



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/CO/SA/466/2017

Decision No. SIC/ CO/ SA/466/2017/976

Appellant : Sh. Mushtaq Ahmad Mir.
Respondent : Public Information Officer (PIO), J&KSSB
Date of decision : **03-07-2017.**
Decision : 2nd Appeal disposed of.

I. Brief facts of the case.

Briefly, the facts of this 2nd appeal are that the appellant filed RTI application with PIO, J&K Service Selection Board (JKSSB) on 15-02-2017 seeking Xerox copy of the award sheet given by the Member/Experts of the Board who had conducted the interview for the post of Sr. ECG Technician, Division Cadre, Kashmir, advertised vide notification No-318(08 of 2010). He had sought the information in the following format:

- Member 1 - Minimum Marks - Out of 20
- Member 2 - Minimum Marks - Out of 20
- Member 3 - Minimum Marks - Out of 20

The PIO responded to the RTI application on 13-03-2017 providing him the photocopy of the said award Sheet. This did not satisfy the appellant with the result he filed 1st appeal on 31-03-2017 with the First Appellate Authority (FAA) with the following prayer:

"I have applied for award sheet by expert members M1, M2 M3 but they have not provide me. So I requested your good self provide me award sheet

by expert members for Post of Sr. ECG Technician, Divisional Cadre, Kashmir item No.318'.

His 1st appeal was however, not disposed of by the FAA as such the appellant filed 2nd appeal with the Commission which was received by the Commission on 25-05-2017.

II. Proceedings before the Commission.

The case was listed for hearing before the Commission on 03-07-2017. The hearing was attended by Sh. Hamid-u-llah Shah PIO, JKSSB and the appellant. During the hearing the appellant accepted that he has obtained the copy of final award sheet of marks for the post of ECG Technician however, he requires the names of the individual members of the Board who awarded the marks. The PIO submitted that award sheet of marks given by the individual members and their names cannot be given in view of the fact that such disclosure was exempted under section 8(e) and 8(f) of the J&K RTI Act, 2009 pertaining to fiduciary relationship and danger to life and safety of the individuals respectively.

Both the parties were heard and record was perused.

III. Decision:

The Commission agrees with the arguments of the PIO to the extent that identities of the individual members of the examining board cannot be made public in view of the provisions of sections 8(e) and 8(f) which reads as under:

Section 8(e) - *There shall be no obligation to give any citizen, information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;*

Section 8(f) - *There shall be no information, the disclosure of which would endanger the life of physical safety of any person or indentify the source of information or assistance given in confidence for law enforcement or security purposes;*

The Hon'ble Supreme Court has given rulings in the following cases in support of section 8(f) and also section 8(e) as under:

1. CBSE Vs Aditya Bandopadhyay (2011);

"That when an examining body engages the services of an examiner to evaluate the answer books etc. the examiner expects that his name and particulars would not be disclosed to the candidate whose answer books are evaluated by him/her and in the event of such information being made known, a disgruntled examinee who is not satisfied with the evaluation of the answer books, may act to the prejudice of the examiner by attempting to endanger his/her physical safety".

2. Bihar Public Service Commission Vs Saiyed Hussian Abbas Rizvi (2012);

"Now, the amicallary question that arises is as to the consequences that the interviewers or the members of the interview board would be exposed to in the event their names and addresses or individual marks given by them are directed to be disclosed. Firstly, the members of the Board are likely to be exposed to danger to their lives or physical safety. Secondly, it will hamper effective performance and discharge of their duties as examiners". The court further held, "The disclosure of names and address of the members of the interview Board would exfacia endanger their lives or physical safety. The possibility of failed candidate attempting t take revenge from such persons cannot be ruled out."

3. Kerla Public Service Commission & ors Vs The SIC (2016);

"Examiners in the position of agents are bound to evaluate the answer papers as per the instructions given by PSC. As a result, a fiduciary relationship is established between a PSC and examiner. Therefore, any information shared between them is not liable to be disclosed..... We would like to point out that the disclosure of the identity of examiners is in the least interest of the general public and also any attempt to reveal the examiner's identity will give rise to dire consequences."

The above rulings support the contention and argument given by the PIO of the JKSSB. The appellant could not put forth any substantial argument to support his request that disclosure of names of the Members who had given him marks in the interview would serve any larger public interest or that any larger public interest was involved. The appellant contended that out of three members only two members had awarded him the marks whereas, in case of all other candidates three members had awarded the marks. This contention of the candidate was noted and brought to the notice of the PIO, SSB. However, it was felt that larger public interest cannot be invoked on this. PIO, SSB was asked to take cognizance and the candidate advised to approach the appropriate forum including Chair Person J&K SSB or even the Hon'ble Courts.

-sd/-
(Khurshid A. Ganai) **IAS Retd.**,
Chief Information Commissioner,
/imi/

Copy to the:

1. First Appellate Authority (FAA), JKSSB, Srinagar for information.
2. Public Information Officer (PIO), JKSSB, Srinagar, for information.
3. PS to CIC for information of HCIC.
4. Sh. Mushtaq Ahmad Mir S/o Abdul Ahad Mir R/o Drugmulla, Kupwara.
5. Guard file.

(Shiekh Fayaz Ahmad)
REGISTRAR,
J&K State Information Commission.