



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/Comp/141/2017

Decision No- SIC/CO/Comp/141/2017/**1072**

Dated: 22.02.2018

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

Complainant : Shri Harsh Dev Singh, Chairman, J&K National Panthers Party, R/O 6-A Gandhi Nagar, Jammu.

Respondent : PIO, Social Welfare Department, Civil, Sectt.Jammu.

Decision : Disposed of

The instant penalty proceedings under Section 17 of the J&K RTI Act,2009 originated from the complaint filed by Shri Harsh Dev Singh against the PIO of the Social Welfare Department, Government of J&K for allegedly providing false and incorrect information about action taken by the Department on Ministry of Tribal Affairs, GoI letters dated 16.10.2007 and 03.06.2016 regarding ST status to 'Kolis' of J&K. The PIO, Social Welfare Department, Govt. of J&K had informed the RTI applicant Shri Harsh Dev Singh that 'as per records available with the deptt. no such communication has been received from the Ministry of Tribal Affairs, (MoTA), GoI.

The complainant/ the then RTI applicant, Shri Harsh Dev Singh approached the State Information Commission(SIC) with a complaint under Section 15 of the J&K RTI Act,2009 enclosing copies of the two letters from the Ministry of Tribal Affairs, GoI and copy of the reply dated 20.06.2016 to

his RTI filed with the PIO, MoTA regarding the same subject. In the reply to the RTI filed by Shri Harsh Dev Singh with the PIO, MoTA,GoI, the PIO has stated that two letters dated 16.10.2007 and 03.06.2016 have been sent by to the Social Welfare Department Govt. of J&K for appropriate action.

In the final order dated 06.06.2017 in this complaint, this Commission ordered as under:

Keeping in view the circumstances of case and the information collected during the hearings conducted so far, proceedings under section 17 of the J&K RTI Act, 2009 for imposition of penalty and/or disciplinary action are warranted and need to be initiated. It is also a fit case to treat the officials whose assistance was sought by the PIO as PIOs in terms of section 5 (5) and to initiate action against them under section 17 of the Act for providing incorrect information. A show-cause notice may, therefore, be issued to the officials namely PIO/Sh. Riyaz-ul-Haq, Under Secretary to the Government, Social Welfare Department, Mr. Abid Khan, Section Officer, Mr. Arshad Jan, Section Officer, Ms. Shamema, Head Assistant and Mr. Rakesh Kumar, Record Keeper all working in the Social Welfare Department asking them to show cause as to why action under section 17 of the J&K RTI Act, 2009 may not be taken against them for providing incorrect information to the RTI applicant and now complainant vide the Social Welfare Department's No. SW/RTI/62/2016 dated: 30.09.2016.

The complaint filed in the Commission is accordingly disposed of.

The first hearing in the penalty proceedings initiated as above was conducted on 21.12.2017. Among the respondents Shri Riyaz Ahmad, the then PIO, Shri Arshad Jan, Section Officer, Sh. Ghulam Mohiddin, Section Officer, the then Head Asstt. and Ms. Deepika Sharma, Jr. Asstt/Record Keeper, Social Welfare Department attended the hearing. During the hearing, the SIC enquired from the then PIO as to why the information regarding the existence of letter dated 16th October 2007 received from GoI was concealed from the information seeker, when the said letter was very much available in the records. In response the PIO submitted that the said letter was in the old file, which was unfortunately not perused and the record was sought only from the current file after receipt of RTI application and this is the reason why initially the information pertaining to the said letter was not given to the information seeker. Record keeper and other officials also put forth the same reason.

The respondents filed written statements also in defence against imposition of penalty. In his statement the Under Secy.Sh.Reyaz Ul Haq stated as under:

'On receipt of RTI application of Mr.Harsh Dev Singh, Chairman, J&K National Panthers Party, the reply was provided to him vide letter No.SW/RTI/62/2016 dated 30.09.2016. However, he filed a complaint in Sate Information Commission of receiving incorrect information. Whereas, taking the cognizance of the said complaint of SIC more officials of SWD were detailed to locate the references in question as the appellant had now provided photocopy of the communication addressed to the Secretary,SWD by Govt. of India , Ministry of Tribal Affairs and therefore was now easy to locate the same. After thorough search of the record one such reference dated 16.10.2007 has been located from old records. However, other reference dated 03.06.2016 was not traceable from the records and the said position was conveyed to the SIC. Had there been any intention of the Department to conceal any information, as such there was no deliberate intention of any official/officer to provide any wrong or incorrect information to the RTI applicant.

