



Jammu and Kashmir State Information Commission
(Constituted under Right to Information Act, 2009)
Old Assembly Complex, Srinagar, Fax No. 0194-2484269
Wazarat Road, Jammu, Fax No. 0191-2520947

File No. SIC-J/Comp/40/2011

Decision No. -SIC/K/Camp/2011
D a t e d: 22 . 09 . 2011

Shri Vilakshana Singh S/O Late Shri Jagdish Singh Dogra
R/o Sidhara By Pas, Opposite Eicher Workshop,
Sidhara Tehsil and District Jammu

(Complainant)

V/S

Public Information Officer
O/o Chief Engineer, Power Development Department Jammu

First Appellate Authority
O/o Chief Engineer, Power Development Department Jammu

(Respondents)

Order u/s 17 of State Right to Information Act, 2009 in above titled case

1/ In this case penalty proceedings under section 17 of the RTI Act, 2009 were initiated against the above named PIO vide this Commission Order dated 18.03.2011 for not providing information to the Information Seeker as per the time laid down in Section 7 of State Right to Information Act, 2009. It was found during the proceedings before the Commission that the Information Seeker Shri Vilakshana Singh Son of Late Shri Jagdish Singh Dogra Resident of Sidhara By Pas, Opposite Eicher Workshop, Sidhara Tehsil and District Jammu had applied under State Right to Information Act, 2009 before Chief Engineer, Electric Maintenance & R. E .Wing Jammu, on 09.07.2011 for seeking information. This application was duly received on the same date vide receipt No. 2411 dated 09.07.2010. The Public Information Officer had to dispose of this application as expeditiously as possible but not later than thirty days i.e. on or before 08.08.2010. As such no order was passed by due date, the PIO attracted the

provisions of Section 17 of the State Right to Information Act, 2009 which provides for penalizing the defaulting PIO @ 250/- per day till the date of order, if the PIO fails to establish that it had any reasonable cause for not furnishing information by due date as laid down under section 7 of State Right to Information Act, 2009.

2/ As the Information Seeker failed to obtain any information within the stipulated period of time, he preferred First Appeal before the First Appellate Authority O/o Chief Engineer, Electric Maintenance & R.E. Wing, Jammu. Even the First Appellate Authority did not dispose of First Appeal within the maximum period of forty five days. The First Appeal was not even disposed of till the Information Seeker approached this Commission under sections 15 & 16 of the Act on 21.01.2011 hence the Commission vide its order referred hereinabove initiated penalty proceedings under section 17 of the Act. Reply was sought and a separate show cause notice was also issued to the PIO on 18.03.2011 by this Commission. The PIO was given reasonable opportunity to show cause why penalty as provided under section 17 of State Right to Information Act, 2009 may not be imposed on him and his reply within fifteen days from the receipt of this show cause was sought. In response to this show cause the respondent Mr. Mohammad Qasim, Chief Engineer, Electric Maintenance & R.E. Wing, Jammu – Cum-PIO has submitted his explanation on 05.04.2011 to this Commission. It would be relevant to peruse the explanation given by the Public Information Officer and then analyse whether there is a reasonable cause to the PIO for not being penalized inspite of the fact that he violated the provisions of State Right to Information Act, 2009. The operative part of the reply dated 05.04.2011 furnished by Chief Engineer, Electric Maintenance & R.E. Wing-cum-PIO- Jammu is reproduced here-in-below:

“...It is intimated that furnishing of reply to desired information got delayed due to non-appointment of designated Public Information Officer in this office. However, undersigned attended Hon’ble Commission’s Office at Jammu in the very first instance. The reply was furnished on targeted date i.e. 14.03.2011 vide this office letter No. CEJ / PS / 4232 dated 14.03.2011 as per directions of Hon’ble Commission.

Hence, it is requested not to impose any penalty for delay in furnishing reply....”

3/ I have considered this reply and I have not found it to be reasonable enough not to impose penalty because of the following reasons:

