



Jammu and Kashmir State Information Commission
(Constituted under Right to Information Act 2009)

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File No: SIC/CO/Comp/39/2013
Decision No: SIC/CO/Comp/39/2013/499

Title:- Abdul Rashid Khan
V/s
PIO Irrigation & Flood Control

Srinagar
12.09.2013

This is a complaint filed by Shri Abdul Rashid Khan, a resident of the State against the PIO PHE, Irrigation & Flood Control Department Srinagar seeking information on number of points which are of high public importance and necessary for bringing transparency and accountability in the working of every public authority. After receipt of this complaint, the Commission had sought a rejoinder from the PIO of Chief Engineer, Irrigation & Flood Control Department Srinagar and had also sought personal attendance of PIO and information seeker vide Commission's Registry Notice No: SIC/CO/Comp/39/2013-2175-76 dated: 07.8.2013. Both the PIO and information seeker attended. The PIO vide his rejoinder under No: 7292/93 dated: 25.7.2013 informed this Commission that the application of the information seeker was forwarded to respective office and information was provided to the information seeker vide order No: 22123 dated: 18.4.2013. The Commission has gone through this so called order and it is found that this is an intimation about the information which has been attached in the Annexures A, B and C. The so called order is passed by the APIO. As per the provisions of Section 7 of the RTI Act, the APIO is not authorised to pass any order providing or refusing the information. The role of the APIO is simply to receive the applications and forward it to the concerned PIO. He has not only to receive the applications on behalf of the PIO but if any information seeker prefers to file any complaint or appeal before the Commission, he can ask the APIO to receive and forward the same to the Commission as well. The wording of Section 7 makes it quite clear that it is only the PIO who is to pass the order. For ready reference the provisions of Section 7 are reproduced hereunder:

"Subject to the proviso to sub-section (2) of section 5 or the proviso to sub section (3) of section 6, the Public Information Officer on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 9."

The phrase "The" as used in the Act clearly establishes the fact that order has to be passed only by the PIO. Hence the Commission vacates the so called order passed by the APIO treating the same as abintio bad in the eyes of law. The concerned PIO Shri Ghulam Ahmed Bhat, AEE PHE, Irrigation & Flood Control Division Kupwara is directed to pass a fresh speaking order. He is also directed to explain the reasons, if any, for not imposing penalty as provided under Section 17 of the State RTI Act 2009. His reply, if any, must reach to the Commission within 15 days from the receipt of this order.

The information seeker who is a literate retired government employee is also advised to go through the provisions of the Act and use the same strictly according to the mandate of the Act particularly in view of the Hon'ble Supreme

me Court directions in the case of Chief Information Commissioner Manipur and Another V/s State of Manipur and Another. It is also observed that PIO and various functionaries in the department are not having even the basic knowledge about the few provisions of the Act which are directly concerning to them. The Chief Engineer, PHE, Irrigation and Flood Control Kashmir is advised to take necessary action for providing necessary training and guidance to the First Appellate Authorities and PIOs working under him.

Sd/-
(G.R. Sufi)

J&K State Chief Information Commissioner

Copy to:-

1. Chief Engineer, PHE, Irrigation & Flood Control, Kashmir
2. Public Information Officer, PHE, Irrigation & Flood Control Srinagar
3. Public Information Officer, PHE, Irrigation & Flood Control Division, Kupwara.
4. Shri Abdul Rashid Khan S/o Late Sarwar Khan R/O Halmat Pora, Kupwara
5. Private Secretary to Chief Information Commissioner
6. Guard File.

(Ghulam Qadir Bhat)
Registrar
J&K State Information Commission, Srinagar