

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.scic.goa.gov.in

Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 276/2022/SIC

Dr. Ashutosh Govind Prabhu Dessai,
Associate Professor, Institute of Psychiatry
& Human Behaviour Bambolim,
R/o. 1/4 Namrata Bldg., Cardozo Wado,
Taleigao, Panaji, 403002.

-----Appellant

v/s

1. The Public Information Officer,
Goa Public Service Commission,
EDC House, Panaji 403001.

2. First Appellate Authority,
Goa Public Service Commission,
EDC House, Panaji 403001.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 21/04/2022
PIO replied on	: 13/05/2022
First appeal filed on	: 22/06/2022
First Appellate Authority order passed on	: 29/07/2022
Second appeal received on	: 28/10/2022
Decided on	: 05/06/2023

ORDER

1. The appellant under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') had sought information on 18 points from Respondent No. 1, Public Information Officer (PIO). It is the contention of the appellant that PIO furnished part information, hence, he filed appeal before Respondent No. 2, First Appellate Authority (FAA), which was disposed vide order dated 29/07/2022. Being aggrieved by the action of the respondents, he under Section 19 (3) of the Act preferred second appeal before the Commission.
2. Notice was issued to the concerned parties and the matter was taken for hearing. Pursuant to the notice, Smt. Sadhana Kenkre, Legal Assistant, Goa Public Service Commission (GPSC) and Advocate Ashish Kuncolienkar appeared on behalf of the PIO. Appellant after filing the appeal chose not to attend the proceeding before the Commission. Nevertheless, Rule 7 (2) of the Goa State Information Commission (Appeal Procedure) Rules, 2006, made under Section 27 of the Act, allows appellant to opt not to be present, accordingly, the matter was heard on merit.

3. It is the contention of the appellant that, only part information was furnished by the PIO and is aggrieved by the arbitrary and wrong action of the PIO to deny him part information. Information sought by him pertains to a matter vital to public interest such as appointment of Director of Institute of Psychiatry and Human Behaviour (IPHB) and Professor of IPHB.
4. Appellant further contended that, alongwith some other information he had requested for Annual Confidential Reports(ACR) sent to the authority by Public Health Department and considered by the Departmental Promotion Committee (DPC) during the process of selection of candidate for the above –mentioned posts in IPHB. That, he had also sought minutes of the DPC to fill up the post of Professor in IPHB and minutes of the meeting of Selection Committee / DPC to fill up the post of Director of IPHB. Similarly, names of expert members of selection committee were sought. Although the said information is available or has to be available in the records of the PIO, the same was not furnished and only part information was furnished after inordinate delay.
5. Appellant further contended that, the PIO, GPSC has been following wrong practices to deny information on imaginary grounds. Since such information cannot be denied to the Parliament or the Legislative Assembly, the same has to be provided to the appellant. Similarly, exemption from disclosure as claimed by the PIO are not applicable when larger public interest is involved.
6. Appellant has relied on Hon'ble High Court of Bombay at Goa, in PIL WP 19 of 2020, WP 01 of 2009 (Kashinath Shetye V/s PIO, Electricity Department & Ors.), WP 1004 of 2019 (C. Radhakrishnan V/s PIO & Ors.), Hon'ble High Court of Allahabad, in Civil Misc WP No. 45252 of 2005 (Praveen Verma V/s. Hon'ble High Court of Judicature).
7. On the other hand, PIO submitted that, she had furnished within the stipulated period, information on point no. 1, 2, 4, 5, 6 and 8 which was readily available in her records. Later, vide letter dated 05/08/2022, sent to the appellant in compliance with the FAA's direction, she furnished additional information and vide letter dated 25/11/2022 and 30/11/2022 she furnished information on point no. 11, 12 and 15.
8. PIO further stated that, Annual Confidential Report (ACR) of respective candidates are sent to the GPSC by the respective departments and the same are returned to the respective

departments upon conclusion of the process and the GPSC does not retain any ACRs. Similarly, information pertaining to minutes of the selection committee was denied to the appellant as the same contains the names of the experts and their views. Hence, the said information was refused under Section 8 (1) (j) of the Act. Also, names of the experts / selection committee members cannot be furnished, as the disclosure would ex facia endanger their life and physical safety.

9. Advocate Ashish Kuncolienar while arguing on behalf of the PIO stated that, the PIO has furnished all the information which can be disclosed within the purview of the Act and as available in the records. On the contrary, the appellant has made vague allegations against the authority and the PIO without substantiating the same. Advocate Ashish Kuncolienar further contended that, GPSC is a constitutional body that is distinct from the State Government and by that very fact, the circulars issued by the Government, do not bind the GPSC.
10. PIO has relied on Hon'ble Supreme Court in CA No. 9052 of 2012 (Bihar Public Service Commission V/s. Saiyed Hussain Abbas Rizwi and Another), Hon'ble Central Information Commission in Appeal No. CIC/ AT/A/2008/01463 (Shri. U.R.M. Raju V/s. Vishakhapatnam Port Trust), File No. CIC/BS/A/2014/000330 (Mr. Rajkumar V/s. CPIO & Superintendent of Post Offices), File No. CIC/AD/A/2011/001646 (Shri. Chandrashekhar Datta V/s. Chittaranjan Locomotive Works.)
11. The Commission has perused the appeal memo and reply of the PIO as well as heard arguments delivered on behalf of the PIO and considered the authorities relied upon by both the sides. After careful perusal of the above mentioned records, it is seen that the appellant vide application dated 21/04/2022 had requested for information on 18 points of which he was furnished information on point no. 1, 2, 4, 5, 6 and 8 by the PIO within the stipulated period, vide reply dated 13/05/2022. Information on other remaining points was rejected for different reasons. Information on point 11,12 and 15 was denied by the PIO stating that the disclosure would impede the process of recruitment and that the information will be provided after the selection process is over. Accordingly, it is seen from the records that, PIO vide letter dated 25/11/2022 furnished information on point no. 11 and 15 and later, vide letter dated 30/11/2022 furnished information on point no. 12. Thus, the Commission finds that the PIO has furnished information on point no. 1, 2, 4, 5, 6, 8, 11, 12 and 15 which has been received by the appellant.

12. With this, it is clear that the appellant has not received information on point no. 3, 7, 9, 10, 13, 14, 16, 17 and 18 and the same has been denied by the PIO for different reasons. This being the case, the issue the Commission needs to decide is whether PIO is justified in her action of denying the information on the above mentioned points and whether the appellant deserves any relief with respect to his grievance, as prayed by him in the instant appeal.
13. To arrive at a logical conclusion on the above mentioned issues, it is necessary to look into the information sought on point no. 3,7,9,10,13,14,16,17 and 18, as well as the stand taken by the PIO with respect to the information on the said points, sought by the appellant vide application dated 21/04/2022.

- (a) Point no. 3: Copy of Annual Confidential Reports of all candidates sent by Public Health Dept for the filling up of post of Professor in Psychiatry in the years 2013 to 2016.

PIO, while denying the information has stated that the GPSC does not retain any such ACR and those are returned to the respective departments upon conclusion of the process.

Here, the Commission acknowledges the fact that the GPSC, public authority in the present matter, might be following the procedure as stated by the PIO, leading to no retention of any ACR. However, PIO has not produced any document to substantiate the said procedure, hence, the Commission finds that the PIO is required to file an affidavit with respect to the status of information on point no. 3 of the application.

- (b) Point no. 7: Name of candidate recommended for the post of Professor IPHB following DPC of 2022.

PIO, while replying to the said query has stated that, no name was recommended for the said post.

Meaning, no information exists on the said point and the Commission concludes that the PIO has replied point no. 7 satisfactorily.

- (c) Point no. 9: Correspondence and action taken by the GPSC and Govt of Goa / Public Health Department on "Letter by undersigned dt. 27/01/2022 on "Sub: Reply to the Memorandum No. 6/9/2002-III/PHD/PART/2368 dated 04/01/2022" if the same has been forwarded by the Public Health Department to the Goa Public Service Commission.

Point no. 10: Copy of forwarding letter from Public Health Department forwarding the letter by undersigned dated

27/11/2022 on "Sub: Reply to the Memorandum No 6/9/2002-III/PHD/PART/2368 dated 04/01/2022"

PIO, while denying the information has stated that, such information is not available in the records and that, all the available information has been provided to the appellant.

Here, the Commission notes that the PIO has simply denied that there exists any such information available in the records. However, the Commission finds that the PIO is required to state regarding the status of information on point no. 9 and 10 of the application, on an affidavit.

