



Jammu and Kashmir State Information Commission

(Constituted under The Right to Information Act, 2009)

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Old Assembly Complex, Srinagar, 0194-2506660, 2506661

www.jksic.nic.in

File No. SIC/CO/SA/439/2017/**1062**

File No. SIC/CO/SA/440/2017

Dated :21-02-2018.

Appellant : Sh. Arjun Kumar Bali.
Respondent : FAA/PIO J&K Economic Reconstruction Agency (ERA).

Order under Section 17 of the J&K RTI Act, 2009.

This order disposes of two penalty proceedings initiated under two different 2nd appeals pertaining to the same PIO of the same public authority i.e Economic Reconstruction Agency (ERA) and even the same appellant. The two 2nd appeals filed in the State Information Commission(SIC) were as under:

- 1 Arjun Kumar Bali Vs PIO/FAA J&K Economic Reconstruction Agency filed on 01-02-2017.
- 2 Arjun Kumar Bali Vs PIO/FAA J&K Economic Reconstruction Agency filed on 01-02-2017.

The above two 2nd appeals were finally disposed of on 19-04-2017 in accordance with the procedure laid down under J&K RTI Act 2009 and J&K

RTI Rules, 2012. The operative part of both the orders is inter-alia given as under:

"The Commission after hearing the parties and perusing the records observed that there has been failure on the part of the then PIO, Sh. Deepak Gupta in providing information to the appellant which calls for an explanation from the said PIO as to why penalty proceedings u/s 17 of the J&K RTI Act 2009, may not be initiated against him for not providing the requisite information to the appellant within the stipulated period provided under the Act. His reply shall reach the Commission within 15 days from the receipt of this order. Chief Executive Officer (CEO), J&K Economic Reconstruction Agency (ERA) is directed to serve the copy of this order to Sh. Deepak Gupta for compliance."

In pursuance of the above order, penalty proceedings were initiated and the said the then PIO was given adequate opportunity to defend himself.

Penalty Proceedings before the State Information Commission (SIC):

As the penalty proceedings in both the aforementioned 2nd appeals were initiated against the same PIO i.e Sh. Deepak Gupta of the same public authority i.e J&K ERA therefore, the two cases were clubbed together in penalty proceedings and were conducted on the same date of hearings before the SIC so that it could have been convenient for the PIO as well as for the SIC to hold the

enquiry in a proper, just and fair manner. The SIC in accordance with the "principles of natural justice" as incorporated in proviso to section 17 of the J&K RTI Act, 2009 gave adequate opportunity to the PIO Sh. Deepak Gupta to file his response in his defense both in writing and through personal/oral hearings. As the said PIO did not file the reply within the stipulated time provided to him while disposing of the two 2nd appeals, the SIC vide notice dated 07-06-2017 asked him to appear before the SIC along with relevant documents on 28-06-2017 to explain his position as to why penalty may not be imposed upon him for his failure to provide the requisite information to the appellant within the stipulated time period provided under the Act.

The then PIO, J&K ERA Sh. Deepak Gupta appeared before the SIC through video conferencing from Jammu office of the Commission on 28-06-2017. During the hearing when asked to explain his failure to provide information to the appellant in response to his RTI application dated 17-10-2016 the PIO submitted that as PIO, ERA he could not provide the information to the RTI application as he was unable to understand or decide as to whether any employee of the Department (ERA) can obtain the information from his own Department under the RTI Act, which he would otherwise be in know of as an employee of that particular Department i.e J&K ERA in this case.

