

# GOA STATE INFORMATION COMMISSION

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

**CORAM: Shri Juino De Souza: State Information Commissioner**

**Penalty case No.52/2011**

**in**

**Appeal No.79/SCIC/2011**

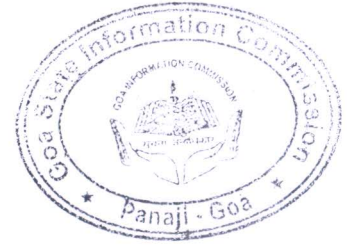
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Shri G. D. Phadte,  
R/o. H. No.898, Nila Niwas,  
Alto Torda, Porvorim –Goa.

.....Appellant

**v/s**

Public Information Officer,  
Secretary,  
Penha de Franca, Village Panchayat  
Britona, Bardez-Goa.



..... Respondent

## **Relevant emerging dates:**

Date of Hearing : 03-10-2016

Date of Decision : 03-10-2016

## **ORDER**

1. The brief facts of the case are that this Commission had vide an order dated 19/07/2011 partly allowed the Appeal directing that a Show Cause Notice u/s 20(1) of the RTI Act be issued to the Respondent PIO to show cause why penal action should not be taken against the PIO for delay in furnishing information and explanation if any should reach the Commission on or before 29/08/2011.
2. The above penalty case was listed on board and accordingly Adv. Atish Mandrekar who is present on behalf of the former PIO M. S Mardolkar Advocate submits that the said former PIO is unable to attend in person due to other prior engagements.
3. It is further submitted that the former PIO who was earlier in active service has since retired on superannuation from the Government of Goa service as BDO on 31/05/2015 and as such the penalty proceedings be dropped. A copy of the retirement order dated 05/06/2015 is produced before the commission which is taken on record.


4. The learned advocate further argues that penalty proceedings are not enforceable on a retired government officer as he is not on the pay rolls of the government and that his only sustenance which is pension cannot be touched. A Supreme Court ruling of Radhey Shyam Gupta V/S Punjab National Bank (SC/8333/2008) which states that the pension cannot be attached is relied upon. It is also argued that as per provisions of section 60(g) of CPC, the pension payable to pensioners are not liable for attachment in any proceeding.
5. The Commission has perused the material on record including order of this Commission dated 19/07/2011, reply of the appellant to Show Cause dated 26/09/2011, written submission of former PIO dated 21/06/2012, written arguments filed by the Appellant on 28/06/2012 and the application filed by the Advocate for the then PIO, Shri M. Mardolkar dated 03/10/2016.
6. It is seen from the order of the Commission dated 19/07/2011 while the Appeal was partly allowed stating that no intervention is required as information is already furnished the Commission had ordered issue of a Show Cause Notice under Section 20 (1) to the Respondent PIO, only because of delay in the furnishing information.
7. Therefore the first point for determination is whether there was considerable delay on the part of the PIO to furnish the information and was there any justifiable reason for the delay. The records show that information was sought by the Appellant on an RTI application dated 05/02/2011 and whereas the information was furnished by the Respondent PIO on 01/04/2011.
8. The Appellant in his written arguments admits in para 10 that there is delay of 25 days, however in the written submissions to the Show Cause the Respondent PIO has stated in para 2 that he was posted on Census duty from 07/02/2011 to 05/03/2011. The PIO has also attached a copy of the attendance certificate issued by the Mamlatdar of Bardez, MAPUSA dated 23/08/2011 which is on record. ...3



9. The PIO in his written submissions has also stated that he has not been deficient or negligent in furnishing the information nor has shown any discrimination or refusal to furnish information or inspection of documents and has in para 9 requested the commission that if some delay is caused to take a liberal view and condone the delay. The Commission finds that there is justification in the explanation tendered by the PIO and that the delay of a mere 25 days is not very considerable and as such condones the delay.
10. The other point for determination before the commission is whether Penalty u/s 20(1) can be imposed on a retired PIO? and Whether the same can be enforced? It is a fact that the said former PIO has retired from government service on 31/05/2015 and when a PIO is no longer in government service it is not possible for the Commission to either initiate any disciplinary action nor can order any deduction from his pension for the purpose of imposing penalty.
11. The Supreme Court as well as High Court have held in several of its decisions that the pension amount received by a retiree on account of his past services should not be attached in execution of any decree or order for realisation of money. Also that proviso (g) of Section 60 of the civil procedure code precludes authorities from attaching retirement benefits of a person.

The Commission comes to the conclusion that as it is not possible to enforce any order of penalty under section 20(1) on a retired PIO and as such the **proceedings in the Penalty case are accordingly closed.**

Pronounced in open court before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the order be given free of cost.

  
Under Secretary cum Registrar  
Goa State Information Commission

  
(Juino De Souza)  
State Information Commissioner