

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

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**Appeal No. : 271/2019/SIC-I**

Rahul Basu,  
D3 and 4, Bay View 204,  
Nagalli Hills, Street 3 Lane 1,  
Dona Paula, Goa 403004 ..... Appellant  
v/s  
Public Information Officer (PIO),  
Directorate of Mines and Geology,  
Panaji-Goa .....Respondent

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

Filed on: 19/08/2019  
Decided on: 21/10/2019

**ORDER**

1. Brief facts of the present proceedings are as under:-
  - (a) In exercise of right under section 6(1) of Right to Information Act, 2005 the Appellant, Shri. Rahul Basu filed application on 25/02/2019 seeking information i.e the copies of the surface geological plans and sections received by the State Government from all mining lease holder under Rule 33 of the Mineral Conservation and Development Rule 2017. The said information was sought in the digital form either on CD or Pendrive or Email from the PIO of Directorate of Mines and Geology, Panjim, Goa
  - (b) It is contention of the Appellant that he received the copy of the letter from Respondent dated 25/02/2019 addressed to the PIO of Indian Bureau of Mines, O/o. Regional Controller of Mines, Fatorda, Margao-Goa by the Respondent PIO transferring his RTI application in terms of section 6(3) of RTI Act, 2005 for further necessary action.
  - (c) It is contention of the appellant that he being aggrieved by such an action of the Respondent Public Information Officer

and as the information as was sought by him was not furnished, he filed 1<sup>st</sup> appeal on 15/03/2019 in terms of subsection (1) of section (19) of RTI Act, 2005 before the Director of Mines and Geology, Panjim-Goa being First Appellate Authority (FAA).

(d) It is contention of the Appellant that First Appellate Authority (FAA) failed to dispose his 1<sup>st</sup> appeal within stipulated time as contemplated under RTI Act, 2005 and as such he being aggrieved by such an conduct of Respondent Public Information Officer (PIO) and First Appellate Authority (FAA) is forced to approach this Commission on 18/08/2019 in the second appeal as contemplated under subsection (3) of Section (19) of RTI Act, 2005.

(e) In this background the present appeal has been filed on the grounds raised in the memo of appeal. The Appellant in present Appeal has sought for the relief and directions to Respondent PIO for providing him requested information or in alternatively for directions to Respondent PIO to file affidavit in reply if the said information is not possessed by them and also for invoking penal provisions against Respondent for non disclosure of the information.

2. In pursuant to the notice of this Commission the Appellant was represented by Advocate Sivagnanam Karthikeyan. Respondents PIO Shri. Sankalp Shet Desai was present.
3. Reply filed by Respondent PIO on 23/09/2019 and additional reply on 27/09/2019 and affidavit on 10/10/2019 alongwith the enclosure (A). The CD containing the information were furnished to Advocate for the Appellant herein and the Appellant was directed to verify the information furnished to him and report accordingly.

4. The Advocate for the Appellant did not raised any grievance with respect to information furnished by the Respondent on CD and accordingly endorsed his say on the memo of appeal.
5. Arguments were canvassed by both the parties.
6. It is contention of the Advocate for the appellant that appellant seeks the information in larger public interest and the present application was also filed by the appellant with the said intention. He further submitted that the information sought by appellant explicitly and exclusively pertain only to State Government and not to Central Government and as such it is only the Respondent PIO that would be the concerned Public Authority for the purpose of section 6(1) of the Act and the IBM being Central Government Authority would not be in any way be in position to provide the information sought by him. It was further submitted that on account of delay in furnishing him the information grate hardship has been caused to him in pursuing his application. He further submitted that the PIO have acted malafidely and denied him information intentionally and deliberately and on that ground he vehemently pressed for invoking penal provision against the Respondent PIO.
7. It was further contended that failure of Director of Respondent Authority who is the First Appellate Authority, to dispose off appeal before 14/04/2019 or 29/04/2019 is contrary to the mandate of section 19(6) of the RTI Act, 2005 and amounts to dereliction of duties is bound to discharge under the RTI Act, 2005.
8. The Respondent PIO on the other hand submitted that the information sought by the appellant is dealt by the Indian Bureau of Mines U/s 33 of Mineral Conservation and Development Rule of 2017 and the Respondent while inquiring in the office, the copies marked to the Director of Geology is found of some of the lease holder but the main correspondence alongwith the Pen drive and

Compact disk were addressed to Regional Controller of Mines, Indian Bureau of Mines at Margao Goa. It was further submitted that information submitted by lease Holder in compact disc format is copied on the other compact disc and the same is submitted to the appellant.

9. It was further submitted by the Respondent that at the time when the application under section 6(1) was received in the Office of Public Authority, Smt. Shobana Rivonkar, Assistant Geologist was officiating as PIO and she on attending her age of superannuation has retired from her services and undertook to place on record supporting documents accordingly the same came to be placed on record by PIO on 16/10/2019.
10. Since information as available and as exist on the records of Public Authority have been now provided to the appellant and since affidavit is also filed by the Respondent on 10/10/2019, the Prayer (1) and (2) becomes redundant.
11. With regards to prayer (3) which is of penal in nature, the point arises for my determination is

*“whether penalty can be impose after retirement on PIO ?*

12. The PIO appointed by the public Authorities are its employees. The section (18) and (19) read with section (20) of Right to Information Act, (Act) provides for imposition of penalties on erring PIO and not authorities. Thus the liability for payment of penalty is personal. Such penalty, which is levied in terms of monies, being personal in nature is recoverable from the salaries payable to such employee's payable during their services. Similarly recommendation of disciplinary action can also be issued during the period of service. After the retirement, what is payable to the employee are the pensionary benefits only.
13. In the present case undisputedly the then PIO has retired and is entitled for pension. Section (11) of Pension Act 1871, grants

immunity to the pension holder against its attachment in following words.

**“ Exemption of pension from attachment:** *No Pension granted or continued by Government or Political consideration, or on account of past service or present infirmities or as a compassionate allowance and no money due or to become due on account of any such pension or allowance shall be liable to seizure, attachment or sequestration by process of any court at the instance of a creditor, for any demand against the pensioner or in satisfaction of a decree or order of any such court”*

14. Section 60 (1) (g) of civil procedure code which is reproduced here under also bars attachment of pensioner following words:

*1) The following particulars shall not be liable to such attachments or sale namely:*

- (a) .....
- (b) .....
- (C) .....
- (d) .....
- (e) .....
- (f) .....

*(g) Stipends and gratuities allowed to pensioners of the Government or of a local authority or any other employer, or payable out of any service family pension fund notified in the gazette, by the central government or the state Government in this behalf and political pension.*

15. From the reading of above provisions there leaves no doubt on the point of non-attachability of pension , gratuity etc.

16. The Hon’ble Apex Court in Gorakhpur University and others V/s Dr. Shilpa Prasad Nagendra in Appeal (Civil) 1874 of 1999 has held;

*“This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands.....”*

17. Under the above circumstances this commission is neither empowered to order any deduction from his pension or from gratuity amount for the purpose of imposing penalty or compensation. Thus the proceedings for penalty has become infructuous.
18. The displeasure is hereby expressed by this Commission on the conduct and attitude of First Appellate Authority. It is seen from the records that the first appeal was filed on 15/03/2019 which was received in the Office of Director of Mines on the same day. As per section 19(6) the FAA was supposed to dispose the said appeal within 30 days or maximum of 45 days. The appellant has approached this Commission in the present proceedings with specific grievances that his first appeal was not heard and disposed by the First Appellate Authority. It also need to mention that in appeal No. 272/2019 the First Appellate Authority also did not hear and disposed the 1<sup>st</sup> Appeal within stipulated time and hence such continuous conduct on the part of First Appellate Authority is not in conformity with the provision of RTI Act and also in spirit of the Act. Hence the FAA is directed to act in conformity with the provision of the Act and to dispose the first appeal within stipulated time as contemplated under Right to Information Act so that detriment and hardship caused to information seeker could be avoided.
19. In the above given circumstances and in the light of discussion above, I dispose the above appeal with the following:-

## ORDER

Appeal is partly allowed.

- a. Since the information is now been furnished as per requirement and satisfaction of the appellant, I find no further intervention of the Commission is required for the purpose of furnishing the information.
- b. In exercise of my powers conferred u/s 25(5) of RTI Act, 2005 this Commission recommends that Secretary, Mines and Geology to Issue instruction to Respondent Public Information Officer (PIO) and to First Appellate Authority (FAA) to deal with the RTI matters appropriately in accordance with the provisions of the RTI Act, 2005 and any lapses on their parts be considered as dereliction of duties.
- c. Copy of the order shall be send to the First Appellate Authority and to the Secretary, Mines and Geology for information and necessary action.

With the above direction appeal proceeding 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