



J&K State Information Commission
Wazarat Road, Near D.C. Office, Jammu /
Old Assembly Complex, Srinagar.

File No. SIC/CO/SA/252/2015
Decision No. SIC/ CO/SA/252/2015/796

Appellant : Pritam Singh Saini
Respondent : FAA / PIO, J&K, Public Service Commission.
Date of hearing: 21-08-2015
Date of Decision: 14-09-2015/
Chief Information Commissioner: G.R.Sufi
Referred Sections: Section 3, 16(4) of the J&K RTI Act, 2009.
Result: Appeal disposed of.

Mr. Mohammad Ayub, Deputy Secretary-cum-PIO, JKPS, Mr. Qazi Raees, PLO-cum-the then PIO, JKPS attended the Commission. Appellant did not attend.

FACTS:

Mr. Pritam Singh Saini, a resident of the State who has filed scores of RTI applications before various PIOs in the State has come up with another application to PIO, JKPS, received in his office on 05-02-2015, seeking voluminous information, as listed under;

- i. Provide authentic photo copy of the letter issued by the Commissioner/Secretary to Government, General Administration Department addressed to Secretary, JKPS on the basis of which, the PSC has issued Notification No. PSC/EXM/12/58 dated: 09-04-2012 for 35 posts of Junior Scale of J&K Administrative Service, clarifying that for which Department, the posts have been advertised with number of posts of each department for which advertisement has been made, i.e., for Revenue Department, Civil secretariat, Excise Department, Rural Development Department and other

departments in which Junior KAS posts have fallen vacant and advertised made for filling up the same.

- ii. Also provide copy of the letter of GAD addressed to PSC during the year 2013 under which the Junior Scale KAS vacant posts have been advertised and filled by the PSC with details of posts of each department pertaining to each department, i.e., Revenue Department, Rural Development Department, etc. Also provide copy of the letter of the GAD regarding the advertisement made in the year 2014, department-wise.
- iii. Provide the details of the revenue collected by sale of the applications forms for all the posts of gazette cadre during the period 01-04-2012 to 31-12-2014, quarterly, half yearly and yearly and provide full details of remittance of the said amount generated through the sale of application forms and other departmental examination charges, etc. Provide information that where the amount so collected has been deposited, i.e., Bank, Government Treasury or incurred by the PSC mentioning the nature of expenditure where made and balance amount with PSC, if any with Bank Account Number.
- iv. Provide copies of the engagement orders of all the officers/officials retired from J&K Public Service Commission with rate of monthly emoluments paid to them individually and also provide copies of the orders of their appointment again after daily wage basis by the JKPSK w.e.f. 01-01-2009 to 31-12-2014 with their rate and copies of the engagement orders.
- v. Provide detail of posts lying vacant in the JKPSK at present and the dates from which have fallen vacant for each post and how many officers/officials retired from JKPSK from 01-01-2009 to 31-12-2014, with name, post and the date of superannuation of each.
- vi. Provide detail of expenditure incurred on payment of overtime to the employees of JKPSK for official work since 01-01-2009 to 31-12-2014, amount drawn bill-wise, with Treasury Vr. No. & Date and names of the officers/official to whom paid the amount for overtime hours.
- vii. Provide information about the mode of payment for late hours duty, whether the said payment has been made from the collection by sale of forms or out of the budget provided by the J&K Government for the said purpose for the period 01-01-2009 to 31-12-2014.
- viii. Provide the information that where the expenditure for conducting examinations, tests, paper checking, conduct of interviews, hiring of centres, incentives for hiring the Government officers/officials for interviews, etc. If

special funds are allotted by the J&K Government or expenditure incurred out of the revenue generated by PSC through sale of forms, etc.

- ix. Provide attested photo copies of budget allotment by the J&K Government to JKPS, both plan and non plan and other special grants w.e.f. 2012-13, 2013-14 and 2014-15.

PIO, JKPS responded to the request of the appellant vide his order dated: 26-02-2015. The appellant not being satisfied with the response of the PIO preferred first appeal before FAA, JKPS. The FAA did provide opportunity notice of being heard to the appellant vide his letter dated: 03-03-2015, fixing hearing on 11-03-2015 in his office chambers. It is alleged by the appellant that the FAA did not pass any order, hence 2nd appeal before this Commission. The appellant in his 2nd appeal has alleged that wrong and misleading information was given to him by the PIO.

