



**Jammu and Kashmir State Information Commission**  
 (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/533/2017  
 Decision No. SIC/CO/SA/533/2017/1350

Appellant : Sh. Mahesh K. Gupta R/o 03  
 Jawahar Nagar Ward No. 1,  
 Kathua, J&K

Respondents : Sh. Umesh Sharma,  
 Under Secretary to Government  
 Department of Forest,  
 Environment and Ecology (the then  
 PIO-Civil Secretariat J&K)

2. Smt. Sushma Rani, Public  
 Information Officer O/o Chief  
 Engineer EM&RE Jammu

3. Sh. Bashir Ahmad Khan, Public  
 Information Officer, O/o  
 Development Commissioner Power,  
 J&K.

Date of Registration : 08-11-2017

Date of Decision : 16-07-2018

**FINAL ORDER**

**Brief Facts:**

While disposing of the 2<sup>nd</sup> appeal titled *Sh. Mahesh Gupta Vs First Appellate Authority and Public Information*

*Officer, Power Development Department* decided by the State Information Commission vide Decision No. SIC/CO/SA/533/2017/1067 dated 28-02-2018, the Commission observed as under:-

*“From the perusal of records on file and after hearing the PIO of PDD and also the appellant through voice call, it transpires that the then PIO of the PDD has delayed the transfer of the RTI application in violation of the statutory period of 5 days stipulated under section 6(3) as he has transferred the application dated 11-05-2017 on 05-06-2017. The PIO, o/o DCP should have disposed of the RTI application at his own level after collection of requisite information from the concerned quarters including the Ex. Engineer, EM&RE, Kathua but he chose to further transfer it to the o/o Chief Engineer, EM&RE, Jammu thereby further delaying the provision of information in violation of section 7(1) although the RTI Act does not envisage second time transfer under section 6(3). Similar poor judgment has been exercised by the PIO, o/o CE, EM&RE, Jammu by transferring it 3<sup>rd</sup> time to Ex. Engineer, EM&RE, Kathua thereby causing additional delay in the disposal of the RTI application. The Ex. Engineer, EM&RE, Kathua has provided the information to the RTI applicant on 25-08-2017 after receipt of application from the PIO, o/o CE, EM&RE, Jammu. It is clear that there has been considerable delay in the provision of information to the applicant due to multiple*

*and mindless transfer of RTI application thrice in violation of the RTI Act.*

*The details and circumstances pertaining to this 2<sup>nd</sup> appeal have been considered carefully and record was also perused and it is observed that the conduct of the then PIO, PDD (delay in transfer under section 6(3)) and the PIO, o/o DCP (second transfer not clearly envisaged under 6(3)) and PIO, o/o CE, EM&RE, Jammu (third transfer not clearly envisaged under 6(3)) fits in the description under section 17.”*

The Commission accordingly, held the then PIO, PDD, the PIO, o/o DCP and the then PIO, o/o CE, EM&RE, Jammu prima facie liable for imposition of penalties under section 17 of the RTI Act and directed the Registry to initiate penalty proceedings against the defaulting PIOs.

Accordingly, the Registry of the Commission vide communication No. SIC/CO/SA/533/2017/246-49 dated 20-04-2018 issued show cause notices to the then PIO, PDD, the PIO, o/o DCP and the PIO, CE, EM&RE, Jammu and directed them to explain why penalties under section 17 of the RTI Act shall not be imposed upon them.

The then PIO, PDD Mr. Umesh Sharma (now Under Secretary, Forest Department), PIO, o/o DCP Mr. Bashir

Ahmad Khan and the PIO, o/o CE, EM&RE Miss Sushma Rani, were heard by the Commission on 17-05-2018 and 16-07-2018. The three PIOs also filed their written statements explaining the cause of delay in transferring the RTI application from the Administrative Department to the office of DCP, from DCP's office to the office of Chief Engineer, EM&RE, Jammu and from Chief Engineer's office to the o/o Ex. Engineer, EM&RE, Kathua.

The then PIO, PDD Mr. Umesh Sharma submitted that the RTI application of the appellant dated 11-05-2017 was received by his office on 23-05-2017. On finding that the information sought by him was not available with him, he transferred the application to the PIO, o/o DCP on 05-06-2017 under section 6(3) of the RTI Act. He submitted that though he was supposed to transfer the RTI application within five days, there has been a delay of seven days as the receipt clerk of his section placed the RTI application before him only on 05-06-2017. He further submitted that the delay was not deliberate or intentional on his part. He came to know about the RTI application only when the receipt clerk put the same to him on 05-06-2017 and he acted promptly by transferring the same on that very day.

