

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

Shri Prashant S.P. Tendolkar,
State Chief Information Commissioner

Appeal No.305/SCIC/2016

Shri Agnelo A. Fernandes,
H.No.38, Sirvoi Pimpolcotto,
Quepem Margao –Goa. Appellant

V/s

- 1) The PIO & Under Secretary,
Personnel Department ,
Secretariat, Porvorim.
- 2) The First Appellate Authority & Addl. Secretary (Per),
Department of Personnel,
Secretariat, Porvorim,
Bardez-Goa. Respondents.

Filed on :05/12/2016

Disposed on:12/12/2017

1) FACTS:

a) The appellant herein by his application, dated 5th April 2016, filed u/s 6(1) of The Right to Information Act 2005(Act) sought certain information from the Respondent PIO, Director of Social Welfare, under several points therein.

b) The said application was transferred by said PIO to the respondent no.1 herein under section 6(3) of the act.

c) The respondent by her reply, dated 28/4/2016 u/s 7(1) of the act informed the appellant that no reservations are applicable to promotions to post in grade-I as per O.M.No.36012/6/85-Estt.(SCT) dated 1/9/1990.

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d) However according to appellant the information as sought was not furnished and hence the appellant filed first appeal to the respondent No.2, being the First Appellate Authority.

e) The First Appellate Authority (FAA) by order, dated 26/7/2016, upheld the contentions of PIO and held that the interference of the FAA was not required thereto with regard to points nos. 1 to 3. With respect to points nos.4 to 7 the FAA issued directions to transfer the same to directorate of Social welfare and with these the first appeal was disposed.

f) The appellant being aggrieved by the order of FAA has landed before this commission in this second appeal u/s 19(3) of the act.

g) Notices were issued to the parties, pursuant to which they appeared. The PIO on 8/9/2017, filed a reply to the appeal. On an application filed by the appellant to implead PIO Director of Social welfare, he was joined as a party. However no reply is filed herein by said PIO.

2. FINDINGS:

a) I have considered the application for information filed by the appellant, dated 5/4/2016. The said application was transferred to the office of personnel Department, whose PIO is arrayed as respondent herein. I have perused the response by the respondent No.1 u/s 7(1) of the act to the said application, which is dated 28/4/2016. By said reply the PIO has informed the appellant that there are no reservations applicable to promotions to the post in grade-I as per office memorandum,

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dated 1/9/1990. In other words according to PIO the information sought was not available as no such promotions were applicable.

b) Before the first appellate authority also the PIO has submitted the same vide her reply to first appeal. Even in the present appeal the PIO has replied that the information as was sought was not available as it was not necessary to maintain such roster as was asked by the appellant.

c) When the submissions of the parties were considered it was found necessary that the fact, that the information as sought was not maintained, as it was not required to be maintained, should be substantiated by way of an affidavit. Accordingly the PIO was directed to file affidavit in support of said fact.

The PIO on 24/10/2017 filed his affidavit affirming that there are no reservations applicable to promotions to the post of senior scale officer as per O.M. No.36012/6/85-Estt.(SCT),dated 1/9/1990 and hence no reservation roster are available.

d) While considering the extent and scope of information that could be dispensed under the act, the Hon'ble Supreme court in the case of: **Central Board of Secondary Education & another V/s Aditya Bandopadhay (Civil Appeal no.6454 of 2011) at para 35 has observed :**

"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and

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*the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. **But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non available information and then furnish it to an applicant.** A public authority is also not required to furnish information which require drawing of inferences and/or making assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act."**(emphasis supplied).***

e) Applying the above rationale of the Hon'ble Apex court I find that the as the information sought is not part of the records of the respondent authority and as the same are nor

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required to be maintained, I find that any direction to issue such non existing information would be redundant.

f) In the above circumstances I find no merits in the appeal and the same is disposed with the following:

O R D E R

The appeal is dismissed. Order be notified to the parties.
Proceedings closed. Pronounced in the open hearing.

Sd/-
(Mr. Prashant S. P. Tendolkar)
Chief Information Commissioner
Goa State Information Commission
Panaji-Goa