

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

Appeal No.146/2019/SIC-I

Vikarant Sadashiv Pangam,
Sankhali Shopping Centre,
Shop no. 1, Opp.KTC. Bus Stand,
Sankhalim-Goa.

....Appellant

V/s

1. SPIO/Office of the Chief Electrical Engineer,
Department of Electricity,
Government of Goa,
Vidhyut Bhavan, 3rd floor,
Panaji Goa.
2. First Appellate Authority,
Office of the Chief Electrical Engineer,
Department of Electricity,
Government of Goa,
Vidhyut Bhavan, 3rd floor,
Panaji-Goa.

.....Respondents

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

Filed on: 24/05/2019
Decided on: 04/07/2019

ORDER

1. The appellant, Shri Vikrant Sadashiv Pangam has filed the present appeal praying that the information /documents as requested by him at serial No. 3 of his application dated 11/12/2018 be furnished to him completely, and for invoking penal provisions against the Respondent Public Information Officer (PIO).
2. The brief facts leading to the present appeal are as under:-
 - a) The appellant vide his application dated 11/12/2018 addressed to Respondent No. 1 PIO, of the Office of Chief Electrical Engineer, Electricity Department Vidhyut Bhawan, Panaji-Goa had requested to provide him information on three points as listed therein pertaining to appointment order dated 4/7/07, under No. CEF/ESTT/06-07-(ADEO)/6868, viz-a-viz;

- (i) Minutes of the Departmental selection committee in respect of appointment order dated 4/7/07, under No. CEF/ESTT/06-07-(ADEO)/6868.
 - (ii) The noting of above files, stated in above paragraph No. 1.
 - (iii) Marks given in above selection to all candidates including that of Mrs. Pratibha Girish Velip.
- (b) The said application was filed by the appellant with the Respondent No. 1 PIO in exercise of his rights u/s 6(1) of Right to Information Act, 2005.
- (c) It is contention of the appellant that he did not received any reply from the PIO nor any information furnished to him within stipulated time of 30 days as contemplated u/s 7(1) of RTI Act.
- (d) It is contention of the appellant that as the information as sought was not furnished, he approached the Respondent No.2 FAA of the office of Chief electrical Engineer within limitation period, however the office of Respondent No.2 flatly refused to accept the appeal memo from the appellant as such he send the appeal memo along with the documents to Respondent No. 2 FAA by speed post on 20/2/2019. However respondent No. 2 FAA refused to accept the same and the postal authority returned the said envelop to him on 28/2/2019 with postal endorsement "refused, returned to sender"
- e) It is contention of the appellant that he received reply dated 27/3/2019 from Respondent No. 1 the PIO in the first week of April, 2019 thereby enclosing the information at point No. 1 and 2. Vide said reply it was also informed to appellant that information at point no. 3 is not traceable.

- f) It is contention of the appellant that as the information as sought was not completely furnished, by Respondent No. 1 PIO and as Respondent No. 2 First Appellate Authority (FAA) refused to accept his appeal memo, he being aggrieved by the action of both the respondents, approached this Commission in this second appeal u/s 19(3) of the Act, on 24/5/2019 on the ground raised in the memo of appeal
3. In this Back ground the present appeal came to be filed by appellant with the contention that the information at point nO. 3 is still not provided and seeking order from this Commission to direct the PIO for providing him information at point nO. 3 as sought by him free of cost and for imposition of penalty on PIO for a delay in furnishing the information.
 4. In pursuant to the notice of this Commission, the appellant was present in person along with Advocate R. Kerkar. The Respondent No. 1 PIO Shri Kuldip Arolkar was present Respondent No. 2. FAA was represented by Mrs Deepika Sawaikar .
 5. Affidavit cum Reply was filed by Respondent No. 1 PIO on 02/07/2019. Reply was filed by FAA on 12/6/2019. The copies of both the replies were furnished to the appellant.
 6. Arguments were advanced by both the parties.
 7. It is the contention of the appellant that Respondent No. 1 PIO neither paid any heed to the request made by him nor the Respondent No. 2 FAA made any attempt to look into the grievance of the appellant, hence both the respondents have disobeyed the provisions of RTI Act 2005. It is the contention of the appellant that the information at point no. 3 is denied to him by single statement, that is "it not traceable."
 8. Vide reply the Respondent No. 1 PIO contended that information desired by the appellant have been provided except the statement

of marks. It was further contended that information pertains to year 2007 and inspite of searching the information for several times, it was not available in the office records.

9. The Respondent No. 2 FAA vide his reply dated 12/6/2019 contended that he could not hear the first appeal as the same was not presented before him.
10. I have scrutinized the record available in the file so also considered the submissions made by the both the parties.
11. In the contest of the nature of information that can be sought from PIO, The Hon'ble Supreme Court in civil Appeal No. 6454 of 2011; Central Board of Secondary Education V/s Aditya Bandhopadhaya has 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. But where the information sought is not a part of the records of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority to collect or collate such non-available information and then furnish it to an applicant".

12. Yet in another decision , 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 ,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”.

13. Hence according to above judgment of the Apex court, the PIO is duty bound to furnish the information **as available and as exist in the office records.** PIO has clearly stated and affirmed that the information at point no. 3 is not available in their office . The same stand was also taken by the Respondent PIO in the reply given interms of section 7(1) of RTI Act.

14. **The Delhi High Court in L.P.A. No.14/2008,** Manohar Singh V/s N.T.P.C. has held;

“The stand taken by PIO through out for which a reference is made to earlier communication issued to the appellant by PIO. It will be clear that even on that day also specific stand was taken that there is no specific documentation made available on the basis of which reply was sent **and hence the directions to furnish the records if the same is not in existence cannot be given.”**

15. By subscribing to the ratios laid down by the Hon'ble Courts, since the information at point no. 3 is not in existence/not available in the records of the office of the Respondent , the same cannot be ordered to be furnished and hence the reliefs sought at serial No.(a) by the appellant cannot be granted.

16. On scrutiny of the records it is seen that the application of the appellant filed under RTI Act was not responded within 30 days as

contemplated u/s 7(1) of RTI Act. The same is only responded on 27/3/2019. There is a delay in responding the same and furnishing the information. Further the records also shows that the conduct and act on part of both the respondents is not in conformity with the provisions of RTI Act, 2005. The said act came into existence to provide fast relief and as such time limit is fixed under the said act to dispose the application u/s 6(1) of RTI Act, 2005 within 30 days and to dispose first appeal maximum within 45 days., which both the respondent failed to adhere too.

13. Never the less , the PIO during the hearing vide his application dated 04/07/2019 submitted that earlier Shri Bharat Nigle was officiating as PIO and he has retired from services on attending the age of Superannuation on 28/02/2019 and after his retirement he has been appointed and taken the charge of PIO on 27/02/2019.
14. In the present case undisputedly the then Respondent No.1 Shri Bharat Nigle has retired as such as per today he 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 in 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 recognized by the proviso (g) of section 60(1) of the code of civil procedure. Under this circumstance the Commission is neither empowered to order a deduction from his pension or from gratuity amount for the purpose of recovering penalty or compensation if awarded.
15. In the above given circumstances and as discussed above, the relief sought by the appellant cannot be granted hence the appeal stands dismissed and 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