

**GOA STATE INFORMATION COMMISSION**

**AT PANAJI**

**CORAM:** Shri M. S. Keny, State Chief Information Commissioner

**Appeal No. 204/SCIC/2010**

Mr. Joao C. Pereira,  
H.No. 40, Acsona Utorda,  
Majorda, Salcete –Goa.

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Appellant.

V/s

1) Public Information Officer,  
Supt. Of Police, PHQ's,  
Panaji –Goa.

....

Respondent No. 1.

2) First Appellate Authority,  
Inspector General Police,  
PHQ's Panaji –Goa.

....

Respondent No. 2.

Appellant in person.

Respondent No. 1 and 2 absent, their representative Smt. E. Fernandes present.

Adv. N. Dias for Respondent No. 1 present.

**J U D G M E N T**

**(03/01/2011)**

1. The Appellant, Joao C. Pereira, has filed the present appeal praying that the order dated 30/08/2010 of Respondent No. 2 passed in Appeal No. 62/2010 be quashed, cancelled and set aside; that the letter of Respondent No. 1 dated 30/07/2010 addressed to the Appellant with regards to reply to query (c) be quashed, cancelled and set aside; that the Respondent No. 1 be directed to furnish correct information as regards to query (c) of the Appellant's request made on the application dated 12/07/2010 and that disciplinary proceeding be initiated and that action as per section 20 of RTI Act be taken against Respondent No. 1 for deliberately and malafidely denying information to the Appellant.

2. The brief facts leading to the present appeal are as under:-

That the appellant addressed an application dated 12/07/2010 to the Respondent under Right to information Act 2005 ('RTI'Act for short) seeking information in the form of queries (a),(b) and (c) pertaining to P.I. Harish Madkaikar's post. That by reply dated 30/07/2010 the Respondent No. 1 furnished information in respect of query No. (a) and (b) and denied the information with

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regards to query (c) that "it does not come under the purview of section 2(f) of RTI Act 2005". Being not satisfied the Appellant preferred the First Appeal on 07/08/2010 before Respondent No. 2. That by order dated 30/08/2010 the First Appellate Authority dismissed the appeal thereby upholding the reply of the Respondent No. 1. Being aggrieved by the said order the Appellant has preferred the present appeal on the various grounds as set out in the Memo of Appeal.

3. The case of the Respondent No. 1 is fully set out in the reply which is on record. In short it is the case of the Respondent No. 1 that the respondent No. 1, vide letter dated 30/07/2010 furnished to the Appellant with all the information available in his office as per the provisions of the Right to Information Act, 2005 however, the information at Sr. No. (c) was denied to the Appellant as the same did not come under the provisions of section 2 (f) of the RTI Act 2005. It is the case of the Respondent No. 1 that the motto of the RTI Act is for transparency and accountability of the functioning of the Public offices like PIO's office. However the point (c) of the complaint of the application of the Appellant is not within the jurisdiction of the Respondent No. 1 and, therefore this respondent is not liable to furnish the information of the application of the Appellant at point (c) and not liable for any action as against this Respondent. That the appeal deserves to be dismissed. It is further the case of the Respondent No. 1 that the matter pertaining to promotions and other service matters are dealt by Police Establishment Board constituted in pursuance to the direction of the Hon'ble Supreme Court in Writ Petition(civil) No. 310 of 1996 Prakash Singh &ors v/s Union of India & others and hence there is no deficiency on the part of Respondent No. 1 in the discharge of his duties and therefore, not liable for any action in that regard. That the matter pertaining to promotions and service matters etc are dealt with by police Establishment Board constituted in pursuance to the directions of the Hon'ble Supreme Court in writ petition (civil) No. 310 of 996. That the decisions in such

matters are taken by the police establishment Board. In short it is the case of the Respondent No. 1 that the information sought by the Appellant at point (c) does not come within the purview of section 2(f) of the RTI Act 2005 and therefore the same was not furnished.

4. Heard the arguments. The Appellant argued in person and the learned Adv. Shri N. Dias argued on behalf of the Respondent No.1.

The Appellant referred to the facts of the case in detail. He referred to the application and also reply of the Respondent No. 1 and submitted that query at No. (c) can very well be asked. He then referred to the order of State Police Authority who passed the order. He referred to section 2(f) and also submitted about transparency and accountability. He next submitted that queries are allowed and referred to 2009(1) RTI. 57 copy of which is on record. According to him PIO was on establishment Board. He referred to the order of FAA. He submitted that section 2(f) cannot be used to deny the information. According to him prayer ought to be granted.

Adv. for Respondent No. 1 also referred to the facts of the case, application seeking information and reply furnished. He next submitted that whatever asked has been furnished. However point (c) was not given as the same does not come within the purview of section 2(f). He next submitted that promotion has been done by somebody else and that Board knows why he was promoted. He submitted that whatever information was available has been furnished. He also submitted that Respondent No.1 has not done anything with malice or malafide intention. According to him appeal is liable to be dismissed.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. The point that arises for my consideration is whether the relief prayed is to be granted or not?

It is seen that the Appellant, vide his application dated 12/07/2010, sought certain information from the Respondent No.1. The information consisted of 3 points (a), (b), and (c). By reply dated 30/07/2010 the Respondent No. 1 furnished the information in respect of point (a) and (b). Regarding (c) it was informed that information sought does not come under the purview of section 2(f) of RTI Act 2005. It is seen that Appellant being not satisfied with the reply preferred First Appeal and by order dated 30/08/2010 observed that the PIO is justified in denying the information because the appellant is asking for opinion and not information and the appeal was dismissed.

6. It would not be out of place to mention about the definition of information. Under section 2(f) "information" means any material in any form, including records, documents, 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. In an old case (AIR 1957 Punj 226) the Punjab High Court explained information as synonymous with knowledge or awareness in contradistinction to apprehension, suspicion or misgiving.

It is to be noted here that term 'record' for the purpose has been defined widely to include any document, manuscript, file etc. Under clause 2 (j) "Right to Information" means the right to information accessible under this Act which is held by or under control of any public authority and powers under the Act include the right to: (a) inspect works, documents, records of any public authority; (b) take notes extracts of certified copies of documents or records; (c) take certified samples of material and (d) obtain information of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print outs where such information is stored in a computer or any other device.

A combine reading of section 2(f) 2(i) and 2(j) of the RTI Act would show that a citizen is entitled for a disclosure of information which is in material form with a public authority and "information" and the right to seek do not include opinions explanations etc.

7. Coming to the case at hand the information sought at point (a) is about the order confirming the post of P.I. Madkaiker from Ad-hoc basis. Point (b) is about the names of the officer who recommend the name of P.I. H. Madkaiker. Information in respect of both these is furnished. Point (c) is as under:-

(c) Can PI Madkaikar's post be confirmed as per service rules applicable to an officer, when F.I.R is registered against him under Cr. No.241/07 pending before J.M.F.C., Vasco for its orders, wherein PI Madkaikar is involved in forgery, manipulation and destroying of records/statements while serving as PI at Verna Police Station. If yes, then give me the relevant section of law/act allowing such officers to be confirmed form adhoc basis, for the Government.

The answer provided is "information sought does not come under the purview of section 2(f) of RTI Act 2005".

On a close reading of the request for information, it appears that the appellant has asked for the opinion or explanation of the Respondent No.1/PIO Ironically the reply is found in answer to item (a) and also (b) as mentioned above. The PIO under RTI is bound to provide information held by the Public Authority, but he is not required to offer explanation or opinion either in confirmation or denial of a decision taken. Explanation about the nature and action of Public Authority need not be raised for answers.

8. I have perused some of the rulings of Central Information Commission on the point. They are as under:-

(i) In Shri P. N. Kalra V/s Commissioner customs & central Excise (Appeal No. 65/IC/(A)/2006 F.No CIC MA/A/2006/00150 dated 19/06/2006) it was observed that CPIO is, however, required to provide information which may be available in any form with his office, rather than giving his personal opinion on the questions asked by the Appellant.

(ii) In R. K. Mirg V/s Ministry of Home Affairs (F.N.CIC/AT/(A)/2006/00154 dated 03/11/2006) it is observed as under:-

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..... Section 2(f) of the RTI Act allows an appellant access to information “held” by a public Authority. Since Rules and Acts were already in public domain, these were freely accessible to any one who wanted to have them, and hence could not be said to be “held” by any public authority. It is therefore, not open to the appellant to seek “interpretation” of a law or rule from the public Authority disguised as seeking information.

7. In overall consideration of the matter before the Commission, it is held that there is no responsibility cast on the Respondents to “interpret” any law or rule to the Appellant. The appeal is rejected.”

(iii) In K. M. Naregal V/s Department of Personal & Training (Appeal No. CIC/WB/A /2007/00825 decided on 02/03/2009) it was observed that interpretation of laws rules and orders is not within the purview of the RTI Act. It was also observed that this is a matter of legal opinion required to be agitated before the competent court.

(iv) In major (Retd) P.G. Deval V/s Central Excise & Customs Department (decision No. F.No.CIC/AT/A/2008/00424 dated 28/07/2008) it was held that RTI Act cannot be invoked to demand and obtain from a public Authority explanations, reasons, justifications and so on in respect of decision made.

In the case before me the concerned officer is already confirmed as can be seen from reply to point No. (a). So the query at point (c ) in the nature of opinion of the PIO. No doubt Appellant may be having a genuine grievance, however, this is not a forum for the same. Appellant will have to see the other legal avenue available to him. The query is "can P.I. Madkaiker's post be confirmed as per service rules applicable to an officer..." this to my mind cannot be attributed to any identifiable information within the meaning of section 2(f) of RTI Act. Besides under RTI Appellant cannot question whether the same was issued properly and whether the authority issuing order invested with the power to issue it. Such queries are beyond RTI and they are to be tested in a different forum.

9. In view of all the above, I do not find any infirmity in the order passed. Hence I pass the following order:-

**ORDER**

The Appeal is dismissed.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 3<sup>rd</sup> day of January, 2011.

Sd/-  
(M. S. keny)  
State Information Commission

