

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Appeal No. 117/SIC/2010

Shri Jowett D'Souza,
H. No. 139, Ambeaxir,
Sernabatim, Colva,
Salcete – Goa

... Appellant.

V/s.

1) The Public Information Officer,
Superintendent of Police,
Police Headquarters,
Panaji – Goa

... Respondent No. 1.

2) The First Appellate Authority,
Inspector General of Police,
Police Headquarters,
Panaji – Goa

... Respondent No. 2.

Appellant in person.

Respondent No. 1 alongwith Adv. Smt. Harsha Naik.

Respondent No. 2 absent.

Adv. Shri K. L. Bhagat for Respondent No. 2.

J U D G M E N T
(28.02.2011)

1. The Appellant, Shri Jowett D'Souza, has filed the present Appeal praying that the Order of the Respondent No. 2 dated 18.03.2010 with respect to para 3 be quashed, cancelled and set aside; that Respondent No. 1 be directed to give certified copies/furnish the information of documents under Sr. No. 2, 3, 5 and 7 of the letter dated 04.01.2010; that disciplinary proceedings be initiated against Respondent No. 1 and 2 and that penalty be imposed on the Respondents.

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

That the Appellant, vide his application dated 04.01.2010 sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for

short) from Respondent No. 1/Public Information Officer (PIO). That by letter dated 30.01.2010 the Respondent No. 1 rejected the request regarding documents at Sr. No. 1, 2, 3 5,6 and 7 of the said application under section 8(1) (j) of RTI Act. Being not satisfied the Appellant preferred First Appeal before Respondent No. 1/First Appellate Authority (FAA). That by order dated 24.03.2009 the FAA partly considered the request at Sr. No. 1 and 6 however, rejected the same regarding Sr. No. 2, . 3, 5 and 7 thereby upholding the findings of Respondent No. 1. Being aggrieved the Appellant has preferred this Appeal on various grounds as set out in the Memo of Appeal.

3. The Respondents resist the appeal and the say of Respondent No. 1 and 2 are on record.

It is the case of Respondent No. 1 that the request of Appellant was rejected under section 8(1) (j) of RTI Act. That the FAA i.e. Respondent No. 2 rejected the application with regard to Sr. No. 2, 3, 5 and 7 with respect to the said application dated 04.01.2010 as the same pertains to the Annual Confidential Report initiated by the superior officers in the Government Department or public authority who keep the records of the performance of the officials and the same can be furnished only to the official concerned and not to any third party. It is the case of Respondent No. 1 that this Commission has also upheld the view in Second Appeal No. 35/2008 vide Order dated 25.09.2008. The Respondent No. 1 specifically denies the case of the Appellant as set out in the Memo of Appeal.

It is the case of Respondent No. 2 that PIO/Respondent No. 1 vide letter dated 30.01.2010 furnished to the Appellant information in respect of point No. 2 and rejected the request in respect of point No. 1 to 3 and 5 to 7 as per the provisions of section 8 (j) of the RTI Act as the information sought was related to personal information the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of privacy of the individual. That the Appellant preferred the First Appeal and Respondent No. 2 vide his order

dated 18.03.2010 directed the PIO to furnish the information as regards point No. 1 and 6 and accordingly the PIO furnished the said information. It is the case of Respondent No. 2 that point No. 2, 3, 5 and 7 pertains to Annual Confidential Reports and as per the provisions of section 8 (j) of RTI Act information as regards ACRS can be furnished to the concerned employee and not to the third party. That the Appellant is not entitled to seek the said information. That the information has been furnished to the Appellant within the stipulated time limit. That information at Sr. No. 2, 3, 5 and 7 has been rightly refused to the Appellant under the provisions of section 8(j) of RTI Act. It is further the case of the Respondent No. 2 that Respondent No. 2 has rightly relied on the Order dated 25.09.2008 passed by this Commission in Second Appeal No. 35/2008. According to the Respondent No. 2 the Appeal is liable to be dismissed.

4. Heard the arguments. Appellant argued in person. Adv. Smt. Harsha Naik argued on behalf of Respondent No. 1 and Adv. K. L. Bhagat argued on behalf of Respondent No. 2.

The Appellant referred to the facts of the case in detail. According to him there is a case of corruption and there is threat to the administration and also threat to the public. He next referred to the information which was given to him and also the information which was not given. According to him information in respect of item at point No. 4, 5 and 6 has been given. He next submitted that regarding departmental enquiries the information has been given. However, he wants to know who has revoked the remarks and who has expunged the same. Appellant submitted that under RTI Act he is entitled to know and more so because case of corruption is pending.

