

**GOA STATE INFORMATION COMMISSION  
AT PANAJI**

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

**Complaint No.598/SIC/2010**

Shri Joao C. Pereira,  
R/o. H. No.40, Alsona  
Utorda, Majorda,  
Salcete - Goa

... Complainant

**V/s**

Shri V.V. Borkar,  
The Public Information Officer,  
Suptd. of Police (H.Q.),  
Police Headquarters,  
Panaji-Goa

... Opponent

Complainant present.

Opponent absent.

Smt. Exaltacao Fernandes representative of the opponent present.

**ORDER**  
(09/12/2011)

1. The Complainant, Shri Joao C. Pereira, has filed the present complaint praying that the opponent be directed to furnish complete information to the Complainant on the application dated 16/09/2010; that action as per sec.20 be initiated against the opponent and that penalty be imposed on the opponent as per Sec.20 of the R.T.I. Act for deliberately furnishing incomplete information.

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

That the complainant had sought certain information pertaining to the promotion of P.I. Harish Madkaikar from adhoc basis to permanent basis by the Police Establishment Board by its order dated 25/01/2010, wherein the opponent was one of the members of the Establishment Board for approving the proposal for promotion of P.I. Harish Madkaikar. The complainant, vide an application dated 16/9/2010, sought certain information under Right to Information Act ('RTI' act for short) from the Public Information Officer (P.I.O.)/opponent. That the opponent replied by letter dated 28/9/2010 and gave deliberately incomplete information on the complainant's request/application dated 16/9/2010 in order to

protect his own wrong doings along with other getting exposed for promoting the said police officer. Hence the present complaint.

3. The opponent resists the complaint and the reply of the opponent is on record. It is the case of the opponent that the information pertains to promotion of P.I. Harish Madkaikar. That the opponent was one of the member of the Police Establishment Board for approving the proposal for promotion of P.I. H. Madkaikar. That the application dated 16/9/2010 seeks the details of all the documents and records which are examined by Police Establishment Board. That the information was provided to the complainant vide letter dated 20/9/2010 and the same was within the time limit except the information coming under Sec.8(1)(j) of the R.T.I. Act. It is further the case of the opponent that no first appeal has been filed. That the complainant had filed a similar application dated 12/7/2010 and therefore present application does not lie. According to the opponent, the complaint is liable to be dismissed.

4. Heard the arguments. The complainant argued in person and the ld. Advocate Smt. H. Naik argued on behalf of the opponent.

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 by application dated 16/9/2010, the complainant sought certain information i.e. the details of all documents and records which are examined by Police Establishment Board on 30/9/2010 of P.I. Madkaikar before recommending his name for promotion to the post of inspector on regular basis and also to give certified copies of the same. By reply dated 28/9/2010, P.I.O./Opponent informed that the documents examined by P.E.B. on 30/9/2009 for recommending Shri Harish Madkaikar for promotion to post of Police Inspector on regular basis are A.C.R's which are confidential nature and as such the said information is rejected U/sec.8(1)(j) of R.T.I. Act. It was also informed that as regards other documents i.e. information on punishment, etc the same was enclosed.

It is the contention of the complainant that information that is furnished is in complete. However according to opponent ACR's were considered. Other documents i.e. information on punishment was furnished. It appears that these are the only documents considered.

6. It is seen that ACRs are not furnished in view of Sec.8(1) (j) of R.T.I. Act.

The view taken earlier was that ACRs should not be disclosed and in earlier cases the same was not shown even to the concerned employee. It was also believed that providing ACR may embarrass the official. Even Central Information Commission in earlier cases has held as under:-

“ACRs are protected from disclosure because arguably such disclosure seriously harm inter-personal relationship in a given organization. Further the ACR noting represent an interaction based on trust and confidence between the officers involved in initiating, reviewing or accepting the ACRs. These officers could be seriously embarrassed and even compromised if their notings are made public. There are thus reasonable grounds to protect all such information through a proper classification under Official Secrets Act. In view of this the decision of the C.P.I.O. is upheld and appeal is dismissed.” [Shri Satish Kumar Chaudhary V/s. Ministry of Communications & IT Appeal No.128/ICPB/2006 F. No.PBA/06/102 dated 17/10/2006].

In N. Aknon V/s. Office of the Chief Commissioner of Income Tax (Decision No.446/IC (A) 2006 F.No.CIC/MA/A/2006/00634 dated 13.12.2006) it was held that the contents of ACR, particularly the remarks made by the superior officers are treated as confidential information, the disclosure of which is barred under section 8(1)(j) of the Act.

Again it was held in another case that the assessment reports by the superior officers are personal and confidential information and therefore exempted under section 8(1)(j) of the R.T.I. Act. Yet in another case it was held that ACRs and its grading not liable to be disclosed. The law that was crystallized by various rulings was that ACR should not be disclosed.

However this view was changed in view of decision of the Hon'ble Supreme Court in Dev Dutt V/s.Union of India & Others (2008) 8 SCC 725. IT is observed as under :-

“39. In the present case we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair average, good or very good) in the Annual Confidential Report of a public

servant, whether in civil, judicial, police or any other State Service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our view is the correct legal position even though there may be no rule/G.O. requiring communication of the entry or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency by public administration, and would result in fairness to public servants. The State must be model employer and must act fairly towards its employees. Only then would good governance be possible.

41. We, however, make it clear that the above directions will not apply to military officers because the position for them is different as clarified by this Court in *Union of India V/s. Major Bahadur Singh* 2006(1) SCC 368. But they will apply to employees of statutory authorities, public sector corporation and other instrumentalities of the State (in addition to Government Servants).”

The full Bench of decision of C.I.C. in appeal No.CIC/WB/A/2007/00422 considered the disclosure of ACRs referring to Supreme Court decision. I need not quote the full paras. Suffice it to say that the decision points that the disclosure of ACRs to the concerned employee cannot, therefore, be denied in the light of decision/directives of the Hon’ble Apex Court.

In subsequent rulings C.I.C. has disclosed ACRs to the concerned officers/employees.

In view of this position and in view of the above rulings ACRs cannot be disclosed to a third party. Opponent was therefore justified in not disclosing the ACRs of the concerned officer.

It is seen that other documents were furnished.

7. In view of all the above, I pass the following order:-

**ORDER**

No intervention of this Commission is required. In case any other document was considered the opponent to furnish the same to the complainant within 20 days from the receipt of this order. The Complaint is disposed off.

The Complaint is, accordingly, disposed off.

Pronounced in the Commission on this 9<sup>th</sup> day of December, 2011.

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