

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

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

Penalty No.26/2014
in
Appeal No.88/SIC/2008

Shri Suboad Sawant,
B-2, Shanti Campus,
Malaviya Road, Mulund –West,
Mumbai -400 080.

..... Appellant/Complainant
V/s

Public Information Officer (PIO),
Shri Pramod Bhat,
Then Mamlatdar of Bicholim Taluka,
Bicholim, Goa.....Respondent/Opponent

Decided on: 24/02/2017

ORDER

1. The appellant herein, Shri Suboad Sawant, by his application dated 7/5/2008, filed u/s 6(1) of Right to information Act 2005 (ACT) sought certain information from respondent No. 1, PIO, Office of the Mamlatdar Bicholim as detailed in the said application. . As the appellant could not receive the information either from the PIO or through the intervention of the First Appellate Authority (FAA), the appellant approached this commission with second appeals u/s(19(3) of the act.
2. In the 2nd appeal the appellant herein inter alia had prayed, for direction as against the Respondent PIO for providing him the information and for invoking penal provisions as against both the Respondents therein viz. the PIO and the FAA .

3. After hearing both the parties and considering records, this commission through the information commissioner disposed off the above mentioned Appeal on 22/9/2008. By said order the commissioner directed Respondent No. 1 PIO , office of Mamlatdar of Bicholim Taluka, Bicholim, Goa to furnish the information to the appellant with in a weeks time from the date of the order. Rest of the prayers seeking imposition of penalty were not granted. As per the records the said orders were pronounced in the open court in the presence of Appellant as well as Respondent No. 1
4. The orders of the commission were not challenged by the appellant thereby rendering finality to the same. As per the records the PIO complied with the said order vide his letter, dated 21/10/2008.
5. On 10/7/2012 the appellant filed applications in the above appeal with prayer to take up the appeal on board and to issue notice u/s 20(1) of the Act to Respondent no.1 PIO and Respondent No. 2,FAA.
6. Notices were issued to the Respondents seeking their say. PIO Shri Pramod Bhat filed his reply on 25/07/2014 and the copies of documents in support of the said reply were filed by him on 7/10/2014.
7. As the matters were not taken up in the meantime for want of appointment of the commissioners, On appointment of this commission appellant as well as respondents were again notified. In Pursuant to the notice appellant appeared in person and Respondent No. 1, then PIO Shri Pramod D. Bhat appeared alongwith Advocate Kishore Bhagat and the matter was fixed for arguments on the above two applications of the Appellant .
8. Initially the said matter were being heard by the Chief Information Commissioners but on the request of the appellant that the same should be heard by another commissioner the same were made over

to me for disposal. As the matters were old the parties were made aware that the matters shall be taken up on priority bases. During the hearing before me, inspite of the several adjournments were sought by the appellant on one or the other pretext. In spite of his request to the chief information commissioner(CIC) to transfer the proceedings to other commissioner and inspite of granting such request by CIC on 26/4/2016, the appellant again filed similar application before the undersigned, which were disposed.

9. The appellant thereafter filed another five applications, one on 16/12/16 and four on 13/1/2017, before CIC for transfer of proceedings before another commissioner. The CIC after hearing the parties by its order, dated 17/1/2017 dismissed the said applications and directed the parties to appear before the undersigned on 14/2/2017 at 10.30 a.m. and further directed the undersigned to dispose the proceedings as expeditiously as possible but in any case on or before 28/2/2017.
10. Accordingly on 14/2/2017, when the matter was called the appellant remained absent however the advocate for PIO remained present. The applications filed by the appellant on the earlier date in the inward section was placed before me and the same was disposed. The parties were directed to file their arguments in writing on or before 20/2/2017. On the said date neither the appellant nor the respondents remained present and hence the matter was posted for orders on 23/2/2017. However on 21/2 2017 the respondent PIO filed with the registry the records pertaining to his retirement from his services. In view of the failure of the parties to file any written submissions, the undersigned finds it appropriate to decide the present proceedings based on the records.
11. The PIO Shri Pramod Bhat in response to the notice issued by this commission, by his reply dated 25/7/2014 informed that he has retired from services. By his subsequent application, 27/10/2016

has prayed for the dismissal of the proceedings in view of the fact that he has since retired. He has also filed on 2/12/2016 on record the copy of pension payment order issued to him by the directorate of accounts. The fact that said Shri Bhat has retired is not disputed as is seen from the fact that even the notice, dated 1st July 2014 issued by this commission in these proceedings are also issued to him as retired.

12. I have perused the application filed by the appellant for imposing penalty. I have also perused the reply filed by the respondent. Considering the rival contentions of the parties, the points required to be determined by me are:

a) Whether the appellant is entitled to seek penalty against the PIO and the first appellate Authority?

b) Whether the penalty can be imposed on PIO after his retirement?

