

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

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**Appeal No. 126/2018 /SIC-I**

Shri Peter Paul D'Souza,  
R/o H.No.63-2,  
Mainath Bhatti Vaddo,  
Arpora, Bardez –Goa.

....Appellant

V/s

1)The Public Information Officer (PIO),  
The Secretary,  
Village Panchayat of Arpora-nagova,  
Bardez Goa.

2)First Appellate Authority (FAA),  
The Block Development Officer-II,  
Government Complex, Mapusa,  
Bardez-Goa.

.....Respondents

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

**Filed on: 21/5/2018**

**Decided on:11/9/2018**

**ORDER**

1. The appellant Shri Peter Paul D'Souza by his application dated 15/2/2018 filed under section 6(1)of Right to Information Act,2005 sought from Respondent No. 1 PIO certain information on six points as stated therein in the said application.
2. According to the appellant his said application was not responded by the PIO nor the information was furnished to him as such deeming the same as rejection the appellant filed 1<sup>st</sup> appeal on 19/3/2018 before Respondent no. 2 which was finally disposed by order dated 23/4/2018. By this order the Respondent No. 2 First appellate Authority (FAA) directed to Respondent no. 1 PIO to furnish the information as sought by the appellant vide his RTI application 15/2/2018, within 10 days free of cost from the date of receipt of the order .

3. It is contention of the Appellant that inspite of the said order the said information was not furnished and hence the appellant had to approached this commission on 21/5/2018 in the second appeal seeking relief of direction to PIO to furnish the information as also seeking penal for not giving information within time .
4. The matter was taken up on board and was listed for hearing . In pursuant to the notice of this commission the appellant was present in person. Respondent PIO Shri Rui Cardozo Was present along with Advocate S.P. Desai. Respondent no. 2 was represented by Shri Mahesh Gawade who filed reply on 10/7/2018 .
5. Respondent No. 1 PIO filed his reply on 23/7/2018 and additional reply on 27/8/2018. Copy of the same is furnished to the appellant .
6. Vide reply 27/8/2018 filed before this commission the respondent PIO submitted that the information sought by the appellant with respect to the affidavit filed by him as Secretary in writ petition bearing No. 21/14 was thoroughly searched and it was found that the said High Court file has been misplaced and not found with the office of Village Panchayat. He further submitted that the said file contains all the documents pertains to the writ petition and he submitted that the he has initiated required procedure for the lost of the said file. He showed his inability to provide necessary information as sought by the appellant as the file containing the requisite information has been misplaced and lost.
7. Since the Respondent PIO at para 3 had contended that he had initiated the required procedure for the lost of the said file as such the respondent PIO was directed by this Commission to

place on record the status of the Departmental inquiry initiated by him for the loss of the said file.

8. The PIO despite of direction by this commission failed to place on records the documents showing that he has initiated inquiry and has not also provided the status of inquiry. In the given circumstances, the contention of the PIO that file is misplaced cannot be taken as gospel truth. Even assuming for a while the contention of the PIO that the file is misplaced, The Hon'ble 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”.

9. The appellant had not disputed and rebutted the contention of the PIO that file is missing and the same is not in existence

now. Considering the said position and as the file is not traced till date as affirmed by the PIO vide his reply , dated 27/8/2018 which was duly notarized and verified before notary, I am unable to pass any direction to furnish information as it would be redundant now. However that itself does not absorbed the PIO or the public authority to furnish the information to the appellant and therefore, the liability is required to be fixed and records are required to be traced.

10. The PIO in his reply did not dispute and rebut the statement of the appellant that the PIO not responded interms of sub section (1) of section 7 of RTI act and non compliance of order of First appellate authority by him . Thus the said act on the part of the PIO is not in conformity with the provisions of the RTI Act and hence condemnable.
11. In the above given circumstances and in the light of the discussion above I dispose the above appeal with the following

#### Order

- a. The Director of Panchayat or through his authorized officer shall conduct an inquiry regarding the said missing of file and to fix the responsibility for missing said file/documents. He shall complete such inquiry within 4 months from the date of receipt of this order by him. The Director of Panchayat at Panjim 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 Respondent PIO is hereby directed to comply with the provisions of the RTI Act in true spirit and any lapses found in futures shall be viewed seriously.

- c. In exercise of my powers conferred u/s 25(5) of RTI Act 2005 this Commission recommends that the Director of Panchayat at Panaji, shall issue instruction to the respondent PIO to deal with the RTI matters appropriately in accordance with the provisions of the RTI Act and any lapses on the part of respondents be considered as dereliction of duties.
- d. The copy of the order shall be sent to Director of Panchayat Panjim for information and for appropriate action

With the above direction the appeal 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