

# 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

## Complaint No. 11/2020/SIC-I

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

..... Complainant

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.

.....Opponents

Filed on : 16/03/2020

Decided on : 06/07/2021

### **Relevant dates emerging from Complaint:**

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
Complaint received on	: 16/03/2020

## **ORDER**

1. The Complaint filed by the Complainant Shri. Prashant S. P. Tendolkar, resident of A-6, Raj Housing, Shantinagar, Ponda Goa, under Section 18 (c) and 18 (e) of the Right to Information Act, 2005, (RTI Act) against Opponent no. 1, Public Information Officer (PIO), Finance Department (R&C), Government of Goa, Secretariat,

Porvorim; Opponent no. 2, First Appellate Authority (FAA), Finance Department (R&C), Government of Goa, Secretariat, Porvorim Goa and Opponent no. 3, Public Information Officer (PIO), Directorate of Information & Publicity, Udyog Bhavan, 3<sup>rd</sup> floor, Panaji Goa, came before this Commission on 16/03/2020.

2. Brief facts leading to the Complaint are that:-

- a) The Complainant 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 Opponent 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 Opponent that he received a letter from Opponent No. 3, PIO, stating the information sought by the Opponent was not held by him and that it was held by the Opponent no. 1. Accordingly in exercise of its rights under section 6 (3) of the RTI Act the Opponent No. 3 transferred the said request to Opponent no. 1 by letter dated 10/12/2019.
- c) It is the contention of the Complainant that in spite of passage of the statutory period provided in the Act, Opponent No. 1 failed to provide information by not disposing off the request, nor rejected the request.
- d) It is the contention of the Complainant that deeming the non-disposal of request as refusal, the Complainant filed the first Appeal before Opponent No. 2, the First Appellate Authority.
- e) It is the contention of the Complainant that Opponent No. 2 by its order dated 07/02/2020 disposed the first Appeal by upholding the contention of Opponent No. 1 that the said letter dated 10/12/2019 sent by the Opponent No. 3 was never received by the office of Opponent no. 1. It is also contended by the Complainant that he has a reasonable belief that Opponent No. 3 has either not transferred the application or that the Opponent No. 1 has given a misleading and false reply to the Opponent No. 2 resulting in the order of FAA dated 07/02/2020.
- f) It is the contention of the Complainant that either the Opponent No. 1 and / or Opponent 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 Complainant.

3. In the above background the Complainant being aggrieved by the action of Opponent No. 1, PIO, Finance Department (R&C); Opponent No. 3, PIO, Directorate of Information & Publicity and Opponent no. 2, FAA, Finance Department (R&C) approached this Commission under Section 18 (c) and 18 (e) of the Right to Information Act 2005, on 16/03/2020. The Complainant prayed for-
  - a) An inquiry be held as contemplated u/s 18 of the RTI Act 2005 against Opponent No. 1 and 3.
  - b) Impose penalty as contemplated under Section 20 (1) and 20 (2) of the RTI Act 2005, 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 Complainant submitted a request received via email and inwards in the office of the Commission vide entry no. 81 dated 30/06/2020 that the Complainant would prefer to submit and receive pleadings, applications, submissions etc. in electronic form. The request was granted.
5. Complainant, Opponent no. 1 and Opponent No. 3 filed their replies, rejoinders, written submissions along with supporting documents/papers to substantiate their say, during the subsequent hearings.

In his submissions, Complainant submitted that the information is not yet furnished is not disputed by any of the Opponents, even as per the records the information is not yet received. It is evident that either the Opponent No. 1 and / or Opponent 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 Complainant.

In her submission, Opponent 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 Opponent 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 Opponent 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 Opponent No. 1 PIO at any point of time, hence the question of any failure on the part of the Opponent no. 1 does not arise.

In his submission, Opponent No. 3 submitted that the Opponent was always willing to furnish the information to the Complainant, 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 Opponent No. 3 could not furnish the information to the Complainant.

6. I have perused the documents and the submissions submitted by the Complainant and the Opponents and have considered the pleadings of the parties. Considering the contentions of the Complainant and the Opponents herein, few points that arise for the determination of this Commission are:
  - (i) Whether the application of the Complainant was transferred by Opponent no. 3 to Opponent 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 Opponent No. 1.
  - (iii) Whether Opponent No. 1 and / or Opponent No. 3 have committed any breach by not providing information and have misled the Complainant and also the First Appellate Authority.
  - (iv) Whether the actions of Opponent No. 1 and / or Opponent No. 3 are qualified to be termed as dereliction of duties and whether the concerned person/persons should be punished under Section 18 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 Complainant filed his RTI application dated 05/12/2019 to the Opponent No. 3, PIO, Directorate of Information and Publicity. The Complainant was informed by the Opponent No. 3 vide letter dated 10/12/2019 that his application is transferred to the Public Information Officer, **Finance Department**. Opponent 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 Complaint 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 Complainant in the first appeal before Opponent 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) Opponent no. 3 has enclosed the said letter no. DI/RTI/Reply/2019/3466 dated 10/12/2019 in his reply to the Complaint 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 Opponent 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 Opponent 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 Opponent No. 3 to Opponent no. 1 and that the said application was received by Opponent No. 1. Also, it is noted that Opponent No. 1, PIO, Finance Department (R&C) came to know about the said letter only when the Complainant

filed the first appeal before Opponent No. 2. Then the Opponent No. 1 made a search in Revenue and Control section of Finance Department, but the said letter could not be traced. Opponent 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 Opponent No. 1 that the said letter was neither inwarded in the Revenue and Control (R&C) section of the Finance Department, nor received by Opponent No. 1.

8. Upon careful scrutiny of the submissions and documents submitted before the Commission it appears that the Complainant was given to understand that his RTI application dated 05/12/2019 was transferred to Opponent No. 1. But there is no conclusive evidence to show that Opponent no. 3 transferred the said request to Opponent No. 1 under Section 6 (3) of the RTI Act. Also, the question, whether this act of Opponent No. 3 was by mistake or a deliberate one, remains unanswered.
9. It is not contested by Opponent No. 1 that the file referred by the Complainant 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 Opponent No. 1 that in case the RTI application of the Complainant had been properly transferred to Opponent no. 1, the Opponent no. 1 would have supplied the information to the Complainant.
10. As per the submission of Opponent 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 Opponent 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 Opponent No. 1 had not received the RTI application dated 05/12/2019, therefore question of replying to the said application by Opponent No.1 does not arise.
11. On the background of these developments Opponent 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 Opponent No. 3 has provided the requisite information as sought by the Complainant under RTI Act and the Complainant has collected the same.

12. Opponent 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, Opponent 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 Complainant. 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. Opponent 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) Opponent No. 3, the then PIO did transfer the RTI application, but it is not clear whether the same was transferred to Opponent 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 as error or a deliberate act.
  - (ii) It is clear from the documents submitted before this Commission by the Complainant and Opponents that Opponent No. 1 did not receive the said transferred application.

- (iii) Therefore, Opponent 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 Complainant.
- (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 V/s 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 Opponent No. 3 in this case, after his retirement as penalty or compensation.

20. Opponent 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 Opponent 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 Opponent 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 Opponent No. 1. Considering the facts presented before the Commission I find the explanation given by Opponent 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). Opponent 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 light of above discussion, I find no ground for action under Section 18 and Section 20 (1) and 20 (2) of the RTI Act 2005, against Opponent no. 1 and Opponent no. 3, the concerned Public Information Officers. Therefore prayer (a) and prayer (b) are rejected and the Complaint is dismissed.

Complaint proceedings 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