

GOA STATE INFORMATION COMMISSION

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

Appeal No. 83/2006/WRD

Shri V. U. P. Gaitonde
Superintending Engineer,
Water Resources Dept.,
Irrigation Complex, Gogal,
Margao - Goa.

..... Appellant.

V/s.

1. First Appellate Authority,
The Chief Engineer,
Water Resources Dept., 2nd floor,
Junta House (Annexe), Panaji - Goa.
2. Public Information Officer,
The Dy. Director of Administration,
Office of the Chief Engineer,
Water Resources Dept., 2nd floor,
Junta House (Annexe), Panaji - Goa.

..... Respondents.

CORAM:

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

(Per A. Venkataratnam)

Dated: 29/03/2007.

Appellant in person.

Adv. Irshad Agha for both the Respondents.

ORDER

The Appellant by his request dated 14/07/2006 has approached the Respondent No. 2 for information on 3 points. A reply was sent on 7/10/2006 by the Respondent No. 2 on 2 points and stated that the information on 3rd point is not available, forcing the Appellant to go in first appeal on 11/12/2006 to the Respondent No. 1. The first Appellate Authority, the Respondent No. 1, herein, has passed an order on 2/1/2007 partly allowing the request. Not satisfied with the order, the Appellant has approached this Commission by his second appeal dated 30/01/2007. It will be in order to mention the request for information and the view of the first Appellate Authority. The request of the Appellant is to

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provide him "copies of the complete set of the Annual Confidential Reports from the year 1979-80 and onwards in the grade of Asst. Engineer, Executive Engineer or the Superintending Engineer as the case may be in PWD/Irrigation Department/ Water Resources Department as the case may be till date (14/07/2006)". The Public Information Officer, Respondent No. 2, informed him that "the Annual Confidential Reports in respect of Superintending Engineer are not in the custody of this Department". The operative portion of the order dated 2/1/2007 of the Respondent No. 1 on this matter is "the Dy. Director of Administration (PIO) is also directed to inform the Appellant if there are any adverse remarks during the period as asked by him within 2 weeks from the date of this order as per the provision of Acts and Rules".

2. The first Appellate Authority has mentioned in his order that he has already allowed the appeal partly. However, as we have seen in detail above, while the information asked is about the issuance of copies of the Annual Confidential Reports, hereinafter referred to for short as ACRs, the direction by the first Appellate Authority is to inform the Appellant if there are any adverse remarks during the period as asked by him. We do not see how this can be interpreted as having allowed the request of the Appellant even partly. The reason for not giving entire extract of ACRs as come out in the Appellate order as well as the written statement of the Respondent No. 1 is that (i) the ACR is a confidential document and only adverse entries as approved by the accepting authority have to be communicated; (ii) the information about the ACR or furnishing the copies is exempted under Section 8(d) of RTI Act; (iii) that such information is a personal information and its disclosure has no relation to public activity or interest; (iv) the disclosure of the ACRs will defeat the very purpose of the confidential report. In his written statement dated 6th March, 2007, the Respondent No. 1 relied on his speaking order and added no further justification for rejecting the request of the Appellant as far as providing the copies of the ACRs are concerned.

3. Before we go further, we take that ACRs requested by the Appellant are available in the office of the Respondent No. 1 because he has directed the Public Information Officer, Respondent No. 1, to give adverse entries of the ACRs if any. Whether this is done or not has not come on record. Again, we take that the statement of the Respondent No. 2 as Public Information Officer that the ACRs of

Superintending Engineers "are not in custody of the Water Resources Department" as communicated by her letter dated 7/12/2006 to the Appellant is not correct and misleading.

4. We, now, come to the prayer of the Appellant that the documents requested by him should be furnished by the Commission as per para No. 9 of his appeal memo. We would like to make it clear, in the first instance, that the Commission does not keep custody of the ACRs of the Appellant. However, we take his prayer to mean that directions should be given to the Respondent No. 2 (PIO) to furnish the documents. There is no Section 8(d) of the RTI Act as mentioned in the Appellate order. Section 8(1)(d) quoted by the first Appellate Authority deals with the withholding of commercial information or trade secrets or intellectual property. The ACRs maintained by the Government Department of its employees are admittedly are regarding performance of its employees and are neither commercial information nor trade secrets nor the intellectual property of the Government nor the employees. We, therefore, reject this argument as irrelevant. We next come to the argument that these documents are personal information and its disclosure is not in public interest. Section 8(1)(j) deals with the disclosure of personal information by a Public Authority. The exemption provided under Section 8(1)(j) deals with the personal information obviously relating to any of the citizens including the employees of a Public Authority. However, what is to be seen is whether ACRs written in a prescribed format has any personal information. A blank copy of proforma of an ACRs is not on record.

5. We, therefore, refer to the 2002 edition of a copy of Swamy's Compilation on Confidential Reports of Central Government servants incorporating the orders of Government of India upto December, 2001. This compilation is relied by Government Departments as authentic version of its orders on the subject. Though the forms are different for different services/posts, there is a pattern which is similar. It contains Part I called "personal data" of the official in respect of whom the report is written. Then follows a self appraisal section in Part II and lastly, the section called Assessment by Reporting Officer in Part III. While the Part I is filled in by either the Department or the official himself, and Part II by the official himself/herself, it is generally, the Part III which is crucial for the career of the official.

