)?
2. Provide me the marks I have secured paper-wise (6 Compulsory plus 3 Optional).
3. What is the open merit (highest and lowest) of the selected candidates and my position vis-à-vis selected candidates? Provide me a Xerox copy of all my answer books (6 Compulsory plus 3 Optional).
4. Whether my paper IV (Compulsory) has been marked its status?
5. Please state the names of the Members of the Commission who participated in the final selection of candidates for viva-voce for KCS (Judicial) Competitive Examination, 2011 (vide notification No.PSC/EXAM-12/49). A copy of the order pronounced by the Commission (with signatures) in this regard may be provided to me.
6. Please state the names of Members of the Commission who participated in final decision making to fail candidates for alleged unfair means. A copy of the order pronounced by the Commission (with signatures) in this regard may be provided to me.
7. Was the selection of the candidates and disqualification of candidates for alleged unfair means- a majority decision of the Commission?

The PIO has passed order on 18-12-2012 denying the information on the following reasons:-

“In this regard, it is, to inform you that your application is not maintainable under Section 8 of the J&K RTI Act, 2009, as the information sought by you was confidential in nature and thus not officially available at the movement in view of the fact that two stages of selection viz interview and Medical Examination are yet to take place.”

The appellant being aggrieved of this decision filed first appeal before FAA of the Public Service Commission who happens to be Secretary and Controller of Examination of the commission. This appeal dated 18-1-2013 was received in the office of FAA on 22-1-2013. As per the provisions of the Act there is a limitation for PIO, FAA and the Commission to dispose of RTI application (First and second appeal). This is one of the unique features of the State RTI Act which distinguishing it from central RTI Act 2005 wherein there is no limitation for disposal of appeal by the Commission.

The FAA send a communication to the appellant stating therein as under:-

“I have examined your appeal as well as the order passed by the PIO. The PIO of the Commission has rightly stated that the information sought cannot be provided being confidential as the process of examination is still incomplete. Furthermore, your appeal is not maintainable under section 8 of J&K RTI Act 2009. Regarding point No.7 of letter addressed to PIO by you, it is to state that punishment awarded to the candidates found guilty of unfair means during the written examination was the decision of the full Commission. However, for the better appreciation, you are hereby advised to visit J&K Public Service Commission office on 21-2-2012 at 3.00 p.m before the undersigned for personal hearing enabling to dispose of your appeal.”

The appellant filed 2<sup>nd</sup> appeal before this commission against this non speaking order and has strongly pleaded that information as sought by her is discloseable and is under no circumstances prohibited under provision of section 8 of State RTI Act 2009. It has also been strongly pleaded that disclosure of the information has been equated with fundamental right by the Hon'ble Supreme Court and various as Hon'ble High Courts in the Country enshrined under Constitution of India as well as Constitution of the State. The commission has gone through the orders passed by the lower authority and has found that both the authorities have utter disregard to the provision of the State RTI have refused to honour the provision of the Act and disclose the information and be

transparent. The Commission is of considered opinion that the entire information sought by the information seeker is not covered under provision of section 8 of the State RTI Act. It is now fairly well known that there are certain informations which are exempted under section 8 of the State RTI Act. The information so exempted is information, disclosure of which would prejudicially affect the sovereignty and integrity of India, security, strategic, scientific or economic interests of the State.....like information disclosure of which will lead to incitement of an offence; information which has been expressly forbidden to be published by any Court of Law or tribunal or the disclosure of which may constitute contempt of court ; information, the disclosure of which would cause a breach of privilege of the Parliament or Legislatures and other relevant information. Nowhere has either PIO or FAA proved under which limb of provision of section 8 the information sought by the appellant is prohibited. Appearing in any examination or interview and writing replies to the questions, queries as set by the examination authorities is an information which is created by the candidate himself or herself and is given to the examination body for evaluation. “ The information has been defined in section 2(d) of the State RTI Act and the limb of information like attendance of the candidate has been marked in all the papers, the marks secured paper wise and open merit highest or lowest of the selected candidate and her position vis-à-vis selected candidates whether paper (4) compulsory was marked and its status and was the selection of the candidates and disqualification of the candidates for alleged unfair means as per majority decision of the commission constitutes information. The issue of providing information with regard to copies of Answer books, marks obtained, has been held by the Hon’ble Supreme Court in their celebrated decision in the case of Central Board of Secondary Education V/s Aditya Bandopadhyay and another to be givable. The Hon’ble Supreme Court’s decision has been brought to the notice of the State Public Service Commission number of times in a number of decisions delivered by this Commission. It is relevant to note that the result for written test was declared by the State PSC on 16-11-2012 and the appellant applied for information on 16-12-2012. Therefore, the information as sought by the appellant on point No.1, 2, 3, 4 and 7 be disclosed to her within 20 days from the date of receipt of this order and with an intimation to this

