

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Appeal No. 237/2017/SIC-I

Dr. Ashutosh Prabhu Dessai,
Associate Professor IPHB,
Res. Address;1/4 Namrata Building,
Cardozo Wado,
Taleigao Panaji Goa.

.....Appellant.

V/s.

1. Public Information Officer (PIO),
Deputy Director IPHB Opp. Holy Cross,
IPHB Bambolim Goa.
2. Assistant PIO IPHB, Opp. Holy Cross,
IPHB Bambolim Goa.
3. The First Appellate Authority (FAA),
Director IPHB Opp. Holy Cross,
IPHB Bambolim Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 27/1/2017

Decided on:12/03/2018

ORDER

1. The brief facts leading to present appeal are that the appellant Dr. Ashutosh Prabhu Dessai by his application, dated 5/5/2017, filed u/s 6(1) of The Right to Information Act, 2005 sought to inspect, and to select papers and the copies of documents/information from the file processing with regards to appellants confidential letter dated 16/3/2010 addressed to the Director of the IPHB/Dean Bambolim and also sought to know the action taken on the said confidential letter dated 16/3/2010. The Said information was sought from the Respondent No. 1 PIO of the office/ Department of IPHB
2. It is the contention of the appellant that he received letter dated 30/5/2017 from Respondent No. 1 PIO by post on 1/6/2017 seeking clarification .

3. It is the contention of the appellant that in pursuant to the letter of PIO, he provided the details to the Respondent No. 1 PIO vide covering letter dated 5/6/2017 thereby also enclosing the confidential letter dated 16/3/2010.
4. It is the contention of the appellant that despite of providing him the details, he did not receive any reply until 6/7/2010 from Respondent No. 1 PIO.
5. As the information as sought was not furnished, the appellant filed first appeal to the respondent No.3 being the first appellate authority on 6/7/2017.
6. It is the contention of the appellant that on 10/7/2017 he received a letter dated 4/7/2017 from Respondent No. 1 PIO transferring his application dated 5/5/2017 and its enclosure dated 16/3/2010 to the PIO, Director (ADM), Goa Medical College.
7. It is the contention of the appellant that he had to make many letters to the respondent No. 3 First appellate authority as FAA did not dispose the first appeal within stipulated time.
8. It is the contention of the appellant that he received a copy of the letter dated 14/8/2017 from the PIO of Goa Medical college and Hospital Bambolim informing him that his confidential letter dated 16/3/2010 is forwarded back to IPHB vide their dispatch No. 1164 dated 19/3/2010.
9. It is the contention of the appellant that respondent no. 3 first appellate authority passed an interim order directing the respondent No. 1 PIO to make attempt to locate the letter in office records within period of 20 days. An final order was passed by the respondent no. 3 first appellate authority on 28/9/2017 by coming to the conclusion that information sought cannot be provided as the PIO was unable to trace the said letter.

10. In the above background the appellant being aggrieved by said response of PIO and order of FAA, has approached this commission in this second appeal u/s 19(3) of the act on 27/12/2017 with the contention that the information is still not provided and seeking order from this commission to direct the PIO to furnish the information as also for other reliefs, including compensation.
11. Notices were issued to the parties, pursuant to which appellant was represented by his wife Mrs Srishti Prabhu Dessai. Respondent no. 1 PIO Smt. Anita Fernandez and Respondent No. 3 Shri Pradeep Naik appeared and filed their respective replies on 29/1/2018 alongwith enclosures.
12. It is the contention of the appellant that his transfer of application dated 5/5/2017 to Goa medical college by the Respondent no, 1 PIO was unwarranted and unjustified and was wrong. And Such an transfer of the said application belatedly after the first appeal was filed, is gross violation of the RTI Act and appears to have been done with ulterior motive to delay and to deny the information sought by him. It is the further contention that it is the duty of PIO and APIO of IPHB to maintain official records as per the act and if the records are untraceable the respondent should have fix the responsibility of the concerned staff who was maintaining the records and should have taken appropriate action as per CCS Rule for failure to safe guard records. It is his further contention that the first appellate authority should have directed Respondent no. 1 & 2 to hold a departmental inquiry for said missing records and should have directed to register FIR and vigilance inquiry against concerned person. It was further contended that the Respondent should be directed to produce the out register and inward register of the IPHB.
13. The respondent No. 3 first appellate authority vide his reply dated 29/1/2018 contended that he has passed interim order and

final order and since the PIO was unable to trace the documents, PIO could not provide the information to the appellant.