- (d) Point no. 13: Minutes of the selection committee /DPC for filing up of post of Director IPHB vide advert no 3/2022 or any advertisement thereafter.

PIO, has denied the said information under Section 8 (1) (g) of the Act by claiming exemption from disclosure as the minutes of the meeting of selection committee contains names of experts and the disclosure would endanger the life and physical safety of the experts.

Here, the Commission is in agreement of the stand of the PIO that disclosure of names of experts is exempted for their safety. However, subscribing to the ratio laid down by the Hon'ble Supreme Court in Civil Appeal No. 6454 of 2011, arising out of SLP (c) No. 7526/2009, (Central Board of Secondary Education & Anr. v/s Aditya Bandopadhyay & Ors.), the minutes of the selection committee meetings can be furnished to the appellant by severing / covering the names and any personal details of the members of the said committee. Thus, the said information needs to be furnished accordingly.

- (e) Point no. 14: Name of the selection committee members for the filing up of post of Director IPHB

PIO, while denying the said information has stated that names of the members cannot be disclosed under Section 8 (1) (g).

Here, the Commission acknowledges the reply of the PIO and concludes that such information cannot be furnished since the disclosure may lead to compromising the safety of the expert members.

- (f) Point no. 16: Copy of correspondence by GPSC & Govt of Goa such as Personnel Department and Public Health Department etc pursuant to letter by undersigned dated 19/02/2022 on "Sub: Notice re-advertisement no. 3/2022 by GPSC post of Director IPHB".

Point no. 17: Copy of correspondence indicating action taken on letter by undersigned dated 19/02/2022 on "Sub : Notice re-advertisement no. 3/2022 by GPSC post of Director IPHB".

PIO, in her reply has stated that, the said information is not available as there is no such correspondence as regards the action taken with respect to point no. 17. PIO further points out that, the appellant had not challenged the grant of said information before the FAA, therefore, now he cannot challenge the same in the second appeal.

Here, the Commission finds that the aspect of furnishing of the information was not challenged by the appellant before the FAA. PIO did not get any opportunity to justify her stand then before the FAA, hence, furnishing of information by PIO on point no. 16 and 17 cannot be challenged before the Commission. Also, the Commission endorses the stand of the PIO that there exist no information since there is no such correspondence as regards action taken on appellant's letter dated 19/02/2022. Thus, the Commission upholds PIO's stand on point no. 16 and 17 of the appellant and finds that PIO is not required to furnish any information on point no. 16 and 17.

(g) Point no. 18: Copy of any other advertisement by GPSC following the Advertisement no. 3/2022 if any further advertisement have been issued for the post of Director IPHB.

PIO, while replying to the said query has stated that no more advertisement was issued for the said post, after the advertisement no. 03/2022.

Meaning, no information exists on the said point and the Commission finds that the reply of the PIO on point no. 18 is satisfactory.

14. With respect to the discussion and findings in Para 13 above, the Commission concludes that the PIO is required to furnish information on point no. 13 of the application dated 21/04/2022, after severing / covering names and personal details of the members of the selection committee. Similarly, the Commission upholds the stand of the PIO on point no. 3, 9, and 10 of the application, subject to swearing an affidavit regarding the status of information on the said points.
15. The Commission finds that part information which is eligible for disclosure (i.e. information on point no. 13) was denied by the PIO. However, the said decision of the PIO was based on her

interpretation of Section 8 (1) (g) and the same was upheld by the FAA. Thus, the Commission does not find any malafide in the action and intention of the PIO. Similarly, appellant has prayed for compensation of Rs. 25,000/- for hardship he had to undergo due to wrong process adopted by the PIO/ GPSC. Here, the Commission does not find any intentional anomaly in the action of the PIO, hence, such relief cannot be granted to the appellant.

16. In the light of above discussion, the present appeal is disposed with the following order:-

- a) PIO is directed to furnish information on point no. 13 of the application dated 21/04/2022 after severing /covering names and personal details of the members of the selection committee/ expert committee, within 20 days from receipt of this order, free of cost.
- b) PIO is directed to file an affidavit before the Commission, with respect to the status of information on point no. 3, 9 and 10 of application dated 21/04/2022, within 20 days from receipt of this order.
- c) All other prayers are rejected.

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.

