



**Jammu and Kashmir State Information Commission**  
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File No. SIC/CO/SA/553 /2017  
Decision No. SIC/CO/SA/553/2017/1067

### **Final order**

Appellant : Shri Mahesh Gupta,  
R/O 03 Jawahar Nagar, Ward No.1  
Kathua, J&K-Jammu.

Respondents : First Appellate Authority(FAA)/ Public Information  
Officer (PIO) Power Development Department.

Date of Registration : 08-11-2017

Date of Decision :28-02-2018

### **Brief Facts:**

This 2<sup>nd</sup> appeal has originated from the RTI filed by Shri Mahesh Gupta on 11.05.2017 with the PIO, Power Development Department(PDD) seeking following information:

- (i) **What is fault/complaint redressal mechanism of consumer?**
- (ii) **Details applicable at Consumer Level.**
- (iii) **Is this mechanism existing in Kathua Distt. in Electric M&RE Division.**

As per records on file, the PIO, PDD transferred the said RTI application to the PIO, Development Commissioner Power (DCP) under Section 6(3) of the Act on 05.06.2017 with the additional remarks that the information may be directly provided to the RTI applicant within stipulated time under intimation to this office and that delay in transmission of information shall invite penalty under Section 17 of the Act.

On receipt of the RTI application from the PIO,PDD, the PIO of the DCP vide communication No.DC/PD/Adm-IV/RTI-302/523-524 dated 21.06.2017 has further transferred the application to the PIO, E&M&RE Wing, Jammu. Subsequently, the PIO, E&M&RE Wing, Jammu O/O Chief

Engineer, EM&RE, Wing Jammu vide communication dated 18th July,2017 has further forwarded the application to PIO/Xen,EM&RE,Kathua with the following remarks:

***“Since the information sought by the applicant comes under your jurisdiction. So under sub section 3(a) &(b) of Section 6/Sub-Section 4 & 5 of the J&K RTI Act,2009, application is transferred to your office and in this connection you are requested to furnish the requisite information to the applicant directly within stipulated time period under an intimation to this office.”***

As no information was provided to the appellant since the filing of RTI application on 11.05.2017, he filed 1st appeal before the First Appellate Authority(FAA) of the PDD on 04.7.2017 which was again forwarded by the PIO of the PDD to the FAA,O/O DCP,Srinagar vide communication dated 25.07.2017. Aggrieved by the non-response, the appellant filed 2nd appeal before the State Information Commission on 10.08.2017 which was finally admitted in the Commission on 8.11.2017 after completion of deficiencies. In the meantime the PIO/Xen, EM&RE, Kathua provided the information to the appellant( the then RTI applicant) on 25.08.2017.

### **Proceedings before the Commission.**

The 2<sup>nd</sup> appeal was first listed for hearing before the Commission on 03.01.2018 which however, was adjourned on the request of the appellant as well as the respondents. The 2nd appeal came up for hearing second time on 28.2.2018, the appellant was absent reportedly due to ill health but was later heard through voice call. Respondents were represented by the PIO,PDD. The respondents in their written counterstatement have submitted as under:

1. It emerges from records that the applicant filed a First Appeal before the Hon'ble Minister for Power Development, and it was marked by the OSD to Hon'ble Minister to the Commr/ Secretary,PDD. The Commr/Secretary in turn marked it to the PIO in the department. The PIO forwarded the First appeal to the FAA in the office of the Development Commissioner Power, apparently because the application of the applicant under the J&K RTI Act had already been forwarded by him to the PIO in the office of DCP under section 6(3) of the RTI Act.
2. As would be seen from the foregoing submissions, there was no occasion for the undersigned to take up or dispose of the appeal of the appellant, as the appeal of the applicant never came to the notice of the

undersigned before the receipt of the notice from the Hon'ble Commission.

### **Decision**

From the perusal of records on file and after hearing the PIO of PDD and also the appellant through voice call, it transpires that the then PIO of the PDD has delayed the transfer of the RTI application in violation of the statutory period of 5 days stipulated under section 6(3) as he has transferred the application dated 11.05.2017 on 05.06.2017. The PIO, O/O DCP should have disposed of the RTI application at his own level after collection of requisite information from the concerned quarters including the Ex.Engineer,EM&RE,Kathua but he chose to further transfer it to the O/O Chief Engineer,EM&RE, Jammu thereby further delaying the provision of information in violation of section 7(1) although the RTI Act does not envisage second time transfer under Section 6(3). Similar poor judgment has been exercised by the PIO, O/O CE,EM&RE,Jammu by transferring it 3<sup>rd</sup> time to Ex.Engineer, EM&RE, Kathua thereby causing additional delay in the disposal of the RTI application. The Ex.Engineer, EM&RE, Kathua has provided the information to the RTI applicant on 25.08.2017 after receipt of application from the PIO, O/O CE,EM&RE, Jammu. It is clear that there has been considerable delay in the provision of information to the applicant due to multiple and mindless transfer of RTI application thrice in violation of the RTI Act.

The details and circumstances pertaining to this 2nd appeal have been considered carefully and record was also perused and it is observed that the conduct of the then PIO,PDD (delay in transfer under Section 6(3)) and the PIO, O/O DCP(Second transfer not clearly envisaged under 6(3)) and PIO,O/O CE,EM&RE, Jammu (third transfer not clearly envisaged under 6(3)) fits in the description under Section 17 which reads as under:

**Section 17 reads as under:**

**17 (1) 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, refused to receive an application for information or has not furnished information within the time specified under the 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 impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:**

**Provided that the Public Information Officer shall be given a reasonable opportunity of being heard and penalty is imposed on him:**

Provided further that, the burden of proving that he acted reasonably and diligently shall be on the Public Information Officer.

**17(2) 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.**

In the light of the provisions of the Section 17 of the J&K RTI Act,2009, the then PIO,PDD, the then PIO, O/O DCP and the then PIO,O/O CE,EM&RE, Jammu appear to be liable for imposition of penalty. However, before doing so they are provided an opportunity of being heard and to submit their written statements as to why penalty may not be imposed on them in terms of Section 17 of the Act. Their written statements should reach to the Registrar of the Commission within a period of 15 days from the date of receipt of this order. There is nothing left for the Commission to consider in this second appeal as the information has been provided to the appellant which he has confirmed though voice call. Accordingly this 2<sup>nd</sup> appeal filed before the Commission is disposed of. However, the Registry will fix the hearing in the penalty proceedings under Section 17 of the RTI Act separately.

The copy of Order be provided to the parties free of cost.

Sd/-  
**(Khurshid A. Ganai)**  
Chief Information Commissioner

*Copy to the :-*

- 1. First Appellate Authority (FAA), Power Development Department, Civil Secretariat, Jammu for information and n/a.*
- 2. Public Information Officer (PIO), Power Development Department, Civil Secretariat, Jammu for information and n/a.*
- 3. Pvt.Secy. to HCIC for information of the HCIC.*
- 4. Shri Mahesh Gupta, R/O 03 Jawahar Nagar, Ward No.1 Kathua, J&K-Jammu.*
- 5. Office Order file.*

**( Sheikh Fayaz Ahmed)**  
**Registrar**  
J&K State Information Commission