

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

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Complaint 26/SIC/2014

Vaikunth V. Parab Gaonkar,  
R/o.Gaonkar Waddo,  
Bicholim-Goa.

.....Complainant

V/s

1. Smt. Pushpa Naik,  
Under Secretary/PIO,  
In the office of The Chief Secretary,  
Government of Goa,  
Secretariat, Porvorim-Goa.

2. Director of Official Language ,  
Governemnt of Goa,  
1<sup>st</sup> lift, 5<sup>th</sup> floor, Junta House,  
Panaji-Goa

3. Under Secretary (Personnel-I) ,  
Personnel Department,  
Secretariat, Porvorim-Goa

.....Respondents

**CORAM:**

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

**Filed on: 7/07/2014**

**Decided on: 29/11/2018**

**ORDER**

1. The brief facts leading to the present complaint are that the Complainant Shri Vaikunth V. Parab Gaonkar by his application dated 25/03/2014 sought permission to inspect the file no. 1/39/2013/DOL/NOTICE-CPC pertaining to the Director of Official language. The said information was sought u/s 6(1) of RTI Act 2005 from Respondent No. 1 Public Information Officer (PIO) of the Office of the Chief Secretary, Government of Goa, Secretariat, Porvorim Goa.
2. According to the Complainant the said application was transferred on 03/04/2014 by Respondent No. 1 to the PIO of the Official Language who is the Respondent No. 2 herein u/s 6(3) of the Right To Information Act, 2005.

3. According to the Complainant he received the letter dated 22/04/2014 from Respondent No. 2 interalia informing him that the said file is submitted to the office of Secretary (Official Language) and there after to the office of Chief Secretary and then to the office of the Chief Minister on 26/11/2013 and the same have not been received back to their office.
4. According to the Complainant he being aggrieved by such a reply from Respondent No. 2, he vide his letter dated 28/04/2014 again requested the respondent No. 1 to furnish him the requisite information.
5. According to the Complainant he received the copy of the letter dated 21/05/2014 which was addressed to Respondent No. 2 by Respondent No. 1 interalia informing him that the said file which was received in their office on 27/11/2013 was marked to personnel department on 28/11/2013 and the Respondent No. 2 was requested to find out the status of the file and to redressed the grievance of the Complainant.
6. According to the Complainant he received the copy of the letter dated 6/06/2014 addressed to the Respondent No. 3 PIO of the Department of Personnel, Porvorim by Respondent No. 2 informing them that office of the Chief Secretary had directed to find out the status of that file and to redress the grievance of the Complainant. Vide said letter the Respondent No. 2 had requested Respondent No. 3 to take necessary action as desired by the Office of the Chief Secretary.
7. According to the Complainant no information was furnished to him by the above referred Respondents for the period of more than 80 days, and as he was made to run from post to pillar with ulterior and malafide motives in pursuant to his said application.
8. In this background the Complainant approached this Commission on 7/07/2014 by the present Complaint thereby seeking relief of providing him information and for invoking penal provisions.

9. Notices were issued to the parties by my Predecessor and in pursuant to which the Complainant as well as Respondent No. 2 appeared in person and then PIO Mrs. Urmila R. Gaude filed her reply on 18/11/2014 alongwith enclosure.
10. My predecessor vide order dated 18/11/2014 directed Respondent No. 2 to transfer the said application to Respondent No. 3 u/s 6(3) within 2 days from the date of order by hand delivery and then the Respondent No. 3 was directed to dispose the said RTI application by giving proper information as required under RTI act within 15 days.
11. After the appointment of this Commission fresh notices were issued to the parties in pursuant to which Complainant was present in person . Respondent No. 1 was represented by Shri Tulshidas Karanzalekar. Respondent No. 2 Shri Anil Sawant was present. And Respondent No. 3 was represented by Shri Shekhar Amonkar alongwith Advocate R. Talaulikar.
12. Reply filed by Respondent No. 1 on 8/03/2017 interalia submitting that the application dated 25/03/2014 was transferred on 3/04/2014 under section 6(3) of RTI Act, 2005 to Respondent No. 2 as the said information/file was not available in the office of Chief Secretary. It was further contended that the Office of the Chief Secretary doesnot maintain any record of information as the correspondence/files received in their office are for approval/decision/direction and for onward submissions.

