

GOA STATE INFORMATION COMMISSION

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

Appeal No. 133/2016

Sattarkhan Babakhan,
H.No. 842/N/SF-1,
Haroons green field Co-op Hsg. Society,
Mugalli SAO Jose DC Areal
P.O.Curtorim Pin.403709.

..... Appellant

V/s.

1. First Appellate Authority,
The Superintending Engineer,
Electricity Department,
Elect. Circle I(S) Aquem Margao
2. Public Information Officer,
The Executive Engineer,
Electricity Department,
Elect DIV.XIV verna Goa.

.. Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 14/07/2016

Decided on: 21/06/2017

ORDER

1. The appellant, Shri Sattarkhan Babakhan submitted an application on 24/11/15 seeking certain information at point No. 1 to 8 from the PIO, The Asst. Engineer, Electricity, Div.XVI Aqem, Margao Goa.
2. The appellant also by anther application dated 29/3/16 filed u/s 6(1) of RTI Act 2005 sought certain information at point No. 1 to 6 as stated therein in the said application from the Respondent No. 1 PIO.
3. It is the case of the appellant the he did not receive any information from PIO/APIO within stipulated time with regard to the application dated 24/11/15 as such he preferred 1st appeal

before the FAA on 18/1/16 and the FAA by an order dated 19/4/16 disposed the said appeal and directed the Respondent PIO to furnish the information to the appellant within one month free of cost .

It is also the case of the appellant that he did not received the reply to his second RTI Application dated 29/3/16 within stipulated time as such he preferred first appeal with the FAA on 19/5/16 and the first appellate authority by an order dated 14/6/16 disposed the said appeal .

4. It is the case of the appellant that he had not receive any information for the PIO despite of order of Respondent No. 2 FAA. As such he was force to approach this commission on 14/7/16 by way of second appeal filed u/S 19(3) of RTI Act, 2005 . In the present appeal he has sought for the direction as against PIO and APIO to furnish him the full information as sought by him vide his application dated 24/11/15 and RTI Application dated 29/3/16.
5. In pursuant to the notice of this commission, the appellant appeared in person . On behalf of Respondent No. 1 FAA Shri Radhakrishna keni appeared Respondent No. 2 PIO Shri Sunil wadekar was present.
6. In the course of hearing on 17/2/17 the appellant submitted that he is satisfied with information provided to him at point No. 4 to 8 . He further submitted that information at point No. 1,2,3, and 7 is not furnished to him fully . The respondent PIO volunteered to furnish him the said information if available in their records, accordingly the same came to be is furnished to the appellant on 17/3/17 . The appellant was given sufficient time for verification of said information.
7. Since the appellant have not come out with any grievance with regards to information furnished to him the commission holds and

presumes that information furnished is as per his requirement and satisfactions.

8. Application filed by appellant on 2/3/2017 thereby praying to impose penalty on the respondents for not furnishing information on the time and thereafter he remained absent .
9. The reply was filed by the Respondent PIO Shri S.B.Wadekar on 24/4/17, 5/5/17 and on 29/5/17. The Respondent PIO vide above replies have given chronological events of the steps taken by him in securing the said information from APIO and the copies of the correspondence which are exchanged between him and APIO have been also annexed to the replies in support of his contention.
10. It is the case of present PIO that he made all the possible efforts to submit information timely by instructing the APIOs since the said information was not in his custody and was not available with him.
11. On scrutiny of the records it is seen that in the present appeal the appellant has clubbed two applications filed u/s 6(1) of the RTI Act. Though the subject matter is common, each application constitutes a distinct and separate cause of action for the purpose of grant of relief. It is not permissible to club all the applications together.
12. The controversy which has arisen here is whether the present PIO is liable for action as contemplated u/s 20(1) and 20(2) of RTI Act. For the purpose of considering such liability the High Court of Bombay Goa Bench in writ petition No. 205/2007, Shri A.A. Parulekar V/s Goa State Information Commission. has observed at para

“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.”

“11. Unless and until it is borne on record that any officer against whom order of penalty for failure is sought to be levied and had occasion to comply with the order and has no explanation or excuse available worth satisfying the forum possesses the knowledge of the order to supply information, as order of penalty cannot be levied.”

Subscribing the above view in the case of A. A. Paruleker (Supra), the Hon'ble High Court of Bombay, Panaji bench in another case of ***Shri Shivanand Salelkar V/S the Goa State Information Commission and another (Writ Petition No.488 of 2011)*** has also set aside the order passed by this Commission imposing penalty against the PIO.

13. Considering the facts of the case I find the explanation given by the present PIO Shri S.P. Wadekar is convincing and probable. as such I find no ground to hold that delay in dispensing information was intentional or deliberate.
14. It has been brought on record that Shri T.S. Wilson Asst. . eng. Was officiating as PIO from 27/7/15 till 30//4/16 and that he has been retired from services on attaining age of superannuation. As such the point arises for my determination is whether the penalty can be imposed after retirement of the PIO
15. The PIO appointed by the public Authority is its employee. In case of default on the part of PIO, sec. 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 to PIO. Such penalty, which is levied in terms of monies, being personal in nature is recoverable from the salaries payable to such employee payable during his services. Similarly recommendation of disciplinary action u/s 20(2) can also be issued during the period of service. After the retirement, what is payable to the employee are the pensionary benefits only.

In the present case undisputedly the then PIO has retired. He has received his salaries during his service. As of today he is entitled for pension. Section (11) of Pension Act 1871, 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”*

7. Section 60 (1) (g) of civil procedure code which is reproduced here under also bars attachment of pension 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-attach ability of pension , gratuity etc.

16. Hon’ble Apex Court in ***Gorakhpur University and others V/s Dr. Shilpa Prasad Nagendra , Appeal (Civil) 1874 of 1999*** has observed:

“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.....”

17. Under the above circumstances this commission is neither empowered to order any deduction from pension or from gratuity amount of the PIO after his retirement as penalty or compensation. Thus I hold that proceedings for penalty as against Shri T.S. Wilson become infructuous.

Appeal disposed accordingly.

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.

Proceeding stands close.

Sd/-

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