

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

Appeal No.73/2019/SIC-I

Shri Anil Faterpenkar,
Residing at S2,above Canara Bank,
Dolfern Classic, Segundo Bairro,
Santa Cruz, Goa-403005.

....Appellant

V/s

1) Siddesh S. Naik,
Section Officer(Medical)/
The Public Information Officer,
Public Health Department,
Secretariat, Porvorim, Goa.

2)Sunil Masurkar,
The Additional Secretary (Health)/
First Appellate Authority,
Secretariat, Porvorim, Goa.

.....Respondents

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

Filed on: 19/03/2019
Decided on:12/04/2019

ORDER

1. The brief facts which arises in the present appeal are that the Appellant Shri Anil Faterpenkar vide his application dated 17/12/2018 had sought information as listed at serial No. 1 to 3 therein with reference to the memorandum bearing No. 4-21-2002 –II/PHD/4124 dated 5/11/2018 pertaining to finalising the seniority of the Assistant lecturers in various specialities of Goa Medical College . The said information was sought from the PIO of the Department of Health, Porvorim, Goa in exercise of appellant's right under sub-section (1) of section 6 of Right To Information Act, 2005. The appellant had also enclosed the memorandum dated 5/11/2018 alongwith the annexure to his said application.
2. It is the contention of the appellant that he received a reply from Respondents no. 1 PIO herein on 2/1/2019 interms of section

7(1) of RTI Act there by requesting appellant to deposit an amount of Rs. 26/- towards the supply of information in respect of information at point No. 1 and 2 and with regards to point no. 3 it was informed to appellant that the service record of the officers referred therein are not available in their office records .

3. It is the contention of the appellant that he deposited an amount of Rs. 26/- towards the said information on 11/1/2019 and receipt to that effect have been issued to him.
4. It is the contention of the appellant that Respondent No. 1 PIO furnished him information however he was not satisfied with the information and hence he preferred first appeal on 1/02/2019 before Respondent no. 2 the Additional Secretary(Health) being first appellate authority interms of section 19(1) of the Right To Information Act, 2005.
5. It is the contention of the appellant that though the Respondent No. 2 First appellate authority heard the matter but failed to dispose the first appeal. It is his further contention that till date he did not received any communication nor information sought by him from the Respondent no. 1 PIO as such he is forced to approached this Commission on 19/3/2019 on the grounds raised in a memo of appeal.
6. In this back ground the appellant being aggrieved by the action of both the above respondents, has approached this commission with a prayer for directions to Respondent No. 1 PIO for furnishing correct and specific information requested by him and for refund of Rs. 26/- paid by him as fees.
7. In pursuant of notice of this commission, appellant appeared in person. Respondent No.1 PIO Shri Siddesh Naik was present and Respondent No. 2 first appellate authority was represented by Smt. Sushma Dabolkar.

8. Reply filed by both the respondents on 8/4/2019 respectively alongwith the enclosures. The respondent No. 1 PIO also filed additional reply on 12/4/2019 alongwith enclosure.
9. The appellant during the hearing on 8/4/2019 expressed his grievance with respect to information furnished to him at point no. 1. It is his contention that the seniority list is not drawn correctly and one of the employee has been placed above one of the eligible candidates in seniority. He further contended that respondent No.1 did not adhere to the provisions of RTI Act and acted contrary and failed to provide him information as sought by him and rather provided him misleading information which at all not requested by him.
10. The PIO contended that as per the provision of RTI Act, 2005 he is supposed to supply the information which already exist and is held by public authority or held under the control of public authority. It was further contended that with reference to point no. 1 and 2 he had supplied the copies of notifications no. OSD/RRVS/43/66 dated 21/02/1969, No. 2/33/76-PER dated 05/01/1987, No. 71/51/79-PHD dated 20/04/1981 and No.7/10/94-II/PHD/ part dated 16/07/1998 available in the office records to the appellant since it contains the guidelines/ information pertaining to seniority. It was further contended that the information sought at point no. 3 i.e the service records since not available in the office records the same could not be furnished to the appellant. It was further contended that the first appellate authority heard the arguments of both the parties on 22/3/2019 and then fixed the matter for order on 29/3/2019 however without waiting for disposal of first appeal the appellant preferred the second appeal before this commission. The respondent PIO also disputed and denied the allegation levelled by the appellant in this memo of appeal. It was further contended that Respondent No. 2 first appellate authority by an

order dated 29/3/2019 disposed the first appeal thereby directing him to reconsider and re-examine the application dated 17/12/2018 filed by the appellant and to dispose it accordingly as per law within 15 days. It was further contended that in pursuance to the said order, the respondent PIO vide letter dated 10/4/2019 had informed appellant that information sought by him vide point no. 1 does not fall within preview of RTI, Act 2005 and hence cannot be furnished.

