

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 98/2020/SIC-I

Shri Sarvesh Raghu Khandolkar,
R/o. H. No. 151, Carmi Bhat,
Merces, Tiswadi Goa 403005

..... Appellant

V/s

1. Public Information Officer (PIO),
Office Superintendent,
Administrative Branch,
PHQ, Panaji – Goa. 403001

2. First Appellate Authority (FAA),
The Superintendent of Police (HQ),
PHQ, Panaji Goa, 403001

... .. Respondents

Filed on : 11/03/2020

Decided on : 22/07/2022

Relevant dates emerging from appeal:

RTI application filed on	: 20/09/2019
PIO replied on	: 17/10/2019
First appeal filed on	: 31/10/2019
FAA order passed on	: 27/11/2019
Second appeal received on	: 11/03/2020

ORDER

1. The second appeal filed by the appellant under section 19(3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') against Respondent No. 1, Public Information Officer (PIO) and Respondent No. 2, First Appellate Authority (FAA) came before the Commission on 11/03/2020, with prayers for furnishing information free of cost and imposition of penalty on PIO for refusing the information.

2. The brief facts of this appeal are that the appellant vide application dated 20/09/2019 sought certain information from the PIO. Part information was furnished to him by the PIO vide reply dated 17/10/2019. Being aggrieved by the action of PIO, appellant filed appeal dated 31/10/2019 before the FAA. FAA vide order dated 27/11/2019 dismissed the appeal and the appellant approached the Commission by way of the second appeal.
3. Notice was issued to the concerned parties pursuant to which appellant appeared before the Commission on 24/07/2020 and later on 10/11/2020 filed a written submission. Appellant filed additional submissions on 17/12/2020 and 22/04/2022. PIO appeared on 24/07/2020 and filed a written submission on the same day. FAA was represented before the Commission by his official representative.
4. Appellant stated that, he had sought information pertaining to appeals/revisonal against the order of D.E. and the said information has been wrongly denied under section 8(1)(j) of the Act by the PIO claiming the same as personal information. However, the information sought is general in nature and the said matters are heard and orders are passed by the quasi-judicial authorities of Goa Police Department, hence the information sought is in public domain and the same is required to be furnished.
5. Appellant further contended that, Appellate/Revisonal Authorities have misused their powers and malpractices are going on with regards to the passing of orders/setting aside those orders passed by the Disciplinary or the Appellate Authorities. This being the case, he is seeking the information in larger public interest.
6. PIO stated that, upon receipt of the application he furnished the information to the appellant pertaining to him and as regards to the

information of other police personnel, the information was rejected under section 8(1)(j) of the Act since the said information is classified as personal information. In this regard reliance is placed on the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 27734 of 2012 in Girish Ramchandra Deshpande V/s Central Information Commission and others.

7. PIO further stated that, he has furnished the information within 30 days and denied the remaining information since the same is personal information and that his stand was upheld by the FAA while dismissing the first appeal.
8. Appellant, while arguing the matter on 22/04/2022 stated that he is seeking this information in order to bring the corruption and malpractices of the authorities to light. The claim of third party that same is personal information cannot legitimately stand since the order passed by the respective Appellate and Revisional Authorities are sought by the appellant and the said information pertains to quasi-judicial proceeding, which cannot be held back from disclosure under the Act.
9. Upon perusal of the records of the present case it is seen that the appellant had requested for the following information:-
 - I. The undersigned hereby requires the following particulars of information
 - a) Subject Matter:- Appeals/Revisional Appeals against the Orders of D.E.
 - b) The period to which the information relates:- 2014-2019.
 - c) Information Description:
 - i. Certified copies of Appeals preferred by Police Personnel before the IGP-Goa and DIGP-Goa (Crime and Range) and (PHQ) against the orders passed by

respective Disciplinary Authorities (SP's) w.e.f. 01/01/2014 till 31/08/2019.

- ii. Certified copies of orders passed into above referred Appeals.
- iii. Certified copies of Revisional Appeals preferred by the Police Personnel before the DGP-Goa, against the Order passed by the respective Disciplinary Authorities and Appellate Authorities w.e.f. 01/01/2014 till 31/08/2019.
- iv. Certified copies of orders passed into above referred Revisional Appeals.

Means the information requested is regarding copies of appeals preferred by police personnel before various authorities against the orders passed by respective Disciplinary Authorities, orders passed by these authorities, copies of revisional appeals and orders passed by the authorities into the revisional appeals.

10. PIO vide reply dated 17/10/2019 furnished the information pertaining to the appellant who is an employee of the Police Department and rejected under section 8(1)(j) information pertaining to other Police Personnel. FAA vide order dated 27/11/2019 while dismissing the appeal held that the appellant has not succeeded to establish that the information sought is for larger public interest.

