

GOA STATE INFORMATION COMMISSION

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

Tel: 0832 2437908, 2437208 E-mail: spio-gsic.goa@nic.in Website: www.gsic.goa.gov.in

Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 130/2020/SIC-I

Shri. Sharad S. Ghure(Ex-Jailor),
H.No. 168/2, Madhalawada-Sal,
Bicholim Goa.

....Appellant

V/s

1) The Public Information Officer,
O/o the Superintendent of Central Jail,
Colvale-Bardez-Goa 403513

2) First Appellate Authority,
The Inspector General of Prisons,
1st floor, Old Education Building,
18th June Road, Panajim-Goa.

...Respondents

Appeal filed on: 31/08/2020

Decided on: 08/04/2022

Relevant dates emerging from Appeal:-

RTI application filed on	: 31/01/2020
Application transferred on	: 19/02/2020
PIO replied on	: 21/02/2020
First appeal filed on	: 21/04/2020
FAA order passed on	: 29/05/2020
Second appeal received on	: 31/08/2020

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 31/08/2020. Appellant prayed for the information and award of compensation of Rs. 20,000/-.
2. The facts in brief of this appeal are that the appellant vide application dated 31/01/2020 sought information on four points, pertaining to his service, from the Inspector General of Prisons. The said application was transferred vide letter dated

19/02/2020 to PIO, Superintendent of Central Jail. Respondent PIO vide letter dated 21/02/2020 furnished information with regards to point No. 1 and 2. Aggrieved appellant filed appeal dated 21/04/2020 before the FAA, and FAA vide order dated 29/05/2020 disposed the appeal with directions to the PIO to furnish the information 'as is available.' Subsequently, PIO provided the information as available in his office to the appellant. However, appellant preferred this appeal stating that the information furnished is not the actual information sought by him.

3. Notice was sent to the concerned parties and pursuant to the notice, appellant and PIO appeared in person. PIO filed reply dated 28/10/2020, then filed affidavit on 09/11/2020, submitted final say on 07/10/2021 and written arguments dated 05/04/2022. Appellant filed reply to the affidavit of PIO on 15/07/2021 and filed reply to final say of PIO on 21/10/2021.
4. PIO stated in his reply that information sought under point no. 1 and 2 was furnished to the appellant within the stipulated period. Later FAA vide his order dated 29/05/2020 directed PIO to furnish information 'as is available'. Accordingly available information has been furnished to the appellant free of cost.
5. PIO filed affidavit stating that he and his concerned dealing hands have repeatedly undertaken search of records in the office, however it is found that documents pertaining to information sought under point No. 3 and 4 are not available in the records. Appellant and person accompanying him have inspected the entire records and stated before the Commission that they did not find any relevant document. The act mandates to furnish only the available information and PIO cannot create information in order to facilitate the appellant. The PIO has already furnished the available information.
6. Further, PIO stated vide final say dated 07/10/2021 that the appellant has already made a submission before the Commission that he had inspected the records of PIO and no relevant documents were found. Opportunity is also given to appellant to inspect the records in the office of Inspector General of Prisons as well as the office of the Superintendent, Central Jail, Colvale. All available information has been furnished to the appellant during the stipulated period of 30

days, after the directions of FAA and lastly during the proceeding of this appeal.

7. Appellant stated in his submission that the information provided by the PIO after the directions of FAA is insufficient. Every government office including the office of PIO is bound to keep records of pay scales and pay structure of each staff. That the appellant has never inspected the records pertaining to the information sought and is not satisfied with the information furnished by the PIO. The submissions made by the PIO in the affidavit are required to be verified. The information sought is easy to understand and can be provided by application of mind by the PIO. The said information has to be available in the office of PIO since such information is always required during implementation of annual increments, etc. of staff as per their pay scales.
8. Appellant vide another submission stated that he visited the office of PIO for collection of information, however appellant had not inspected any records pertaining to point No. 3 and 4 of his application. Though the Department of Prisons is formed in 2012, prior to the formation of department, the functioning was under the District Collector-North and the said office was functioning separately in the same premises and the staff of the said office are now working in the Department of Prisons. The contention of PIO that the information sought is not available in the newly formed office is not acceptable.
9. Appellant argued on 05/01/2022 stating that he worked as Jailor and retired in 2010. He was awarded a lower pay scale as compared to other Jailors and hence he is seeking the information pertaining to pay scales of different posts fixed after adoption of the central pay recommendations by the State Government, with respect to various Pay Commissions. Appellant further argued that Inspector General of Prisons had issued circular giving pay scales of different posts including the post of Jailor and he is seeking the copy of the said circular.
10. The Commission has perused the records of this appeal. It is seen that the appellant has sought information on four points and PIO has furnished information on point No. 1 and 2 within the stipulated period. Later, PIO furnished available information pertaining to point no. 3 and 4 in compliance of the directions of FAA. However, appellant is not satisfied with

the said information and is seeking specific information in tabular form. He is seeking pay scale/pay structure fixed after adoption of the central pay recommendation by the State Government, i.e. from 3rd Pay Commission to 7th Pay Commission for the posts of Jail Guard, Head Guard, Assistant Jailor, Jailor and Assistant Superintendent. He is aggrieved due to the fact, according to him, that he was awarded a lower scale as compared to other Jailors, and hence seeking the said information in order to approach appropriate court of law to seek justice.

11. Section 2(f) of the Act defines information as:-

“information” means any material in any form, including record, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

The above definition makes it amply clear that the PIO is required to furnish ‘information’ falling under the ambit of the said definition, and at the same time the Act does not ask PIO to create relevant information to meet the expectations of the appellant. Appellant, in this case, expects PIO to furnish the information by application of mind, which is not provided in the Act.

12. Hon’ble Supreme Court in Civil Appeal No. 6454 of 2011 (arising out of SLP (C) No. 7526/2009) in Central Board of Secondary Education & Anr V/s Aditya Bandopadhyay & Ors others has held in para 35:-

"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public

authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such nonavailable information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' 49 in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act."

13. Subscribing to the ratio laid down by the Hon'ble Supreme Court in the above-mentioned Judgement, the Commission is of the view that the PIO has furnished the available information and is not required to go beyond the purview of section 2(f) of the Act.
14. The Commission is in agreement with the statement of PIO that he has furnished the information as available and the Act does not mandate him to create the information in order to satisfy the appellant. Though the appellant is not satisfied with the information furnished to him, the Commission is unable to direct the PIO to furnish the information specifically as sought by the appellant, since the said information is not available in the form sought by him and the PIO has furnished the available information, as available in his records.
15. In the light of above discussion, the Commission concludes that PIO has furnished the available information sought by the appellant vide application dated 31/10/2020 and nothing more remains to be decided by the Commission. Hence the appeal is disposed accordingly and the proceeding stands 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