



Jammu and Kashmir State Information Commission

(Constituted under The Right to Information Act, 2009)

Wazarat Road, near DC Office Jammu, 0191-2520947, 2520937

Old Assembly Complex, Srinagar, 0194-2506660, 2506661

www.jksic.nic.in

File No. SIC/K/SA/76/2016

Decision No. SIC/K/SA/76/2016/53

Appellant : Prof. Ab. Gani Bhat

Respondents : FAA/PIO SKIMS Medical College
Bemina Srinagar

Date of Registration : 24.06.2016

Date of Decision : 26.09.2016

1. The appellant preferred Second Appeal in the Commission against the refusal to receive the First Appeal by FAA (Respondent-1) and denial of information and examination by PIO. (Respondent-2) by referring to procedure under Section-19 of J&K RTI Act, (*should have been Section-16*) which as per appellant, is an appellate procedure to file Appeal under RTI Act to correct errors of inferior forum.

Brief facts leading to the second appeal are that appellant filed RTI application through Speed Post on 14.05.2016 with Public Information Officer SKIMS Medical College Bemina Srinagar. As PIO failed to provide the information within time limit, the appellant on 14.06.2016 filed First Appeal with FAA through speed post on 14.06.2016. That on 16.06.2016 appellant received Speed Post envelope undelivered by the Postal Authorities with the certificate

that respondent -2 has refused to receive the said Speed Post. That on the same day he received a communication dated 14.06.2016 from Respondent-2 stating that as informed by Administrative Officer SKIMS Medical College Srinagar vide letter dated 13.06.2016, information cannot be provided as the concerned file is under submission to Hon'ble Chief Minister. That date and letter when the said file was submitted to Chief Minister has not been provided and also date and letter under which Administrative Officer was asked to provide the information. That there are many items of information sought by the complainant which are of general nature and which the respondent-2 could provide without recourse to the file i.e., Who is the appointing authority of the Assistant Professor in the Medical College-Hospital, how much leave the said Doctor has availed of and how much leave is at his credit; how long the suspension period should last; how much amounts by way of his pay dues the Doctor was paid during the months of November, 2014 to April 2015, how much amount the Doctor was paid by way of subsistence allowance, when and at what rate from the date of his suspension; details of unauthorized absentee cases in the SKIMS having taken place for last 25 years, providing copy of the SKIMS constitution; and examination of the above information. That reply of respondent-2 shows delaying tactics and has created artificial hurdles in delivering the information and PIO deserves to be divested of the authority of PIO.

Accordingly, appellant has prayed that proceedings as warranted under law may be initiated against the respondents and they be directed to pay costs, damages and statutory penalty to the

complainant and information and examination may also be provided to him.

2. As per records, appellant has filed application before PIO SKIMS Medical College Hospital Bemina Srinagar seeking information on 21 points regarding suspension of Dr. Mohammad Himayun, Asstt. Professor SKIMS Medical College Hospital Bemina Srinagar. The PIO has responded the application on 14.06.2016 informing the appellant that information sought under RTI Act cannot be provided at this stage as the Personal File of the concerned Doctor is under submission to Hon'ble Chief Minister. Thereafter, appellant has filed First Appeal on 14.06.2016 before FAA against the response of PIO as referred to above.

Proceedings:

At the outset, the appellant provided envelop of First Appeal send by him through Speed Post, which was returned by Post Office with remarks "Not received by JVC Hospital hence returned".

The information provided by PIO SKIMS Medical College Hospital Bemina vide letter dated 05.07.2016 has been received by the appellant.

Dr. Shafa A Deva, Dy. Medical Superintendent/PIO SKIMS Medial Colege and appellant Prof Ab. Gani Bhat attended hearing.

During proceedings, the information provided by PIO above reference vis-à-vis information sought by the appellant was perused before parties and conclusions arrived at are as under:-

Information in respect of Point 1 & 2 has been provided. At point-3 information regarding C/L and Earned Leave (E/L) availed by Dr. Mohammad Himayun and total amount of E/L to his credit. PIO has informed that Casual Leave (C/L) Register got

completely damaged in the floods of 2014.. PIO further submitted that HoD Pediatrics has submitted attendance statement of Dr. Mohammad Himayun from October 2014 till August 2016. However, this information is not relevant to the information sought. Therefore, PIO is directed to provide information regarding C/L and E/L as per records.

The reply given at Point-4 is contested by the appellant on the ground that information sought with regard to appointing authority of the said Doctor has not been given. Accordingly PIO is directed to provide copy of information of appointing authority as per records.

The information sought at Point-5 has three limbs: (a) Who has placed Doctor under suspension (b) Quoting of relevant law (c) Providing copy of constitution of Governing Body of SKIMS showing assignment of powers of appointment, suspension and dismissal of the said Doctor. PIO submitted that copy of suspension order has already been given as Annexure “D”, which is the response to limb (a) of the information. Regarding limbs b & c, PIO submitted that this information is available with Sr. Administrative Officer SKIMS Srinagar and in this regard PIO/Sr. Administrative Officer SKIMS has been requested vide letter dated 05.07.2016 to provide information

As PIO SKIMS was not present in hearing, the Commission directs PIO SKIMS to provide response in respect of limb “b” and “c” of Point-5 of the RTI application to PIO SKIMS Medical College Bemina Srinagar/appellant as per records.

