



Jammu and Kashmir State Information Commission

شنیشن کمیٹی انفارمیشن ری اسٹیٹوٹڈ کشمیر 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/CO/SA/451/2017/1119

Dated: 14.05.2018

ORDER

Subject: Penalty proceedings in the 2nd appeal titled Sh. Touseef Majeed Rather vs. Public Information Officer (PIO), State Mission Directorate (SMD), ICDS, J&K under the J&K RTI Act, 2009.

Order u/s 17 of the J&K Right to Information (RTI) Act, 2009.

1. The case under consideration involves imposition of penalty u/s 17 of the J&K RTI Act, 2009 on Sh. Pran Singh, [the then Public Information Officer (PIO), SMD, ICDS, J&K] now Deputy Commissioner, Commercial Taxes (Recovery), Jammu for his failure to dispose of the RTI application of Sh. Touseef Majeed Rather under J&K RTI Act, 2009 within the stipulated time period.
2. The background of the case is that one Sh. Touseef Majeed Rather, S/o. Abdul Majeed Rather, R/o. Maisuma Bazar, Near Madrasa Tul Banat Girls High School, Srinagar-190001 had applied for information to the PIO, Social Welfare Department, Kashmir vide his RTI application dated: 21.06.2016 (received on 22.06.2016). The PIO, Directorate of Social Welfare, Kashmir

transferred the said application to the PIO, State Mission Directorate ICDS, J&K, Kashmir vide letter dated: 23.06.2016 as the information pertained to the SMD, ICDS J&K, which as per the records of the PIO, Directorate of Social Welfare, Kashmir was received on the same date in the office of SMD, ICDS, J&K. However, the PIO of SMD, ICDS, J&K failed to take any action on the RTI application till the appellant filed First Appeal which also resulted in non-provision of requisite information. Subsequently, the appellant filed second appeal in the Commission and vide order dated: 19.06.2017, the Commission directed for provision of information which was then provided to him by the PIO of the SMD, ICDS, J&K (major part of information was provided by them) and smaller part of information had earlier been provided by the PIO/District Social Welfare Officer, Srinagar on 05.06.2017.

3. Penalty proceedings had been initiated in respect of both the officers i.e. PIO/Directorate of Social Welfare, Kashmir and PIO of the SMD, ICDS, J&K and finally the explanations were received from both the officers. The PIO/Directorate of Social Welfare, Kashmir has argued that the then PIO (predecessor) had promptly transferred the application because most of the, if not all, information pertained to the ICDS and, therefore, pleaded that penalty may not be imposed on the PIO, Directorate of Social Welfare who first received the RTI application.

4. As regards the PIO, SMD, ICDS, J&K it has been observed by the Commission while dealing with the 2nd appeal, that there has been no action by him between 23.06.2016 till the filing of the First Appeal and that information has been provided after the orders of the Commission in 2nd appeal in June, 2017. Clearly, the then PIO, SMD, ICDS, J&K is in default and in violation of section 7(1) of the J&K RTI Act which lays down that information has to be provided by the PIO within 30 days from the date of filing of the RTI application. The PIO has failed to produce any evidence to show that he acted promptly on the RTI application received in his office on 23.06.2016 or that such an application was never received in the office of the SMD, ICDS, J&K.
5. The then PIO, SMD, ICDS, J&K was given multiple opportunities to defend himself in terms of provision under section 17 but he has failed to put up any convincing explanation to inform as to why penalty under section 17 (1) may not be imposed on him.
6. The then PIO, SMD, ICDS J&K in his letter of explanation to the Commission dated: 25.04.2018, has stated that he saw the First Appeal only on 27.11.2016, however, he has not denied that the RTI application transferred on 23.06.2016 was not received in the O/O SMD, ICDS, J&K. He had taken a similar stand in his earlier letter dated: 10.02.2018 addressed to the Commission. He has also taken the stand that PIOs in this case were District Social

Welfare Officer, Srinagar and CDPO, Srinagar and, therefore, penalty proceedings may be dropped against him.