6. We are aware that it contains the information about the functioning of the employee of the Public Authority in relation to his duties entrusted to him and his performance over a period of time as assessed by his superior officials in the organization. No doubt, it contains very minor component of his personal information regarding his name, date of birth, scale of pay, date of joining service and the like. The remaining portion of the ACRs is about his working in the Department, his dealings with the members of the public, colleagues and superiors, his disposal of work and many other personality traits as observed by his immediate superior officers. Thus, this little information in Part I of ACR cannot make the document personal. Hence, we reject the argument that ACR is a personal document. The Part III of the ACR is a subjective assessment of the performance of an employee by his superior officers. The Government has taken certain steps to make the assessment as objective as possible. However, by definition, the assessment has to be subjective. As per the present practice, this assessment is done behind the back of the employee. Though, there are certain precautions taken by the Government like communicating the adverse remarks, if any, recorded by the superior officers and enough opportunity is given to the employee to defend himself, before relying on the adverse remarks for his career advancement, it still remains a confidential document in the administration. This very classification of the confidentiality by the Government of such reports gives rise to the suspicion by the employees of unfair assessment of their performance especially when one gets superceded in matters of promotion.

7. The provision under Section 8(1)(j) exempts the personal information and not confidential information. More so, when there are no criteria of classification of information as confidential/secret, this section cannot be invoked to reject the "confidential" information. Again, sub-section (2) of Section 8 allows access to information even what is prohibited for disclosure under the Official Secrets Act, 1923 (a Government of India Act No. 19 of 1923), if the disclosure of information in public interest outweighs the harm to the "protected interest". It is, therefore, clear that even the secret information classified as such under the Official Secret Act has to be given to the citizens under the Right to Information Act, if the public interest is better served. We have, therefore, to consider the request of the present Appellant in light of the bench mark provided in Section 8 (2) of the RTI Act and not with reference to what is provided under

either Section 8(1)(d) or Section 8(1)(j) relied by the Respondent No. 1. As we have stated that though there is a little bit of personal information of the employee in the ACRs the entire document cannot be classified as a personal information of the employee. It is a confidential information gathered and recorded by the Public Authority about its own employees at their back. Hence, the application of Section 8(2) of the RTI Act and not Section 8(1)(j) in this case. While weighing "public interest" versus harm to the "protected interest", we are at a loss to understand whose interest will be protected by refusing to part with the ACRs of the Government employees. No doubt, the Appellate Authority had mentioned that the disclosure of the entire ACR would be defeating the very purpose of the ACR. We do not know what purpose is kept by the Appellate Authority in his mind while saying this. On the other hand, it has been mentioned in the Swamy's Compilation in ACR the purpose of initiating the ACR is to firstly, "to improve the performance of the subordinate in his present job," secondly, "to assess his potentialities and provide him appropriate feedback and guidance for correcting his deficiencies and improve his performance". A set of instructions printed on the ACR from itself read as follows:

"Performance Appraisal through Confidential Reports should be used as a tool for human resource development. Reporting Officer should realize that the objective is to develop an officer so that he/she realizes his/her true potential. It is not meant to be a fault finding process but a developmental one". Suffice it to say, that such lofty objectives cannot be achieved by writing a report without the participation of the officials.

8. Over the years, the ACR has become not an instrument to assess the capability of an official but an instrument to harass him/her by the supervising officers. We are of the opinion that such an important document which determines the fate of a Government officials in the entire career should be made known to the officials in advance from time to time and their participation in the actual assessment of performance would be essential for good Governance. We have, therefore, no doubt and hesitation in holding that the contents of ACR should be made known to the employees on regular and annual basis. Till such time, the Government works out such a mechanism of ensuring the writing, reviewing and accepting of ACRs of its employees in a participative manner

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taking into confidence the employee whose performance is reported. We are of the opinion that the ACRs already available with the Department should be made available to the Appellant for his examination and taking of notes.

9. However, this should be a facility accorded by the Public Authority only in respect of his own ACR. That is to say, all citizens do not have such a right to access the ACRs of particular employees of the Public Authority. This is so because it becomes a third party information and no public interest is served in disclosing the working of a Government official over a period of time. On the other hand, providing access to one's own ACR for taking notes, including digital photographing, will ensure better objectivity and satisfies the criterion of lifting the veil of confidentiality under Section 8(2) of the RTI Act. However, giving certified copies to the officials even of their own ACRs, will involve handling of the documents by a number of officials which will make it completely open which is also not desirable. A particular employee can ask for inspection and take notes including videography or taking digital photographs of his own ACR's by making a proper application to the Public Information Officer and pay necessary fees prescribed under the Rules. With these observations, we partly allow the appeal and set aside the Appellate Order of the Respondent No. 1 and the letter of Public Information Officer relating to their orders on ACRs. We direct the Public Information Officer to make available to the Appellant access to his own ACRs and allow him to take photographs, if he so desires. Parties to be informed by post.

(A. Venkataratnam)
State Chief Information Commissioner

(G. G. Kambli)
State Information Commissioner