13. For the purpose of deciding the above points it would be necessary to consider the provisions of the act granting powers to the commission for imposing penalties. Such powers are granted by section 20 of the act, in the following words:

*" **20. Penalties.**__ (1) Where the Central Information Commission or the State Information Commission, as the case may be, **at the time of deciding any complaint or appeal** is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any*

manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

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Thus the act confers power to the commission to form an opinion whether the penalty should be imposed or not at the time of deciding the appeal itself. The act does not confer powers to the commission to consider the penalty independently in the absence of appeal or complaint. The above provision also does not confer locus to the appellant to invoke the penalty.

14. In the case of **Ankur Mutreja V/S Delhi University (LPA 764/2011)** the Hon'ble High Court of Delhi , while considering the scope of commission in granting penalties under the act, at paras 9 and 10 thereof has observed:

The aforesaid procedure is even otherwise in consonance with logic and settled legal procedures. At the stage of allowing the appeal the CIC can only form an opinion as to the intentional violation if any by the information officer of the provisions of the Act. Significantly, imposition of penalty does not follow every violation of the Act but only such violations as are without reasonable cause, intentional and malafide.

10 While in deciding the appeal, the CIC is concerned with the merits of the claim to information in penalty proceedings the CIC is

concerned with the compliance by the information officers of the provisions of the Act. A discretion has been vested in this regards with the CIC. The Act does not provide for the CIC to hear the complainant or the appellant in the penalty proceedings, though there is no bar also there against if the CIC so desires. However the complainant cannot as a matter of right claim audience in the penalty proceedings which are between the CIC and the erring information officer. There is no provision in the Act for payment of penalty or any part thereof if imposed to the complainant Regulation 21 of the Central information commission (management) Regulations, 2007 though provides for the CIC awarding such costs or compensation as it may deem fit but does not provide for such compensation to be paid out of the penalty if any imposed. The appellant cannot thus urge that it has a right to participate in the penalty proceedings for the said reason either.-----"

15. While deciding the said appeals the commission has not considered the prayer of the appellant for penalty. In other words the commission has not formed any opinion for grant of penalty against the PIO. The appellant has not expressed any grievance against the said order of commission. Had he been aggrieved the same could have been challenged. The said orders, dated 22/9/2008 and 23/9/2008 have thus attained finality.
16. For entertaining the present application for penalty filed after a gap of over 4 years, another aspect which also requires consideration is the period of limitation involved in the proceedings. The proceedings before the commission was a second appeal u/s 19(3) of the act. The relief of penalty being concurrent to the appeal, the limitation for considering the penalty would also be governed by the limitation as applicable for the appeal.
17. Section 19(3) of the act reads:

“ 19. Appeal.(1)-----

(2)-----

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

4)-----”

Considering the above limitation, the as the penalty relief also flows with the appeal the same is required to be considered within the same period of ninety days as prescribed for appeal. The proceedings thus filed by the appellant being after a period of about four years are hit by the issue of limitation.

In the light of the above, I find that the present proceedings for penalty initiated by the appellant are not maintainable.

18. Coming to the second point for my determination, it is not disputed that the PIO has retired in 2013. The fact of his retirement is recorded by this commission since 25/7/2014 and he is referred as retired PIO in the cause title. The PIO has also filed records showing his pension records.
19. The PIO appointed by the public Authorities are its employees and a privity of contract exist between such employees and the Public

Authority/Government. Such privity concludes after retirement. Section 18 read with section 20 of the Act, provides for imposition of penalties on erring PIO and not public authorities. Thus the liability for payment of penalty is personal to PIO and is recoverable from the salaries payable to such employee's payable during their services. Similarly recommendation of disciplinary action u/s 20(2) can also be issued only during the period of service as after retirement the same becomes redundant. After the retirement, what is payable to the employee are the pensionary benefits only.

20. Pension Act 1871, which governs pension of retired employees, at section (11) grants immunity to the pension holder against its attachment. Said section 11 of The Pension Act 1871 reads:

" 11)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"

21. Section 60 (1) (g) of civil procedure code which is reproduced here under also bars attachment of pensioner in 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."*

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

"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....."

23. The Hon'ble Apex court in yet another case viz. ***civil appeal NO 6440-41 of 2008, Radhe shyam Gupta v/s Punjab National Bank*** has held

" even after the retiral benefits such as pension and gratuity had been received by the any person, they did not lose their character and continued to be covered by the proviso (g) to section 60 (1) of the code of civil procedure" .

From the reading of above provisions and from the ratio laid down by the Hon'ble Supreme court in various decisions , leaves no doubt that the benefits received under pension, gratuity by a retired person are immune to attachment. Under the circumstances this commission is neither empowered to order any deduction from his pension or from gratuity amount for the purpose of recovering penalty or compensation if awarded. .

In the above back ground I find that the proceedings for imposition of penalty as sought by the appellant herein are not maintainable and hence are liable to be dismissed. Consequently all

the applications dated 10th July 2012 and dated 7th November 2014 filed stands dismissed. Notice issued to then PIO, Shri Pramod Bhat stands withdrawn.

Proceedings closed.

Notify the parties.

Pronounced in the open court.

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