

Before the Central Information Commission

CIC Bhawan, Baba Gangnath Marg, Munirka, New Delhi – 110 067

**Joint Appeal and Complaint submitted
under Section 19(3), read with Section 18(1)(e) and (f) of
The Right to Information Act, 2005
with a prayer for condonation of the delay in submitting the appeal against
the 1st Respondent Public Authority**

In the matter of

Venkatesh Nayak

vs

1) Ministry of Defence

&

2) Indian Army

Date of submission: 24/08/2018

Index of Contents

<u>No.</u>	<u>Item</u>	<u>Page</u>
1.	Letter of second appeal submitted under Section 19(3) of the RTI Act	2-22
2.	Annexe 1: Self-attested copy of the RTI application dated 12/12/2017 along with Annexure	23-27
3.	Annexe 2: Self-attested copy of the communication sent by the CPIO, Ministry of Defence dated 22/02/2018	28
4.	Annexe 3: Self-attested copy of the communication sent by the Under Secretary (AG-I) Ministry of Defence dated 26/02/2018	29

5.	Annexe 4: Self-attested copy of the communication sent by Lt. Col. Rajiv Guleria for CPIO, Indian Army dated 01/03/2018	30
6.	Annexe 5: Self-attested copy of the communication sent by Lt. Col. Ram Naresh Sharma for CPIO, Indian Army dated 28/03/2018	31
7.	Annexe 6: Self-attested copy of the communication sent by Lt. Col. A D S Jasrotia for CPIO, Indian Army dated 16/04/2018	32
8.	Annexe 7: Self-attested copy of the first appeal submitted to the FAA, Department of Defence dated 15/03/2018	33-37
9.	Annexe 8: Self-attested copy of the order of the FAA, Department of Defence, dated 11/04/2018	38
10.	Annexe 9: Self-attested copy of the first appeal submitted to the FAA, Indian Army dated 07/05/2018	39-45

Before the Central Information Commission

CIC Bhawan, Baba Gangnath Marg, Munirka, New Delhi – 110 067

Joint Appeal and Complaint submitted

under Section 19(3), read with Section 18(1)(e) and (f) of

The Right to Information Act, 2005

with a prayer for condonation of the delay in submitting the appeal against
the 1st Respondent Public Authority

Date: 24/08/2018

- 1) Name and contact details of the Appellant-cum-Complainant** : Venkatesh Nayak
#55A, 3rd Floor
Siddharth Chambers-1
Kalu Sarai
New Delhi- 110 016
- 2) Name and address of the Central Public Information Officer (CPIO) to whom the RTI application was addressed** : The Central Public Information Officer &
US (GS-I/IS)
Department of Defence
Ministry of Defence
Government of India
Room No. 283-B, South Block
New Delhi- 110 001
- 3) Name and address of the officers who gave reply to the RTI application** :
- 1)** Mr. B. Senapati
CPIO & Under Secretary to Govt. of India
D(RTI)
Ministry of Defence
Government of India
South Block
New Delhi- 110 001
- 2)** Shri T. D. Prashanth Rao
Under Secretary (AG-I)
D(AG), Ministry of Defence
Room No. 108, Sena Bhawan
New Delhi
- 3)** Lt. Col. Rajiv Guleria
GSO-1 Appeal
For CPIO Indian Army
RTI Cell, Addl. DG MT (AE)
G-6, D-1 Wing
Sena Bhawan, Gate No. 4

IHQ of MoD (Army)
New Delhi – 110 011

4) Lt. Col. Ram Naresh Sharma
GSO-1 Appeal
For CPIO Indian Army
RTI Cell, Addl. DG MT (AE)
G-6, D-1 Wing
Sena Bhawan, Gate No. 4
IHQ of MoD (Army)
New Delhi – 110 011

5) Lt. Col. ADS Jasrotia
GSO-1 Appeal
For CPIO Indian Army
RTI Cell, Addl. DG MT (AE)
G-6, D-1 Wing
Sena Bhawan, Gate No. 4
IHQ of MoD (Army)
New Delhi – 110 011

4) Name and address of the First Appellate Authority to whom the two First Appeals were submitted

:

1) The First Appellate Authority & DS (AG-I), Department of Defence
Ministry of Defence
Government of India
"B" Wing, Sena Bhawan
New Delhi- 110 011

2) The First Appellate Authority & Provost Marshal
Integrated HQ of MoD (Army)
Room No. 421-A, "B" Wing
Sena Bhawan
New Delhi- 110 011

5) Name and address of the First Appellate Authority who gave a decision on the first appeal

:

1) Shri B. D. Barua
First Appellate Authority & Deputy Secretary to Govt. of India
D(AG-I), Ministry of Defence
Room No. 105, 'B' Wing
Sena Bhawan
New Delhi – 110 105

2) No decision from the FAA of the Indian Army till date

6) Particulars of the RTI application and appeals	:	
a) No. and date of submission of the RTI application	:	No. RTI/GoI/MoD/2018/1 dated 12/02/2018
b) Date of payment of additional fee (if any)	:	Not applicable
c) No. and date of the CPIO's reply	:	<p>1) Communication from CPIO, Ministry of Defence of No. F.14(16)/2009-D(GS-I/IS) dated 22/02/2018</p> <p>2) Communication from US (AG-I) of MoD ID No. 23(03)/2017-D(AG) dated 26/02/2018</p> <p>3) Communication from Lt. Col. Rajiv Guleria of No. A/810027/RTI/OF_44712 dated 01/03/2018 on behalf of CPIO, Indian Army</p> <p>4) Communication from Lt. Col. Ram Naresh Sharma of No. A/810027/RTI/OF_44712 dated 28/03/2018 on behalf of CPIO, Indian Army</p> <p>5) Communication from Lt. Col. A. D. S. Jasrotia of No. of No. A/810027/RTI/OF_44712 dated 16/04/2018 on behalf of CPIO, Indian Army</p>
d) Date of submission of the first appeal to the Ministry of Defence	:	15/03/2018
e) No. and date of the FAA's order on the first appeal	:	File No. 23(03)2017-D(AG) dated 11/6/2018
f) Date of submission of the first appeal to the Indian Army	:	07/05/2018
g) No. and date of the FAA's order on the first appeal	:	No order issued by the FAA of the Indian Army till date

