

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 08/SIC/2012

Smt. Kunda Kerkar,
Goa Legislative Assembly,
Porvorim - Goa

.... Appellant

V/s.

1) Public Information Officer,
Smt. Ligia Godinho,
Goa Legislative Assembly,
Porvorim - Goa

.... Respondent No. 1.

2) First Appellate Authority,
N. B. Subhedar,
Secretary Legislature,
Porvorim - Goa

.... Respondent No. 2.

Appellant alongwith Adv. A. Mandrekar.

Respondent No. 1 in person.

Respondent No. 2 in person.

J U D G M E N T
(21.06.2012)

1. The Appellant, Smt. Kunda Kerkar, has filed the present Appeal praying that the Order passed by the First Appellate Authority in case No. Information Appeal No. 1 of 2011 dated 13.10.2011 be quashed and set aside; that the information as requested by the Appellant in his application dated 19.07.2011 be furnished to him correctly and fully without reserving any information to save any person; that action be taken on P.I.O. for not providing complete and correct information within stipulated time limit of 30 days; that penalty be imposed on P.I.O., for not providing the information as per Section 20 of R.T.I. Act 2005; that the disciplinary action may be initiated against the P.I.O.; that the compensation and costs be provided and that no fees be charged as per Section 7(6) of the R.T.I. Act.

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

That the Appellant, vide application dated 19.07.2011, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer ('P.I.O.)/Respondent No. 1. That an unsatisfactory reply was received from the

Respondent No. 1 dated 18.08.2011 requesting to collect the part information. That the reply of the Respondent is unsatisfactory, very vague, inconclusive and evasive thus the Respondent No. 1 has miserably failed to meet the object of R.T.I. Act, 2005 by not providing the complete and correct information as per the application. That being not satisfied the Appellant preferred First Appeal before the First Appellate Authority (F.A.A.)/Respondent No. 2. By order dated 13.10.2011 the F.A.A. rejected the request. That the Respondent No. 1 and 2 breached the mandate of R.T.I. Act. Being aggrieved by the order the Appellant has filed the present appeal on various grounds as set out in the Memo of Appeal.

3. The Respondents resist the Appeal and their replies are on record. In short, it is the case of the Respondent No.1 that the Appellant had filed the application seeking information. That all the application preferred by the Appellant to provide information under R.T.I. Act were addressed to P.I.O. as Miss Kunda Kerkar and not Smt. Kunda Kerkar as solemnly verified on 06.01.2012 but not signed as deponent before the Commission. That intimation was sent to the Appellant on 18.08.2011 to collect the information under R.T.I. from P.I.O. which is well within 30 days. That the Appellant collected the information on 19.08.2011. That the information as mentioned at point 4 was provided by the Respondent as available in Goa Legislative Secretariat. That the Respondent has provided the appellant complete and correct information as per the records available in the Secretariat. That the question does not arise of not providing the correct information. That the information sought by the Appellant at Sr. No. 2 of her application under R.T.I. i.e. Confidential Reports of her service was rejected under Section 8(j) of R.T.I. Act. Respondent no. 1 also refers to First Appeal and order passed by the First Appellate Authority. That the allegations made by the Appellant in the petition before the Commission are not true and baseless as the information well within the purview of R.T.I. Act was

provided to the Appellant. According to Respondent No. 1 the Appeal is liable to be dismissed.

It is the case of the Respondent No. 2 that available information has been furnished. That the Confidential Reports being of confidential nature and being secret are not supposed to be disclosed and, therefore, the request has been turned down under Section 8(j) of the R.T.I. Act. In short according to Respondent No. 2 whatever information is with the record and in custody of their Department has been provided to the Appellant without any prejudice. That only such information can be supplied under the Act which already exists and held by the Public Authority. That the Public Information Officer is not supposed to create information, or to interpret information or to solve the problems raised by the Applicants or furnish replies to hypothetical questions. According to the Respondent No. 2 appeal is liable to be dismissed.

4. Heard the arguments. Adv. A. Mandrekar argued on behalf of Appellant and Respondent No. 1 and 2 argued in person.

According to Adv. Mandrekar C. R. is not furnished. He next submitted that the same are liable to be furnished in view of latest decisions.

During the course of arguments the Respondent No. 1 and 2 submitted that all information has been furnished except the C.R. According to the Respondents the same are confidential and secret and as such the same were not furnished.

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 an application dated 19.07.2011 sought certain information consisting of 3 items at Sr. No. 1, 2 and 3. By letter dated 18.08.2011 the P.I.O./Respondent No. 1 informed the Appellant to collect the same by paying the official

charge of Rs.4/- and Rs. 2/- per copy/page during office hours. By letter dated 19.08.2011 the P.I.O./Respondent No. 1 furnished the information. There is endorsement of the Appellant on the said letter bracketing some portion regarding C.R. as "not received" on 19.08.2011. Being not satisfied the Appellant preferred an appeal before the F.A.A./Respondent No.2. By order dated 13.11.2011 the Appeal was disposed off by upholding the rejection of request by P.I.O. under Section 8(j).

During the course of his arguments Adv. Mandrekar submitted that Confidential Report of Appellant's service from the year 1999, 01.12.1999 till date has not been furnished. According to Respondent No. 1 and 2 the same cannot be furnished in view of Section 8(1) (j). The short point that falls for my consideration is whether the same can be given?

6. 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 notings 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 is 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 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 officer 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 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 point 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.

7. In view of the above and the law bearing on the point Confidential Report of the Appellant should be furnished as sought by her vide her application dated 19.07.2011.

8. Coming to the aspect of delay it is seen that the information was sought by letter dated 19.07.2011. By letter dated 18.08.2011 the Appellant was called to collect information after paying the fees.

The Appellant collected the information by letter dated 19.08.2011.
There is no delay as such.

Since there is no delay the question of penalty does not arise.
Good or bad the information was rejected under Section 8(1) (j) and
the same has backing of law.

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

ORDER

Appeal is allowed. The Respondent No. 1 is hereby directed to
furnish the information regarding Confidential Report of Appellant's
service from the year 1999 (01.12.1999) till date as sought by the
Appellant vide application dated 19.07.2011 within 20 days from the
date of receipt of this Order.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 21st day of June, 2012.

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

