

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

Appeal No. 114/2018/SIC-I

Shri Anirband Tarafder,
22C, Banerjee Para Lane, Dhakuria,
Kolkata;700 031,West Bengal.

.....Appellant

V/s.

1. Public Information Officer
Additional District Magistrate,
South Goa, Margao,
Magisterial Branch, South Goa District.

2. First Appellate Authority,
Office of the Collector and District Magistrate,
South Goa District Collectorate,
Margao-Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 7/5/2018

Decided on: 09/08/2018

ORDER

1. The second appeal came to be filed by the appellant by Shri Anirband Tarafder on 21/3/2018 against the Respondent no. 1 PIO of the office of Additional District Magistrate, South Goa at Margao and as against respondent no. 2 first appellate authority under subsection 3 of section 19 of the RTI Act, 2005 .
2. The brief facts leading to the second appeal are that the appellant vide his application dated 12/5/2017 had sought for certain information as stated therein from the PIO of Goa State Legal Service authority, Altinho, Panaji-Goa .
3. The PIO of Goa State Legal Service authority transferred the said application to the Collector South Goa at Margao on 30/5/2017.
4. The said application was responded by respondent No. 1 PIO on 16/6/2017 interalia requesting appellant to attend their office and to pay requisite fees Rs. 62/- towards the information.

5. It is the contention of the appellant in pursuant to the said letter he sent a email on 4/7/2017 on the official email id of Respondent No. 1 thereby seeking clarification regarding the mode of payment which can be made by him as it was not possible for him to come down to Goa only to pay the requisite fees for the said information.
6. It is the contention of the appellant that he did not receive any reply to his email as such he by a letter dated 14/7/2017 requested again PIO to provide the mode of the payment of requisite fees which was unserved and was return back to him with a postal-remark, "retired", returned to sender. As such he was constrained to send another letter dated 9/10/2017 to Respondent no. 1 PIO which was replied by Respondent No. 1 PIO on 19/9/2017 interalia requesting him to pay a revised fees Rs. 56/- Via money order for the said information.
7. It is the contention of the appellant immediately after receipt of letter dated 19/10/2017 he paid a requisite sum of Rs. 56/- by way of money order bearing eMOPNR No. 136781171102006811 dated 2/11/2017 which redirected back to him with a remark "refused". And the said message of refusal of said money order was received by him from postal Department on or around 1 week of January 2018.
8. Being aggrieved by such an conduct on the part of respondent No. 1 PIO, he preferred first appeal before Respondent No. 2 on 13/2/2018 and the said was not considered on the ground that period of filing the first appeal u/s 19(1) of RTI Act, 2005 has lapsed and it was informed to him by Respondent no. 1 PIO vide letter dated 1/3/2018.
9. In this background being aggrieved by the action of both the Respondents, the present appeal came to be filed on 21/3/2018 by way of second appeal filed u/s 19(3) of RTI Act,2005, with the prayer for direction to respondent no. 1 PIO for providing him

information as sought by him and for invoking penal provision U/s 20(1).

10. After notifying the parties the matter was taken up for board and listed for hearing .
11. In pursuant to the notice the appellant opted to remain absent. Respondent No. 1 PIO Shri Agnelo Fernandes was present alongwith his staff Shri Raviraj Parwar. Reply of PIO was filed on 6/8/2018. The copy of the reply could not be furnished to the appellant on account of his absence. Arguments were advanced by PIO Shri Agnelo Fernandes.
12. I have scrutinize the records available in the file and also considered submission made on behalf of Respondent PIO .
13. Vide memo of appeal the appellant contended that there was a short delay in filing first appeal and the said delay was clearly explained by him in the memo of appeal filed before Respondent No. 2 as such the said delay was ought to be dealt liberally and ought to be condoned and merely not admitting appeal on the ground of delay by taking hyper technical approach by First appellate authority have resulted in grave miscarriage of justice. The appellant further contended that PIO refusing to accept money order is to be construed as an act of deliberate refusal. vide said memo of appeal the appellant further contended that the act of the PIO is asking the appellant to come down all the way to Goa from Calcutta in person to pay the fees is not only ridicules but is done only to harass and for denying the information . It is further contended that the information sought by him is not exempted from disclosure and hence the non supply of information by PIO is highly illegal.
14. The PIO vide his reply have admitted of having received the application of the appellant dated 12/5/2017 on 5/6/2017 through the office of District service authority and having responded the same vide letter dated 16/6/2017 and thereafter

vide letter dated 19/10/2017 wherein he was requested to pay revised fee of Rs. 56/- via money order. However it is the contention of the Respondent PIO though the information was kept ready however the same was not issued due to non payment of fees by the appellant .

15. The averments made by the appellant in the memo of appeal appears to be probable, convincing and genuine as the same was supported by documentary evidence more particularly the Xerox copy of the document issued by the Department of post with a endorsement" eMO No. 136781171102006811 dated 2/11/2017 of new secretariat of Rs 56/- re-diverted from Margao HO with reasons 'REFUSED'. The Respondent PIO though the said copy was furnished to him along with the memo of appeal have not categorily disputed neither the rebutted the said documents .
16. Since the appellant have substantiated his case by way of documentary evidence that upon the direction issued to him by the PIO vide letter dated 19/10/2017 he has remitted the fees amount of Rs. 56/- towards the said information by money order which was refused, considering the said fact I am of the opinion that appellant is entitled to get the said information free of cost.
17. The PIO vide his reply dated 6/8/2018 have contended that earlier official communication was done by then PIO Shri L.S.R Pereira Additional District Magistrate, South Goa, has now retired. As in such situation this commission is not empowered to order any deduction from his pension or from gratuity amount for the purpose of recovering penalty or compensation if awarded as section (11) of pension Act 1981 and section 60(1)(g) of the Civil Procedure Code grants immunity to pension holders against his attachment. The Apex Court in Gorakhpur University and others V/s Dr.Shipa Prasad Nagendra appeal (Civil) 1874 of 1999 and in civil appeal No. 6440-41 of 2008, Radhe Shyam Gupta V/s Punjab National Bank has come to the finding that the 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 and they are continued to be covered by the proviso (g) to section 60(1) of the code of civil procedure. Hence the prayer IV sought by the appellant cannot be granted.

In the above circumstances and in the light of the discussions above, I dispose off the above appeal with the following :

ORDER

1. Appeal partly allowed.
2. The respondent No. 1 PIO is hereby directed to furnish the information to the appellant as sought by him vide his application dated 12/5/2017 free of cost within 15 days from the date of the receipt of the order
3. Rest prayers are dismissed.

With the above directions, the appeal 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