



Jammu and Kashmir State Information Commission

شہن یشن کمیت انفارمیر اسٹینڈ کشمیر جموں ا
(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/CO/SA/460/2017

Decision No. SIC/CO/SA/460/2017/956

Final Order

Appellant : Mrs. Iram Fayaz W/O Sheikh Faisal
Respondent : First Appellate Authority (FAA)/Public
Information Officer (PIO), J&K Public
Service Commission (JKPSC).
Date of hearing : 16.05.2017
Date of Decision : 29.05.2017

Brief Facts:

The Appellant filed an RTI application dated: 22.12.2016 with the PIO, J&K Public Service Commission, Bakshi Nagar, Jammu seeking the following information in respect of the selected candidate namely Mr. Altaf Ahmed Najar, S/o. Ghulam Rasool Najar, R/o. Kaka Sahib, Sangam, Eidgah, Srinagar pursuant to J&K PSC's Notification No. 37-PSC (CD-S) of 2016 dated 17.12.2016 for the post of Assistant Professor (Industrial Chemistry) in Higher Education Department:

- a) Criteria laid down for conducting the interview.
- b) Break-up/distribution of total marks obtained vide above referred to notification i.e. weight-age in respect of marks to academic qualification/merit, interview, experience etc.

Aggrieved by the non response of the PIO, the appellant filed the First Appeal dated: 31.01.2017 before the First Appellate Authority/Secretary & CEO, J&K Public Service Commission. While the final disposal of the First Appeal was still pending, the appellant filed 2nd appeal before the Commission on 15.03.2017.

Proceedings:

This 2nd Appeal has been filed on 15.3.2017 and had to be disposed of by or before 14.05.2017 in terms of Section 16 (11). But since the hearing could not be held on account of workload and temporary closure of offices due to change of headquarters from Jammu to Srinagar (Darbar Move), the 1st hearing could be held only on 16.05.2017. On these grounds the time period for final disposal of this appeal is hereby extended by another 60 days w.e.f 15.5.2017 in terms of Section 16(11) of the J&K RTI Act,2009.

In response to the notice of the Commission dated: 31.03.2017 FAA/Sh. Shakeel-ul-Rehman, Secretary, J&K Public Service Commission has filed counter statement dated: 07.04.2017 interalia submitting that through the medium of a communication dated: 27.03.2017, the appellant was advised to appear for personal hearing on 08.03.2017 enabling him to dispose of the First Appeal but the appellant did not turn up.

The 2nd appeal came up for hearing before the Commission on 16.05.2017 which was attended by Sh. Ishtiyaq Ahmed, PIO, J&K PSC and the appellant Mrs. Iram Fayaz. During the hearing, the appellant submitted that the PIO has not furnished to her the full information. The PIO submitted that whole information except 'third party' information was provided to the appellant, however, late by few days (08) days. The PIO further submitted that

the appellant was called upon by the FAA twice for hearing, however, she didn't choose to appear and that the information relating to 'third party' lies with the Secretary, J&K PSC to whom he has no access. The appellant contended that she received part information after she had filed the First Appeal before the FAA.

It is clear from the record on the file of the JKPSC that the PIO has failed to dispose of the application in time i.e, within 30 days after the receipt of the RTI application in terms of Section 7(1) of the J&K RTI Act,2009. The PIO has belatedly provided some information on 30.01.2017, the day the appellant filed the first appeal before the FAA of the J&K PSC. The FAA/ Secretary, J&KPSC has also not disposed of the 1st Appeal in terms of Section 16(7) i.e, within thirty days or within the extended period of 45 days from the date of filing. Both the authorities i.e, PIO and the FAA of the J&K PSC are in violation of the provisions of the J&K RTI Act,2009. They should have disposed of the application and the 1st Appeal within the stipulated time period which has unfortunately not been done. Although, during the proceedings before the Commission, the PIO referred to Section 11 relating to 'third party' information but no record has been provided to show that 'third party' proceedings were initiated in this case by him or that Section (11) was at all applicable in this case. No authority or judgment was quoted in support of applicability of third party information in this particular case of selection. The FAA has also not made any mention of third party proceedings either at the level of 1st appeal or at the time of proceedings with the PIO. For these reasons i.e, failure to dispose of the RTI application in terms of Section 7(1) which lays down specified time period of 30 days for disposal by the PIO and on the grounds of delay, the PIO is fit to be proceeded under Section 17 of the Act.

