

**GOA STATE INFORMATION COMMISSION**

Kamat Tower, Seventh Floor, Patto Panaji-Goa

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Appeal No.94/SIC/2014

Shri Rajendra A. Haldankar,  
Asst. Divisional Officer,  
Directorate of Fire & Emergency Services,  
Panaji Goa .

.....Appellant.

**V/s.**

1. Deputy Secretary/ Public Information Officer,  
Goa Public Service Commission,  
EDC House, Block 'C', 1<sup>st</sup> floor,  
Dada Vaidya Road, Panaji Goa .

2. Secretary/The First Appellate Authority,  
Goa Public Service Commission,  
EDC House, Block 'C', 1<sup>st</sup> floor,  
Dada Vaidya Road, Panaji Goa .

..... Respondents

**CORAM:**

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

**Filed on: 28/8/2014**

**Decided on: 16/1/2018**

**ORDER**

1. By this appeal the Appellant Shri Rajendra A. Haldankar assails the order, dated 16/6/2014 passed by the first appellate authority in case No. Appeal No. RTI/GPSC/24/2014 filed by the appellant herein.
2. The facts in brief in arises in the present appeal are that the appellant by his application dated 22/3/2014, sought information from PIO of Goa Public Service Commission, Panajim on points (a) to (j), in respect of Interview held by GPSC on 18/12/2013 in pursuant to the advertisement bearing No. 6/13 dated 14/6/2013

for the post of Dy. Director Fire Services. The said information was sought by the appellant in exercise of his right u/s 6(1) of the RTI Act 2005.

3. The above application was responded by Respondent PIO on 11/4/2014 thereby rejecting the information at point NO. (a) to (f) u/s 8(1)(g) of the Act. Information at point No. (i) and (j) was denied by replying 'No roll is defined' and information at point NO. (g) and (h) was offered to him.
4. Appellant being not satisfied with the reply of Respondent PIO approached the first appellate authority on 7/5/2014. First appellate authority by his order 16/6/2014 dismissed the said appeal by upholding the say of Respondent PIO.
5. Being aggrieved by the action of both the Respondents, the present appeal came to be filed by the appellant on 26/8/2014. The appellant by this appeal has prayed for direction for furnishing him required information as sought by him vide application dated 22/3/2014 .
6. The notice of the appeal was given to both the parties. The appellant was represented by Advocate Gaurish Nagvekar. Respondent was represented by Advocate Rajesh Shiolkar. Reply filed by first appellate authority on 29/3/2016 and by Respondent PIO on 27/7/2016 resisting the appeal. The copy of the reply was furnished to the Advocate for the appellant .
7. The appellant has challenged the order passed by First appellate authority on several ground as raised in the memo of appeal.
8. Arguments were advanced by both the parties.
9. It is the contention of the appellant that he being candidate is entitled to know on basis on which the other candidate has been selected as such the minutes were sought . It is his further

contention the GPSC being a constitutional body , the affairs of the said body has to be transference. He further submitted that the citation relied by the first appellate authority in dismissing the appeal is not applicable in the fact in the present case as in the said case a stranger had asked for the said information.

10. It is the contention of the Advocate for the Respondent that since in the present case unsuccessful candidate has asked for such information as such there is serious possibility of revenge on the penal of selection members. It is his second contentions that revealing the minutes of interview held by the section committee/interview committee amount to reliving the name of the interviewers as minutes includes names, signature and designation of the interviewers and also qualification. It is his further contention the relation between the interviewer and GPSC is in nature of Fiduary capacity as such the GPC supposed to protect the interest of interviewers .
11. I have considered the submissions made by both the parties and also perused the records available in the files.
12. The considering the rival contentions of both the parties , the issues /points arises for my consideration is  

Whether the appellant is entitled for the information at point (a) to (j) as sought by him vide his application dated 22/3/2014?
13. On perusal of the records, it is seen that appellant at point No. (f) (i) and (j)has sought for cadre rank/hierarchy of member of selection committee, the role of members of selection committee and exact role played by the expert member of the selection committee.
14. A conjoint of reading of the provisions of RTI Act shows that information seeker can exercise his right in the form and manner as specified at section 2(j) in respects of the records as specified in section 2(f).

