

GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

Shri Prashant S. P. Tendolkar,
State Chief Information Commissioner

Appeal No.277/2018/CIC

Shri Anil A. Gad,
Lab. Assistant,
Peter Alvares Memorial High,
School, Morjim Pednem –Goa.

... Appellant

V/s

- 1) The Public Information Officer,
Headmaster Shree Durga English,
High School Parsem,
Pednem-Goa.
- 2) The First Appellate Authority,
Authority by Director of Education,
North Education Zone,
Mapusa-Goa.

....Respondents.

Filed on: 15/11/2018

Disposed On: 24/07/2019

Appeal No.15/2019/CIC

Shri Anil A. Gad,
Lab Assistant,
Peter Alvares Memorial High School,
Morjim, Pedne Goa.

..... Appellant

V/s

- 1) The Public Information Officer,
Headmaster, Shree Durga English High School,
Parsem, Pernem - Goa
- 2) The First Appellate Authority,
O/o. Director of Education,
North Education Zone,
Mapusa – Goa.

....Respondents.

Filed On: 18/01/2019

Both Decided On: 24/07/2019

The above appeals involve common parties and identical facts. The defence in both the above appeal is also common

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and hence both the above appeals are disposed by this common order:

For the purpose of convenience, the above appeal no.277/2018/CIC is herein after referred to as THE FIRST APPEAL and appeal no.15/2019/CIC is hereinafter referred to as THE SECOND APPEAL.

1) FACTS

- a) The facts as are pleaded by appellant in **first appeal** are that [On 09/08/2018 by an application u/s 6(1) of The Right to Information Act 2005, (Act for short) to the Headmaster/Public Information officer, appellant sought certified copies of the appellant's earned leave application for the period from 06/06/1989 to 08/10/2003. Said application was received by PIO on 13/08/2018. The respondent No.1 vide letter dated 08/09/2018 informed the appellant that he searched the appellant's personal file in the records of the school but it is not found and that during enquiry it is leant that the appellant's personal file was sent to Peter Alvares Memorial High School, Morjem Pednem-Goa, hence unable to provide the copies of earned leave application.

The appellant filed the first appeal dated 01/10/2018 before the respondent no.2, Dy. Director of Education, North Zone, Mapusa being the First Appellate Authority (FAA). According to appellant respondent no.2, issued a notice dated 05/10/2018 where by the hearing of the said first appeal was fixed on 11/10/2018 at 4.30pm in the office of the North Education Zone, Mapusa but that the appellant

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received the notice on 12/10/2018 at 8.30 am as the Respondent No.2 sent the notice on wrong address at Shree Durga English High School, Parsem-Pednem, inspite of his clearly mentioning that the appellant works at Peter Alvares Memorial High School, Morjim Pednem. As the appellant received the notice late he could not remain present for the hearing held on 11/10/2018 before the respondent no.2 and without affording any opportunity the respondent no.2 disposed the first appeal.

The appellant has raised objection to the respondent no.2 making observation in the order that the appellant has not verified his service records in regular intervals which was his right and that he is claiming injustice which does not seem to have valid evidence and that there is no need to provide any such information which is not available with PIO.

- b) On notifying the respondents Adv A. Gosavi appeared on behalf of PIO. Though FAA i.e. respondent no.2 was represented initially, subsequently non appeared on his behalf. No reply is filed by the FAA.
- c) In the rely filed by PIO, his contention in brief is that the appellant was absorbed by Peter Alvares Memorial High School, Morjim, Pednem-Goa in the year 2003 and consequently all his personal records were duly transferred to the aforesaid school. The said fact of transfer is duly acknowledged by the said school and therefore there is no question of appellant now seeking any information regarding his earned leave or otherwise from respondent No.1. According to PIO the personal file of the appellant is with Peter Alvares Memorial High School, Morjim, Pednem - Goa, where appellant is presently working and all his

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records including earned leave records should be asked from the said school and not the respondent no.1.

According to PIO, as a matter of fact the earned leave application are kept in the personal file and there is no separate file maintained of earned leave applications and that the appellant Shri Anil A. Gad has personally collected his personal file to endorse the same in his school and hence respondent no.1 has reasons to believe that the earned leave applications may/could have been taken away by the appellant himself from his personal file at the time of submitting the personal file to the authority of Peter Alvares Memorial High School, Morjim, Pednem Goa.

- d) The facts as emerge in the **second appeal** are that by his letter, dated 27/09/2018 appellant sought from the respondent no.1 herein i.e. the PIO, the certified copies of muster roll for the period from 06/06/1989 till 08/10/2003 and the certified copies of appellant's earned leave sanction orders for the period from 06/06/1989 till 08/10/2003. Said application was not decided within time. After filing of the first appeal to FAA on 15/11/2018 for not deciding application in time, appellant received a letter from PIO which was dated 30/10/2018 under which information i.e. the certified copies of muster roll was offered on payment of fees. Regarding the information in respect of the earned leave sanction orders, it was informed that such orders are contained in the application itself and that there are no separate orders.

