

GOA STATE INFORMATION COMMISSION

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

Appeal No. 25/SCIC/2014

Mr. Vithal Veluskar,
LCS-73,GHB Colony,
Ekta Nagar,
Mapusa Bardez Goa.

..... Appellant

V/s.

1. The Public Information Officer,
Smt. Neetal P. Amonkar,
Under Secretary (Home),
Secretariat Porvorim Goa.
 2. The First Appellate Authority,
Mr. Sanjiv M. Gadkar,
Additional Secretary (Home),
Secretariat Porvorim Goa.
 3. PIO, O/o Superintendent,
Administrative Branch, DGP Office,
Police Head Quarters Panaji.
- Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 03/02/2014
Decided on: 06/02/2017

O R D E R

1. The Appellant Shri Vithal Veluskars had filed this present second appeal praying that the respondent No. 1 PIO be directed to furnish correctly fully information sought by him vide his application dated 5/12/13, to quash and set a side the order dated 13/1/14 passed by the Respondent NO. 2 First appellate authority in appeal No. 6 of 13, for initiating penalty and disciplinary proceedings as against Respondent PIO for wrongly transferring the RTI Application and for refusal of the information to the appellant malafidely without reasonable cause .
2. The brief facts leading to the present appeal are as under:

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That the appellant, vide his application dated 5/12/13 sought certain information under Right to Information Act regarding revision of scale of pay of Goa Police organization file No. 1/30/93/HD (G) from the Public Information Officer, Home Department, Secretariat, PorvorimGoa, The Respondent No. 1 PIO herein .

3. By letter dated 13/12/2013, the said application was transferred by the Respondents No.1 PIO , to Superintendent of Police, (head quarters) /PIO Panaji U/s 6(3) of the Act with the request to provide information to the appellant under intimation to them.
4. Being aggrieved by the action of Respondent No. 1 PIO , first appeal came to filed by the appellant on 23/12/13 before the joint Secretary, Secretariat, Porvorim Goa being the First appellant Authority who is the Respondents No. 2 herein. one of the ground which was raised by the appellant in the said appeal was that Respondent No. 1 PIo had wrongly transferred his application dated 5/12/2013 to PIO/ Superintendent of Police, head Quarters without application of mine and with intend to deny and refuse the applicant the requested information . The Respondent No. 2 FAA by an order dated 13/1/14 dismissed the appeal of the appellant by upholding the say of Respondent No. 1 PIO.
5. Being aggrieved by the action of both the Respondents, the appellant has approached this commission by way of second appeal u/s 19(3) of RTI Act on 3/2/14.
6. Notices were duly served on both the parties. In pursuant to the notice the appellant remained present and Respondent No. 1 was represented by Mrs. Nithal Amonkar . Respondent No.2 First appellate authority opted to remain absent despite of due service of notice

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7. The appellant filed application for amendment of memo of appeal on 14/9/16 praying to make the PIO of the office superintendent administration, PSQ as one of the Respondent on the ground that The Respondent. 1 PIO in her reply before the first appellate authority had submitted that the action has to be taken by the DGP being the appointing authority. In the interest of Justice this commission felt it necessary to obtain the say of PIO of the office of Superintendent of administrative branch, PHQ, Panaji and accordingly the notice were issued to them .During the hearing the PIO the office of Superintendent of administrative branch PHQ was represented by Shri V.T.Korgaonkar and he filed his reply on 26/12/2016.
8. Oral argument were advanced by Respondent No. 1 PIO Smt. Neetal Amonkar she contended that her Department had issued order No. 1/30/93-HD (G) dated 15/2/2009 and further action was needed to be taken by DGP being the appointing authority as such she had transferred the same to PIO of Head Quarters. Further she submitted that since DGP looks after the court matter pertaining to police as such all the correspondence and notings including replies filed before the respective courts where with them .According to her to all the information was held by Police Head Quarters and not by their Department. In Nut Shell Respondent No. 1 have tried to justify her stand in transferring the application.
9. Vide reply dated 26/12/2016 Respondent No. 3 have contended that application U/s 6(1) dated 5/12/13 of appellant was received by them from Respondent NO. 1 PIO, of Home Department on 17/12/2013 and they have furnished the required information to the appellant on 7/1/2014 within stipulated time limit under RTI Act.

On perusal of the records it is seen that PIO of office of Superintendent of administrative branch, PHQ, Panaji vide their letter dated 7/1/14 have furnished the required information to the appellant.

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At query No. 1 they have replied that the application is forwarded to special secretary Home and the Decision of the Government is awaited.

Vide reply filed before this commission the Respondent No. 3 have furnished the detailed information with regards to point No. 1 of RTI application. They have contented that the pay scale of Head Constable (Executive) have been upgraded w.e.f. January 2001 vide order dated 13/02/1006 and the scale of other Head Constable Viz Dog holder/Band Section//armholes etc. working in their Department remained the same. The application made by the Head Constable to revise their pay scales on par with the Head Constable (Executive) was forwarded to the Government vide their office letter dated 15/5/2008 and 31/07/2008. It was further submitted that vide Government order No. 1/30/93-HD(g) 604 dated 22/1/14, the pay scale of head constable (dog handle/Band man and armholes) has been upgraded in pre-revised pay scale. With prospective effects and vide their order dated 27/10/2014 directed to pay arrears . Further at para 10 they have submitted that application 20/2/15 received from Shri Vithal Veluskar was forward to U.S. Home on 25/3/15 and U.S Home had referred to the matter to the finance Department for reconsideration. The finance Department vide their letter dated 10/07/2015 had informed them no further examination will be considered in the said matter as the issue is examined in details numbers of times . It is also further submitted at para 11 that police Department had moved D.O. letter dated 30/9/15 to the Chief Secretary, Government of Goa requesting to reexamine the case to grant in partly in the pay scale to head constable (dog handle/band man and armholes) on par with head constable (executive) and the U.S. home vide his letter dated 17/11/15 has informed that the decision conveyed vide letter dated 10/7/15 is reiterated.

The respondent No. 3 have also given detail moment of the file and have mentioned the Department where the file has travelled.

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It appears that when the application u/s 6(1) of RTI act dated 5/12/13 was made, and when the said was replied no decision was taken in the matters of revision of scales of pay of ASI and head constable viz RTO, Dog handlers Band man, armoires etc. The decision was finalized only in the year 2015 as such I find no fault in the reply dated 7/01/2014 given at query No. 1 by the Respondent No. 3 PIO of Administration Branch, DGP,Office, PHQ, Panaji.

This Commission holds that Respondent No. 3 by his reply dated 26/12/16 have furnished detailed information pertaining to point 1 of the said application with regards to point 2 it was informed by the PIO of administrative branch, Police head quarters, panaji that the said information is not available in their office. The PIO could only provide information which is in their custody. It appears that said was in the custody of other section of their Department. In such a situation Respondent No. 3 ought to have transferred said application to concerned department/section for providing information at point 2.Or in alternative ought to have sought the same from other section and thereafter should have furnished the same to the appellant.

10. It is the case of the appellant that application u/s 6(1) was wrongly transferred by Respondent No. 1 PIO and on that ground he had sought for penal action as against Respondent No. 1 PIO. Appellant had contended such a fact based on the reply of Respondent No. 3 dated 07/01/2014 It is case of appellant that since that Respondent No. 3 have stated at point No. 1 that file was sent to Special Secretary for Home and the decision was awarded the information was available with Respondent No. 1 PIO and as such the transfer of application u/s 6(3) was not required.
11. The prayer of the appellant are in the nature of penal action either by granting of penalty or by compensation . The strength of evidence is required in such proceedings is laid down by the Hon'ble

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High Court of Bombay in writ petition No. 205 /2007, **Shri A.A. parulekar V/s Goa State information Commissioner and others** wherein it is held "

11 The order of penalty for failure in action under criminal law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate".

Yet in another decision Hon'ble 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".**

12. In the present case the appellant failed to demonstrate that the PIO had **knowingly with malafide intention** have deliberately transferred the application in order to avoid furnishing the information. The appellant was unable to justify or substantiate his case based on supporting evidence/documents.
13. It is a known fact that as per the procedure, the Government refers the matters to different department for their examination and only after the clearance /approval from respective departments the final decision are taken . The file travels from one department to another before arriving of any decision .

Though the reply of Respondent No. 3 submits that file was referred to Secretary Home, there is nothing on record to show that at particular point when application u./s 6(1) made or replied by Respondent No. 1 PIO the said file was with Home Department and Respondent No.1 PIO was aware of same and that she has knowingly

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with malafide intention transferred the said application to Respondent No. 3 in order to cause delay. From the perusal of the reply of Respondent No. 3 dated 26/12/2016 filed before this commission it could be gathered that the decision on the said issue was only taken on 10/07/2015 after the said issue was referred with various Department for their consideration.

14. section 20 of RTI Act specifies grounds under which PIO can be penalized, the ground raised by the appellant in seeking penalty as against Respondent No. 1 PIO is not covered under said section . Hence are enable to concede to the request of the appellant by his prayer (b) ,(d),(e) , (f) and (g). prayer (a) has become redundant as the same already offered to be furnished by the administrative branch, PHQ, Panaji vide their reply dated 26/12/2016 filed before this commission and the copy of which was furnished to the appellant .

Appeal is 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. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa

