

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Appeal No.31/2017

Shri Bandhagit Nadaf ,
No. 9, 3rd floor Paes Avenue Bldg.
F.L. Gomes Road, Vasco-da-Gama, Goa. Appellant

V/s.

1. Public Information Officer,
Administration Branch, DGP's Office,
PHQ, Panaji Goa.

2. The First Appellate Authority,
Superintendent of Police,(HQ),
Police Head quarter, Panaji Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 28/02/2017

Decided on: 16/10/2017

ORDER

1. By this appeal the appellant Shri Bandhagit Nadaf assails the order dated 14/2/17, passed by the Respondent No. 2 FAA Superintendent of Police (Head Quarters).
2. The facts in brief which arises in the present appeal are that Shri Bandajit Nadaf , the appellant herein by his application dated 7/11/16 sought certain information on 7 points from the PIO, office of Director General of Police, Police, Head Quarters, Panajim . The said information was sought by the appellant in exercise of his right U/s 6(1) of the Right to information Act, 2005 .
3. As per the said application the information sought by appellant was pertaining to various " Separate cadets / selection in respect of seniority existing within the Goa Police Department as on date and the date of formation of each of such separate cadets/unit/section.

4. On receipt of the said application by the Respondent PIO by his letter bearing No. 23/11/2016 informed the appellant to collect the information in respect to point No. 1 and 3 after making the payment of Rs. 440/- and also informed him that he requires to pay Rs. 2000/-(approximately) for the information with Respect to point 2,4,5,6 & 7 . The appellant was informed to deposit the said fees in advance towards photo copying the copies of documents. It was also informed that on the production of receipt of the same the information would be dispensed.
5. The point wise information was also came to be furnished on 23/11/2016 by the Respondent PIO wherein the information at point No. 1 & 3 was provided to the appellant and with regards to other information he was directed to pay an amount .
6. Being not satisfied with the said reply , the appellant preferred 1st appeal before the Superintendent of Police on 12/1/17 being first appellate authority who is the Respondent No.2 herein . And Respondent No. 2 First appellate authority by an order dated 14/2/17 upheld the say of PIO and dismissed the appeal .
7. Being aggrieved by action of both the Respondents, the appellant has approached this commission by way of second appeal on 27/2/2017 thereby seeking prayer for furnishing him correct information, free of cost and for invoking penal provisions against both the Respondents.
8. To The appellant has challenged the order passed by the Respondent No. 2 first appellate authority on several grounds. It was also contended that full/complete information was available with PIO but was not furnished due to nepotism being maintained by the less mined or high handed FAA to defeat transferent law of land and to safeguard his subordinate with ultimate motive and malafide intentions.

9. The Respondent No. 1 PIO resisted the appeal inter alia on the ground that whatever information is available by the public authority have been furnished to him . It was specifically contended that vide letter dated 23/11/16 the information at point no 1 and 3 provided and vide letter dated 4/1/2017 again point wise information was provided to him. It was further submitted that the PIO in a instant case has provided the information what was available and that he cannot create the information .
10. Since the appellant has contended that incomplete information was provided to him or the full information was not provided to him as such the onus was on him prove the same. Further the appellant has not submitted what were the documents/information furnished to him and has also not enclosed the information /documents which according to him is incomplete or incorrect to the memo of appeal. By remaining continuously absent and failure to produce any evidence in support of his case the appellant thereby is miserably failed to discharge the burden . On the contrary the Respondent PIO showed his bonafied at every stage in furnishing the information. There is nothing on record to show that appellant has deposited the amount and still PIO has denied him information and that full and complete information was not furnished to him in absence of any sufficient evidence it is not appropriate on part of this commission to draw and arrive at any such conclusion .
11. The Hon'ble High court of Bombay , Goa bench at Panaji in writ petition No.205/2007 ; shri A A Parulekar v/s Goa State information commission has observed
- "The order of penalty for failure to akin action under the criminal law . It is necessary to ensure that the **failure to supply information is either intentional or deliberate**"*
12. if one applies this ratio and from the reasons discussed above I m in the opinion that appellant have miserably failed to substantiate his case that incomplete information is provided to him *intentionally and deliberately*

13. Section 20 of the RTI Act provides that the commission , while deciding complaint or an appeal , shall imposed penalty on erring PIO incase where the PIO has , without any reasonable cause ;refused to receive an application for information,; or has not furnished information within the time specified u/s7(1) ;or malafidely denied the request for information ,or; knowingly given incorrect ,incomplete or misleading information ;or destroyed information which was a subject of the request ,or; obstructed in any manner in furnishing information.
14. Therefore, it is pertinent to note that as per the provisions of the RTI Act , only the PIO can be penalized u/s 20 and not the First Appellate authority . Hence the prayer (1) as sought by the appellant in the present appeal proceedings cannot be granted .
15. Based on the reasons discussed above I am of the opinion as there is no cogent and sufficient evidence on record for invoking penal section against both the Respondent, prayer of the appellant for invoking penal provision cannot be granted
16. Never the less the option for appellant to seek any further information if he so desires with regards to same subject matter is kept open.

Appeal disposed accordingly . Proceedings stands closed .

Notify the parties.

Authenticated copies of the Order should 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.

Pronounced in the open court.

Sd/-

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

