

GOA INFORMATION COMMISSION

Ground Floor, "Shrama Shakti Bhavan", Patto Plaza, Panaji.

Appeal No. 35/2008

Shri. Joao C. Pereira,
H. No. 40, Acsona, Utorda,
Majorda, Salcette – Goa.

.....

Appellant.

V/s.

1. Public Information Officer,
Superintendent of Police (HQ),
Police Head Quarters,
Panaji – Goa.
2. First Appellate Authority,
The Inspector General of Police (Goa),
Police Head Quarters,
Panaji – Goa.

.....

Respondents.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner
&
Shri G. G. Kambli
State Information Commissioner

(Per A. Venkataratnam)

Dated: 25/09/2008.

Appellant in person.

Adv. Mrs. Neelima Narvekar for both Respondents.

ORDER

The Appellant has approached the Public Information Officer, S.P. (South Goa) by a request dated 13/03/2008 on 5 points regarding the promotion of Mohan R. Kulkarni in the Police Department as Asst. Sub-Inspector. The Public Information Officer (HQs) to whom the application seems to have been transferred, refused the information, as it is objected to by the third party Shri. Mohan R. Kulkarni. The Respondent No. 2 by his order dated 14/05/2008, now impugned in the second appeal, has also rejected the first appeal on the ground that it is personal information, disclosure of which has no relation with any public activity and interest and cited section 8(1)(j) of Right to Information Act, 2005 (for short the RTI Act) for such refusal.

2. The parties were heard and a notice was also issued to Shri. Mohan Kulkarni. Shri. Mohan Kulkarni appeared in person. However, he wanted

...2/-

more time for giving his say as he has approached Government for appointment of the Government Counsel. The matter was adjourned two times on 27/08/2008 and 11/09/2008 only for this reason and on the final occasion, the request for further adjournment was rejected and he was asked to explain in person his objection for the request. He could not explain any reason. The Respondents have filed their own statements as well as written arguments were filed by the Government Counsel Mrs. Narvekar.

3. The Appellant while arguing his matter stated that the reasons for refusal cited by the Public Information Officer and the first Appellate Authority are different and the first Appellate Authority cannot substitute his own reasons while deciding first appeal. He has to only examine the grounds of rejection by the Public Information Officer and either agree or disagree with the reasons. His next argument was that the information about the promotion of Shri. Mohan Kulkarni is neither personal nor a third party information. It is part of the office records and in fact to an earlier request under the same RTI Act even copies of the minutes of the DPC held on 01/02/2007 recommending the promotion of Mohan Kulkarni were given to him. In this meeting, the candidature of Mohan R. Kulkarni was recommended at Sr. No. 12, para No. 9 of the minutes. The DPC recommended his promotion after going through the Annual Confidential Reports (ACR), result of written examination, parade test, integrity certificate and other service records. The contention of the Appellant is that he is merely asking for further information in pursuance to this paragraph in the DPC minutes and by the present request has asked for the copies of the ACR and the results of the written examination and parade test etc. to be given to him. At this stage, the information cannot be withheld on the grounds of either third party information or personal information not serving public interest, when the DPC minutes about the same official were given to him earlier.

4. The DPC minutes were given to the Appellant at the Department level itself by the then Public Information Officer. This Commission is not a party to the disclosure of the DPC minutes. In fact, so far, this Commission has not directed any Public Information Officer to give either the minutes of DPC meeting or DSC meeting. There were occasions when

the Commission has directed the Public Information Officer to give the information relating to the marks obtained by the successful candidates as well as aggrieved citizen if he was a candidate at the interview or written examination and other details such as names of the Selection Committee, criteria followed for the selection etc. but the entire copy of the DPC or DSC minutes have never been directed to be given to any citizen by this Commission. Now the point that arises for our consideration is whether after having already given the minutes of the DPC, is it proper to withhold the basis on which the DPC has come to such conclusion for promoting Shri. Mohan R. Kulkarni.

5. The Annual Confidential Reports are initiated by the superior officials in Government Departments or public authorities to keep records of performance of the officials. No doubt, it is an important document and is relied by the various selection committees for considering the officials for their career advancement and or for releasing increments. Nobody can deny the need for keeping a written record of performance of an official in a prescribed format. However, it is not necessary and definitely not in public interest to release this document for scrutiny by all the citizens. We have already held in a number of cases that the copies of the completed ACRs can be given to the official concerned and to no one else. This would help him in improving his own working and also helps to know what the superiors think of him. The same cannot be said about the written examination and parade test conducted in respect of Shri. Mohan R. Kulkarni the results of which the DPC considered. However, here also there is no need to give the question paper as well as answer sheets as requested by the Appellant. Overall marks obtained, if any, in both the tests and relied by the DPC could be given to the Appellant.

6. There is no doubt that the records relied by the DPC are the official records and they are kept confidential by the Department but they cannot be classified as either personal information or the information related to a third party. Both the Public Information Officer and the first Appellate Authority have erred in considering the information as third party information and personal information. Again the law on issuing the third party information is clear. It is not as if simply because the third party has objected to the sharing of the information, the Public Information Officer

is duty bound to reject the request of disclosure by the citizens. The Public Information Officer has to apply his mind and give a reasoned order even while rejecting information and upholding the objection by the third party. The law is in favour of citizens even when sharing of the information about the third party except in so far as it violates the privacy of the third party or breaches any trust with the third party if it was given by the third party to the public authority in confidence. In any case, no such reason is mentioned by the Public Information Officer and the records requested by the Appellant do not come under that category.

7. Therefore, we direct the Public Information Officer to issue this information regarding the marks obtained in the written examination and parade test of Shri. Mohan R. Kulkarni. We also set aside the orders of both the Public Information Officer and the first Appellate Authority rejecting the request for information.

8. The appeal is partly allowed in terms of above directions.

Announced in the open court on this 25th day of September, 2008.

Sd/-
(A. Venkataratnam)
State Chief Information Commissioner

Sd/-
(G. G. Kambli)
State Information Commissioner