



Jammu and Kashmir State Information Commission

شنیشن کمیٹی انفارمیر اسٹیٹسٹ 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/458/2017

Decision No. SIC/CO/SA/458/2017/964

Final Order

Appellant : Sh. Anirudh Khajuria

Respondent : First Appellate Authority (FAA)/
Secretary, J&K Public Service Commission and
Public Information Officer (PIO)/
Under Secretary, J&K Public Service Commission.

Date of Registration : 03.03.2017

Date of Decision : 08.06.2017

Brief Facts:

The appellant Sh. Anirudh Khajuria, R/o. H. No. 827, Krishna Nagar, Canal Road, Jammu, Pin code: 180001 filed 2nd appeal under section 16 (4) of the J&K Right to Information Act, 2009 before this Commission on 08.02.2017 (admitted on 03.03.2017), stating therein that he had filed an application before the PIO, J&K Public Service Commission (J&K PSC) for seeking the following information:

- 1) Total no. of candidates in Psychology who have submitted their deficient documents in response to the notice dated: 09/12/2016.
- 2) Total no. of the candidates whose candidature was rejected on the basis of failure to submit their deficient documents.

- 3) Photocopies of the documents submitted by the candidates with deficiencies in Psychology as required vide notice dated: 09/12/2016.
- 4) No. and date vide which the PSC has received their deficient documents.
- 5) Total no. of candidates who have applied for the post of Assistant Professor in Psychology along with their marks and year of passing out in P.G., M.Phil and PhD.

The appellant has alleged that PIO vide letter no. PSC/DR/RTI/148/2016 dated: 16/12/2016 denied furnishing the above sought information on the pretext that the information being voluminous cannot be compiled in an easiest way and it may lead to diversion of resources. That the PIO had directed him to visit the office of J&K PSC for inspection of records on a particular date. That since inspection didn't guarantee furnishing of information in the form he had applied for, he approached the FAA with a written request to direct the PIO to furnish the information on the basis of judgment dated: 30.08.2010 of Hon'ble Kerala High Court in WP(C) No. 6532 of 2006 (C) and Judgment dated: 07.01.2010 of High Court of Judicature at Madras in W.P. No. 20372 of 2009 and M.P. No. 1 of 2009. That the J&KPSC vide letter dated: 16/01/2017 directed him to appear before the FAA on 06.02.2017 at 11:30 A.M. for personal hearing. The appellant has further alleged that as per his knowledge there is no section or clause under the RTI Act which empowers the FAA to call for personal hearing and that too without giving justification to the appellant. That the discretion to call for hearing rests with the J&K State Information Commission only. In view of the above, appellant has requested the Commission to direct the concerned authorities to furnish the information sought for.

Proceedings:

In compliance to the notice of the Commission dated: 16.03.2017 FAA/Sh. Shakeel-ul-Rehman, Secretary, J&K PSC filed counter statement dated:

27.03.2017 interalia stating that the application of the information seeker was disposed of by the PIO of the Public Service Commission vide order dated: 26.12.2016 with the advise to attend the Commission office on 09.01.2017 for inspection of the records, as the information sought cannot be provided being voluminous in nature. That the compiling of information will lead to diversion of the limited human resources available with the Commission. That the information seeker did not turn up for inspection of the records and has instead filed First Appeal that too before the mandatory date of filing of First Appeal. That FAA though taking cognizance of the First Appeal has asked the appellant to appear for personal hearing on 06.02.2017 at 11:30 A.M. at J&K PSC. That the appellant did not turn up and has instead filed 2nd Appeal.

The case was firstly listed in the State Information Commission on 15.05.2017 on which date both the parties failed to cause their presence prompting the Commission to adjourn the hearing. The case was again listed for 07.06.2017. In compliance with directions of the Commission PIO/Sh. Ishtiaq Ahmad Bhat, Under Secretary, J&K PSC attended the Commission. Sh. Nagesh Jamwal authorized representative of the appellant also attended. The contention of the appellant that RTI Act does not mention about personal hearing before the FAA is correct in terms of the letter of the Act but not in spirit. The FAA is an appellate authority and like the second appellate authority (SIC) is expected to follow a due procedure of giving an opportunity of being heard to all the parties. So, there is no illegality about calling the appellant for a personal hearing. In this regard the FAA has, therefore, done no wrong.

Directions/Decision:

- i. The PIO of the J&K PSC will provide information in response to paras 1, 2 and 5 of the original RTI application if not provided so far,

as the information is of statistical nature and should be available with the PIO/J&K PSC.

- ii. As regards paras 3 and 4, the PIO will allow inspection of the documents submitted by the selected candidates as part of their application like degree and category certificates as an alternative since as per the PIO, the process of making up the deficiencies in documents goes up to the interview stage where original documents are presented by the candidates. Inspection of documents and records is a good alternative to provision of documents and records where the volume of copies, documents/records sought for by the appellant is large and will result in diversion of resources and effort on the part of the Public Authority. This (inspection of documents) is clearly provided in the J&K RTI Act. Excessive demands for information and documents at the cost of operational efficiency of the Public Authorities and leading to diversion of resources has been decried even by the Hon'ble Supreme Court (CBSE v/s. Aditya Bandopadhyaya civil appeal No. 6454/2011). Provision of other candidate documents like degree certificates, category certificates etc. to the RTI applicant must be done in public interest only after according due consideration to section 11 of the Act dealing with Third Party information. If it appears to the PIO of a recruitment or selection or allotment agency that interests of transparency require showing such documents of other competing candidates and applicants, the same may be done and record made available for inspection only. Provision of other person's/party's documents will often and naturally call for invoking section 11 related to Third Party information.

- iii. J&K PSC must follow a clear cut policy and procedure about the documents to be submitted by the candidates at different stages of the process of selection. If deadlines are to be given, so be it. The procedure should neither be unclear nor flexible, as that will surely give rise to misunderstandings and even to litigation. The above recommendation is being offered in terms of powers vested in the State Information Commission under Section 22(5) to enable the PSC/Public Authority to better conform to the provisions of the RTI Act while dealing with requests for information from the RTI applicants. J&KPSC must keep State Information Commission informed about the follow up action from time to time.

The appeal is accordingly disposed of.

Copy of this decision be given free of cost to the parties.

Sd/-

(Khurshid A. Ganai) *IAS Retd.*
Chief Information Commissioner
J&K State Information Commission

(P.A. Ajay)

No: SIC/CO/SA/458/2017_____

Dated: .06.2017

Copy to:

1. FAA/Secretary, J&K Public Service Commission, Srinagar.
2. PIO/Sh. Ishtiaq Ahmad Bhat, Under Secretary, J&K Public Service Commission, Srinagar.
3. PS to HCIC for information.
4. Appellant/Sh. Anirudh Khajuria, R/o. H. No. 827, Krishna Nagar, Canal Road, Jammu, Pin code: 18000.
5. Office file.

(Sheikh Fayaz Ahmed)
Registrar
J&K State Information Commission