

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

Appeal No. 53/2017

Sebastian Fernandes
H.No.68/6,Pomburpa,
Bardez-Goa.

.....Appellant

V/S

1. PIO,,Under Secretary-II
Department of Personnel
Secretariat, Porvorim-Goa.

2. First Appellate Authority
Addl. Secretary
Department of personnel
Secretariat, Porvorim-Goa.

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 12/10/2016

Decided on: 11/09/2017

ORDER

1. The information seeker Shri Sebastian Fernandes by an application, dated 12/10/16 sought information /documents as stated therein in the said application pertaining to Smt. Maria Santan Fernandes , Talathi in Bardez from the PIO , Collector of North Goa, Panajim, Goa.
2. The said application was responded by the PIO of Collector of North Goa on 26/10/16 thereby providing information at point No. 1 and with regards to point (a) and (b) it was transferred to under secretary Personnel –I and with regards to point No. (c) it was transferred to Mamlatdar Bardez.
3. The PIO of Collector of North Goa vide letter dated 26/10/16 also transferred the said application to the Respondent No. 1 herein who is the PIO of Department of Personnel u/s 6(3) with a request to provide the information on point no. (a) and (b) to the applicant directly.

4. The respondent No. 1 PIO responded the said application on 28/10/16 interalia informing the appellant information sought by him at point (a) and (b) of his RTI application dated 12/10/2016 is not available in their Department.
5. Being not satisfied with the reply of RespondantNo.1 PIO , the appellant preferred 1st appeal before the Department of Personnel on 22/11/16 being first appellate authority who is the Respondent No.2 herein and the respondent no. 2 FAA by an order dated 10/1/2017 dismissed the appeal of the appellant by upholding the say of the PIO.
6. The appellant being aggrieved by the action of Respondents, the present appeal came to be filed by the appellant on the grounds as set out in the memo of appeal .In the present appeal the appellant has prayed for the directions to the Respondent No. 1 PIO to provide him correct and complete information.
7. Parties were duly notified. In spite of service of notice the appellant remained absent PIO Shri Shashank Thakur appeared and filed his reply on 21/8/2017. No copy of the reply could be furnished to the appellant on account of his absence. The opportunity was given to the appellant to collect he reply of the Respondent and the matter was fixed for arguments.
8. Since the appellant remained continuously absent the commission decided to dispose the matter based on the available records in the file.
9. From the scrutiny of the records , it is seen that the Respondent No. 1PIO right from the inception has informed the appellant that the information is not available in their office.
10. PIO is duty bound to furnish the information as available on record of the public authority . PIO is not required to create the information for the purpose of furnishing the same to the information seeker . The said observations of mine are based on the ratio laid down by the

Apex court in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya has held at para 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 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 analyzed 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, 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 of 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 ."

11. In the above given circumstances and also by applying the ratio laid down by the Apex Court in the case of Central Board of Secondary Education V/s Aditya Bandhopadhaya, Since the information is not available with the public authority the same cannot be directed to be furnished.

The appeal disposed accordingly the 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 under the Right to Information Act 2005.

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

Ak/-