

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

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**CORAM: Shri Juino De Souza: State Information Commissioner**

**Appeal No: 168/2018/SIC-II**

Shri. Amit S. Morajkar,  
H. No.414/F,  
Sai Wada, Canca,  
Post Parra Bardez-Goa.  
Pincode:- 403 510

**..... Appellant**

**v/s**

1. The Public Information Officer,  
Office of the Commissioner of Excise,  
Panaji-Goa.
2. The First Appellate Authority,  
Commissioner of Excise,  
Panaji-Goa.

**..... Respondents**

**Relevant emerging dates:**

**Date of Hearing: 17-01-2019**

**Date of Decision: 17-01-2019**

**ORDER**

1. **Brief facts of the case** are that the Appellant vide an RTI application dated 17/11/2017 addressed to the PIO, O/o Commissioner of Excise, Panaji-Goa, sought certain information under 6(1) of the RTI Act 2005. The information pertains to one Mr. Mahesh Korgaonkar, Excise Inspector, working at the Excise office, Mapusa, Goa and the Appellant *inter alia* is seeking information regarding 1. Designation in the Department. 2. Date of appointment and date of increment and promotion, if any. 3. Service book till date. 4. Dates on which he has applied for various types of leave. 5. The content of bribe in cash given by him to superiors and other such related information.
2. It is seen that the PIO as per section 7(1) vide his reply No. CE/1-3/2017/RTI/4305 dated 15/12/2017 within 30 days has furnished the information in tabulation form. The Appellant not being satisfied with the information furnished at points No. 3 & 4 and the amount paid for information documents, thereafter filed a First Appeal on 16/01/2018 and the First Appellate Authority (FAA), vide an Order dated 13/04/2018 disposed the First Appeal with directions to the PIO to provide certified copies of the Service Book of the third party to the Appellant free of cost and also directed to refund excess amount, paid by the Appellant. ...2

3. The Appellant subsequently filed a Second Appeal before the Commission on 11/07/2018 and has prayed that fine may be imposed at the rate of 250 per day on the PIO and for disciplinary action, cost and other reliefs.
4. **HEARING:** This matter has come up before the Commission on three previous occasions and is thus taken up for final disposal. During the hearing the Appellant is absent. It is seen from the Roznama that the Appellant has remained absent right since the registration of the Second Appeal. However during the hearing held on 06/09/2018, the Appellant was represented by one Adv. K. Radhika.
5. At the hearing held today (17/01/2019) one Shri Sadanand D. Vaigankar resident of Arambol, Pernem Goa, appears before the Commission and submits that he has instructions from the Appellant to appear in the matter before the Commission and further submits that he is not an Advocate but the next friend of the Appellant and files a written statement dated 17/01/2018 confirming facts which is taken on record.
6. As per the RTI rules it is not necessary for the Appellant to remain present before the Commission which matter is decided purely on merits even in the absence of the appellant. It is therefore immaterial if Shri Sadanand D. Vaigankar is allowed to put forth his submissions before the Commission as representative of the appellant. The Respondent PIO, Shri Satyawan G. Bhivshet, Asst. Commissioner of Excise is present on his own behalf and on behalf of FAA.
7. **SUBMISSIONS:** At the outset the Representative for the Appellant submits that the Appellant has received all information, as sought for, in the RTI application including certified copies of the Service Book and also the refund, as per the directions of the First Appellate Authority in the Order dated 13/04/2018 and that the Second Appeal is filed for imposing fine @ of 250 per day and for disciplinary action, as information was delayed by more than 100 days.

8. The Respondent PIO submits that pursuant to the Order of the First Appellate Authority, all information was furnished to the Appellant timely, including service book records and the refund and therefore the question of any fine or disciplinary action does not arise. Per contra the Representative for the Appellant argues that the Commission has the power to impose penalty even in Second Appeal as per 19(8) and presses for a fine of Rs.250 per day.
9. **FINDINGS:** The Commission after hearing the respective parties and perusing the material on record at the outset finds that there is no delay in furnishing information by the PIO. The RTI application was dated 17/11/2017 and the PIO furnished information in tabulation form on 15/12/2017 within the mandated 30 days period. The Commission also finds that the PIO has complied with the directions mentioned in the Order dated 17/11/2017 of FAA in providing the service book records and refund of excess amount timely.
10. In view of the above, it is clear that no fault lies on the part of the PIO. Consequently, the Prayer of Appellant in terms of b) for fine @Rs. 250/- per day stand rejected. Also the Prayer in terms of c) for disciplinary action and d) cost of the appeal to be awarded are rejected.

**The Appeal is devoid of any merit and stands dismissed.**

11. **OBSERVATIONS:** Before parting, the Commission expresses serious concern that the First Appellate Authority has passed an Order directing the PIO to provide certified copies of the Service Book of the third party without even hearing and considering the objections of the 'Third Party'. Also it is seen that the procedure under section 11 has not been followed and which includes giving notice to the concerned officer.
12. There were objections filed by the 'third party' before the PIO perhaps due to the apprehension that the PIO may furnish personal information about him in the work place and as such the PIO had rightly denied furnishing the information at point No 3 (service book), it being exempt u/s 8(1)(j) and which was informed to the Appellant by enclosing copy of the objections of Shri Mahesh Korgaonkar, Excise Inspector. .4

13. The Commission further observes that the FAA in the present case is a senior IAS officer, holding the post as 'Commissioner of Excise' and being a quasi judicial authority should have applied his mind and decided the First Appeal as per 19(1) purely on merits as per the RTI act 2005. The FAA is duty bound to see that the justice is done.
14. The Service Book of an employee is essentially a matter between the employer and employee more so as it contains important records such as annual confidential report, family nomination, health status, disciplinary proceedings taken against the employee and other such information that is Personal in nature and every Government servant has a right to guard the same.
15. Unless larger public interest is shown, the furnishing of such records can cause prejudice and unwarranted invasion of privacy to the concerned government servant, besides the information can also be misused against the employee by unscrupulous elements using RTI as a cover.
16. The Commission is not inclined to accept the view that since the service book pertained to Mr. Mahesh Korgaonkar, holding the post of Excise Inspector, therefore larger public interest is involved and hence this can outdo the exemption provided under section 8(1)(j). If the FAA had felt that certain information contained in the service book was required to be furnished in larger public interest, then the FAA could have ordered the furnishing of such information by invoking Sec.10(1) of the RTI Act so as to sever all those portions that are exempt from disclosure u/s 8(1)(j) of the Act.
17. It appears that the FAA was carried away by the citation bearing no CIC/AD/A/2010/000014 DATED 03/02/2011 and some Central Information Commission orders dated 13/05/2013 which the Appellant provided at the second hearing and as such directed the PIO to furnish the service book.

**The Supreme Court in Girish Ramchandra Deshpande vs. Central Information Commissioner & Ors., (2013) 1 SCC 212 has held thus :**

*"12. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos....."*

*.....issued to the third respondent, show-cause notices and orders of censure/punishment, etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest.*

*On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.*

*13. The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information."*

**The Supreme Court in Civil Appeal 22 of 2009 Canara Bank Rep. by its Deputy Gen. Manager....Appellant(s) V/s C.S. Shyam & Anr. ...Respondent(s) and the Supreme Court in R.K. Jain vs. Union of India & Anr., (2013) 14 SCC 794 have also dealt with exemptions u/s 8(1)(j).**

18. The FAA is accordingly instructed to be more cautious in future while dealing with information that is 'Personal' in nature and which may cause invasion of privacy and also information falls under the ambit of exemptions under section 8 of the RTI act 2005, specially the exemption under section 8(1)(j) of the RTI act 2005.

**With these observations all proceedings in Appeal case stand closed.** Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the order be given free of cost.

Sd/-  
**(Juino De Souza)**  
**State Information Commissioner**