15. In the contest of the nature of information that can be sought from PIO the Hon'ble Supreme Court in case of in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya wherein it has been held at para 35

*"At this juncture, it is necessary to clear some misconception about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from the combined reading of section 3 and the definition of "information "and "right to information "under clause (f) and (j) of section 2 of the Act. 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."*

16. Yet in another decision 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 in 2008(110)Bombay L.R.1238 at relevant para 8 has held**

*"The definition of information cannot include within its fold answers to the question why which would be same thing as asking a reason for a Justification for a particular thing, The Public information authorities cannot be expected to communicate to the citizens the reasons why a certain thing was done or not done in the sence of justification because the citizen makes a requisition about information justifications are matters within the domain of adjudicating authorities and cannot properly be classified as information".*

17. The Apex court in case of peoples Union for Civil Liberties V/s Union of India AIR Supreme Court 1442 has held

*"under the provisions of RTI Act of Public Authority is having an obligation to provide such information which is recorded and stored but not thinking process which transpired in the mind of authority which an passed an order".*

18. By applying the same ratio to the present appeal, I find that information sought by the appellant in the form of opinion and queries does not come within the perview of definition of information. Hence, I find no irregularity or perversity in the reply of PIO or in the order of First appellate authority.
19. Information sought at point (b) to (e) relates to the names , designations, Education qualifications ,cadres rank of members of selection/interview committee and at point (a) the appellant has sought for a minutes of the interview held by the selection committee.
20. **The Hon'ble Apex Court In case of Kerala Public Service Commission Vs. State Information Commission; (2016) 3 Supreme Court Cases 417 at para 8 and 9 has held:**

*8. "In the present case, PSC has taken upon itself in appointing the examiners to evaluate the answer papers and as such, PSC and examiners stand in a principal-agent relationship. Here PSC in the shoes of a principal has entrusted the task of evaluating the answer papers to the examiners. Consequently examiners in the position of agents are bound to evaluate the answer papers as per the instructions given by PSC. As a result, a fiduciary relationship is established between PSC and the examiners". Therefore, any information shared between them is not liable to be disclosed. Furthermore, the information seeker has no role to play in this and we do not see any logical reason as to how this will benefit him or the public at large. **We would like to point out that the disclosure of the identity of examiners is in the least interest of the general public***

***and also any attempt to reveal the examiners identity will give rise to dire consequences. Therefore, in our considered opinion revealing examiners identity will only lead to confusion and public unrest. Hence we are not inclined to agree with the decision of the Kerala High Court with respect to the second question.***

9. *"In the present case the request of the information seeker about the information of his answer sheets and details of the interview marks can be and should be provided to him. It is not something which a public authority keeps it under a fiduciary capacity. Even disclosing the marks and the answer sheets to the candidates will ensure that the candidates have been given marks according to their performance in the exam. This practice will ensure a fair play in this Competitive environment, where candidate puts his time in preparing for the competitive exams, **but, the request of the information seeker about the details of the person who had examined/checked the paper cannot and shall not be provided to the information seeker as the relationship between the public authority i.e. Service Commission and the examiners is totally within fiduciary relationship. The Commission has reposed trust on the examiners that they will check the exam papers with utmost care, honesty and impartially and, similarly, the examiners have faith that they will not be facing any unfortunate consequences for doing their job properly. If we allow disclosing name of the examiners in every exam, the unsuccessful candidates may try to take revenge from the examiners for doing their job properly. This may, further, create a situation where the potential candidates in the next***

*similar exam, especially in the same State or in the same level will try to contact the disclosed examiners for any potential gain by illegal means in the potential exam”.*

21. **In yet another decision, the Supreme Court of India in Civil Appeal No. 9052 of 2012 (Arising out of SLP (C) No. 20217 of 2011) in case of Bihar Public Service Commission Vs. Respondent: Saiyed Hussain Abbas Rizwi and Another at para , 29, and 31 has held;**

