



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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File No: SIC/CO/SA/40/2013

Decision No: SIC/CO/SA/40/2013/458

Title: Zahid Hussain, Advocate
C/o Chamber No. 5, District Court Complex, Kargil
V/s
Public Information Officer, J&K Public Service Commission

Srinagar
31.5.2013

This is a second appeal filed by Shri Zahid Hussain, Advocate a resident of the State before this Commission on 9th of April 2013. This appeal was posted for hearing vide this Commission's Registry Notice No: SIC/CO/SA/40/2013/708-10 dated: 16.5.2013. PIO as well as the appellant were required to attend this Commission. PIO was further required to file counter statement. PIO vide his letter dated: 29.5.2013 under No: PSC/RTI/2012/596 has sent his counter statement. The PIO did not attend the Commission rather on an enquiry from the office, it was informed that he had sought adjournment on the plea that he was busy in his other official matters. However, on further verification it is found that no such request is before the Commission for adjournment of the hearing. Section 16 of the State RTI Act places a time limitation on the disposal of second appeal, hence the appeal is decided on the basis of available record and after hearing the appellant Shri Zahid Hussain in person.

2. The brief grounds of the appeal are that the appellant appeared in J&K Civil Services (Judicial) Examination conducted by J&K Public Service Commission under Roll No: 2100154 and the Respondents i.e J&K Public Service Commission declared the results of said examination in the month of October, 2012 and in the said result, the Public Service Commission only notified the Roll Nos of the successful candidates without any marks or ranking. Thus the appellant was declared unsuccessful in the said

examination. In order to check his marks and ranking in the said examination the appellant moved an application before the PIO on 20.12.2012 seeking the information as per his RTI application. This application was sent through registered post. As per Section 7 of the State RTI Act 2009, an order by the PIO was to be passed as expeditiously as possible and in any case within 30 days. As this was not done, the appellant filed first appeal as provided under Section 16 of the State RTI Act before the Secretary Public Service Commission who is designated First Appellate Authority of the Commission under the Act. The appellant informed the First Appellate Authority that he did not receive any response within 30 days from the PIO and, therefore, filed an appeal seeking the intervention of the First Appellate Authority for providing him information. This appeal was posted through speed post on 11.2.2013 and as per the time limitation laid down in Section 16, the first appeal has to be decided by First Appellate Authority within 30 days or within further extended time of 15 days if reasons so warrant. That period is over. Till this date there is no order by the First Appellate Authority. The Commission is constrained to observe that the functionaries of the J&K Public Service Commission who are designated to deal with RTI applications are not so sensitive and conscious about the transparency law and discharge of their duties cast on them under the State RTI Act 2009. Since the establishment of the State Information Commission in 2011, there has been considerable improvement in the compliance of State RTI Act 2009 by various public authorities but inspite of passing number of orders in the case of J&K Public Service Commission the compliance with the State RTI Act is still lacking in several respects. The Commission once again expect the constitutional body like J&K Public Service Commission to follow the law of the land. Having made these observations, the present appeal is adjudicated as under:

3. The PIO vide his communication dated: 20.2.2013 under No: PSC/RTI/596/2012 provided information to the information seeker on points 3,5,6 and 7 as per Annexure "A" which the appellant has admitted of having received but in respect of information with regard to points 1,2,3,4,8,9 and 10 the PIO informed the appellant that " no such information can be given at this stage as two stages of examination process viz. interview and medical examination is yet to take place". The appellant has assailed the order of the PIO by stating that his process of examination has been complete and final because he has already been declared unsuccessful by the respondents and hence under rules he was not called for interview and medical examination. Only successful candidates are called for interview and medical examination. Therefore, the PIO has with a " malafide intention and willfully suppressed the information". It is further argued that the respondent is deliberately neglecting his duties which are cast on him under Section 7 of the State RTI Act. As remaining information particularly the information at points 1,2,4,8 and 9 do not fall under the prohibitory provisions of Section 8 and 9, therefore, the PIO has willfully suppressed the information and with malafide intention and the appellant has,therefore, prayed the Commission to initiate the penalty

