

# GOA STATE INFORMATION COMMISSION

"Kamat Towers" 7<sup>th</sup> Floor, Patto Plaza, Panaji, Goa – 403 001

Tel: 0832 2437880 E-mail: [spio-gsic.goa@nic.in](mailto:spio-gsic.goa@nic.in)

Website: [www.scic.goa.gov.in](http://www.scic.goa.gov.in)

**Shri. Sanjay N. Dhavalikar**, State Information Commissioner

**Appeal No. 81/2020/SIC-I**

Shri. Prashant S. P. Tendolkar,  
A-6, Raj Housing, Shantinagar,  
Ponda-Goa

.....Appellant

v/s

1. Public Information Officer,  
Finance Department (R & C),  
Government of Goa, Secretariat,  
Porvorim Goa.

2. First Appellate Authority,  
Finance Department (R & C),  
Government of Goa, Secretariat,  
Porvorim Goa.

3. The Public Information Officer,  
Directorate of Information & Publicity,  
Udyog Bhavan, 3<sup>rd</sup> Floor,  
Panaji Goa.

..... Respondents

Filed on : 21/04/2020

Decided on : 06/07/2021

## **Relevant dates emerging from appeal:**

RTI application filed on	: 05/12/2019
PIO replied on	: Nil
First appeal filed on	: 13/01/2020
FAA order passed on	: 07/02/2020
Second appeal received on	: 21/04/2020

## **ORDER**

1. The second Appeal filed by the Appellant Shri. Prashant S. P. Tendolkar, resident of A-6, Raj Housing, Shantinagar, Ponda Goa,

against Respondent no. 1, Public Information Officer (PIO), Finance Department (R&C), Government of Goa, Secretariat, Porvorim; Respondent No. 2, First Appellate Authority (FAA), Finance Department (R&C), Government of Goa, Secretariat, Porvorim Goa and Respondent No. 3, Public Information Officer (PIO), Directorate of Information & Publicity, Udyog Bhavan, 3<sup>rd</sup> floor, Panaji Goa, under Section 19 (3) R/W Section 20 of the Right to Information Act, 2005, (RTI Act) came before this Commission on 21/04/2020.

2. Brief facts leading to the second appeal are that:-

- a) The Appellant, Shri. Prashant S. P. Tendolkar, vide his application dated 05/12/2019, filed under Section 6 (1) of the RTI Act 2005 sought from the Respondent no. 3, PIO, the information viz. the entire file No. GSIC/Per/F-1/2016-761 along with noting, endorsements etc. contained in the file.
- b) It is the contention of the Appellant that he received a letter from Respondent No. 3, PIO, stating the information sought by the Appellant was not held by him and that it was held by the Respondent No. 1. Accordingly in exercise of its rights under section 6 (3) of the RTI Act the Respondent no. 3 transferred the said request to Respondent No. 1 by letter dated 10/12/2019.
- c) It is the contention of the Appellant that in spite of passage of the statutory period provided in the Act, Respondent No. 1 failed to provide information by not disposing off the request, nor rejected the request.
- d) It is the contention of the Appellant that deeming the non-disposal of request as refusal, the Appellant filed the first Appeal before Respondent No. 2, the First Appellate Authority.
- e) It is the contention of the Appellant that Respondent no. 2 by its order dated 07/02/2020 disposed the first appeal by upholding the contention of Respondent no. 1 that the said letter dated 10/12/2019 sent by the Respondent no. 3 was never received by the office of Respondent No. 1. It is also contended by the Appellant that he has a reasonable belief that Respondent No. 3 has either not transferred the application or that the Respondent No. 1 has given a misleading and false reply to the Respondent No. 2 resulting in the order of FAA dated 07/02/2020.

- f) It is the contention of the appellant that either the Respondent No. 1 and / or Respondent no. 3 are holding the information have committed breach of the mandatory requirement by not furnishing information in time contemplated under Section 7 (1) of the RTI Act and / or have misled the Appellant.
3. In the above background the Appellant being aggrieved by the action of Respondent No. 1, PIO, Finance Department (R&C); Respondent No. 3, PIO, Directorate of Information & Publicity and Respondent No. 2, FAA, Finance Department (R&C) approached this Commission under sub section (3) of Section 19 of the Right to Information Act 2005, on 21/04/2020. The Appellant prayed for:-
- a) Respondent no. 1 and /or Respondent No. 3 be directed to furnish to the Appellant the information as sought by his application dated 05/12/2019.
  - b) Action under Section 20 (1) and Section 20 (2) against the concerned Public Information Officer.
4. After notifying the concerned parties the matter was taken up for hearing. In pursuant to notice of this Commission, the Appellant submitted a request received via email and inwarded in the office of the Commission vide entry No. 78 dated 24/06/2020 that considering the covid situation the Appellant would prefer to submit and receive pleadings, applications, submissions etc. in electronic form. The request was granted.
5. Appellant, Respondent No. 1 and Respondent No. 3 filed their replies, rejoinders, written submissions along with supporting documents/papers to substantiate their say, during the subsequent hearings.

