

GOA STATE INFORMATION COMMISSION

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

**CORAM: Smt. Pratima K. Vernekar,
State Information Commissioner**

Appeal No. 56/ SCIC/2014/

Shri Laxuman V. Shirodkar,
H. No. 148/37, Mukta-Niwas,
Durgabhat-Ponda, Goa , Pin Code. 403401

.....Appellant.

V/s.

1. Public Information Officer,
Under Secretary (Health-II), Secretariat-Porvorim, Goa
2. Ms. Jessinha,
Public Health Department,
Secretariat-Porvorim, Goa
3. Mr. D. G. Sardesai,
Additional Secretary (Health)/ First Appellate Authority,
Secretariat-Porvorim ..Respondent

Appeal filed on :- 26/05/2014

Disposed on:- 18/05/2017

ORDER

1. The brief facts leading to second appeal are that the Appellant vide his application dated 7/01/14 has sought for certain information at point no. 1 to 21 as stated therein in the said application in respect of payment of arrears due in respect of "patient care allowance" from the Public Information Officer (PIO), Public Health Department, Govt. of Goa, Secretariat, Porvorim Goa.
2. The Respondent No. 1 PIO vide his letter dated 14/1/14 transferred the said application u/s 6(3) of the Right To Information Act 2005 to the PIO/ Deputy Director (HIV), Campal, Panjim, Goa with the request to furnish information at point no. 5, 6,7, 8, 9, 10 and 18 and further vide his letter dated 5/02/14 supplied the information to the appellant in respect of the remaining points.
3. It is contention of the appellant that the said reply of Respondent No. 1 PIO dated 5/02/14 was received by him on 17/02/14 at 1 p.m. which was after the period of 12 days from the date of issue. Appellant apprehending that

manipulation was done by the official of public health department, again filed application dated 19/02/14 there by seeking detail of processing, signing and the dispatch of the letter dated 5/02/14.

4. On the receipt of the said application by Respondent No. 1, vide his letter dated 21/02/14 transferred the item no. 6 of the said application to the Under Secretary (GA-II), General Administration Department (GAD), Porvorim u/s 6(3) of the RTI Act 2005 and the Respondent No. 1 vide his letter dated 5/03/2014 provided the information on the remaining points of his application dated 19/02/14.
5. The PIO of the GA-I section, General Administration Department (GAD), Secretariat, vide his reply dated 27/02/14 furnished information to the appellant in respect of point number 6.
6. Being not satisfied with the information provided to him and as according to him the Respondent No. 1 PIO even after charging him Rs. 2/- per paper has supplied him blank papers, as such preferred the first appeal before the Respondent No. 3 First Appellate Authority (FAA) herein. And Respondent No. 3 FAA by an order dated 5/5/14 disposed the appeal by upholding the say of the PIO.
7. Being aggrieved by the action of all Respondents, the present appeal came to be filed under section 19(3) of the RTI Act on 26/05/14 thereby seeking relief for directions to the Respondent no. 1 PIO for providing information as stated by him in his prayer at Sr. No. 3, 6 and 7 , for refunding his amount and for initiating action against Respondent No. 2 and Respondent No. 3.
8. In pursuant to the notice appellant was present alongwith Advocate B. Prabhudesai. Respondents were represented by Advocate Kishore Bhagat.
9. All the Respondents filed their respective reply on 25/04/2016.

10. Rejoinder also filed by the appellant to the replies of the Respondents on 4/10/2016.
11. Written arguments were filed on behalf of appellant on 16/11/2016 and on behalf Respondents on 02/03/2017.
12. It is contention of the appellant that even after charging him fees illegible pages at sr. no. 158/c to 162/c , 178/c, to 180/c , 181/c to 182/c , 189/c , 191/c, 249/c, 252/c and 253/c of file no. 21/18/2004-I/PHD were provided to him by the Respondents there by causing him loss.

It was also contended by the appellant that Respondent no. 1 and 2 have manipulated the letters and have deviated from the usual process. It is further contention of the appellant that replies which was given to him u/s 7(1) of RTI Act bears the outward number and the letters dated 14/01/14 and 21/02/14 by which the application was transferred u/s 6(3) of the RTI Act 2005 doesn't bears the outward number.

It is also his contention that the Respondent no. 1 and 2 failed and neglected to provide him information requested by him at sr. no. 4, 15, 16 and 21 of the application dated 7/01/2014 vide his written arguments the appellant contended that disciplinary action has to be initiated against Respondent No. 2 and 3 for using abusive language to him and against all the Respondents for providing incorrect information to the appellant.

13. The Respondent No. 1 PIO vide their reply contended that though the information sought by the appellant was voluminous, the same came to be furnished to the appellant without much delay. Vide their reply it was also contended that the relevant file in regards to the patient care allowance of the appellant was sent to finance, (Rev.), and (Cont.) Department, which was received by them back on 4/4/2014. As such it is contention of the PIO that the information could not be supplied to the appellant before 5/02/14. It is further contention that on receipt of the said file on 4/02/14, the reply was prepared on 5/2/14 and the same was signed by

him on 6/2/14 and which was sent to the outward section of the secretariat for dispatch. It is further contention that there is no special outward/ mailing section in the public health department. It was further contention that the delay of one day was not deliberate or intentional or due to negligence of PIO.

It is contention of the Respondent No. 1 that the appellant has paid directly to cash section of Secretariat before approaching the PIO and that the appellant while receiving the said information did not make any claim or demand for free information or refund of money which he paid to the cash section nor did he endorsed his protest while claiming information.

