

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 132/2009

Shri Sudhir S. Kerkar,
Joint Mamlatdar – III,
Tiswadi Taluka, Panaji - Goa.

..... Appellant.

V/s.

1. Public Information Officer,
Personnel Department, Secretariat,
Porvorim, Bardez – Goa.
2. First Appellate Authority,
Joint Secretary,
General Administration Department,
Secretariat, Porvorim, Bardez – Goa.

..... Respondents.

Adv. S. Sawant for Appellant.

Adv. K. L. Bhagat for Respondent No. 1.

JUDGEMENT **(23-04-2010)**

1. This Second Appeal filed by the Appellant, Shri Sudhir S. Kerkar, praying that the Respondent be directed to furnish the information within specific period and that section 20 of the Right to Information Act, 2005 be evoked for failing to provide the information within the statutory period.

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

That the Appellant had applied for information under Right to Information Act, 2005 ('RTI' Act for short) as regards to the seniority prepared by the Personnel Department in the Cadre of Mamlatdars/Joint Mamlatdar/Assistant Director of Civil Supply vide application dated 24/7/2008. That in response to the above application, Personnel Department vide letter dated 22/8/2008, received on 25/8/2008, stating

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that the concerned file has been called by the learned Advocate General of Goa and soon after its receipt the matter will be examined and necessary reply will be given to the undersigned. That from 24/7/2008 to 8/6/2009 the Appellant visited the office of the Respondent on a number of occasions on working days and was given the same reply that the concerned file was with the Advocate General office. That till 8/6/2009 there was no correspondence/intimation from the office of the Respondent and suddenly on 17/6/2009 a letter dated 9/6/2009 was received from the Respondent stating that the information on point No. 1, 3 and 6 is enclosed alongwith the letter and as regards to the other points the Appellant was asked to inspect the record in the office of the Respondent. It is the case of the Appellant that he sent the regretted letter dated 30/6/2009 for providing incomplete information after a period of 10 months. Being aggrieved, the Appellant preferred the First Appeal before the First Appellate Authority ('F.A.A.' for short). That during the proceedings in order to settle the dispute amicably the presiding officer/F.A.A. by Order dated 23/7/2009 directed the Public Information Officer to furnish the information as desired by the Appellant for which Public Information Officer had agreed to furnish the same within 8 days. However, whatever information was provided vide letter dated 28/7/2009 was incomplete, vague and wrong information. That this fact was brought to the notice of the F.A.A. by letter dated 30/7/2009. By letter dated 4/8/2009 the Public Information Officer admitted that he has furnished wrong information and requested to grant some more time to correct the information and to furnish the other information. Again it was brought to the notice of F.A.A. that whatever information provided is not complete and that information provided to Shri Paresh Faldessai on similar aspect

by the same Public Information Officer. That finally F.A.A. passed the Order directing the Public Information Officer to furnish the information within two weeks from receipt of Order. That till date no information is provided. Thus being aggrieved the Appellant has preferred this Appeal on the grounds mentioned in the Memo of Appeal.

3. The Respondents resist the Appeal and the say of Respondent No. 1 is on record. It is the case of Respondent No. 1 that Public Information Officer by his letter dated 22/8/2008 i.e. within a period of 30 days from the date of receipt of the said application informed the Appellant that the concerned file having been called by Learned Advocate General of Goa, his request for information would be examined and necessary action would be taken as soon as the file is received back by the Personnel Department. That subsequently the Public Information Officer vide his letter dated 9/6/2009 intimated the Appellant to deposit an amount of Rs.68/- for furnishing the information sought at points Nos. 1, 3 and 6 of his application and as regards the remaining points set out in his application, the Appellant was asked to inspect the records of the Personnel Department. That information in respect of point No. 1, 3 and 6 were furnished to the Appellant. It is the case of the Respondent No. 1 that the information sought could not be furnished before 9/6/2009 since the concerned file was not available in the Department and the said fact was intimated to the Appellant and that there was no malafide intention on the part of Public Information Officer. Respondent No. 1 also refers to First Appeal, its orders furnishing of information etc. It is further the case of the Respondent No. 1 that the information in respect of point No. 2 and 4 were available in the notings furnished to the Appellant and the Public Information Officer by his letter dated 28/7/2009 had brought the same to

the knowledge of the Appellant. That Public Information Officer cannot create the information but has to furnish the information in its available form. Moreover admittedly the letter dated 21/8/2008 addressed to Sri Paresh M. Faldessai contains the information related to points No. 2 and 4 and hence information is exempted under the provision of section 8(1)(e) of the RTI Act, as the same was available to the Appellant in his fiduciary relationship. That therefore there was no obligation on the Public Information Officer to furnish the same information to the Appellant. According to Respondent No. 1, Appeal is liable to be dismissed.