7) Particulars of the order(s) including number, if any against which the appeal is preferred

- :
- 1)** Communication from CPIO, Ministry of Defence of No. F.14(16)/2009-D(GS- I/IS) dated 22/02/2018
 - 2)** Communication from US (AG-I) of MoD, ID No. 23(03)/2017-D(AG) dated 26/02/2018
 - 3)** Communication from Lt. Col. Rajiv Guleria of No. A/810027/RTI/OF_44712 dated 01/03/2018 on behalf of CPIO, Indian Army
 - 4)** Communication from Lt. Col. Ram Naresh Sharma of No. A/810027/RTI/OF_44712 dated 28/03/2018 on behalf of CPIO, Indian Army
 - 5)** Communication from Lt. Col. A. D. S. Jasrotia of No. A/810027/RTI/OF_44712 dated 16/04/2018 on behalf of CPIO, Indian Army
 - 6)** Order of the FAA, Ministry of Defence vide communication bearing File No. 23(03)2017-D(AG) dated 11/6/2018
 - 7)** Lack of any order from the FAA, Indian Army on the first appeal dated 07/05/2018, till date

8) Brief facts leading to the appeal :

8.1) On 12/02/2018, this Appellant-cum-Complainant despatched a request for information by Speed Post, to the CPIO mentioned at para #2 above, along with the prescribed application fee, stating as follows (**Annexe 1**):

"Apropos of the reply to Unstarred Question No. 1463 tabled in the Rajya Sabha on 01/01/2018 (copy along with Annexure is enclosed), by the Hon'ble Minister of State in your Ministry, I would like to obtain the following information under the RTI Act:

- 1) A clear photocopy of all official records containing details of the procedure that is required to be followed by your Ministry while deciding whether or not to grant sanction for prosecuting any member of the defence forces for actions committed under the *Armed Forces (Jammu and Kashmir) Special Powers, 1990* (J&K AFSPA), including channel(s) of supervision over and accountability of such decision making procedure;

- 2) A clear photocopy of all official records/documents containing the norms, criteria and standards that are required to be applied for assessing the evidence submitted by the Government of Jammu and Kashmir in relation to its request for sanction for prosecuting any member of the defence forces for actions committed under J&K AFSPA;
- 3) The rank or designation of the officer who is competent to make a final decision on whether or not to grant sanction for prosecuting any member of the defence forces for actions committed under J&K AFSPA in any case (name of the officer is not required);
- 4) A clear photocopy of the communication sent by your Ministry to the Government of J&K denying sanction for prosecution of members of the defence forces in all cases listed in the Annexure to the reply to the said Unstarred Question; and
- 5) Inspection of every file including all papers, correspondence, file notings and emails, if any, relating to the denial of sanction for prosecution of members of the defence forces as per the list annexed to the reply to the said Unstarred Question and supply of clear photocopies of the relevant papers and electronic files identified by me during the inspection.

I believe that the information sought at paras #1-4 above are required to be proactively disclosed by your Ministry under Sections 4(1)(b), 4(1)(c) and 4(1)(d) of the RTI Act. As I am unable to locate the said information on your official website, I am constrained to file this RTI application. I would like to receive all this information by post at my postal address mentioned above.

As regards the request for inspection of information described at para #5 above, I would be grateful if you would give me sufficient advance notice of the date and time for inspection."

8.2) Subsequently, on 26/02/2018, this Appellant-cum-Complainant received a reply of number and date captioned at **para #7.1** above from the CPIO mentioned at **para #3.1** above stating *inter alia* as follows (**Annexe 2**):

" 2. It is intimated that information sought in your RTI application referred to above is not under the custody of the undersigned CPIO. Hence your application in original is transferred under Section 6(3) of the RTI Act, to CPIO for providing requisite information, if any. The requisite information as sought on behalf of the undersigned CPIO may be treated as 'Nil'."

8.3) Subsequently, on 01/03/2018, this Appellant-cum-Complainant received a copy of a communication of number and date captioned at **para #7.2** above from the officer mentioned at **para #3.2** above which *inter alia* stated as follows (**Annexe 3**):

"...The requisite information are not maintained/available in D(AG) section. The RTI application of Sh. Venkatesh Nayak is transferred to the ADG (AE), RTI Cell, Sena Bhawan, New Delhi under the provision of Section 6(3) of Right to Information Act,

2005 with a request for taking appropriate action and to provide the requisite information to the applicant directly under intimation to all concerned."

8.4) Subsequently, on 08/03/2018, this Appellant-cum-Complainant received a communication of number and date captioned at **para #6.c.3** above, from the officer mentioned at **para #3.3** above allotting a case number for the instant RTI application and stating *inter alia* as follows (**Annexe 4**):

"2. Please be informed that RTI applications are processed with coordinating section of concerned branches/directorates to obtain inputs with respect to information sought which lay scattered within various sections/branches. Provisioning of information also involves inter-directorate movement of the said application. IHQ of MoD (Army) and all its agencies function only 5 days a week and consequently each month has 8 or more non working days. Hence there is a possibility of a slight delay and in case of such a delay, please accept delayed response."

8.5) Subsequently, on 06/04/2018, this Appellant-cum-Complainant received a communication of number and date captioned at **para #6.c.4** from the office mentioned at para #3.4 above stating *inter alia* as follows (**Annexe 5**):

"2. It is intimated that your application is under process with concerned agency at IHQ of MoD (Army) and it will take some more time to provide information requested for, subject to availability of information with concerned agency."

8.6) Meanwhile on 15/03/2018, this Appellant-cum-Complainant submitted an appeal to the First Appellate Authority (FAA) of the 1st Respondent Public Authority, namely, the Ministry of Defence under Section 19(1) of the RTI Act, with the following prayers (**Annexe 7**):

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

- 1) admit this appeal and inquire into the matters raised herein; and
- 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 from this very public authority."

8.7) In support of his prayers, this Appellant-cum-Complainant adduced the following grounds in his first appeal:

"**8.1)** According to Section 19(1) of the RTI Act any person aggrieved by any decision of a CPIO may prefer an appeal against such decision within 30 days of receipt of that decision to an officer senior in rank to such CPIO. This first appeal is being submitted on the 14th day of receipt of the decision of the CPIO mentioned at para #3.2 above which is well within the statutory time limit specified in Section 19(1) of the RTI Act. This Appellant is aggrieved by the decision of the said CPIO for the following reasons:

8.1.1) A perusal of the instant RTI application makes it clear that this Appellant was seeking information from this Department and not from the Indian Army to whom the CPIO mentioned at para #3.2 above transferred it under the terms of Section 6(3) of the RTI Act. For the purpose of demonstrating this point, Section 7 of *The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990* (J&K AFSPA) is reproduced below, *ad literatim*:

“7. **Protection of persons acting in good faith under this Act.**—No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.”

A perusal of the said provision contained in the J&K AFSPA clearly indicates that the authority competent to make a decision on a request for sanction of prosecution of a member of the defence forces, operating in a “disturbed area”, as declared under Section 3 of the said Act, is the Central Government. This Appellant was seeking information relating to the details of a reply tabled by this Department through its parent Ministry, namely, the Ministry of Defence in the Rajya Sabha on 01/01/2018 – a copy of which was annexed to the instant RTI application. To the best of this Appellant’s knowledge the Indian Army to which the instant RTI application was transferred by the CPIO mentioned at para #3.2 above can be described as an instrumentality of the Central Government and not the Central Government itself as understood within the meaning and scope of the definition of that phrase provided under Section 8(b)(i) of the *General Clauses Act, 1897*. Further as per the Second Schedule attached to the *Allocation of Business Rules, 1961*, this Ministry is the controlling authority for the Armed Forces of the Union. The Indian Army falls within the administrative jurisdiction of this Department and its parent Ministry. So the authority competent to make a decision on requests for sanction for prosecution of members of the defence forces is this Department or its parent Ministry and not the Indian Army to which the CPIO mentioned at para #3.2 transferred the instant RTI application under Section 6(3) of the RTI Act. Therefore this Appellant is aggrieved by the action of the CPIO which appears to be aimed at dodging the responsibility for providing a definitive reply to the queries raised in the instant RTI application. Therefore this Appellant believes that the action of the said CPIO is bad in law and deserves to be set aside and the request for information be considered in depth within this Department or any other part of its parent Ministry for the purpose of making a determination as to whether or not to disclose the information sought in the instant RTI application. **Hence the submission of this first appeal to this Hon’ble Appellate Authority.**

8.1.2) Further, according to Section 7(6) of the RTI Act, where a CPIO fails to supply the information sought within the period of 30 days stipulated in Section 7(1) of the RTI Act, the applicant has a right to obtain all the information free of charge. As more than 30 days have passed since the submission of the instant RTI application to this Department, this Appellant therefore has a right to receive all the information specified in the instant RTI application free of charge, under Section 7(6) of the RTI

Act. ***Hence the submission of this first appeal to this Hon'ble Appellate Authority.***"

8.8) Subsequently on 13/04/2018, this Appellant-cum-Complainant received an order of number and date captioned at para #7.6 above from the FAA of the 1st Respondent Public Authority, namely the Ministry of Defence, mentioned at **para #5.1** above stating *inter alia* as follows (**Annexe 8**):

"2. The matter has been discussed with the concerned CPIO, who has stated that as per Section 6(3) of the RTI Act, the matter was transferred to the concerned authority who is the custodian of the desired information.

3. As such, you may approach the concerned authority directly."

8.9) Subsequently, on 21/04/2018, this Appellant received a communication of number and date captioned at **para #7.5** above from the officer of the 2nd Respondent Public Authority, namely the Indian Army, mentioned at **para #3.5** above stating *inter alia* as follows (**Annexe 9**):

"2. **Information on Para 1 to 5.** It is intimated that concerted efforts were made to obtain the information sought by you, however, the same is not available/held with the concerned agency of this Headquarters."

8.10) Subsequently, on 09/05/2018, this Appellant despatched by Speed Post an appeal under Section 19(1) of the RTI Act to the FAA of the 2nd Respondent Public Authority, namely the Indian Army against the communication of number and date captioned at **para #7.5** above received from the officer named at **para #3.5** above with the following prayers (**Annexe 10**):

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

- 1) admit this appeal and inquire into the matters raised herein;
- 2) direct the concerned CPIO to disclose 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."

8.11) In support of his prayers, this Appellant adduced the following procedural and substantive grounds in his first appeal:

"**8.1)** According to Section 19(1) of the RTI Act, when a person is aggrieved by any decision of the CPIO, he may prefer an appeal against such decision to an officer senior in rank to the CPIO within a period of 30 days of receiving such decision. This Appellant received the decision of the CPIO specified at para #6 above on 21/04/2018. This appeal is being submitted against the decision of the CPIO specified at para #6 above on the 16th day of receipt of his decision which is well

within the statutory deadline specified in Section 19(1) of the RTI Act. This Appellant is aggrieved by the decision of the CPIO of this Public Authority on both procedural and substantive grounds reasons explained below:

8.1.1) Procedural Grounds: According to Section 7(1) of the RTI Act, it is the express duty of only the CPIO of every public authority to make a decision regarding the disclosure of information sought in an RTI application. He or she may disclose the information on payment of additional fee by the RTI applicant or reject the information request 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 #4 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]

The reply received from the Officer named at para #4 above is purported to have been issued for the designated CPIO rather than by the designated CPIO. Nothing in the RTI Act permits a CPIO to delegate his or her 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 #4 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 to this Hon'ble First Appellate Authority.**

8.1.2) Further, in the matter of **Venkatesh Nayak vs CPIO, RTI Cell, IHQ of MoD (Army)**, File No. CIC/VS/A/2015/003293/SD, decision dated 09/11/2016, the Hon'ble Central Information Commission was pleased to issue directions to this Public Authority to discontinue the practice of permitting an officer other than a CPIO to respond to RTI applications, in the following words:

"Commission based upon the perusal of the reply of the CPIO finds it adequately appropriate to allow the contention of the Appellant regarding the CPIO reply being wrongly signed for him by another officer when no such express authority to delegate his responsibility exists within the provisions of the RTI Act. Commission warns the CPIO to adopt an appropriate procedure to ensure in future that he issues replies to RTI applications under his name, designation and signature only." *(emphasis supplied)*.

8.1.3) In view of the aforementioned direction of the Hon'ble CIC to this Public Authority, the communication issued by the Officer specified at para #4 above is not only without jurisdiction but is also in blatant disregard for its express direction. Although, the ruling of the Hon'ble CIC to disclose all information sought in the RTI application that formed the basis of the second appeal in that case, has been stayed by the Hon'ble Delhi High Court in the matter of **Union of India vs Venkatesh Nayak and Anr.**, W.P. (C) 5703/2017, vide Order dated 17/07/2017, nothing in the said Writ Petition challenges the directions of the Hon'ble CIC quoted at para #8.1.2 above. Therefore this Appellant believes that the communication of number and date specified at para #6 above, issued by the Officer specified at para #6 above, is without jurisdiction and deserves to be set aside. **Hence the submission of this first appeal to this Hon'ble First Appellate Authority.**

8.2) Substantive Grounds: As explained already at para #6.2 above, the RTI application which forms the subject matter of this appeal was transferred by the CPIO, Department of Defence to the CPIO of this Public Authority. On 15/03/2018, this Appellant submitted a first appeal to the First Appellate Authority, Department of Defence, against the action of the CPIO, Department of Defence of transfer of the instant RTI application (**Annexe 6**).

8.2.1) On 11/04/2018, the FAA, Ministry of Defence was pleased to dispose of the said first appeal holding as follows (**Annexe 7**):

"2. The matter has been discussed with the concerned CPIO, who has stated that as per Section 6(3) of the RTI Act, 2005, the matter was transferred to the concerned authority who is the custodian of the desired information." *(emphasis supplied)*

8.2.2) Given the unequivocal assertion of the CPIO, Department of Defence and its subsequent endorsement by the FAA, Ministry of Defence, that this Public

Authority, namely, the Indian Army, is the custodian of the requested information, it is reasonable to deduce that the reply of the Officer specified at para #6 above is incorrect and possibly misleading. The Ministry of Defence, being the controlling Ministry for this Public Authority, cannot be said to have erred about the exact *locus* of the information sought in the instant RTI application. Therefore, the reply of the Officer specified at para #4 above deserves to be set aside. ***Hence the submission of this first appeal to this Hon'ble Appellate Authority.***

8.3) Further, according to Section 7(6) of the RTI Act, an RTI applicant is entitled to receive the information requested in his or her RTI application free of charge, if it is supplied after the lapse of the statutory deadline of 30 days, stipulated in Section 7(1) of the RTI Act. The instant RTI application was transferred to this Public Authority on 27/02/2018. The communication issued by the Officer specified at para #4 above, despite being without jurisdiction, is dated 16/04/2018. Even this communication has been sent well after the lapse of the 30-day time limit specified in the RTI Act. Therefore this Appellant believes that he is entitled to receive all information requested in the instant RTI application free of charge. ***Hence the submission of this first appeal to this Hon'ble Appellate Authority.***

8.4) Further, as already pointed out at paras # 8.1.2 to 8.1.3 above, the CPIO of this Public Authority is found to be repeatedly contravening the provisions of the RTI Act and the express direction of the Hon'ble Central Information Commission in the case cited above. Therefore this is a deserving case to issue an official memorandum to the CPIO to discharge his duties with greater care and diligence in future. This Hon'ble Appellate Authority being senior in rank to the CPIO is well within his or her powers to issue such a memorandum to the said CPIO. ***Hence the submission of this first appeal to this Hon'ble Appellate Authority."***

8.12) This Appellant has not received any order or communication from the FAA of the 2nd Respondent Public Authority, namely, the Indian Army, on the first appeal submitted on 07/05/2018, till date.

9) Prayers or relief sought :

This Appellant-cum Complainant respectfully prays that this Hon'ble Commission be pleased to:

- 1) condone the delay in the submission of the Joint Appeal and Complaint against the 1st Respondent Public Authority for reasons described at paras #10.1-10.3 below;**
- 2) admit this Joint Appeal and Complaint and inquire into the matters averred to and canvassed herein for reasons described at paras #10.4-10.11 below;**

- 3) invoke its powers under Section 18(3) of the RTI Act in order to make a determination as to which of the two Respondent Public Authorities is the custodian of the information requested in the instant RTI application for the purpose of Section 2(h), read with Section 2(j) and Sections 3, 6 and 7 of the RTI Act;
- 4) for the purpose of making such determination as prayed for at para #9.2 above, invoke its powers under Section 18(3) of the RTI Act, read with the procedure provided for in Rule 11 of the *Right to Information Rules, 2012* (RTI Rules) and summon the official documents containing the information specified in the instant RTI application from the custodian Respondent Public Authority or Respondent Public Authorities, as the case may be;
- 5) after summoning the official documents containing the information specified in the instant RTI application from the custodian Respondent Public Authority or Respondent Public Authorities, as the case may be, as prayed for at para #9.3 above, peruse the same as per the procedure provided under Rule 11 of the RTI Rules, for the purpose of giving directions to the custodian Respondent Public Authority or Respondent Public Authorities, as the case may be, to provide access to such information as is permissible under the provisions of the RTI Act in the form of access sought by the Appellant-cum-Complainant in the instant RTI application, within a reasonable time limit;
- 6) direct the custodian Respondent Public Authority or Respondent Public Authorities, as the case may be, to furnish all the information specified in the instant RTI application as per Section 7(6) of the RTI Act on grounds described at para #10.7 below;
- 7) initiate proceedings under Section 20 of the RTI Act against the CPIOs of the Respondent Public Authorities or the concerned Officers who gave replies to the instant RTI application, if the determination as prayed for at para #9.2 above indicates that the any or both of the said Public Authorities were indeed the custodian of the information sought in the instant RTI application;
- 8) initiate proceedings under Section 20 of the RTI Act against the CPIO of the 2nd Respondent Public Authority, namely, the Indian Army, for contravening the express direction of this Hon'ble Commission issued to such CPIO in the matter of *Venkatesh Nayak vs CPIO, RTI Cell, IHQ of MoD (Army)*, File No. CIC/VS/A/2015/003293/SD, vide decision dated 09/11/2016, on grounds described at paras #10.10-10.11 below;
- 9) issue appropriate directions for the *suo motu* disclosure of the information described in the instant RTI application by invoking its powers provided under Section 19(8)(a)(iii) of the RTI Act;

- 10) **issue appropriate directions to the Respondent Public Authorities under Section 19(8)(a)(v) of the RTI Act to require their FAAs and CPIOs to undergo training in the procedures and practices under the RTI Act at a reputable training institution such as the Institute of Secretariat Training and Management, New Delhi, without delay; and**
- 11) **pass any other order or recommendation that this Hon'ble Commission may deem appropriate in this matter.**

10) Grounds for the prayer or relief :

10.1) According to Section 19(3) of the RTI Act, a second appeal against the decision under made under Section 19(1) of the Act shall be preferred before this Hon'ble Commission within ninety days of the date on which such decision should have been made or was actually received. The FAA of the 2nd Respondent Public Authority, namely the Indian Army, ought to have given a decision on the first appeal on 21/06/2018 on which date the outer limit of 45 days stipulated in Section 19(6) of the RTI Act for giving a decision was breached. However, this Appellant-cum-Complainant has not received any decision from the said FAA, till date. This appeal is being submitted to this Hon'ble Commission on the 64th day of the last date on which the FAA's decision on the first appeal ought to have been made. **Therefore this appeal is being submitted against the 2nd Respondent Public Authority within the statutory limit specified in Section 19(3) of the RTI Act.**

10.2) However, this appeal is also being submitted against the 1st Respondent Public Authority, albeit well past the statutory limit of ninety days, stipulated in Section 19(3) of the RTI Act. As per the *proviso* underlying Section 19(3) of the RTI Act, this Hon'ble Commission may admit the appeal after the expiry of the period of ninety days if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal on time. Both the CPIO and the FAA of the 1st Respondent Public Authority, namely the Ministry of Defence (MoD) had categorically stated that the information sought in the instant RTI application that forms the subject matter of this Joint Appeal and Complaint is available with the 2nd Respondent Public Authority (see **Annexes 2 and 8**, respectively). This Appellant-cum-Complainant received the order of the said FAA on 13/04/2018. An appeal under Section 19(1) of the RTI Act against the reply received from the officer mentioned at **para #3.5** above was submitted to the FAA, of the 2nd Respondent Public Authority, namely the Indian Army by treating the order of the FAA of the 1st Respondent Public Authority, namely the MoD, as a substantive ground for that appeal. This Appellant-cum-Complainant elected in good faith to wait for the order of the FAA of the 2nd Respondent Public Authority, namely the Indian Army as he then had no reason to disbelieve the assertion of the FAA of the 1st Respondent Public Authority, who is a responsible senior officer of that Public Authority, that the 2nd Respondent Public Authority, namely the Indian Army is indeed the custodian of the information sought in the instant RTI application. However 109 days have lapsed since the submission of the first appeal to the FAA of the 2nd Respondent Public Authority, namely, the Indian Army. This Appellant-cum-Complainant is not prepared to wait any longer for a decision of the said FAA. **As the 1st Respondent Public Authority is claiming that the 2nd Respondent Public Authority is the custodian of the information sought in the instant RTI application whereas the latter has issued a categorical denial that it**

is the custodian of the said information, this Appellant-cum-Complainant has no option but to submit this appeal against both Respondent Public Authorities.

Therefore the delay in submitting an appeal under Section 19(3) of the RTI Act against the 1st Respondent Public Authority, namely the MoD, may please be treated as one arising out of a reasonable and sufficient cause as described above. ***Hence the prayer for condonation of the delay in submitting this appeal to this Hon'ble Commission.***

10.3) This Appellant-cum-Complainant is also submitting a Complaint under Section 18(1) along with this Appeal under Section 19(3) of the RTI Act, jointly against both the Respondent Public Authorities for the following reasons:

