



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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File No: SIC/CO/SA/90/2012

Decision No: SIC/CO/SA/90/2012/523

Title:- Haji Nazir Ahmad Shah

V/s

Shri Rattan Chand, PIO Irrigation & Flood Control Deptt.

Jammu

07.11.2013

In this case Haji Nazir Ahmad Shah, a resident of the State filed an RTI application before the PIO Irrigation Department on 9.7.2012 which was received in the PIO's office on 11.7.2012 seeking very brief information to the effect of providing latest status of the case "on the above cited subject". In accordance with the provisions of Section 7 of the State RTI Act, the PIO had to provide this information as expeditiously as possible but not later than 30 days which was not done. Having failed to receive any information the appellant filed first appeal before the FAA i.e Special Secretary to Government, PHE Department on 27.8.2012 which also was not adjudicated by the FAA. Consequently a second appeal as provided under Section 16 of the State RTI Act was filed before this Commission on 3.10.2012 praying the Commission for a direction for disclosing the information. The second appeal was adjudicated upon by the Commission vide its order dated: 8.11.2012. During the hearing, penalty proceedings under Section 17 of the State RTI Act were initiated and PIO was required to explain why penalty may not be imposed on him from the due date of passing the order till the date order was actually passed and served upon the information seeker. In response to show cause notice the defaulting PIO furnished his reply under No: PHE/PW/NGK/126/2012 dated: 19.11.2012 wherein the PIO admitted of having

received RTI application on 16.7.2012 and marked the same to the concerned SO. The note of the same was put up by the Head Assistant on 10.9.2012 to the SO concerned and it was later on put up to the PIO on 11.9.2012. On the same date the PIO submitted the case to Special Secretary for further necessary action and simultaneously the note was approved by the senior authorities on 13.9.2012 and subsequently the information was dispatched to the applicant on 19.9.2012 through ordinary post and thus entire blame is placed on SO/HA for putting up "note very late". The information was not received by the appellant till the date of hearing before this Commission because it was during the course of hearing before the Commission that the copy of information was handed over to the information seeker. During the hearing, the Commission was misled by PIO stating that information was sent by registered post. But after the verification of dispatch register of PHE Deptt. it was found that order was sent through ordinary post. The PIO was, therefore, required to explain why Commission was misled. Vide PIO's explanation dated: 31.7.2013 it was confirmed that information was not sent to the information seeker on the date which was claimed. It was alleged that the junior officials had caused delay and misled the PIO to give a wrong statement before the Commission regarding the dispatch of order under Section 7 of the State RTI Act. It is further pleaded by the PIO that as the delay was regretted by the staff, therefore, request has been made for dropping of the proceedings.

2. The Commission has gone through the explanation of the PIO and perused the records and has also given due thought to the mandate given to the PIO under Section 7 of the State RTI Act to provide information to the residents of the State which is held by public authorities in order to bring transparency and accountability in the working of public authorities in the State. There is no denying the fact that application was received on 11.7.2012 and the PIO was thus under statutory obligation to pass an order on before 30 days i.e the outer date for passing order was 11.8.2012. A copy of note sheet maintained by the office of PIO reveals that action on this application was initiated late and note was sent to SO seeking approval of the authorities whether to disclose the information or not. SO puts his initials on 10.9.2012. Under Secretary/Special Secretary also put their initials on 11.9.2012. The note is then put up to the Secretary on 13.9.2012. Ultimately note sheet reads as under:

“ Fair copies placed above are submitted for signatures”

There are interesting facts which emerge from this note sheet. No officer has made any specific comment or finding on this note sheet. No officer has applied

his mind that the issue relates to disseminating of information under State RTI Act which has made PIO responsible for passing orders under Section 7 of the State RTI Act or either providing information or defining information within a maximum period of 30 days if denial is justified under Section 8. Similarly, no officer has advised the PIO that under the State RTI Act 2009 he has to act independently. Therefore, there was no need to route the file through a chain of officials and officers as they had no role to play at all. It is the PIO under the scheme of the Act who has to pass the order and if he fails to pass the order it is he who will be penalized and the amount of penalty is to be paid by him out of his own pocket as the statutory duty of the PIO is clear and unambiguous and as interpreted by various courts of law that a personal responsibility has been placed on the PIO to pass order under Section 7 and in case he fails to provide the information and is consequently penalized amount of penalty cannot be drawn from Government funds. It is to be paid by the defaulting PIO himself. No default can be attributed to any senior or junior official/officer by the PIO. Therefore, senior officers cannot interfere with the working of PIO. A misleading statement was given before the Commission that the staff had misled the PIO to depose before the Commission that information was sent though it was not actually sent. No action at all has been taken against the erring officials rather their case is being pleaded before the Commission that they have tendered apology. Even lesser and minimum punishment i.e non-recordable warning has not been issued to the erring officials. As per provisions of Section 17 of the State RTI Act, the Commission may not impose penalty on the defaulting PIO if there is a reasonable cause for the PIO not to have passed order within statutory period.

3. The Commission has considered the explanation given by the PIO which is not at all convincing particularly when it is seen that the official note on the application of the information seeker is initiated on 10.9.2012 i.e even after one month after the receipt of application under Section 6 of the State RTI Act. Though Commission has already mentioned above that law nowhere intends the PIO that he should route through the RTI application from very junior staff members to the senior level officer i.e Secretary of the Department and that also without any meaningful contribution by the senior most functionaries of the department, it is a sad reflection of the working of the system. Therefore, keeping in view the fact that there was hardly any awareness and training given to the PIOs about the understanding and implementation of the State RTI Act which was mandated on the administration under Section 23 of the Act, the Commission

treats period of default to one month for the penalty purpose which is, therefore, reckoned with effect from 11.8.2012 to the date of sending note to senior officers i.e 10.9.2012. Therefore, the Commission in accordance with the powers vested in it under Section 17 of the State RTI Act holds PIO Shri Rattan Chand, Under Secretary, PHE Irrigation and Flood Control Department to be in default and hereby impose penalty on him which is calculated as under:

1. No. of days of default	60 days
2. Penalty to be imposed for each day from date of receipt of application i.e 11.7.2012 to the date of sending note i.e 10.9.2012.	250/-
3. Penalty restricted to only 30 days	250X30= 7500/-
4. Total amount of penalty imposed	Rs.7500/-

The Drawing and Disbursing Officer of Irrigation and FC Department will ensure deduction of penalty amount of Rs.7500/- from the salary of Shri Rattan Chand, Under Secretary-cum-PIO in two equal instalments from the months of December 2013 and January 2014 and remit it to the Government Account Head "0070-other administrative services" with an intimation to this Commission. The DDO is further directed to submit a compliance report alongwith a copy of deduction certificate/Challan with T.V No and date to this Commission within 5 days of the compliance.

Sd/-
(G.R. Sufi)
J&K State Chief Information Commissioner

Copy to:-

1. Commr/Secretary to Govt. Irrigation & Flood Control Department, Civil Sectt. Jammu
2. Public Information Officer, Irrigation & Flood Control Department, Civil Sectt. Jammu. He is directed to serve a copy of this order on Shri Rattan Chand, Ex-PIO. If Shri Rattan Chan is retired, present PIO is directed to serve a copy of this order to the Treasury Officer where from the pension of Shri Rattan Chand is drawn and the concerned Treasury Officer be directed to