4. Heard the arguments. The Appellant argued in person and the learned Adv. K. L. Bhagat argued on behalf of the Respondent No. 1.

Appellant narrated in detail about the facts of the case and pointed various letters on record. According to him it took about 10 months to provide the information and what has been provided is incomplete and incorrect information. He next submitted that replies to points 2, 4 and 5 not given. Point 7 is a wrong answer and 8 is partly given. He argued on similar lines as mention in the Memo of Appeal and took me through various letters and notings. Appellant also submitted that penalty ought to be imposed on Public Information Officer, compensation be awarded and disciplinary action be taken. He also relied on section 19(5)(7) and section 20(1) and (2).

5. During the course of his arguments, the learned Adv. Shri K. L. Bhagat also referred to various letters and submitted that file had gone to Advocate General. He also submitted that on 9/6/2009 notings were furnished. He also submitted that in the notings they have given the criteria. He referred to the application dated 24/7/2008. According to him

file was with A.G. in connection with seniority only. He next submitted that Exhibit B is the intimation given and that too within 30 days. He next submitted that 9/6/2009 vide Exhibit C information is given and that 3 items were furnished to him. He also referred to First Appeal and order passed. According to him there is no malafide intention.

6. 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 information is furnished and that too in time?

At the outset I must say that right to know is a basic right of citizens of a free country. Long back Aristotle observed that people desire to know. Without adequate information a person cannot form an informed opinion. The Right to Information Act, 2005 has been enacted to provide for a legal right to information for citizens to secure access to information under the control of public Authorities, in order to promote transparency and accountability in the working of every public authority. The citizens and information seekers have, subject to few exemptions, an overriding right to be given information on matters in possession of State and Public Agencies that are covered by the Act.

It is pertinent to note that, RTI Act in general is the time bound programme between the Administration and the citizen requesting information and every step will have to be completed within the time for presentation of request and disposal of the same presentation of First Appeal and disposal by the Appellate Authority.

7. Now coming to the case at hand, the Application for furnishing

information was made by letter dated 24/7/2008 and the same consisted of 9 points. By letter dated 22/8/2008 the Respondent No. 1 informed the Appellant that concerned file has been called by Learned Advocate General of Goa and that soon after its receipt the matter will be examined and the necessary reply would be given to him. If file was not there one wonders as to why the said reply was not given immediately on receipt of the letter/application from the Appellant. By letter dated 9/6/2009 the Applicant is called to deposit Rs.68/- for furnishing the information on point No. 1, 3 and 6 of the said Application. It is also mentioned that as regards other points the Appellant may inspect the records of the Department. It is pertinent to note here that information on 3 points is being given. Normally, Public Information Officer has to give full information whenever such a request is made. It is incumbent upon the Public Information Officer to provide such information as he commands. The information given ought to be clear and in proper form. Request to take inspection may be allowable but not justified under RTI Act. In short full information has been furnished by 9/6/2009 even after much delay. It appears that correspondence flowed between Appellant and Respondent No. 1.

Thereafter Appellant preferred the First Appeal. The F.A.A. passed the Order on 12/8/2009 directing the Public Information Officer to furnish correct information to the point No. 2, 4 of the application filed by the Appellant in the right manner after adhering to the provisions of RTI Act, 2005 alongwith above documents as agreed upon within 2 weeks from the receipt of the Order.

I have also perused the letter dated 28/7/2009 whereby the

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information on point No. 2, 4, 5, 7, 8 and 9 are furnished. It is interesting to note that Order of F.A.A. was passed on 12/8/2009 directing to give correct information. It is the grievance of the Appellant that no information has been furnished to him so far particularly on point No. 2, 4 and 5. I have perused the questions as well as answers.

8. Looking at the factual backdrop of the case, this Appeal is for non-execution of the Order of First Appellate Authority dated 12/8/2009. Apparently the Appellant has no grievance against F.A.A. Under section 19(3) of the RTI Act, 2005, Second Appeal lies only against the Order of the First Appellate Authority. However, in the ends of justice and in true spirit of RTI Act, I am proceeding with the same as the grievance of the Appellant is non-furnishing of information.

