

GOA STATE INFORMATION COMMISSION
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Appeal No. 27/2024/SCIC

Shri. Prajyot Kudalkar,
Section Officer,
Goa Legislature,
Secretariat, Porvorim-Goa.
V/s
-----Appellant

1.The Public Information Officer,
Goa Legislature Secretariat,
Porvorim-Goa.
2.The First Appellate Authority,
Secretary, Legislature,
Goa Legislature Secretariat,
Assembly Complex,
Porvorim-Goa.
-----Respondents

Shri. ARAVIND KUMAR H. NAIR - State Chief Information Commissioner, GSIC

Relevant Facts Emerging from the Appeal

RTI application filed on	01/09/2023
PIO replied on	29/09/2023
First Appeal filed on	06/10/2023
First Appellate order on	06/11/2023
Second appeal received on	29/01/2024
Decided on	18/06/2025

Information sought and background of the Appeal

1. Shri. Prajyot Kudalkar filed an application dated 01/09/2023 under RTI Act, 2005 to the PIO, Goa Legislature Secretariat, Porvorim seeking following information :
- i. *"Certified copies of Annual Performance Appraisal Reports for the years 2019-20, 2020-21 and 2021-22.*
 - ii. *Certified copies of page noting of the file moved towards promotion of ONE post of Committee Officer, 2023 at the Goa Legislature Secretariat including correspondence and the approval/comments of the BOARD.*
 - iii. *Certified copy of the notified Recruitment Rules made applicable to the post of Committee Officer at the Goa Legislature Secretariat".*

2. In response to the RTI application, PIO vide letter dated 29/09/2023 replied as under :

<i>"Point No.1</i>	<i>The CRs of the relevant years are under scrutiny of the "Board" of the Legislature Secretariat. As the scrutiny is due to an investigation being conducted by the "Board", the same is in investigation process and as such till the process is concluded, the same is exempted from disclosure u/s. 8(1) (h) of the RTI Act, 2005.</i>
<i>Point No.2</i>	<i>No file has been moved for promotion to the post of Committee Officer and as such the reply to the same is NIL.</i>
<i>Point No.3</i>	<i>Certified copy of the Recruitment Rules of the post of the Committee Officer is annexed at Annexure A".</i>

3. Being aggrieved over furnishing incomplete information by the Respondent PIO, Appellant filed first appeal dated 06/10/2023 before the First Appellate Authority. Appellant submitted that denying copies of his own APARs citing '*investigation*' is irrational and it has prevented him from exercising his right to represent his case effectively.
4. Respondent PIO vide letter dated 01/11/2023 submitted before the First Appellate Authority that "*I am directed to state that the Legislature Board is conducting an inquiry/investigation in the conduct of Shri. Prajyot Kudalkar, Section Officer, during his tenure in the Administration Branch of the Goa Legislature Secretariat. And, as such all papers, documents, reports and confidential reports of the said Section Officer are under the custody of the Board, pursuant to the said inquiry/investigation by the Board and the enquiry/investigation is still ongoing*".
5. Appellant in his rejoinder dated 08/11/2023 to the Respondent PIO's submission dated 01/11/2023 before the FAA stated that :
- i. The information sought vide RTI application dated 01/09/2023 has been denied under the garb of being exempted from disclosure in terms of mandate of Section 8(1) (h) of RTI Act 2005.

- ii. In his knowledge, there is no departmental enquiry/disciplinary proceedings or any other investigation against him which warrant the APARs of the Appellant to be put under scrutiny of the Board of Legislature, Secretariat.

6. The First Appellate Authority (Secretary, Legislature, Goa Legislature Secretariat) vide order dated 06/11/2023 dismissed the Appellant's first appeal on the ground as under :

"Since, all papers, documents, reports, Confidential Reports/APARs of the said Section Officer, Shri Prajyot Kudalkar is in the custody of the 'Board' pursuant to the said enquiry/investigation is over and the papers thereto are released to the Administration Section by the 'Board', then only, the same can be handed over to the concerned. Hence the PIO is justified in not providing the information pertaining to the Confidential Reports/APARs which are directly under scrutiny have been refused under the relevant section mentioned hereinbefore under Section 8(1)(h) of the RTI Act".

7. Being aggrieved by the FAA's order dated 06/11/2023 dismissing his first appeal, Appellant preferred Second appeal dated 29/01/2024 before the Commission stating that the impugned Judgement and Order dated 06/11/2023 passed by the Respondent No.2 (FAA) is arbitrary, perverse and contrary to law. The said Judgement of the FAA is contrary to the facets and the basic principles of the RTI Act. According to the Appellant, the information sought for by the Appellant being within the ambit of the mandate of Section 2(1) (f) of the RTI Act, it was mandatory upon the Respondent No.1 (PIO) to disclose such information to the Appellant.

8. In the Second appeal, Appellant prayed for the following :

- i. Since the impugned judgement and order dated 06/11/2023 passed by the FAA, (Respondent No.2) same be quashed and set aside.
- ii. The records and proceedings of the first appeal on the file of Respondent No.2 be called for before the Hon'ble Commission.
- iii. Present appeal be allowed and Respondent No.1 be directed to furnish information sought by the Appellant vide application dated 01/09/2023.

FACTS EMERGING IN COURSE OF HEARING

9. Pursuant to the present appeal filed by the Appellant, parties were notified fixing the matter for hearing on 27/02/2024 for which Appellant and Respondent PIO present in person. Representative of Respondent No.2 (FAA) present alongwith the letter of authority. Appeal memo duly served to the PIO and FAA and matter posted to 02/04/2024.
10. Thereafter no hearing held in the matter till September 2024 as the post of SCIC and SIC remained vacant during the period from March 2024 to September 2024.
11. When the matter resumed before the SCIC on 04/10/2024, Appellant as well as Respondents absent. Adv. Chirag Angle appeared on behalf of Appellant. Registry received a note from the Respondent PIO on 03/10/2024 stating that he is unable to attend the hearing due to some urgent time bound work and requested for the next date of hearing in the second week of November 2024. Issued notices to the Respondents to file submissions to the Commission within two weeks time with an advance copy to the Appellant. Matter adjourned to 14/11/2024 for arguments.
12. Matter called out for hearing on 14/11/2024 for which Appellant Shri. Prajyot Kudalkar present and Respondent PIO Shri. Mohan Gaonkar present alongwith Shri. Hercules Noronha, Jt. Secretary, Legislature. Appellant vide written submission dated 14/11/2024 stated that –
 - a. APARs were furnished to the Appellant in response to his application dated 01/09/2023 but the same are not certified in terms of the RTI Act, 2005.
 - b. Information sought at Point No.2 and 3 (Certified copies of page notings of the file moved towards promotion of one post of Committee Officer and the certified copies of the notified Recruitment Rules made applicable to the post of Committee Officer respectively has not been provided till date.

During the hearing, Respondent PIO submitted that as desired, the certified copies of the APARs of the Appellant would be furnished to him today itself. Matter was adjourned to 05/12/2024.

13. When matter took up for hearing on 05/12/2024, Respondent PIO filed written submission dated 05/12/2024 stating that :

- i. Complying with the direction of the Hon'ble Commission on 04/11/2024, certified copies of the Appellant's APARs for the years 2019-20, 2020-21 and 2021-22 were furnished to the Appellant on 24/11/2024.
- ii. With regard to the Appellant's query relating to the post of Committee Officer, it is a settled law by the Apex Court that the process of recruitment begins with the issuance of advertisement and ends with the filling up of notified vacancies.
- iii. Whether recruitment or promotion process, once the process is completed then only documents pertaining to the post filled can be forwarded if applicable.
- iv. In the present case, as regards the query pertaining to the post of Committee officer, the same is speculative.

14. Matter adjourned to 18/12/2024. On 17/12/2024, Registry received a letter from the Appellant requesting to adjourn the hearing to January 2025 as his lawyer has a medical issue and accordingly the matter adjourned to 14/01/2025.

However, on 10/01/2025, Registry received a letter 10/01/2025 from the Respondent PIO requesting to defer the next hearing (14/01/2025) to the second week of February 2025 on account of the upcoming Assembly session related works. Accordingly, the matter fixed for hearing on 17/02/2025 but Respondent PIO requested in writing dated 13/02/2025 for a longer date preferably 3rd week of April 2025 on account of the upcoming budget session and other Goa Legislature related works. Accordingly, matter adjourned to 16/04/2025. Then Respondent PIO vide letter dated 11/04/2025 submitted that he has to attend a Supreme Court related matters on 16/04/2025 followed by comprehensive meetings of Parliamentary Committee and State Legislature from May 07 to 10, 2025 and requested to postpone the matter to the last week of May 2025.

15. Matter called out for hearing on 29/05/2025 for which Appellant appeared in person and the Respondent PIO appeared along with his lawyer Adv. Upasso Gaonker. During the hearing, Respondent PIO's

lawyer submitted that file notings do not fall under the definition of "information" under the RTI Act. On the same day Appellant filed a letter seeking adjournment of the hearing (on 29/05/2025) to first or second week of June 2025 as his lawyer is out of station.

16. When the matter took up for final hearing on 18/06/2025, Adv. Upasso Gaonker appeared on behalf of Respondent PIO filed a copy of the Office Memorandum dated 14th August 2013 issued by Joint Secretary (AT & A), Ministry of Personnel, Public Grievances and Pensions, DoPT, Government of India on the subject disclosure of personal information under RTI Act, 2005 which states as under :

The Central Information Commission in one of its decision has held that information about the complaints made against an officer of the Government and any possible action the authorities might have taken on those complaints qualifies as personal information within the meaning of provisions of Section 8(1) (j) of the RTI Act, 2005.

