

**GOA STATE INFORMATION COMMISSION**  
**AT PANAJI**

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

Appeal No. 118/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 letter of the Respondent dated 22.01.2010 and Order dated 18.03.2010 passed by the First Appellate Authority be quashed, cancelled and set aside; that Respondent No. 1 be directed to give certified copies/furnish information of documents under Sr. No. 8 of the letter dated 28.12.2009 and for initiating disciplinary proceedings and also for imposing penalty against the Respondents.

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

That the Appellant by his letter dated 28.12.2009 sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short)

from the Public Information Officer/Respondent No. 1. That the Respondent No. 1 vide his letter dated 22.01.2010 furnished the information. However, information sought at Sr. No. 8 was rejected under section 8(1) (j) of R.T.I. Act. Being not satisfied with the said reply the Appellant preferred an Appeal before the First Appellate Authority/Respondent No. 2. That the Respondent No. 2 after hearing the said Appeal dismissed the same by upholding the findings of Respondent No. 1 by Order dated 24.03.2009. Being aggrieved by the said Order 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 reply of Respondent No. 2 is on record. Respondent No. 1 did not file any reply as such. However, Advocate for Respondent No. 1 advanced arguments.

It is the case of Respondent No. 2 that information was furnished in respect of all the points. However, information pertaining to the point No. 8 has been rejected as per the provisions of section 8(1) (j) of the R.T.I. Act. That the same was refused to the Appellant in as much as the information sought was related to personal information disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual. It is further the case of Respondent No. 2 that as per provisions of section 8(j) of the R.T.I. Act and various decisions of Central Information Commission and the Hon'ble Supreme Court as regards ACRs can be furnished to the concerned employee and not to the third party and hence Appellant is not entitled to seek the said information. It is also the case of Respondent No. 2 that PIO has furnished the information within the stipulated time and Appeal is also disposed off within stipulated time limit, considering time limit that First Appellate Authority is entitled for the extended period of fifteen days as envisaged under section 19(6) of the RTI Act. According to Respondent No. 2 Appeal is liable to be dismissed.

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

According to the Appellant information under Sr. No. 8 can very well be provided in view of the record of the concerned Police officer. According to him the rejection is contrary to section 3 of R.T.I. Act whose purpose is transparency and accountability of functioning of public office. He also referred to criminal case registered against the officer, etc. He next submitted that Respondent No. 1/Public Information Officer has furnished wrong, incomplete and false information in respect of information at Sr. No. 11 of his application.

Advocate for Respondent No. 1 and 2 submitted that all information has been furnished and that too in time and information at Sr. No. 8 cannot be provided in view of the decisions of this Commission as well as Central Information Commission and the Hon'ble Supreme Court of India. They dealt with this aspect in detail.

5. I have carefully gone through the records of the case, 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 filed an application dated 28.12.2009 seeking certain information. The information is in the nature of details/certified copies from the records of office of DGP/SP, HQ, against then PSI/PI Jivba Dalvi attached to Goa Police Department. Items are at Sr. No. 1 to 11. It is seen that by reply dated 22.01.2010 the Public Information Officer furnished information in respect of all points except point at Sr. No. 8. In respect of Sr. No. 8 it was informed that information is rejected under section 8(1) (j) of R.T.I. Act. This item at Sr. No. 8 is regarding furnishing copies of Annual Confidential Reports from the date of joining of PI Jivba Dalvi in the Goa Police Department till date. Being

not satisfied with the said reply the Appellant preferred First Appeal before the Respondent No. 2. By Order dated 18.03.2010 the request of the Appellant was rejected and the reply of the Public Information Officer was upheld. The First Appellate Authority relied on the Order dated 25.09.2008 in Second Appeal No. 35/2008 filed by Shri Joao C. Pereira *versus* PIO & Anr whereby it was observed that it is not necessary and definitely not in public interest to release this document for public scrutiny by all the citizens. It was also observed that copies of completed ACRs can be given to the official concerned and to no one else.

6. Now it is to be seen whether this document can be given or not. At the outset I must say that Commission has to exercise utmost caution in authorizing disclosure of personal information of employees of Public Authorities. ACR notings represent an interaction based on trust and confidence between the officers involved in initiating, reviewing or accepting ACRs. If the notings are made public these officers could be seriously embarrassed and as such information is better left undisclosed under the provisions of section 8(1) (j). To put it in a nutshell, the contents of 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 Vs. Union of India & Ors* (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 on a number of occasions by Central Information Commission as well as State Information commissions that ACRs cannot be disclosed since it is a confidential document.

The information is very clearly about personal details and as such there is no reason why it should be made available to an information seeker. Besides, this information has no relationship to any public activity. Under the circumstances there is no tangible purpose to override the exemption under section 8(1) (j).

In view of this settled position of law it is not possible to grant the request of the Appellant on that count.

In view of all the above the request of the Appellant regarding documents at Sr. No. 8 is to be rejected.

7. It was next contended that information in respect of item at Sr. No. 11 is wrong and incorrect. The grievance of the Appellant is the information that is given in respect of item at Sr. No. 11 is not correct. This is disputed by Advocate for the Opponent. According to them information that is furnished is correct.

It is to be noted that purpose of R.T.I. Act is per se to furnish information. Of course Complainant has a right to establish that information furnished to him is false, incorrect, misleading, etc. But the Complainant has to prove it to counter Opponent's claim. The information seeker must feel that he got true and correct information otherwise purpose of RTI Act would be defeated. It is pertinent to note that mandate of R.T.I. Act is to provide information - information correct to the core and it is for the Appellant to establish that what he has received is incorrect and incomplete. The approach of the Commission is to attenuate the area of secrecy as much as possible. With this view in mind I am of the opinion that Complainant must be given an opportunity to substantiate that information given to him is incomplete, incorrect, misleading, etc. as provided in section 18(1) (e) of the R.T.I. Act.

8. Regarding delay it is seen that application is dated 28.12.2009 and the reply is dated 22.01.2010. Considering this there is no delay as such.

The Complainant should be given an opportunity to prove that information furnished is incorrect and incomplete.

Hence, I pass the following Order:

**ORDER**

The Appeal is allowed only to the extent enquiry is concerned. The Appellant to prove that information furnished is incomplete, incorrect, etc. Other prayers are rejected.

Further enquiry posted on 05.04.2011 at 10:30 a.m.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 28<sup>th</sup> day of February, 2011.

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