With regard to RTI application dated 19-10-2016, the PIO J&K ERA, Sh. Deepak Gupta submitted that upon receipt of the RTI application dated

19-10-2016, he issued a letter on 26-10-2016 to the Estates Officer, Jammu to provide him the information regarding construction and repair works. However, for other parts of the information sought by the applicant, he did not provide any satisfactory reply about his inability to seek information from the concerned section. He further submitted that he demitted the office on 3rd January 2017 on transfer to another Department. From the statement of the said PIO and from the records it transpired that two letters were issued dated 24-01-2017 and 25-01-2017 from Kashmir Office and Jammu Office of J&K ERA, respectively in response to the query from the Head Office/PIO dated 24-01-2017 pertaining to the said RTI application dated 19-10-2016. During the hearing on 28-06-2017, the then PIO J&K ERA, Sh. Deepak Gupta submitted that he will also come up with his written defense on the next date of hearing. In view of the submission of the PIO, hearing was adjourned with an interim order. The FAA and present PIO J&K ERA were also directed to attend the next date of hearing along with the relevant records. The next date of hearing was fixed for 17-07-2017.

The SIC issued notices to the above said officers/officials on 05-07-2017 for causing appearance for hearing before the SIC on 17-07-2017 along with relevant document. On 17-07-2017, Sh. M.Y Pandit, First Appellant Authority, J&K ERA, Sh. Mukesh Kumar Dubey the present PIO, J&K ERA, and Shri Deepak Gupta the then PIO, J&KERA appeared before the SIC at Srinagar. Sh. Deepak Gupta did not file any written explanation/reply in his defense

although he had informed the SIC on the last date of hearing that he wanted to submit the same.

The hearing was adjourned upon the request of the then PIO Sh. Deepak Gupta for providing him a final opportunity for filing the written reply explaining the reasons for not furnishing the information to the RTI applicant within the stipulated time period. His reply was sought within 10 days from the SIC's order. He was also directed to appear before the SIC for next hearing along with the FAA and present PIO, J&K ERA.

The SIC issued notice to said officers/officials on 31-07-2017 for appearing before the SIC for hearing of the case on 10-08-2017. On 10-08-2017 the then PIO, J&KERA Sh. Deepak Gupta and Sh. Mukesh Kumar Dubey, present PIO, J&KERA attended the hearing. During the hearing the then PIO submitted a document dated 04-08-2017 addressed to Registrar of this SIC. He requested for granting some more time enabling him to produce further evidence in support of his explanation. Considering his fresh plea he was directed to produce any further evidence within week's time. Thereafter, the SIC received an application addressed to the Registrar from him on 11-08-2017 enclosing a letter dated 26-10-2016 addressed to the Accounts Officer, PIO ERA Kashmir from PIO/Accounts Officer J&KERA. The said reply was examined and duly considered.

Decision:

The penalty proceedings were conducted in the spirit of the due principles of law in which the then PIO was given adequate opportunity to present his case. The then PIO, J&K ERA Sh. Deepak Gupta was given adequate opportunity to place his defense before the Commission both personally and in writing to explain why he failed to provide information to the RTI applicant in both the RTI applications 17-10-2016 and 19-10-2016 when the information was very much available in the office record of ERA and when it did not fall under any of the exemption clauses under section 8 or section 9 of the J&K RTI Act, 2009.

The RTI application dated 17-10-2016 filed by one Arjun Kumar Bali S/o Sh. P.N. Bali(a Director level Officer in ERA) asked for the following information:

"Minutes of the 10th and 14th meetings of Governing Body of J&K ERA".

The RTI application dated 19-10-2016 filed by the same applicant Sh. Arjun Kumar Bali asked for the following information:

- 1. Total Expenditure occurred on repair of electric gadgets. Provide name of each gadget and its repair cost in serial manner in the financial year.*
- 2. What action has been taken on the application of EE, Srinagar, forwarded by Director Safeguard for the mobile reimbursement.*
- 3. Cost of repair of Bathrooms in this financial year in the following Performa in Jammu.*

