GOA STATE INFORMATION COMMISSION

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

CORAM: Shri Juino De Souza: State Information Commissioner

Complaint No. 23/2017

Shri. Sushant ray,
Shop No.G-003, Colmorod Navelim,
Supreme Colmorod Centre,
Margao-Goa. **.....Complainant**

v/s

1. Assistant Public Information Officer,
   Margao Town Police Station,
   Margao – Goa.

2. Public Information Officer,
   Sub Divisional Police Officer,
   Near Municipal Garden, Margao –Goa.

3. First Appellate Authority, **..... Respondent**
   Superintendent of Police (South),
   Near Municipal Garden, Margao – Goa.

Relevant emerging dates:

Date of Hearing : 19-02-2018
Date of Decision : 19-02-2018

O R D E R

1. Brief facts of the case are that the Complainant has filed a Complaint case registered with this Commission on 08/08/2017 and in his prayer has prayed for initiating inquiry under 18 (2&3) against the PIO/SDPO, Mr. Mohan Naik and for imposing penalty u/s 20(1&2) and disciplinary action and other such reliefs.

2. The Complainant in his Complaint memo has enclosed a copy of RTI application dated 13/03/2015 wherein, he has sought certain information regarding a police complaint dated 03/07/2014 filed by himself from the Respondent PIO, Inspector General of Police and also inspection of the relevant files. The Complainant has also enclosed a reply of the PIO dated 31/03/2015 and a copy of the first appeal dated 13/04/2015 and Order of First Appellate Authority (FAA) dated 30/04/2015. This matter has come up for hearing on 02 previous occasions and hence it is taken up for final disposal. …2

3. During the hearing the Complainant is present in person. The present PIO, Shri. Raju Raut Dessai, SDPO, Margao is also present. The FAA is absent.

4. The Complainant submits that he has filed written submissions and the same be treated as his oral submissions and arguments and that he has nothing further to say in the matter.

5. The Respondent PIO on his part submits that the Complainant herein had earlier filed a Second Appeal having the same subject matter before this Commission being Appeal No.58/SIC/2015 and which was disposed off by this Commission vide an Order dated 16/03/2017 wherein this Commission had directed the PIO to furnish status report on the Appellant's complaint dated 03/07/2014 and if investigation on the Complaint are completed, then to give inspection of the relevant files and documents to the Appellant therein.

6. The Respondent PIO also submits that the order of the commission has been complied and accordingly a letter bearing No.SDPO/MRG/RTI/746/2017 dated 22/06/2017 was sent to the Appellant through the Police Inspector, Margao Police Station and same was returned un-served on 06/07/2017. Again on 12/07/2017 the same letter was sent by Registered A.D. on 21/07/2017 and that too was returned back on 25/07/2017.

7. It is finally submitted that intimation of this was also sent to Goa State Information Commission vide letter dated 31/07/2017 regarding the Appellant's Complaint dated 03/07/2014 and it was informed that there was no criminal case was made out and as such no FIR was registered and that the Appellant therein who is the Complainant herein was informed accordingly.

8. It is also submitted that the Complainant has already been heard in the Appeal case No.58/SIC/2017 and justice has been meted out. The PIO has also complied with the Order of this Commission as such the question of imposing penalty or….

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…conducting an enquiry in the present Complaint case does not arise. It is also submitted that the former PIO, Mr. Mohan Naik has since retired from acting Government service in the year 2017.

9. The Commission after hearing the submission and perusal on material on records at the outset finds that the Complainant herein has already exhausted the remedy available to him by filling a Second Appeal as per 19(3) and which Second Appeal came to be registered bearing No. 58/SIC/2015 and the same has been disposed by this Commission by an order dated 16/03/2017 and which order has been complied.

10. As such the Appellant is barred by the universal principle of *Res Judicata* (*already decided*) from agitating the same matter again by filing a Complaint case under section 18. The Complainant has already got his reliefs in the Second Appeal case of 58/SIC/2015 with the PIO complying with the Order of this Commission and as such the Complaint case is not maintainable and on this ground itself is liable to be dismissed forthwith.

11. This apart, it is also not possible to conduct any enquiry or impose penalty on the former PIO, Mr. Mohan Naik as he has retired from government service.

12. The Supreme Court in Gorakhpur University & others V/s Dr Shilpa Prasad Nagendra in appeal (civil) 1874 of 1999; Union of India vs. Radha Kissan Agarwalla AIR 1969 SC 762; Union of India vs. Jyoti Chit Fund and Finance & another AIR 1976 SC 1163 and Union of India and another vs. Wing Commander R.R. Hingorani (Retd.) AIR 1987 SC 808 have in its decisions held that pension cannot be attached in any proceedings whatsoever.

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13. Further as per Circular No. F.7(28)E.V/53 dated August 25, 1985 issued by the Government of India, Ministry of Finance to that states that When a pensioner refuses to pay Government dues—The failure or refusal of a pensioner to pay any amount owed by him to the Government cannot be said to be misconduct within the meaning of Article 351 of the C.S.R. (Rule 8, C.C.S. (Pension) Rules, 1972).

14. Also as per provisions of section 60(1)(g) of CPC, the pension payable to pensioners are not liable for attachment in any proceeding. Section 11 of The Pension act 1871 exempts pension from attachment. In view of the above discussions it is clear that the pension amount received by a retiree on account of his past services cannot be attached in execution of any decree or order for realization of money. The Commission therefore comes to the conclusion that it is not possible to enforce any enquiry nor impose any penalty under section 20(1) or disciplinary action on a retired PIO.

Consequently, the Complaint case being devoid of any merits stands dismissed.

All proceedings in the Appeal case are closed. Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the Order be given free of cost.

Sd/-
(Juino De Souza)
State Information Commissioner