

GOA STATE INFORMATION COMMISSION
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Appeal No. 95/2022/SCIC

Adv. Satyam Shirvoiker,
H.No. 414, Oitalim,
Taleigao-Goa 403002.

.....Appellant

V/S

1. The Director RDRM,
Public Information Officer,
Goa University,
Taleigao-Goa 403206.

2. The Finance Officer,
Public Information Officer,
Goa University,
Taleigao-Goa 403206.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 28/03/2022

Decided on: 23/12/2022

FACTS IN BRIEF

1. The Appellant, Adv. Satyam Shirvoiker r/o. H.No. 414, Near Mahalaxmi Temple, Oitalim, Taleigao-Goa by his application dated 28/12/2021 filed under sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO), Goa University, Taleigao Plateau, Goa:-

"Kindly provide the certified copy of the documents

- 1. Copy of the muster roll in Department of Marine Science from 04.05.2013 to 17.11.2015.*
- 2. Copy of the document specifying Acceptance of my resignation (dated 18.11.2015).*
- 3. Copy of the experience certificates issued to me for various positions to me vide request made by me to the principle investigator.*

4. *Copy of the documents issuing stipend details to me for a period from 04.05.2013 to 17.11.2015.*
5. *Copy of the reply for the application dated 01.08.2016 which was marked to the principle investigator.*
6. *Copy of the reply for the application dated 29.08.2016 which was marked to the registrar."*

2. The said application was responded by the PIO on 01/02/2022 in the following manner:-

<i>Point No.</i>	<i>Reply placed at</i>	<i>Reply provided by</i>
<i>1,2,3,5 & 6</i>	<i>Annexure A (1 page)</i>	<i>Director (RDRM)/ PIO</i>
<i>4</i>	<i>Annexure B (07 pages)</i>	<i>Finance Officer / PIO</i>

3. Being aggrieved and not satisfied with the reply of the PIO, the Appellant preferred first appeal before the First Appellate Authority (FAA) of Goa University on 02/02/2022.
4. The FAA by its order, upheld the reply of the PIO and disposed off the first appeal on 02/03/2022.
5. Aggrieved with the order of the FAA, the Appellant landed before the Commission with this second appeal under Section 19(3) of the Act, with the prayer to direct the PIO to furnish the information and to award the compensation to him for the hardship caused.
6. Notices were issued to the parties, pursuant to which, Adv. J. Sawaikar appeared on behalf of the Respondents and placed on record the reply of the Respondent No. 1 and 2 on 08/06/2022. After filing written arguments by both the parties, the matter was posted for argument on 21/09/2022.
7. During the course of hearing on 21/09/2022, the Appellant alleged that though he has received the information at point No. 4, the said documents are not certified. The Commission therefore

directed the PIO to furnish the certified copy of the documents on next date of hearing. As per the direction of the Commission, the PIO has furnished certified copy of the information at point No. 4 to the Appellant on 29/11/2022. Now the question remains with regards to part of the information which was rejected by the Respondent No. 1, PIO.

8. I have perused the pleadings, replies, written arguments, scrutinised the documents on the records and considered the oral submissions of the rival parties.
9. According to the Appellant, he was ex-employee of Goa University and was working as Junior Research Fellow in the Department of Marine Science, Goa University at Taleigao Plateau, Goa. And after his resignation from the service he filed the present RTI application to know the details of his own service records. However, the PIO refused to divulge the information at point No. 1,2,3,5 and 6 with the reason "Not available".

Further according to him, he sought the information such as copy of muster roll which is a public document and also information about various representations which have been inwards with the office of public authority.

Further according to him, once letter is inwards it will be processed further and placed before the authorities to take the appropriate decision and accordingly the information has been generated, however, the PIO denied to disclose the information on wrong footing and to support his case he produced on record the copy of Resignation letter dated 18/11/2015, copy of representation dated 03/02/2016 requesting for experience certificate, application dated 03/02/2016 requesting regarding information on stipend, representation dated 01/08/2016 and 29/08/2019 requesting to issue experience certificate, which is duly inwards in the office of public authority.

10. On the other hand, Adv. R. Bhatkar appearing on behalf of Respondents submitted that details of stipend paid to the Appellant for the period 04/05/2013 to 17/11/2015 were duly supplied to the Appellant alongwith ledger account extract, however, the information with regards to muster roll could not be furnished as the Appellant was working purely on temporary basis on a research project and as such no information was available.
11. On going through the application filed under Section 6(1) of the Act dated 28/12/2021, the Appellant has sought (1) the copy of muster roll (2) document specifying acceptance of his resignation letter (3) outcome of representation filed by him to issue experience certificate (4) copy of stipend detail etc which is produced in para no. 1 hereinabove.
12. On perusal of the reply dated 01/02/2022 furnished by Respondent No. 1 alongwith the copy of covering letter of RTI Co-ordinator, same was replied as under:-

"Point No. 1 : Not available
Point No. 2 : Not available
Point No. 3 : Not available
Point No. 5 : Not available
Point No. 6 : Not available"

In a given reply neither the PIO cited exact provision of the Act nor gave any reasoning as why the said information is not available.

13. Right to Information is a fundamental right therefore, denial of such right has to be backed by the strong reason. The PIO has limited scope to reject any application. Section 3 of the Act, very significantly describes this right by stating "subject to the provisions of this Act, all citizens shall have the right to information".

Therefore denial of information under the Act, can only be based on the exemption provided under Section 8(1) of the Act. The word 'Not available' is vague in as much as it does not suggest whether any steps is proposed by the public authority or forwarded representation of the Appellant for any other authority for further action or what is the outcome of said representations. It appears that, the PIO without accessing the records from the Principal Investigator of Department of Marine Science or without any reasonable verification replied the RTI application as 'not available'. Such a vague reply cannot be accepted as a response under Section 7(1) of the Act.

Moreover, it is a admitted fact by the PIO that, the Appellant was employee of Goa University and drawing the stipend from Goa University. It is also admitted fact that, Respondent No.2, the Finance Officer of Goa University provided the details of the stipend paid to the Appellant from the period 04/05/2013 to 17/11/2015 alongwith ledger account. It would be highly improbable to expect that the stipend was conferred to the Appellant without appraising his attendance in the service.

It is no where the case of the PIO that no muster roll/ attendant sheet was not at all maintained by the public authority. Since the stipend has been paid to the Appellant as per his attendance in service with the public authority, it cannot be held that no information is generated or exists with the public authority. The PIO has no bonafide and logical explanation to this aspect. The RTI Act does not acknowledge the expression "Not available" as being the ground for denial of information. Hence the PIO's refusal to disclose the information is without any basis of law and the Commission can see no reasonable cause for the denial of information.

14. Under the Act, the PIO is designated person or representative of the department who is responsible to ensure compliance with the RTI Act. He cannot take the defence that the information is lying with the superior or subordinate officer and therefore information is 'not available' with him. The PIO has a duty to deal with the applications received from the citizens for furnishing the information and he is under obligation to render reasonable assistance to the information seeker. Sum and substance of Section 5 of the Act provides that every PIO should extend all reasonable assistance in making the information available.

15. Section 19(5) of the Act reads as under:-

"19. Appeal_____

(5). In any appeal proceeding, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or the State Public Information Officer as the case may be, who denied the request."

From the reading of the above provision, it is clear that, in appeal proceeding the onus to prove that a denial of a request was justified is on the PIO. Normal rule is that Appellant has to put forth his case and required to produce an evidence to support his claim, but here under the RTI Act specific provision has been made where the PIO has to justify the denial of request with reasons.

16. Hon'ble High Court of Delhi in the case of **State Bank of India v/s Mohad. Shahajan (W.P. No. 9810/200)** has held as under:-

"22. The very object and purpose of the RTI Act is to make the working of public authorities transparent and accountable. For the purpose of the RTI Act, all information held by a public authority is accessible

except to the extent such information is expressly exempted from disclosure as provided in the RTI Act itself. In other words, unless the public authority is able to demonstrate why the information held by it should be exempt from disclosure, it should be normally be disclosed. The burden therefore is entirely on public authority to show why the information sought from it should not be disclosed."

17. In another judgement Hon'ble Supreme Court in the case **Central Board of Secondary Education & another v/s Aditya Bandopadhyay (Civil Appeal no. 6454 of 2011)** has observed as under:

"12. Section 3 of the RTI Act provides that subject to the provisions of this Act all citizens shall have the right to information. The term 'right to information' is defined in Section 2(j) as the right to information accessible under the Act which is held by or under the control of any public authority. Having regard to section 3, the citizens have the right to access to all information held by or under the control of any public authority except those excluded or exempted under the Act. The object of the Act is to empower the citizens to fight against corruption and hold the Government and their instrumentalities accountable to the citizens, by providing them access to information regarding functioning of every public authority."

18. Hon'ble Supreme Court in the case of the **Institute of Chartered Accountant of India v/s Shaunak H. Satya & Ors. (C.A.No. 7571/2011)** has held that:-

*"25..... Public authorities should realize that in an era of transparency, previous practices of unwarranted secrecy have no longer a place. Accountability and prevention of corruption is possible only through transparency. Attaining transparency no doubt would involve additional work with reference to maintaining records and furnishing information. Parliament has enacted the **RTI Act** providing access to information, after great debate and deliberations by the Civil Society and the Parliament. In its wisdom, the Parliament has chosen to exempt only certain categories of information from disclosure and certain organizations from the applicability of the Act."*

19. Considering the above, I find that the purported information has been denied on wrong footing and not justifiable by law. In the backdrop of above fact, I find merit in the appeal and consequently the present appeal is allowed with the following:-

ORDER

- The appeal is allowed.
- The PIO, Prof. Rajendra Gad, Directorate of RDRM, Goa University, Taleigao Plateau, Goa is directed to provide rest of the information free of cost to the Appellant as per his RTI application dated 28/12/2021 within the period of **FIFTEEN DAYS** from the date of receipt of the order.
- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner