



**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/595/2018

Decision No. SIC/CO/SA/595/2018/1348

Appellant: Dr. Sheikh Ghulam Rasool C/o J&K  
RTI Movement, Malik House  
Hyderpora Near Al-Amin Hospital,  
Airport Road, Srinagar

Respondents: 1. First Appellate Authority (FAA)/  
General Administration Department,  
Civil Secretariat, Srinagar.

2. Public Information Officer (PIO),  
General Administration Department,  
Civil Secretariat, Srinagar

Date of Registration : 15-03-2018

Date of Decision : 12-07-2018

**Final Order**

**Brief Facts:**

The present 2<sup>nd</sup> appeal has arisen out of RTI request filed by Dr Shiekh Ghulam Rasool of J&K RTI Movement with Public Information Officer, o/o Chief Secretary, J&K on 13-

09-2017, received by the PIO on 19-09-2017, seeking the following information:-

- (1) details about compensation paid to the cases awarded/recommended by SHRC from January, 2000 to August, 2017 with case-wise details alongwith the title of the case, name of the beneficiary alongwith parentage, full address, total amount paid, Government Order copy (monetary as well as SRO 43)- case wise break-up and year wise break-up;*
- (2) provide details about the case which has been rejected by Government (alongwith title, victim's name);*
- (3) details about the cases which are pending with Government alongwith their title/ names of the cases, victim's name, parentage, residence, period of pendency; and*
- (4) status report of section 4(1)(b) under J&K RTI Act, 2009 implementation in digital form and non-digital form, if not implemented, reasons thereof and also specify date for its implementation.*

The PIO, General Administration Department transferred the RTI request of the applicant to the PIO, Home Department under section 6(3) on 27-09-2017 with the request that the information may be directly furnished to the applicant. As the applicant did not receive any information, he filed a first appeal before the First Appellate Authority, o/o Chief Secretary on 21-11-2017 stating thereunder that PIO has not provided any information till the expiry of

specified period and prayed for a direction to PIO to provide the same as soon as possible.

The said first appeal was disposed of by the FAA, GAD on 08-01-2018 dismissing the appeal of the appellant on the ground that PIO, GAD has provided the information to the appellant which was available with him vide letter No. GAD(Adm)/38/2017 dated 03-10-2017, while the RTI application has been transferred to PIO, Home Department for providing the rest of the information directly to the appellant. Aggrieved by the response of the FAA, GAD, the appellant filed this 2<sup>nd</sup> appeal before the State Information Commission on 15-03-2018 with the prayer that the PIO and the FAA be directed to provide complete and certified copies of information to the appellant as soon as possible and necessary action should be taken against the said PIO and FAA under the provisions of J&K RTI Act for not furnishing information to the appellant.

**Proceedings before the State Information Commission:**

The appeal came up for hearing before the SIC on -8-05-2018. The appellant did not attend the hearing. The respondents filed a communication No. GAD(Adm)/39/2018-IV dated 08-05-2018 informing the Commission that since the required information, which was asked from the concerned quarters, was still awaited, the hearing of the case be postponed. Since it was imperative to hear both the parties to know the status of the information provided by GAD and Home Departments to the appellant and the balance information to be provided, if any, the hearing in the

appeal was adjourned with a direction to the PIOs of GAD and Home departments to submit their counterstatements to this appeal by or before the next date of hearing.

The appeal came up for hearing before the Commission second time on 05-06-2018. Shri Subash Chibber, Addl. Secretary/FAA, GAD and the PIO, Home Department attended the hearing, besides the representative of the appellant. However, the PIO, GAD was not present. During the hearing, the FAA, GAD submitted a communication dated 04-06-2018 stating therein that he received the 1<sup>st</sup> appeal of the appellant on 06-12-2017 from Chief Secretary's office and on 08-01-2018, both the PIO and the appellant were called for hearing. The appellant did not appear before the FAA on the scheduled date, while the PIO, GAD attended the hearing. The PIO informed during the hearing that the available information has already been provided to the appellant vide letter No. GAD(Adm)38/2017 dated 03-10-2017 and for rest of the information not available with GAD, the RTI application was transferred to the Home Department for requisite reply.

