

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

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Appeal No.12/2019/SIC-I

Shri Kashinath Shetye,  
102,Raj Excellency, Ribandar,  
Tiswadi-Goa.

...Appellant

V/s

1. The Public Information Officer,  
Mr. Ajit K.Kamat,  
Directorate of Fire and Emergency Services ,  
St.Inez , Panaji Goa.
2. First Appellate Authority,  
Ashok Menon,  
Director, of Fire and Emergency Services ,  
St.Inez , Panaji Goa.

.....Respondents

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

Filed on:15/01/2019

Decided on: 08/07/2019

**ORDER**

1. By this appeal the Appellant assails the order dated 26/09/2018 passed by the Respondent No. 2 Director of Fire and Emergency Services , Goa and First Appellate Authority (FAA), in first appeal No. 01/2018, filed by the Appellant herein.
2. The brief facts which arises in the present appeal are that the Appellant Shri Kashinath Shetye vide his application dated 30/07/2018 had sought information as listed at serial No. 1 to 10 therein. The said information was sought from the PIO of the office of Directorate of Fire and Emergency Services , Panajim-Goa in exercise of appellant's right under sub-section (1) of section 6 of Right To Information Act, 2005.
3. It is the contention of the appellant that the information at point No. 5 and 6 was denied to him by the Respondent No. 1 PIO on

the ground that the same is not available with the Department as such he being aggrieved by such a response of Respondent no.1, filed first appeal on 20/8/2018 before the Directorate of Fire and Emergency Services , Panajim-Goa being first appellate authority who is the Respondent no.2 herein interms of section 19(1) of the Right To Information Act, 2005.

4. It is the contention of the appellant that the Respondent No. 2 First appellate authority did not issue him any notice and without hearing him dismissed his first appeal by order dated 26/09/2018 upholding the say of PIO. No any further relief was granted to the appellant by the First appellate authority.
5. Being aggrieved by the order dated 26/9/2018 passed by Respondent No. 2 first appellate authority and reasoning given by Respondent No.2 first appellate authority, the Appellant approached this Commission on 14/1/2019 on the ground raised the memo of appeal thereby contending that the information at point no. 5 and 6 still not provided to him by Respondent PIO.
6. In this back ground the appellant has approached this commission with a prayer for directions to Respondent No.1 PIO for furnishing him correct and complete information free of cost , invoking penal provisions and seeking compensation for the harassmt and detriment caused to him.
7. In pursuant of notice of this commission, Appellant appeared along with Dr. Ketan Govekar. Respondent No.1 PIO Shri Ajit Kamat and PIO Shri P.T.Murgaonker were present. Respondent No. 2 First Appellate Authority was represented by Advocate Shri Kishore Bhagat .
8. An application was also filed by the appellant on 8/2/2019 thereby contending that gross violation of principle of natural

justice of not giving hearing to any appellants have been done by Respondent no. 2 first appellate authority, and sought relief of taking action and fine as per RTI Act against Respondent No. 2 first appellate authority. The copy of the said application was furnished to both the Respondents.

9. During the hearing on 25/03/2019, the copy of the information along with the enclosures were furnished to the appellant by Respondent No. 1 PIO Shri A.K.Kamat vide forwarding letter dated 23/03/2019. The appellant on verification of the information submitted that he is satisfied with the information furnished to him at point no. 6. However raised his grievance with regards to point no. 5 on the ground that PIO has only provided him information from the year 2015-2019 and the information pertaining to years 2000 to 2014 have not been furnished to him.
10. Reply filed by Respondent No.1 PIO Shri Ajit Kamat on 04/04/2019 along with the enclosures. Affidavit also filed by the Shri Ajit K Kamat, PIO of technical section on 12/4/2019 and on 22/04/2019 there by contending that he has furnished the information to the appellant which was supplied by the office superintendent of administrative section, by the Accountant of Account section of Fire and emergency services, Panaji and by the Managing Director of Sea Scan Maritime foundation, Goa.
11. Shri P. T. Mulgaokar PIO of Administrative Section also filed his affidavit on 31/05/2019. Vide his affidavit he contended that he has sort the assistance of the Assistant Accounts officer of Directorate of fire and emergency services, of Managing Director of Sea Scan Maritime services, Home Department, station fire officer (Store section) and then after collecting it had submitted the information to Shri Ajit Kamat on 22/02/2019 pertaining to the years 2015 to 2018. He further contended that information at serial no. 5 for the year 2000 to 2015 is not available in Establishment / Accounts section of their Department.