DECISION:

The Commission heard this appeal from time to time. On last hearing, held on 21-08-2015, present PIO, JKPS, Mr. Mohammad Ayub and the then PIO, JKPS, Qazi Raees attended. The appellant did not attend, inspite of being given many opportunities to appear before the Commission to substantiate his contentions raised in the 2nd appeal and to rebut contentions of the PIO. The Commission was informed by the respondents that the FAA has decided the first appeal of the appellant vide his order dated: 15-04-2015. Commission while perusing order of PIO found that information with regard to point 1,2,5,6,7,8 & 9 has been provided. With regard to information at point 3 of the RTI application, i.e., revenue generated on account of sale of application forms, etc, appellant has been informed by the PIO that matter has been taken up with Bank and same will be provided as and when response received from bank authorities. With regard to information at point 4, appellant has been intimated that this information is covered under Section 8 of the J&K, RTI Act, 2009, hence cannot be provided.

The Commission while going through J&K State RTI Act, 2009 has found that there is no provision in the Act, which would justify non disclosure of information, like

giving details of appointment of Resource Persons for what, J&K, Public Service Commission says "effective functioning of the Commission." The only exemption from providing information in the Act is enumerated in Section 8 of the J&K RTI Act, 2009. Under Section 8(f) of the J&K RTI Act, 2009, no information is disclosable if the disclosure of such information endangers the life or physical safety of any person or identify source of information or assistance given in confidence or law enforcement or security purposes. The persons in J&K PSC, associated with exams of the papers or persons constituting interview boards are not such, whose identity can not be disclosed. If the J&K Public Service Commission finds that the disclosure of names of Resource Persons will endanger their life, then they should satisfy Commission by producing necessary evidence, which will include the record also. The attention of PIO is also invited to Section 8(2), which provides that even in the case of any of the exemptions permissible in accordance with Sub-section (1) to Section (8), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. It simply means that if any information is overwhelmingly in public interest, same is to be disclosed, even if it may ordinary be covered under exempted clause.

Before concluding this order, Commission would like to reiterate that the purpose and rationale for accessing right to information given to the residents of the State is qualified and the qualification is that the right to information is to be used with an intension and purpose of "promoting transparency and accountability in the working of public authorities." The constitution and establishment of the Commission is with the sole objective of ensuring that such purpose and rationale for exercising right to information is fulfilled. This position is explained in the preamble of the J&K RTI Act, 2009. The Hon'ble Supreme Court of India has held in the case of Kashav Bharti that preamble is an important part of the Constitution. The information seeker in this case has been using RTI Act for last several years and has filed hundreds of applications before various public authorities. The Commission has number of times asked him to show what was the purpose and aim for making such numerous applications. The Commission feels that in view of the preamble to the J&K RTI Act, 2009, it has an inherent power to see whether right to information exercised by any resident of the

State is used for the purpose laid down in the preamble of the Act. Prima Facie, it seems that the information seeker in this case has not fulfilled that objective of the Act. There are very serious allegations in the possession of the Commission against this person by some public authorities, alleging misuse of the law by this individual. Therefore, PIO, J&K, Public Service Commission is directed to upload said information, which is now directed to be disclosed vide this order on the official website of JKPS and not give it directly to the information seeker. After this information is uploaded on official website, the appellant may then download the same. However, same should be done strictly in accordance with the purpose and preamble of the Act.

PIO's compliance to this order must reach the Commission within 15 days of the receipt of this order. Information seeker is directed to let this Commission know, how he has used the information which has already been given to him vide RTI application under appeal and several other applications filed by him. His compliance must reach this Commission within 15 days of the receipt of this order.

2nd Appeal is accordingly disposed of.

No. SIC/ CO/SA/252/2015

Sd/-
(G.R.Sufi)
Chief Information Commissioner
Dated: -09-2015

Copy to the:-

1. First Appellate Authority, J&K, Public Service Commission, J&K, Srinagar.
2. Public Information Officer, J&K, Public Service Commission, J&K, Srinagar.
3. Pvt. Secretary to HCIC.
4. Mr. Pritam Singh Saina C/o Daily English Nawa-e-Waqat, Akalpur Morh, Lower Muthi, Jammu (Appellant).
5. Guard File.

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