*The Central Information Commission while deciding the said case has cited the decision of the **Supreme Court of India in the matter of Girish Ramchandra Deshpande V/s CIC and others** in which it was held as under:*

"The performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and normally these aspects are governed by the service rules which fall under the expression personal information, the disclosure of which has no relationship to any public activity or public interest."

17. Citing the Supreme Court decided matter ***Girish Ramchandra Deshpande V/s Central Information Commission (2013)***, Respondent PIO's lawyer submitted that the performance of an employer/officer is primarily a matter between the employer and the employer and normally those aspects are governed by the service rules which fall under the expression of personal information, the disclosure of which has no relationship to any public activity or public interest.

18. Respondent PIO in his written submission dated 18/06/2025 stated that :

- i. *The present appeal filed by the Appellant is in the official capacity.*
- ii. *There is no provision in the RTI Act, 2005 to hear the appeal by this Authority filed under official capacity.*
- iii. *The present appeal is bad in law and is not maintainable.*
- iv. *The Government servants/employees are governed by CCS Conduct Rules and not RTI Act, 2005.*
- v. *The authority has no jurisdiction to hear the official capacity appeal filed under RTI Act, 2005.*
- vi. *Present appeal be dismissed.*

19. On the day of final argument (18.06.2025) in the appeal, Respondent PIO (Shri Mohan Gaonkar), Joint Secretary, Legislature vide written submissions dated 18/06/2025 argued that the present appeal filed by the Appellant is in the official capacity and there is no provision in the RTI Act, 2005 to hear the appeal by this authority (Commission). Moreover, the present appeal is bad in law and not maintainable as the Government Servant/employee is governed by CCS Conduct Rules and not RTI Act, 2005.

20. In order to justify the denial of information to the appellant by the Respondent PIO, Advocate for Respondent PIO cited Hon'ble Supreme Court Judgement in ***Girish Ramchandra Deshpande V/s. Central Information Commissioner 2013)ISCC212*** wherein Hon. Supreme Court held that *"The performance of an employee/officer in an organisation is primarily a matter between the employee and employer and normally those aspects are governed by the service rules which falls under the expression 'Personal Information' the disclosure of which has no relationship to any public activity or public interest.*

21. Advocate for the Respondent PIO filed another matter decided by the Central Information Commission (***Manoj Arya Vs. (PIO, Cabinet Secretariat, Vigilance & Complaint Cell, File No. CIC/SM/A/2013/000058)***) wherein Central Information Commission held that *"information about the complaints made against an officer of the government and any possible action, the authorities might have*

taken on those complaints, qualified as personal information within the meaning of provision of Section 8(1)(j) of the RTI Act, 2005”.

22. Advocate for the Respondent PIO also filed various judgements by the Hon’ble Supreme Court establishing that internal deliberations and file notings between Judges are exempt from disclosure under RTI Act, 2005.
23. Appellant’s lawyer in his brief written synopsis of arguments dated 18/06/2025 submitted that the Respondent No. 1 vide order dated 29/09/2023 had rejected the information on the sole and exclusive ground that confidential reports of the Appellant for the years 2019-2022 had been under scrutiny of the Board. Further submitted that Appellant had addressed vide application dated 01/09/2023 sought information as a matter of right and the same was required to be disclosed by the Respondent as the sought information being entirely in public domain and having no relation to the privacy or to constitute in any manner the personal information.
24. Citing various decided cases, Appellant’s lawyer argued that *"disclosure of information pertaining to public activity is mandatory and disclosure is the norm and refusal in the exception"*.

COMMISSION’S OBSERVATIONS

- i. PIO’s reply dated 29/09/2023 to the Appellant’s 3-point RTI application dated 01/09/2023 stated that Annual Confidential Reports in respect of the Appellant for the year 2019-2020, 2020-2021 and 2021-2022 are under scrutiny of the ‘Board’ of the Legislature Secretariat in connection with an investigation being conducted by the Board.
- ii. Appellant emphatically stated that neither the Respondents (Appellant’s senior formations) ever informed him about the inquiry/investigations initiated against him by his department for he is aware of any such inquiry/investigation.