The PIO, o/o DCP Mr. Bashir Ahmad submitted that he received the RTI application, which was transferred by PIO, PDD on 05-06-2017, only on 08-06-2017. On finding that the information sought by the RTI applicant pertained to the office of CE, EM&RE, Jammu, he transferred the same to the PIO, o/o CE, EM&RE, Jammu on 21-06-2017. He further submitted that the delay of 7-8 days in transferring the RTI application was not deliberate and intentional on his part but it has happened as a result of heavy work load in his office. He also submitted that he has respect for the law and regretted un-intentional delay of 7-8 days in transferring the application to the PIO, o/o CE under section 6(3).

The PIO, o/o CE, EM&RE, Jammu Miss Sushma Rani submitted that the RTI application transferred by the PIO, o/o DCP on 21-06-2017 was received by her on 11-07-2017. Since the information was relating to the office of Executive Engineer, EM&RE, Kathua, she transferred the RTI application to PIO, o/o Ex. Engineer, Kathua on 18-07-2017 for furnishing the information directly to the applicant. She also submitted that though there has been a couple of days delay in transferring the RTI application but such delay was neither willful nor intentional.

**Decision:**

After hearing the PIOs and after perusing the record and the explanations submitted by them, it transpires that these PIOs have not read and understood the provisions of the J&K RTI Act, 2009 rightly and correctly. They are confused about the application and scope of section 6(3) of the RTI Act. This provision of law is applicable only when an RTI applicant requests a public authority to provide an information which is actually held by some other public authority. In that case, the public authority, to which such application is made, is required to transfer the application to that other public authority holding the information. Therefore, the essential ingredients for attracting the application of section 6(3) is that, (a) the public authority to which an RTI request is made is not holding the information or part information asked for, and (b) the information sought for is held by any other public authority. This provision is not applicable where the information sought for may not be available with the PIO to whom the application is made but is available with some other officer of the same public authority. There can be many offices or sections in a public authority and there could be more than one PIO in that

public authority. Suppose the information sought by an applicant from PIO-I of a public authority is available with or held by PIO-II of the same public authority, section 6(3) of the RTI Act would not be applicable and PIO-I cannot transfer the RTI application to PIO-II for providing the information directly to the applicant. In that eventuality, section 5(4) of the Act would be applicable. The PIO-I has to seek the assistance of PIO-II or any other officer of his public authority under section 5(4) of the Act for proper discharge of his duties. The PIO-II or that other officer whose assistance has been sought under section 5(4) is under an obligation to render assistance to the PIO-I seeking such assistance and for purposes of any contravention of the provisions of the Act, such other officer shall be treated as a PIO. Moreover, the transfer of application under section 6(3) of the Act is a one-time exercise. The PIO to whom the application is made has to transfer it to the public authority which holds the information. Such transfer cannot be made over and over again.

In the present case, the public authority was Power Development Department. The PIO, PDD, the PIO, o/o DCP and the PIO, o/o CE, EM&RE belonged to the same public

authority. The information sought by the RTI applicant was not held by any different public authority. Therefore, all the three PIOs applied section 6(3) wrongly. The PIO, PDD should have sought the assistance of PIO, o/o DCP or PIO, o/o CE, EM&RE under section 5(4) for collecting the information sought for and disposed of the same at his level. Similarly, the PIO, o/o DCP on receiving the application from PIO, PDD should have sought assistance of the concerned officer and collected the information for being provided to the applicant. The PIO, o/o CE, EM&RE also applied section 6(3) wrongly and instead of seeking assistance under section 5(4) from Ex. Engineer, Kathua and dealing it at her own level, she transferred the RTI application under section 6 (3). The transfer of the application on multiple occasions delayed the response to the RTI application.

The information seeker has received the information sought for by him, though delayed. The delay has been caused by wrong application of section 6(3) by PIOs concerned. It has happened due to lack of understanding of the law by the concerned PIOs. However, there is no evidence of deliberate or intentional attempt on the part of PIOs to delay the response to the RTI application. Perhaps this case



emphasizes the need for proper training and guidance of the PIOs and FAAs in dealing RTI applications and correct understanding of the provisions of J&K RTI Act. The PIO, PDD Mr. Umesh Sharma, the PIO, o/o DCP Mr. Bashir Ahmad Khan and the PIO, o/o CE, EM&RE Miss Sushma Rani have expressed their regret for the delay in transferring the RTI application. In these circumstances, the penalty proceedings against them are dropped and the matter is closed with a warning to them to remain cautious in future while dealing with RTI requests.

Sd/-  
(Mohammad Ashraf Mir)  
State Information Commissioner

Typed by:  
Altaf Zullah, PS

Copy to:-

1. Sh. Umesh Sharma, Under Secretary to Government Department of Forest, Environment and Ecology (the then PIO-Civil Secretariat J&K)
2. Smt. Sushma Rani, Public Information Officer O/o Chief Engineer EM&RE Jammu
3. Sh. Bashir Ahmad Khan, Public Information Officer, O/o Development Commissioner Power, J&K.
4. Sh. Mahesh K. Gupta R/o 03 Jawahar Nagar Ward No. 1, Kathua, J&K

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