Whereas Section 17 of the J&K RTI Act,2009 lays down as under:-

Section 17 (1): Where the State Information Commission at the time of deciding any complaint, appeal or reference is of the opinion that the Public Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within time specified under sub-section (I) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished ,so however, the total amount of such penalty shall not exceed twenty five thousand rupees:

Provided that the Public Information Officer shall be given a reasonable opportunity of being heard before any penalty is imposed on him

Provided further that, the burden of proving that he acted reasonably and diligently shall be on the public information officer

Section 17 (2): Where the State Information Commission at the time of deciding any complaint, appeal or reference is of the opinion that the Public Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within time specified under sub-section (I) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the

Public Information Officer under the service rules applicable to him.

Decision

In view of the above, the following directions are issued:

- 1. The PIO of the J&K PSC shall dispose of the original RTI application of Mrs. Iram Fayaz by providing the information requested for within a period of fifteen days from the date of receipt of this order by his office. In this particular case, the issue of third party does not arise as the appellant has sought information about the general criteria laid down for conducting the interview, break-up of marks obtained and weightage. She has not sought copies of answer scripts of the selected candidate which may have invoked the 'third party' reference in terms of Section 11 of the RTI Act. Making public the criteria and break up of marks obtained by the candidates after the examination is over and results announced will only add to the transparency of the selection process.**
- 2. The PIO is also provided an opportunity of being heard as to why the penalty @ Rs.250/ day for every day of delay is not imposed in terms of Section 17 (1) of the J&K RTI Act,2009 w.e.f 22.01.2017 i.e, the last date for providing information in terms of Section 7 (1) upto 30.01.2017 i.e, the date on which some information was actually provided.**
- 3. The PIO is also provided an opportunity of being heard as to why disciplinary proceeding under the service rules applicable may not be recommended to the competent authority in terms of Section 17 (2) of the J&K RTI Act,2009.**
- 4. The First Appellate Authority (FAA) shall ensure, in future timely disposal of 1st appeals received by him. As the incharge of administration in the office of J&K PSC, he must take appropriate steps to streamline the functioning of the RTI Cell/Cells within J&K PSC so that the RTI applicants don't have to face difficulties in pursuing their applications. The**

Secretary may have to seek certain orders from the Chairman, J&K PSC in this regard which he should do, so that the RTI Cell in J&K PSC is strengthened on a permanent basis and problems of the instant nature don't recur. He shall also apprise the SIC about the steps so taken as soon as possible.

The 2nd appeal is accordingly disposed of. A copy of this Order be also handed over to the PIO and FAA/Secretary, J&K PSC for compliance. The Registry of the Commission shall fix the date of hearing for penalty proceedings u/s 17 of J&K RTI Act, 2009 in pursuance of the above orders.

Sd/-
(Khurshid A. Ganai)IAS (Retd),
Chief Information Commissioner,

No.SIC-CO-460-2017/

Dated 29.05.2017

Copy to:-

1. First Appellate Authority, O/o Public Service Commission, Solina, Srinagar.
2. Public Information Officer, O/O Public Service Commission, Solina, Srinagar.
3. Smt.Iram Fayaz W/O Sheikh Faisal Shah R/O Bee Keepers Lane, Near IGNOU Centre Kursoo Rajbagh, Srinagar.

(Sheikh Fayaz Ahmad)
Registrar,
J&K State Information Commission.