“29. Now, the ancillary question that arises is as to the consequences that the interviewers or the members of the interview board would be exposed to in the event their names and addresses or individual marks given by them are directed to be disclosed. Firstly, **the members of the Board are likely to be exposed to danger to their lives or physical safety. Secondly, it will hamper effective performance and discharge of their duties as examiners.** This is the information available with examining body in confidence with the interviewers. Declaration of collective marks to the candidate is one thing and that, in fact, has been permitted by the authorities as well as the High Court. We see no error of jurisdiction or reasoning in this regard. **But direction to furnish the names and addresses of the interviewers would certainly be opposed to the very spirit of Section 8(1)(g) of the Act”.**

31. “For the reasons afore-stated, we accept the present appeal, set aside the judgment of the High Court and **hold that the Commission is not bound to disclose the information asked for by the applicant under the Query No. 1 of the application”.**

22. Hon'ble supreme Court in "**Central Board of Secondary Education and another V/s Aditya Bandopadhyay and Others (Civil Appeal No. 6454 of 2011)**", while dealing with the said issue at para 28 has observed:

28. "*When an examining body engages the services of an examiner to evaluate the answer books, the examining body expects the examiner not to disclose the information regarding evaluation to anyone other than the examining body. Similarly the examiner also expects that his name and particulars would not be disclosed to the candidates whose answer books are evaluated by him. **In the event of such information being made known a disgruntled examinee who is not satisfied with evaluation of the answer books, may act to the prejudice of the examiner by attempting to endanger his physical safety. Further, any apprehension on the part of the examiner that there may be danger to his physical safety, if his identity becomes known to the examinees, may come in the way of effective discharge of his duties. The above applies not only to the examiner, but also to scrutinizer, coordinator and head examiner who deal with the answer book. The answer book usually contains not only the signature and code number of the examiner, but also the signatures and code number of the scrutiniser/coordinator / head examiner. The information as to the names or particulars of the examiners/coordinators/scrutinisers/head examiners are therefore exempted from disclosure under Section 8 (1) (g) of the RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety***".



23. **The Hon'ble High Court of Jharkhand at Ranchi in W. P. © No. 6079 of 2007 in Jharkhand Public Service Commission, Ranchi V/s The State of Jharkhand and Ors. At para 9 and 10 has observed :-**

9. *"As regards the **information regarding the names and identities of the members of the interview Board, the same cannot possibly be furnished in view of the fact that confidentiality regarding the names and identities of the members of the interview Board needs to be preserved**".*

10. *"Considering the facts and circumstances of the case and also in the light of the discussions made above, the claim of the petitioner that the **information sought for in respect of the names of the members of the interview Board cannot furnished since it would violate the confidentiality, appears to be a reasonable objection**".*

24. By subscribing the views laid down by the above courts I hold that the names , designation , qualifications etc. of the examiners cannot be disclosed.

25. However the THE HIGH COURT OF DELHI AT NEW DELHI in **WRIT PETITION (CIVIL) NO. 16907 OF 2006 UNION OF INDIA ....Petitioner Through Mr. A.S. Chandhiok, ASG with Mr. Ritesh Kumar, Ms. Vibha Dhawan and Mr. Sandeep Bajaj, Advocates. Versus SWEETY KOTHARI Through Mr. Bhakti Pasrija, Advocate** Date of Decision : 30th November , 2009. Has held in below given paras :

58. "Respondent no.1-Sweety Kothari had filed an application seeking following information:

"(a) Copies of the advertisements calling for applications for selection of ITAT members in Calendar Years 2002 and 2003.

(b) Recommendation of Interview/Selection Board regarding selection of the said members.

(C) Names of the person finally selected as ITAT members in the above-mentioned Calendar Years."

59. "Information at serial nos. (a) and (c) have been supplied but information at serial no.(b) was denied by the Public Information Officer and the first appellate authority. Central Information Commission by the impugned order dated 7th June, 2006 has directed furnishing of the said information. The contention of the petitioner herein is that the final selection is approved by the Appointment Committee of the Cabinet (ACC) and therefore Section 8(1)(i) of the RTI Act was attracted, was rejected. It was the contention of the public authority that Appointment Committee of the Cabinet functions under the delegated powers of the Cabinet and for all practical purposes it is co-extensive with the Cabinet's powers attracts exemption under Section 8(1)(i)of the RTI Act. To this WPC NO.7304/2007 +CONNECTED MATTERS Page 54 extent, the CIC agreed but relying upon the first proviso to Section 8(1)(i) of the RTI Act it was observed that appointments have already been made and therefore information should be disclosed and put in public domain".

