

# **GOA STATE INFORMATION COMMISSION**

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

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

**Penalty case No.34/2018 in  
Complaint No. 25/2017**

Mr. Joseph S. R De Souza,  
R/o Nagoa, Bardez, Goa

**.....Complainant**

**v/s**

**1.**The former Public Information Officer,  
Shri Ramchandra Morajkar,  
Chief Account Officer,  
Goa Housing Board,  
Porvorim-Goa.

**.....Respondent**

## **Relevant emerging dates:**

Date of Hearing : 16-01-2019

Date of Decision : 16-01-2019

## **O R D E R**

1. Brief facts of the case are that this Commission had vide order dated 21/06/2018 in the above matter directed to issue notice to the Respondent 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 the information and the explanation, if any should reach the Commission on 18/08/2018 at 11.30am.
2. Pursuant to the notice issued, the matter was listed on board on several previous occasions and is taken up for final disposal. During the hearing the PIO, Shri. Ramchandra Morajkar appears before the Commission and tenders his explanation. He submits that he was promoted on 01/01/2016 as Dy Director of Accounts and posted to Goa Housing Board and also continued on the lower post of AAO (GSCST).
3. It is submitted that due to promotion, he could not manage to do justice to all three offices, AAO (GASST), HOO (S&T) and Chief Accounts Officer (Goa Housing Board) and had requested the Director of Accounts to relieve him from the additional charge of AAO(GSCST). It is further submitted that after receiving... ..2

... the RTI application, he had circulated an official note to the concerned officials to furnish the RTI details and was on short leave from 05/05/2017 till 08/05/2017 and was also holding charge as Head of Office (HOD) in the Department of Science & Technology and his work responsibilities increased manifold and as such had requested the Member Secretary to appoint another in house PIO.

4. The PIO also submitted that due to non cooperation of subordinate officials and also the FAA, the information being scientific could not be furnished even after the First Appeal was filed on 12/06/2017 as the FAA neglected to pass any orders within 30 days and that he as the PIO had no intentions of hiding, delaying or destroying any information.
5. The PIO finally submitted that he has retired on superannuation from Government service on 31/10/2018 and as such his only sustenance is pension which itself is not sufficient to meet his expenses and that he is unable to pay any penalty. The PIO files a detailed reply dated 16/01/2019 along with Pension order no: Goa-A/25036 dated 02/11/2018 and has prayed to grant him pardon and set aside any penalty. The said reply along with enclosure is taken on record.
6. The point for determination before the commission in the above matter is whether Penalty u/s 20(1) can be imposed on a retired PIO and if yes whether and how the same can be enforced?
7. It is a fact that the said PIO has retired from government service on 31/10/2018 and which fact is confirmed by the pension order No. Goa-A/25036 dated 02/11/2018. Therefore when a PIO is no longer in government service and has since stopped drawing remuneration it is not possible for the Commission to either initiate any disciplinary action nor order any deduction from his salary besides the monthly pension received by him during his retirement cannot be touched or attached for the purpose of imposing penalty.

8. Therefore penalty proceedings are not enforceable on a retired government officer as he is not on the pay rolls of the government and his only sustenance which is pension cannot be touched for recovery or realization of money in any proceedings.
9. Several Judgments of the Hon'ble Supreme Court in Gorakhpur University & others V/s Dr Shilpa Prasad Nagendra in appeal (civil) 1874 of 1999, Union of India vs. Radha Kissan Agarwalla AIR 1969 SC 762, Union of India vs. Jyoti Chit Fund and Finance & others AIR 1976 SC 1163 and Union of India and another vs. Wing Commander R.R. Hingorani (Retd.) AIR 1987 SC 808 have in its decisions held that pension cannot be attached.
10. Further as per Circular No. F.7(28)E .V/53 dated August 25, 1985 issued by the Government of India, Ministry of Finance to the effect: "When a pensioner refuses to pay Government dues--The failure or refusal of a pensioner to pay any amount owed by him to Government cannot be said to be 'misconduct' within the meaning of Article 351 of the C.S.R. (Rule 8, C.C.S. (Pension) Rules, 1972). Also as per provisions of section 60(1)(g) of CPC, the pension payable to pensioners are not liable for attachment in any proceeding. Section 11 of The Pension act 1871 exempts pension from attachment.
11. In view of the above discussions it is clear that the pension amount received by a retiree on account of his past services cannot be attached in execution of any decree or order for realization of money, the Commission therefore comes to the conclusion that it is not possible to enforce any order of penalty under section 20(1) on a retired PIO.

**The proceedings in Penalty case are accordingly 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**