The FAA by order dated 26/11/2018 directed PIO to furnish the information at point (1) free of cost and fact the information at point (2) was stated to be not available. It is

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the appellant's case that inspite of order the PIO failed to furnish the information at point (1). Thus having not received the information at point (1) inspite of order of FAA and being not satisfied with contention PIO on point (1) regarding the sanction orders, the appellant has filed the second appeal u/s 19(3) of the act.

- e) In the course of hearing before this commission the PIO furnished to the appellant the information at point (1) as was sought in the second appeal which are the copies of muster roll. The same were received by appellant against payment. Considering this the information at point (1) stands furnished.

Regarding the information at point (2) which were the sanction orders of earned leave, it was the case of PIO that the same is contained on the earned leave applications itself. Said earned applications is the subject of the information in first appeal above, hence common hearing was conducted on both appeals with a view to access the availability and consequential dispensation of information.

- f) As it was the consistent stands of the PIO that the concerned earned leave applications, which also contained the sanction orders thereon, were sent to Peter Alvares Memorial High School, in exercise of the powers vested in this commission u/rule 5(vi) of The GSIC Appeal Procedure Rules 2006, the PIO was directed to file an affidavit in support of his such contention. Accordingly the PIO, Shri Subhash Uttam Parab on 04/04/2019 filed affidavit dated 14/03/2019 as also additional affidavit dated 07/05/2019, on 09/05/2019. As the said affidavits did not contain specific averments

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on the contentions as raised, he was directed to file additional affidavit. Accordingly the PIO filed additional affidavit on 09/05/2019.

Contention of PIO, Shri Subhash Uttam Parab that the personal file of the appellant was transferred to Peter Alvares Memorial High School the same also contained the earned leave application of the appellant. Further in the context of the present case the personal file which contains earned leave application of the appellant who came to be transferred to the Peter Alvares High School. He further stated that he has checked the personal files of the staff presently working in the school and in respect of all of them the earned leave application are kept in the personal file and that since all the earned leave applications of any staff are always kept in the personal file, when the personal file of the appellant was transferred to the Peter Alvares High School it also contained the earned leave application of the appellant. He further stated that he has checked the office records and found that personal file and/or the earned leave applications of the appellant are not available with the records.

- g) Thus as it was the case of PIO that the personal file of the appellant contained his earned leave applications with sanction orders and that the personal file of the appellant were transferred to Peter Alvares Memorial High School, in further exercise of the powers granted to this commission u/rule 5(i) of GSIC appeal procedure rules oral evidence in the form of affidavit was sought from the PIO of said Peter Alvares Memorial High School. Accordingly its PIO Shri Nazareth Fernandes filed his affidavit dated 07/07/2019. Vide his said affidavit it is his averment that at

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the time of transfer of the appellant to Peter Alvares Memorial School, the in charge head Master of Shri Durga High School, Shri S. R. Patil, vide letter dated 11/06/2014 submitted only two documents of the appellant viz (i) service book and (ii) adverse remarks of confidential report for the period of July 2002 to June 2003. He further stated that said institution has not received the personal file containing earned leave applications of appellant for the period 06/06/1989 till 08/10/2003 as stated by PIO of Shree Durga English School, Parsem Pernem Goa.

- h) Parties filed their written statements. I have considered the submissions of the parties. In short the information sought are copies of the appellant's earned leave applications and the sanctioned orders. According to PIO the sanction orders are contained on earned leave application itself and hence the information as required are the copies of earned leave applications itself. If such copies are furnished it would constitute the information in both the above appeals.

2) FINDINGS:

- a) On considering the rival contentions of the parties, Shri Durga English School i.e. the respondent authority herein contends that the relevant records are transferred to transferee school viz. Peter Alvares Memorial High School. The PIO of Peter Alvares Memorial School has Specifically stated that while transferring the records, the earned leave records are not sent. Unless the records are traced no information can be located. Any order passed by this

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commission to divulge information in the absence of records would be in fructuous. It is nobody's case that the records constitution the information never existed. What is disputed is the present existence of the records. Thus in the first instance it would be necessary to locate the relevant records.

- b) While dealing with a case involving similar facts, The Hon'ble High court of Delhi in the case of **Union of India V/s Vishwas Bhamburkar WP © 3660/2012 & CM 7664/2012 (stay)** by upholding the order passed by the Commission ordering inquiry has observed:

"7. This can hardly be disputed that if certain information is available with a public authority, that information must necessarily be shared with the applicant under the Act unless such information is exempted from disclosure under one or more provisions of the Act. It is not uncommon in the government departments to evade disclosure of the information taking the standard plea that the information sought by the applicant is not available. Ordinarily, the information which at some point of time or the other was available in the records of the government, should continue to be available with the concerned department unless it has been destroyed in accordance with the rules framed by that department for destruction of old record. Therefore, whenever an information is sought and it is not readily available, a thorough attempt needs to be made to search and locate the information wherever it may be available. It is only in a case where despite a thorough search and inquiry made

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by the responsible officer, it is concluded that the information sought by the applicant cannot be traced or was never available with the government or has been destroyed in accordance with the rules of the concerned department that the CPIO/PIO would be justified in expressing his inability to provide the desired information. Even in the case where it is found that the desired information though available in the record of the government at some point of time, cannot be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility for the loss of the record and take appropriate departmental action against the officers/ officials responsible for loss of the record. Unless such a course of action is adopted, it would be possible for any department/ office, to deny the information which otherwise is not exempted from disclosure, wherever the said department/ office finds it inconvenient to bring such information into public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to [Information Act](#).

8. Since the Commission has the power to direct disclosure of information provided, it is not exempted from such disclosure, it would also have the jurisdiction to direct an inquiry into the matter wherever it is claimed by the PIO/CPIO that the information sought by the applicant is not traceable/ readily traceable/ currently traceable. Even in a case where the PIO/CPIO takes a plea that the information sought by the applicant was never available with the

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government but, the Commission on the basis of the material available to it forms a prima facie opinion that the said information was in fact available with the government, it would be justified in directing an inquiry by a responsible officer of the department/ office concerned, to again look into the matter rather deeply and verify whether such an information was actually available in the records of the government at some point of time or not. After all, it is quite possible that the required information may be located if a thorough search is made in which event, it could be possible to supply it to the applicant. Fear of disciplinary action, against the person responsible for loss of the information, will also work as a deterrence against the willful suppression of the information, by vested interests. It would also be open to the Commission, to make an inquiry itself instead of directing an inquiry by the department/ office concerned. Whether in a particular case, an inquiry ought to be made by the Commission or by the officer of the department/ office concerned is a matter to be decided by the Commission in the facts and circumstances of each such case.(emphasis supplied)

9. -----”

- c) Regarding the nature and extent of inquiry which can be ordered by the commission, the Hon’ble High Court in same case at para (10) has held:

“10. For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed. The

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interim order dated 1.6.2012 stands vacated. In my view, the inquiry conducted by the petitioner in compliance of the order passed by the Commission on 17.4.2012 was not at all satisfactory. It is, therefore, directed that a thorough and meaningful inquiry in terms of the provisions of the directions of the Commission be carried out by an officer not below the rank of a Joint Secretary to the Government within eight weeks from today and a copy each of the said report shall be provided to the Commission as well as to the respondent before this Court.”

- d) In the present case it not the case of PIO that the earned leave records were never generated. It is his sole plea that the same were transferred to Peter Alvares Memorial School when the appellant was transferred. Said fact is disputed by the transferee school. Hence it is necessary to inquire into the missing of the said records and find out whether there is willful suppression of information. This will also necessitate the authority to fix the responsibility on the erring official and deal with such lapse as per his/her service conditions.
- e) I have perused the order passed by the FAA in the first appeal. On going through the same it is seen that said authority in spite of dealing the matter as the requirement under the act, has considered the same in his administrative capacity. The FAA has raised a blame on the appellant that he has not verified the leave records periodically. By doing so he has conveniently lost the sight as a seeker of information,

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under RTI Act the appellant was entitled to have the same, not withstanding the fact that he has not verified the same. Being a senior officer in the respondent authority he could have very well ordered for tracing the records which were stated to have been misplaced.

In the above circumstances I find that the order dated passed by FAA lacks propriety and apparently perverse. The same is therefore liable to be set aside.

- f) In the above facts and circumstances and the ratio laid down by the Hon'ble High Court of Delhi, in case of *Union of India v/s Vishwas Bhamburkar (supra)*, I find that a thorough and meaningful probe is required to be ordered to inquire into the loss/missing /misplacement of the concerned records from both the schools and thereafter fix the responsibility and initiate appropriate action against the culprit.
- g) Considering the fact that the records pertaining to the same information is missing/not available simultaneously from two public authorities i.e. Durga English School, Parsem, Pednem and Peter Alvares Memorail High School Morjim Goa, I find it appropriate to direct an inquiry through the controlling department i.e. the Directorate of Education, by an officer, not below the rank of Director of Education.
- h) In the backdrop of the above facts, both the above appeals stands disposed with the following:

O R D E R

The order, dated 11/10/2018 passed by the First Appellate Authority in First Appeal No. NEZ/ADM/RTI/FAA/65/201/4153, is set aside.

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The Director of Education, Govt. of Goa is hereby directed to conduct a thorough inquiry into the non availability/loss/misplacement of the earned leave records of appellant, Shri Anil Gad, from Durga English School Parsem, Pednem and Peter Alvares Memorial School Morjim Pednem.

The inquiry as above shall be conducted after notifying the appellant and PIO and all the parties interested, by permitting them to participate in inquiry and to produce evidence, if they wish so.

Inquiry shall be completed within a period of six weeks from the date of receipt of this order by the Director of Education and on conclusion of inquiry the copies of the report be submitted to the appellant and to this commission.

Both the above appeals stand disposed in the light of above directions. The rights of appellant to receive the information as sought, free of cost, if the records are traced at anytime later as also his rights to file complaint u/s 18 of the act, are kept open.

Notify parties.

A letter be issued to the Director of Education, alongwith a copy of this order, for further action.

Pronounced in open proceeding.

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(Prashant S. P. Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji -Goa