In his submissions, Appellant submitted that the information is not yet furnished is not disputed by any of the respondents, even as per the records the information is not yet received. It is evident that either the Respondent no. 1 and / or Respondent No. 3 are holding the information have committed breach of the mandatory requirements by not furnishing the information in time and / or have misled the appellant.

In her submission, Respondent no. 1 submitted that Finance Department has more than one sections and each section of the department has separate PIO and separate inward clerks and separate inward registers. The Respondent No. 1 is the PIO of the Revenue and Control (R&C) section of the Finance

Department, where as the letter dated 10/12/2019 was addressed by Respondent no. 3 to the Finance Department Expenditure (Exp) section. The said letter was neither inwards in the Revenue and Control section, nor received by the Respondent No. 1 PIO at any point of time, hence the question of any failure on the part of the Respondent No. 1 does not arise.

In his submission, Respondent No. 3 submitted that the Respondent was always willing to furnish the information to the Appellant, but the application had to be transferred to the PIO of Finance Department because the relevant file was sent to the Finance Department. Department of Information and Publicity made several attempts to send the said application to the Finance Department, but the application was not accepted by the Finance Department. Since the relevant file was under submission to Finance Department the Respondent No. 3 could not furnish the information to the Appellant.

6. I have perused the documents and submissions submitted by the Appellant and the Respondents and have considered the pleadings of the parties. Considering the contentions of the Appellant and the Respondents herein, following points emerge for the determination of this Commission:-

- (i) Whether the application of the Appellant was transferred by Respondent No. 3 to Respondent No. 1 or the said application was mistakenly/deliberately marked to a PIO from different section of Finance Department.
- (ii) Whether the said application was received by Respondent No. 1.
- (iii) Whether Respondent No. 1 and / or Respondent No. 3 have committed any breach by not providing information and have misled the Appellant and also the First Appellate Authority.
- (iv) Whether the actions of Respondent No. 1 and / or Respondent No. 3 are qualified to be termed as dereliction of duties and whether the concerned person/persons should be punished under Section 18 (1) (a) as well as under Section 20 (1) and 20 (2).

7. Upon perusal of the records available before the Commission certain observations need to be mentioned here:-

- a) The Appellant filed his RTI application dated 05/12/2019 to the Respondent No. 3, PIO, Directorate of Information and Publicity. The Appellant was informed by the Respondent

No. 3 vide letter dated 10/12/2019 that his application is transferred to the Public Information Officer, **Finance Department**. Respondent no. 1 has stated before this Commission that Finance Department has more than one sections and each section has separate PIO and separate inward clerks and separate inward registers. With this background it has to be noted that:

- (i) Letter No. DI/RTI/Reply/2019/3466 dated 10/12/2019, relied in the Appeal Memo is addressed to the Public Information Officer, **Finance Department (R&C)** and it contains overwriting in the address (R&C).
  - (ii) The said letter No. DI/RTI/Reply/2019/3466 dated 10/12/2019 relied by the Appellant in the first appeal before Respondent no. 2 is addressed to the Public Information Officer, **Finance Department**, and there is no mention of the specific section of the Finance Department.
  - (iii) Respondent no. 3 has enclosed the said letter no. DI/RTI/Reply/2019/3466 dated 10/12/2019 in his reply to the appeal filed before this Commission, is addressed to **Finance Department (Exp)** and it contains overwriting in the address (Exp).
  - (iv) In above mentioned three instances letter no. DI/RTI/Reply/2019/3466 dated 10/12/2019 is signed by Respondent No. 3, Shri. John Aguiar, the then PIO of Department of Information & Publicity, but it contains three different addresses with overwriting of address in two letters and no mention of specific section of Finance Department in one letter.
- b) Copy of Inward/outward register of Directorate of Information & Publicity submitted by Respondent No. 3 shows three outward numbers related to Public Information Officer, Finance Department, but not a single entry has a specific mention of Public Information Officer, Finance Department (R&C). Details of these entries are as under:-
- (i) DI/RTI/Reply/2019/3466 Dt. 10/12/2019 To Public information Officer, **Finance Department**, Secretariat.
  - (ii) DI/RTI/Reply/2019/3466 Dt. 10/12/2019 To Public Information Officer, **finance Department**, Secretariat, Porvorim.

