

GOA INFORMATION COMMISSION

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

Appeal No. 96/2007-08/US(PER)

Mr. Bossuet Da Silva,
1st Floor, Parijat Bldg.,
St. Inez, Panaji - Goa.

..... Appellant.

V/s.

1. First Appellate Authority,
The Joint Secretary (GA),
Secretariat, Porvorim - Goa.
2. Public Information Officer,
The Under Secretary (Personnel - I),
Secretariat, Porvorim - Goa.

..... Respondents.

CORAM:

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

(Per G. G. Kambli)

Dated: 28/01/2008.

Adv. Aires Rodrigues for the Appellant.

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

J U D G M E N T

This is a second appeal filed by the Appellant under sub-section (3) of section 19 of the Right to Information Act, 2005 (for short the Act) against the order dated 5/10/2007 passed by the Respondent No. 1 in Appeal No. Appeal/RTI Act No. 45 (hereinafter referred to as the impugned order).

2. The facts of the case, in brief, are that the Appellant vide his application dated 14/8/2007 requested the Respondent No. 2 to furnish the copies of the Annual Confidential Reports for self and other 11 Police Officers whose names were forwarded for consideration of regularization for the post of Dy. S.P., for the last five years. The Respondent No. 2 rejected the request of the Appellant on the ground of the limitation laid down in the Act vide letter dated 22/8/2007. Feeling aggrieved by the said letter dated 22/8/2007 of the Respondent No. 2, the Appellant preferred the appeal before the Respondent No.1. The Respondent

...2/-

No. 1, after hearing both the parties passed an order dated 5/10/2007 directing the Respondent No. 2 to allow the Appellant to have an access to the ACR's of the Appellant and take notes including photographs and rejected the request of the Appellant in respect of other Police Officers.

3. It is against this impugned order, the Appellant has filed the present appeal on the grounds set out therein. Upon issuing the notices, both the Respondents filed their replies. The learned Advocate for the Appellant also filed his written arguments and in support of his arguments, the learned Advocate for the Appellant relied upon the decision of the Hon'ble High Court of Bombay reported in 2007 (3) BCR 134.

4. The case of the Appellant is that the Respondents have erred in rejecting the request of the Appellant under section 8(1)(j) and 8(2) of the Act. The Appellant also contended that the Respondents have misconstrued/misapplied the ratio of order dated 29/3/2007 passed by this Commission in Appeal No. 83/2006/WRD.

5. Both the Respondents in their replies submitted that they have rightly rejected the request of the Appellant as the disclosure of the ACR's of the other officers are not at all in the public interest and such a disclosure will seriously harm interpersonal relationships in a given organization. They have stated that the non-disclosure of the ACR's of other officers falls within the exempted provisions of section 8(1)(j) of the Act. Both the Respondents have also submitted that the disclosure of the ACR's may also even result in the uneasiness of the reporting, reviewing and accepting officers as their comments on the ACR's will no longer remain confidential. The Respondents have contended that the ACR's also related to personal information.

6. In the written arguments filed by the learned Advocate for the Appellant, it is submitted that in view of the proviso to section 8(1)(j) of the Act, the Respondents cannot deny the information as the said information cannot be denied to the Parliament or State Legislature and therefore, the Respondents were bound to provide the information to the Appellant. However, since the information pertains to the third party, notice under section 11 of the Act is required to be given to the third party. The learned Advocate for the Appellant

has relied upon the decision of the Hon'ble High Court of Bombay reported in 2007 (3) BCR 134. On perusal of the said decision of the Hon'ble High Court of Bombay, it is seen that the facts and circumstances of the said case are totally different than the present case. The learned Advocate for the Appellant failed to satisfy us that Annual Confidential Reports of the officers can be provided to the State Legislature and therefore, the decision relied upon by the learned Advocate for the Appellant is not applicable in the present case.

7. It is to be noted that the ACR's is an assessment of the performance of an officer for a particular year and it also contains certain personal data of that officer. It is written at three levels i.e. reporting, reviewing and accepting. These ACR's are considered for promotions etc. The disclosure of the ACR's to the colleagues of the officer will certainly cause ill will, hatred among the officers and certainly not conducive for the smooth functioning of any organization/department. The very purpose of maintaining this assessment of the performance of the officers will be lost if these ACR's are made known to the others. Therefore, Respondent No. 1 has rightly held that the disclosure of the ACR's is certainly not in the public interest. The learned Advocate for the Appellant has also failed to satisfy us as to how the disclosure of the ACR's of the other officers will serve larger public interest.

8. We have already held in Appeal No. 83/2006/WRD and also in Appeal No. 80/2007-08/Police (M. K. Desai Vs. Police Department) that only the personal ACR's could be made available to the officer concerned and not of the others. We see no reasons to deviate from the said view. The first Appellate Authority has given the reasons for rejecting the request of the Appellant for providing the ACR's of the other officers and we find no reasons to interfere with the findings of the Respondent No. 1.

9. In view of the above, we pass the following order: -

ORDER

Appeal is hereby dismissed.

Announced in the open court on this 28th day of January, 2008.

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

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

