

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

CORAM: Shri. Prashant S. P. Tendolkar ,
State Chief Information Commissioner

SECOND APPEAL NO. 22/2018/CIC

Mr. Sarvesh R. Khandolkar,
H.No.151, Carmi Bhar,
Merces, Tiswadi-Goa.Appellant

V/s

1. Public Information Officer
The Deputy Superintendent of Police,
HO-North, Porvorim-Goa

2. First Appellate Authority
The Superintendent of Police, (North),
North District Head Quarters,
Porvorim-Goa.Respondents

Filed on: 16/1/2018

Disposed on: 18/5/2018

1) FACTS IN BRIEF:

a) The appellant herein by his application, dated 15/11/2017 filed u/s 6(1) of The Right to information Act 2005 (Act for short) sought information pertaining to the sick leave/commuted leave availed by Police Personnel of Escort Cell Panaji from the Respondent No.1, PIO in the format provided in said application.

b) The said application was replied on 24/11/2017 rejecting the request u/s 8(1)(j) of the act holding that the information sought is personal information. As the information was refused, the appellant filed first appeal to the respondent No.2, being the First Appellate Authority (FAA).

c) The FAA by order, dated 15/12/2017 dismissed the said appeal upholding the response of PIO since the appellant remained absent.

d) The appellant has therefore landed before this commission in this second appeal u/s 19(3) of the act.

In this appeal the appellant has prayed for necessary orders as also penalty on respondents.

e) Notices were issued to the parties, pursuant to which they appeared. The PIO, on 27/2/2018, filed reply to the appeal. The FAA also filed reply on 25/4/2018. The appellant and PIO also filed their written arguments.

f) In his arguments the appellant has contended that the PIO has quoted incorrect and misleading provisions in the act while rejecting the application and that the FAA has overlooked the merits of the appeal seeking compulsory attendance appellant contrary to rule 7(2) of Goa State Information Commission (Appeal procedure)Rules 2006.

g) The PIO and the FAA have filed the written arguments. In the submission of the PIO it is his contention that the request was rejected as the entries towards sick leave are

recorded in the service book of police personal and copies of service book cannot be furnished in the light of the judgment of the Supreme Court in special leave petition No.27734 of 2012 and hence the request of the appellant was denied under section 8(1)(j) of the act.

It is also the contention of the PIO that the information sought by the appellant could not be generated as per the format submitted by the appellant as the entries towards sick leave is recorded in the service book of individual police personal.

h) In the written argument, the FAA has given the sequence of events pertaining to said application of the appellant and it is submitted that the PIO has rightly rejected the request as per the Supreme Court order

2) FINDINGS:

a) Perused the records and considered the rival contentions of the parties. In the present second appeal the appellant has challenged the response of the PIO and the order of the FAA.

b) considering the rival contention of the parties as raised in the pleadings and the arguments, the points which arise for my consideration are:

(i) Whether the PIO was right in rejecting the application by invoking section 8(1)(j) of the act.

(ii) Whether the FAA was justified in dismissing the appeal in view of the absence of the appellant.

(iii) Whether the appellant is entitled to receive the information in the format as given by him in his application.

c) While rejecting the request of the appellant the PIO has heavily relied upon the judgment of the Apex Court in special leave petition No.27734 of 2012 (*Girish Ramchandra Deshpande V/S Central Information Commissions and others*) The order of the FAA is silent as to which order of the Hon'ble supreme court is referred to by the PIO. Apparently it is the same citation.

If one considers the said judgment the Hon'ble Apex Court has upheld the order of the Central Information Commission and that of the Hon'ble High Court ordering the dispensation of the information under the act in respect of (i) *the copy of the appointment order*, (ii) *copy of the promotion order including details of salary*, (iii) *copy of transfer order*,(iv) *copy of EPF Rules*, (v) *details regarding TA/DA*, (vi) *Copy of Charge sheet and (vii) copy of posting order*, which were sought under points 1, 2, 3, 5, 10, 11, 12, 13(part) respectively of the applicant's application. In the same order the apex court has upheld the rejection of (i) *the copy of memo*,(ii) *show cause notice*,(iii) *censure issue return of assets*,(iv) *details of investment*,(v) *value wise gift details*,(vi) *details of immovable properties*. The said order does not deal with the leave records.

d) Section 8(1) (j) of the act reads

“ 8. Exemption from disclosure of information. _____ (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,____
(a)-----

*(j) information which relates to personal information the disclosure of **which has no relationship to any public activity or interest**, or which would cause unwarranted invasion of the privacy of the individual **unless** the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the **larger public interest justifies the disclosure of such information**:*

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.” (emphasis supplied)

From the above reading it is clear that immunity from disclosure is granted only in respect of the personal information, which has no relationship to any public activity or interest. The said provision also confers powers to the appellate authority and the commission to decide whether in larger public interest the disclosure of such information is justified.

The said provision also clarifies that the information which cannot be denied to the Parliament or Legislature shall not deny any person.

e) In this case the appellant has applied for leave records of certain class of employees i.e. Police personal escorts cell Panaji. While considering the nature of such leave records and the scope for its dispensation under the act, the Hon’ble High Court of Bombay, Goa bench at Panaji in *Writ Petition no.1 of 2009 (Kashinath J. Shetye V/S Public Information Officer and others)* has observed :

“7) The first thing that needs to be taken into consideration is that the petitioner is a public servant. When one becomes a public servant, he in strict sense becomes a public servant and as such, every member of public, gets a right to know about his working, his honesty, integrity and devotion to duty. **In fact, nothing remains personal while as far as the discharging of duty. A public servant continues to be a public servant for all 24 hours. Therefore, any conduct/misconduct of a public servant even in private, cases to be private. When, therefore, a member of a public, demands an information as to how many leaves were availed by the public servant, such information though personal, has to be supplied and there is no question of privacy at all.** Such supply of information, at the most, may disclose how sincere or insincere the public servant is in discharge of his duty and the public has a right to know.

