

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

CORAM: Shri Juino De Souza: State Information Commissioner

**Penalty case No. 13/2019 in
Appeal No.169/SIC/2013**

Mr. Gabriel Joseph Fernandes,
H. No. 132, Umттavaddo,
Calangute, Bardez – Goa.

.... Appellant

v/s

Public Information Officer,
Secretary,
Village Panchayat Calangute,
Calangute, Bardez – Goa.

....Respondents

Relevant emerging dates:

Date of Hearing : 15-07-2019

Date of Decision : 15-07-2019

O R D E R

1. **Brief facts of the case** are that this Commission had vide an order dated 28/02/2019 in the above matter had directed to issue notice to the Respondent former PIO, to show cause u/s 20(1) of the RTI act 2005 as to why penal action should not be taken against the Respondent PIO for causing delay in furnishing information and the explanation, if any should reach the Commission on or before 03/04/2019 at 11.30 a.m.
2. **HEARING:** Pursuant to the notice issued, the former PIO Shri. Kishor Pagi, presently posted as Secretary, Village Panchayat Socorro, Porvorim, appears before the Commission and tenders his explanation.
3. **SUBMISSIONS:** Shri. Kishor Pagi submits that after receipt of the RTI application dated 11/07/2013, he had made a diligent search for the said information in the records, however the same were not traceable and as such the information could not be furnished and this fact was orally informed to the RTI applicant when he was present in the office of the PIO.

4. It is also explained that after the Order of the First appellate authority (FAA) dated 18/09/2013, he had once again made a diligent search for the missing records and the same were still not traceable. Shri. Kishor Pagi submits that there is no malafide intention on his part to intentionally deny or delay the information. It is stated that he was thereafter transferred.
5. Shri. Kishor Pagi, tenders an unconditional apology for not furnishing a reply to the Appellant as was required u/s 7(1) of the RTI act 2005 in a time bound manner and assures that the same will not be repeated in future. He requests the Commission to take a lenient view and condone the delay and close the penalty proceedings. The former PIO files a written explanation dated 15/07/2019 along with a letter of apology which is taken on record.
6. **FINDINGS:** The Commission after hearing the submissions of the former PIO and on going through the material on record finds that the RTI application was dated 11/07/2013 and that no reply was sent to the Appellant as was required u/s 7(1) of the RTI act 2005. However the former PIO has explained that the information was not traceable and the Appellant was orally informed about the same when he visited the office of the PIO and thus finds that the PIO has acted in good faith and is therefore entitled to protection as per section 21 of the RTI act 2005. The Commission accordingly finds that the delay caused was purely unintentional and inadvertent and as there is no malafide intention on the part of the PIO to cause any deliberate delay.

The High Court of Bombay at Goa, Panaji writ Petition No.704 of 2012 has held in para 6 " the question, in such a situation, is really not about the quantum of penalty imposed, but imposition of such a penalty is a blot upon the career of the Officer, at least to some extent. In any case, the information was ultimately furnished, though after some marginal delay. In the facts and circumstances of the present case, the explanation for the marginal delay is required to be accepted and in fact, has been accepted by the learned Chief Information Commissioner. In such circumstances, therefore, no penalty ought to have been imposed upon the PIO".

The High Court of Punjab and Haryana at Chandigarh civil writ petition No.6504 of 2009 has held that the penalty provisions under Section 20 is only to sensitize the public authorities that they should act with all due alacrity and not hold up information which a person seeks to obtain. It is not that every delay that should be visited with penalty. If there is a delay and it is explained, the question will only revolve on whether the explanation is acceptable or not.

High Court of Delhi in the decision of Col. Rajendra Singh v. Central Information Commission and Anr. WP (C) 5469 of 2008 dated 20.03.2009 had held as under: "Section 20, no doubt empowers the CIC to take penal action and direct payment of such compensation or penalty as is warranted. Yet the Commission has to be satisfied that the delay occurred was without reasonable cause or the request was denied mala fide. The preceding discussion shows that at least in the opinion of this Court, there are no allegations to establish that the information was withheld mala fide or unduly delayed so as to lead to an inference that petitioner was responsible for unreasonably withholding it."

7. **DECISION:** The Commission accordingly accepts the explanation tendered by the former PIO and in view of the unconditional apology tendered takes a lenient view and condones the delay and also exonerates the former PIO from levy of any penalty. The Commission however warns the former PIO who is still in government service to be diligent and cautious in future while dealing with RTI applications so as to ensure disposal of the same in a time bound manner strictly as per the provisions of the RTI Act strictly.

With these observations, the penalty proceedings in above case accordingly stand closed.

Pronounced at the conclusion of the hearing. Notify the party concerned.
Authenticated copies of the order be given free of cost.

Sd/-
(Juino De Souza)
State Information Commissioner