

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/467/2017.

Decision No.SIC/ CO/SA/467/2017-**985**

Appellant : Dr. Sapna Sharma.
Respondent : PIO University of Jammu.
Date of decision : **31-08-2017**
Decision : Appeal disposed of.

I. Brief facts of the case.

Briefly the facts of this case are that the appellant Dr. Sapna Sharma while exercising her Right to Information under section 6 of the J&K RTI Act, 2009 filed an RTI application dated 24-12-2016 before the Public Information Officer (PIO), O/o Hon'ble Chancellor (Universities) Raj Bhawan, Jammu seeking the following information:

- a) **Please provide copy of relevant rules, which defines duties of the Hon'ble Chancellor if the complaint of abuse of official position, nepotism, deliberate concealment of facts for favoring or disfavoring a particular candidate from being selected or not selected by the Vice Chancellor or Registrar is made.**
- b) **Provide copy of the orders vide which Dr. Pallavi Sachdeva, Dr. Bharti Prabhakar and Dr. Sandeep Singh continued after expiry of their initial contract of one year in the Centre for Continuing Education & Extension, University of Jammu.**
- c) **Provide Copy of the rule under which Dr. Pallavi Sachdeva, Dr. Bharti Prabhakar and Dr. Sandeep Singh appointed in the Centre for Continuing Education & extension, University of Jammu on 'Contract basis' for one year in February 2009 were regularized in violation of the Hon'ble Chancellor's Secretariat own view taken in the regularization matter of Dr. Sapna Sharma, Department of Sociology, University of Jammu at note para (NP) 10 (copy enclosed).**
- d) **What accordingly to the Hon'ble Chancellor's office is more important and carries more weightage - Initial Advertisement or Decision of the Selection Committee as both terms are being blatantly abused by the University of Jammu as per the suitability to accommodate the candidates.**

- e) What is the procedure to seek an appointment with Hon'ble Chancellor for putting forth an official grievance.**

The PIO Raj Bhawan responded to her RTI application on 28-12-2016, providing information on point 'e' and for the rest of the points, he informed her that the information sought for pertains to Jammu University which is as such transferred there in terms of section 6(3) of the J&K RTI Act, 2009. PIO, University of Jammu vide letter dated 22-01-2017 provided her the information received from the concerned section vide date communication dated 16-01-2017 which is reproduced as under:

- a) No such information is available in this office.**
- b) Copy of order is enclosed as Annexure-I**
- c) No rule is available on the subject matter, however, consequent upon the decision taken by the University Syndicate at its meeting held on 25-01-2016 vide Resolution No.109.73 (Annexure-II), the services of Dr. Pallavi Sachdeva and Dr. Bharti Prabhakar have been regularized and its subsequent meeting held on 20-08-2016 vide Resolution No.110.65 (Annexure-III), the services of Dr. Sandeep Singh have been regularized.**
- d) No such information is available in this office.**

Not satisfied with the reply of the PIO, the appellant filed First appeal with First Appellate Authority, (FAA) Principal Secretary to Hon'ble Governor, Rajbhawan, Jammu on 29-01-2017. The FAA, Rajbhawan passed the order in the 1st appeal on 15-03-2017, upholding the order of the PIO, Rajbhawan. He further observed that information sought at point 'e' of the RTI application does not come within the ambit of word 'information' defined under section 2 of the J&K RTI Act, 2009.

At last, the appellant filed 2nd appeal which was finally admitted in the Commission on 03-05-2017. The appellant prayed for the provision of the information to her.

II. Proceedings before the Commission.

The 2nd appeal was listed for hearing before the Commission on 05-07-2017. The hearing was attended by Sh. Vivek Slathia, Deputy Registrar-cum-PIO,

University of Jammu, however, the appellant did not attend. Hearing was adjourned with the direction to the PIO to file counter statement to the 2nd appeal within 10 days from receipt of the interim order.

The appeal again came up for hearing again on 21-08-2017. The hearing was attended by Sh. Imran Farooq, PIO University of Jammu and the appellant through video conferencing from Jammu office of the Commission. The appellant stated that she has not received the requisite/full information. The PIO stated that maximum information has been provided from the records available with the University.

Both the parties were heard at length. Thereafter, hearing was adjourned with the direction to the PIO to appear personally along with relevant records on 31-08-2017 at Srinagar office of the Commission. The appellant was asked to attend the hearing through video conferencing from Jammu office of the Commission.