(iii) DI/RTI/Reply/2019/3466 Dt. 11/12/2019 To Public Information Officer, **Finance Department (Exp)**, Secretariat.

c) There is no conclusive evidence to show that the RTI application was transferred by Respondent No. 3 to Respondent no. 1 and that the said application was received by Respondent no. 1. Also, it is noted that Respondent No. 1, PIO, Finance Department (R&C) came to know about the said letter only when the Appellant filed the first Appeal before Respondent No. 2. Then the Respondent No. 1 made a search in Revenue and Control section of Finance Department, but the said letter could not be traced. Respondent No. 1 again conducted a search in the section after disposal of the first appeal, however the said letter dated 10/12/2019 could not be traced in her section. Therefore, the Commission is inclined to believe the claim of Respondent No. 1 that the said letter was neither inwards in the Revenue and Control (R&C) section of the Finance Department, nor received by Respondent No. 1.

8. Upon careful scrutiny of the submissions and documents submitted before the Commission it appears that the Appellant was given to understand that his RTI application dated 05/12/2019 was transferred to Respondent No. 1. But there is no conclusive evidence to show that Respondent No. 3 transferred the said request to Respondent No. 1 under Section 6 (3) of the RTI Act. Also, the question, whether this act of Respondent No. 3 was by mistake or a deliberate one, remains unanswered.

9. It is not contested by Respondent No. 1 that the file referred by the Appellant in his RTI application dated 05/12/2019, file No. GSIC/Per/F-1/2016/761 pertaining to claim of interest on delayed payment of salary arrears of the State Chief Information Commissioner was under submission to the Finance Department (R&C). Therefore, there is sufficient ground to believe the submission made by Respondent No. 1 that in case the RTI application of the Appellant had been properly transferred to Respondent no. 1, the Respondent No. 1 would have supplied the information to the Appellant.

10. As per the submission of Respondent No. 1 the said file bearing no. GSIC/Per/F-1/2016/761 was returned to the Department of Information and Publicity on 23/07/2020 through the

Central Registry of the Secretariat. The Respondent No. 1 has furnished copy of the outward register of Finance Department (R&C) showing outward entry dated 23/07/2020 of the said file. It has to be noted that till this time Respondent No. 1 had not received the RTI application dated 05/12/2019, therefore question of replying to the said application by Respondent No. 1 does not arise.

11. On the background of these developments Respondent No. 3, present PIO, Department of Information & Publicity Shri. Prakash Naik filed a reply, received in the office of the Commission vide entry No. 664 dated 27/04/2021. The reply states that on receipt of the said file from the Finance Department the Respondent No. 3 has provided the requisite information as sought by the Appellant under RTI Act and the Appellant has collected the same.
12. Respondent No. 3 has also stated in his reply that RTI application dated 05/12/2019 of Shri. Prashant S. P. Tendulkar was transferred to Finance Department by Shri. John C. Aguiar, the then Public Information Officer, as the designated Public Information Officer of the Department of Information and Publicity Shri. Prakash Naik was on leave during that period. This statement of Shri. Prakash Naik, Respondent No. 3 can be verified from the fact that transfer letter dated 10/12/2019 is signed by Shri. John C. Aguiar and not by Shri. Prakash Naik.
13. From the above discussion it appears that the negligent and casual approach of the then PIO of Department of Information and Publicity led to the confusion, which amounted to non-furnishing of information to the Appellant. The then PIO should have been more diligent while transferring the RTI application to the Finance Department and should have ensured that the application is transferred to the appropriate PIO. Also, the fact that letter dated 10/12/2019 signed by Shri. John Aguiar has three different addresses, out of which two contain overwriting, raises doubts on the transparency of his functioning. Therefore, the needle of suspicion is pointed towards the style of functioning of the then PIO Shri. John Aguiar in the said matter.
14. Respondent No. 3, PIO Shri. Prakash Naik has also informed this Commission that the then PIO Shri. John Aguiar has retired on superannuation from service and is relieved from service vide order no. DIP/ADMN/2(165)/90/Part file/20-21/1042 dated 30/06/2020.
15. With reference to above discussion the Commission arrives at following findings regarding points raised in para 6:-