- 11 The Respondent No. 2 first appellate authority vide reply dated 8/4/2019 contended that he has discharged in official capacity and impleading him in the present appeal in his individual name is unwarranted. It was further contended that the appeal memo was received in his office only on 18/2/2019 and he had heard both the parties and when the matter was pending for final disposal, the appellant preferred the second appeal and as such the appellant has approached this commission with unlearned hand thereby misleading the commission. It was further contended that the appellant has filed this appeal before this commission without waiting for the period as specified in section 19(6) of the Act and therefore this appeal is premature and liable to be dismissed in limine.
- 12 I have scrutinized the records available in the file so also considered the submissions made by both the parties.
- 13 The appellant herein has not raised any grievance with respect to information furnished to him at point no. 2 and 3 but his grievance is specifically in respect of the information provided to him at point no. 1. Hence I will restrict myself to the findings only at point No. 1.
- 14 On perusal of the documents, it is seen that the appellant vide his application dated 17/12/2018 had referred the memorandum No.4-21-2002-II/PHD /4124 dated 5/11/2018 issued by Under Secretary Health and at point No. 1 had requested for furnishing him information as under;

(1) What is the purpose of the above referred Seniority List ,whether it is for promotion of Assistant Lecturers in GMC to higher grade/Cadre If it is so, then;

- i. Whether length of the continuous service in the present cadre/grade of the officers has been taken into consideration for preparation of the list?
- ii. Whether extra ordinary leave, other than on the medical ground/seeking higher studies has been included as the length of the continuous service of the officers?

15 In the contest of the nature of information that can be sought from PIO the Hon'ble Supreme Court in case of in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya wherein it has been 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 .”**

16 Yet in another decision Hon'ble High Court of Bombay at Goa in the case of **Dr. Celsa Pinto V/s. The Goa State Information Commission and another, reported in 2008(110)Bombay L.R.1238 at relevant para 8 has held**

“The definition of information cannot include within its fold answers to the question why which would be same thing as asking a reason for a Justification for a particular thing, The Public information authorities cannot be expected to communicate to the citizens the reasons why a certain thing

was done or not done in the sense of justification because the citizen makes a requisition about information. Justifications are matters within the domain of adjudicating authorities and cannot properly be classified as information”.

17. 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 of 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 has passed an order”.

18. The Hon’ble High Court of Delhi in writ petition No. 5957/2007 Kusum Devi V/s Central Information Commission & others has held that at para 5;

“ Most of the questions asked by the petitioner are argumentative, presumptuous or asking for opinion and cannot be categorized as “information”. The petitioner certainly has right to ask for “information” with regards to complaint made by him, action taken and the decision taken thereafter, but not ask for opinion or presumptive question.”

19. Hence according to the above judgment, The PIO is duty bound to furnish the information as available and as exist in the office records. The appellant vide his application dated 17/12/2018 at point No. 1 (i) & (ii) is trying to seek the explanation and the reasons, why and whether certain things was done or not done or whether certain things were considered at the time of preparing seniority list or required to be done in the sense of justification.

20. By subscribing to the ratio laid down by the above courts, I hold that the Information as sought by appellant at point no. 1 (i)

&(ii) does not come within the purview of definition of "information" as such the same cannot be ordered to be furnished.

21. PIO during argument submitted that file bearing No. 4-21-2002-II/PHD pertains to same subject matter, is available in the office record and if the appellant files fresh application for inspection the same can be shown to appellant. The right of the appellant to inspect and seek information from the said file if he so desires, is kept open.
22. As discussed above, I find no merits in the appeal and hence the relief sought by the appellant cannot be granted. 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