



J&K State Chief Information Commissioner
Old Assembly Complex, Srinagar. Fax ;0194-2484268,2484269
Wazarat Road, Jammu. Fax No: 0191-2520947, 2520927

File No.SIC/CO/SA/59/2013

Decision No.SIC/CO/SA/59/2013/538

Title:- Shri Balvinder Singh R/o H.No.127, Lane No.2, Sector No.2, Nanak Nagar, Jammu.

V/s

1. Managing Director,
First Appellate Authority,
J&K, SICOP, Jammu.
2. Sr. General Manager/
Public Information Officer,
J&K, SICOP, Jammu.

Jammu

25-11-2013

This is a 2nd appeal filed by Shri Balvinder Singh, a resident of the State against in action of PIO to provide information and also failure of PIO to follow the directions of FAA for dissemination of information. The commission had sought presence of FAA and PIO. It is reported that FAA was not present at Jammu on account of official engagement at Srinagar, therefore he had deputed his junior officer i.e Mr. G.M.Mir, D.M HQ. The PIO and information seeker attended and they have been heard.

(2)

The brief facts in this appeal are that the appellant had filed RTI application before the PIO which was received in his office on 16-3-2013. As the information sought was of high public value which if disclosed and is properly used would go long way in bringing transparency and accountability in working of public authorities as per the mandate given in the State RTI Act 2009, therefore, it would be appropriate to reproduce the information so sought:-

1. Provide the name along with parentage of all the persons appointed as daily wagers/need basis/adhoc/or on temporary basis during the last ten years in your department, mention the date of appointment also.
2. Has your department ever wrote to the seniors about the shortage of staff before engaging daily wagers/temporary/adhoc. If yes then provide the copy of all such correspondence.
3. Whether these appointments are made in accordance with the laid down norms or rules, if yes provide the copy of all or any such rules or norms.
4. If the answer to the above mentioned question is negative then provide the reason for the violation of the laid down norms for recruiting/engaging persons as daily wager /adhoc basic/or on temporary basis.
5. Provide the detail of how many out of these appointees are confirmed during the last ten years along with the file noting of the recommending authority.
6. Provide the date of confirmation and date of engagement as daily wager/adhoc/temporary basis in the following format.

S.No.	Name of the appointee	Date of engagement as daily wager/temporary	Recommending authority if any along with the copy of recommendation	Date of confirmation
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7. Has your department even advertised any vacancies to be filled from the general public, through electronic or print media, during the last ten years, if yes provide copy of all such news paper cutting?

(3)

8. Has your department abandoned the idea of filling vacancies of clerical staff advertised last year, if yes provide the reason and if the answer is negative then provide the detail how many days, months or years shall take to fill those vacancies by conducting interview or some exams.

This information obviously is giveable as not a single item of information so sought falls under any prohibited provisions of the State RTI Act. The PIO was under legal obligation to pass order within 30 days on or before 15-4-2013. The PIO admits that order was not passed within stipulated period of time as he had sought assistance from Divisional Manager, SICOP, Jammu vide his communication No.SICOP/GM/RTI/2026/9561-62 dated 26-3-2013. The reminder was also issued on 28-3-2013 with no result.

The appellant having failed to have received information, preferred first appeal before FAA vide his appeal dated 15-5-2013 which was received in the office of FAA on 30-5-2013. The FAA adjudicated the first appeal on 10-6-2013. The PIO had admitted before FAA that information could not be given on time because he was busy in official engagement like Annual Tender Process. Ultimately, the FAA directed the PIO to provide information within 10 days under information to his office. The PIO Shri Jaswinder Singh, G.M. SICOP Jammu has admitted to have received this order on same day. The PIO admits that he did not pass order even after receiving order of FAA. The appellant having been repeatedly denied of information so sought preferred 2nd appeal before this commission on 2-9-2013. After hearing the appeal, the PIO is directed to pass an order under section 7 of the Act within 5 days from the receipt of this order and ensure that information is dispatched to the appellant by registered post.

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The appellant has also claimed for being provided compensation as laid down in section 16(9)(b) of the Act. The public authority of J&K SICOP i.e Commissioner/Secretary to Government, Industries & Commerce is required to give his objection why compensation as claimed by the appellant may not be awarded as provided under section 16(9)(b) of the State RTI Act. The reply from the public authority i.e Commissioner/Secretary to Government, Industries and Commerce is sought as the Act has provided the same. His reply if any must reach this commission within 30 days from receipt of this order. The information sought is of high value and should have been disclosed within stipulated period of time. The PIO flouted provision of State RTI Act and also violated the directions of the superior authorities i.e FAA. Therefore, penalty proceeding under section 17 are initiated against the PIO Shri Jasvinder Singh and he is directed to explain reasons if any for not imposing penalty. Penalty will reckon from the date when order was to be passed till the date order is actually passed and served on the information seeker. The FAA is also directed to explain why he did not make a reference to the State Information Commission as provided under section 16(3) of the State RTI Act. The appellant is also required to explain before this commission how the delaying of information has caused any loss or other detriment which he has been subjected to. His reply if any must also reach to this commission within 30 days from receipt of this order.

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Before this order is concluded, it is seen that FAA has not passed order strictly in accordance with provisions of section 16 of the State RTI Act. As per section 16(3) of the State RTI Act the FAA was under legal obligation to make a reference to this commission for failure of the PIO who had not passed order for taking necessary action by the commission. Under the State RTI Act the FAA is quasi judicial authority. He has no powers to condone the delay for not passing the order which has been caused by his subordinate officer i.e PIO. Imposing the penalty or dropping the same is within the legal competence of the commission alone. For this purpose FAA's attention is invited to section 17 of the State RTI Act. Secondly, the purpose and aim of the State RTI Act is to bring transparency and accountability in the working of public authority. One of the principles of bringing transparency and accountability is that Government authorities while they pass orders and issue official communications they should identify themselves by mentioning/writing their name under their signatures. The FAA has not identified himself in his order under appeal. The FAA is also reminded about the fact that there are number of circulars issued by the State Government, the latest one being issued by the Secretary, General Administration Department vide circular No.20- GAD of 2013 dated 10-9-2013. The FAA has also failed to ensure the compliance with this circular by the PIO. If this circular is not followed or honoured it will obviously lead to indiscipline and insubordination in the administration.

The PIO is directed to provide the information to the information seeker on the same lines which are mentioned in the RTI application of the

(6)

appellant within five days from the date of pronouncement of this order and intimate this commission about the compliance of the commission's order. The appellant is also directed to inform the commission about the compliance of commission's order.

Sd/-

(G.R.Sufi)

State Chief Information Commissioner.

Copy to the:-

1. Commissioner/Secretary to Government, Industries and Commerce Department, Civil Secretariat, J&K Jammu.
2. Managing Director/First Appellate Authority, J&K SICOP, Jammu.
3. Sr. General Manager/PIO, J&K SICOP, Jammu.
4. Shri Balvinder Singh R/o H.No.127, Lane No.2, Sector No.2, Nanak Nagar, Jammu.
5. Private Secretary to HCIC.
6. Guard file.

(Gh. Qadir Bhat)

Registrar,

J&K State Information Commission.