

GOA STATE INFORMATION COMMISSION

"Kamat Towers" 7th Floor, Patto Plaza, Panaji, Goa – 403 001

Tel: 0832 2437880 E-mail: spio-gsic.goa@nic.in

Website: www.gsic.goa.gov.in

Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 135/2020

Shri Sushant Shirodkar,
C-4-C, Govt. Quarters,
Altinho Panaji – Goa
403001

..... Appellant

V/s

1)First Appellate Authority (FAA),
O/o. Directorate of Social Welfare,
Panaji – Goa.

2)Public Information Officer (PIO),
O/o. Directorate of Social Welfare,
Panaji – Goa.

.... Respondents

Filed on : 08/09/2020

Decided on : 30/09/2021

Relevant dates emerging from appeal:

RTI application filed on	: 16/06/2020
PIO replied on	: 13/07/2020
First appeal filed on	: 28/07/2020
First Appellate Authority Order passed on	: Nil
Second appeal received on	: 08/09/2020

ORDER

1. The second appeal filed under section 19(3) of the Right to Information Act, 2005 (hereinafter to be referred as Act) by the Appellant Shri. Sushant Shirodkar against Respondent No. 1, The Appellate Authority (FAA), O/o Directorate of Social Welfare, Panaji Goa and Respondent No. 2, Public Information Officer (PIO), O/o. Directorate of Social Welfare, Panaji Goa, came before this Commission on 08/09/2020.
2. Brief facts leading to the second appeal are that:-
 - a) The Appellant, Shri. Sushant Shirodkar, Ex-employee of Directorate of Social Welfare, vide his application dated

16/06/2020 had sought information relating to himself on following points :-

- i. Certified copy of the M.A.C.P. (3rd upgradation) order.
 - ii. Certified copies of noting sheets/ correspondence related to transfer / posting / deployed with reference to order no. 12/66/81/ADMN/Vol. VIII/6385 dated 02/11/2012, from the Directorate of Social Welfare, Panaji Goa, to the Goa State Commission for Backward Classes, Altinho, Panaji Goa, in the year 2011-12 and related documents/ file noting related to transfer.
 - iii. Certified copies of confidential reports (CRs) during the service from 2010-11 to 2018-19.
- b) It is the contention of the Appellant that only part information was provided vide letter no. 13-225-2015-16-ADMN/Part-V/1367 dated 13/07/2020.
- c) It is the contention of the Appellant that part of the information listed at point no. 2 has not been provided and the RTI application was transferred to the O/o Goa State Commission for Backward Classes vide letter no. 13-225-2015-16-ADMN/Part-V/1368 dated --/07/2020. However the PIO, Goa State Commission for Backward Classes sent back the said application to the PIO, O/o Directorate of Social Welfare Department, vide letter dated 14/08/2020, stating that the information sought by the Appellant is held by the office of Respondent No. 2.
- d) It is the contention of the Appellant that in the meanwhile the Appellant filed first appeal dated 28/07/2020 before FAA. However, no hearing was conducted by the First Appellate Authority within the stipulated period of 45 days.
- e) It is the contention of the Appellant that PIO has furnished incomplete information and FAA neither conducted hearing nor passed order, as such he is forced to approach this commission by way of second appeal.

