

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

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

Appeal No. 119/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. Smt. N. Narvekar 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. 8, 12 and 15 of the letter dated 06.01.2010; that disciplinary proceedings be initiated against Respondent No. 1 and 2 and that penalty be imposed on the Respondents for causing inconvenience and loss of precious time.

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

That by letter dated 06.01.2010 the Appellant sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from Public Information Officer(PIO)/Respondent No. 1. That the Respondent No. 1 vide reply dated 28.01.2010 considered the request of the Appellant and the request was rejected in respect of documents at Sr. No. 8, 10, 11, 12, 14 and 15 under section 8(1) (j) of the RTI Act. Being not satisfied the Appellant preferred the Appeal before the FAA/Respondent No. 2. By Order dated 24.03.2010 the FAA partly considered the request at Sr. No. 10, 11 and 14 and rejected the same at Sr. no. 8, 9, 12 and 15 by upholding the findings of Respondent No. 1. Being aggrieved by the Order of Respondent No. 2 the Appellant has filed this Appeal on various grounds as set out in the Memo of Appeal.

3. The Respondents resist the Appeal and their replies are on record. It is the case of Respondent No. 1 that the request was rightly rejected. That Respondent No. 2 upheld the findings of Respondent No. 1 and who also directed Respondent No. 1 to furnish the information to the Appellant at Sr. No. 10, 11 and 14. That information at Sr. No. 8, 12 and 15 cannot be furnished and that this has been upheld by this Commission also in Second Appeal No. 35/2008. According to Respondent No. 1 Appeal is liable to be dismissed.

It is the case of Respondent No. 2 that Respondent No. 1 vide reply dated 28.01.2010 furnished to the Appellant information in respect to point No. 1 to 7, 9, 10 and 13. That the information pertaining to point at Sr. No. 8, 11, 12, 14 and 15 has been rejected as per provisions of section 8 sub section (j) of the RTI Act. That the same was refused as the information sought related to personal information the disclosure of which has no relationship to any public authority or interest or which would cause unwarranted invasion of the privacy of the individual. That the Appellant preferred First Appeal and Respondent No. 2 upheld the decision of PIO in respect of point at Sr. No. 8, 12 and 15 and directed the PIO to furnish the information as regards point No. 10, 11 and 14. It is

further the case of Respondent No. 2 that points at Sr. No. 8, 12 and 15 pertain to ACR of the concerned officer and as per the provisions of section 2(1)(j) as well as series of decisions of Central Information Commission and the Hon'ble Supreme Court the information as regards ACR can be furnished to the concerned employee only and not to any third party. That the Appellant is not entitled to seek the said information. That the information has been furnished within the stipulated time and the Appeal has also been disposed within the stipulated period. According to the Respondent No. 2 the Appeal is liable to be dismissed.

4. Heard the arguments. The 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 parties advanced elaborate arguments.

Appellant referred to the facts of the case in detail. According to him part information has been given and information in respect of point at Sr. No. 8, 12 and 15 has been refused under section 8(1) (j) of the RTI Act. He next submitted that information provided at Sr. No. 10 is false and incorrect. He next submitted that officer is involved in his case and that is why he requires the information. He also referred to the illegal activities and misuse of power by the concerned officer. According to him he is entitled for the said information.

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. 8, 12 and 15 are 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 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 06.01.2010, sought certain information from the Respondent No. 1. The information consisted of 15 points/items i.e. Sr. No. 1 to 15. By reply dated 28.01.2010 the Respondent No. 1 furnished the information in respect of point at Sr. No. 1 to 7, 9, 10 and 13. In respect of point No. 8, 11, 12, 13, 14 and 15 the request was rejected under section 8(1) (j) of the R.T.I. Act. It is seen that the Appellant preferred the Appeal before the First Appellate Authority and by order dated 18.03.2010 the F.A.A. directed to furnish the information in respect of point at Sr. No. 10, 11 and 14 and rejected the request in respect of point at Sr. No. 8, 12 and 15.

Now it is to be seen whether the request of the Appellant can be granted or not. The said points are as under:-

“8. Give me copies of Annual Confidential Report from the date of joining of P.I. Edwin Colaco in the Goa Police Department till date.”

“12. Give me details/copies whether any correspondence/representation filed by P.I. Edwin Colaco to the D.G.P/I.G.P/D.I.G over the adverse remarks of his superiors on his

Annual Confidential Reports for the year 2005, 2006, 2007, 2008 and 2009.”

“15. Give me all orders issued by Superintendent of Police Headquarters/S.P. South wherein the adverse remarks were recommended to the superiors.”

6. I have perused the decision of the Hon'ble Supreme Court in Dev Dutt V/s. Union of India & Others (2008) 8SCC 725 and also some decisions of Central Information Commission as well as this Commission. It is observed that information regarding ACRs has been barred from disclosure and allowing the information would needlessly disclose the names of those who write observations/comments on the work and conduct of their juniors – such disclosures not only violate a pre-existing implied contract of confidentiality between the officers writing the reports and those authorized to oversee those reports. It also greatly restricts the freedom which such officers used to objectively record their remarks of their juniors. The consistent stand taken by C.I.C. and also this Commission in earlier decisions is that such information is exempted from disclosure under section 8(1) (j) read with section 8(2).

In view of this position and law bearing on the point it is not possible to grant the request and request at Sr. No. 8 above is to be rejected.

7. Coming to the item at Sr. No. 12 and 15 the request cannot be granted the way it is asked. It is to be noted here that application of confidentiality arises only when confidentiality is clearly in reference to the contents of the ACR and the same cannot be disclosed. However, some activity which is outside the ACR can be given. That is to say that in respect of Sr. No. 12 only information that can be granted is 'whether any representation was filed by P.I. Edwin Colaco to D.G.P./I.G.P./D.I.G. over the adverse remarks'. Copies as sought cannot be permitted to be given

in view of what is observed herein above. Regarding Sr. No. 15 only information 'whether adverse remarks, if any, were recommended to the superiors' can be given, however, orders as such need not be given. In my view what is allowed is only an activity and cannot qualify for exemption under section 8(1) (j) as contended by Advocates for Respondents.

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

'12. Whether any representation was filed by P.I. Edwin Colaco to D.G.P./I.G.P./D.I.G. over the adverse remarks.'

'15. Whether adverse remarks, if any, were recommended to the superiors.'

9. It was next contended by Appellant that information in respect of item at Sr. No. 10 is false and incorrect. This is disputed by Advocate for the Respondents. 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 Appellant has a right to establish that information furnished to him is false, incorrect, etc., but the Appellant has to prove it to counter Respondent's claim. It is pertinent to note that mandate of R.I.T. 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 the Appellant must be given an opportunity to substantiate that information given to him is false, incorrect, etc. as provided in section 18 (1) (e) of R.T.I. Act.

10. 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 Sr. No. 12 and 15 as mentioned in para 8 hereinabove, within 15 days from the date of receipt of this Order. Other prayers, however, are rejected.

The Appellant to prove that information furnished at Sr. No. 10 is false, incorrect, etc.

Further inquiry posted on 05.04.2011 at 10:30a.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