12. Both the respondents submitted to consider their replies as their arguments. The appellant was directed to file written synopsis if any within 8 days. No any written synopsis came to be filed by the appellant.
13. I have scrutinized the records available in the file so also considered the submission of parties.
14. Vide memo of appeal the appellant contended that the training courses on fire Department ground is affiliated to Director General of Shipping are totally private business . It was further contended apart from the fire fighting training STCW courses are conducted and the applicable fees for the same are never collected from Sea Scan maritime foundation Pvt. Ltd by Government of Goa for using the government premises for their business. It was further contended as per the agreement with Sea Scan maritime foundation, number of trainees records must be maintained as the fees charged are not lumpsum but for the batch of 30 students and if more trainees are trained in particular month then more fees are required to be collected from the Sea Scan Maritime foundation. It was further contended that for the decades the said fees are not collected by the public authority concerned herein. It was further contended that around 150 students are trained on month on average in this premises and the government are loosing revenue on 120 student's fees /dues to government from Sea Scan maritime foundation . It was further contended that he had sought the said information in the larger public interest and that the respondent no.2 first appellate authority i.e, Director of Fire and Emergency Services in order to save sea scan maritime services/sea scan maritime foundation and to suppress corruption has given findings that "*since the information at 5 and 6 is not in the position of state information officer hence furnishing of the same by way of appellate decision does not arise*".

15. Both the respondents namely Shri Ajit Kamat and Shri P T Mulgaokar have submitted and affirmed on oath that they are unable to provide the information at point no. 5 pertaining to years 2000 to 2015 since not available in their office records.
16. 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.** 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”.

17. 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”.

18. Hence according to the above judgments of the Apex court, the PIO is duty bound to furnish the information **as available and as exist in the office records**. Both the PIOs has clearly stated and affirmed that information at point no. 5 pertaining to year 2000 to 2014 is not available in their office and hence the information which is not in existence/not available in the records of the office, cannot be ordered to be furnished.
19. In view of the application filed by the appellant on 8/2/2019 this Commission felt is necessary to examine the records of the First Appellate Authority which accordingly were called and the Xerox copy of the same i.e appeal 1 of 2018 were produced on record by the Respondent No.2FAA along with his reply dated 25/3/2019.
20. On perusal of the order passed by First Appellate Authority and also of the records of proceedings of First Appellate Authority, this commission found that nowhere there is a reference of issuing notices to the appellant. From the order and from the noting page No.12/N it could be gathered that said order was passed by respondent no.2 only after he examined the records and reply filed by the PIO. The contention of the appellant that he was not heard in the first appeal have not been categorily disputed and rebutted by the Respondent No.2 First appellate authority and hence, I find some truth in the contention of the appellant that there is gross violation of principle of natural justice.
21. It needs to mention that in every judicial proceedings, the principle of natural justice demands that both the parties should be heard. Non hearing of the appellant in the first appeal has

resulted into mischarge of justice there by depriving the opportunity to the appellant of substantiating his case.

22. Considering the above facts, and records pertaining to first appeal I find that the respondent no.2 First Appellate Authority has committed a serious irregularity of not notifying the appellant to substantiate his grievance. Thus, I find that the respondent no. 2 First Appellate Authority, has acted in total casual and mechanical manner. There is a gross violation of principal of natural justice. Such an conduct on the part of Respondent No. 2 first appellate authority who is Quashi Judicial authority was least expected. Hence the respondent no. 2 First Appellate Authority is here by admonished and he is hereby directed hence forth to follow the principal of natural justice and to dispose the matters in accordance with law after affording opportunities to both the parties. Any such lapses and irregularities found in future on the part of the respondent no.2 First Appellate Authority shall be viewed seriously.

With the above directions the 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