

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

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Appeal No. 195/2020

Shri. Vishwesh R. Karpe,
309, Essen Whispering Willow,
Behind Regina Mundi School,
Near Joggers Park,
Chicalim, Vasco Goa.

-----Appellant

v/s

1. Public Information Officer,
Office Superintendent,
Administrative Branch, PHQ,
Panaji-Goa.

2. The First Appellate Authority,
The Superintendent of Police,
PHQ, Panaji-Goa.

----Respondents

Shri Vishwas R. Satarkar - State Chief Information Commissioner

Filed on:-17/11/2020

Decided on:-08/09/2021

FACTS IN BRIEF

1. The Appellant herein by his application dated 30/07/2020 filed under sec 6(1) of the Right to Information Act, 2005 (Act for short) sought information on seven points as mentioned in the said application from the Respondent No. 1, Office Superintendent, Public Information Officer, Administrative Branch, Police Head Quarters, Panaji-Goa.
2. The said application was replied on 27/08/2020 by which the information at point no. 2,3,4,5 was refused as exempted, under

sec 8(1)(J) of the Act and information at point no. 6 and 7 was stated as not traceable in the records of the office.

3. The Appellant contends that, the information furnished was incomplete and aggrieved with the said reply, he preferred first appeal to Superintendent of Police, Head Quarters, Panaji being the First Appellate Authority (FAA).
4. The FAA by order dated 14/10/2020, dismissed the said appeal with the observation that information sought for is a personal information and has no relationship to any public activity or public interest, and exempted u/s 8(1)(J) of the Act.
5. Not satisfied with the order of FAA, Appellant preferred the present appeal under sec 19(3) of the Act, before this Commission, with the prayer that a) direction be issued to PIO to provide complete information, b) direction to impose penalty, c) recommendation of disciplinary action against PIO and d) for appropriate compensation for causing harassment to the Appellant.
6. Notice was issued to the parties, pursuant to which PIO appeared and filed his reply cum written submissions on 30/03/2021. The PIO through his reply contended that , Appellant is the employee of PIO Department and has been furnished all the information which is pertaining to his own case and rejected to furnish information as regards to the information of other Police personnel as the said information is exempted u/s 8(1)(J) of the RTI Act.

The PIO also relied upon three judgments passed by the Hon'ble High Court and Supreme Court to support his case (1) Girish Ramchandra Deshpande v/s Central Information Commission (SC) (2) Canara Bank v/s C.S. Shyam & Anr (SC) and (3) Mr. Deepak Vaigankar v/s Suryakant Babu Naik & Ors (HC of Bombay).

7. Perused the pleadings, scrutinize the records and considered the submissions of PIO and Appellant, with reference to and citations relied upon by PIO.
8. During the course of arguments Appellant admits that he received the information at point No. 1 and he is not pressing for information at point No. 3,4,5,6 and 7. He submitted that he is pressing for information at point No. 2 of his RTI application.

Therefore point for determination remains with reference to information at Point No. 2 only, which reads as under:-

"2. Certified copies of promotion order issued to Police Inspector 1) Krishna Shetgaonkar 2) Richard D'Costa 3) Gurudas Kadam 4) Sidhant Shirodkar 5) Jivba Dalvi 6) Rajan Nigalye 7) Rajendra Prabhu Dessai 8) Nerlon Albuquerque 9) Ashish Shirodkar 10) Pravinkumar Vast 11) Edwin Colaco 12)Sagar Ekoskar 13) Rajesh Kumar 14) C.L. Patil 15) Manoj Mardolkar 16) Tushar Vernekar and 17) Vishwesh Karpe from Police sub-inspector to Police inspector alongwith copy of regularization order of each Police Inspectors?

9. On perusal it reveals that, information sought in respect of point no. 2 has been rejected by invoking sec 8(1)(J) of the Act.

Sec 8(1)(J) of the RTI Act reads as under:

"8(1)(J) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,___ information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the

case may be, is satisfied that the larger public interest justifies the disclosure of such information."

From the above provision of law, it is clear that personal information is exempted from disclosure.

10. In the present case, Appellant viz. Shri. Vishwesh Karpe, employee of Police Department has sought the information from his Department pertaining to promotion order issued to Police Sub-Inspector to Police Inspector alongwith copy of regularization of each Police Inspector.
11. According to Appellant, Police Department is an institution and post of Police Sub-Inspector and Police Inspectors are of public servant being so their promotions are not confidential as they are performing their duties as public servants.

