



Jammu and Kashmir State Information Commission

جموں اینڈ کشمیر اسٹیٹ انفارمیشن کمیشن

(Constituted under the Right to Information Act, 2009)

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www.jksic.nic.in

File No. SIC/K/SA/49/2017

Decision No. SIC/K/SA/49/2017/72

Final Order

Appellant: Tariq Ahmad Shah S/O Ali Muhammad Shah R/o Noorani Colony, Pampore

Respondent: First Appellate Authority (FAA)/Public Information Officer (PIO)/R&B Division Pulwama

Date of Registration : 28-07-2017

Date of Decision : 20-11-2017

Brief Facts:

The brief facts of this 2nd appeal are that the appellant Tariq Ahmad Shah has filed the 2nd appeal before the Commission against the First Appellate Authority (FAA)/Superintending Engineer, R&B Division, Pulwama, PIO)/R&B Division, Pulwama on 28-07-2017 alleging therein that the PIO has failed to provide the information to the appellant sought vide RTI application dated 15-05-2017.

Thereafter, the appellant filed first appeal before FAA on 03-07-2017. After filing of the first appeal, the PIO responded his RTI application vide letter dated 14-07-2017 followed by another letter dated 18-07-2017. The appellant submitted that, on perusal of the information, he observed that the PIO has deliberately and dishonestly delayed and denied the information by intimating him that the information is barred under section 8 (1) (i) of J&K RTI Act being third party/personal information of Mst. Naza. The appellant has requested the Commission to direct the respondents to comply the law by furnishing the information as sought without any further delay besides penalty of Rs. 250/- per day of delay be imposed upon the erring respondents.

As per records of the 2nd appeal, the appellant vide RTI application dated 15-05-2017 has sought information from PIO/R&B Division, Pulwama on six queries which pertain to an employee namely Mst. Naza Akhter wife of the appellant Tariq Ahmad Shah (D/o Ali Muhammad Trag) R/o Noorani Colony, Pampore working as Draftsman and presently posted at R&B Division, Pulwama. On 03-07-2017, the appellant filed first appeal before FAA against the inaction of PIO. The PIO vide letter dated 15-07-2017 has responded the RTI application of the appellant refusing to provide him the information sought by him as the same being personal in nature of the above named employee namely Mst. Naza Akhter. Not satisfied with the reply of PIO, the appellant filed the instant 2nd appeal before the Commission.

In reply to the notice of Commission, Executive Engineer, R&B Division Pulwama has submitted the reply/counter statement to the 2nd appeal vide his communication dated 18-08-2017. The PIO in his reply has submitted that before information as sought for in the RTI application under consideration could be furnished/provided, the consent of Mst. Naza Akhter (whose information is being sought) was sought vide letter No. R-2/EEP/3887-88 dated 15-07-2017 but vide her representation, Mst. Naza Akhter represented that the information sought by the applicant shall not be disclosed to him as the same being personal information.

The 2nd appeal came up for hearing on 18-10-2017 and on the said date, the Commission was pleased to direct the registry to issue notice to the 3rd party viz above named Mst. Naza Akhter and inform her to appear before the Commission and also submit her written objections, if any, on the next date of hearing.

The 2nd appeal came up for hearing today on 20-11-2017. Mr. Showkat Ahmad Wani, S.E R&B Division Pulwama/FAA, Syed Naquib, Executive Engineer, R&B Division Pulwama/PIO and Mr. Malik Muhammad Mushtaq, counsel for the appellant appeared. In response to the notice issued by the Commission, Mst. Naza Akhter appeared along with her counsel today and filed her objections which were taken on record.

The counsel for the appellant has submitted during the hearing that the information sought by the appellant has not

been provided to him by the PIO on the ground that the same pertains to a 3rd party and is personal in nature. However, he has submitted that the information sought for is not personal but is official and can be disclosed under the provisions of the J&K RTI Act. The counsel for the 3rd party has submitted in her objections that the information sought by the appellant is purely personal and disclosure of the same would not serve any public interest but will invade her privacy.

Heard parties and perused the record of the case.