S.No Date Name / Location of Bathroom Cost

- 4. List of officers entitled for laptops in ERA*

However, no justified explanation was presented by the then PIO Sh. Deepak Gupta to explain the delay and non-reply during his tenure. The requisitioned

information was however provided to the information seeker by the new PIO on 08-02-2017. The then PIO Sh. Deepak Gupta failed to do the same which was done so easily by his successor. The information sought was very much covered under the definition of "information" as defined under section 2(d) of the Act as it was available in the records. The PIO was not to collate or create the same. The negligence of the PIO deprived the appellant of his "right of information" for a considerable period which is a part of fundamental right of "Freedom of Speech and Expression" as enshrined in Article 19(1)(a) of the Constitution of India. This has been upheld by the Hon'ble Supreme Court in plethora of cases e.g ***Rajnarayan Vs State of UP (1975)***, ***S.P Gupta Vs UOI (1981)***. ***In secretary, Ministry of information and broadcasting Government of India Vs Cricket Association of Bengal (AIR 1995 SC 1236)***, the Hon'ble Apex Court has held that right to freedom of speech and expression includes the right to receive and impart information. Similarly in *S.P Gupta Vs UOI (1981)* Court has held that "right to know" is important facet of right of free speech and expression and that disclosure of information regarding functioning of the government must be the rule. In a government of responsibility where all agents of the public must be responsible for their conduct there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries.

The then PIO appears to have not understood or realized the seriousness of the responsibility as PIO of ERA. He seemed to have been largely ignorant about the duties of the PIO in terms of the provision of the Act.

SIC is of the considered view that the PIO has failed in furnishing information to the appellant in terms of the J&K RTI Act and the Rules in both the aforementioned RTI applications dated 17-10-2016 and 19-10-2016 and thereby has failed in performing his statutory duties. The materials on record clearly show his lackadaisical approach leading to denial of information to the appellant within the stipulated time. His conduct is devoid of any reason and justification. Under the mechanism provided under the J&K RTI Act, 2009, the PIO is the pivot for enforcing the implementation of the Act. The Act under various provisions has enumerated the responsibility of the PIO, which can be summarized as under:

Section 5(3):- *"Every Public Information Officer shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information."*

Section 7(1):- *"Subject to the proviso to sub-section (2) of Section 5 or the proviso to sub-section (3) of Section 6, the Public Information Officer on receipt of a request under Section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reason specified in sections 8 and 9:*

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request."

From the above quoted provisions of the Act, it is clear that the PIO is to ensure that givable information is provided to the information seeker as expeditiously as possible but in any case not beyond the prescribed time limitation provided under the Act. The intention of the legislature and the mandate of the Act by providing that the information should be given as expeditiously as possible under section 7(1) of the Act, is that the outer limit for providing information is 30 days even if the information has to be collected from multiple sources, otherwise the PIO should dispose of the RTI application as expeditiously as possible and that delay in collection of information from other sources or subordinate offices cannot be cited as the reason for violation of time limit of 30 days stipulated under section 7(1). The legislature has placed a cap on the maximum time limitation i.e 30 days and any unjustified contravention of the specified time limitation on the part of the PIO invites action under section 17 of the Act and taking penal action against a defaulting PIO in such a situation is a duty cast upon the SIC under the provision of section 17 of the Act.

The Act having required the PIO to "deal with" the request for information and to "render reasonable assistance" to the information seeker cannot be said to have intended the PIO's role as superficial. The expression "deal with" would mean everything from receipt of the application till the issue of decision thereon under section 6(1) and 7(1) of the J&K RTI Act, 2009.

The Hon'ble High Court at Delhi in case titled ***J.P Agarwal Vs UOI of India & ors 2011*** has held as under:

"under section 6(1) and 7(1) of the Act, it is the PIO to whom the application is submitted and it is he who is responsible for ensuring that the information as sought is provided to the applicant within statutory requirements of the Act."

Section 5(4) is simply to strengthen the authority of the PIO within the department.

The RTI Act places confidence in the objectivity of a person appointed as the PIO and when the PIO mechanically handles the request for information he shakes the confidence placed in him by the public authority.

The PIO is expected to apply his/her mind and duly analyze the material before him/her and then either disclose the information sought or give grounds for non disclosure. The PIO can reject application if the same is not as per the Act or Rules in terms of section 7(8) of the Act, however, in that case also he has to give reasons for such rejection, the period within which an appeal against such rejection can be made and particulars of the appellate authority. Section 7(2) provides that if PIO fails to give decision on the request for information within the period specified under sub section (1) the PIO shall be deemed to have refused the request. The then PIO has exactly done the same here by not giving timely information to the appellant in both of his RTI applications dated 17-10-2016 and 19-10-2016.

