



Jammu and Kashmir State Information Commission

شہنیشن کمیٹی انفارمیری اسٹیٹ کنٹ کشمیری جموں ا

(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/J/A/249/2018

Decision No. SIC/J/A/249/2018/189

Final Order

(Second Appeal)

- Appellant : Sh. Mohd Ayaz Khan (Advocate).
- Respondents : First Appellate Authority (FAA)/
Public Information Officer (PIO), O/O Deputy
Commissioner, Poonch.
- Date of Registration : 19.03.2018
- Date of Decision : 03.04.2018

Brief Facts:

The appellant Sh. Mohd Ayaz Khan (Advocate), J&K High Court, Jammu filed 2nd appeal under section 16 (4) of the J&K RTI Act, 2009 with the J&K State Information Commission interalia stating that he had filed an RTI application with the PIO, O/O Deputy Commissioner, Poonch on 11.10.2017 and sought information *'about the status of communications vide no. A/131/GEN dated: 23 Feb, 2015 and no. A/131/GEN dated: 17 April, 2015 which were forwarded by Adjutant office 3rd JAKLI c/o 99APO for allotment of Government Waste Land to landless serving soldier i.e.*

Havaladar Shri Sakander Hayat No. 9098123N serving in 3^d JAKLI C/o 99APO' and other related information.

Feeling aggrieved by the non-response of the PIO, the appellant preferred First Appeal on 01.01.2018 before the FAA, O/O Deputy Commissioner, Poonch. The FAA too did not provide him the requisite information. At last, the appellant approached the State Information Commission (SIC) by filing 2nd appeal which was admitted on 19.03.2018.

Proceedings:

The 2nd appeal came up for hearing before the Commission on 03.04.2018. The hearing was attended by PIO/AC (R), Poonch through Video Conferencing from NIC Poonch. The appellant attended the hearing at Jammu office of the Commission.

Both the parties were heard at length.

Decision:

The PIO/AC (R), Poonch conceded that he has failed to provide the information in time as per sub section (1) of section 7 of the RTI Act. He also conceded that the information sought for was of simple nature which should have been provided without delay and it was due to oversight that he forgot to dispose of the RTI application in time. He also informed that he had marked the RTI application to the dealing Assistant on 20.10.2017 with the endorsement to put it up without delay, but unfortunately the application was never put up to him again. He stated that he regrets this mistake and assured the Commission during the hearing that he will

provide the requisite information to the appellant (the then RTI applicant) within the next two days.

The PIO was asked as to why penalty under section 17 (1) should not be imposed on him for inordinately delaying provision of information of this simple nature. He stated that he has no excuse to offer except that it was an oversight for which he feels sorry and expresses regret.

The penalty provision under section 17 (1) reads 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 refused 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 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 before any 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.

The delay between 11.10.2017 till today i.e. 03.04.2018 is nearly 174 days. The maximum amount of penalty in this case that can be imposed is Rs. 25000/-.

In terms of proviso to section 17 (1), the PIO was again asked if he has any grounds to offer as to why penalty should not be imposed on him under section 17 (1). He stated that he had no excuse or grounds to offer for not providing the information till date and that if the Commission decides to impose penalty he has really nothing to offer by way of objection but would request for amnesty.

The PIO then requested for waiver of penalty with the assurance that he will be careful in future and that he will provide the requisite information within the next two days.

Keeping in view the frank admission of oversight and regret expressed by the PIO/AC (R), Poonch and having marked the RTI application to the dealing Assistant on 20.10.2017 which, however, was reportedly never put up to him in time and, therefore, on the balance, a penalty of less than Rs. 25000/- looks appropriate and fair in this case. Accordingly, a penalty of Rs. 5000/- only is imposed on the PIO/AC (R), Poonch in terms of section 17 (1) of the J&K RTI Act, 2009 for not providing the information to the RTI applicant even beyond the stipulated thirty days till the date of first hearing in this second appeal.

The penalty amount so imposed shall be deducted from the salary of the PIO/AC (R), Poonch by the DDO O/O DC, Poonch and

deposited in the appropriate Government Account as per the standing orders or rules in this regard.

On his part, the PIO shall ensure that the requisite information is provided to the appellant within the next 2-3 days positively.

*With these observations/directions the second appeal is disposed of.
Copy of this decision be given free of cost to the parties.*

Sd/-
(Khurshid A. Ganai)
Chief Information Commissioner
J&K State Information Commission

(P.A. Ajay)

No: SIC/J/A/249/2018_____

Dated:

Copy to:

1. FAA, O/O Deputy Commissioner, Poonch for information.
2. DDO, O/O Deputy Commissioner, Poonch for information and necessary action.
3. PIO/AC (R), Poonch for information and necessary action.
4. Private Secretary to CIC for information of the HCIC.
5. Appellant/Sh. Mohd. Ayaz Khan (Advocate), J&K High Court, Jammu for information.
6. Office file.

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