

**CENTRAL INFORMATION COMMISSION**  
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**File No. CIC/VS/A/2015/003293/SD**

**Date of Hearing: 25/10/2016**

**Date of Decision: 09/11/2016**

**Relevant facts emerging from the Appeal:**

Appellant	:	Venkatesh Nayak # 55A, 3 <sup>rd</sup> Floor Siddharth Chambers – 1 Kalu Sarai New Delhi - 110016
Respondent	:	CPIO RTI Cell, G – 6, D-1 Wing Sena Bhawan, Gate No – 04 IHQ of MoD (Army) New Delhi - 110011
RTI application filed on	:	27/01/2015
PIO replied on	:	11/03/2015
First appeal filed on	:	22/04/2015
First Appellate Authority order	:	19/06/2015
Second Appeal dated	:	26/09/2015

**INFORMATION COMMISSIONER : SHRI DIVYA PRAKASH SINHA**

**Information sought:**

The Appellant sought copy of documents through 5 points regarding findings of the Court Martial in the matter of the conviction of five Army personnel for killings committed at *Macchil, J&K* in the year 2010 & proceedings of Court of Inquiry in the matter of killing of five persons in *Pathribal, Anantnag District, J&K* in the year 2000.

**Grounds for the Second Appeal:**

The CPIO has not provided the desired information.

**Relevant Facts emerging during Hearing:**

The following were present:-

**Appellant:** Present in person.

**Respondent:** Col. R. Balaji, Director (RTI) & CPIO, AKL Das, Dy. Director and Avinash Srivastava, Dy. Director, IHQ of MoD(Army) present in person.

Appellant stated that he is not satisfied with the denial of information under Section 8(1)(h) of the RTI Act as the CPIO did not indicate as to how the disclosure will impede the process of investigation or the apprehension or prosecution of offenders. Further, he referred to the following series of judgments of Hon'ble Delhi High Court in this regard to exemplify the ambit of Section 8(1)(h) reproduced hereunder:

***Bhagat Singh Vs. Chief Information Commissioner & Ors. [146 (2008) DLT 385]***

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

***Adesh Kumar Vs. Union of India & Ors. [WP (C) No. 3543/2014]***

*".....A plain reading of the aforesaid provision indicates that information which would impede the process of investigation or apprehension or prosecution of offenders could be denied. In order to deny information, the public authority must form an affirmative opinion that the disclosure of information would impede investigation, apprehension or prosecution of offenders; a mere perception or an assumption that disclosure of information may impede prosecution of offenders is not sufficient. In the present case, neither the FAA nor the CIC has considered as to how the information as sought for would impede the process of investigation or apprehension or prosecution of the petitioner and other accused"*

*"....A bare perusal of the order passed by the FAA also indicates that the aspect as to how the disclosure of information would impede prosecution has not been considered. Merely, citing that the information is exempted under Section 8(1)(h) of the Act would not absolve the public authority from*

*discharging its onus as required to claim such exemption. Thus, neither the FAA nor the CIC has questioned the Public Authority as to how the disclosure of information would impede the prosecution.*

***Union of India Vs. O.P Nahar [WP (C) No.3616/2012]***

*“...A careful reading of the provision would show that the holder of the information can only withhold the information if, it is able to demonstrate that the information would “impede” the process of investigation or apprehension of the offenders.”*

Thereby, concluding that the CPIO did not fully meet the requirement of Section 7(8) of the RTI Act and contended that even the FAA has not given any consideration to his grounds of First Appeal, rather mechanically reiterated the decisions of the CPIO in his order. Furthermore, the Appellant raised an issue gathered from the signature portion of the reply of the CPIO that the signee appears to have acted on behalf of the CPIO which amounts to delegation of his authority and the same is in violation of the express provisions of Section 7(1) of the RTI Act. He relied on the observations of the Hon’ble Delhi High Court in the matter of *J P Agrawal vs. Union of India & Ors. [2011 VIIAD (Del.) 625]* stating that ‘*a responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates*’.

CPIO submitted that even though investigation was not pending, there were some post Court of Inquiry legal issues underway and that the prosecution cannot be said to be complete as confirmation was pending to be received from Army authorities at the time the RTI Application was filed. He further stated that the said confirmation has been received only in September 2015. He also objected to the claims of the Appellant which were based on media reports. He furthermore admitted to a factual error regarding the proceedings of the Court of Inquiry into *Pathribal* encounter sought at query no. 5 of the RTI Application. He regretted the initial reply in this regard while clarifying at the hearing stage that there was no such Court of Inquiry and therefore information is not available as such to be provided.

**Decision on 09.11.2016**

Commission takes a very serious view of the fact that the CPIO gave a misleading response with respect to query no.5 of the RTI Application regarding *Pathribal* encounter vide his reply dated 11.03.2015. He should have ascertained and verified the factual position completely before replying to the RTI Application.

Commission observes from the further submissions of the CPIO that there are no tenable grounds for invoking Section 8(1)(h) for query nos. 1 to 4 of the RTI Application. CPIO has clarified during the hearing that no investigation is pending and that Section 8(1)(h) was invoked with respect to the pendency of prosecution confirmation. Commission also takes into consideration the submissions of the Appellant as well as the case laws referred by him. In the absence of any plausible justification for invoking the exemption of Section 8(1)(h), Commission finds it inappropriate on the part of the CPIO to have denied the information. The reliance of the Appellant on the above referred case laws is well placed and upon a conjoint reading of the above referred *ratio-decidenti* of the Hon'ble Delhi High Court, Commission concurs with the same.

In view of the aforesaid, Commission directs the CPIO to provide all available and relevant information with regard to **query nos. 1 to 4** of the RTI Application to the Appellant within 15 days from the date of receipt of this order.

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 & signature only.

**The appeal is disposed of accordingly.**

**(Divya Prakash Sinha)**  
**Information Commissioner**

**Authenticated true copy**

**(H P Sen)**  
**Dy. Registrar/Designated Officer**