The appellant has sought information on the following six points from the PIO:-

1. Provide full particulars of one employee namely Naza Akhter W/o Tariq Ahmad Shah (D/o Ali Mohd Trag) R/o Noorani Colony Pampore at present Trali Payeen working as Draftsman in the department of R&B presently posted at R&B Deptt. Division Pulwama.
2. Provide the attendance copy from the attendance registry of said Naza Akhter w.e.f. 01-03-2016 to 31-05-2016 and also w.e.f. 01-03-2017 to till date.
3. Provide the copy of appointment order of said Naza Akhter alongwith copies of her qualification and marks certificate submitted and produced by said Naza Akhter in the department.
4. Provide the exact time and date from which she is performing her duties in the said R&B Deptt, Division Pulwama so far, and how many times she i.e. Naza Akhter has been transferred from the said Division to other place and how long she Naza Akhter performed her duties at other places.

5. Provide the copies of all transfer orders which has been passed about the said Naza Akhter so far from her date of appointment.
6. Provide the list of all candidates who had applied with the said Naza Akhter, before her appointment in R&B Department.

On examination of the contents of information sought to be provided by the appellant, the entire information sought cannot be termed as personal information of the 3rd party. Copy of appointment order of the 3rd party Ms Naza Akther is a public document and not a confidential document. Hence, it is not exempted from disclosure in terms of Section-8 of the RTI Act. Similarly, transfer orders of Government employees are also public documents and not confidential documents or documents held in fiduciary capacity by the public authorities/employees. Such documents are not exempted from disclosure under the RTI Act. Likewise, the qualification certificate and marks certificate submitted by Ms Naza Akthar at the time of her appointment cannot be termed as personal information. The information about these documents is not exempted from disclosure and the public authority cannot deny such information to anybody who seeks such information under the RTI Act. However, information like exact time of arrival and departure of an employee to his or her office can be treated as personal information being a matter between the employer and the employee and is as such, exempted from disclosure within the meaning of Section-8 read with Section-11 of the RTI Act unless the appellant demonstrates that the

disclosure of such information is in the larger public interest. In the present case, the appellant is the estranged husband of the 3rd party whose information with regard to her attendance and exact time of her arrival to office and her departure from office is sought by the appellant from the PIO. Given the nature of relationship of the appellant and the 3rd party Ms Naza Akther, the disclosure of exact time of attending the duties and leaving from the office by the 3rd party can endanger her life and physical safety. Besides, the appellant has failed to show how disclosure of such information is in the public interest. Keeping in view the circumstances obtaining in this case particularly the estranged relationship of the appellant and the 3rd party, the disclosure of information about the attendance of the 3rd party and exact time of her attending and leaving the office is held to be exempted from disclosure in terms of Section-8 (f) read with Section 11 of the RTI Act and her objection to such disclosure is upheld.

As regards the information sought about the list of all candidates who had applied along with the 3rd party, the argument of the PIO that since the selection was made by the Services Selection Board and the said information may be available only with the SSB and not with the PIO is upheld. The appellant can approach the PIO of the SSB in this regard.

The 2nd appeal is accordingly disposed of with a direction to the PIO to provide copy of the Appointment Order, copies of qualification and Marks Certificate submitted by Ms Naza

Akthar and Transfer Orders of the 3rd party Ms Naza Akther to the appellant within 15 days from the date of receipt of this order without charging any fee from the appellant. However, the information with regard to the attendance of the 3rd party and her exact time of arrival and departure in the office shall not be disclosed being exempted from disclosure keeping in view of her physical safety.

Since Mst. Naza Akhter has been selected by Service Selection Board as Draftsman, the information with regard to the list of candidates who had applied during such selections and their merit position can be available only with the selection agency i.e., SSB. Such information cannot be available with the PIO, R&B Division Pulwama. The appellant can seek such information from the Services Selection Board.

Sd/-
(Mohammad Ashraf Mir)
State Information Commissioner

Copy to the:-

1. FAA/Superintending Engineer PWD (R&B) Circle Pulwama/Shopian, H Q Pulwama
2. PIO/Executive Engineer PWD (R&B) Circle Pulwama
3. Ms Naza Akther, Draftsman, R&B Division, Pulwama.
4. Appellant—Sh. Tariq Ahmad Shah S/o Ali Muhammad Shah R/o Noorani Colony, Pampore
5. Office File

(M. S. Bhat)
Deputy Registrar,
J&K State Information Commission,
Srinagar