During the hearing on 31-08-2017. PIO Jammu University attended Srinagar office of the Commission and the appellant was heard through video conferencing/voice calling from Jammu office of the Commission.

The PIO reiterated his earlier stand that the available information as per records has been provided to the appellant. However, the appellant once again showed her dis-satisfaction with the reply of the PIO.

Both the parties were heard and record was also perused.

III. **Decision:**

The Commission heard the parties at length during the hearings. The record was also perused. Due consideration was given to the rival contentions put forth by the parties.

Keeping in view the facts of the appeal and submissions made by the parties, the following transpires:

- I. So far as point (a) of the RTI application is concerned, PIO has informed that the information on this point is not available.**

The Commission observes that under the J&K RTI Act, 2009 and also as per the case law, governing the subject, it is established that PIO is obliged to give only that

information which is held by the Public Authority. The queries for any information will need to pass the test both of section 2(d) and 2(i) of the Act, in order to qualify as queries for information. In other words, a query for information should not only be for identifiable information conforming to the definition of information in section 2(d), the information should also be held by a Public Authority or be under its control.

Hon'ble Supreme Court, has also held in *CBSE Vs Aditya Bandapaya (2011)* that when information sought is not part of record of a public authority, and where such information is not required to be maintained under any law or rules or regulations of a public authority, RTI Act does not cast an obligation upon the public authority to collect or collate such non-available information and then furnish it to the applicant.

Therefore, the reply of the PIO to this query needs no interference.

II. The information sought at point (b) of the RTI application has been provided to the appellant which has also been conceded by her.

III. So far as information on point (c) is concerned, the appellant had sought the copy of rule as per which Dr. Pallavi Sachdeva, Dr. Bharti Prabhakar and Dr. Sandeep Singh who were appointed for one year on contractual basis were regularized which according to the appellant was in violation of the Hon'ble Chancellor's view in her case.

The PIO has given response in two parts. Firstly, he has stated that no such rule is available on the subject matter. Secondly, he has provided to the appellant the copies of decision of syndicate whereby services of the aforementioned candidates were regularized.

The Commission observes that though such response of the PIO may be due to non-availability of information, however, the question which remains is that why such type of information is not maintained and made available by the University in terms of the provisions of section 4(1)(c) and 4(1)(d) particularly.

The necessity for an open and transparent administration and governance has been discussed and enjoined upon by the Hon'ble Supreme Court and High Courts in their various judgments including in CBSE Vs. Aditya Bandopadya (2011) and recently in RBI and ors Vs Jayantilal D. Mistry and ors (2015).

In the light of the pronouncements under these judgments and in terms of sections 4(1)(c) and 4(1)(d) of the J&K RTI Act, 2009 it is incumbent on all public authorities to make information available on suo moto basis and certainly on requisition under the RTI Act, the reasons for its administrative or quasi-judicial decisions to the affected persons.

It is also relevant to mention the provisions under section 16(6) of the J&K RTI Act, 2009 which states that in any appeal proceedings, the onus to prove that denial of a request was justified shall be on the public information officer who denied the request.

The Commission therefore, in terms of section 16(9) directs the Public Authority (University of Jammu) to re-examine the reply of the PIO in relation to point (c) of the RTI application of the appellant and provide the information sought for from the available records, within a period of 30 days from receipt of this order.

- IV.** The information sought at point (d) is a hypothetical question which PIO was not required to reply. It is true that no application or a specific request for information can be rejected merely on the ground that appellant has chosen to use expression such as why, how, whether etc. but it is equally true, that with or without the use of those expressions if the request for information falls beyond the scope of section 2(d), the request has to be rejected for the simple reason that no such information which does not qualify the definition of section 2(d) can be sought or disclosed under the RTI Act.
- V.** So far as the information on point (e) is concerned, PIO of the Raj Bhawan has already furnished the same to the appellant, which needs no interference.

The 2nd appeal is hence disposed of subject to above observations/direction of the Commission.

Copy of order be provided free of cost to the parties.

-sd/-

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

Copy to the:

1. First Appellate Authority (FAA), Raj Bhawan, J&K, Srinagar, for information.
2. Vice Chancellor, University of Jammu, for information.
3. Public Information Officer (PIO), University of Jammu for information.
4. PS to CIC for information of HCIC.
5. Dr. Sapna Sharma R/o H.No-25-A Shastri Nagar, Jammu-180004.
6. Guard file.

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