3. In the above background the Appellant being aggrieved by this action of PIO and inaction of FAA, approached this Commission under sub section (3) of section 19 of the Act on 08/09/2020. The Appellant prayed for correct and complete information, penalty under section 20 along with some other prayers.
4. After notifying the concerned parties the matter was taken up for hearing. Pursuant to the notice of this Commission, the Appellant appeared along with his representative Shri. John Nazareth. The PIO Ms. Ana Menezes appeared in person and FAA was represented by Ms. Suhana Naik, PIO filed reply dated 01/10/2020 stating that some information with respect to Point No. 2 of application was not found in office records and she will again make efforts to trace the information and if available, the same will be furnished to the Appellant. As regard to point No. 3 of the application, the PIO has stated that C.R.s of the Appellant for the year 2017-18 and 2018-19 are not available on record and there is no deliberate intention to hide the said information.
5. Advocate Harsha Naik appeared on behalf of PIO and FAA for hearing dated 31/03/2021 and assured the Commission to furnish the remaining information. However, Advocate Harsha Naik later stated before the Commission that the said information i.e. C.R. for the year 2017-18 does not exist in the office of the PIO as the Appellant was not working in her office during that period. Subsequently copy of a letter dated 21/06/2021 written by Ms. Vidya V. Parulekar, Head Clerk, Directorate of Social Welfare to the Deputy Director (Admn), Directorate of Social Welfare is furnished by the PIO on 01/07/2021. The letter states that as informed by the office of Goa State Commission for Backward Classes, though Shri. Sushant Shirodkar was deployed in the office of the Commission during 2017-18 and 2018-19, Shri. Shirodkar has not done any work of the Chairman, therefore he is unable to write APARs of Shri. Sushant Shirodkar for the said period.
6. The Appellant filed written submission dated 31/08/2021 stating he had sought information pertaining to the service matter and part of it is still not furnished to him. The Appellant has insisted on getting C.Rs of his service for the years 2017-18 and 2018-19.
7. The PIO, meanwhile, filed an application dated 31/08/2021 with a request to add Shri Arvind Bugde, Member Secretary of Goa State

Commission for Backward Classes, stating Shri. Bugde is the authority to sign document in the Commission. However considering the fact that Shri. Bugde was not posted in the Goa Commission for Backward Classes during the period for which Appellant is seeking records, the said request filed by the PIO vide application dated 31/08/2021 is rejected by the Commission.

8. It appears from the events unfolded during the proceedings of this Appeal, that the grievance of the Appellant regarding C.R.s for the years 2017-18 and 2018-19 has remained unanswered because the said records are not created by the concerned authorities, and therefore not available. This being the case, the said information cannot be ordered to be furnished. However, matter of writing/not writing confidential report (C.R.) of any employee is related to service matter and this Commission does not have jurisdiction to hear service grievances of the Appellant. The role of the Commission is limited to ensure that a citizen is provided with information that is available in the records and sought under the Right to Information Act, 2005.
9. In a similar matter in the case of Tushar Kanti Chatterjee V/s S.P.I.O, P and RD Directorate, no. 1785 (3), decided by West Bengal Information Commission on 25/08/2019 it is stated:-

"Since service matters are guided by memos, rules, order, circular etc., which are being followed by the concerned department and it is impossible for the Commission to go into every detail of the complexity of Government Establishment. Nor the Commission can assume the charge of an expert about every service matter of a Government Department and would be able to adjudge whether or not an information has been correctly furnished. For the purpose of ameliorating grievances of the members of staff, the Government Administrative Tribunals have been set up which is a proper forum."

This position has been made clear by different State Information Commissions and also by the Central Information Commission.

10. Considering the position mentioned above and as per the facts stated during the proceedings of this matter, the Commission concludes, that the available information has been furnished by the PIO and the appeal is thereby required to be disposed accordingly.

11. Before closing, the Commission finds it necessary to note that the FAA did not entertain first appeal when tendered by the Appellant. Section 19(1) provides for filing of the first appeal before FAA. Right to file first appeal is statutory and seeker cannot be deprived of the same. Practice of refusal to entertain the first appeal is not in tune with the provision and spirit of the RTI Act. The FAA is expected to set an example of transparent conduct by honoring the RTI Act. FAA has therefore failed to adhere to the provisions of the Act.

12. The Appeal is disposed and proceedings are closed with the following order:-

(a) The available information has been furnished to the Appellant and non existing information cannot be ordered to be furnished, the prayer for remaining information becomes infructuous and no more intervention of the Commission is required.

(b) All other prayers are rejected.

Pronounced in the open hearing.

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