9. It is seen that the Appellant sought the information on certain points and replies given are as under: -

Point No. 2. Kindly furnish me the details of the criteria followed for the preparation of tentative seniority list of the Mamlatdar/Joint Mamlatdar/Assistant Director of Civil Supplies appointed after 6/10/2000.

Reply. Answer to be revealed from the copies of the notings provided under point No. 5.

Point No. 4. Kindly furnish me the details of the criteria followed for the preparation of final seniority list of the Mamlatdar/Joint Mamlatdar/Assistant Director of Civil Supplies appointed after 6/10/2000.

Reply. Answer to be revealed from the copies of the notings provided under point No. 5.

Point No. 5. When tentative seniority list of Mamlatdar/Joint Mamlatdar/Assistant Director of Civil Supplies was forwarded to the officers, whether any objections were filed. If yes, furnish the copies of the same.

Reply. Copies of notings from 76/N to 96/N are enclosed.

To my mind replies ought to have been given the way the same were asked. It is held that Public Information Officer shall provide information in the form in which it is sought. In S.R. Prasad Vs. P.I.O. Ministry of Commerce (Dept. of Supply) [Appeal No. 119/ICPB/2006 F No. PBA/06/136 dated 2/10/2006] certain information regarding Notification issued by President of India was sought, the Appellant was told that since information being notification he could have access from concerned Gazette. However, C.I.C. held that C.P.I.O. may note that even if information sought is available in Gazette, he is bound to furnish the same and cannot ask the information seeker to search for the same elsewhere.

Even F.A.A. directed to give correct information, in the right manner after adhering to the provisions of RTI Act, 2005.

It is interesting to note here that information given to one Paresh M. Faldessai by letter dated 21/8/2008 is in a different way and criteria is mentioned. If the same could be given to one then the same can be given to the other also.

It is contended that Public Information Officer cannot create information but has to furnish the information in its available form. In view of the above position, this contention does not hold water. So also the contention regarding section 8(1)(e). This letter is probably cited to

show that the information is in existence. Under RTI Act information would mean any material in existence and apparently it cannot mean and include something that is not in existence or has to be created. Under section 4(1)(a) every Public Authority shall maintain all its records duly catalogued and indexed in a manner and the form which facilitates right to information.

In any case Public Information Officer will have to furnish the said information.

10. Now it is to be seen whether there is any delay. Apparently there is delay in furnishing the information as contended by the Appellant. However, Public Information Officer should be given an opportunity to explain that the same was not intentional malafide etc. in the factual matrix of this case.

11. The Appellant contends that the information is incomplete, incorrect, false and misleading. This is disputed by the Advocate for Respondent No. 1. According to him information furnished is correct.

It is to be noted that purpose of the RTI Act is per se to furnish information. Of course Appellant has a right to establish that information furnished to him is false, incorrect, misleading etc., but the Appellant has to prove it by means of some sort of documentary evidence to counter Opponent's claim. The information seeker must feel that he got the true and correct information otherwise purpose of RTI Act would be defeated. It is pertinent to note that mandate of RTI 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 the Complainant must be given an opportunity to substantiate that the information given to him is incomplete, incorrect, misleading etc. as provided in section 18(1)(e) of the RTI Act.

12. In view of the above, the Respondent No. 1 has to furnish the information to Point No. 2, 4 and 5. Since there is delay the Respondent No. 1 is to be heard on the same. The Appellant should be given an opportunity to prove that the information is incomplete, incorrect, misleading etc. Hence, I pass the following Order: -

ORDER

The Respondent No. 1 is hereby directed to furnish the information to point No. 2, 4 and 5 as ordered by F.A.A. within 15 days from the receipt of this Order.

Issue Notice under section 20(1)(2) of the RTI Act to Respondent No. 1/Public Information Officer why penalty action should not be taken against him for causing delay for furnishing information. The explanation, if any, should reach the Commission on or before 14/06/2010. Public Information Officer/Respondent No. 1 shall appear for hearing.

The Appellant to prove that information furnished is false, incorrect, misleading etc.

Further inquiry posted on 14/06/2010 at 10.30 a.m.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 23rd day of April, 2010.

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

