

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Complaint No. 27/2018/SIC-I

Shri Nitin Y. Patekar,
Oshalbag, Dhargal,
P.O. Colvale Goa

.....Complainant

V/s

1.The Public Information Officer (PIO),
The Dy. Conservator of Forests,
North Goa Division,
Ponda Goa.

2.First Appellate Authority (FAA),
Conservator of Forest,
Forest Department ,
3rd floor, Junta House,
Panaji, Goa.

....Opponent/Respondents

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

Filed on: 11/06/2018

Decided on: 18/07/2018

ORDER

1. The present complaint has been filed by the complainant Mr. Nitin Y. Patekar against Opponent No.1 PIO and against First Appellate authority on the ground that the Opponent No.1 PIO has furnished wrong information pertaining to tour diaries of Mr. Jitendra Naik and Shri. Anil Kerkar and on said ground he has sought for penal provisions against Opponent no. 1
2. The brief facts of the present complaint are that the Complainant by his application dated 14/09/2017 sought from the opponent No.1 PIO of Office of Dy. Conservator of Forest, Forest Department, Ponda Goa certain information on six points as stated therein in the said application .
3. The said application of the complainant was responded by the Opponent No. 1 PIO on 6/10/2017 and vide letter dated

31/10/2017 also provided information at point No. 2 as per the requirement of complainant. However according to the complainant as the said was not satisfactory, he preferred first appeal before the respondent No. 2 on 12/01/2018 and the respondent no. 2 FAA after hearing both the parties and after discussion with both the parties resolved the grievances of the complainant and vide order dated 13/2/2018 directed the PIO to furnish the two tour diaries of forest Guard namely Jitendra Naik and Anil Kerkar for the month the of September 2017 to the Complainant free of cost within a period of 15 days by obtaining the same from the range concerned or to furnish a suitable reply to the appellant of non availability of the same under intimation to first appellate authority .

4. According to the complainant, pursuant to the said order of the First appellate authority, the Respondent PIO vide their letter dated 14/2/2018 furnished the said information to the Complainant.
5. According to the complainant that the information furnished by the opponent vide letter dated 14/2/2018 was misleading, vague, incomplete and false information and cannot be considered as information .
6. In this background the complainant has approached this Commission by way of present complaint .
7. In pursuant to the notice issued by this commission, the complainant was present in person opponent PIO Shri Kuldip Sharma was present along with APIO A. G. Samant.
8. Reply on behalf of opponent no. 1 and 2 was filed on 18/7/2018 alongwith enclosures. copy of the same was furnished to complainant .
9. Argument were advanced by the complainant. The APIO Shri A.G. Samant submitted that their reply dated 18/7/2018 may be treated as their argument.

10. The complainant submitted that the PIO has provided the information with regards to other guards and deliberately and intentionally not provided the information of tour diaries of Shri Jitendra Naik and Anil Kerkar as they would be exposed to illegal Act committed by them and the PIO and the Department is trying to Shield the above named forest guard. He further submitted that the above two guards were not on the check post duty and were deputed on Patrolling duty in the month of September, 2017 . He further submitted that if they were on check post duty how the above guard was seen at Sukeih, Dhargal, Pernem Goa and at Doda Marg respectively. He further contended that he had filed application dated 15/3/2018 before the opponent No. 2 First appellate authority showing his displeasure on the information furnished to him after the order of First appellate authority. However the First appellate authority by letter dated 3/4/2018 disallowed his application on the ground that the order has been complied and there are no grounds exists to hear fresh . As such it is the contention of the Complainant that both the opponents are trying to cover the lacunas or the lapses committed by forest guards Shri Jitendra Naik and Shri Anil Kerkar.
11. The PIO vide his reply dated 18/7/2018 have contended that the application dated 14/9/2017 from the complainant was received by them on 15/9/17 and the same was responded and the available information was furnished to the complainant by their letter dated 6/10/2017 within stipulated time of 30 days. Vide said reply it was also contended that the complainant had discussion with PIO regarding his dissatisfaction with respect to the information provided at point no. 2 of his RTI Application. It was further contended that the movement register of forest guard was not maintained and as such are not available with their office. It was further submitted tour diaries of the forest guards are regularly maintained and even though vide application dated 14/9/2017 the said tour diaries of the staff were not sought by the complainant, the PIO with an good intention went out of way and

furnished him the tour diaries of Pernem Staff from 1/9/ 2017 to 23/10/2017 vide their letter dated 31/10/2017 which was duly received by the complainant on 12/12/2017 and the signature of the complainant in acknowledgment of the same has been obtained on the letter dated 31/10/2017. Vide reply it was further contended that the order of First appellate authority dated 13/2/2018 was complied by them and vide letter dated 14/2/2018 it was informed to the complainant that as the said forest Guards are posted on check post duty during the month of September, 2017, the tour diaries were not maintained and as such not available in their record. It was further contend that vide reply dated 14/2/2018 the order dated 21/8/2017 issued to above name forest guard of posting at Patradevi and Dodamarg were enclosed to the said reply.

12. In the nutshell it is the case of the PIO that whatever information was available with the public authority have been provided to the complainant and there was no any malafide intention in denying the information .
13. The APIO Shri A.G. Samant submitted that as the PIO is having additional charges of other division and he is overloaded with the work and as the RTI matter are time bound, all the replies and the information was provided under his signature after due approval of PIO.
14. I have scrutinize the records available in the file and also considered the submission of both the parties. On verification of the application dated 14/9/2017 vis-à-vis the information furnished on 6/10/2017 it is seen that the point wise reply have provided by the APIO Shri A.G. Samant to the complainant. Further vide letter dated 31/10/2017 even went out of way and provided the information which was not sought by the complainant in his initial application in order to avoid further hardship and inconvenience to the complainant. It is also seen from the records the order of FAA was duly complied by the opponent PIO and in pursuant to which

whatever information available on record i.e the order dated 21/8/2017 of posting the forest guard to the check post was provided to the complainant .

15. From the above it could be gathered that whatever information available from the records of the public authority have been provide to the complainant. The PIO is liable and responsible only to furnish information which is available on record and he is not suppose to create information or to interpret the information or to solve the problem raised by the complainant. The PIO has acted in consolence with the provision of RTI Act, and was diligent in performing his duties under RTI Act. Bonafide has been shown by PIO in providing information on time and again to the complainant.
16. Be that as it may, the Hon'ble High Court of Bombay at Goa in the case of **Dr. Celsa Pinto V/s. The Goa State Information Commission and another, reported in2008(110)Bombay L.R.1238 at relevant para "7" has held:-**

"The Commission has with reference to question No. 1 held that the petitioner has provided incomplete and misleading information by giving the clarification above. As regards the point No. 1 it has also come to the conclusion that the petitioner has provided false information in stating that the seniority list is not available. It is not possible to comprehend how the Commission has come to this conclusion. ***This conclusion could have been a valid conclusion if some party would have produced a copy of the seniority list and proved that it was in the file to which the petitioner Page 1241 Information Officer had access and yet she said Not Available.*** In such circumstances it would have been possible to uphold the observation of the Commission that the petitioner provided false information in stating initially that the seniority list is not available."

17. In the present proceedings, since it is a specific case of complainant that misleading , vague, incomplete and false information has been provided by the Opponent PIO vide letter dated 14/2/2018, the onus was on the complainant to prove the same. The complainant has not produced any cogent and convincing evidence on records, showing that four dairies of above referred two guards were available with public authority and still not provided to him as such in absence of any such evidence it is not proper to draw or to arrive at any such conclusions. The observation of mine is based on ratio laid down by Hon'ble High Court in case of Celsa Pinto(Supra).
18. Never the less the Hon'ble High court of Bombay , Goa bench at Panaji in writ petition No.205/2007 ; Shri A A Parulekar v/s Goa State information commission has observed
- "The order of penalty for failure to akin action under the criminal law. It is necessary to ensure that the failure to supply information is either intentional or deliberate."***
19. In the present case the complainant has miserable failed to discharge his burden and has not produced any cogent and convincing documentary evidence on record substantiating his case that misleading, vague incomplete and false information has been intentionally and deliberately provided to him by the PIO.
20. In view of the ratios laid down by the above courts, and for want of cogent and convincing evidence, the penal relief sought by the complainant against the PIOs cannot be granted. Hence the following order.

Order

The complaint stands dismissed

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