The State Right to Information Act, 2009 was promulgated in 2009 and it came into force at once. As per the Section 4 of the Act, obligations of Public Authority regarding the dissemination of information were laid down and they were required to publish the various details of records etc. within one hundred twenty days from the commencement of the Act vide Section 4(b) (xxvi), the names, designations and other particulars of Public Information Officers had also to be disseminated wherever a Public Information Officer is designated. If no PIO is designated, it is the responsibility of the Public Authority to designate the PIO otherwise the Public Authority will be deemed PIO. It is seen that the applicant had addressed his application under RTI to PIO, O/o the Chief Engineer, Electric Maintenance & R.E. Wing, Jammu. Chief Engineer being the highest and top authority of the Department can safely be designated as Public Authority and as it was in his notice that an RTI Application has been received in this Office on 09.07.2010. He should have immediately taken the necessary steps to get the PIO designated and forward the application to him for disposal within time schedule laid down in the Act which has not been done. The Information Seeker has alleged in his complaint before this Commission that he visited the Office of the Chief Engineer, Electric Maintenance & R.E. Wing, Jammu and he had assured him that information will be provided to him. Again this shows that Chief Engineer was aware about the urgency of the matter. Later on Shri Mohammad Qasim, Chief Engineer, Electric Maintenance & R.E. Wing, Jammu attended this Commission in response to this Commission notice dated 11.03.2011. He was given copy of appeal for his response which was received on 14.03.2011. This response is nothing but information which was originally sought by the Information Seeker. Again that day the Public Authority i.e. Chief Engineer, Electric Maintenance & R.E. Wing, Jammu did not take any step for appointing the PIO neither there was any communication to the Commission whether there were any problems with the Chief Engineer, Electric Maintenance & R. E. Wing, Jammu that were responsible for not designating the Public Information Officers nor any step has been taken for getting them designated which was requirement of the law as per the provisions of State Right to Information Act, 2009. Hence it is established beyond doubt that in accordance with the provisions of Right to Information Act, 2009, Chief Engineer, Electric Maintenance & R.E. Wing, Jammu

is deemed to be Public Information Officer in view of Rule 2(f) of J&K Right to Information Rules, 2010 and he is liable for being penalized under section 17 of J&K Right Information Act, 2009. Rule 2(f) of J&K Right to Information Rules, 2010 is reproduced as under:

RULE 2(F):

“...Public Information Officer” means an Officer designated by a public Authority under section 5(1) of the Act and include an Assistant Public Information Office so designated or notified under section 5(2) of the Act and it also includes the Head of the Public Authority in case no Public Information Officer is appointed or notified...”

Chief Engineer, Electric Maintenance & R.E. Wing, Jammu cannot be exonerated for not being penalized as he has not forwarded or advanced any reasonable cause, therefore, Commission holds the Public Information Officer in default and imposes a penalty to the tune of Rs. 25000/- which is calculated as under:

- 1. Date of application u/s 6 of J&K Right to Information Act, 2009, for seeking information is 09.07.2010.**
- 2. Due date of providing information is 08.08.2010.**
- 3. Actual date of providing information is 14.03.2011.**
- 4. Penalty to be imposed for each day is Rs. 250/-.**
- 5. The total no. of days of default is 245.**

4/ Therefore, the imposition of penalty is restricted to 100 days only as per Section 17 of the Act is given as under:

$$\mathbf{\underline{100\ days\ x\ Rs.\ 250(per\ day)\ =\ Rs.\ 25000/-}}$$

5/ The Drawing and Disbursing Officer, O/o Chief Engineer, Electric Maintenance & R.E. Wing, Jammu will ensure deduction of **Rs. 25000/- (Rupees Twenty Five Thousand)** from the salary of Mr. Mohammad Qasim, Chief Engineer, Electric Maintenance & R.E. Wing, Jammu and remit it to Government Account with an intimation to this Commission. In case of any default committed by DDO in this regard, he (DDO) will be personally liable for making the payment

towards the Government Account. This order has to be complied within fifteen days from the date of receipt of the order.

6/ The complainant has also claimed compensation for harassing him by deliberately violating the provisions of the J&K RTI, Act, 2009. The complainant is required to prove how he has been harassed by the PIO and what damage and detriment he suffered. The Public Authority is also required to explain why compensation so provided under the Act may not be awarded. Submission, if any, in this regard be furnished to this Commission within one month from the date of receipt of this order by both the parties.

7/ Mr. Mohammad Qasim, Chief Engineer, Electric Maintenance & R.E. Wing, Jammu-Cum-PIO is at liberty to file Review Petition before this Commission for review of this order as provided under Rule 36 Clause (4) of J&K Right to Information Rules, 2010.

Sd/-

(G.R.Sufi)

Chief Information Commissioner, J&K

No:

Dated: /09/2011

Copy to:

1. Commissioner / Secretary to Government, Power Development Department, J&K, Srinagar for information and necessary action.
2. Mr. Mohammad Qasim, Chief Engineer, Electric Maintenance & R.E. Wing, Jammu-Cum-PIO for information.
3. Drawing & Disbursing Officer, O/o Chief Engineer, Electric Maintenance & R.E. Wing, Jammu for compliance under an intimation to this Commission.
4. Shri Vilakshana Singh Son of Late Shri Jagdish Singh Dogra Resident of Sidhara By Pas, Opposite Eicher Workshop, Sidhara Tehsil and District Jammu for information.
5. Guard File/Website.

Sd/-

(M.A.Wani)

Joint Registrar

J&K State Information Commission