14. It is case of the Respondent no. 2 that she was not designated as Assistant Public Information Officer (APIO) or any other post under the provision of RTI Act. And she is only the dealing hand for the RTI application under the Public Information Officer (PIO).
15. It is contention of Respondent No. 3 First Appellate authority (FAA) that he acted diligently in disposal of the appeal.
16. Responded No. 2 and Respondent No. 3 have categorically denied the allegation made by the appellant in memo of appeal at para 9 .
17. I have perused entire records including reply and written arguments. Though the appellant has claimed that illegible and or /blank pages have been provided to him he have not produced the said copies before this Commission to substantiate his contention. In the absence of any documents on records this Commission cannot conclusively conclude that information was furnished was illegible. Since appellant have also not produced the information which was furnished to him by the Respondent No. 1 PIO, this Commission also cannot arrive to the conclusion that documents furnished to him by the PIO is not certified copies.

18. It is also the case of the appellant that Respondent No. 1 and Respondent No. 2 failed and/or neglected to furnish information as sought by appellant at serial No. 4, 15, 16 and 21 of application dated 7/01/2014 and that the respondent no. 1 has intentionally given false reply that information is not available in the relevant file.
19. Vide the Rejoinder, the appellant at para 5 have contended that the Respondent to be directed to produce the relevant files for verification of the original records. The Advocate for Respondents himself volunteers to produce original record before this Commission accordingly the same was produced on 11/04/17. The Appellant absent when the original records were produced before this Commission.
20. The appellant also failed to discharge his burden to show that the letter dated 5/02/14 of the respondent PIO was received by him on 17/2/14 at 1.30. p. m. he has not produce on record any documents to substantiate his claim. The awareness made in the memo of appeal are not supported by any supporting documents.
21. In the case of Dr. Celsa Pinto V/s the Goa State Information Commission reported in 2008 (110) BOM L R 1238. At relevant para 7 the Hon'ble High Court has held:-

"As regards the point No. 1 it has also come to the conclusion that the petitioner has provided false information in stating that the seniority list is not available. It is not possible to comprehend how the commission has come to this conclusion. This conclusion could have been a valid conclusion if some party would have produced a copy of the seniority list and proved that it was in the file to which the petitioner page 1241 Information Officer had access and yet she said Not Available. In such circumstances it would have been possible to uphold the observation of the Commission that

the petitioner provided false information in stating initially that the seniority list is not available. "

22. No case is made out by the Appellant viza-viz the records/documents that the said information at point No. 4, 15,16,21 of application was available with them and they have deliberately and purposively not furnished. In my opinion the appellant has failed to discharged the burden.
23. Since after filing the written arguments the Appellant did not appeared before this commission nor was represented by his advocate, as such this Commission could not seeks any clarification on the above aspects. And had no any other option to decide the present appeal based on the available records in the file.
24. The reply of the Respondent PIO dated 5/03/14 given to his RTI application dated 19/02/2014 which is relied by the appellant himself shows that the copy of the relevant page i.e. Outward register wherein the entry of the dispatch of the letter no. 23/03/2014/I/PHD/573 dated 5/02/14 was furnished to the appellant. The said reply also reveals that the said letter was referred to Central Registry of the Secretariat on 7/02/2014 for dispatch.
25. In the present case the PIO has responded within 30 days. It appears that the delay if any appears to have been cause due to the administrative procedure and for that PIO cannot be held responsible.
26. The Hon'ble High Court at Bombay at Goa Bench at Panaji in case of Shri A. A. Parulekar V/s Goa State Information Commission and others (Writ Petition No. 205/2007) has observed:
 "11. The order of penalty for failure is akin to action under criminal law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate"
27. Yet in another case i.e. (Writ Petition No. 11271/2009) reported in Delhi High Court in case of Registrar of

Companies and Others V/s Dharmendra Kumar Garg and Another has held that:-

“The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e. where the PIO without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, threat the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIO's in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.”

28. The High court of Punjab and Haryana at Chandigarh in Writ Petition No. 6504 of 2009; State of Punjab and others V/s State Information Commission Punjab has held at para 3

“The penalty provisions under section 20 is only to sensitize the public authorities that they should act with all due alacrity and not hold up information which a person seeks to obtain. It is not every delay that should be visited with penalty. If there is a delay and it is explained, the question will only revolve whether the explanation is acceptable or not. If there had been a delay of a year and if there was superintendent, who was prodding the Public Information Officer to Act, that is self should be seen a circumstance where the government authorities seemed reasonably aware of the compulsions of time and the imperatives of providing information without any delay. The 2nd respondent has got what he has wanted and if there was a delay, the delay was for reasons explained above which I accept as justified.”

29. In the present case the PIO has justified delay of 1 day which is convincing.
30. The allegations of the appellant that the Respondent no. 2 and 3 were arrogant and to initiate disciplinary proceedings cannot be considered and looked into by this Commission, as has no jurisdiction to entertain such grievances.
31. I feel the ends of justice will meet with the following direction:-

ORDER

- a) The Respondent PIO is hereby directed to certify the pages of the documents which are already furnished to appellant from the file No. 21/18/2004/I/PHD if the same are not certified by them. The appellant is directed to produce the said copies before Respondent for certification.

Pronounced in open proceedings. 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.

Sd/-

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

Kk/-