Appellant also produced on record the copy of identical promotion order issued by Police Department obtained under RTI Act. On perusal of promotion order dated 17/06/2013,11/06/2010, 03/10/2012, 21/12/2010 and 25/01/2010 it is revealed that same is furnished to the seeker with the endorsement and seal "Copy issued under RTI ACT 2005".

12. The Hon'ble High Court of Bombay at Goa in **Kashinath Shetye v/s Public Information officer and Ors. (W.P.No. 1/2009)** has held in para No. 7 as under:

"7. The first thing that needs to be taken into consideration is that the petitioner is a public servant. When one becomes a public servant, he in strict sense becomes a public servant and as such, every member of public, gets a right to know about his working, his honesty, integrity and devotion to duty. In fact, nothing remains personal while as far as the discharging of

duty. A public servant continues to be a public servant for all 24 hours. Therefore, any conduct/ misconduct of a public servant even in private, ceases to be private. When, therefore, a member of a public, demands an information as to how many leaves were availed by the public servant, such information though personal, has to be supplied and there is no question of privacy at all. Such supply of information, at the most, may disclose how sincere or insincere the public servant is in discharge of his duty and the public has a right to know."

13. Further Hon'ble Punjab & Haryana High Court in **Vijay Dheer v/s State Information Commission, Punjab & Ors (LNIND 2013 PNH 2263)** has held that:

"While examining the scope of an exemption clause under Section 8 of the Act, it would be useful to refer to the statement of objects and reasons of the Act itself. The object and reasons of the Act recite that the provisions of the Act are to ensure maximum disclosure and minimum exemptions consistent with the constitutional provisions and to provide for an effective mechanism for access to an information and disclosure by authorities. Still further the Act has been enacted in order to promote transparency and accountability in the working of every public authority.

The State Information Commission while passing the impugned order has attempted to strike a balance between public interest as also the privacy of the individual concerned i.e. the petitioner. The Public Information Officer concerned has been directed to

provide such part of the information sought by respondent no.3 which primarily relates to the mode of appointment and promotion of the petitioner to a public post. The basis of passing the impugned order by the State Information Commission stands disclosed in the impugned order itself in the following terms:-

"It is necessary in order to understand as to what is the larger public interest vis-a-vis personal information which would cause unwarranted invasion of the privacy of the individual. After considering all relevant aspects in the instant case, I find that the stand/order of the PIO Office ADC (D), Roop Nagar is not tenable. The PIO concerned has unnecessarily stretched the information sought as personal information about third party as unwarranted invasion on the privacy of the individual. A part of information/documents sought by the complainant, relates to the mode of appointment/promotion of a person on a public post, therefore, information/documents to that extent fall under the domain of larger public interest. The documents on the basis of which a person has sought an appointment in a public office becomes the documents of larger public interest."

14. The PIO relied upon the judgment of Girish Ramchandra Deshpande (Supra), Canara Bank v/s C.S. Shyam & Anrs (Supra) and Deepak Vaigankar v/s Suryakant Babu Naik & Ors.

Present appeal deals with an application seek to know the details of promotion and regularization of public servant. On many occasion such order of promotion are uploaded on the website of

concerned department. The order of posting, promotion and service related matters of certain class of officers are published in the official gazette. The Government of India in its guidelines issued to that effect on 29/06/2015 has suggested for suo-moto disclosure under sec 4 of the Act of the information relating to recruitment, promotion and transfer and the same should be brought in to public domain.

15. Apart from that, referring the case of Girish Ramchandra Deshpande v/s Central Information Commission & Ors (Supra), Canara Bank v/s C.S. Shyam & Anrs (Supra), Subhash Chandra Agarwal v/s Registrar, Supreme Court of India & Ors (Supra), R.K. Jain v/s Union of India (Supra) and Aditya Bandopadhyay (Supra), the Hon'ble Supreme Court in **Central Public Information Officer, SC of India v/s Subhash Chandra Agarwal (C.A.No. 10045/2010)** in para No. 59 has held that :

"59. Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access

is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive.”

16. In the back drop of the above discussion and the reason mentioned herein above, the refusal to provide information regarding promotion order and regularization order is inappropriate and therefore requires intervention of this Commission..

In view of the above findings, the present appeal is disposed with following:

O R D E R

- The appeal is allowed, the PIO shall furnish to the Appellant the information as sought by him at Point No. 2 of the application dated 30/07/2020, free of cost within **FIFTEEN DAYS** from the date of receipt of this order.
- Proceedings closed.
- Pronounced in open court.
- Notify the Parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner