



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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File No: SIC/CO/SA/38/2013

Decision No: SIC/CO/SA/38/2013/469

Title:- Shri G.A Zarga R/o Check No. 1, Block B.K Pora
Tehsil Chadoora, District Budgam

V/s

PIO General Administration Department

Srinagar

11.06.2013

This is a second appeal filed by Shri G.A Zargar, a resident of the State against the FAA's order passed on 15.3.2013. The hearing of this appeal was fixed by the Registry of this Commission by its Notice under No: SIC/CO/SA/38/2013/795-97 dated: 21.5.2013. In response to the notice the FAA Shri Bashir Ahmed Dar Additional Secretary GAD and Shri Manzoor Ahmed Under Secretary-cum-PIO attended. The appellant Shri G.A Zargar inspite of having been informed about date of hearing and inspite of having been requested to attend the hearing personally or through his representative to help the Commission to arrive at a correct conclusion chose not to attend. The appeal is, therefore, decided on the basis of material available on record.

The brief grounds of appeal are that the appellant had filed an RTI application before the PIO on 17.12.2012 seeking replies to the queries listed in his RTI application. The PIO forwarded the application to PIO Finance Department invoking Section 6(3) of the State RTI Act requesting the concerned PIO of Finance Department to provide the information to the applicant within time stipulated under the RTI Act. A copy of this order was duly marked to Shri G.A. Zargar appellant who has confirmed of having received such order. The said PIO Finance Department returned back the communication of PIO GAD by observing that the matter pertained to appointments of adhoc/consolidated/contractual employees,

therefore, the information be provided by the PIO GAD. Hence the PIO GAD passed an order on 23.1.2013 holding as under:-

“The contents of the application have been examined and found that issues at Sr. No. (i) & (ii) above are in the shape of a questionnaire and no specific information/documents has been sought that can be provided to the applicant. The issue at Sr. No. (iii) pertains to appointments with regard to Range Officers, Junior Engineers, Junior Assistants. The Junior Engineers and Junior Assistants are borne on different departments and the applicant has failed to specify the department for which the information is required by him. The Range Officers are borne on the establishment of Forest Department and the information sought by the applicant is not available in General Administration Department. The Apex Court in Civil Appeal No. 6454 of 2011, arising out of SLP © No. 7526/2009 in the case of Central Board of Secondary Education and Another Versus Aditya Bandopadhyay and others has clarified that the RTI Act provides access to all information that is available and existing. The RTI Act does not cast an obligation upon the public authority to collect or collate such non-available information and then furnish it to the applicant”.

Complying with the mandate of the Act, the PIO also informed the appellant that he had a right to appeal. The appellant accordingly filed an appeal before the FAA. In the said appeal the grounds of appeal as raised is as under:-

“PIO failed to provide information within 30 days hence the appeal”

The FAA passed an order on 15.3.2013. As a habit, the appellant again failed to appear before the FAA neither contacted him on phone to argue his appeal though he was duly given an opportunity to attend. He was also given option of contacting FAA on phone. In view of the non cooperative attitude of the appellant, the FAA decided the appeal on the basis of material and evidence available on record. The FAA has considered the allegation of the appellant that the order passed by the PIO was received by him after a lapse of one month. The FAA noted that the date quoted by the appellant is wrong. The FAA agreed with the findings of the PIO that information sought at points i and ii, though in the form of queries does not specify the order/policy which the appellant desired to obtain from the PIO. As the appellant has not asked any specific information rather has posed a question, therefore, PIO rightly denied the information. The FAA further noted that appellant who is the retired government employee has willfully filed the application wrongly before the PIO GAD. Similarly, the FAA found that reply to the information sought at point 3 by the PIO is right to the extent that the appointments of Junior Engineers and Junior Assistants etc; were not mentioned by the appellant and it was not possible for the PIO to identify to which department appellant was referring to. However, the FAA observed that the information with regard to Range Officers could have been obtained from the PIO Forest Department under Section 5 or 6 of the State RTI Act and accordingly he directed the PIO to collect the information

sought by the appellant pertaining to Range Officers at point 3 of the application from the Forest Department and pass it on to the appellant immediately. Against this order the appellant filed a second appeal. The appeal has been addressed to Chief Information Commissioner instead of the Registrar of the Commission. However, taking a liberal view and ignoring the serious technical defects the appeal was posted for hearing has referred above. The close scrutiny of second appeal makes it quite clear that no infirmity or illegality has been pointed out by the appellant in the order passed by the FAA on 15.3.2013. Once there is a appeal against the PIOs order before the FAA and FAA disposes of the said appeal and second appeal is filed, grounds of appeal have to be raised against the order of FAA because the order of PIO after disposal of first appeal merges with the4 FAA's order. The appellant is accordingly advised that in future he should go through the provisions of State RTI Act carefully and then exercise his right of information. The Commission has noted with concern that the appellant has been filing number of applications before the PIOs, FAAs and the Commission without following the provisions of law and is then failing to substantiate his grounds of appeal. On the basis of record Commission agrees with the FAA that the appellant, a retired senior officer in the Government, in knowledgeable, therefore, onus on him is to be more responsive and not waste the precious time of Government functionaries. Coming to so called grounds of appeal it is found that the appellant has not made any justiciable ground of appeal against the findings of the FAA. He has nowhere disproved the findings of the FAA that the queries made by him are not in the form of information but in the form of a questionnaire. However, inspite of this finding of the FAA, the FAA wanted to pass a judicially reasonable order after hearing the appellant. The appellant has failed to provide any assistance either to the FAA or to second Appellate Authority i.e the Commission to arrive at a correct decision and to adjudicate the appeal. The appellant has nowhere disproved the contentions of PIO and FAA that the queries made by the appellant in the shape of questionnaire and not the information as defined under Section 2 of the State RTI Act. It would be appropriate to reproduce the relevant provisions which defines the term "Information". Section 2(d) defines" Information" as under:-

“ Information” means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force”.

It is to be ascertained whether the information asked does exist in official records in any form on the date when information was sought. The PIO is not obliged under the Act to create information or give any opinion which is not recorded. The Commission agrees with the FAA that the appellant was not sure what information he wanted. For instance, the first point he makes is of the norms/criteria/ parameters

Yard sticks/mechanism etc were followed/adopted while making the said adhoc or contractual or consolidated appointments referred in the Act i.e Jammu and Kashmir Civil Services (Special Provisions Act 2010). The onus was upon the appellant to prove that this information was held by the PIO and he should have identified the information which he wanted. Similarly he has not made any case to show the Commission that appointments were made in relaxation of rules. Once he would have identified such appointments then he could have been justified in seeking the information with regard to compelling reasons for relaxing the rules to make such appointments. PIO has forwarded the information with regard to Forest Department which the FAA had directed to correlate and has accordingly been forwarded to the appellant.

(G.R. Sufi)

J&K State Chief Information Commissioner