



**Jammu and Kashmir State Information Commission**

جموں اینڈ کشمیر اسٹیٹ انفارمیشن کمیشن

(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](http://www.jksic.nic.in)

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File No. SIC/CO/SA/568/2018

Decision No. SIC/CO/SA/568/2018/**1128**

**Final Order**  
**(2<sup>nd</sup> Appeal)**

- Appellant : Dr. Sheikh Ghulam Rasool.
- Respondents : First Appellate Authority (FAA)/Public Information Officer (PIO), O/O Chief Wild Life Warden, J&K.
- Date of Registration : 29.01.2018.
- Date of Decision : 29.05.2018.

**Brief facts:**

This 2<sup>nd</sup> appeal titled Dr. Sheikh Ghulam Rasool vs. FAA/PIO, O/O Chief Wildlife Warden has already been dealt with by this Commission in reasonable detail vide its interim orders dated: 27.03.2018, 23.04.2018 and 22.05.2018. In the order dated: 27.03.2018, the Commission observed that transfer of RTI application by the PIO, O/O Chief Wildlife Warden to PIOs of subordinate offices under section 6(3) was not correct in the light of the letter and objective of section 6(3) and on the other hand the PIO should have resorted to section 5(4), collected information from the subordinate

offices and provided to the then RTI applicant Dr. Sheikh Ghulam Rasool (now appellant in this 2<sup>nd</sup> appeal). Following specific directions were issued:

- 1. PIO, O/O Chief Wildlife Warden shall collect and collate the information in terms of the RTI application of the appellant and provide para-wise reply within a period of 21 days from the date of issue of this order.**
- 2. A separate counterstatement should be filed by the FAA, O/O Chief Wildlife Warden.**
- 3. PIO shall explain why penalty may not be imposed on him under section 17 of the J&K RTI Act, 2009 for not providing the requisite information as prescribed under Section 7(1).**

Counter statement dated: 21.04.2018 was subsequently filed by the PIO which contained parawise replies to the RTI queries with a copy endorsed to the appellant. In the said counter statement the PIO has lamented the role of subordinate PIOs for not being adequately responsive to the RTI applicant.

In the order dated: 23.04.2018, the Commission observed that the PIO cannot now refer the appellant to the website under section 4 for collecting information after having failed to respond appropriately in the first instance at the time of reply to the RTI application. The Commission also enquired as to why O/O Chief Wildlife Warden does not have a duly designated and appointed FAA and took serious note of this violation of the J&K RTI Act by the said office. Finally following directions were issued after the hearing vide order dated: 23.04.2018:

- 1. In exercise of the powers vested in the State Information Commission under Section 16 (9) (a), the Public Authority i.e. Chief Wild Life Warden, J&K is directed to designate one senior officer as FAA within a period of 07 days from the date of receipt of this order under intimation to Commission to hear the appeals against the order of the PIO.**
- 2. The PIO, O/O Chief Wild Life Warden, J&K Sh. Tahir Mehmood Mirza is given another opportunity to explain as to why penalty u/s 17 of the Act may not be imposed upon him for his failure to provide timely information to the appellant. His reply shall reach within 07 days from the date of receipt of this order.**
- 3. The PIO is directed to ensure that the information sought by the appellant through his RTI application is provided to the appellant well before the next date of hearing on 22.05.2018.**

In the Commission's interim order dated: 22.05.2018 following directions were passed:

- 1. Chief Wild Life Warden, J&K shall remain present in person along with his PIO before the Commission on the next date of hearing to explain as to why the earlier interim orders of the Commission have not been complied with.**
- 2. PIO to reformulate his reply specifically parawise as per the contents of the RTI application and furnish the same to the appellant within two days.**
- 3. PIO to offer inspection to the appellant in terms of section 7(9) of the J&K RTI Act, 2009 with respect to the voluminous part of the information within a week's time. He is also directed to come up with**

***an explanation in the penalty proceedings initiated vide interim order dated: 23.04.2018.***

- 4. Chief Wild Life Warden J&K as a public authority to take steps for implementation of the section 4 of the J&K RTI Act, 2009 in the public authority under his charge.***
- 5. Chief Wild Life Warden J&K/Public Authority to explain why the SIC may not award compensation to the appellant in terms of section 16 (9) (b) for failure of the O/O Chief Wild Life Warden to have a FAA resulting in the non-hearing of the appellant's first appeal thereby compelling him to file second appeal, which must have cost him financially and may also have caused to him physical and mental stress.***

The appeal could not be heard on 25.05.2018, but came up on 29.05.2018 through teleconferencing from Jammu with the PIO who reported at Srinagar office. In the counter statement submitted by the PIO vide his no. nil dated: 28.05.2018, he has enumerated the various steps/follow up action taken in compliance of the interim orders of the Commission in this 2<sup>nd</sup> appeal dated: 23.04.2018 and 22.05.2018. In the same counter statement, the PIO has also stated that *'the concerned PIOs have already provided the information to the applicant (appellant) and the copies of the same have already been placed before the Hon'ble Commission on 25.05.2018 and further in compliance to the Hon'ble Commission order dated: 22.05.2018 the reply has already been reformulated and provided to the applicant (appellant) on 24.05.2018.*

*That the provisions of section 4 of the J&K RTI Act, 2009 have been implemented in letter and spirit and the information with regard to the functions, duties, guidelines, schemes and policies or other information connected to the Wildlife Protection Department including information provided to the information seekers under RTI Act, 2009 are uploaded on the official website [www.jkwildlife78.com](http://www.jkwildlife78.com) from time to time.*

*That the First Appellate Authority has already been appointed by the Chief Wildlife Warden vide order bearing No. WLP/ESTT/RTI/2018/322-35 dated: 27.04.2018 in compliance to the direction of the Hon'ble Commission's order dated: 23.04.2018.'*

Vide letter No.WLP/Legal/CSK/403-14/18 dated: 24.05.2018, the PIO has informed the appellant/the then RTI applicant Dr. Sheikh Ghulam Rasool as under:

***“All the concerned Public Information Officers to whom your application under RTI Act, 2009 was transferred have provided you the information specifically and point wise and also invited you to inspect the records and locations as sought by you during office hours but you denied on one or other pretext for the reasons best known to you. Now again in compliance to the Hon'ble Commission order dated: 23.05.2018 you are invited for inspection or records and locations on any working day during office hours.”***

In the written statement dated: 25.05.2018 submitted by the PIO, he has stated that the PIOs to whom the RTI dated: 08.09.2017 received in the O/O Chief Wildlife Warden on 04.10.2017 had been transferred on 05.10.2017 to the concerned PIOs who had provided the information directly to the RTI applicant Dr. Sheikh Ghulam Rasool, PIO (WLW South Kashmir) vide his No. 955-57/WLW dated; 28.11.2017, PIO/Deputy Conservator of Forests Wild Life Central Division, Srinagar vide his no. WLWC/Estt/2017-18/1932 dated: 20.11.2017, PIO (Wildlife Warden), Chenab Division, Kishtwar vide No. 732-33/WLWK dated: 20.10.2017, PIO (Wildlife Warden), Shopian Wildlife Division vide his no. WLW-Spn/Estt/2017-18/672-74

dated: 09.11.2017 and the PIO (Wildlife Warden) North Division vide his No. 01.11.2017.