7. The hearings in the penalty proceedings were conducted on 22.09.2017, 21.12.2017, 20.02.2018, 12.03.2018 and today on 14.05.2018 and adequate number of opportunities were given to the PIO to defend himself.
8. It has transpired during the many hearings in 2nd appeal and in penalty proceedings that the RTI application was transferred to the PIO, SMD, ICDS on 23.06.2016 but the PIO, SMD, ICDS failed to provide the requisite information and took cognizance only on 27.11.2016 after filing of first appeal with the FAA, O/O SMD, ICDS and even then the information was not given till the filing of 2nd appeal by the appellant in the SIC on 09.03.2017, which was finally disposed of on 19.06.2017.
9. The argument given by the then PIO/Joint Director, SMD Sh. Pran Singh that the PIOs were District Social Welfare Officer, Srinagar and CDPO, Srinagar is not correct as the RTI application was first filed with PIO, O/O Director Social Welfare who transferred it to the PIO, O/O State Mission Directorate, ICDS under section 6 (3) of the J&K RTI Act, 2009. If the CDPO Srinagar was the repository of information then the PIO, O/O SMD, ICDS should have promptly collected the information under section 5(4) from the said CDPO and provided to the RTI applicant. This was not done nor was the RTI application transferred to CDPO, Srinagar

for providing the requisite information. In fact he took neither of the two actions.

10. Section 17 of the J&K RTI Act, 2009 states as under:

(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 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.

(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 subsection (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.”

- 11. Keeping in view the provisions of section 17 of the J&K RTI Act, 2009, the findings in the 2nd appeal and hearings in penalty proceedings held on 22.09.2017, 21.12.2017, 20.02.2018, 12.03.2018 and today on 14.05.2018 and after due consideration of the submissions made by the then PIO, SMD, ICDS Sh. Pran Singh (KAS), a penalty of Rs. 25,000/- in terms of Section 17 (1) is now imposed on Sh. Pran Singh (KAS), the then PIO/Joint Director (Adm), SMD, ICDS, J&K presently posted as Deputy Commissioner, Commercial Taxes (Recovery), Jammu.**
- 12. The Drawing and Disbursing Officer (DDO) Incharge of the O/O Deputy Commissioner Commercial Taxes (Recovery) Excise and Taxation Complex, Rail Head Jammu shall deduct the penalty of Rs. 25,000/- (Rs. Twenty Five**

Thousand) only, from the salary of Sh. Pran Singh (KAS) and deposit it in the appropriate account of the Government and file compliance report to the J&K State Information Commission within one month from the date of receipt of this order.

A copy of this order be endorsed and sent to Commissioner, Commercial Taxes, J&K for ensuring implementation of the order and compliance within a period of one month.

*With the above observations/directions, the case is disposed of.
Copy of this decision be given free of cost to the parties.*

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

(P.A. Ajay)

No: SIC/CO/SA/451/2017_____

Dated:

Copy to:

1. Commissioner, Commercial Taxes, J&K for information and necessary action.
2. Sh. Pran Singh (KAS) [the then PIO, SMD, ICDS, J&K] now Deputy Commissioner, Commercial Taxes (Recovery) Jammu for information.
3. PIO, Directorate of Social Welfare, Srinagar for information.
4. PIO, State Mission Directorate, ICDS, J&K for information.
5. Drawing and Disbursing Officer (DDO) Incharge of the O/O Deputy Commissioner Commercial Taxes (Recovery) Excise and Taxation Complex, Rail Head Jammu for information and necessary action as directed above.
6. Private Secretary to CIC for information of the HCIC.
7. Appellant/Sh. Touseef Majeed Rather, S/o. Abdul Majeed Rather, R/o. Maisuma Bazar, Near Madrasa Tul Banat Girls High School, Srinagar-190001 for information.
8. Office file.

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