The PIO, Home Department filed his communication No. Home/SHRC/RTI/2018 dated 05-06-2018 before the Commission stating therein that the details of the cases/recommendations considered by the Empowered Committee constituted vide Government Order No. 905 of 2008 dated 31-12-2008 with effect from 01-04-2009 till 05-03-2018 have been forwarded to the GAD vide O.M.No. Home/SHRC/RTI/2018 dated 26-04-2018 and among other

things, it has been conveyed to the GAD that out of 439 cases received during the above period, 213 cases have been rejected by the EC in its various meetings. During the hearing, the PIO, Home also informed the Commission that only the part of information related to recommendations of the SHRC cases are dealt with by the Home Department whereas the rest of the information sought by the RTI applicant is dealt with by the GAD.

The FAA/Addl. Secretary, GAD informed that the GAD has received information from some Deputy Commissioners and as and when all information is received from the remaining Dy. Commissioners, same will be provided to the appellant expeditiously. He also informed that the Chief Secretary is himself reviewing the implementation of section 4(1)(b) in the Committee of Secretaries (COS) meetings by all Administrative Secretaries.

The representative of the appellant, however, reiterated the plea of the appellant raised by him in the memo of 2<sup>nd</sup> appeal that the communication addressed by FAA on 03-01-2018 asking the appellant to attend the hearing scheduled for 08-01-2018 was actually dispatched by the FAA on 06-01-2018 and was received by the appellant on 12-01-2018, much after the 1<sup>st</sup> appeal was dismissed by the FAA on 08-01-2018. He also produced a copy of the postal stamp/receipt, indicating the date of dispatch as 06-01-2018 at 15:27 hours, to prove his claim. The representative of the appellant argued that the FAA disposed of the 1<sup>st</sup> appeal without affording a reasonable opportunity to the appellant

to present his case and without hearing him, which makes the order of FAA per se bad in the eyes of law.

After hearing both the parties, the hearing in the appeal was adjourned with a direction to the PIO, GAD to collect and collate the information as required by the appellant and furnish a para-wise reply to the appellant within a period of 21 days.

This appeal was once again fixed for hearing before the Commission on 09-07-2018 and the notices were accordingly issued to the concerned parties. However, the PIO, GAD informed the Commission vide his letter No. GAD(Adm)39/2018-IV dated 04-07-2018 that the information that has been sought from the Deputy Commissioners for onward transmission to the appellant was still awaited despite reminders to the Dy. Commissioners for expediting the information, the hearing scheduled for 09-07-2018 be postponed. The hearing in the appeal was accordingly re-scheduled for 12-07-2018.

The appeal came up for hearing on 12-07-2018. The FAA/Addl. Secretary, GAD and the representative of the appellant attended the hearing. The PIO, GAD did not attend. The representative of the appellant submitted that the appellant is yet to receive information inspite of a direction from the Commission to the PIO, GAD to collect the information and furnish the same to the appellant within 21 days vide interim order dated 05-06-2018. The FAA, GAD filed a written communication dated 11-0-7-2018 submitting thereunder that the PIO, GAD through a series of

communications dated 26-04-2018, 21-05-2018 and 04-07-2018 directed the concerned Dy. Commissioners to furnish the requisite information. However, most of the Dy. Commissioners have not furnished the same. During the hearing, the FAA also informed that the information sought by the appellant is held by, and available with, the Deputy Commissioners of the concerned District. The GAD is trying its best to collect the said information from the concerned Dy. Commissioners so that the same is furnished to the appellant. However, till date only five Dy. Commissioners Viz, Srinagar, Budgam, Udhampur, Reasi and Doda have furnished the information. The rest of the D.Cs are yet to respond. The FAA also assured the Commission that as soon as the information is received from the remaining districts, the same would be consolidated and furnished to the appellant.

