



Jammu & Kashmir State Information Commission
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Wazarat Road, Jammu. Fax No: 0191-2520947, 2520927

File No: SIC/CO/SA/61/2013
Decision No; SIC/CO/SA/61/2013/486

Title:- Khuram Parvaiz
V/s
PIO/FAA D.C Office Baramulla

Srinagar
29.07.2013

This is a complaint filed by Shri Khuram Parvaiz, a resident of the state before this Commission against the FAA for not complying with the directions contained in the Order No: SIC/CO/SA/61/2012/299 dated: 1.10.2012 for passing an order under Section 16 of the State RTI Act with an opportunity of being heard to be provided to the appellant. This order was to be passed within 30 days from the receipt of the order. Shri M.I. Qadri (KAS) Additional Deputy Commissioner Baramulla-cum-

FAA under RTI Act has confirmed before this Commission that order was received by him on 10.10.2012 and he had directed his staff to inform the appellant about the date of hearing before him. As per the submissions of the FAA, even though the appellant allegedly did not attend the hearing, the FAA still passed order on 8.12.2012. The explanation for delay in passing the order is stated to be non-

appearance of the appellant. However, the complainant has rebutted this submission by stating that he did not receive any notice in writing or any call from the office of FAA with regard to his appearance. From the facts emerging during this hearing, it is confirmed that there was no written communication to the appellant for his presence neither there was any telephonic call to him. Therefore, it is once again reiterated by the Commission that providing an opportunity for being heard has to be through a proper notice and not verbally. Sending proper notice under cover of registry is the essence of law. It is expected that these observations of the Commission would be kept in view for future guidance.

2. The FAA vide his order dated: 08.12.2012 had directed the PIO to pass an order under Section 7 of the State RTI Act and provide information to the appellant. But he has to ensure that any direction passed by him to the PIO is strictly and in accordance with law implemented and if the PIO does not pass any order under the State RTI Act which he was required to do or if he provides knowingly any incorrect, incomplete or misleading information or destroys the information

which was subject matter of the request of RTI application or obstructs in any manner the information, the FAA is duty bound to make a reference to this Commission for taking action against such erring PIO. The FAA's attention, in this connection, is invited to provisions of Section 16(3) of the State RTI Act. In any case, PIO was to carry out the directions of FAA passed vide order dated: 8.12.2012.

3. It emerges from the record that PIO initially had not passed the order under Section 7 on the plea that the appellant had to pay some amount as copying fee. The Commission recognizes the right of the PIO to demand requisite charges as copying fee etc provided the requisition for said charges is made within a time of 30 days from the date of receipt of RTI application. As per the provisions of law no charges can be recovered from any information seeker unless PIO gives a requisition before 30 days time. In this case there has not been any order for charging such fee within 30 days. The PIO is reported to have sent a requisition to the complainant on 29.9.2012 for depositing copying charges. The application for seeking information has been made on 29.12.2011 to the Divisional Commissioner Kashmir and under law he was required to forward the said application to the concerned PIO within 5 days and it is reported to have forwarded the said application to the concerned PIO in January 2012. Therefore, the requisition for charges was to be made from the information seeker within 30 days. The law further provides that if charges are not requisitioned within 30 days then information has to be provided free of charges. This information is, therefore, to be provided to the information seeker without any charges. The fact remains that so far PIO has not passed the order which he was required to pass under Section 7 of the Act within 30 days. The PIO at the time of making the application till date is the same officer namely Shri Farooq Ahmed Shah, A.C (R). The Commission has noted it with serious concern that such a senior officer has not bothered to adhere to the time limit and pass a speaking order which is a duty cast on him as a public authority under the provisions of State RTI Act. He is directed to implement the FAA's order within 10 days from the date of pronouncement of this order i.e today 29.07.2013. The pronouncement of the order has been made in presence of Shri M. I. Qadri, ADC-

FAA Baramulla. The said defaulting PIO Shri Farooq Ahmed Shah is also directed to explain reasons why penalty under Section 17 of the State RTI Act may not be imposed on him for violating the provisions of the Act and refusing to discharge his duty as cast on him under the Act as a public functionary. His reply, if any, must reach in this Commission within 15 days.

Sd/-

(G.R. Sufi)

J&K State Chief Information Commissioner

Copy to:-

1. Additional Deputy Commissioner-cum-FAA D.C Office Baramulla
2. Public Information Officer, D.C Office Baramulla
3. Shri Khuram Parvaiz, H. No: 01, Gupkar Road, Srinagar
4. Private Secretary to Chief Information Commissioner
5. Guard file

(Mohammad Syed Shah)

Registrar

J&K State Information Commission, Srinagar