- (i) Respondent No. 3, the then PIO did transfer the RTI application, but it is not clear whether the same was transferred to Respondent no.1, as it did not have the name of the section. It is also not clear whether this act of the then PIO was an error or a deliberate act.
- (ii) It is clear from the documents submitted before this Commission by the Appellant and Respondents that Respondent No. 1 did not receive the said transferred application.
- (iii) Therefore, Respondent No. 1 has not created any breach of the provisions of RTI Act and it appears that act of the then PIO of Department of Information & Publicity has misled the Appellant.
- (iv) The default is on the part of the then PIO, Shri. John Aguiar. In case of default on the part of PIO, Section 18 read with Section 20 of Right to Information Act, provides for imposition of penalties on erring PIO and not on other authorities. Such penalty, which is levied in terms of money, being personal in nature is recoverable from the salary payable to such employee during his service. Similarly, recommendation of disciplinary action under Section 20 (2) can be issued during the period of service, and not after the retirement.

16. Pension Act 1871 which governs pension at Section 11 grants immunity to the pension holder against its attachment in following words:-

“Exemption of pension from attachment: No pension granted or continued by Government or political consideration or on account of past service or present infirmities or as a compassionate allowance and no money due or to become due on account of any such pension or allowance shall be liable to seizure, attachment or sequestration by process of any court at the instance of a creditor, for any demand against the pensioner or in satisfaction of a decree or order of any such court.”

17. In the present case the then PIO has retired and is entitled for Pension. Retirement benefits are beyond the scope of attachment in view of the ratio laid down by the Hon’ble Supreme Court in the case of Gorakhpur University and others Vs. Dr. Shilpa Prasad Nagendra (Appeal Civil 1874 of 1999). The Hon’ble Apex court has observed:

“This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands.....”



18. In another matter Hon'ble Supreme Court has cautioned regarding recommendation of disciplinary action against Public Information Officers. In the case of Manohar s/o Manikrao Anchule Vs. State of Maharashtra (Civil Appeal no. 9095 of 2012) the Apex Court has observed in para 30:-  
"It is not the legislative mandate that irrespective of the facts and circumstances of a given case, whether reasonable cause is shown or not, the Commission must recommend disciplinary action merely because the application was not responded to within 30 days. Every case has to be examined on its own facts."
19. Under the circumstances mentioned above this Commission does not have jurisdiction to order any deduction from pension or from gratuity of the then PIO who is Respondent No. 3 in this case, after his retirement as penalty or compensation.
20. Respondent No. 1 PIO, Finance Department (R& C) has stated in written submission dated 28/04/2021 that the Finance Department is the principal Department but there are different sections of Finance Department and Respondent No. 1 is the PIO of only one section of the Finance Department and the submission made is in respect of only Finance (R & C) section of Finance Department. As per the said transfer letter dated 10/12/2019 submitted by the Respondent No. 3, The same is addressed to Finance (Exp) section and as such same was not accepted by the inward clerk of the Finance (R&C) section. Hence, there is no failure on the part of the Respondent No. 1. Considering the facts presented before the Commission I find the explanation given by Respondent No. 1, PIO, Finance Department (R&C), Ms. Davika D'Souza is convincing and she has not committed any breach of RTI Act and therefore not liable for action under Section 18 and Section 20 (1) and 20 (2). Respondent No. 1, PIO finance Department (R&C) cannot be held liable for disciplinary action for not furnishing reply within 30 days to a request which she never received.
21. In the facts and circumstances of the case I find no ground for action under Section 20 (1) and 20 (2) of the RTI Act 2005, against the concerned Public Information Officers.
22. In the above circumstances and in the light of above discussion I dispose off the appeal with following:-
- a) Since Respondent No. 3, present PIO has provided the information to the Appellant sought by him vide application dated

05/12/2019 and the Appellant has collected the same as well from Respondent No. 3, no more intervention of this Commission for providing information is required and as such prayer (a) becomes infructuous.

b) Prayer (b) regarding action under Section 20 (1) and Section 20 (2) against the concerned Public Information Officer is rejected.

23. Hence the appeal proceedings stand disposed and 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 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