11. Section 8(1)(j) of the Act states:-

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 relates 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 a State Legislature shall not be denied to any person.

12. As mentioned above, section 8(1)(j) exempts information of personal nature which has no relationship to any public activity or interest. However, the said section further suggests that the personal information may be disclosed in case the larger public interest justifies the disclosure.

In the present matter, the appellant has claimed malpractices in the process of deciding the appeals before the authorities and has stated one such example i.e. Proceedings No. 5 of 2018 which has been referred before Hon'ble Lokayukta of Goa. Hence, the Commission conclude that the disclosure of the said information is in the larger public interest and the same needs to be disclosed.

13. While reading section 8(1)(j) of the Act, it is necessary to read proviso to the said section. The proviso states that any information which cannot be denied to the Parliament or a State Legislature shall not be denied to any citizen. It is a known fact that the Parliament or the State Assembly has a right to know the details pertaining to appeals before quasi-judicial authorities of the Police Department and the orders passed by the said authorities. Hence the appellant has a right to seek the information requested vide application dated 20/09/2019.

14. It is observed that the authorities appointed in the Police Department as Disciplinary/Appellate/Reviewing Authority and these authorities conduct proceeding under Goa Police Subordinate Service (Discipline and Appeal) 1975, hence these authorities are quasi-judicial authorities and the proceedings are quasi-judicial in nature. This being so, proceeding and orders passed by the quasi-judicial authority are required to be in public domain. Thus, the information sought by the appellant qualifies as information under section 2(f) and is not exempted, and needs to be furnished to the appellant.

15. During the hearing on 14/08/2020 the Commission observed that the information sought by the appellant pertains to the third party (147 Police personnel) and directed the Registry to issue notice under section 19(4) of the Act to the third party Police personnel, after seeking the names and address of the said personnel from the PIO. Accordingly notice was issued under section 19(4) of the Act and reasonable opportunity was given to the third party police personnel. Most of the Police personnel filed reply objecting the disclosure of the said information under section 8(1)(j), whereas few police personnel vide their reply conveyed no objection for the disclosure and some police personnel preferred not to reply.

It has been already concluded by the Commission that the said information does not qualify for exemption under section 8(1)(j) and the same needs to be furnished.

16. PIO has relied upon judgement passed by the Hon'ble Supreme Court in Girish Ramchandra Deshpande V/s Central Information Commission (Special Leave Petition (Civil) No. 27734 of 2012). The said judgment deals with the information having no relationship to any public interest and exempts such information from disclosure under section 8(1)(j) of the Act. However, the present appeal deals

with an application seeking the information pertaining to appeals and orders decided before Disciplinary/Appellate/Reviewing authorities of the Police Department, which are quasi-judicial authorities and proceeding before the said authorities falls in public domain.

17. Nevertheless, referring the case of Girish Ramchandra Deshpande v/s Central Information Commission and Ors. and some other cases, the Hon'ble Supreme Court in Central Public Information Officer, SC of India V/s Subhash Chandra Agarwal (C.A. No. 10045/2010) in para No. 59 has held

"59. Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive."

18. In the light of the above discussion and subscribing to the ratio laid down by the Hon'ble Supreme Court, the exemption from disclosure under section 8(1)(j) claimed by the PIO is inappropriate and hence the said information is required to be furnished. The PIO is held guilty of non complying with section 7(1) of the Act by not furnishing the information within stipulated period to the appellant.

19. However, it is noted from the records that Shri. John Nazareth the then PIO has retired from service on superannuation, on 30/04/2020. Section 11 of the Pension Act, 1871 grants immunity to the pension holder against its attachment. Similarly, section 60(1)(g) of Civil Procedure Code bars attachments of Pension benefits. In the present case, Shri. John Nazareth, the then PIO, though guilty of not furnishing the information under section 7(1) of the Act, has retired from service and his retirement benefits are beyond the scope of attachment. Hence the Commission is unable to invoke section 20(1) of the Act against the PIO for penal action.

20. In a similar matter, the Hon'ble Supreme Court, in Gorakhpur University and others V/s Dr. Shilpa Prasad Nagendra (Appeal Civil 1874 of 1999) has held:-

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

21. Nevertheless, the appellant cannot be deprived of the information, the same being his statutory right. On the background of the facts of this case, the present appeal is disposed with the following order:-

a) PIO is directed to furnish the information sought by the appellant vide application dated 20/09/2019, within 30 days from the receipt of this order, free of cost.

b) Prayer for imposing penalty on the PIO is rejected.

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