**Decision:**

In the present case, the appellant has sought information with regard to details about compensation paid pursuant to recommendations of the State Human Rights Commission from January 2000 to August, 2017, name of the beneficiaries, amount of compensation paid, number of jobs provided under SRO 43, number of recommendations rejected and details about cases pending besides status report of implementation of section 4(1)(b) of the J&K RTI Act, 2009. This kind of information is supposed to be available with the General Administration Department and the Home Department, the two most important departments

involved in decision-making process of the Government. Under the Jammu and Kashmir Protection of Human Rights Act, 1997, the State has constituted the State Human Rights Commission (SHRC, for short) to inquire into complaints of violation of human rights or abetment thereof or negligence in the prevention of such violation, by a public servant. In terms of clause (3) of section 19 of Protection of Human Rights Act, the SHRC may, among other measures, recommend to the Government for grant of such immediate relief to the victim or the members of his family as it may consider necessary. The SHRC sends copies of its inquiry reports together with its recommendations to the Government and the Government is required to forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission in terms of clause (5) of section 19 within a period of one month or such time as the Commission may allow. The inquiry reports together with the comments of the Government and the action taken or proposed to be taken by the Government on the recommendation of SHRC, are published by the SHRC in terms of clause (6) of the said section. These recommendations of SHRC form part of Annual Reports submitted by SHRC and laid before each House of the State Legislature in terms of section 12 of the Protection of Human Rights Act, 1997. Alongwith the Annual Report, the Government is required to lay before each House a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any. The Annual



Reports of SHRC and Action Taken Reports of the Governments are laid before the State Legislature every year. The decision for acceptance or rejection of any recommendation made by the SHRC is taken at the highest level of the Government either in the Home Department or the General Administration Department. Therefore, these two vital pillars of State administration cannot feign ignorance or non-availability of the kind of information sought for by the appellant in this case. Such information has to be available with these two departments, who alone are competent to take decisions on the recommendations of SHRC, be it acceptance of such recommendations or rejection thereof. The PIO of the Home Department has informed the Commission that whatever information was available with it has been communicated to GAD and that GAD holds the rest of the information. Even assuming that the information sought by the appellant is not readily available with GAD and has to be collected from respective Deputy Commissioners, it should not be normally difficult for it to collect and collate the same within a reasonable time. The Deputy Commissioners, and for that matter every officer of State administration, are under the administrative control of the General Administration Department and it is hard to believe that these officers would not comply with the directions issued by it provided there is serious craving on the part of GAD to have the response from its subordinate officers. The non-seriousness in collecting the information on the part of PIO, GAD is reflected by the fact that no action has been taken, and not even a warning has been issued, against the Dy.

Though a lot of delay has been caused by the PIO in furnishing the information as sought for by the appellant but keeping in view the peculiar circumstances obtaining in this case, the Commission is not making any order with regard to imposition of penalties on the PIO under section 17 of the J&K RTI Act, 2009 as of now. However, should the PIO, GAD fail to provide information to the appellant within the period allowed above or should the concerned Dy. Commissioners fail to render assistance to the PIO within the period of four weeks as mentioned above, the appellant would be at liberty to file a complaint under section 15 of the Act and the delay in furnishing, or refusal to furnish, the information to the appellant within period specified in section 7(1) would be taken into account by the Commission while deciding such complaint, if any filed by the appellant hereto or while deciding the contravention of the Act by the Dy. Commissioners whose assistance has been sought by the PIO under section 5 (4) of the Act.

A copy of this order be forwarded to the Chief Secretary, J&K State for information and appropriate action.

Sd/-  
(Mohammad Ashraf Mir)  
State Information Commissioner.

Typed by:  
Altaf Zullah,PS

1. Chief Secretary, J&K State, Civil Secretariat, Srinagar
2. First Appellate Authority (FAA)/ General Administration Department, Civil Secretariat, Srinagar
3. Public Information Officer (PIO)/General Administration Department, Civil Secretariat, Srinagar
4. Dr. Sheikh Ghulam Rasool C/o J&K RTI Movement, Malik House Hyderpora Near Al-Amin Hospital, Airport Road, Srinagar

(Sheikh Fayaz Ahmad)  
Registrar,  
State Information Commission, Srinagar