

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

Appeal No. 99/2020/SIC-I

Mr. Tukaram Appa Patil
R/o. Solasia Society, F-4/102,
Baif Road, Behind Moze College of Engineering,
Wagholi, Pune-412207 (M.H.).

.....Appellant

V/s

- 1) State Public Information Officer,
O/o the Principal,
Government Polytechnic,
Altinho, Panaji Goa.403001
- 2) The Principal,
Government Polytechnic,
Altinho, Panaji Goa.403001.

.....Respondents

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

Filed on: 29/06/2019
Decided on:19/08/2020

ORDER

- 1) By this Appeal the Appellant assails the order dated 20/03/2020, passed by the First Appellate Authority in the First Appeal, filed by the Appellant herein.
- 2) The facts in brief which arises under the present Appeal are there the Appellant Shri. Tukaram Appa Patil, by his application dated 24/09/2019 sought information from the Public Information Officer, Office of the Director of Technical Education, Porvorim-Goa. The said information was sought by the Appellant in exercise of his Right under sub section (3) of section (6) of the Right to Information Act, 2005.
- 3) As per the said application the Appellant has sought for the certified copy of the current status of letter bearing no.P2/G/0107190114 dated 1/07/2019 received from under Secretary, Presidents Secretariat, Rastrapati Bhavan, New Delhi-04, regarding erroneously Promotion and excess pension fixation to Shri Shivdas G. Ekawade, Ex. Store officer, Government Polytechnic, Panaji Goa.

- 4) Pertaining to the said application the Second Appeal was filed before this Commission against the Public Information Officer of the Director of Technical Education, Porvorim - Goa which was register as Appeal No.347/2019/SIC-I and this Commission after considering the submission of the parties came to be prima-facie findings that the representation submitted by the Appellant Shri A. Patil dated 22/06/2019 forwarded to the Office of President of India was sent and marked to the Principal of Government Polytechnic and since the Principal of Government Polytechnic was seized with the matter, this Commission vide order dated 21/01/2020 directed the Public Information Officer, Office of the Director Technical Education, Porvorim, Bardez - Goa to transfer the RTI Application dated 24/09/2019 filed by the Appellant herein to the PIO of Government Polytechnic at Altinho, Panaji within 5 days interms of section 6(3) of the RTI Act.
- 5) The said RTI application dated 24/09/2019 was responded by Respondent No. 1 PIO herein and as the Appellant was not satisfied with the said reply and with the information, filed First Appeal on 14/02/2020 in terms of section 19(1) with the Principal, of Government Polytechnic Panaji-Goa being First Appellate Authority and the Respondent No.2 First Appellate Authority by considering the reply of PIO and the enclosures disposed his first appeal by an order dated 20/03/2020 by coming to the findings that the letter dated 04/03/2020 of the Principal, Government Polytechnic Panaji, the action taken on the application before the President of India is duly issued.
- 6) Being aggrieved by the action of both the Respondents, the Appellant approached this Commission on 29/06/2020 in this Second Appeal u/s 19(3) of the RTI Act on the grounds raised in the memo of Appeal with the contention that information is still not provided and seeking the order from this Commission for setting aside the order of Respondent No.2 First Appellate Authority.

- 7) The matter was taken on board and was listed for hearings in pursuant to the notice of this Commission. Appellant opted to remain absent. The Respondent No.1 PIO Shri Allvin Facho and Respondent No.2 Shri. Luis Fernandes were present.
- 8) Reply filed by Respondent No.1 PIO on 30/07/2020 along with enclosures. The copy of the same could not be furnished to the Appellant on account of his absence, however the Respondent No.1 PIO undertook to serve the said copy by Email to the Appellant herein. Appellant also submitted his arguments by Email on 20/07/2020 in the registry of this Commission which was inwards under Entry No.110 which were furnished to the Respondents.
- 9) Written arguments of the Appellant were also received by Email on 03/08/2020 which was inwards vide Entry No. 124 dated 03/08/2020, the same were furnished to the Respondents herein.
- 10) According to the Appellant his petition to his Excellency, The President of India was forwarded to the Principal, of Government Polytechnic, Panaji - Goa to take corrective action mentioned in the Office Memorandum No.8/7/2008-FIN(R&C) dated 18/02/2014 wherein the Government of Goa adopted office memorandum F.NO18/26/2011-ESTT(pay-I) dated 06/02/2014 issued by G.O.I., Ministry of Personal, PG and Pension Department of Personnel and Training New Delhi with a caption "***recovery of full/excess payment made to Governments servants***".
- 11) It was further contended that the erroneous promotion and excess pension was given to Shri S. G. Ekawade which has caused great loss to Public Exchequer and against Public interest. It was further contended that he had sought information in good faith and in public interest as documents are generated from public office.
- 12) The Appellant submitted that closing his case of petition dated 22/06/2019 and 14/11/2019 before his Excellency The President of India Delhi, is absolutely against the Public interest and decision on