10.3.1) *First*, as described above, the 1st Respondent Public Authority namely the MoD, has expressly stated that the 2nd Respondent Public Authority is the custodian of the information sought in the instant RTI application. However the 2nd Respondent Public Authority has categorically denied that it is the custodian of the same information. It is this Appellant-cum-Complainant's humble opinion that both Respondent Public Authorities cannot be correct in their replies as that would create an absurd situation. The very purpose of the RTI Act as explicated under Section 3 read with Sections 2(f) 2(h) and 2(j) of the Act is to recognise the right of a citizen to seek and obtain information that is materially "held" by or is under the physical custody of one or more public authorities. However, instead of making a decision on whether or not the information sought in the instant RTI application may be disclosed as per the provisions of the RTI Act, each Respondent Public Authority have taken recourse to either point towards other, as is the case with the 1st Respondent Public Authority, namely the MoD, or simply deny that they hold the information, as is the case with the 2nd Respondent Public Authority, namely the Indian Army. As stated already, the FAA of the 2nd Respondent Public Authority has not even bothered to give a decision on a first appeal submitted by this Appellant-cum-Complainant, till date. Therefore, this Appellant-cum-Complainant firmly believes that he has a right to invoke the Complaint jurisdiction of this Hon'ble Commission under Section 18(1)(f) for the purpose of making a determination as to which of the two Respondent Public Authorities is actually the custodian of the information sought in the instant RTI application. Section 18(1)(f) of the RTI Act permits any person to submit a complaint to this Hon'ble Commission "in respect of any other matter relating to requesting or obtaining access to records under this Act." This Complaint is occasioned by one formal request for obtaining information that has been dealt with by both Respondent Public Authorities, one after another. Therefore this Complainant firmly believes that this is a fit case for conducting an inquiry for ascertaining the physical location of the official records that contain the information sought in the instant RTI application. ***Hence the submission of this Complaint before this Hon'ble Commission.***

10.3.2) *Second*, this Appellant-cum-Complainant firmly believes that the subject matter and the prayers made in this Complaint do not fall within the scope and ambit of the issues determined by the Hon'ble Supreme Court in the matter of ***Chief Information Commissioner & Anr. Vs State of Manipur & Anr. [AIR 2012 SC 864]*** with regard to the difference between the appeals procedures under Section 19 and the complaint procedure under Section 18 of the RTI Act. As the issue is one of making a determination

about the physical custodianship of the records in question this Complainant has deemed it fit to pray for invoking this Hon'ble Commission's powers and jurisdiction under Section 18(1) of the RTI Act. This Appellant-cum-Complainant is not praying for a direction of disclosure of information sought in the instant RTI application through the exercise of this Commission's Complaint jurisdiction under Section 18 of the RTI Act. **Hence the submission of this Complaint before this Hon'ble Commission on this limited issue.**

10.3.3) Third, Rule 11 of the RTI Rules, 2012 merely prescribes the procedure for this Hon'ble Commission to observe while deciding an appeal submitted under Section 19(3) of the RTI Act. Nothing in the said Rules places any compulsion on the Respondent Public Authorities to submit records summoned by this Hon'ble Commission in the course of deciding an appeal under the Act. However, Section 18(3) of the RTI Act vests the powers of a Civil Court in this Hon'ble Commission for the purpose of doing all the things specified in Clauses # (a) to (f) during the process of inquiring into a Complaint submitted by any person under Section 18(1) of the Act. Further, Section 18(4) of the RTI Act prohibits a Respondent Public Authority from withholding any official document summoned by this Hon'ble Commission in the course of an inquiry it may conduct into a complaint received from any person under Section 18(1) of the RTI Act. This Appellant-cum-Complainant has already made out his case above as to the limited issue on which the complaint jurisdiction of this Hon'ble Commission is being invoked in the instant case. **As Section 18 of the RTI Act contains a reservoir of power for this Hon'ble Commission to invoke in order to make a determination as to whether the official records containing the information sought in the instant RTI application are physically held by either Respondent Public Authority, this Appellant-cum-Complainant has elected to submit this Joint Appeal and Complaint to this Hon'ble Commission instead of submitting an appeal and a complaint against the Respondent Public Authorities separately.**

10.3.4) Fourth, this Appellant-cum-Complainant has deemed it fit to submit a single Joint Appeal and complaint against both Respondent Public Authorities in order to avoid multiplicity of proceedings before this Hon'ble Commission and save its precious time. To the best of the knowledge of this Appellant-cum-Complainant, nothing in the RTI Act or the RTI Rules 2012 prevents him from submitting this Joint Appeal and Complaint in relation to the Respondent Public Authorities both of whom have dealt with one and the same RTI application in their own fashion. Further, this Appellant-cum-Complainant firmly believes that the present Appeal meets all the requirements specified under Rule 9 of the RTI Rules, 2012. Further, this Appellant-cum-Complainant firmly believes that all the requirements for filing a Complaint under Section 18(1) of the RTI Act listed in the Office Order of this Hon'ble Commission of No. CIC/CR-1/2017/0007 (pt.2), dated 14/06/2018, including the time limits specified therein, are also satisfied in the instant case. **Hence the submission of this Joint Appeal and Complaint before this Hon'ble Commission.**

10.3.5) Further, in the matter of **University of Delhi vs Abner Ingty, W.P. (C) 1873/2016, Order dated 10/08/2017**, the Hon'ble Delhi High Court has held that it is entirely legal for this Hon'ble Commission to enquire into a complaint under Section 18(1) of

the RTI Act while entertaining an appeal under Section 19(3) arising out of the same RTI application. The relevant paragraph is reproduced below:

“14. The reliance placed by the learned counsel of the petitioner on the case of **Chief Information Commissioner** (*supra*) is wholly misconceived. In that case, the Supreme Court had observed that complaint under Section 18 could not be treated as an appeal and, therefore, CIC would not have the jurisdiction to direct disclosure of information while examining a complaint under Section 18 of the Act. The said judgment is not an authority for the proposition that the CIC cannot entertain the complaint regarding denial of information while considering an appeal under Section 19(3) of the Act. Thus, in a proceeding under Section 19(3) of the Act, if the CIC is of the opinion that the information has been *malafidely* denied or incorrect or incomplete information has been given or that the information has been destroyed or the request of the information seeker has been obstructed in any manner, the CIC would be well within its jurisdiction to enquire into the matter and impose the penalty as specified under Section 20(1) of the Act.” [emphasis supplied]

It will be shown below (**paras #10.8-10.10**) as to why this Appellant-cum-Complainant believes that in the present Joint Appeal and Complaint there are sufficient grounds for this Hon’ble Commission to initiate action against the CPIOs of the Respondent Public Authorities under Section 20(1) of the RTI Act. Nevertheless, the purpose of citing the aforementioned case-law is to apprise this Hon’ble Commission that it is well within its powers to inquire into a Complaint under Section 18(1) of the RTI Act on any of the grounds mentioned therein, while entertaining an appeal under Section 19(3) of the Act. **Hence the submission of this Joint Appeal and Complaint before this Hon’ble Commission.**

10.4) Further, more than six months have lapsed since the submission of the instant RTI application and the initial decisions on the same made by the two Respondent Public Authorities. The information sought at paras #1-3 of the instant RTI application are in the nature of information that ought to have been disclosed *suo motu* by either Respondent Public Authority under Section 4(1)(b)(iii), (iv), (i) of the RTI Act. Further, this Appellant-cum-Complainant firmly believes that the information sought at paras #4-5 of the instant RTI application ought to have been disclosed as per the provisions of Sections 4(1)(c) and 4(1)(d) of the RTI Act. However, neither Respondent Public Authority has bothered to make a decision on the substantive aspects of the RTI application and have instead acted in a manner that is highly frustrating for this Appellant-cum-Complainant. According to Section 19(8)(a)(iii) of the RTI Act, while deciding an appeal received under Section 19(3) of the Act, this Hon’ble Commission has the power to require a Respondent Public Authority to publish certain categories of information, ostensibly in compliance with Section 4(1) of the RTI Act. Therefore this Appellant-cum-Complainant firmly believes that no purpose would be served by merely urging this Hon’ble Commission to summon the records for making a determination regarding their physical custodianship unless accompanied by a prayer to rule on the matter of disclosure of the information also. **Hence the submission of this Appeal before this Hon’ble Commission.**

10.5) Further, this Appellant-cum-Complainant had pointed out in the instant RTI application that the information described in it ought to have been disclosed under various clauses of

Section 4(1) of the RTI Act. As he was unable to find such information in the public domain, he was constrained to submit a formal request for the information in writing. Nevertheless, the two Respondent Public Authorities have only dodged the information request without making any decision on whether or not the information ought to be disclosed. As argued at **para #8.1** of the appeal submitted under Section 19(1) of the RTI Act to the FAA of the 1st Respondent Public Authority, the MoD being the final decision-maker whether or not to grant sanction for prosecution of defence personnel for actions committed under the *Armed Forces (Jammu and Kashmir) Special Powers Act, 1990* (J&KAFSPA), all the information described in the instant RTI application ought to be available with it (**Annexe 7**). Nevertheless, both the CPIO and the FAA of the MoD have replied that they are not the custodian of the information sought in the instant RTI application. Therefore, even if this Hon'ble Commission were to make a determination that the 1st Respondent Public Authority is indeed the custodian of the information sought, this Appellant-cum-Complainant has no faith in the said Public Authority to make a reasoned decision on whether or not to disclose the information described in the instant RTI application. Therefore this Appellant-cum-Complainant is urging this Hon'ble Commission to peruse the records summoned from the 1st Respondent Public Authority, namely the MoD in order to make a determination regarding their disclosure as per the provisions of the RTI Act and direct the said Public Authority to disclose the information within a specific time limit. ***Hence the submission of this Appeal before this Hon'ble Commission.***

10.6) Further, if on the other hand, this Hon'ble Commission were to make a determination that the 2nd Respondent is the custodian of the information sought in the instant RTI application, this Appellant-cum-Complainant urges this Hon'ble Commission to peruse the records summoned from the 2nd Respondent Public Authority, namely the Indian Army in order to make a determination regarding their disclosure as per the provisions of the RTI Act and direct the said Public Authority to disclose the information within a specific time limit. ***Hence the submission of this Appeal before this Hon'ble Commission.***

10.7) Further, according to Section 7(6) of the RTI Act, where a CPIO fails to supply the information sought within the period of 30 days stipulated in Section 7(1) of the RTI Act, the applicant has a right to obtain all the information free of charge. It has already been shown conclusively above, that both the Respondent Public Authorities have not bothered to make a substantial decision on the contents of the instant RTI application. In the event that this Hon'ble Commission is pleased to direct the disclosure of any or all of the information described in the instant RTI application, this Appellant-cum-Complainant believes that he has the right to receive all the information specified in the instant RTI application free of charge, under Section 7(6) of the RTI Act. ***Hence the submission of this Appeal to this Hon'ble Commission.***

10.8) Further, according to Section 20 of the RTI Act, in the course of deciding a complaint or an appeal preferred before it, if this Hon'ble Commission were to form an opinion that a CPIO has knowingly given incorrect information, then it may impose a penalty up to a maximum of Rs. 25,000 on such CPIO. If in the course of hearing this Joint Appeal and Complaint, this Hon'ble Commission were to make a determination that any of the officers mentioned at **para #3** above were responsible for knowingly giving incorrect information

regarding the physical custody of the information sought in the instant RTI application, this Appellant-cum-Complainant urges this Hon'ble Commission to initiate proceedings under Section 20 of the RTI Act against such officer(s). ***Hence the submission of this Joint Appeal and Complaint before this Hon'ble Commission.***