*'That the Public Information Officers narrated here and above provided the information to the applicant (appellant) specifically and point wise as sought by the applicant (appellant) and the applicant (appellant) hid this fact before the Hon'ble Commission on the one or other pretext and succeeded to get harassment to the undersigned.'*

*'That all the Public Information Officers also invited him for inspection of record and locations at any working day during office hours as sought by the applicant (appellant) and the same has not been admitted by the applicant (appellant) before the Commission and this aspect is required to be looked into by the Hon'ble Commission on the basis of evidences of already provided information.'*

*'That the information has been provided to the applicant specifically by the concerned Public Information Officers best before the filing of 2<sup>nd</sup> appeal before the Hon'ble Commission and thereafter also in response to the Hon'ble Commission order dated: 23.03.2018.'*

*'That in compliance to the Hon'ble Commission order dated: 23.05.2018 the information is again being specially prepared and shall be provided to the applicant (appellant) hence the question of imposing the penalty under the provision of RTI Act 2009 does not arise as the information to applicant (appellant) has already been provided specially and point wise well before the filing of 2<sup>nd</sup> appeal which is evident from the Annexures attached to this written reply.'*

*'That the provisions of section (4) of the RTI Act, 2009 are being implemented in letter and spirit and the information with regard to the functioning and duties, schemes, policies of the Department are uploaded on the official website [www.jkwildlife78@.com](http://www.jkwildlife78@.com) from time to time.*

**Decision:**

**In view of the various averments made by the PIO during the hearings and through written statements, it transpires that though he erred in his judgment while transferring the RTI application to many PIOs, the said PIOs had in fact tried to provide information and also despatched the same in time. This action of the PIO, O/O Chief Wildlife Warden as an error of judgement does not warrant imposition of penalty under section 17 as there seems to be no malafide or a deliberate attempt on the part of the PIO to hide or not disclose the information which in any case he had to collect from subordinate offices and also as information had not been hidden or kept away by the PIOs to whom this RTI was transferred. However, the RTI applicant, notwithstanding his denial about having received information from the PIOs to whom the RTI had been transferred, had the right to appeal to the First Appellate Authority (FAA) which was unfortunately missing from the O/O Chief Wildlife Warden which is a grave violation of the J&K RTI Act, 2009 and in respect of which the Chief Wildlife Warden has now made amends by appointing the FAA.**

**In terms of powers vested under Section 16 (9), following directions are now issued for compliance:**

- a. The appellant is entitled to a lump sum compensation of Rs. Two Thousand only (Rs. 2000/-) from the public authority i.e. O/O Chief Wildlife Warden, as cost of filing of 2<sup>nd</sup> appeal, transport etc. which he may have spent in filing second appeal as there was no FAA in the O/O Chief Wildlife Warden. If such an FAA had been in place, there may have been no occasion to file the 2<sup>nd</sup> appeal.**
- b. The Chief Wildlife Warden as Head of the Public Authority, O/O Chief Wildlife Warden, J&K is directed to organize training for all the PIOs and FAAs of his department to ensure that they become well versed with the provisions of the J&K RTI Act, 2009.**
- c. The Chief Wildlife Warden as Head of the Public Authority should take all necessary steps for setting up RTI cells in various subordinate offices and ensure appointment of PIOs and FAAs with clear jurisdiction. And then, this information should be made available to the public at large through Departmental website and notices etc.**
- d. The Chief Wildlife Warden shall take steps to ensure strict and prompt implementation of section 4 of the J&K RTI Act, 2009 in his Department and this may be complied with within two months from the date of receipt of this order.**

*With these 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

(P.A. Ajay)

No: SIC/CO/SA/568/2018\_\_\_\_\_

Dated:

Copy to:

1. Chief Wildlife Warden, J&K for information and necessary action.
2. First Appellate Authority, O/O Chief Wildlife Warden, J&K for information.
3. Public Information Officer, O/O Chief Wildlife Warden, J&K for information and necessary action.
4. Private Secretary to CIC for information of the HCIC.
5. Appellant/Dr. Sheikh Ghulam Rasool, C/o. J&K RTI Movement, Airport Road Hyderpora-190014, Near Al-Ameen Hospital, Srinagar, J&K for information.
6. Office file.

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