At Para 61:- The Hon'ble High Court has held that

*"information seeker is asking for recommendations made by selection/interview board and not for comments or observation of list of candidates as per recommendation of the interview/selection board have to be furnished and the order of CIC was upheld.*

26. **Yet in another WRIT PETITION (CIVIL) NO. 9914 OF 2009**

UNION OF INDIA THR. SECRETARY,MINISTRY OF DEFENCE &

ANOTHER ..Petitioners through Mr. A. S. Chandhiok, ASG with Mr. R. Balasubramanian, Advocate Versus THE CENTRAL INFORMATION COMMISSION THR. ITS REGITRAR &MAJ.RAJ PAL (RETD.) ....Respondents Through Prof. K. K. Nigam, Advocate for Respondent No. 1.Maj. Raj Pal, in person the Hon'ble Delhi High Court at below given paras has held

68 "Respondent no.2-Maj. Rajpal (retd) was invalidated from army service on medical grounds on 26th August, 1992. On 14th May, 2007 he asked for the following information:-

(i) List of senior service officers who formed the "selection panel".

(ii) List of affected service officers placed before the "selection board".

(iii) My medical category listed and placed before the "selection board".

(iv) Board proceedings and its subsequent disposal duly enclosing the relevant AO/AI's on the subject.

(v) A copy of Military Seecretary-14 (MS14) Branch letter No. 55821/Gen/MS-14/B dated 21 August, 1992 addressed to 664 Coy ASC Tk tptr type 'C', C/O 56 APO, Subject : Photograph Officers, The said letter has been signed by Sh B.R. Sharma, ACSO, Off AMS-14 for MS."

At para 69 It has been observed that:- Information was partly denied by the Public Information Officer and the first appellate authority. On second appeal by the impugned Order dated 12th February, 2009 the Central Information Commission has directed furnishing of following information :-

"(i) A list of senior officers who constituted the Selection Board.

(ii) A copy of the Board proceedings of the Selection Board including the copy of the record in the recommendation of the Board was subsequently dealt with."

70. Union of India objects and has filed the present Writ Petition.

71. It is mentioned in the writ petition that the respondent no.2 was considered for promotion to the rank of Lt. Colonel (Time Scale) in June 1990 but because of low medical category he was not granted the said grade.

The Hon'ble Delhi High court at para 72 has observed that:-

*"The period in question admittedly relates to the year 1990. The respondent no.2 has been adversely affected and was denied promotion as a result of the said board proceedings. **As held above the test of larger public interest cannot be put in any strait jacket but is flexible and depends upon factual matrix of each case. It is difficult to comprehend and accept that any public interest would be served by denying information to the respondent no.2 with regard to selection board proceedings and record of how the recommendations of the selection board was subsequently dealt in an old matter relating to the year 1990.** The matter is already stale and of no interest and concern to others, except respondent no.2. Reference can be made to para 54 of the decision of the Supreme Court in R.K. Jain (supra) that the extent to which the interests referred to have become attenuated by passage of time or occurrence of intervening events is a relevant circumstance. Passage of time since the creation of information may have an important bearing on the balancing of interest under section 8(1)(j) of the RTI Act. The general rule is that maintaining exemption under the said clause diminishes with passage of time. The test of larger public interest merits disclosure and not denial of the said information. However, direction to disclose names of the officers who constituted the said panel could not have been issued without complying with provisions of Section 11 and Section 19(4) of the RTI Act. The said procedure has not*

*been followed by the CIC. I am however not inclined to remand the matter back on the said question as disclosure of the said names would result in unwanted invasion of privacy of the said persons and there is no ground to believe that larger public interest would justify disclosure of said names. The impugned order passed by the CIC dated 12th February, 2009 is non-speaking and no-reasoned and does not take the said aspects into consideration. **Even the written submissions of the respondent no.2 do not disclose any larger public interest which would justify disclosure of the name of the officers.** This will also take care of objection under section 8(1)(e) of the RTI Act.*

*73. The Writ Petition is accordingly partly **allowed and the petitioner need not disclose the name of the officers who constituted the selection panel and applying the doctrine of severability, copy of the board minutes and subsequent record of recommendation should be supplied without disclosing the names of the officers**".*