the petition i.e. closing of the case and the reasons mentioned in the letters dated 04/03/2020 are not in rule in force and absolutely misuse of powers given to the Principal, as head of the Department under rule 2(g) of the Goa Delegations of Financial Power, Rules 2008.

13) It was further contended that the Respondent No.1 has provided misleading information vide Principal office Letter No.GPP/EST/A/TAP/20203246 dated 31/03/2020.

14) On the other hand the Respondent No.1 PIO submitted that relief sought by the Appellant is not maintainable since the RTI Act envisages free flow of information and no action on a particular case can be pursued under the Right to Information Act. It was further contended that the Principal, GPP has already given the brief summary of the case and has informed that case is closed for the reasons recorded in the Principal's Letter. It was further contended that the Appellant is trying to misuse the provision of the RTI Act to get action taken on Shri. G. Ekawade and the RTI Act cannot be used to settle personal scores. It was further contended that the available information duly furnished in this case and there is no further information available in the records in the above subject matters.

15) I have scrutinized the records available in the file and also made the submission by both the parties.

16) In the contest of the nature of information that can be sought from PIO the Hon'ble Supreme Court 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. A public authority is also not required to furnish information which required drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice 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) Yet in another decision reported in AIR 2012 Pat 60; letters appeal no 1270 of 2009 in civil writ jurisdiction case 11913/2009; Shekarchandra Verma vs State Information Commissioner Bihar has held

"in our view, the RTI Act contemplates furnishing of information which is available on record, but it does not go so far as to require an authority to first carry

out an inquiry and collect, collate information and then to make it available to applicant.”

Hence according to above judgment of the Apex court, the PIO is duty bound to furnish the information **as available and as exist in the office records.**

- 19) On perusal of the records it is seen that the Appellant intends to know the status of his petition to HIS EXCELLENCY, The President of India, New Delhi which was transferred to the Principal of Government Polytechnic Panaji. In response to said application a letter dated 04/03/2020 addressed to Public Information Officer by the Principal of Government Polytechnic, Panaji and note dated 31/01/2020 of Shri L. R. Fernandes was furnished to the Appellant herein. On perusal of the letter 04/03/2020 of the Principal of Government Polytechnic, it could be gathered that the of Principal of Government Polytechnic has submitted that, the case being old and the pension of both the parties also settled, it is inappropriate to open up the issue after 5 years of retirement of Shri. Shivdas Ekawade and hence he was unable to further process the petition submitted to the President of India and the case is closed.
- 20) The Respondent PIO in his reply also submitted the representation made by the Appellant is examined by the Principal and the case is closed for the reasons as recorded in the Principal's letter.
- 21) The PIO is supposed to furnished the information as available and exist in Public Authority concerned herein. In my considered opinion the Respondent PIO have provided information and given the status of representation submitted to the President of India by the Appellant "*as closed*" and the said facts has been also supported by the documentary evidence i.e. letter dated 04/03/2020 and note dated 31/01/2020.

- 22) By subscribing to the ration laid down by the above Hon'ble Courts, I find that the Respondent PIO has done his obligation by providing the information which is recorded and stored.
- 23) It appears that the Appellant is having grievance of closure of the case of his petition dated 26/02/2019 and 14/11/2019 by the Principal of Government Polytechnic which was submitted before HIS EXCELLENCY The President of India at New Delhi and the reasons mentioned therein by the Principal of Government Polytechnic. According to the Appellant that the same was not done according to the rules in force and there was absolutely misuse of powers given to the Principal, as head of the Department under rule 2(g) of the Goa Delegation Financial Powers Rules 2008.
- 24) The above grievance cannot be dealt by this Commission as this Commission has got no Jurisdictions and Powers to decide the same. The Appellant may if so desires can approach the appropriate forum to redress the same.

Appeal proceedings stands closed.

Notify the parties.

Pronounced in the open court.

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.

Sd/-
(Ms.Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission
Panaji-Goa

