

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No. 11/2021

IN

Appeal No. 90/2020/SIC-I

Tanya Kim Margaret Fraser,
Flat No. 3, Novo Portugal,
Moirá, 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

Relevant dates emerging from appeal:

Order passed in Appeal 90/2020	:12/08/2021
Show cause notice issued to PIO	:19/08/2021
Beginning of Penalty Proceeding	:15/09/2021
Decided on	:29/10/2021

ORDER

1. The Penalty proceeding has been initiated against the Respondent Public Information Officer (PIO), under section 20(1) and/or 20(2) of the Right to Information Act, 2005 (for short, the Act) for not complying the order of the First Appellate Authority (FAA) and for not furnishing complete information to the Appellant.
2. The details of the case are mentioned in the order of this Commission dated 12/08/2021. However, the facts in brief are reproduced here to navigate through the matter comprehensively.
3. The Appellant had sought information vide four applications all dated 16/01/2020 under section 6(1) of the Act, from the PIO. The Appellant contended that the information furnished by the PIO is incomplete and he intentionally provided wrong information. The Appellant filed Appeal dated 08/02/2020 before the FAA, Additional Secretary, Home Department. The FAA vide order dated 16/03/2020

directed PIO to furnish information within 7 days. That the Appellant did not receive information within the stipulated time and being aggrieved she filed second appeal dated 29/05/2020 before this Commission. Appellant prayed for complete information and penalty to be imposed on PIO.

4. The Commission, after hearing both the parties disposed the appeal vide order dated 12/08/2021. It was concluded that the PIO initially did not furnish the information by transferring the application to other department and later failed to furnish the remaining information as per the direction of FAA. That the conduct of PIO is not in consonance with the Act and such a lapse is punishable under section 20(1) and 20(2) of the Act. Accordingly PIO was asked to show cause as to why penalty as provided under section 20(1) and 20(2) of the Act should not be imposed against him.
5. The Penalty proceeding was initiated against Shri. Umesh Desai, the then PIO, presently working as Section Officer, Goa Human Rights Commission, Panaji-Goa, who appeared before the Commission on 15/09/2021. Advocate K. L. Bhagat requested for time to file reply on behalf of the PIO. Ms. Tanya Kim Margaret Fraser, Appellant, appeared in person and pressed for penalty by stating she is being harassed for the information. Later on 04/10/2021, PIO filed reply along with enclosures, where as Appellant filed submission dated 05/10/2021.
6. The Appellant stated in her submission that she has still not received the reply of PIO, even though PIO claims that the copy is sent to her by Registered Post. That she has been harassed for the information and that the FAA in his order has also stated that the PIO's behaviour in not providing the said information has not been appropriate. By stating this the Appellant pressed for imposing penalty on PIO.
7. The PIO, in his reply contended that he transferred three out of four applications to Directorate of Women and Child Development with a bonafide intention to enable her to get the compensation at the earliest. Secondly the subsequent delay caused to furnish the information to the Appellant was due to PIO having been proceeded on leave and further, had no knowledge about the order of FAA till he was transferred from the Home Department. The PIO also stated that as per the provisions of section 20(1) and 20(2) there ought to

be intentional, persistent and malafide acts on the part of the PIO in delaying the information or knowingly giving incorrect, incomplete and misleading information. In the present case he has made bonafide efforts at the first instance to assist Appellant to get the relief of compensation for which she sought the said information.

8. It appears from the records that the PIO initially transferred application to Directorate of Women and Child Development. Secondly the PIO was on earned leave when FAA passed the order. The official who took over the charge during the leave period of PIO did not update the PIO regarding FAA order. Later the PIO was transferred from Home Department to Protocol Department and Shri. Sushant Parab assumed the charge of PIO in Home Department and furnished the information to the Appellant. Therefore it is seen that the then PIO Shri. Umesh Desai never denied any information to the Appellant. He faulted on two aspects. One – when he transferred the application to Directorate of Women and Child Development with an intention of helping the Appellant to get compensation. His first priority should have been furnishing the information. Two - The PIO should have updated himself regarding proceeding of first appeal, immediately after joining back office, which he failed to do, However, no malafide can be attributed to the action of PIO as it appears very clearly that he has not intentionally denied the information, nor he has knowingly given incorrect, incomplete and misleading information.

It is also seen that Smt. Jyoti Sawant, present PIO of Home Department has furnished complete information to the Appellant as per the directions of this Commission, vide letter dated 03/09/2021. Smt Sawant has furnished a copy of the said letter in the registry of Commission on 03/09/2021. Therefore Appellant's contention that the present PIO has not furnished the information cannot be accepted.

9. Hon'ble High Court of Bombay at Goa bench in writ Petition No. 704 of 2012 (Public Authority and others V/s Shri. Yeshwant Tolio Sawant) has held:-

" Imposition of such a penalty is a blot upon the career of the officer, at least to some extent. In any case, the information was ultimately furnished, though after some marginal delay. In the facts and circumstances of the present case, the explanation for the marginal delay is required to be accepted by the learned Chief Information Commissioner. In such

circumstances, therefore, no penalty ought to have been imposed upon the PIO."

10. The reply filed by the then PIO and justification given by him appears to be convincing. Thus considering the ratio laid down by the Hon'ble High Court of Bombay as above, circumstances of the present case does not attribute any malafide on the part of PIO and hence not a fit case warranting levy of penalty on PIO.
11. Hence the penalty proceeding against the PIO is dropped. The Matter is disposed and proceeding 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