Commission. The appellant/information seeker is also advised to inform the commission about compliance with the orders of the Commission.

The commission has noted the fact that J&K Public Service Commission has started same action again against the candidate for using alleged unfair means while appearing in the examination. This is within powers/function of the Public Service Commission but disclosure of information, as per considered view of the commission will not impede process of the investigation or apprehension or persecution of offender, hence, the order for disclosure of information.

The appellant has also sought names of Members of the commission who participated in the final selection of candidates for viva-voce for KCS (Judicial) Competitive Examination, 2012 and the names of Members of the commission who participated in final decision making to fail candidates for alleged unfair means. The commission is not inclined to agree with the appellant that this part of information is not exempted under Section 8 of the State RTI Act. Non disclosure of such names in order to ensure the safety and security of the Hon'ble Members who take bona-fide decisions in the process of selection of various candidates is in order. Thus, therefore, there is no directions by the Commission to the PSC to disclose such names. This ground of appeal is accordingly rejected.

The appellant assailed the order passed by the PIO and FAA on technical grounds also by stating that though the PIO has shown date of order as 18-12-2012 but the order is actually signed on 7-1-2013 and has been dispatched on 22-1-2013 and received by her on 24-1-2013. The order of the PIO is also incomplete in the sense that he has not provided the details of filing first appeal before FAA and particular of FAA to the appellant as is provided under Section 7(8) of the Act. The PIO is advised to take note of this deficiency and pass orders in future in accordance with the mandate given to him under provisions of the law. The commission hopes that the provisions of the law will be complied by the authorities of the constitutional body.

Similarly, the FAA's show cause notice for appearance of the appellant on 18-2-2013 is absolutely found to be non speaking and against the basic spirit of the concept of natural justice. In the said notice the FAA has

already rejected the request of the appellant for disclosure of information in variance of the PIO's directions. If the request was already rejected then what is need for calling her to visit his office on 21-2-2013. This is shocking to note that notice is dated 18-12-2012 and hearing is fixed on 21-2-2012. Though these are technical mistakes, the appellant is rightly aggrieved. As per the scheme of the Act the FAA is a senior officer and commission expects application of mind by the senior officer of a constitutional body.

The appellant has also filed a complaint before this commission on 12-2-2013 complaining therein that the PIO has not provided to her the information which was mandatory to be given within 30days. She received the information on 24-1-2013 after a period of 45 days. She has also stated that PIO has not substantiated his stand by giving reasons as how section 8 of the Act was applicable. Similarly she is aggrieved against the FAA's alleged no response to her appeal within time. The appellant has also complained against the FAA for not giving response to her appeal filed before him on 22-1-2013 within 30 days and not giving her opportunity to be heard before him before 30 days as laid-down under section 16(3). Section 16(3) also enjoins upon the FAA to make reference to the commission for imposing a penalty on PIO if he has not disposed of RTI application within 30 days. The Registry of the commission is directed to seek explanation/parawise reply of PIO as well as FAA on the complaint of the appellant and put up to Commission for further hearing. By this combined order the 2<sup>nd</sup> appeal is disposed of.

Sd/-

G.R.Sufi,

Chief Information Commissioner, J&K.

Copy to the:-

1. First Appellate Authority, Public Service Commission, J&K, Srinagar.
2. Public Information Officer, Public Service Commission, J&K, Srinagar.
3. Ms. Iram Kabuli D/o Shri Abdul Rashid Kabuli R/o 168, Sanant Nagar, Srinagar.
4. Guard file.

(Mohammad Syed Shah)

Registrar,

J&K State Information Commission at Srinagar.