



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/73/2013

Decision No.SIC/CO/Comp/73/2013/575

Title:- Ms. Indu Koul R/o House No.1A Sector 1, Channi Himmat, Jammu.
V/s

1. Principal,
Government Medical College,
Jammu (Deemed PIO).
2. Public Information Officer,
Health & Medical Education Department,
Civil Secretariat, J&K Jammu.

Jammu
30-1-2014.

This is a complaint filed by Ms. Indu Koul, a resident of the State before this Commission on 2-9-2013. To investigate into the complaint the registry of this Commission fixed the hearing and Dr. Naseem Javaid Chowdhary, Addl. Secretary, Health & Medical Education-Cum-PIO, Dr. Shashi Gupta, Principal Government Medical College, Jammu (Deemed PIO), Shri Mansoor Aslam Chowdhary, PIO and Shri Anuj Sawhney, Adovocate from M/S Jalali & Associates attended and they have been heard. The brief facts of the complaint are that the complainant had filed an RTI application before Commissioner/Secretary to Government, Health & Medical Education Department, Jammu and

Kashmir, Civil Secretariat, Jammu on 10-6-2013 which was received in the office of PIO, Health & Medical Education Department on the same day seeking the following information:-

1. Copy to letter No.ME/81/89 dated 16-12-1996 from Under Secretary to Government, Health & Medical Education Department to Dr. Shashi Gupta, Lecturer Gyne and Obsts C/o Principal Medical College, Jammu on the subject “ Un-authorized absence from duty.”
2. Whether any permission or NOC was given by the Government in Favour of Dr. Shashi Gupta, for proceeding outside the country for the period of unauthorized absence. In case it is so, copy of the same be furnished.
3. Copy of the Matriculation certificate or any other document furnished by Dr. Shashi Gupta to the Government in support of her Date of Birth for the purpose of appointment as Lecturer in the Department of Gynaecology & Obstetrics, Government of Jammu & Kashmir.

The PIO, Health & Medical Education passed an order on 18-6-2013 providing information on point No.1. With regard to point No.2 of information it was informed by the PIO that no such information was forthcoming from the available record. With regard to point No.3 copy of Matriculation certificate or any other documents furnished by Dr. Shashi Gupta to the Government, in support of her Date of Birth for the purpose of appointment as Lecturer in the Department of Gynae. and Obsts. Government of Jammu and Kashmir. The PIO directed the information seeker to approach the Principal, Government Medical College, Jammu/DDO, PIO GMC, Jammu. The PIO also had made a copy of the above mentioned order to PIO GMC, Jammu with the request to provide the information regarding point 3 directly to the applicant within time stipulated under the Act. This communication was received by the PIO GMC, Jammu on

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22-6-2013. The PIO GMC, Jammu wrote to Principal, GMC Jammu vide his order No. AHJ/RTI/2013/3924-27 dated 25-06-2013 requesting the said authority to provide assistance to him in terms of Section 5(4)(5) of the State RTI Act for providing relevant information. It is submitted before the Commission that Chief Accounts Officer in the office of Principal, GMC, Jammu wrote back to PIO, GMC vide her communication No.GMC/Acctts/13-14/27 dated 10-7-2013 intimating him that desired information stands communicated to him vide No.GMC/PS/RTI/3262 dated 8-7-2013. The above referred document which was sent to PIO GMC, Jammu on 10-7-2013 contains information with regard to travel of Dr. Shashi Gupta to Soudi Arabia and NOC thereof. Similarly, this letter also accompanied by letter dated 16-12-1987. The complainant has submitted that in his RTI application among other things he had also asked to furnish copy of matriculation certificate or any other documents which was furnished by Dr. Shashi Gupta to the Government in support of her Date of Birth for the purpose of appointment as Lecturer in the Department of Gyane. & Obsts., Government of Jammu and Kashmir. The complainant submits that neither Matriculation certificate was furnished nor any documents given by Dr. Shashi Gupta was given to information seeker.

The complainant vide his complaint has requested this Commission to take suitable action under the Act so that necessary information is provided to the information seeker.

The Commission has called the parties and perused the record. The PIO, Health & Medical Education though acted promptly, did not indicate the

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particulars of FAA to the information seeker as provided under section 7(8) of the State RTI Act. He is advised that in future he should pass order under section 7 with its all components. Secondly, PIO in Secretariat should have himself invoked section 5 and obtained the full information and forwarded the same to the information seeker. The deemed PIO prima facie failed to give information which information seeker wanted to the PIO, GMC Jammu. Hence, the Commission considers it appropriate to initiate penalty proceedings as provided under section 17 of the State RTI Act and deemed PIO Dr. Shashi Gupta is directed to explain reasons, if any, for not initiating penalty proceedings as provided under the Act. She may send her reply in writing within 30 days from receipt of this order.

The information seeker who is assisted by well qualified Advocate is advised that while exercising his/her right of information under this Act he/she should have followed proper procedure i.e file first appeal before the FAA seeking disclosure of information as contained in her application under section 6 and if FAA would have not adjudicated first appeal within time stipulated under the Act he/she should have preferred second appeal before this Commission under section 16 of the State RTI Act 2009.

The jurisdiction of section 15 and 16 has been elaborated and explained by the Hon'ble Supreme Court in their celebrated judgment in the case of Chief Information Commissioner, Manipur V/s State of Manipur. The Hon'ble Supreme has Court held that the information seeker should not be allowed to bypass FAA. Similarly, the Hon'ble Supreme Court has also held that

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section 15 is only supervisory section which provides for conduct of enquiry under the Act for not given information on time or giving information which is misleading, incorrect or false. It is accordingly advised that in future exercise of right to information has to be done which has been held to be a fundamental right in accordance with the provisions of the Act. The complainant has liberty to file first appeal before FAA and FAA is advised to condone the delay if any and admit an appeal and adjudicate the same in accordance with the law. The commission was informed that the FAA in this case is Principal, GMC, Jammu. The public authority i.e Commissioner/Secretary to Government, Health & Medical Education Department is advised that in order to avoid implications of conflict of interest he should designate some other authority as FAA for adjudicating appeal if filed.

The complaint is accordingly disposed of.

Sd/-

G.R.Sufi

Chief Information Commissioner.

Copy to the:-

1. Principal, Government Medical College, Jammu (Deemed PIO).
2. Public Information Officer, Health & Medical Education Department, Civil Secretariat, Jammu.
3. Ms. Indu Koul R/o House No.1A Sector 1, Channi Himmat, Jammu.
4. Private Secretary to HCIC.
5. Guard file.

(G.Q.Bhat)

Registrar,

J&K State Information Commission,

Jammu