



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/Comp/52/2013
Decision No.SIC/CO/Comp/52/2013/539

Title:- Shri Firdous Ahmad Khan, Senior Scale Stenographer C/o Board of
School Education, Srinagar.

V/s

1. First Appellate Authority,
Board of School Education,
Jammu.
2. Public Information Officer,
Board of School Education,
Srinagar.

Jammu
26-11-2013.

This is a complaint filed by Shri Firdous Ahmad Khan in this commission on 16-7-2013 against in action of FAA and PIO of J&K BOSE, Kashmir Division. The FAA could not attend this commission because being busy in some other important office engagement, she has deputed Mr. Mukhtar Ahmad Jallu, Deputy Secretary-Cum- PIO, J&K BoSE, Kashmir Division.

The brief facts of the case are that the complainant had filed RTI application on 21-2-2013 seeking certain information. PIO did not pass order

(2)

within stipulated time as provided under section 7 of the State RTI Act and passed order beyond the stipulated time period on 13-5-2013.

In the first appeal the complainant had requested the FAA to direct the concerned PIO for giving reason how information was refused to him invoking section 8 of the State RTI Act. This appeal was received in the office of FAA i.e Secretary of the BOSE on 14-5-2013. In view of the section 16 of the State RTI Act first appeal was to be adjudicated upon within 30 days or on further extended time of 15 days after recording reasons in writing for extending the time. However, there is nothing on the record to show that any order was passed by the FAA. Having therefore being aggrieved by non action of FAA to adjudicate his appeal the appellant/complainant approached this commission vide his communication dated 16-7-2013 with the request for directions to PIO for disclosing information. The commission accordingly fixed the hearing. The commission also asked the PIO to let the commission know detailed reasons for invoking section 8(1)(f) of the State RTI Act. The newly designated PIO Mr. M.A. Jallu Deputy Secretary of the Board attended the hearing and invited the attention of the commission to a letter dated 8-10-2013 addressed to registry of the commission wherein it has been submitted that information sought "pertaining to promotion dispute of the information seeker which involved his profound emotions and once the Xerox copies of noting side would be provided to him there would be every apprehension that it would give birth to a soaring feeling of enmity and loathing in him as the officers/officials who have/had processed the said file have/had expressed the factual position that led to his promotion case which might seem adverse to the applicant. Accordingly, in view

(3)

of the above and the known situation in the Valley, this office invoked section 8(1)(f) of the RTI Act in the instant case.”

Further the information so asked by the complainant is being denied to be given to him on the plea that the “noting on the file constituted personal opinion of various officers/officials in the course of their duties.” Surprisingly on the one hand the denial of information is justified vehemently misinterpreting provisions of section 8(1)(f). On the other hand it has been mentioned that “it is pertinent to mention here that whatever the process has taken place on the noting side of the instant file, the decision of the same stand communicated to the appellant/complainant in the form of letter from time to time as and when requested by the said official.”

During the hearing before this commission Mr. M.A.Jallu, Deputy Secretary-Cum-PIO was informed that above mentioned letter which has been addressed to the registry of the commission has been signed by one Mr. Farooq Ahmad Khan, APIO Kashmir Division. Under the scheme of RTI Act the limited role of APIO is to accept and forward RTI application to the PIO/FAA and the commission if so requested. As per section 7 of the State RTI Act “it is the PIO who on receipt of a request under section 6 shall pass the order within specified period of time either provide the information or denying the same.” The PIO Mr. Jallu was accordingly informed that it is only PIO and FAA who are a quasi judicial authorities designated under the Act can pass orders and make submission etc. before the commission, no other officer can usurp the powers assigned to the PIO and FAA as they have to perform quasi judicial powers which cannot be delegated to others unless the law so permits.

(4)

However, during the hearing the present PIO informed the commission that this was the opinion of PIO who has invoked section 8(1)(f). Mr. Jallu during the hearing also tried to explain that no opinion are needed to be given to information seeker if sought and in this regard he referred to Hon'ble Supreme Court's decision arising out of SLP(C) No.7526/2009 in Civil Appeal No.6454 of 2011 in the case of Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & Ors.

The commission has considered the order passed by the then PIO and submissions made by the present PIO and also gone through the records which included the official noting made in the case of complainant from para 222 to 267 which is the subject matter of the RTI application dated 21-2-2013. The noting has been done by the officers/officials of the BOSE from time to time in their capacity as Government functionaries and not in their individual capacity. The opinion are recorded in the official record, hence, these notings fall under the definition of information as given in section 2(d) which reads as under:-

“information” means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;”

Thus, from the above definition it is quite clear that recorded opinions given by these Government officers from time to time in the promotion case of the complainant/appellant form a part of record. What the Hon'ble Supreme Court has laid down in the above quoted case is that “the public

(5)

authority is not required to furnish information which require drawing of inferences and/or making of assumptions.” The information seeker in the present case was seeking opinions which are not passed on as inferences or purely unrecorded, unauthenticated opinions but he wanted Xerox copies of the opinions (note side from para 222 to 267) of the file under process. These notings have emanated from the record maintained by public authority of the J&K BoSE. The appellant/complainant had addressed to the then Commissioner/Secretary to Government, School Education Department (the then Chairman, BOSE) for seeking such recorded opinions. The commission has found that these notings are properly recorded therefore, these notings duly fall under the definition “information” as given in section 2 of State RTI Act which the Hon’ble Supreme Court has held that such information existed in the material form and is available in the official records of the public authorities therefore, they have to be disclosed. Now, the commission is dealing with the objections of the PIO that such information is prohibited under section 8(1)(f). After going through these official notings the commission has found that the PIO erroneously and with a mischievous mind invoked this provision with a purpose to deny the information to the information seeker, a right which has been conferred on the residents of the State as per section 3 read with section 6 of the State RTI Act. The RTI is not only a statutory right but it has been equated with fundamental right as enshrined in the Constitution of India in its chapter on fundamental right, which has been adopted by the Constitution of Jammu and Kashmir State as a part. Therefore, fundamental right cannot be denied to the citizens of the country or residents of the State. But prohibitions under section 8 of the State RTI Act 2009

(6)

have been provided are reasonable restrictions for protecting sovereignty and security of the Country. Prohibiting any contempt of a court etc. It would be appropriate to reproduce the provision of section 8(1)(f) which the PIO has invoked which are reproduced as under:-

“Notwithstanding anything contained in the Act, there shall be no obligation to give any citizen’s information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;”

This prohibition is specifically meant for that information which has been given to the law enforcement agencies in confidence by any source. The purpose of this prohibition is to safeguard the life and security of a person who acts as a source. Thus denial of information given by a source has to be protected for the safety and security of that source.

Under the present facts and the circumstances of the case this provision of law is not applicable to the information seeker. He wants the information to pursue his claim to promotion which he feels, he has a fundamental right to pursue. The commission fails to understand how PIO has invoked this provision of law out of context and without justification. The aim has been to deny the information but not to apply law. The PIO is therefore, accordingly directed to explain why penalty as provided under section 17 may not be imposed on him from the date information was to be given till the date information is actually received by him. The then PIO is also directed to explain why his case may not be referred to appropriate authority for disciplinary action. While being briefed

(7)

about the correct legal position of section 8(1)(f) and its importance during the hearing before the Commission, the present PIO has offered to provide this information to the information seeker within 10 days from the pronouncement of this order which was made on 26-11-2013 in his presence. The appellant/complainant Mr. Firdous Ahmad Khan is directed to inform this commission about compliance or otherwise of this order by the PIO. The PIO is also directed to serve a copy of this order on the PIO who received RTI application and denied information.

Sd/-
G.R.Sufi

State Chief Information Commissioner.

Copy to the:-

1. Commissioner/Secretary to Government, School Education Department, Civil Secretariat, Jammu.
2. First Appellate Authority, J&K Board of School Education, Jammu.
3. Public Information Officer, J&K Board of School Education, Kashmir Division, Srinagar.
4. Shri Firdous Ahmad Khan, Senior Stenographer C/o Board of School Education, Kashmir Division, Srinagar.
5. Private Secretary to HCIC.
6. Guard file.

(Gh. Qadir Bhat)
Registrar,
J&K State Information Commission.