The core aim of the RTI application was grant of ST status to "Kolis" community for which the Social Welfare department on the lines of Pahari Speaking People has now decided to conduct detailed survey to ascertain socio-economic status of Chopan and Kolies from academicians and panel of experts has been sought from the University of Jammu/ Kashmir to conduct such survey to facilitate department to examine the grant of ST status to these communities in totality before referring it to Government of India.

Whereas, the formal orders for constitution of said Committee alongwith terms of references will be issued shortly as the approval of the Hon'ble Ministers has been received in this behalf.

On receipt of the Commission's decision dated 06.06.2017, the signatures of the officials on the RTI file of the Department were further cross examined in the department and were found of following officials:-

- 1. Ms.Deepika Sharma, Junior Assistant (Record Keeper).*
- 2. Mr.Ghulam Mohi-Ud-Din, the then Head Assistant (Now Section Officer).*
- 3. Mr.Abid Khan, Section Officer.*
- 4. Mr.Arshad Jan, Section Officer.*
- 5. Riyaz-ul Haq, Under Secretary.*

Therefore, it is humbly requested the names of Ms.Shamima, Section Officer and Mr.Rakesh needs to be replaced with Sr.No.1 and 2 above.

The concerned officials showed full assistance for providing the information to the applicant and there is no fault on their part for furnishing of incorrect information and it is therefore, it is requested that explanation in their favour may also be withdrawn.

The RTI cases are taken very seriously in the Department so that the spirit and essence of RTI Act may be maintained, therefore the PIO cannot imagine of furnishing the incorrect information to the applicant being a Law binding officer. Now, therefore in the interest of justice, it is humbly prayed/requested that penalty proceedings under section 17 of the J&K RTI Act,2009 may be not be initiated against me as no incorrect information was provided to the RTI applicant.

In the written statement dated 29.06.2017 and received in the Commission on 03.07.2017, the junior officials namely Shri Arshad Jan, Section Officer, Shri Abid Khan,S.O, Sh.Ghulam Mohiddin, Section Officer, (the then Head Asstt.) and Ms.Deepika Sharma, Jr.Asstt/Record Keeper submitted as under:

In the instant case, due assistance was rendered to the Public Information Officer of the Department in a time bound manner. However, report to the extent that said reference not available in the records, is based on the fact that said reference dated 03.06.2016 is

not still available in the records, which is substantiated from the compliance report furnished by the PIO, SWD. However, tracing of another reference dated 16.10.2007, as sought by the RTI applicant got delayed owing to the fact that said reference was not available in the relevant original file, as the same was kept in separate file/old records by the then Record Keepers, some ten years back, and traced only after PIO,SWD had furnished reply to the information seeker.

Further scrutiny of the records reveals that matter with regard to grant of ST status to 'Koli Community' is under examination in the Department in chain of files, which might have confused the record keeper in tracing the reference in the first instance. Had there been any intention to conceal the information, the efforts wouldn't have been made to trace the reference dated 16.10.2007 from the records. The file in which said reference was located was one decades old and was inactive, due to opening of chain of files on the subject. Therefore, in no means it can be attributed that any incorrect information has been provided to the PIO, as alleged by him, during the course of hearing. Pertinent to mention here that PIO, in capacity of Under Secretary in the Department is himself dealing the subject matter, and could have easily assessed the authenticity of the report of the record keeper, had there been such file in movement. The report that reference dated 03.06.2016 is not available, still stands, as same could not be located despite all efforts. Cognizance of prevailing system of record keeping, also merits consideration, where record keepers are still bank on manual search of files, where, it is very difficult some times for Record Keeper to trace/locate any particular reference, especially, when it is ten years old.

In view of the above averments, it is evident that there was no deliberate intention by any of the officials associated with the Section, to provide any wrong or incorrect information to the PIO, SWD, therefore initiations of penalty proceedings are very harsh and arbitrary. However, we assure further promptness in dealing with RTI related matters in future.

Now in the light of the circumstances referred heretofore, it is humbly prayed that penalty proceedings under Section 17 of the J&K

RTI Act,2009 initiated against all of us may kindly be withdrawn in the interest of justice.

The penalty proceedings were listed for hearing on 20.02.2018. The respondents reiterated the stand taken by them in the written statements to prove that none of them had handled the old file which was closed in 2010 and where reference dated 16.10.2007 received from MoTA, GoI had been handled by the Department. Their main grounds were:

- a) That the reference from the GoI dated 16.10.2007 was in another file closed in 2010 and they had not seen that file, nor referred to it.**
- b) The later reference dated 03.06.2016 from Ministry of Tribal Affairs, GoI was still not traceable in the Department.**

The oral and written statements from the respondents were considered with due application of mind. There is no evidence to show that the PIO or the staff have deliberately provided incorrect information. It is a case of poor judgment where the PIO has failed to make requisite efforts to trace the reference from old and new files on the subject. He was dealing with the subject in the new file, post 2010 file, but common sense dictates that reference of 2007 may not be in the current file and that old files should have been referred to. Then, he should have also considered that the RTI applicant was a reputed Lawyer and an ex-Minister who would not have filed the RTI except on the basis of proper information. The applicant had made specific reference to two letters from MoTA,GoI.

The same holds for the record keeper Ms. Deepika Sharma and the then Head Assistant, Gh. Mohi-ud-Din. The S.O has mechanically put up the note received from the Record Keeper to the Under Secretary and the reply to the RTI was accordingly drafted.

This exercise of poor judgement on the part of the PIO and other staff however, does not appear to be deliberate or driven by any malafide consideration. The collective mistake is a result of collective judgement which in this case happens to be poorly exercised.

Although, the PIO has provided the reply on 30.09.2016 which is 07 days delayed after 30 days as stipulated under Section 7(1) but the complainant has not given this as a ground for filing the complaint. He has

alleged in his complaint that the Social Welfare Department (SWD), Govt. of J&K has given false and incorrect information. While the information provided to him by the PIO in reply to his RTI application dated 23.08.2016 is incorrect to the extent of existence of the reference dated 16.10.2007 from MoTA,GoI in the old records, it is reportedly correct in respect of MoTA, reference dated 03.06.2016 as the respondents continued to claim non-receipt of the said reference . The reply by the PIO has not been proved during the inquiry as being deliberate or driven by any malafide intention. The case therefore, does not warrant imposition of penalty on the PIO and the deemed PIOs in terms of Section 17. Both the Sections 17(1) and 17(2) require existence of malafide, deliberate attempt to hide information or to give incorrect information, which have not been proved here. However, the officials deserve to be warned to be careful in future. To that extent, the Social Welfare Department is advised to issue a stern warning to the concerned officials to be careful in future. A copy of the said warning may be sent to the State Information Commission for record and reference.

The Social Welfare Department should also take steps to improve the speed and quality of disposal of RTI applications and first appeals by providing necessary training to its staff and officials so that they don't repeat exercise of poor judgement as has been done in the instant case. The SWD should also take urgent steps to implement provisions of Section 4 of the J&K RTI Act,2009 to facilitate the information seekers and also to maintain records in a systematic and orderly manner to enable easy access. Access can become easier if all the files and references received and sent out are diarised on computer systems.

Accordingly, this complaint filed before the State information Commission is disposed of as closed.

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

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

Copy to :

1. Commr/Secretary to Government, Social Welfare Department for information and necessary action.

2. First Appellate Authority (FAA), Social Welfare Department, Civil Secretariat, Jammu for information and n/a.
3. PIO, Social Welfare Department, Civil Secretariat, for information and n/a.
4. Pvt. Secretary to HCIC, J&K for information of the HCIC.
5. Shri Harsh Dev Singh, Chairman, J&K National Panthers Party, R/O 6-A Gandhi Nagar, Jammu.
6. Office order file.

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