8) The next question is whether the applicant should be supplied the copies of the application at all. It was contended that the copies of the application should not be supplied for, they may contain the nature of the ailment and the applicant has no right to know about the ailment of the petitioner or his family. To my mind, what cannot be supplied is a medical record maintained by the family physician or a private

*hospital. To that extent, it is his right of privacy, it certainly, cannot be invaded. **The application for leave is not a medical record at all. It, at the most, may contain ground on which leave was sought. It was contended that under section 8(1)(J), the information cannot be supplied. In this regard, it would be necessary to read proviso to that section. If the proviso is read, it is obvious that every citizens entitled to have that information which the parliament can have.** It is not shown to me as to why the information as is sought, cannot be supplied to the parliament. In fact the parliament has a right to know the ground for which a public servant has taken leave since his salary is paid from the public exchequer. In the circumstances, I do not find that the information commission committed any error in direction such information to be supplied. There is no substance in the writ petition. It is dismissed.”(emphasis supplied)*

f) By applying the said ratio to the appeal in hand, though the leave records as sought by the appellant herein are personal in nature the same are generated on account of and for the purpose of the public activity performed by the employees. It has a direct relation with public activity. Hence the said information cannot be said to be personal or has no relation to any public activity to claim immunity

u/s 8(1)(j) of the act. Consequently the appellant is entitled to have the copies of the leave records. The Point no.(i) as framed at para 2(b)(i) above therefore is answered accordingly.

g) In order to consider the second point whether the FAA was justified in dismissing the appeal in view of the absence of the appellant it is necessary to consider the provision of rule (7) of The Goa State Information Commission (Appeal procedure Rules) 2006, which reads:

“7. Personal presence of the appellant or complainant- (1)-----

(2) The appellant or complainant, as the case may be, may, at his discretion, at the time of hearing of the appeal or complaint by the commission, be present in person or through his duly authorised representative or may opt not to be present.

(3)-----”

Thus under said rule a liberty is granted to the appellant/complainant to opt not to be present in person during hearings in appeal and complaints.

The act is beneficial legislation and considering such intent various liberties are granted to the seeker while seeking the information as under section (6) of the act. The discretion thus granted to the appellant or complainant under rule 7(2) can be extended

to the appellant in first appeal also. The procedure herein is governed by the civil procedure code 1908 where under the presence of the parties need not be insisted upon.

Even otherwise as per para (5) of the rely filed by the FAA herein on 13/12/2017, it is submitted that during the first appeal the appellant has sought leave of the FAA not to remain present at the time of hearing on 15/12/2017. Considering these facts, I find no justification on the part of FAA while rejecting the appeal due to the absence of the appellant for hearing. The order should have been passed on merits of the appeal notwithstanding the absence of the appellant. Point (ii) above is thus answered accordingly.

h) For considering the third point of contention of the PIO, that the information sought regarding the sick leave could not be generated in the format as was sought by the appellant, it would be necessary to consider the provisions of section 2(f) of the act. Said provision reads:

“ 2. Definitions.--- In this Act, unless the context otherwise requires,

(a)-----

(f) “information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples,

*models, data material **held** in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;(emphasis supplied)*

i) The extent and scope of the information and the nature in which it is to be dispensed is elaborately discussed and laid down by the Apex Court in the case of: ***Central Board of Secondary Education & another V/s Aditya Bandopadhyay*** (Civil Appeal no.6454 of 2011) as under:

“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 analysed 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, the Act does not cast an obligation upon 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 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. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act."
(emphasis supplied)

j) Considering the above ratio the intention of the act is to dispense the information as is held by the public authority and in the same form. The PIO is not required to collate any information as sought by the applicant for being furnished to him. In the present case the appellant has offered a format in which he desires to have the information. In other words the appellant herein requires the PIO to undertake an exercise by analyzing and formatting the information and thereafter furnishing the same to him. I therefore find force in the contention of PIO that the information in the form as sought for by the appellant cannot be furnished in said form. I therefore hold that the appellant can have the information in the same

format and nature as is held by the authority.

k) Considering the above facts and the law, I find that the appellant is entitled to have the information in the form and the nature as it exist with the respondent authority and not in the format as suggested/given by him.

l) In view of the fact that the information was sought in a specific format, which is beyond the scope of the act, I hold that the appellant shall not be entitled to the benefit of section 7(6) of the act and the dispensation of information shall be against payment of fees for information as provided under the act.

Further considering the peculiar circumstances involved in this proceedings, I find no grounds to invoke my powers either u/s 20(1) and or 20(2) of the act to impose penalty on the PIO. I therefore dispose the present appeal with the following:

ORDER.

The PIO shall furnish to the appellant the information sought vide his application, dated 15/11/2017 in the form and nature as it exist and on payment of the fees prescribed. Prayer of the appellant for penalty against the PIO is rejected. Parties to be notified.

Proceedings closed.

Pronounced in the open proceedings.

Sd/-

(Mr. Prashant S. P. Tendolkar)
State Chief Information commissioner
Goa State Information Commission
Panaji-Goa