

GOA STATE INFORMATION COMMISSION

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

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Complaint No. 24/2022/SIC

C. Radhakrishnan,
H.No.500/7, Palmar Colony,
Bambolim Medical Complex (P.O.),
Bambolim, Tiswadi-Goa.

-----Complainant

v/s

1.The Public Information Officer,
Dy. Director (Adm),
Institute of Psychiatry and Human Behaviour,
Bambolim-Goa.

2. The Director/ Dean/First Appellate Authority,
Institute of Psychiatry and Human Behaviour,
Bambolim-Goa.

-----Opponents

Relevant dates emerging from the proceeding:

RTI application filed on	: 13/01/2022
PIO replied on	: 04/02/2022
First appeal filed on	: 27/04/2022
First Appellate authority order passed on	: Nil
Complaint received on	: 11/07/2022
Decided on	: 09/01/2023

ORDER

1. The complaint filed under Section 18 of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') by the complainant against Opponent No.1, Public Information Officer (PIO), Deputy Director (Admn), Institute of Psychiatry and Human Behaviour and Opponent No. 2, First Appellate Authority (FAA), Director/ Dean, Institute of Psychiatry and Human Behaviour, came before the Commission on 11/07/2022.
2. The brief facts of this case, as contented by the complainant are that, vide application dated 13/01/2022 he had sought information pertaining to duty time and the presence of one official in various courts during the office time. The said information was denied by the PIO, hence he filed appeal dated 27/04/2022 before the FAA. It is the contention of the complainant that the FAA, after keeping the appeal unheard for 35 days, informed him that the appeal cannot be considered as the same is filed beyond 30 days of period. Being aggrieved by non furnishing of information by the PIO and non hearing of the appeal by the FAA, complainant appeared before the Commission by way of this complaint.

3. The concerned parties were notified and the matter was taken up for hearing. Pursuant to the notice complainant appeared in person and filed rejoinder cum argument dated 13/09/2022. Shri. Seby M. Dias appeared on behalf of PIO and filed reply on 24/08/2022. Shri. Seby M. Dias filed reply on behalf of the FAA on 24/08/2022. On 27/09/2022 Shri. Uday A. Chari Priolkar filed an intervener application, whereas complainant filed reply dated 01/11/2022 to the intervener application.
4. Complainant stated that, he had sought information in public interest, pertaining to activity of a public servant who is an employee of the public authority, who was attending various Courts, Commissions and Government authorities during the office hours. Such information should be readily available with the PIO since the salary of the said public servant is being paid from the public exchequer. However, PIO denied the information without giving any reason.
5. Complainant further stated that, aggrieved by an incorrect and vague reply from the PIO, he filed appeal before the FAA. The appellate authority never gave any hearing, nor sought any clarification for delay if any, in filing the first appeal. If given an opportunity, the complainant would have stated the reasons for delay, which would have satisfied the authority. Similarly, FAA has not passed any order on the appeal, has sent a reply/ communication dated 01/06/2022, after keeping the appeal unheard for 35 days, informing the complainant that his appeal cannot be considered as the appeal is filed beyond 30 days of period.
6. PIO stated that, the complainant has sought information about attendance of the Court / judicial proceeding of one of the employee Shri. Uday Chari, during working hours for the past years, and the information regarding the permission granted by the office to Shri. Uday Chari to attend Court proceeding during the working hours and details regarding the permission granted / not granted. That the PIO informed the complainant that the said information is not available in the institute.
7. FAA stated that, he had received the first appeal dated 27/04/2022 filed by the complainant, and vide letter dated 01/06/2022 FAA had informed the complainant that the appeal cannot be considered as the appeal is beyond thirty days of period as provided under Section 19 (1) of the Act. That, the complainant vide letter dated 16/6/2022 requested to review the rejection, to which FAA vide letter dated

06/07/2022 informed the complainant that the request cannot be considered.

8. Shri. Uday A. Chari Priolkar, whose attendance details are sought by the complainant, on 27/09/2022 filed an intervener application stating that, PIO has failed to issue notice under Section 11 of the Act to him, as the information requested by the complainant pertains to his attendance in the office and that the said information is personal information under Section 8 (1) (j) of the Act. Shri. Uday A. Chari Priolkar, intervener submitted various prayers including dismissal of the present complaint.
9. Upon careful perusal of the records of the present matter it is seen that the complainant had sought information pertaining to the attendance records of Shri. Uday A. Chari Priolkar, who has been attending various Courts including the Commission, during office hours. Shri. Uday A. Chari Priolkar is an employee of Institute of Psychiatry and Human Behaviour (IPHB) and PIO of the said authority vide reply issued within the stipulated period informed the complainant that the said information is not available in the institute. The said reply was issued by the PIO on 04/02/2022.

Aggrieved by the said reply, complainant filed appeal under Section 19 (1) of the Act, dated 27/04/2022 before the FAA. The available records indicate that the FAA did not hear the appeal within the period of 30 days and vide letter dated 01/06/2022 issued after 30 days, informed the complainant that the appeal cannot be considered as the same is filed beyond the thirty days of period.

10. Section 19 (1) of the Act states:-

19. Appeal. (1) Any person who does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

11. The provision in above mentioned section makes it clear that any person aggrieved by the decision of the PIO is required to file appeal before the appellate authority within thirty days from the receipt of

the decision of PIO. In the present matter, PIO had issued reply on 04/02/2022, meaning appeal against the said reply should be filed on or before 06/03/2022, whereas the appeal was filed on 27/04/2022, delay of about 50 days.

However, it is pertinent to note the proviso of Section 19 (1) of the Act. The said proviso provides for the appellate authority to admit the appeal after the expiry of 30 days, if the authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

12. In the instant matter, the complainant during the arguments stated that, he was not given any opportunity by the FAA to present his case before the authority. He could not file first appeal within the prescribed period since he was infected with Covid-19 and also that, his father- in-law expired during the period.
13. With respect to the proviso of Section 19 (1) of the Act, the Commission finds that the complainant was not given any opportunity to explain the delay. The Right to Information Act is a beneficial act, brought by the Government with an intention to promote transparency and accountability in the working of public authority. Considering the aim and spirit of the Act, the Commission is of the view that the FAA was required to give an opportunity to the complainant to explain the reason for delay in filing the first appeal, and take an appropriate decision on the appeal.
14. While concluding that the FAA was required to hear the complainant before deciding the first appeal, it is made clear that the Commission has not gone into the aspects of merit of the application, nature of the information sought, merit of the decision of the PIO, prayers of the intervener etc. Similarly, the present matter being complaint filed under Section 18 of the Act, the Commission has no jurisdiction to direct PIO to furnish the information. The Commission only holds that the FAA, before arriving at a decision was required to hear the complainant, in the interest of natural justice.
15. In the light of above discussion, the present complaint is disposed with the following order:-
 - a) The present matter is remanded to the First Appellate Authority (FAA), Director/ Dean, Institute of Psychiatry and Human Behaviour (IPHB), and the FAA is directed to decide the same on merit, as provided by the law.

b) The complainant, if aggrieved by the order of the FAA, shall have the right to file second appeal under Section 19 (3) of the Act, within the period of limitation.

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