

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto, Panaji-Goa

Penalty Case No.12/2014

In

Appeal No. 103/SCIC/2013

Shri Gabriel Joseph Fernandes,
R/o. H.No. 132, Umtavaddo,
Calangute, Bardez Goa.

V/s.

1. Shri K.D. Pagui,
Then Calangute Village Panchayat Secretary/
The Public Information Officer,
(24/04/2012 to 18/12/2013),
Naikawado, Calangute Bardez Goa.

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

Disposed on:- 27/2/2018

ORDER

1. In the above penalty proceedings an interim order was passed by my predecessor on 19/11/14 wherein part penalty of Rs. 3000 was imposed on then PIO which had to be deposited within 30 days. Vide said order last chance was given to then PIO to explain why an increased penalty should not be imposed on PIO.
2. As the said penalty proceedings were not finally disposed, after the appointment of this commission a fresh notices were issued to then PIO Shri K.D. Pagui on 13/9/2017,10/10/2017 and 30/10/2017.
3. In pursuance to the above show cause notices, the then PIO Shri K.D.Pagui appeared and filed his reply on 5/1/2018.
4. Counter reply was also filed by the appellant on 12/1/2018 .
5. Written argument also filed by Respondent PIO on 9/2/2018 . copy of the same could not furnished to the appellant on account of his absence .
6. It is the contention of the appellant in his application dated 12/1/2018 that the then PIO was aware of the order dated

19/11/2014 passed by this commission so also with respect to the order passed by First appellate authority and he deliberately never bother to inquire with his superior to check his salary statement . As such according to the appellant, that Respondent PIO has disobeyed this commissions order by not paying the penalty of Rs. 3000/- within a period of 30 days.

7. Vide reply the PIO has contented that he was under impression that his Drawing and Disbursing Officer (DDO) has deducted the amount of Rs. 3000/- towards penalty imposed by this commission. He has further contented that on learning that amount towards penalty is not deducted by DDO, he paid the said amount by challen in government treasury in State bank of India. He further contented that he was not aware of order of first appellate authority dated 24/6/2013 and he could not act on a said order as he was transferred on 14/2/14. He further contented that he has been penalize by penalty of Rs. 3000/-and any further penalty shall cause loss and prejudiced to him .
8. I have scrutinize the records available in the file .
9. The section 20 of RTI Act, speaks that the commission while deciding any complaint or appeal, shall impose a penalty which may not exceed 25,000/- Rupees. There is no any specific provision in the RTI Act conferring powers on the Commission to review any orders passed in an appeal. I also find no provision under the act for enhancing or for revision of penalty. The only scope for the commission is the imposition penalty at the time of disposal of appeal or complaint. In the present case this commission, vide disposing the appeal/penalty proceedings has ordered payment of Rs. 3000/- as penalty and as such any order by this commission for enhancement of penalty after disposal of such appeal is beyond the scope and powers under the act.
10. The issue which arises in the present proceedings is whether the order of this commission is complied within time specified ?

11. The interim order was passed by this commission on 19/11/2014 with a direction to deposit a penalty amount of Rs. 3000/- within 30 days . The PIO has filed his reply inter alia contending that on learning regarding non deduction of the penalty amount from his salary by the DDO he deposited the same on 3/1/2018.
12. Obviously the order of this commission was not complied within time specified in the order. There is a delay of about more than three years in complying the order of this commission. As such the point arises for my determination is
 - a) Whether the delay in complying the order of this commission dated 19/11/2014 was deliberate and intentionally?
13. 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

"unless and until it is borne on record that any officer against whom order of penalty for failure to be sought to be levied and has occasion to comply with a order , and has no explanation or excuse available worth satisfying the forum, possessing the knowledge of the order to supply information, an order of penalty cannot be levied".
14. The Respondent has contended that he was officiating as Secretary of Village Panchayat Calangute from 2/5/2012 to 23/1/2014. From the Roznama of the penalty proceedings it reveals that Advocate A. Wadkar was then representing him. It could be also seen that on the day of order 19/11/2014 he was not present for PIO . From the Roznama of this commission dated 19/11/2014 it could be gathered that the commission on 19/11/2014 had directed to issue fresh notice to PIO for quantum of punishment however there is no record in the file showing that the said order dated 19/11/2014 passed in the penalty proceedings No.12/2014 was communicated to the PIO

Shri K. D. Pagui nor any copy of the showcause notice is in the file though it was ordered by my predecessor on 19/11/2014. The appellant also did not produce any record showing that the Respondent was aware of the order. More so over the operative part of the order says that copy of said order is sent to the Director of Panchayat to ensure compliance. Therefore, compliance of deduction from his salary was to be done by a Department through BDO who was officiating as DDO. As soon as the then PIO learnt about the order dated 19/11/2014, during present proceedings the bonafides have been shown by then PIO Shri K.D. Pagui by effecting payment of penalty out of his salary payment on 3/1/2018 without waiting for Department to complete the Departmental procedure.

15. Considering the facts of the present proceedings I find that delay in payment of fine/penalty, there is no evidence to support that the delay is either intended or deliberate . Hence in view of ratio laid down by the Bombay High Court in case of Shri A.A. Parulekar(Supra), I hold that facts of the present case dose not warrant for enhancing the penalty amount and such I am not inclined to grant relief sought by appellant vide his application dated 12/1/2018.

Penalty proceedings dispose off accordingly. Pronounced in open proceedings. 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.

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

Ak/-