



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/494/2017

Decision No. SIC/CO/SA/494/2017/**1033**

Final Order:

Appellant : Sh. Sanjiv Kumar Gupta,
R/o Ward No. 100471, District Jail, Jammu.
Respondent : FAA/PIO, J&K, Home Department, J&K, Civil Secretariat.
Date of decision: : **30-11-2017**
Decision : Appeal disposed of.

Brief Facts:

Briefly the facts of this appeal are that the appellant while exercising his right to information filed RTI application dated 25-04-2017 with the Public Information Officer, (PIO) Under Secretary, Hon'ble Chief Minister Secretariat, J&K Civil Secretariat, Jammu, seeking "Action taken by the Principal/Secretary to Govt., Home Department in the case of the applicant".

Proceedings before the State Information Commission(SIC):

The 2nd appeal came up for hearing before the SIC on 05-10-2017. The hearing was attended by Mrs. Nivedita Munshi, Public Information Officer (PIO), Home Department, J&K Civil Secretariat and Sh. Sanjiv Kumar Gupta,(appellant) along with his counsel Advocate Tawheed Ahmad. During the hearing, the PIO stated that the requisite information has already been provided to the appellant. However, the appellant denied to have received the specific information sought by him.

From the records it transpires that the appellant had filed RTI application with PIO of the Hon'ble Chief Minister's Secretariat on 25-04-2017. The PIO transferred his application under section 6(3) of the J&K RTI Act, 2009 vide letter dated 18-05-2017 to the Home Department. The FAA and the PIO, Home Department have stated in their counter statement dated 12-09-2017 that RTI application of the applicant has been responded to vide letter dated 12-06-2017.

During the hearing on 05-10-2017, the counsel for the appellant was provided a copy of the counter statement filed by the respondents. Both the parties were heard. The hearing was adjourned with the directions to the counsel for the appellant to go through the counter statement of the respondents and file a rejoinder with a copy to the PIO. The appeal was ordered to be listed on 23-10-2017.

The hearing on 23-10-2017 was attended by Mrs. Nivedita Munshi, Public Information Officer (PIO), Home Department, J&K Civil Secretariat and Sh. Hilal Ahmad Wani counsel for the appellant. The counsel for the appellant submitted that all the information sought by him has not been provided. He further submitted that counter reply/rejoinder has been filed by him in response to SIC direction dated 05-10-2017. After hearing both the parties, the case was adjourned with the directions to the PIO, Home Department to go through the counter reply filed by the counsel for the appellant and prepare a fresh reply on the basis of the record and in the light of the counter reply.

The 2nd appeal was finally heard on 30-11-2017. The hearing was attended by Mrs. Nivedita Munshi, PIO, Home Department. The appellant was represented by Advocate Rajeev Gorkha. During the hearing, the appellant submitted that respondents have given contradictory statements before the SIC to avoid the supply of information. He submitted that respondents on the one hand state that the record pertaining to promotion of similarly circumstanced employees to the scale of Jr. Asstts is not available, however, on the other hand it is stated that

such promotion orders have been rescinded and further that matter is subjudice. He stated that the respondents have not clarified in which court the matter regarding promotion of other similarly situated employees is subjudice and also government order in terms of which the promotion have been rescinded has not been brought on the record. He requested that the information on all aspects to his RTI application may be provided to him. The appellant filed rejoinder in support of his contentions.

In reply the PIO submitted that the information sought by the appellant has already been provided to him vide their various communications. She further submitted that seven nursing orderlies who were promoted as Jr. Assistants by the then Director General of Prisons Department in contravention to J&K Jail Subordinate Service Recruitment Rules, 1985 Circular No. 7-GAD of 2003 dated 12-03-2003 and 25-GAD of 2003 dated 29-08-2003 of General Administration Department and vide Government Home/771(Jail) of 2010 dated 24-06-2010 have been rescinded through a speaking order. She further stated that aggrieved persons have approached the Court and matter is presently subjudice.

She further submitted that the appellant made a number of representations for change of cadre from warder to Jr. Assistant which is not covered under the recruitment rules of 1985 of Prisons Department and the matter was referred to Home Department by Prison Department for necessary orders. Home Department forwarded the copy of said representation to Prison Department and requested them to inform the appellant that conversion from warder to Jr. Asstt. is contrary to the policy of the Government and above mentioned circulars and orders. She has submitted a counter reply to this effect with the SIC.

Both the parties were heard on different dates of hearings and record was also perused.

Decision:

Having heard the parties and on perusal of the record, SIC is of a considered view, that the appellant has not been provided all the details and facts about his case and also the information whatever given has been provided in piecemeals, which is not the import of the RTI Act. The appellant has every right to know the grounds on which his case has not been considered for promotion when other similarly situated person according to him had been promoted. It is the fundamental right ensured in the constitution that likes should be treated alike under equal circumstances as such he has a right to know why his case has not been considered and the appellant is entitled to get the copy of DG, Prison's order of other promotes, though later reportedly rescinded by the Home Department and presently subjudice in the court of law. Prima-facie the information sought by the appellant surely falls under the ambit of the J&K RTI Act, 2009 as defined under section 2(d) of the Act as such it cannot be denied except under section 8 and 9 of the Act which does not seem to be the situation in this case as the respondents have not cited or invoked any of the exemption under section (8) or otherwise.

Public Authorities cannot deny or with hold information from the record as such actions have no legality under the transparency law. Further it is the legal obligation of the public authority under section 4(1)(d) to provide reasons for its administrative or judicial decision to the affected persons like this one.

In view of the above, the Home Department/Public Authority is directed to prepare a fresh reply to the RTI application of the appellant through which he has sought action taken report in his case/representations. Quite justifiably, the Home Department must consider his representations and provide information to him on all aspects of his case that he has been highlighting in all the hearings in the SIC and in the presence of the PIO, Home Department e.g. why he was not promoted from warder to Jr. Asstt. unlike other similarly circumstanced officials in the Prison Department, why he was left out, status of the court case where the rescinded order of the Home Department has been challenged, whether there is any stay and most importantly why the Home Department is not able to give his case a favorable consideration etc. information based on records of the Home Department pertaining to his case may be provided to him within 30 days from the date of receipt of this order. In the said fresh reply, the PIO Home Department is free to inform the applicant about the legal/rule position that does not allow to accord promotion or change of cadre that the appellant has represented for and sought and in respect of which has sought Action Taken Report.

Further, under section 16(9)(c)(iii)(iv) the Home Department, with a view to improve transparency, is directed under section 16(9)(a)(iii)(iv) to take immediate steps for implementation of section 4 of the Act in the Department under intimation to the SIC.

The 2nd appeal is disposed of subject to the above directions.

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

-sd/-

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

No. SIC/CO/SA/507/2017

Dated: / /2017.

Copy to the:

- 1 First Appellate Authority (FAA) Home Department, J&K Civil Secretariat, Jammu for information and compliance.

- 2 Public Information Officer (PIO), Home Department, J&K Civil Secretariat, Jammu for information and compliance.
- 3 PS to CIC for information of HCIC.
- 4 Sh. Sanjiv Kumar Gupta, R/o Ward No. 100471, District Jail, Jammu.
- 5 Guard file.

(Reeta Kaul)
Deputy Registrar,
J&K State Information Commission.