



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

Old Assembly Complex, Srinagar, Fax No. 0194-2484269, 2484262

Wazarat Road Near DC Office, Jammu, Fax No. 0191-2520947, 2520937

www.jksic.nic.in

File No: SIC/CO/SA/36/2012

Decision No: SIC/CO/SA/36/2012/488

Title: Khuram Parvaiz, H.No: 1,
Gupkar Road, Srinagar
V/s
Home Department

Srinagar

13.08.2013

These proceedings have originated from above mentioned information seeker's application before the PIO Home Department dated: 12.1.2012 and subsequent first appeal filed before the FAA Home Department on 26.4.2012. As the PIO as well as the FAA Home Department had failed to dispose of the information seeker's request for information within time, therefore, appellant filed second appeal before this Commission on 6.6.2012. The Commission by its order dated: 24.7.2012 in decision No: SIC/CO/SA/36/2012/228 disposed of the appeal with a direction to the FAA of Home Department that appeal be adjudicated within 20 days from the receipt of the order with a proper opportunity of being heard to the appellant. The order instead of being complied by FAA was mechanically complied by the then PIO. Shri Arshad Ayub, Additional Secretary vide his order dated: 3.9.2012 informed the appellant that the information could not be provided as the same was exempted under Section 8 of the State RTI Act. The appellant states that he did not receive even this order, therefore, he approached the Commission for ensuring the compliance of its order dated: 24.7.2012. The present PIO Smt. Rita Koul Under Secretary-cum-

PIO Home Department attended the Commission and informed that an order was passed by Shri Arshad Ayub on 3.9.2012. This order has been perused by the Commission and it is found that Mr. Arshad Ayub passed the order in the capacity of the PIO

whereas the Commission had directed the FAA to adjudicate first appeal as per law. Under the scheme of State RTI Act, the PIO has only to pass order under Section 7 of the State RTI Act. His order is appealable before the FAA. Therefore, order passed by the PIO on 3.9.2012 is set aside being without any jurisdiction. The Commission is constrained to observe that the senior authorities in the Home Department i.e FAA has not acted according to the provisions of the State RTI Act. The officer who is now designated as FAA Home Department has to pass an order after giving a due opportunity of being heard to the appellant. The passing of order has been considerably delayed because of the failure of the FAA to adjudicate the appeal. Therefore, Commission once again directs the present appellate authority in the Home Department to adjudicate the appeal with a proper opportunity of being heard to the appellant. The Commission has also gone through the so called order passed by the PIO consequent to the directions by the Commission and has found that this is most non speaking order. The information cannot be denied simply by quoting Section 8. Section 8 provides nine exemptions and the FAA or the PIO who think that any information requisitioned by a resident of the State falls under any limb of Section 8, both the authorities are duty bound to specifically identify such limb with proper reasons which prohibits the disclosure of information. The FAA or PIO while dealing with RTI Act and applications have to act as a quasi-judicial authorities. Therefore, the requirement of law meant for quasi judicial authorities and the procedure has to be strictly followed. A fresh order be passed within 20 days from the pronouncement of the order i.e today. The then PIO Shri Arshad Ayub is also required to explain why penalty proceedings under section 17 of the State RTI Act may not be initiated for not passing the order as provided under Section 7 of the State RTI Act. His explanation, if any, must reach to this Commission within 30 days from the receipt of this order. The present PIO Smt. Rita Koul is directed to serve a copy of this order on Shri Arshad Ayub. The Appellant is also directed to invoke Section 15 in case an order passed by the Commission is not complied with.

Sd/-
(G.R. Sufi)

J&K State Chief Information Commissioner

Copy to:

1. First Appellate Authority, Home Department, Civil Secretariat, Srinagar
2. Public Information Officer, Home Department, Civil Secretariat Srinagar.
3. Shri Khuram Parvaiz, H.No 1, Gupkar Road, Srinagar
4. Private Secretary to Chief Information Commissioner
5. Guard File

(M.A. Wani)
Deputy Secretary/Joint Registrar
J&K State Information Commission