

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

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

**Complaint No.59/SCIC/2016**

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

V/s

- 1) The Public Information Officer,  
Social Welfare Department,  
18<sup>th</sup> June Road,  
Panaji –Goa.
- 2) The Directorate of Social Welfare Department,  
Social Welfare Department,  
18<sup>th</sup> June Road, Panaji –Goa. .... Respondents.

**Filed on :23/01/2016**

**Disposed on:12/12/2017**

**1) FACTS:**

a)The complainant 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 PIO, Director of Social Welfare, the respondent no.1 herein under several points therein.

b) According to complainant as the information was not furnished within the period of thirty days he preferred first appeal on 9/5/2016 to First Appellate Authority (FAA) Directorate of Social welfare, who by order dated 24/6/2016 upheld the response of PIO to transfer the application u/s 6(3) to the PIO Department of Personnel.

...2/-

c) The complainant is aggrieved by the inaction of the FAA and has landed before the commission in a complaint u/s 18 of the act.

d) Notices were issued to the parties, pursuant to which they appeared. The PIO on 10/10/2017, filed a reply to the complaint. The FAA also filed on record the copy of the order, dated 24/06/2016 passed by him in first appeal.

## **2. FINDINGS:**

a) I have considered the application for information filed by the complainant, dated 5/4/2016. The said application was transferred to the PIO personnel Department. Pertaining to the same information the complainant has filed a second appeal to this commission being appeal no.305 of 2016. From the records of said appeal, which is also disposed by me today, it is seen that by response of the PIO, Department Personnel u/s 7(1), dated 28/4/2016, to the said application, complainant is informed that there are no reservations applicable to promotions to the post in grade I as per office memorandum, dated 1/9/1990. In other words according to said PIO the information sought was not available as no such promotions were applicable.

b) In the present complaint the complainant has a grievance that the response of PIO herein to transfer the application is malafide and that the FAA has also delayed the order. The order is dated 24/6/2016.

c) I have considered the pleadings. A complaint u/s 18 of the act would lie under the following circumstances as provided under said section. Said section 18 reads:

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**"18 fun. Powers and ction of Information Commissions.\_\_\_\_\_**

*(1) Subject to the provision of this Act, it shall be the duty of the Central Information Commission or a State Information Commission, as the case may be, to receive and inquire into complaint from any person,\_\_\_\_\_*

*(a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that **no such officer has been appointed** under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, **has refused to accept his or her application** for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior office specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;*

*(b) who has been **refused access to any information** requested under this Act;*

*(c) who has **not been given a response to request** for information or access to information within the time limit specified under this Act;*

*(d) who has been **required to pay an amount of fee which he or she considers unreasonable;***

*(e) who believes that he or **has been given incomplete, misleading or false information** under this Act; and*

*(f) in respect of any other matter **relating to requesting or obtaining access to records** under this Act. (emphasis supplied)*

d) Thus a complaint would lie only in the cases covered as above like refusal of application, non appointment of PIO, delay in furnishing information, charging of excess fees, providing false and incomplete information. Said provision does not provide for filing a complaint for transferring the application u/s 6(3) to other PIO. The said section also does not provide for complaint in case of delay in disposal of appeal by FAA.

e) Ordering of the information is beyond the scope of section 18 of the act. However for the purpose of considering the bonafides in the response of PIO, he was directed to file affidavit in support of his contention which was filed by him accordingly affirming that the information as was sought, is not available in the records of the authority. The complainant has prayed for penalty against the PIO.

f)The Hon'ble High Court of Bombay, Goa bench at Panaji, while dealing with a case of penalty (**Writ petition No. 205/2007, Shri A. A. Parulekar, V/s Goa State Information Commission and others** ) 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."***

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g) As observed above the PIO herein has rightly transferred the application u/s 6(3) of the act to the complainant. From the affidavit filed by PIO the it is seen that the information was not available. Hence I find no malafide on the part of PIO in dealing with the application of the complainant. The failure to supply information is not intentional or deliberate.

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

**O R D E R**

The complaint is dismissed. Order be communicated 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