



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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www.jksic.nic.in

File No: SIC/J/Comp-02 Dec.2011

Decision No: SIC/J/Comp-02 Dec.2011/533

Title: Ajay Singh Jamwal

V/s

PIO/FAA PWD

Jammu

20.11.2013

This is a second appeal filed by one Shri Ajay Singh Jamwal, a resident of the state against the failure of PIO/FAA in providing the information as sought by him vide his RTI application. The brief facts and grounds of the complaint are as under:

1. That the appellant filed an RTI application in the office of PIO Public Works Department on 05.9.2011 seeking certain information. The PIO passed an order vide his letter No: PW(R&B)/PIO/RTI/05/2011 dated: 22.09.2011 providing some information to the appellant. Not satisfied with the reply of PIO, the appellant filed first appeal before the FAA on on 08.10.2011 requesting the FAA to intervene and direct the PIO to give the correct information in response to his RTI application filed on 05.09.2011. In response to this Commission's letter dated: 22.2.2012 the complainant informed the Commission vide his letter dated: 10.3.2012 that no action has been taken by the FAA against his first appeal. Vide Commission's decision dated: 02.08.2012, the matter was restored back to the FAA with the direction that the appeal of the complainant be disposed of within 30 days from the receipt of this order and also directed the FAA to give

reasonable opportunity of being heard to the complainant. The complainant was asked to appear before the FAA vide letter dated: 7.8.2012 but he failed to appear before the FAA. Again vide letter No: 22.8.2012 the complainant was asked to appear before the FAA on 29.08.2012. The complainant vide his letter dated: 31.8.2012 informed the Commission that he received the letter of the PWD after the date of appearance before the FAA and had requested the Commission to look into the violation done by the FAA in terms of not providing the information within the stipulated period of time as envisaged under State RTI Act. The FAA passed a speaking order rejecting the appeal of the appellant vide Order No: PS/AS/R&B/RTI/16/11 dated: 20.08.2013 which the appellant admits of having received by fax.

2. The only submission of the appellant is that it took PWD more than one and half years in deciding my complaint and too rejecting it and the information sought by him has not been provided to him.

3. PIO produced the dispatch register and it is seen from the records that the order of FAA has been dispatched to the appellant on 21.8.2013 by speed post. The FAA's attention is invited to J&K Right to Information Rules of 2012 vide which service of notice has to be issued in the following modes:-

- (i) Service by the party itself
- (ii) by hand delivery (dasti) through Process Server
- (iii) by registered post with acknowledgement due or
- (iv) through Head of office or Department

Therefore, the FAA is directed to send another copy by registered post on the address given by the appellant in his first appeal. The appellant has also pointed out the incompleteness of the information provided to him and Appellate Authority's refusal to pass any direction to PIO for providing information in accordance with the RTI application on the plea that information seeker wants opinion and comments which are not permissible under the Act and, therefore, the first appeal has been rejected. The Commission has gone through the records and concurs with the FAA only to the extent that if any opinion of any officer is sought under the RTI Act which is recorded anywhere and emanates from the official records or obtained by the public authority, the said information has to be given and the said opinion falls under the definition of Section 2(d) of the State RTI Act 2009. However, if no such information emanates from the records then

obviously that information is not to be given. While going through the RTI application and subsequent order passed under Section 7 by the PIO. It is seen that on number of points vague information has been given. In view of this the Commission is minutely analyzing what was the original information sought and what the information was given to the information seeker. The first point of information was what was the total number of vacancies by PWD(R&B) for post of Junior Engineer (Mechanical) in 2010 and 2011 till August excluding the appointment which was done by any package like Prime Ministers special package for Kashmiri migrants etc in which only Kashmiri migrants are eligible while rest unemployed youth of J&K having desired qualification were not eligible. The reply of this point is as under:

“In view of creation of supernumerary posts of JE Mech under the Prime Minister’s package for Kashmiri migrants. There is no post of JE Mech lying vacant as on date”.

Obviously the reply is not to the satisfaction of information seeker. He wanted to know whether the Prime Ministers Package meant for Kashmiri migrants was only for kashmiri migrants and rest of the unemployed youth of J&K were not eligible. He should be clearly informed on the basis of documents that only Kashmiri Pandit migrants were eligible or if there was no such mention on the records, same should be conveyed. Second point of information is the projected number of vacancies going to be filled by PWD(R&B) for the post of JR Mechanical after 2011 and coming year 2012. The PIO has replied this query by stating that “no such information was available at this point of time”. Though the reply seems to be alright, however, better would have been to inform the information seeker whether any projection was at all made by the concerned department till the time of filing RTI application. The third point of information was for provision of document which shows the reasons for not advertising the vacancies of JE Mechanical for all permanent residents of J&K in the year 2010-2011. Reply to this query has been given in a vague manner. The PIO should have certified whether it was incumbent on the department to advertise vacancies every year or not. The information seeker is seeking information with regard to all permanent residents of the State and the PIO has referred only to special drive for Kashmiri migrants under rules 2009 issued under SRO 412. Obviously, this information is incorrect. The PIO is directed to provide information with regard to all permanent residents. It is seen that the information seeker had also sought reasons why this package of Hon’ble Prime Minister was restricted only to Kashmiri Pandits.

Obviously, the PIO is not obliged to give this information because this is a government decision. In this case, no personal opinion can be asked. Under RTI Act it is also established that no government policy can be challenged. The information on point No 5 is also given. However, it would have been better if PIO would have informed the information seeker that this is a government policy decision and no reasons are on record that would show why Prime Minister's package was restricted only to Kashmiri migrants. Information on point No 6 is also not provided. The information seeker had sought information with regard to total number of vacant posts for AE Mechanical lying in the PWD(R&B) till August 2011 because on the basis of another RTI application it was reported that not a single appointment was made for the post of AE Mechanical in 2009 and 2010 respectively. The information seeker also wanted a copy of SRO 297 dated: 14th September 2006 which provides that according to J&K Engineering (Gazetted) Services Recruitment Rules 1978 for filling of posts of AE, 20% of the total number of vacant posts was to be filled by direct recruitment while 80% by promoting the JEs from the concerned department. The PIO has replied this query by referring to previously filed RTI application. Obviously, it is not the information. The PIO is directed to provide the copy of SRO 297 and also copy of reply to earlier RTI application and reply thereto. If the said RTI application was made by same RTI user then there is no need for giving copy and the reply because the information seeker is already in possession of such documents and such documents are, therefore, in public domain. The information seeker is advised that while using the State RTI Act, he being a literate person should go through first the provisions of State RTI Act and then frame his points of information. It is an established fact that no information or projections which are not part of record can be sought through RTI application and if there are complicated issues and matters in the RTI application which have not been replied to the satisfaction of the information seeker, it is in his interest to appear before the FAA or State Information Commission to help and assist these institutions to arrive at a correct decision based on law. Otherwise the purpose and object of the Act will get defeated.

The complaint is accordingly disposed of.

Sd/-

(G.R. Sufi)

J&K State Chief Information Commissioner

Copy to:-

1. First Appellate Authority, Public Works Department, Civil Sectt. Jammu
2. Public Information Officer, Public Works Deptt. Civil Sectt. Jammu.
3. Shri Ajay Singh Jamwal, R/o 7th Floor Piping Deptt. Engineers India Ltd, Cama Palace, New Delhi-66.
4. Private Secretary to Chief Information Commissioner
5. Guard file.

(G.Q. Bhat)
Registrar
J&K State Information Commission