



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/501/2017
Decision No. SIC/CO/SA/501/2017/998

Final Order:

Appellant : Sh. Asif Azad.
Respondent : FAA/PIO J&K, Public Service Commission (PSC).
Date of decision : **16-10-2017**
Decision : Appeal disposed of.

Facts:

Briefly the facts of this 2nd appeal are that the appellant while exercising his right to information under the J&K RTI Act, 2009 filed RTI application dated 15-12-2016 with the Public Information Officer(PIO) J&K Public Service Commission (PSC) seeking photocopies and inspection of answer sheets of his main examination viz:

1. General Studies Paper I and Paper II.
2. Public Administration Paper I and Paper II.
3. Urdu Paper I and Paper II.
4. Detailed marks certificate of his main examination.
5. Detailed cut off of the main examination.

As he did not get the response from the PIO, he filed 1st appeal on 08-02-2017 with the concerned First Appellate Authority (FAA). The FAA also failed to dispose of his 1st appeal, constraining him to approach the Commission in 2nd appeal which was admitted in the State Information Commission (SIC) on 31-07-2017. In the 2nd appeal, the appellant requested to provide him the requisite information as sought through the RTI application.

Proceedings before the Commission:

1. The 2nd appeal was listed for hearing before the SIC on 16-10-2017. The hearing was attended by Sh. Rakesh Kumar Gupta, PIO, J&K PSC at Srinagar. The appellant was heard through video conferencing from Jammu office of the SIC.

2. Appellant informed the SIC that he has not been provided the information sought by him in his basic RTI application.
3. The SIC enquired from the PIO, the reason for not providing the requisite information to the appellant to which the PIO stated that information was not provided to the appellant because the matter was sub judice in the Hon'ble High Court.
4. The PIO further stated that the J&K PSC Rules do not provide for disclosing the information relating to answer keys.
5. The PIO further informed that FAA has passed the order in the 1st appeal on 27-04-2017. However, the file could not be traced from the records and the copy of the said order has been taken from the personal section of the FAA.
6. On perusal of the said order of the FAA, it is evident that FAA, has denied the information on the grounds that Hon'ble High Court has dismissed the appellant's writ petition for making him eligible for appearance in the main examination.
7. The SIC heard the parties and considered the rival contentions.

Decision:

The Commission observes that the approach of both FAA and PIO has not been appropriate while dealing with the instant case. The PIO has erred in not responding to the RTI application. Under the J&K RTI Act, 2009 PIO is the pivot around which the whole Act revolves. He is the main source of the information. Even when the PIO denies the information he is under obligation under section 7(8) of the Act to respond to the RTI application within the stipulated time period and to give appellant the reasons for the rejection and particulars of the FAA. Again it is incumbent upon the FAA to dispose of the 1st appeal as per the provisions of section 16(7) of the Act, which as per the records has been done. Further under section 16(3) of the Act, an additional responsibility is cast upon the FAA to make reference to the SIC in case PIO fails to adhere to the provision of the Act. The SIC expects the respondents to adhere to the provisions of the Act in letter and spirit in future.

Further the plea taken by the FAA that since the writ petition has been dismissed by the Hon'ble High Court therefore, information cannot be provided to the appellant is bereft of reason and logic. The provision of information has no connection with the fate of the writ petition. The Right to Information is an independent right, which cannot be denied except under the situations falling under sections (8) and (9) of the J&K RI Act, 2009 itself. The FAA tried to invent a new exception to it.

Therefore, taking over all view of the matter, SIC hereby directs that PIO, J&K PSC shall offer inspection of papers as sought by the appellant in his RTI application within one (1) month and for this one (1) week prior notice shall be given to the appellant to

choose a date for such inspection keeping in view the submission made by the appellant that he is appearing for the forth coming J&K Civil Services Examination.

With the above directions/observations, the instant 2nd appeal is disposed of.

The 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.
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Copy to the:

1. First Appellate Authority (FAA) J&K Public Service Commission for information.
2. Public Information Officer (PIO), J&K Public Service Commission for information and compliance.
3. PS to CIC for information of HCIC.
4. Sh. Asif Azad, S/o Azaz Ahmad Khan, R/o Hill View Super Market Lane No. 3 Vidhata Nagar, Bathindi Jammu.
5. Guard file.

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