

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

Appeal No. 19/2020/SIC-I

Shri Rupesh Madhukar Gadkar,
r/o House No. 11, Co. No. 11,
Vaddem, Sanguem-Goa.

....Appellant

V/s

1)The Public Information Officer (PIO),
Admin branch,
DGP Office, PHQ,Panaji-Goa.

2)The Public Information officer ,
Office Superintendent,
Administrative branch, PHQ,
Panaji-Goa .

.....Respondents

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

Filed on: 21/01/2020
Decided on: 20/3/2020

ORDER

1. Brief facts of the present proceedings as put forth by the Appellant Shri Rupesh Gadkar are as under:-

(a) In exercise of right under section 6(1) of Right to Information Act, 2005 the Appellant filed application on 30/09/2019 seeking certain information from the Respondent No.1 Public Information Officer of the Administration Branch of DIGs office, PHQ, Panajim-Goa on 5 points as stated therein in the said application mainly pertaining to the examination held for the selection of the Police Sub-Inspector in pursuant to the advertisement published in the news paper "Tarun Bharat "dated 24/8/2012 for the post of police sub-inspector in Goa Police Department .

(b) It is the contention of the Appellant that his above application filed in terms of sub section (1) of section 6 was responded by the Respondent No.1 PIO on 25/10/2019 under sub-section (1) of Section 7 of RTI Act, rejecting the information, as such the Appellant filed 1st appeal on 22/11/2019 before the Superintendent of Police interms of section 19(1)of RTI Act being First Appellate Authority who disposed the said appeal on 24/12/2019 by upholding the say of the PIO .

(c) It is contention of the Appellant that he being aggrieved by the action of both the Respondents and as no information was provided to him at point no. 3 (a) of his RTI application dated 30/9/2019 he is forced to approach this commission.

2. In this background the present appeal came to be filed before this commission on 21/1/2020 as contemplated u/s 19(3) of RTI Act on the grounds raised in the memo of appeal with a contention that the complete information has not been provided to him there by seeking relief of directions to PIO to furnish the information as sought by him at point no.3(a)of his application dated 30/09/2019 .
3. Notices were issued to both the parties. In pursuant to notice of this Commission, Appellant was present in person. Respondent PIO Shri John Nazareth was present .
4. Reply was filed by Respondent on 14/2/2020 and on 26/2/2020 thereby resisting the appeal. Copy of both the replies were furnished to the Appellant. Appellant also filed application on 9/3/2020 to amend the cause title and to delete the name of Respondent no. 1PIO
5. Arguments were advanced by both the parties.

6. It is the contention of the Appellant that in response to the Advertisement published in the news paper Tarun Bharat for the post of Police Sub-Inspector in Goa Police department he had applied under category of Scheduled Cast and also appeared for written test and oral interview and he was placed in the wait list. He further submitted that except 3(a), the rest of the information has been furnished to him by the PIO. He further submitted that from the information provided to him by the Respondent PIO at point No. (b) to (e) it was noticed by him that in the oral test he had more marks than the selected candidates and despite of same he has been kept on the wait list. He further submitted that his grievance is in respect of non furnishing of information at point 3(a) i.e a copies of written examination question papers and answer sheets of selected candidates of SC category. He further submitted that he required the said information to know what is the transference followed in the said selection process and in support of his contention he relied upon the Judgment of the Apex Court given in case of Central board of Secondary Education V/s Aditya Bandhopadya .
7. On the other hand the Respondent PIO contended that the copies of the written examination question papers given to selected candidates in SC category and copies of respective selected candidates answer sheet of SC category (copies of OMR Sheets) cannot be furnished as the same is exempted under the section 8(1) (e) and 8(1) (j) of RTI Act and in support of said contention he relied upon the decision given by the Central information commission in appeal no. ICPB/A-3/CIC/2006.
8. I have scrutinised the records available in the file and also considered the rival submission made by both the parties

9. The point arises for my determination is whether the Appellant is entitled for copies of examination questions papers and answer sheets of selected candidates in SC categories (copies of OMR sheets) .
10. The Apex Court in civil Appeal No. 6454 of 2011 (arising out of SLP© number 7526/2009 has held at para 24
- “ We may next consider whether an examining body would be entitled to claim exemption under section 8(1)(e) of the RTI Act, even assuming that it is in a fiduciary relationship with the examinee. That section Provides that notwithstanding anything contained in the Act, there shall be no obligation to give any citizen information available to a person in his fiduciary relationship. **This would only mean that even if the relationship is fiduciary, the exemption would operate in regards to giving access to the information held in fiduciary relationship, to third parties.** There is no question of the fiduciary withholding information relating to beneficiary, from the beneficiary himself “.

Further it has been held that ;

“therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer-book, section **8(1)(e) would operate as an exemption to prevent access to any third party** and will not operate as a bar of the very person who wrote the answer-book, seeking inspection or disclosure of it” .

11. The Hon’ble High Court of Uttarkhand at Nainital in writ petition No. 1623 (M/S) of 2012,Uttarakhand Public Service Commission

Haridwar, District Haridwar through its Secretary V/s Tanvir Ahmed, by subscribing to the ratio laid down by the Apex Court in the matter of Central Board of Education and another's (supra) has held ;

"in view of the findings of the Apex Court, the petition cannot deny the information to the examinee who wrote the answer-book, I find no illegality in impugned the order. **In the case at hand third party has not applied for supply of information but** examinee has applied for copies of answer-book written by him" .

12. The Hon'ble Delhi High Court at new Delhi in writ petition NO. © 747 of 2011 and CM Appeal No 1568/2011 Indian Institute of technology V/s Navin Talwar has held at para 12;

"This is not information sought by the third party but by the candidates himself or herself. There is not question defence under section 8(1) (e) of the Right to information Act being invoked by the IIT to deny copy of such OMR sheets /ORS to the candidates."

13. Hence in view of the above finding given by the above Hon'ble Courts, it is quite clear that section 8(1) (e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer-book seeking inspection or disclosures of it.
14. In the present case the Appellant herein is trying to seek the answer sheet of the selected candidates and not of his. In other words the Appellant is trying to seek the information/answer papers of the third party who are selected for the post of Police Sub-Inspector. Hence by subscribing to the ratios laid down by the above Hon'ble

Courts, no directions can be issued to the Respondent PIO for furnishing the information as sought by him at point No. 3(a) of his RTI application dated 30/9/2019 mainly pertaining to third parties when moreover the other information at point no. 3(b) to 3 (e) and more particularly the marks scored in written examination and oral examination by the selected candidates and other candidates pertaining to said examination have been issued to the Appellant, which will serve his purpose to redress his grievances before competent forum of keeping him on the waiting list despite of securing higher marks in oral examination than other candidates.

15. In the facts and circumstances of the present case , I do not find merits in the above proceedings hence liable to be dismissed which I hereby do

Pronounced in the open Court. 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