The Hon'ble High Court of Delhi in case titled ***Mujibur Rehman Vs Central Information Commission (2009)*** has held ***"information seekers are to be furnished what they ask and not to be driven away through filibustering tactics and it is to assume a culture of information disclosure that penalty provision have been***

provided in the RTI Act. The Act has conferred the duty to ensure compliance on the PIO."

Similarly the same court in ***Vivek Mittal Vs B.P Srivastava 2009***, held that a PIO cannot escape his obligations and duties by stating that persons appointed under him had failed to collect documents and information and that the Act as framed casts obligation upon the PIO to ensure that the provisions of the Act are fully complied.

Taking overall gamut of the case into consideration in light of the above stated responsibilities of the PIO, Commission observes that this case falls in specific default on the part of the PIO in the sense that such default is persistent and without reasonable cause on both the occasions i.e with respect to RTI application dated 17-10-2016 and 19-10-2016. The SIC has observed that the said the then PIO has dealt with the matter in purely mechanical manner and not in a statutory and quasi judicial manner as provided under the provision of the Act governing his duties as a PIO. SIC is very much conscious of a very well established principle of law that penal provisions are to be construed strictly as no one can be penalized unless his/her conduct clearly falls within the four walls of the letter and spirit of the provision of law and therefore, the same has been a guiding principle for SIC in this case. The SIC has recorded findings specifically and strictly after giving the then PIO an adequate opportunity of being heard by adhering to the principles of natural justice (PNJ)and has formulated a

reasonable opinion after giving due consideration to the facts of the case and conduct of the PIO in handling the said two RTI applications and holds that this case squarely calls for recommending disciplinary action against the PIO, Sh. Deepak Gupta in terms of section 17(2) of J&K RTI Act, 2009, which is reproduced as under:

"Where the State Information Commission at the time of deciding any complaint, appeal or reference is of the opinion that the Public Information Officer has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of Section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Public Information Officer under the service rules applicable to him."

The last hearing in this penalty proceedings under section 17 of the J&K RTI Act, 2009 was conducted on 10.08.2017. Subsequently, the records on file and of all the hearings conducted were perused in great detail. After

due consideration of all the facts and aspects surrounding the matter, it has been decided to impose penalty as under: -

I recommend disciplinary action under section 17(2) of J&K RTI Act, 2009 against Sh. Deepak Gupta the then PIO, J&K ERA to the Competent Authority under Service Rules as apply to him. He is from the J&K Accounts Service and therefore a copy of this order be sent to Director General Accounts and Treasures J&K and Administrative Secretary of Finance, Department for compliance. CEO, J&K ERA is also directed to take necessary action for onward transmission of the order to the concerned officer at his new place of posting.

The penalty proceedings are hence disposed of subject to above directions.

-sd/-

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

No. SIC/CO/SA/**439&440**/2017

Dated: / /2018.

Copy to the:

- 1 Director General Accounts and Treasures J&K, for information and compliance.
- 2 Administrative Secretary of Finance Department, J&K Civil Secretariat, Jammu for information and compliance.
- 3 First Appellate Authority (FAA)/Director Finance, J&K ERA, Jammu for information and compliance.
- 4 Sh. Deepak Gupta, the then PIO, J&K ERA for information and compliance.
- 5 Public Information Officer (PIO), O/o Director Finance (Administrative) J&K ERA, Jammu for information and compliance.
- 6 CEO, J&K ERA. He is directed to take necessary action for onward transmission of the order to the concerned officer at his new place of posting.
- 7 PS to CIC for information of HCIC.
- 8 Sh. Arjun Kumar Bali R/O 70/14 Nanak Nagar, Jammu Near L.G Shoppe Railway Road, Jammu-180004.
- 9 Guard file.

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