# ORDER OF THE APPELLATE AUTHORITY ON THE APPEAL BY SHRI VENKATESH NAYAK UNDER SECTION 19 (1) OF THE RIGHT TO INFORMATION ACT- 2005

1. WHEREAS, Shri Venkatesh Nayak vide application dated 27 Jan 15, had sought following information under Right to Information Act 2005 : -

(a) A clear photocopy of the entire text of the findings of the Court Martial in relation to the conviction of five Army Personnel for the killings committed at Macchil, Jammu and Kashmir in the year 2010 as reported in the attached news clipping;

(b) A clear photocopy of the charge sheet filed before the said Court Martial in relation to the case mentioned above at para #1 along with Annexures, if any;

(c) A clear photocopy of the sentence awarded to the convicted Army Personnel by the said Court Martial.

(d) A clear photocopy of the communication along with Annexures, if any, sent to the concerned confirming officer/confirming authority in relation to the said case as per the relevant Rules under the Indian Army Rules, 1954;

(e) A clear photocopy of all proceedings of the Court of Inquiry which enquired into the matter pertaining to the killing of five persons in Pathribal, Anantnag district, Jammu and Kashmir in the year 2000.

2. AND WHEREAS, DDG RTI, the CPIO at Integrated Headquarters of MoD (Army), vide their letter No A/810027/RTI/19893 dated 11 Mar 2015 had provisioned the appropriate reply.

3. AND WHEREAS, aggrieved by the response of the PIO at Integrated Headquarters of MoD (Army), Shri Venkatesh Nayak preferred an appeal dated 22 Apr 15, under the provisions of section 19 (1) of the said Act, stating that he was not satisfied with the information provided and as requested vide his application dated 27 Jan 15.

4. AND NOW THEREFORE, after having perused all the records and after hearing views of the nodal officer, I find that requisite information has been correctly denied under section 8(1) (h) of RTI Act 2005 by CPIO vide their letter No A/810027/RTI/19893 dated 11 Mar 2015. I, therefore, uphold the decision of the CPIO.

5. The appeal is therefore disposed off accordingly.

Signed at New Delhi on this nineteenth day of Jun 15.

(VD Dogra)
Major General
Appellate Authority

Case No : B/87008/AG/PM/RTI-3366

Provost Marshal's and Appellate Authority Office
Adjutant General's Branch, Integrated HQs of MoD (Army)
Room No : 423A, Sena Bhawan, B Wing
DHQ PO - New Delhi - 110011

Forwarded to :-

Shri Venkatesh Nayak #55A, 3rd Floor, Siddharth Chambers-1, Kalu Sarai, New Delhi-110 016

DDG RTI

# Before the Designated First Appellate Authority

## and Provost Marshal, Integrated HQ of MoD (Army)

## Room No. 421-A, "B" Wing, Sena Bhawan, New Delhi- 110 011

## Appeal filed under Section 19(1) of the Right to Information Act, 2005

## In the matter of

## *Venkatesh Nayak vs CPIO, Indian Army*

**Date of submission : 22/04/2015**

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S.S. Venkatesh Nayak

# Before the Designated First Appellate Authority

## and Provost Marshal, Integrated HQ of MoD (Army)

## Room No. 421-A, "B" Wing, Sena Bhawan, New Delhi- 110 011

## Appeal filed under Section 19(1) of the Right to Information Act, 2005

**Date: 22/04/2015**

| | | |
|---|---|---|
| **1) Name and address of the appellant** | : | Venkatesh Nayak<br>#55A, 3rd Floor, Siddharth Chambers-1<br>Kalu Sarai<br>New Delhi- 110 016 |
| **2) Name and address of the Central Public Information Officer (CPIO) to whom the Application was addressed** | : | The Central Public Information Officer cum<br>Addl. Director General of Army Education<br>RTI Cell, G-6, D-1 Wing, Sena Bhawan<br>Integrated Headquarter of MoD (Army)<br>DHQ PO New Delhi- 110 011 |
| **3) Name and address of the Officer who gave reply to the Application** | : | **1)** Shri Prashant Saxena<br>Lt. Col, GSO-1 (RTI)<br>for DDG MT (RTI)<br>RTI Cell, G-6, D-1 Wing, Sena Bhawan<br>IHQ of MoD (Army)<br>New Delhi- 110 011<br><br>**2)** Shri Rajiv Guleria<br>Lt. Col. GSO-1 (Appeal)<br>for CPIO of Indian Army<br>RTI Cell, G-6, D-1 Wing, Sena Bhawan<br>IHQ of MoD (Army)<br>New Delhi- 110 011 |
| **4) Particulars of the RTI application-** | | |
| **a) No. and date of submission of the RTI application** | : | No. RTI/GOI/IndArmy/2015/1 dated 27/01/2015 |
| **b) Date of payment of additional fee** (if any) | : | Not applicable. |
| **5) Particulars of the order(s) including number, if any against which the appeal is preferred** | : | Communication No. A/810027/RTI/19893 dated 11/03/2015 issued by the Officer mentioned at para #3(2) above. |



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**6) Brief facts leading to the appeal :**

**6.1)** On 27/01/2015 this Appellant despatched by Speed Post a request for information to the CPIO mentioned at para #2 above along with the prescribed application fee, stating as follows **(Annexe 1)**:

> "I would like to obtain the following information from your public authority under the RTI Act, 2005:
>
> 1) A clear photocopy of the entire text of the findings of the Court Martial in relation to the conviction of five Army Personnel for the killings committed at Macchil, Jammu and Kashmir in the year 2010 as reported in the attached news clipping;
>
> 2) A clear photocopy of the chargesheet filed before the said Court Martial in relation to the case mentioned above at para #1 along with Annexures, if any;
>
> 3) A clear photocopy of the sentence awarded to the convicted Army Personnel by the said Court Martial;
>
> 4) A clear photocopy of the communication along with Annexures, if any, sent to the concerned confirming officer/confirming authority in relation to the said case as per the relevant Rules under the *Indian Army Rules, 1954*;
>
> 5) A clear photocopy of all proceedings of the Court of Inquiry which enquired into the matter pertaining to the killing of five persons in Pathribal, Anantnag district, Jammu and Kashmir in the year 2000."

**6.2)** On 05/02/2015 the officer mentioned at para #3(1) above sent this Appellant a communication in response to the said RTI application stating as follows (**Annexe 2**):

> "1. Your RTI application dated 27 Jan 2015, received at this office on 03 Feb 2015 and the same is under process at this Headquarters.
>
> 2. To know status of your application in future, your case No is **19893**."

**6.3)** Further, on 25/03/2015, this Appellant received a reply from the officer mentioned at para #3(2) above stating as follows:

> "1. Further to this office letter No A/810027/RTI/19893 dated 11 Feb 2015.
>
> 2. Information as available with concerned agency of this Headquarters and permissible under RTI Act is given as under:-
>
> a) **Information on Para 1 to 5.** Information sought is exempted from disclosure under Section 8(1)(h) of RTI Act 2005.
>
> 3. This disposes off your RTI application dated 27 Jan 2015."



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**6.4)** This Appellant is aggrieved by the response provided by the said officer against the said RTI application for reasons explained below.

**7) Prayers or relief sought :**

**This Appellant prays that this First Appellate Authority be pleased to:**

1) **admit this appeal and inquire into the matters raised herein;**
2) **order the disclosure of all the information sought in the said RTI application, as is this Appellant's right under Section 7(6) of the RTI Act;**
3) **issue an official memorandum to the CPIO to discharge his statutory responsibilities under the RTI Act with greater care and diligence in future.**

**8) Grounds for the prayer or relief :**

**8.1)** According to Section 7(1) of the RTI Act it is the express duty of the CPIO to make a decision of disclosure of information on receipt of the prescribed additional fee or reject the request for information for any of the reasons specified in Sections 8 and 9 of the RTI Act. It is not open for any other officer of a public authority to make a decision on a request for information made under the RTI Act. The officer mentioned at para #3(2) above appears to have acted on behalf of the CPIO of this public authority by his own admission. In a catena of decisions the Hon'ble Central Information Commission has held that every decision on an RTI application must be made under the name and signature of the CPIO. Further in the matter of *J P Agrawal vs Union of India & Ors.* [2011 VIIAD (Del.) 625] the Hon'ble High Court of Delhi was pleased to make the following observation:

> "7. Section 4 of the Act obliges every public authority to publish inter alia the particulars of facilities available to citizens for obtaining information and the names, designations and other particulars of the PIOs. Section 5 requires the public authorities to designate PIO to provide information to persons requesting for information under the Act. Such PIOs, under Section 5(2) of the Act are to receive applications for information and under Section 5(3) of the Act are to deal with request from persons seeking information and render reasonable assistance to the information seekers... Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he has sought information, the PIO is expected to recommend a remedial action to be taken. The RTI Act makes the PIO the pivot for enforcing the implementation of the Act.
>
> 8. Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO... The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates... [emphasis supplied]



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The reply received from the Officer named at para #3(2) above is purported to have been made at the instance of the designated CPIO rather than issued by the CPIO himself. The designation of the CPIO as provided on the website fo your public authority does not match with the designation of the Officer mentioned at para #3(2) above. Nothing in the RTI Act permits a CPIO to delegate his authority to any other officer for the purpose of making a decision on an RTI application. Therefore this Appellant believes that the Officer mentioned at para #3(2) above had no jurisdiction under the RTI Act to make a decision on the RTI application that is the subject matter of this first appeal. As the reply sent to this Appellant is without jurisdiction, it deserves to be set aside. ***Hence the submission of this first appeal before this Hon'ble First Appellate Authority.***

**8.2)** Further, the Officer mentioned at para #3(2) has contended that the information sought is exempted from disclosure under Section 8(1)(h) of the RTI Act. Assuming temporarily that this was indeed the reasoning dictated by the unnamed CPIO of this public authority, nothing in the reply received by this Appellant indicates how any of the interests protected under Section 8(1)(h) apply to the information sought in the RTI application that is the subject matter of this first appeal. Section 8(1)(h) of the RTI Act reads as follows:

> "**8.** (*1*) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—
> X X X
>
> (*h*) information which would impede the process of investigation or apprehension or prosecution of offenders;"

Under the said exemption a request for disclosure of information may be rejected if such disclosure will impede the process of investigation or the apprehension or prosecution of offenders. Nothing in the reply received from the Officer mentioned at para #3(2) above indicates how any or all of these interests are attracted by the information requested in this Appellant's RTI application. To the best of this Appellant's knowledge, no process of 'investigation' within the meaning of that term as defined in Section 2(h) of the *Code of Criminal Procedure, 1973* is currently underway in either case about which information has been sought. Further, to the best of this Appellant's knowledge there is no prosecution that is in progress in either case, nor is there any process underway for the apprehension of the any of the persons accused in either case. In the Macchil case the Army Court has completed trial and sentenced the accused persons to a term of imprisonment for life. In the Pathribal case, the Court of Inquiry of the Army has declared the matter as closed. To the best of this Appellant's knowledge none of the public interests protected by Section 8(1)(h) are attracted by any of the information sought in the RTI application that is the subject matter of this first appeal.

Further, in the matter of *Bhagat Singh vs Chief Information Commissioner & Ors.* [146 (2008) DLT 385] The Hon'ble High Court of Delhi was pleased to interpret the import and ambit of Section 8(1)(h) in the following manner:

> "13. ... It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some



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material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information." [emphasis supplied]

Nothing in the reply received from the Officer mentioned at para #3(2) above indicates that the CPIO had applied his mind to the nature of the information sought by this Appellant in the light of the pronouncements of the Hon'ble High Court of Delhi. Therefore the reply received from the Officer mentioned at para #392) above is bad in law and deserves to be set aside. ***Hence the submission of this first appeal before this Hon'ble First Appellate Authority.***

**8.3)** Further, the reply sent by the Officer mentioned at para #3(2) above does not meet the requirements prescribed in Section 7(8) of the RTI Act while issuing an order of rejection. According to Section 7(8) of the RTI Act, a CPIO is required to communicate the reasons for rejection of a request. This requirement cannot be satisfied by making a mere reference to one or more exemptions specified in Section 8 of the RTI Act. The decision to reject a request for information must be in the form of a speaking order. In the matter of *Balmukand Rai v Life Insurance Corporation of India* (Decision No.204/IC(A)/2006, decision dated 25/08/2006) the Hon'ble Central Information Commission has held that the CPIO had erred in not issuing a speaking order while rejecting the RTI application. The Hon'ble Commission noted:

> *"A mere mention of the provisions of 8(1)(d) of the Act for denying the information is not enough."*

Further, in the matter of *Lajinder Singh v Archaeological Survey of India*, (F.No.PBA/06/504, decision dated 24/05/2007) the Hon'ble Central Information Commission has held that the PIO performs a quasi-judicial role and has to pass a speaking order while denying access to information.

Further, in the matter of *Ranjit Singh Saini v State Bank of India* (Appeal No.1927 ICPB/2008, decision dated 05/05/2008) the Hon'ble Information Commission has held as follows:

> *"Whenever the CPIO and AA provided the reply to the appellant they should give a speaking order so that the appellant will be able to understand why this information has not been given to him."*

Further, in the matter of *S P Goyal v Income Tax Officer XII(2)(1), Mumbai* (Appeal No. CIC/AT/A/2008/00688, decision dated 15/01/2009) the Hon'ble Information Commission has held that the PIO is required to issue a speaking order while denying access to the information requested by an applicant.

Further, in the matter of *Kusum Singh v Bharat electronics Ltd.* (Appeal No.CIC/WB/A/2008/01435-SM, decision dated 15/04/2009) the Hon'ble Central Information Commission has held as follows:



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*"We note that the CPIO was not right in denying a number of information by merely referring to the provisions of Section 8 of the Right to Information (RTI) Act. If any information is to be denied, the CPIO has to record a speaking order and explain/clarify why a particular piece of information should not be disclosed under any provision of that Section."*

The full text of these decisions is not being annexed to this first appeal in order to save paper. All these orders are available on the website of the Hon'ble CIC at www.cic.gov.in. According to the Hon'ble Central Information Commission the established position in law on this matter is that a CPIO is duty bound to give detailed reasoning in the form of a speaking order while denying an information request instead of mechanically invoking an exemption under one or more provisions the RTI Act. Either the CPIO has erred in not discharging his duty with due diligence or the Officer mentioned at para #3(2) was not capable of issuing a reasoned order based on any directions issued by the CPIO. As this Appellant has not been provided with a speaking order by this public authority this Appellant is exercising his right to file an appeal against the order of the CPIO under section 19(1) of the RTI Act. ***Hence the submission of this first appeal before this Hon'ble First Appellate Authority.***

**8.4)** Further, according to Section 19(1) of the RTI Act, any person who is aggrieved by the decision of the CPIO may prefer an appeal with the officer senior in rank to such CPIO within 30 days of the receipt of a decision. This Appellant is aggrieved by the actions and the decision made by the officers of this public authority for the reasons explained above. The reply from the Officer mentioned at para #3(2) above was delivered to this Appellant on 25/03/2015 via Ordinary Post. ***This first appeal is being filed on the 28th day from the date of receipt of the said reply, well within the limitation period mentioned in Section 19(1) of the RTI Act.***

**9) I hereby verify that the aforementioned facts are true to the best of my knowledge. I also declare that I have authenticated the Annexes to this appeal.**

**Signature of the Appellant:**

S. S. Venkatesh Nayak

**(Venkatesh Nayak)** 22/4/15