14. The Respondent No. 1 PIO vide her reply dated 29/2/2018 has contended that she was holding a main charge at Goa dental College and Hospital and a additional administrative duties were allotted to her at Institute psychiatry and Human Behavior. It is her contention that efforts were made to trace the letter and that she even contacted the earlier PA to the Director and inquired about the said letter, however, no clue have been obtained. She further contended that all the cupboard of PA and the Dy. Director (Admn)and personal files in the Administrations were checked. She further contended that a note was sent to medical superintendent and professor and HOD and replies in this respect including that of PA have been received *stating that the said Documents is not available* in any of their related files. In support of her above contention she has relied the replies of respective authorities which are exhibit "I" It is her further contention that there is no ulterior motive or malafide intention to withhold the information/documents or not to allow inspection of requested notings/files as the appellant was very well aware that his letter dated 16/3/010 was not traceable in the year 2010 itself and in support of said contention she had relied upon exhibit "K", the copy of the outward register at entry No. 1164 dated 19/3/2010 and the other documents were enclosed to the said replies .
15. She further contended that said confidential letter was made to place on record certain facts and not sought any relief as such question of taking any action on said letter does not arise at all.
16. I have perused the records and also considered the submissions of the parties.
17. In the nutshell It is the contention of PIO that the records are missing and not traceable . It is not the contention of the PIO that the said information is destroyed based on any order or as

per the law or that records are weeded out as per the procedure . Besides that mere claim of "non availability of records " has no legality as it is not recognized as exception under the RTI Act. If the file/documents are really not traceable, it reflects the inefficient and pathetic management of the public authority.

18. In this case it is only the lapse and failure of the authority to preserve the records which has lead to non traceability of the file/said confidential letter. From the above it appears that the authority itself was not serious of preservation of records. Such an attitude would frustrate the objective of the act itself.
19. It is quite oblivious that appellant has suffered lots of harassment and mental agony in seeking the information and pursuing the matter before different authorities
20. The Honble High court of Delhi in writ petition © 36609/12 and CM 7664/2012 (stay) in case of Union of India V/s vishwas Bhamburkar has held

"It is not uncommon in the Government departments to evade the disclosure of the information taking the standard plea that the information sought by the applicant is not available. Ordinarily, the information which at some point of time or otherwise was available in the records of the government should continue to be available to the concerned department unless it has been destroyed in accordance with the rules framed by the department for destruction of old records. Even in the case where it is found that desired information though available at one point of time is now not traceable despite of best efforts made in the regards , the department concerned must fix responsibility for the loss of records and take action against the officers /official responsible for the loss of records.

unless such a course of action is adopted , it would not be possible for any department /office, to deny the information which otherwise is not exempted from the disclosure ”.

21. Considering the above position and the file/documents/ said confidential letter dated 16/3/2010 is not traced till date, I am unable to pass any direction to furnish information as it would be redundant now. However that itself does not absolve the PIO or the public authority concerned herein to furnish the information to the appellant. An appropriate order therefore is required to be passed so that the liability is fixed and records are traced.
22. Further as per the definition of information and also in terms of ratio laid down by the Apex Court in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya (at para 35) and in case of Peoples Union for Civil Liberties V/s Union of India AIR Supreme Court 1442 ; it could be gathered that if the 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 . In the present case there is nothing on record to show that the said confidential letter was processed further for appropriate action, as such I am of the opinion that no any directions to provide the information on both the points can be issued.
23. The respondents have not acted in conformity with the RTI Act, 2005. The Respondent PIO despite of providing clarification by the appellant on 5/6/2017 have failed to respond the said Application filed by the appellant u/s 6 (1) of the RTI Act and also erred in transferring the said application to the PIO of Goa medical College. The first appellate authority ought to have disposed the first appeal maximum within 45 days. From the records it could be gathered that the first appeal was not disposed within the period of 45 days. Hence the act on the part of the

Respondents herein is condemnable. However as there is nothing on record to show that such act on the part on the Respondent is persistent, a lenient view is taken in the present proceedings and Respondents are directed to be vigilant hence forth while dealing with the RTI matters.

24. For seeking compensation, the burdon lies on the claimant to produce evidence sufficient to grant compensation. The appellant herein have failed to exhibit in what manner prejudice has been caused to him. Hence , as there is no evidence of determent or losses suffered by the appellant , the relief of compensation sought by the appellant cannot be granted.
25. In the above circumstances and in the light of the discussions above I dispose off the above appeal with the following:

ORDER

- a)The Director of IPHB or through his representative shall conduct an inquiry within four months regarding the said missing document/file pertaining to the confidential letter dated 16/3/2010 of the appellant to the Director/Dean of IPHB and fix the responsibility for missing said documents/file. The director of IPHB shall also initiate appropriate proceedings against the person responsible as per his/her service condition. A copy of the report of such inquiry shall be sent to the appellant and the right of the appellant to seek the same information from the PIO free of cost is kept open, after the said file is traced.
- b)The Public authority concerned herein also shall carry out the inventory of their records within 3 months and are hereby directed to preserve the records properly.
- c)The Public authority may also appoint Records officer for the purpose of maintaining and preserving the official records.

With the above directions, the appeal proceedings stands 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 against this order under the Right to Information Act 2005.

Sd/-

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

Kk/-