proceedings and pass a direction for providing information on points 1,2,4,8 and 9 without any further delay. The Commission has considered the submissions of the appellant as well as the PIO and has also heard the appellant in person. It is an admitted fact that RTI application has been received by the PIO and it is also an admitted fact that the PIO has failed to adhere to the time limit as laid down for him under Section 7 of the RTI Act in passing the order within 30 days. Therefore, Shri Dilshad Ahmed Baba, Additional Secretary-cum-PIO in J&K Public Service Commission is required to explain why penalty as provided under Section 17 is not imposed on him. His reply, if any, must reach to this Commission within 15 days from the receipt of order. The PIO in his rejoinder has informed the Commission that ordinarily the information seeker should have filed the first appeal before the First Appellate Authority of the Public Service Commission but has directly filed second appeal in the State Information Commission. The appellant has strongly contested this un-verified and unsubstantiated claim of the PIO. First appeal was filed and sent by post by the appellant as narrated above. Secondly, Section 7(8) places a duty on the PIO to intimate the information seeker his right to file first appeal before the First Appellate Authority giving full particulars of the First Appellate Authority. It would be appropriate to reproduce the provisions of Section 7(8) of the State RTI Act" which reads as under:-

"Where a request has been rejected under sub section (1), the Public Information Officer shall communicate to the person making the request:-

- a) The reasons for such rejection;
- b) The period within which an appeal against such rejection may be preferred; and
- c) The particulars of the appellate authority."

4. This Commission in a number of decisions has brought the attention of concerned PIO to the said provisions but there is totally disregard shown by the PIO with the provisions of the Act. Therefore, taking this unfounded plea is rejected. Secondly, the PIOs attention is invited to provisions of Section 15 of the State RTI Act which provides for filing of a complaint before this Commission. The PIO's attention is invited to the following provisions of law:-

"Section 15(1): Subject to the provisions of the Act, it shall be the duty of the State Information Commission to receive and inquire into a complaint from any person"who has not been given a response to a request for information or access to information within the time limit specified under the Act".

The PIO himself being a senior officer from Law Department is expected not to ignore the rights of the people of the State as conferred on them under the State RTI Act. The PIO's communication under No:

PSC/RTI/596/2012 dated: 20.2.2013 is not treated as an order passed under Section 7 as in view of his failure to adhere to the provisions of Section 7(8) it is considered a defective and incomplete order.

With regard to other prayer and plea of the appellant that PIO be directed to provide the remaining information as has been denied to him, the Commission finds the said plea in accordance with the provisions of the Act. Only that information under the Act is prohibited for disclosure which is expressly exempted and prohibited under the provisions of Section 8 and 9 of the State RTI Act,2009. It is pertinent to mention that the Hon'ble Supreme Court in its celebrated decision in Civil Appeal No:6454 of 2011 Central Board of Secondary Education and Another (CBSE) v/s Aditya Bandopadhyay and others has held that disclosure of information is a general rule, exemption is a exception. The Commission finds itself in agreement with the appellant. As per the rules of Public Service Commission if the candidate fails in written examination he is not to be called for any interview or subject to any medical examination. The process in his respect is complete. Therefore, it is absurd and without any basis to say that information on these points cannot be given as the second stage of examination process is yet to be completed. The information asked on the above mentioned points is givable in view of the definition of information given in Section 2(d) read with Section 3 and 6 information is, therefore, ordered to be disclosed within 15 days from the receipt of this order with a copy to this Commission. The information seeker is advised to inform the Commission about the compliance of this order by the PIO of J&K Public Service Commission. Second appeal is accordingly disposed of.

Sd/-

(G.R. Sufi)

J&K State Chief Information Commissioner

Copy to:-

1. Public Information Officer, J&K Public Service Commission
2. Shri Zahid Hussain, Advocate C/o Chamber No. 5, District Court Complex, Kargil
3. Private Secretary to Hon'ble Chief Information Commissioner
4. Guard File

(Mohammad Syed Shah)

Registrar

J&K State Information Commissioner