- 27. The Honble Delhi High court in WRIT PETITION (CIVIL) NO. 6085 OF 2008 UNION OF INDIA AND ANOTHER ....Petitioners Through Mr. A. S. Chandhiok, ASG with Mr. R.Balasubramanian,Advocate.Versus CENTRAL INFORMATION COMMISSION & ANOTHER .....Respondents Through Prof. K. K. Nigam, Advocate for Respondent No. 1**

**It has been observed that at para 74 that :-** Col. H.C. Goswami (retd.)-respondent no.2 is a retired Army officer of 1963 batch officer. He was charge sheeted on the ground of misconduct and general court martial was convened and he was sentenced to be cashiered and directed to serve rigorous imprisonment of two years. The court martial proceedings and subsequent orders were quashed in Crl. Writ Petition No.675/1989. The respondent no.2 was held entitled to all benefits as if he was not tried and punished and the said judgment was upheld by the Supreme Court. Consequent upon

the judgment, the respondent no.2's case was put up for consideration for promotion to the rank of Brigadier on 7th September, 1999 before selection board-II. By letter dated 25th October, 1999 respondent no.2 was informed that he was not found fit for promotion. This order was successfully challenged in W.P.(C) 7391/2000 decided on 7th August, 2008. The Division Bench held that the selection board-II could not have directly or indirectly relied upon or discussed respondent no.2's trial and punishment in the court martial proceedings while evaluating his performance and considering his case for promotion. Reference was made to Master Data sheets and CR dossiers in which the details of CRs earned since commissioned and court certificates, awards, citations in respect of honours, details of disciplinary cases are mentioned. It was noticed that evaluation of merits of the officers was not based upon any quantification of marks or aggregation of marks. There was no cut off discernible from the record to justify or deny promotion to any one falling below the cut off. Accordingly, the recommendations made by the selection board II denying promotion was set aside with a direction to reconvene a selection board to consider the case of the respondent no.2 afresh. It was in these circumstances that the respondent no.2 had filed an application under the RTI Act seeking the following information:-

"Regarding the proceedings of No.2 Selection Board held in August/September 1999 and the proceedings of no.2 selection Board held in Aug/Sep 1990 of 1963 batch for promotion to the rank of Brigadier:

1. The extracts of all my ACRs which were considered for his promotion to the rank of Brigadier
2. The OAP (Overall Performance) Grading/Pointing of his promotion to the rank of Brigadier of the batch 1999 with whom my name was considered.

3. The OAP of the last officer who was approved and promoted to the rank of Brigadier of the batch 1999 with whom my name was considered.
4. The OAP Grading/Points of the last officer of 1963 batch who was approved by the No.2 Selection Board held in Aug/Sep 1990 for promotion to the rank of Brigadier.||

20. The Hon'ble Delhi High Court held that:-

At para 78:-

*"The disclosure directed by CIC does not require interference except that names of the officers who were members of the selection committee II need not be revealed. **Information asked for is personal to the respondent No.2 and if names of members of selection Committee II are not revealed, there will be no unwarranted invasion of privacy. Even otherwise the facts disclosed above, repeated judgments in favour of the respondent no.2 and his frustration is not difficult to understand. Blanket denial of information would be contrary to public interest and disclosure of information without names would serve public cause and justice.***

**28.** In the present case the petitioner has failed to justify that the larger public interest will be served in disclosures the name and other personal details of member of interview Committee, Never the less by taking into consideration the intent of RTI Act , **and the ratio laid down by the above courts and also applying Doctrine of Severability , I am of the opinion that ends of justice will be meet if information at point no.(a) i.e copy of the minutes of the interview/viva voice held by the selection committee/ interview committee should be supplied without disclosing the names and other details of the members of the selection committee. hence the following order**

## ORDER

- i) The appeal is partly allowed.
- ii) The Respondent No.1 PIO is hereby directed to provide information at point no.(a) as sought by the applicant vide his application dated 22/3/2014 by coding/ without disclosing the names, signatures ,designations and other personal details etc of the members of the selection committee, within two weeks from the receipt of this order.

29. I therefore disposed the present appeal as 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 under the Right to Information Act 2005.

Sd/-

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

Ak/-