Regarding information sought at Point-6, the Commission is of the considered view that circumstances and under what law the

Action by
PIO SKIMS
Soura

Doctor was placed under suspension is already covered in the order of suspension provided to the appellant. PIO submitted that response given by her to point-7 is on the basis of information given by Administrative Officer. The appellant argued that this information must be on the basis of records and file notings. Accordingly, PIO is directed to provide copy of record/File notings related to Point-7.

The information sought at Point-8 is in the nature of opinion and question and therefore these are outside of the purview of the definition of '*information*'. Even then PIO has given response to said query.

Response to Point-9 has been given by the PIO on the basis of information provided by Administrative officer.

As regards information sought at Point-10 appellant submitted that Second limb of the information sought i.e. "within what period enquiry into his suspension should have been completed" has not been responded to .Accordingly, PIO is directed to provide response/ information as per records.

In response to Point-11, PIO submitted that order of constitution of Enquiry Committee has already been given as Annexure "E". Regarding information at Point 13, 14 and 15, PIO has responded by saying that file has been sent to the Hon'ble Chief Minister through Chief Secretary. PIO submitted that this file has now been returned to the Department. Accordingly, PIO is directed to provide information to point 13, 14, and 15 as per records.

The information sought at Point-16 and 17 has been given as Annexure "H" and Annexure "J". Regarding Point-18, the PIO has provided information as communicated by Chief Accounts Officer.

Action by
PIO SKIMS
Soura

In response to Point-19, PIO has provided information relating to SKIMS Hospital Bemina Srinagar. However information related to SKIMS Soura, Sr. Administrative Officer SKIMS has been requested to provide the requisite information to the appellant vide letter dated 05.07.2016. Accordingly, PIO SKIMS Soura is directed to give response to this limb of information as available on records along with response to limb (b) and (c) of Point-5 of application as referred to here-in-above to PIO SKIMS Hospital Bemina/appellant.

Regarding information sought at Point 20 & 21, PIO has responded that same can be had from the Personal File of the Doctor which has been forwarded to the Hon'ble Chief Minister for further necessary action. PIO informed that Personal File of the Doctor has now been received back. Therefore, now PIO should be able to provide information sought as on record.

The Commission has observed that information given to the appellant is not attested as is required under provisions of the Act. Accordingly, PIO is directed to provide attested copies of the information to the appellant. As regards examination of record, PIO is directed to facilitate examination of part of records which appellant wants to examine.

PIO submitted that in view of prevailing situation three weeks time may be granted for compliance of above directions. In view of the prevailing conditions in the valley, request of PIO is granted to comply with above directions within three weeks from the receipt of this order.

As per records, RTI application dated 14.05.2016 has been received by the PIO on 18.05.2016 and on the same day, PIO has requested Administrative Officer SKIMS Medical College Bemina

Srinagar to provide point wise details pertaining to his Section to the PIO within one week. Copy of this letter is marked to Principal SKIMS Medical College Bemina and the appellant. Thereafter, the reply of Administrative Officer dated 14.06.2016 has been communicated to the appellant and received by him. It is therefore held that RTI application has been disposed of within a period prescribed under the act including transfer period of 5 days. However, there is some merit in the plea of the appellant at Para-13 that many items of information are of general nature, which the respondents could have provided without recourse to file of concerned Doctor. It appears that Administrative Officer has given general reply without proper application of mind with regard to other information, which he has later on collected from Accounts Section and other Sections.

In view of the above, the Commission directs Administrative Officer SKIMS Medical College Hospital Bemina Srinagar to explain as to why incomplete information have been given to the appellant and as to why proceedings under Section-17 of the Act shall not be initiated against him. His reply, if any, should reach the commission within three weeks.

As regards the refusal to accept the First Appeal, PIO submitted that during that period post of Principal/designated FAA was vacant, and therefore appeal was returned. The Commission holds that admission/receipt of an appeal cannot be refused merely because the post of officer designated as FAA is vacant. As per Section-16, there is a time limit of 30 days extendable to 45 days for deciding appeal by FAA. Therefore, there is no justification to return

an appeal merely because FAA was not in place on the day of receipt of appeal.

Accordingly, the Commission directs Principal Medical College Bemina to enquire into the issue of refusal to receive the First Appeal and take action against delinquent officials, so that such lapses are not repeated in future. Principal is further advised to sensitize his subordinate staff regarding provisions of RTI Act to ensure that application filed by the citizens under RTI Act, are acknowledged, diarized and place before the respective authorities at the earliest. Appeal is disposed of with the above directions.

Sd/-
(Nazir Ahmed)
State Information Commissioner

Copy to the: -

1. Principal, SKIMS Medical College Bemina Srinagar
2. Dy. Medical Superintendent/PIO SKIMS Medical College Bemina Srinagar
3. Sr. Administrative Officer SKIMS Soura Srinagar
4. Private Secretary to HSIC(K)
5. Prof. Ab. Gani Bhat R/o H No. 8 Pamposh Lane Natipora Srinagar

(Sheikh Fayaz Ahmad)
Registrar,
State Information Commission