

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 105/2020/SIC-I

Mrs. Josephine Vaz,
Flat No. 8, 1st Floor, Soares Apartment,
Near Ponda Municipal Council,
Ponda, Tisk Goa .403401.

..... Appellant

V/s

1. Dr. Pooja M. Madkaiker,
Public Information Officer / Dy. Director (Admin.),
Institute of Psychiatry & Human Behaviour (IPHB),
Bambolim Goa 403202.

2. Prof. Dr. S.M. Bandekar,
First Appellate Authority, Director/Dean,
Institute of Psychiatry & Human Behaviour (IPHB),
Bambolim Goa 403202.

..... Respondents

Filed on : 03/07/2020

Decided on : 25/08/2021

Relevant dates emerging from appeal:

RTI application filed on	: 20/01/2020
PIO replied on	: 18/02/2020
First appeal filed on	: 06/03/2020
FAA order passed on	: 7/04/2020
Second appeal received on	: 03/07/2020

ORDER

1. The Second Appeal filed under section 19(3) of the Right to Information Act, 2005 by Mrs. Josephine Vaz, R/o. Ponda Goa against Respondent No. 1, Public Information Officer (PIO), Dr. Pooja M. Madkaiker, Deputy Director (Admin), Institute of Psychiatric and Human Behaviour (IPHB), Bambolim-Goa and Respondent No. 2 the First Appellate Authority (FAA), Director/Dean, Institute of Psychiatry & Human Behaviour (IPHB), Bambolim Goa, came before this Commission on 3/07/2020.

2. The Brief facts leading to the Second Appeal as contended by the Appellant are that:-
 - a) The Appellant vide application dated 20/01/2020 sought information from the PIO on 8 points related to service and salary as well as promotion and salary revision; information pertaining to her service and also regarding some other employees.
 - b) The PIO failed to decide/respond as required in section 7(2) of the Act within 30 days. Being aggrieved, the Appellant filed first Appeal dated 06/03/2020 before the FAA.
 - c) The FAA vide order dated 07/04/2020 directed the PIO to provide all such available information listed and itemised in the RTI application. However the PIO failed to respond to the FAA's Order and did not notify the Appellant, as to the information being provided as directed in the FAA Order.
 - d) Being aggrieved due to the deemed refusal by the PIO the Appellant preferred Second Appeal dated 03/07/2020 before this Commission with various prayers including complete information, penalty under section 20(1), written warning to the PIO etc.
3. After notifying the concerned parties the matter was taken up for hearing on 30/07/2020. The Appellant and the PIO appeared before this Commission and both the Respondents the PIO and FAA filed reply. Subsequently additional reply and submission was filed by both the sides and arguments were advanced.
4. On perusal of the RTI application dated 20/01/2020 which is a subject matter in the present Appeal, it is seen that Appellant has sought information of the Staff Nurses, Ward Sisters and Assistant Matrons, alongwith the information related to her own service. Hence notices were issued under section 19(4) of the RTI Act to the 3rd party. Smt. Dhanashree Naik submitted that She has no objection to furnish the information regarding her service and pay to the Appellant. Whereas Smt. Deepika Korgaonkar, Smt. Ivette Araujo, Smt Maria Victoria Fernandes, Smt Nirmala Karbotkar filed reply to the Commission stating that they object to furnish their personal information to the Appellant.