During the course of her arguments Adv. Smt. Harsha Naik submitted that ACRs are not to be given and she referred to various rulings of Central Information Commission as well as of the Supreme Court. She next submitted that items at Sr. No. 2, 4, 5 and 7 all related to

ACRs and as such they cannot be given. According to her the Order passed by FAA is just and proper.

Adv. Shri K. L. Bhagat also submitted that it is well settled by law that ACR cannot be given to any person other than the concerned employee. According to him Order passed by FAA is just, proper and no fault can be found with the same. He even submitted that there cannot be any grievance against the said Order.

In reply the Appellant submitted that the concerned officer is involved in his case and hence he wants the ACR. He also submitted that there are serious allegations. He referred to Writ Petition No. 1/2009 Kashinath Shetye V/s. Public Information Officer, Superintending Engineer-II(North), Electricity Department and three others of the Hon'ble Bombay High Court.

5. I have carefully gone through the records of the case, considered the arguments advanced by the parties and also considered the rulings on which the parties placed reliance. The short 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 04.01.2010 sought certain information from Respondent No. 1. By reply dated 30.01.2010 the Respondent No. 1 furnished the information, however, in respect of points at Sr. No. 1, 2, 3, 5, 6 and 7 information was rejected under section 8(1) (j) of the R.T.I. Act. Being aggrieved the Appellant preferred Appeal before the First Appellate Authority and by Order dated 18.03.2010 the F.A.A. directed the PIO to furnish the information regarding point at Sr. No. 1 and 6 and in respect of points at Sr. No. 2, 3, 5 and 7 the reply of P.I.O. was upheld.

6. Now it is to be seen whether request of the Appellant can be granted or not? It is to be noted that commission has to exercise utmost caution in authorizing disclosure of personal information of employees of public authorities. ACR notices represent an interaction based on trust

and confidence between the officers involved in initiating, reviewing or accepting ACRs. The contents of the ACRs particularly the remarks made by the superior officer are treated as confidential information the disclosure of which is barred under section 8(1) (j) of the Act.

I have perused the decision of the Hon'ble Supreme Court of India in Dev Dutt v/s. Union of India & Others (2008) 8 SCC 725 and also some decisions of Central Information Commission as well as this Commission. The rule of law now crystallized by the various rulings is that all entries of ACR of a public servant whether in Civil, judicial, police or any other State Services, except the military, must be communicated to him only and not to any other person.

It has been reiterated time and again by Central Information Commission as well as State Information Commission that ACR dossiers of officers are not liable to be disclosed.

In view of this position the request of the Appellant regarding item at Sr. No. 5 cannot be granted.

7. The other information sought is as under:-

“2. Give me the details/copies of who has expunged the Adverse Remarks of P.I. Jivba Dalvi on Annual Confidential Report.

3. Give me details/copies whether any correspondence/representation filed by P.I. Jivba Dalvi to the D.G.P./I.G.P./D.I.G. over the adverse remarks of his superiors on his Annual Confidential Report for the year 2005, 2006, 2007, 2008 and 2009.

7. Give me all orders issued by Superintendent of Police Headquarters wherein the adverse remarks were expunged.”

It is to be noted here that application of confidentiality arises only when confidentiality is clearly in reference to the contents of ACR and the

same cannot be disclosed. However some activity which is de hors the ACR can be given. That is to say in respect of Sr. No. 2 above, only thing that can be granted is 'Whether the Adverse remarks were expunged?' And regarding Sr. No. 3 information in respect of some part can be granted i.e. 'Whether my representation was filed by P.I. Dalvi to DGP/IGP/DIG over the adverse remarks'. Copies as sought cannot be permitted to be given in view of what is observed herein above.

Regarding item at Sr. No. 7 above the same cannot be granted the way it is asked.

8. In view of all the above in my view the following information can be furnished:-

(2) Whether the adverse remarks were expunged?

(3) Whether representation was filed by P.I. Dalvi to DGP/IGP/DIG over the adverse remarks'.

9. In view of all the above I pass the following Order:

ORDER

The Appeal is partly allowed. The Respondent No. 1 is hereby directed to furnish the information in respect of query No. (2) and (3) as mentioned in para 8 herein above, within 15 days from the date of receipt of this Order. Other prayers, however, are rejected.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 28th day of February, 2011.

Sd/-
(M. S. Keny)
State Chief Information Commissioner