- iii. It is surprising to see how the Appellant is unaware or not communicated by his department if any kind of inquiry is initiated or under progress against him by the Department. In any kind of a departmental inquiry against an officer/employee, as a natural principle of justice, the said officer/employee need to be informed the ground of such inquiry under the concerned service rule and said officer deserves an opportunity to present his/her 'say' before the Inquiry Officer. In the present case, Appellant is unaware of the inquiry/investigation cited by the Respondent PIO to deny the certified copies of ACR.
- iv. Even if any inquiry/investigation is undergoing against the appellant, furnishing of ACRs is not expected to impede the so called inquiry/investigation against the appellant.
- v. During the hearing on 14/11/2024, Respondent PIO submitted that as desired by the appellant, certified copies of the APARs of the Appellant will be furnished.
- vi. **It is surprising to see that on the date of final argument in the present appeal i.e. on 18/06/2025, Respondent PIO contended in his written submission that as the present appeal filed by the appellant is in the official capacity, there is no provision in the RTI Act, 2005 to hear the appeal by the Commission and the appeal filed by the Appellant is under his official capacity.**
- vii. Appellant filed his RTI application to the PIO on 01/09/2023, first appeal before First Appellate Authority on 01/11/2023, the present appeal on 29/01/2024 and the proceedings before the Commission in the present appeal began on 27/02/2024. However, at no point of time, the Respondent stated that there is no provision in the RTI Act 2005 to file an appeal by the Appellant, a Section Officer, Goa Legislature, in the official capacity. **Commission doesn't find any logic or merit in this contention of the Respondent PIO placed on the final day of hearing.**

- viii. Appellant approached the Commission as an information seeker and not at his official capacity. When Appellant's senior formations (PIO & FAA) denied information then only he approached the Commission, being an aggrieved.
- ix. Substantiating the denial of information (noting for proposal of promotion to the post of Committee Officer) to the Appellant, Advocate for the Respondent PIO relied heavily on the Hon'ble Supreme Court's decision in ***Girish Ramchandra Deshpande V/s. Central Information Commissioner (2013)*** wherein Hon'ble Supreme Court held as follows – *"The performance of an employee/officer in organisation is primarily a matter between the employee and employer and normally those aspects are governed by the service rules which fall under the expression personal information, the disclosure of which has no relationship to any public activity or public interest"*.
- x. Absolutely there is no dispute to the fact that performance of an employee/officer in an organisation is a matter between the employee and employer and third party is not entitled to get the information unless undoubtedly prove the public interest in the disclosure of employee employer matter.
- xi. In this case, Appellant is not a third party.
- xii. Respondent PIOs lawyer cited another matter decided by the Central Information Commission in ***Manoj Arya V/s. CPIO, Cabinet Secretariat***. In this matter, Appellant (RTI applicant) had sought the copies of the complaints made against the third party in the case and the details of the action taken including the copies of enquiry reports. In this case, CPIO after consulting the third party u/s. 11 of the RTI Act, 2005 had refused to disclose any such information. In the present matter, Appellant cannot be treated as 'Third Party' and he is not asking any information of personal in nature.
- xiii. Respondent PIO has initially furnished part information (with regard to Point 3 of RTI application dated 01/09/2023 vide letter dated

29/09/2023 and later certified copies of ACRs of the Appellant furnished in November 2024.

- xiv. In the reply dated 29/09/2023 to the Appellant, Respondent PIO stated that 'No file has been moved for promotion to the post of Committee Officer and as such the reply to the same (Point No. 2 of RTI application dated 01/09/2023) as 'NIL'. However, during the course of final hearings, Respondent PIO's lawyer submitted that such information could be disclosed only if it would serve a larger public interest.

DECISION

- i. Considering the above facts and circumstances of the present appeal and the submission as well as arguments placed before the Commission by the parties to the present appeal, Commission has come to the conclusion that information with regard to Point No. 3 of the Appellant's RTI application dated 01/09/2023 was furnished initially and information pertaining to Point No.1 was furnished later during the course of proceedings before the Commission.
- ii. The **Commission hereby directed the Respondent PIO** to furnish the information sought by the Appellant at Point No.2 of his RTI application dated 01/09/2023 - certified copies of page noting of the file moved towards promotion of one post of Committee Officer, 2023 at the Goa Legislature Secretariat including correspondence and the approval/comments of the BOARD-within two weeks from the date of receipt of this order as the Appellant is considered as one of the eligible candidates for the post of Committee Officer, Goa Legislature Secretariat.
- iii. Respondent PIO can apply the provision of '*Severability*' clause mentioned under Section 10 of the Right to Information Act, 2005 while furnishing the sought information to the Appellant if the Public Authority of the Respondent PIO wish to conceal the name and designation of the officer(s) or members of the said 'BOARD' who

made notings in the concerned file or accorded approval or offered comments. However, the application of '**Severability**' clause should not be taken as a ground to prevent the Respondent PIO from furnishing the information sought by the Appellant at Point No.2 of his RTI application dated 01/09/2025.

- iv. **Respondent PIO should file compliance report to the Commission within three weeks on receipt of this order.**

Proceedings in the present appeal stands closed and appeal is disposed.

- Pronounced in open Court.
- Notify the parties.

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/-

(ARAVIND KUMAR H. NAIR)
State Chief Information Commissioner, GSIC