5. The Commission has perused the Appeal Memo replies other submissions and have heard arguments of both the sides. After careful perusal, the Commission has arrived at following findings:-
- a. The Appellant has sought information vide application dated 20/01/2020 related to her service as well as service of other employees in IPHB. Some of the information is dating back to 1984. The PIO vide 4 letters dated 18/02/2020, 26/02/2020, 18/03/2020, 20/03/2020 conveyed to Appellant to collect the information from her Office after paying the prescribed charges. The first letter dated 18/02/2020 was sent by the PIO within the stipulated period.
 - b. The appellant did not collect the information presuming the information is not complete. On the contrary, the appellant could have collected the information provided by the appellant and then challenge, if it is incomplete/wrong. The appellant, instead of collecting the information, opted to file the first appeal dated 06/03/2020 before the F.A.A.
 - c. The FAA, in his order dated 07/04/2020 has mentioned, "this is to state that the Appellant Ms. Josephine A. Vaz has filed an appeal before collecting the requested information. Further, to state that the required information was not denied, nor delayed by the Public Information Officer."
 - d. The PIO, in her submission dated 30/07/2020, has stated that the Appellant did not pay the required amount to collect the information inspite of the fact that the PIO sent this letter within the stipulated period which was received by the Appellant. It can be seen from the records that the PIO had sent letter on 18/02/2020, within the stipulated period of 30 days.
 - e. The PIO furnished some more information on 18/08/2020. The Appellant has made a submission that the said information was not furnished within the stipulated period. However, the fact is the Appellant never attempted to pay and collect the information available with the PIO. Therefore the Appellant cannot blame the PIO for delayed submission of the information.

- f. At the same time the PIO, has technically sent the first letter to the Appellant within the stipulated period of 30 days. However, the PIO in the first letter dated 18/02/2020 has not mentioned the details of fees with point wise breakup of the amount to be charged.
6. The events unfolded above indicate that the PIO expressed willingness to furnish part information, however did not mention the details of fees initially, which were mentioned in the third and fourth letter sent after the expiry of thirty days.
7. The PIO has shown willingness to provide information and has actually furnished part information during the proceedings of this Appeal. However, the Commission does not endorse the action of the PIO regarding third party information.
8. Section 11 of the RTI Act, 2005 regarding third party information says :-

11. Third party information:-

- (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

- (2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section(1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.
- (3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of this decision to the third party.
- (4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

It is observed that the PIO made no decision within 45 days from the date of RTI application on furnishing the information related to third party.

9. The PIO has denied the information sought by the Appellant at point No. 1 and 2 under Section 8(1)(j).

Section 8(1)(j) reads:

8. Exemption from disclosure of Information- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(j) information which related 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.

Provided that the information which cannot be denied to the Parliament or State Legislature shall not be denied to any person.

The information sought at point No. 1 and 2 of RTI application dated 20/01/2020 is related to service book and salary details of employees working in the same institute where the Appellant was working. Salary paid to employees of Public Authority is sourced from public money and the same need not be restricted from disclosure under RTI Act.

10. It has also to be noted that one of the employee Smt. Dhanashri Naik, ward sister, vide letter dated 16/09/2020 has given her consent to release information regarding her service book and salary, to the Appellant. Smt. Dhanashri Naik in her letter has stated:-

"I have no objection to provide my service book copy including monthwise salary slip copies for my entire service duration, all pay fixations, all MACPS orders and promotion date to the Appellant. I hereby give my consent for releasing the same to the said appellant. Since such information is in the public interest, and fall under the pervuew of section 4 of the RTI Act, hence to uphold transfarency via proactive disclosure such information is deemed required to be hosted/ displayed suo moto by the concerned public authority on the institution's website."

Same may be applied to the details of other employees, sought by the Appellant and the relevant information could be furnished.

11. Except information sought at point No. 1 and 2, the PIO has made attempts to compile and furnish information, though beyond the stipulated period. If the circumstances considered cumulatively and the law laid down by the Hon'ble High Court of Bombay at Goa bench, in the case of A. A. Parulekar V/s Goa State Information Commission is applied, then it does appear that there is no malafide on the part of the PIO and there is no justification for imposing penalty u/s 20(1), 20(2) upon the PIO.

12. In the background of the above discussion and as per the facts presented before the Commission the Appeal is disposed with the following:-

a) The Appeal is partly allowed.

- b) The PIO is directed to furnish remaining information to the Appellant within 15 days from the receipt of this Orders
- c) The Appellant may undertake inspection of the records within 10 days from the receipt of this Order, with prior intimation to the PIO. The PIO is directed to facilitate the inspection to the Appellant, if desired by her, within the stipulated period.
- d) The PIO is directed to be more diligent while dealing with the RTI application and ensure that he/she adhere to the provisions of the Act regarding disposal of RTI applications.
- e) All other prayers are rejected.

13. Hence the Appeal is disposed accordingly and proceedings stand closed.

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