

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 90/2020/SIC-I

Tanya Kim Margaret Fraser,
Flat No. 3, Novo Portugal,
Moirā, Bardez Goa.
403507.

..... Appellant

v/s

1. First Appellate Authority,
Additional Secretary Home Department.,
Secretariat, Porvorim Goa, 403521.
2. Public Information Officer,
Home Department (Section Officer-Home)
Secretariat, Porvorim – Goa.

..... Respondents

Filed on : 29/05/2020

Decided on : 12/08/2021

Relevant dates emerging from appeal:

RTI application filed on	: 16/01/2020
PIO replied on	: 20/02/2020
First appeal filed on	: 08/02/2020
FAA order passed on	: 16/03/2020
Second appeal received on	: 29/05/2020

ORDER

1. The Second Appeal filed under section 19(3) of the Right To Information Act, 2005 (RTI Act) by the Appellant Ms. Tanya Kim Margaret Fraser, R/o. Moira Bardez-Goa against Respondent No. 1 First Appellate Authority (FAA), Additional Secretary, Home Department, Porvorim and Respondent No. 2 Public Information Officer (PIO), Section Officer, Home Department, Secretariat, Porvorim was admitted in the Goa State Information Commission on 29/05/2020.
2. Brief facts as contended by the Appellant in the Second Appeal are:-

- a) That the Appellant vide four applications all dated 16/01/2020 under section 6(1) of the RTI Act had sought from the PIO, Home Department the following information.
- i) How much funds were received from various resources towards the Rape Victim Compensation/Women Victim Compensation from 2012 to 2020?
 - ii) The number of application received requesting for the Rape Victim Compensation Women Victim Compensation from 2012 to 2020?
 - iii) The names of the sources from which the funds were received for the Women Victim Compensation/ Rape Victim Compensation from 2012 to 2020?
 - iv) The precise reason that the rape Victim Compensation was denied to me/rejected to me based on the Victim Compensation Scheme 2012. The reason needs to be from the clauses as per the Victim Compensation 2012.
- b) That the PIO u/s 6(3) transferred three applications out of four to the PIO of Directorate of Women and Child Development on 22/01/2020 with a request to furnish information to the Appellant. However the PIO, Home Department maliciously transferred the said RTI application to the PIO, Directorate of Women and Child Development knowing that no such scheme exist with the said department, and that Goa Victim Compensation Scheme 2012 lies with the Home Department. Subsequently PIO, Directorate of Women and Child Development replied dated 20/02/2020 to the Appellant stating information sought is not available with the department.
- c) That the fourth RTI application dated 16/01/2020 at (iv) above was replied by the PIO, Home Department on 07/02/2020 stating, "the case is not coming under clause 4 of the Goa Victim

Compensation Scheme 2012.” And that the copy of reply was not handed over to the Appellant.

d) That because of the malafide information provided by the PIO, the Appellant filed first Appeal dated 08/02/2020 before the First Appellate Authority (FAA), Additional Secretary, Home Department. The FAA passed an order dated 16/03/2020 directing the PIO to furnish information to the Appellant within 7 days. That the Appellant did not receive the information. Being aggrieved, the Appellant filed Second Appeal dated 29/05/2020 before the State Information Commission.

3. Notice was issued to the concerned parties and the matter was taken up for hearing. Pursuant to the notice the Appellant Ms. Tanya Kim Margaret Fraser, Respondent No. 2, the then PIO, Umesh Desai, and Present PIO Ms. Kavita Velip and also Shri. Sushant Parab, the ex- PIO appeared before the Commission. Appellant as well as the Respondents filed replies, rejoinders and written arguments. While the matter was being heard, the then State Information Commissioner demitted the Office on completion of tenure and the matter could not be heard. The hearing resumed on 25/03/2021 after joining of the new State Information Commissioner.

4. The Commission has perused all the submissions filed by the Appellant and the Respondents. After careful perusal of all the submissions the Commission has arrived at following findings.

a) The Appellant had sought information from the PIO, Home Department vide four RTI applications, out of which three were transferred to the PIO, Directorate of Women and Child Development. The PIO, Directorate of Women and Child Development had no information sought vide the said RTI

applications, therefore the Appellant did not receive information on those three applications. Fourth application was replied by the PIO, Home Department within the stipulated period.

- b) The FAA vide order dated 16/03/2020 disposed the first Appeal with the directions that the PIO shall reconsider the applications and furnish relevant information to the extent, available in the office records, within 7 days.
- c) Information was not furnished to the Appellant by the PIO Shri. Umesh Desai within 7 days. PIO Shri. Umesh Desai was on earned leave with effect from 02/03/2020 to 22/03/2020 and the charge was given to other official. Shri. Umesh Desai in his reply has contended that he was not aware of the FAA order after joining duty on 23/03/2020. However, the PIO Shri. Umesh Desai had filed reply before the FAA and was aware of the matter and therefore should have inquired about the decision in the first appeal, which he did not bother to do.
- d) The claim made by the PIO Shri. Umesh Desai about point wise information given to the Appellant vide letter dated 17/01/2020 and 20/01/2020 is not acceptable. Even the FAA in his order dated 16/03/2020 has not accepted the said claim and has directed PIO to furnish the information within 7 days.
- e) PIO Shri. Umesh Desai was transferred to Protocol Department vide order dated 4/05/2020 and Shri. Sushant Parab assumed the charge of Section Officer/ PIO, Home Department on 06/05/2020. Later vide reply dated 3/08/2020, PIO Sushant Parab furnished the information to the Appellant which was duly endorsed. However Appellant pressed for the penalty on the PIO and later claimed that the information furnished by Shri. Sushant Parab is

not complete and that she is seeking complete information along with the penalty on the PIO.

f) The Appellant has been making efforts to seek the information from the PIO of Home Department for more than one year, and in response, the then PIO Shri. Umesh Desai and Shri. Sushant Parab have not attended the Appellant with sufficient seriousness. PIO did not apply his mind while transferring the three RTI applications to the Directorate of Women and Child Development and also while furnishing information to the Appellant in the fourth application.

g) The Appellant had mentioned rape victim compensation/women victim compensation in her RTI application. Technically no scheme by the same nomenclature exist in the Home Department, the PIO was aware of the Goa Victim Compensation Scheme 2012 which is being administered in his own Department. This Schemes also covers Women Victim as well as rape victim. However, without proper application of mind the PIO transferred RTI application. On the contrary the PIO could have apprised the Appellant regarding the provisions of Goa Victim compensation scheme 2012. Such an action on the part of the PIO would have been in tune with the true spirit of RTI Act and would have given requisite information to the Appellant.

5. Therefore, it is aptly clear that the PIO initially did not furnish the information by transferring the application to other department and later also failed to furnish the information as per the direction of FAA. The PIO must introspect, non furnishing of the correct and complete information lands the citizen before the FAA and also also before this Commission resulting into unnecessary harassment of the Appellant which is socially abhorring and legally impermissible.

6. From the above gesture of the PIO the Commission prima facie finds that the conduct of the PIO is not in consonance with the RTI Act. Such a lapse on the part of the PIO is punishable under section 20 (1) and section 20 (2) of the RTI Act. However, before imposing penalty, the Commission finds it appropriate to seek explanation from the PIO as to why penalty should not be imposed on him for the contravention of section 7(1) of the Act, for non compliance of the order of the FAA and for furnishing incomplete information.

7. In the light of above discussion the Appeal is disposed with following order:-

a) The Appeal is allowed.

b) The present PIO, Home Department, Secretariat Porvorim is directed to comply with the Order passed by the FAA on 16/03/2020 and to provide complete information to the Appellant sought vide applications dated 16/01/2020 within 15 days from the receipt of this Order, free of cost.

c) Issue notice to the then PIO Home Department Shri. Umesh Desai and Shri. Umesh Dessai is further directed to showcause as to why the Penalty as provided under section 20 (1) and 20 (2) of the RTI Act, 2005 should not be imposed against him.

d) In case Shri Umesh Desai is transferred, the present PIO shall serve this notice alongwith the Order to the then PIO and produce the acknowledgment before the Commission on or before the next date of hearing alongwith full name and present address of the then PIO.

e) The then PIO Shri. Umesh Dessai is directed to remain present before this Commission on 15/09/2021 at

10.30 a.m. alongwith the reply to the showcause notice. The registry is directed to initiate penalty proceedings.

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

Sd/-

(Sanjay N. Dhavalikar)

State Information Commissioner
Goa State Information Commission,
Panaji-Goa