10.9) Further, the 2nd Respondent Public Authority, namely the Indian Army received the instant RTI application on 27/02/2018. A final reply to the instant RTI application was sent by this Respondent Public Authority on 16/04/2018. A period of 47 days were taken by the 2nd Respondent Public Authority for giving a final reply on the instant RTI application. This Appellant-cum-Complainant believes that the delay in sending a final response has not been explained in any reasonable manner except to justify that the CPIO did not have 30 working days to send a reply. Even if the 8 non-working days in a month as cited by the officer of the 2nd Respondent Public Authority mentioned at para #3.3 above is factored in, there was a delay of nine more days which has not been explained by their officer while sending a final reply to the instant RTI application. Therefore this Appellant-cum-Complainant believes that the delay in sending a final reply to the instant RTI application is without reasonable cause and this constitutes adequate ground for initiating action against the officers of the 2nd Respondent Public Authority. ***Hence the submission of this Joint Appeal and Complaint before this Hon'ble Commission.***

10.10) Further, this Appellant would like to point out that the 2nd Respondent Public Authority has violated the express direction of this Hon'ble Commission regarding the authority who is competent to send a reply to an RTI application under the RTI Act. In the matter of ***Venkaresh Nayak vs CPIO, RTI Cell, IHQ of MoD (Army)***, File No. CIC/VS/A/2015/003293/SD, decision dated 09/11/2016, this Hon'ble Commission was pleased to issue directions to the 2nd Respondent Public Authority, namely the Indian Army to discontinue the practice of permitting an officer other than a CPIO to respond to RTI applications, in the following words:

"Commission based upon the perusal of the reply of the CPIO finds it adequately appropriate to allow the contention of the Appellant regarding the CPIO reply being wrongly signed for him by another officer when no such express authority to delegate his responsibility exists within the provisions of the RTI Act. Commission warns the CPIO to adopt an appropriate procedure to ensure in future that he issues replies to RTI applications under his name, designation and signature only." [emphasis supplied].

In the instant case, also both the interim and final replies to the instant RTI application have been sent by officers purporting to act on behalf of the CPIO and not the designated CPIO himself or herself. The 2nd Respondent Public Authority, namely the Indian Army, continues to act in complete contravention of the express direction of this Hon'ble Commission. This Appellant-cum-Complainant believes that this is a fit case for this Hon'ble Commission to not only initiate action under Section 20 of the RTI Act against the CPIO for contravening the provisions of this Act repeatedly but also for violating the express directions of this Hon'ble Commission. To the best of the knowledge of this Appellant-cum-Complainant, this direction of the Hon'ble Commission has not been stayed by the Hon'ble Delhi High Court in the

matter of ***Union of India vs Venkatesh Nayak and Anr.***, W.P. (C) 5703/2017, vide its Order dated 17/07/2017. Therefore this Hon'ble Commission is within its powers to initiate penal action against the CPIO of the 2nd Respondent Public Authority, namely the Indian Army for violating its express direction. In the matter of ***G. Basavaraju vs Smt. Arundhati & Anr.***, [ILR 2009 KAR 1053] a Division Bench of the Hon'ble High Court of Karnataka was pleased to rule as follows:

"9. Section 20 of the RTI Act provides for penalties. It confers powers on the Commission on the basis of which it can enforce its order. The Act having provided for constitution of the Commission and the power to impose the penalties by way of levy of fine and also the statutory right to recommend to the Government for disciplinary action against the State Information Officer, itself has the necessary powers/provisions, in the form of the provisions of Contempt of Courts Act. It is cardinal principle of interpretation of statute, well-settled by catena of decisions of the Apex Court, that, Courts or Tribunals, must be held to possess power to execute its own order. Further, the RTI Act, which is a self-contained code, even if it has not been specifically spelt out, must be deemed to have been conferred upon the Commission the power in order to make its order effective, by having recourse to Section 20....

10....The powers of the Commission to entertain and decide the complaints, necessarily shows that, the Commission has the necessary power to adjudicate the grievances and decide the matters brought before it, in terms of the provisions contained in the RTI Act. The legislative will, incorporating Section 20 in the RTI Act, conferring power on the Commission to impose the penalties, by necessary implication is to enable the Commission to do everything which is indispensable for the purpose of carrying out the purposes in view contemplated under the Act. In our considered view, provisions of Section 20 can be exercised by the Commission also to enforce its order. The underlying object in empowering the Commission to impose the penalty and/or to resort to other mode provided therein, cannot and should not be construed only to the incidents/events prior to the passing of an order by the Commission, but are also in aid of the order passed by the Commission and its enforcement/execution, as otherwise, the legislative will behind the enactment gets defeated." [emphasis supplied]

In view of the aforementioned case law, this Appellant-cum-Complainant believes that this Hon'ble Commission has the powers to initiate proceedings against the CPIO of the 2nd Respondent Public Authority on grounds of violating its express directions regarding the sending of RTI replies under his own name and signature. ***Hence the submission of this Joint Appeal and Complaint before this Hon'ble Commission.***

10.11) Further, as pointed out at **para #8.12** above, the FAA of the 2nd Respondent Public Authority, namely the Indian Army has not sent any decision on the first appeal submitted to him by this Appellant-cum-Complainant despite the lapse of the statutory limit of 45 days. Even though there is no provision in the RTI Act for initiating penal action against an FAA for violating the provisions of the RTI Act, this Hon'ble Commission may nevertheless issue a direction under Section 19(8)(a)(v) of the RTI Act to the 2nd Respondent Public Authority,

namely the Indian Army to require its FAAs and CPIOs to undergo training on the procedures of the RTI Act. This Appellant-cum-Complainant urges this Hon'ble Commission to issue a direction to the 2nd Respondent Public Authority, namely the Indian Army, to send its CPIOs and FAAs for in-depth training on the RTI procedures at a reputable training institution such as the Institute of Secretariat Training and Management, New Delhi. ***Hence the submission of this Appeal before this Hon'ble Commission.***

11) 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. I also affirm that I have transmitted a copy of this appeal along with Annexes to both the Respondent Public Authorities.

Signature of the Appellant-cum-Complainant:

(Venkatesh Nayak)