It was further contended that he subsequently on 21/05/2014 informed the Respondent No. 2 that the said file is with Personnel Department as such it was for Respondent No. 2 to trace the file or to call back the file or to transfer the said application to the Respondent No. 3 to whom the above referred file was marked.

It was also contended that then PIO, Mrs. Pushpa Naik has retired on superannuation on 30/09/2014 and that he has taken over charge as PIO in February 2015.

13. The Respondent No. 2 filed his replies on 18/10/2016, 14/09/2017 and on 13/11/2017 alongwith enclosures. Vide said replies it was contended that in pursuant to the order of this commission dated 18/11/2014 the said RTI application was transferred by them to Respondent No. 3 with a request to redressed the grievance of the Complainant as the said file was with the personnel department with effect from 28/11/2013 and which was returned back only on 21/01/2015.

It was contended that the Complainant had made similar application seeking some of the same information vide application dated 5/12/2014 and the same was transferred on 9/12/2014 to Respondent No. 3. It was further contended that the said file was returned back to them by Respondent No. 3 on 21/01/2015 and thereafter they have provided the said information to the Complainant on 28/01/2015. In support of his case he is relied the enclosures at 20/C,22/C,23/C and 24/C .The respondent nO. 2 has also relied the enclosure an exhibit 10/C,15/C, 16/C.17/C and 19/C pertaining to another RTI application filed by the appellant on 5/12/2014

It was also contended that the then PIO Smt. Urmila R. Gaude has expired by accident. And he has been assigned this case only on 05/08/2015.

14. The reply came to be filed by the Respondent No. 3 present PIO on 17/10/2016. interalia submitting that the Personnel Department has no role in this matter since the information sought does not pertain to their department and the concern file was just send to them for examination and opinion. It was further submitted that in pursuant to the response to letter dated 18/11/2014 from Respondent No. 2,

u/s 6(3) of RTI Act, he vide letter dated 21/11/2014 requested the Complainant to do the inspection and accordingly the said was carried out by the Complainant.

15. Reply filed by then PIO Shri Umeshchandra Joshi on 12/04/2018 thereby contending that the RTI application dated 25/03/2014 was filed by the Complainant before Respondent No. 1 and 2 and even the letter dated 28/04/2014 was addressed by the Complainant to Respondent No. 1 and not to Respondent no. 3 as such it is his contention that he is nowhere connected to the information sought by the complainant. It was further contended that in the letter dated 6/06/2014 respondent No. 2 have mentioned that available information was given to the Complainant.
16. It was further contended that even though the said file was under examination by Personnel Department, the inspection of the same was given to the Complainant and that complainant has not filed any RTI application before them asking for information from the said file under the RTI Act.
17. It was also contended that the said file was sent back to respondent No. 2 vide letter dated 29/12/2014 for the purpose of providing information which was sought by complainant in another RTI application dated 5/12/2014.
18. It was further contended by Umeshchandra Joshi that since the file pertaining to Respondent No. 2 which was at relevant time under the examination and advise of Respondent No. 3 officially, an request was made accordingly to the Respondent No. 2 to withdraw the same from the O/o Respondent No. 3 and to furnish required information and then to return the concern file back but Respondent No. 2 rather than following procedure wrote to their office that question of withdrawing the said file from personal Department and then to resubmit it back does not arise. It was further submitted that despite of same the Under Secretary

(Personnel-II)vide letter dated 20/01/2015 return the said file back to the O/o. Respondent No. 2 to provide the information to the Complainant pertaining to his RTI applications.

19. It is further contended that complaint itself is not maintainable in view of non filing of first appeal.
20. Arguments were advanced by complainant. Respondent No.2 submitted to consider his reply as arguments and Respondent No. 3 then PIO file his written argument on 25/10/2018.
21. It is contention of the Complainant that Respondent no. 1 did not transfer said application filed under RTI Act to Respondent No. 2 within 5 days. It was further contention that Respondent No. 1 and Respondent no. 2 were tossing the ball in each other court. It was further contended that Respondent No. 3 on receipt of the notice of this commission in the present proceeding ought to have furnish the information but the Respondent No. 3 waited for Commission's order to furnish the information. He further contended that the file sought for inspection was pertaining to staff of official language wherein the respondent no. 2 and respondent no. 3 are part of DPC as such it is contention that both the respondents intentionally delayed the information. It was further contended that since none of the PIO did not mentioned who was the FAA as required u/s 7(3) (b) of the RTI Act, 2005 as such he was unaware where to approach. He further submitted that since the Respondent No. 3 was holding the said file, he has to be treated/ considered as PIO for all purposes.
22. The respondent No. 2 and 3 has reiterated stand taken by them in their reply and written argument respectively
23. I have scrutinized the records available in the file and also considered submission made on behalf of both the parties.
24. In the present case undisputedly the then Respondent No. 1 Smt. Pushpa Naik has retired as such as per today she is entitle for

pension. Section 11 of pension act 1871, and section 60 (1) (g) of Civil Procedure Court grant immunity to the pension holder against its attachment. The Apex court in case of Gorakhpur University and others V/s Dr. Shilpa Prasad Nagendra Appeal (Civil) 1874 of 1999 and also in civil appeal No. 6440-41 of 2008, Radhe Shyam Gupta v/s Punjab National Bank has also given finding that retired benefits such pension and gratuity etc. does not loose their character and continued to be covered by the proviso (g) of section 60(1) of the code of civil procedure. Under this circumstances the Commission is neither empowered to order any deduction from her pension or from gratuity amount for the purpose of recovering penalty or compensation if awarded. Hence, in this circumstances the relief of penal nature sought by the appellant with respect to Respondent No. 1 cannot be granted.

25. The death certificate of Urmila Gawade was also placed on record by the present PIO. The then PIO Respondent No. 2 Smt. Urmila R. Gaude since expired, the proceedings against her stands abated.
26. Hence the only point arises for my determination is whether any penal provisions can be invoked against Respondent No. 3 then PIO Shri Umeshchandra Joshi ?
27. The Hon'ble High court of Bombay, Goa Bench at Panjim in writ petition no. 205/2007 Shri A. A. Parulekar V/s Goa State Information Commission has observed:-

*"11. The order of penalty for failure is akin to action under criminal law. It is necessary to ensure that the failure to supply the information is either **intentional or deliberate.**"*

28. Yet in Writ petition No. 6504 of 2009 State of Punjab and others V/s State Information Commissioner, Punjab and another it has been held:-

"The penalty provisions under section 20 is only to sensitize the public authorities that they should act with all due alacrity and not hold up information which a person seeks to

obtain. It is not every delay that should be visited with penalty. If there is delay and it is explained, the question will only revolve on whether the explanation is acceptable or not. I there had been a delay of year and if there was a superintendent, who was prodding the public information officer to act, that itself should be seen a circumstance where the government authorities seemed reasonably aware of the compulsions of time and the imperatives of providing information without any delay. The 2<sup>nd</sup> respondent has got what he has wanted and if there was a delay, the delay was for reasons explained above which I accept as justified.”

29. Hence according to the Judgment penalty under subsection (1) of section could be imposed only in the cases only there is repeated failure to furnish information and that too deliberately and intentionally without any reasonable cause.
30. There is no dispute that the information sought by the Complainant under the RTI was pertaining to the documents of the file of Respondent No. 2 and that the said file was only sent to Personnel Department by Respondent No. 2 for examination and opinion with respect to service matter. It is also admitted fact that the respondent No.1 vide letter dated 3/4/2014 had transferred the application of the appellant to Respondent no. 2 in terms of section 6(3) and also have requested to redress the grievance of the applicant and to furnish requisite details as desired within the schedule time frame. The respondent No. 1 vide letter dated 21/05/2014 addressed to Respondent No. 2 had directed to find out the status of the file and to redress the grievance of the Complainant. In both the above letters there were no any directions issued to Respondent No. 3 herein to furnish the information. On the contrary the directions were specifically given to respondent No. 2 to redress the grievance of the appellant at the earliest and to furnish the information. The Respondent No.2 then PIO could



have sought the assistance of Respondent No.3 and thereafter facilitate the Complainant in furnishing the information. It appears that the respondent No.2 instead of complying his superior directions, chose a shortcut and vide their forwarding letter dated 6/6/2014, forwarded the copy of the letter dated 21/5/2014 of the respondent no. 1 to respondent no. 3 and the respondent no. 3 was requested to take necessary action as desired by the office of Chief Secretary. On perusal of the contents of the said letter dated 6/6/2014 it is seen that there was no any specific direction to Respondent No.3 to furnish the information on the contrary at para 2 the respondent No. 2 had categorically stated that vide their office letter dated 22/4/2014 the available information given to the applicant. In view of the said statement of respondent no.2 at para 2 of letter dated 6/6/2014 and as there was no specific directions to respondent no. 3 to furnish the information, hence the question of resubmitting the information to the applicant by respondent No. 3 does not arise. It also appears that letter dated 6/06/2014 was made in casual manner without applying the provisions of section 6 (3) of RTI Act, 2005. My predecessor also came to the finding that said letter was not made in terms of section 6 (3) and hence vide order dated 18/11/2014 directed to Respondent No. 2 to transfer the said application to Respondent No. 3 in terms of section 6(3) of RTI Act within two days from the date of order by hand delivery and then the Respondent no. 3 was directed to dispose the said RTI Application by giving proper information as required under the RTI Act within 15 days.

31. The appellant also admitted of having received the information from Respondent No. 3 in pursuance to the order of this commission passed on 18/11/2014. The averments made by then PIO Shri Umeshchandra Joshi at para 14 of their reply dated 12/4/2018 and written arguments dated 25/10/2018 that the said file No.1/39/2013 /DOL/NOTICE/CPC pertaining to the Director Official Language was

even inspected by the complainant when the file was under examination of Personnel Department are not rebutted and disputed by the complainant. Considering the above position it appears that there was no denial from the side of respondent No. 3 and hence the delay caused if any in furnishing the information cannot be solely attributed to the Respondent no. 3. On the contrary the records shows that the then PIO respondent no. 2 was not diligent in her duties and failed to seek assistance of the Respondent No.3 in securing the information/file from the office of Respondent no. 3 in order to facilitate the information seeker to carryout the inspection of the said file as sought by him vide his application dated 25/3/2014 and also failed to transfer the said application to Respondent no. 3 interms of section 6(3) of the RTI Act.

32. Though the complainant has relied upon certain documents vide his application dated 12/6/2018 the same has no relevancy for the purpose of present proceedings more particularly in view of the fact that my predecessor by said order dated 18/11/2014 has held that there is no application before Respondent No. 3 either as under section 6(1) or under section 6(3) of the Act. However in case the complainant has any grievance in respect of any malades involved in the process of selection, he has to get it redressed from the appropriate forum.
33. By subscribing the ratios laid down by the above courts, the explanation given by the PIO appears to be convincing and probable as it is supported by the documentary evidence .
34. The appellant in the present case have also approached this commission by way of present complaint thereby seeking information and for invoking penal provisions without exhausting his first remedy interms of section 19(1) of RTI act. The said complaint was it self not maintainable in view of the ratios laid down by the Hon'ble Apex Court in case of Chief Information

Commissioner and Another V/s State of Manipure (Civil Appeal No. 10787-10788 of 2011).

35. Considering the above peculiar circumstance and facts of the case, I am of the opinion that levy of penalty is not warranted as against Respondent No. 3 then PIO Shri Umeshchandra Joshi.
36. In the above given circumstances I find no substance in the merits of the Complainant hence the same stands dismissed.

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