

GOA INFORMATION COMMISSION

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

Appeal No. 80/2007-08/Police

Shri. M. K. Desai,
Madegal Kakoda,
Curchorem - Goa.

..... Appellant.

V/s.

1. Public Information Officer,
The Superintendent of Police (HQ),
Police Headquarters, Panaji - Goa.
2. The Under Secretary (Personnel - II),
Secretariat, Porvorim - Goa.
3. First Appellate Authority,
The Dy. Inspector General of Police,
Police Headquarters, Panaji - Goa.

..... Respondents.

CORAM:

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

(Per A. Venkataratnam)

Dated: 18/01/2008.

Adv. Gajendranath Usgaonkar for the Appellant.

Adv. K. L. Bhagat, Government Counsel for both the Respondents.

ORDER

This disposes off the second appeal by the Appellant filed before this Commission on 12/10/2007 against the order dated 23/7/2007 of the first Appellate Authority, Respondent No. 3 herein, hereinafter referred to as the "impugned order" under the Right to Information Act, 2005 (RTI Act for short). The request of the Appellant dated 8/5/2007 consists of information sought by him on 14 points, most of which have already been replied by the Public Information Officer, in time. Two points regarding the vacant posts in respect of junior scale and senior scale of Goa Police Service have been referred to the Under Secretary (Personnel - II), Respondent No. 2 herein, as the Public Information Officer stated that cadre controlling authority for Goa Police Service is the Government in the Personnel Department. The Respondent No. 2, however, in his reply before us contended that the powers of posting, promotion and transfer of all police officers of and below the rank of the Dy. Superintendent of Police have already been transferred to the Police Establishment Board by the

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Government order dated 15/2/2007 of the Home Department the photocopy of which was enclosed by the Respondent No. 2. However, the copy is unreadable. From whatever we could make out from the illegible copy, it is true that the Board was entrusted with the powers to decide all transfers, postings, promotions and other service related matters of the police officials of and below the rank of the Dy. Superintendent of Police which means that the promotion of the Dy. Superintendent of Police to the rank of the Superintendent of Police also has to be decided by the Police Establishment Board. On the other hand, the Respondent No. 1, who is the Public Information Officer still maintains that the cadre controlling authority of the Goa Police Service is the Government in the Personnel Department. The Respondent No. 3 mentions that this matter is under the consideration of the Government. Whatever be the truth, it is clear that the Police Department, specially the Public Information Officer and Dy. Inspector General of Police are themselves confused as to who is the cadre controlling authority of Goa Police Service. This matter has to be sorted between the Director General of Police and the Government and a reply has to be given to the Appellant on these 2 points by the Public Information Officer of the Police Department, if necessary, by obtaining the information from wherever it is available.

2. There are other matters raised by the Appellant regarding non-issue of his own ACRs from the years 1987 to 2005 which were not given by the Public Information Officer. The second grievance is about the copies of minutes of the DPC to the post of Police Inspector held from the feeder grades on various occasions. 12 such meetings of DPC have been cited alongwith specific dates by the Appellant wherein the DPC is supposed to have been held. The Public Information Officer claimed exemption from disclosure of the minutes of meeting of DPC under section 8(1)(j) of the RTI Act which was confirmed by the Dy. Inspector General of Police, Respondent No. 3. Finally, the copies of the citations sent to the Government recommending the President and Chief Minister Police medals to the various officers were also not given to the Appellant claiming exemption under section 11 of the RTI Act. The Public Information Officer treated this information as third party information and asked the consent of the third parties. The information in respect of those third parties who had no objection was given to the Appellant. However, where there were objections, the Public Information Officer refused to give this information.

3. Notices were issued and all the three Respondents have filed their replies

which were countered by the Appellant. The matter was also argued by the Advocates namely, Adv. G. Usgaonkar for Appellant and Shri. K. L. Bhagat for the three Respondents.

4. We have already disposed one prayer namely the information regarding the cadre controlling authority and the vacant posts of the Dy. Superintendent of Police and Superintendent of Police to be given by the Public Information Officer after getting information from the Government, if necessary. Regarding the minutes of the DPC, the case of the Public Information Officer as well as the first Appellate Authority is that they contain the grading of the various contenders which is the confidential information and therefore, cannot be given. We agree that the assessment of the selection committee of the promotion committee containing actual minutes need not be given to the citizens under the RTI Act. But, however, we cannot hold the same view in respect of the furnishing copies of the ACR of Appellant to himself after ensuring that all the ACRs are complete in all respects including the endorsement by the accepting authority. We have already held earlier that there is no ground for withholding this information once the ACRs are already written by the competent authorities, reviewed and accepted by the competent authorities. Such a procedure is followed now by amending ACR rules for All India Services. We, therefore, grant the request of the Appellant and direct the Public Information Officer to give the copies of the ACRs to the Appellant within 30 days from the date of pronouncement of this order.

5. On furnishing the information regarding the citation and recommendatory letters to the Government in respect of conferring of Police medals, we agree that the recommendations may not necessarily be dependent only on the cases investigated by the officers with respect to the FIRs, chargesheets filed and convictions obtained. We do not see any objection for giving copies of the recommendatory letters not only in respect of the third parties who have no objection but in respect of all others because these are public documents once the recommendations are accepted and the medals are conferred on the recipients. We do not consider that these are third party information. In fact, the recommendations for the Police medals have to be based on certain guidelines and rules. We are not aware whether such guidelines have been framed by the Police Department. In any case, the information is not third party information. Even for a moment presuming that this is third party information, there is no way in which the Department can refuse the third party information merely because it is objected to by the third party. This is not in accordance with

the provisions of the RTI Act. All that has been said in the RTI Act is that an opportunity has to be given to the third party to file his say once the Public Information Officer arrives at a prima facie conclusion that the information can be disclosed. If the Public Information Officer comes to a conclusion that the information cannot be disclosed, the question of seeking the say of the third party does not arise. On the other hand, when the Public Information Officer comes to a prima facie conclusion that information could be given the opinion/objection of the third party has to be sought within 5 days. The third party is given time of 10 days to reply. The time frame has to be respected by both the Public Information Officer and the third party. Thereafter, the Public Information Officer has to "weigh" the public purpose against the injury caused to the third party and come to a conclusion whether to part with the information as originally decided by him prima facie or to reject it. In the case he decides to reject, he has to give valid reasons and Appellate Authority has to necessarily hear the third party as well as the Appellant before he decides the matter. We do not see on the record any such procedure having been followed by the Public Information Officer. Further it is odd that the recommendatory letters in respect of some officials have been given and others refused merely because some have no objections and some third parties have objections. This is not the intention of the RTI Act because the issue is the same though the third parties are many. We, therefore, reject the argument of both the Public Information Officer and first Appellate Authority and direct the Public Information Officer to furnish all the recommendatory letters sent to the Government by the Police Department in respect of the Police medals conferred by the President and or Chief Minister.

6. With the above discussion, the appeal is partly allowed. The Public Information Officer is directed to give the information within one month on the points decided above.

Announced in the open court on this 18th day of January, 2008.

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

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