

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Appeal No. 28/SIC/2014

Shri Maximo J R De Souza,
H. No. 120, Velsao,
PO Cansaulim Goa.

..... Appellant

V/s.

1. Assistant Executive Engineer,
Public Information Officer,
O/o Executive Engineer, Division XVI,
Aquem Margao Goa.

2. Superintending Engineer-I(S)/FAA,
O/o Circle I(S) Electricity Department,
Third Floor, Aquem, Margao Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 12/03/2014

Decided on: 15/12/2016

ORDER

1. By application , dated 11/10/13, appellant shri Maximo J.R. D'Souza sought certain information from Respondent under section 6(1) of to Right to Information (Act).
2. The Respondent No. 1 PIO then send the RTI application to SPIO on 15/10/1013 under section 5(4) and section 5(5) of RTI Act under intimation to the applicant .
3. The APIO provided information to the Respondent NO. 1 PIO on 29/10/13 and the same was furnished to the applicant by Respondent no. 1 on 7/11/13 after the due payments were made by the applicant on 7/11/13.

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4. Since the applicant was not satisfied with the reply of the Respondent no. 1 PIO he made a letter to the Respondent No. 1 PIO on 11/11/13 informing that the reply was given to him was evasive , misleading and misrepresentation of the facts.
5. As the Respondent No. 1 PIO did not respond to his letter dated 11/11/13, the appellant prefer first appeal on 13/11/13. Which was disposed on 31/1/14, interalia making observation that the information furnished by the concerned officer found to be incorrect and the Respondent No. 1 PIO once again directed to furnish the correct information within the 15 days from the date of the order.
6. Since the order of respondent no. 2 FAA was not complied and being aggrieved by the action of the Respondents No. 1 PIO, the appellant has come in second appeal under section 19(3) of RTI Act before this commission on 12/3/14 with a direction as against Respondent No. 1 PIO of furnishing correct information and for imposing penalty u/s 20 of the RTI Act.
7. Notice were issued to the parties . Only during one hearing the appellant was present in person and Respondent No. 1 PIO was initial represented Mataies Mascarenhas and on subsequent hearing he was represented by Shri M.B. Shirodkar and subsequently neither the appellant appear nor the Respondent appeared before this commission as such this commission had no other option to decide the matter based on the records available in the file.
8. On Scrutiny of the file it is seen from the reply was filed on behalf of Respondent No. 1 PIO on 16/ 12 /14 . In the said reply the PIO had submitted that he has furnished the information to the applicant on 13/11/14.

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9. The appellant filed his written submission on 14/6/16 enclosing the copy of the information furnish to him on 7/4/15 by the Respondent No. 1 PIO. In the said submission he had placed grievance that the action given report were not been furnished to him till date by APIO, Electricity Department, sub Div III Verna, and has disputed the contents of the reply filed by Respondent no. 1 PIO.

Prma facie there is a delay in providing the information . the order of the first appellate authority was passed on 31/1/14 with direction to furnish it within 15 days from the date of order,the information came to be furnish to the appellant on 7/4/15 . there is a delay of 15 months.

10. However during the hearing before this commission a notice dated 5/5/16 addressed to Dasharath M. Redkar , Under Secretary Cum Registrar Goa state Information Commissioner was submitted by the Executive engineer, Electricity Division XVI Aquem Margao interalia informing that Shri T.S. Vincent A.E.E Who the PIO has retired on 30/4/16 on superannuation. As such point for my determination is:-

a) Whether the penalties can be imposed on the retired Employee.

11. The PIO appointed by the public Authorities are its employees. In case of default on the part of PIOs, u/s 18 read with section 20 of Right to Information Act, (Act) provides for imposition of penalties on erring PIO and not authorities. Thus the liability for payment of penalty is personal. Such penalty, which is levied in terms of monies, being personal in nature is recoverable from the salaries payable to such employee's payable during their services. Similarly recommendation of disciplinary action can also be issued during the period of service. After the retirement, what is payable to the employee are the pensionary benefits only.

12. In the present case undisputedly the then PIO has retired and is entitled for pension. Pension Act 1871, which governs such pension, at section (11) grants immunity to the pension holder against its attachment in following words.

“ Exemption of pension from attachment: No Pension granted or continued by Government or Political consideration, or on account of past service or present infirmities or as a compassionate allowance and no money due or to become due on account of any such pension or allowance shall be liable to seizure, attachment or sequestration by process of any court at the instance of a creditor, for any demand against the pensioner or in satisfaction of a decree or order of any such court”

13. Section 60 (1) (g) of civil procedure code which is reproduced here under also bars attachment of pensioner following words:

1) The following particulars shall not be liable to such attachments or sale namely:

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)

(g) Stipends and gratuities allowed to pensioners of the Government or of a local authority or any other employer, or payable out of any service family pension fund notified in the gazette, by the central government or the state Government in this behalf and political pension.

From the reading of above provisions there leaves no doubt on the point of non –attachability of pension , gratuity etc.

14. Hon’ble Apex Court in Gorakhpur University and others V/s Dr. Shilpa Prasad Nagendra in Appeal (Civil) 1874 of 1999 have held

“ This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands.....”

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9. Under the above circumstances this commission is neither empowered to order any deduction from his pension or from gratuity amount for the purpose of imposing penalty or compensation . Thus the proceedings for penalty has become infructuous. Hence the following order.

ORDER

Since the appellant has raised certain grievances against the information furnished to him, I direct the present PIO to furnish him correct information sought by him vide his application dated 11/10/13 within 15 days from the receipt of this order by registered A.D. and the Respondent No. 1 PIO is hereby directed to placed on record his compliance report alongwith the acknowledgement card of the appellant within 15 days after receipt of the same.

Proceedings closed.

Notify the parties.

Authenticated copies of the Order be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Proceedings closed.

Pronounced in the open court.

Sd/-

(Ms.Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa