

No.F.14 (16)/2009-D(GS-I/IS)

Ministry of Defence

D(GS-I/IS)

South Block, New Delhi

Dated 22.02.2018

To

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

Subject:- Application under Right to Information Act, 2005.

Sir,

Kindly refer to your application No. RTI/Gol/MoD/2018/1 dated 12-02-2018 and received on 19th Feb. ,2018 on the subject mentioned above.

2. It is intimated that information sought in your 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 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'.

3. In case, you are not satisfied with aforesaid reply, you may prefer an appeal to following First Appellate Authority:

Shri C.S. Reddy,
First Appellate Authority/Director(G)
Room No. 206(II), South Block,
New Delhi – 110 011.

Yours faithfully,



(B. Senapati)

CPIO/Under Secretary to Govt. of India

Tele: 23012972

Copy to:- Shri T.D. Prashantha Rao, Under Secretary(AG) & CPIO, Room No. 108, B-Wing, Sena Bhawan, New Delhi along with application & enclosures including application fee(IPO No 38F 252947) in original referred to above for information and necessary action.

MOST IMMEDIATE
RTI ISSUE

Ministry of Defence
D(AG)

Subject: RTI application from Shri Venkatesh Nayak regarding details related to Rajya Sabha Unstarred Question No. 1463 answered on 1.1.2018 - reg.

Please find enclosed herewith RTI application dated 12.02.2018 of Sh. Venkatesh Nayak received in this section on 22.02.2018 through D(GS-I/IS) on the subject cited above. 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.

2. In case, if it does not pertain to your division, the same may be forwarded to the concerned CPIO with a copy marked to the RTI applicant.

Prashanth
26-02-18

(T D Prashanth Rao)
Under Secretary (AG-I)
Tele No. 23018602

ADG (AE) &CPIO, RTI Cell, D-I Wing, G-6, Gate No. 4, IHQ of MoD (Army), Sena Bhawan, New Delhi

MoD ID No. 23(03)/2017-D(AG) dated 26.02.2018

Copy to:-

- 1) Shri Venkatesh Nayak, #55A, 3rd Floor, Siddharth Chambers-I, Kalu Sarai, New Delhi-110016, with a request to further pursue the matter with above mentioned addressee.

"B" Wing, Sena Bhawan, New Delhi- 110 011

In the matter of

Date of submission : 15/03/2018

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S. S. Konkatesh Nayak

Before the Designated First Appellate Authority
and DS[AG-1], Department of Defence, Ministry of Defence

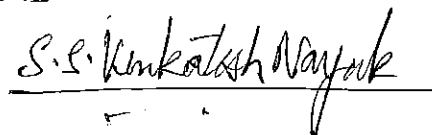
Government of India

"B" Wing, Sena Bhawan, New Delhi- 110 011

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

Date: 15/03/2018

- 1) Name and address of the Appellant :** 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
Government of India
Room No. 283-B, South Block
New Delhi- 110 001
- 3) Name and address of the CPIOs who gave reply to the Application :**
- 1)** Shri B. Senapati
CPIO & Under Secretary to Govt.
of India, D(GS-I/IS)
Ministry of Defence
Government of India
New Delhi- 110 011
- 2)** Shri T. Prashanth Rao
CPIO and Under Secretary (AG-I)
Room No. 108, 'B' Wing
Sena Bhawan
New Delhi- 110 011
- 4) Particulars of the RTI application-**
- a) No. and date of submission of the RTI application :** No. RTI/GoI/MoD/2018/1 dated
12/2/2018
- 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. MOD ID No. 23(03)/2017-D(AG) dated 26/02/2018 issued by the CPIO mentioned at para #3.2 above.

6) Brief facts leading to the appeal :

6.1) On 12/02/2018 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**):

"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.

S.S. Venkatesh Nayak

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."

6.2) On 26/02/2018 the officer mentioned at para #3.1 above, sent this Appellant a communication in response to the said RTI application stating, that the same had been transferred to the CPIO mentioned at para #3.2 above (**Annexe 2**). This action of the said CPIO is not being challenged through this appeal.

6.3) Subsequently, on 01/03/2018, this Appellant received a communication of number and date captioned at para #5 above, addressed to the CPIO & ADG (AE), RTI Cell, D-I Wing, G-6, Gate No. 4, IHQ of MoD (Army), Sena Bhawan, New Delhi stating that the information sought in the instant RTI application is "not maintained/available in D(AG) section and that the said RTI application was being transferred to the said CPIO for taking appropriate action (**Annexe 3**).

6.3) This Appellant is aggrieved by the action of the CPIO mentioned at para #3.2 above 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; 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) Grounds for the prayer or relief :

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

S.S. Venkatesh Nayak

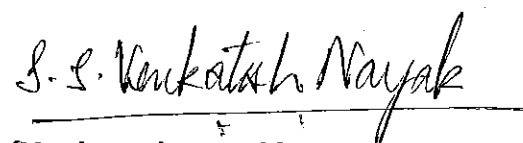
anything done or purported to be done in exercise of the powers conferred by this Act."

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 12 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.**

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:


(Venkatesh Nayak)

BY SPEED POST

File No. 23(03)2017-D(AG)
Ministry of Defence
D(AG-I)

Room No. 105, 'B' Wing,
Sena Bhawan, New Delhi - 110105

Dated 11th April, 2018

To,

Shri Venkatesh Nayak
#55A, 3rd Floor,
Siddharth Chambers-1,
Kalu Sarai,
New Delhi - 110016

Subject:- RTI appeal filed in the matter of Venkatesh Nayak ..Vs.. CPIO and Under
Secretary (AG-I) - reg.

Sir,

This is with reference to your RTI appeal dated 15.03.2018 in respect to the
decision of CPIO No. 23(03)/2017-D(AG) dated 26.02.2018.

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.
3. As such, you may approach the concerned authority directly. Accordingly,
your appeal stands disposed off.

In case you are not satisfied with this order, you may approach CIC.

Yours faithfully,


(B.D. Barua)

First Appellate Authority/Deputy Secretary to the Govt. of India,
Tele.:23014036

Tele: 011-23019585

RTI Cell, Addl DG MT (AE)
आर टी आई सेल ए डी जी एम टी (ए ई)
G-6, D-1 Wing
जी - 6, डी-1 वींग
Sena Bhawan, Gate No-4
सेना भवन, गेट नं.-4
IHQ of MoD (Army)
एकीकृत रक्षा मंत्रालय (सेना)
New Delhi -110011
नई दिल्ली-110 011

A/810027/RTI/OF_44712

01 Mar 2018

Shri Venkatesh Nayak
55A, 3rd Floor, Siddharth Chambers - 1,
Kalu Sarai, New Delhi - 110016

RIGHT TO INFORMATION ACT 2005

1. Your RTI application reference No. RTI/Gol/MoD/2018/1 dated 12 Feb 2018 received at this office on 27 Feb 2018 and the same is under process at this Headquarters.
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.
3. To know status of your application in future, your case No is **OF_44712**.



(Rajiv Guleria)
राजीव गुलेरिया
Lt Col
ले0 कर्नल
GSO-1(Appeal)
जी.एस.ओ.-1 (अपील)
For CPIO of Indian Army
कृते जन सूचना अधिकारी भारतीय सेना

Tele: 011-23019585

RTI Cell, Addl DG MT (AE)
आर टी आई सेल ए डी जी एम टी (ए ई)
G-6, D-1 Wing
जी - 6, डी-1 वींग
Sena Bhawan, Gate No-4
सेना भवन, गेट नं.-4
IHQ of MoD (Army)
एकीकृत रक्षा मंत्रालय (सेना)
New Delhi -110011
नई दिल्ली-110 011

A/810027/RTI/OF_44712

28 Mar 2018

Shri Venkatesh Nayak
55A, 3rd Floor, Siddharth
Chambers - 1,
Kalu Sarai, New Delhi - 110016

RIGHT TO INFORMATION ACT - 2005

- 43-
1. Further to this office letter No A/810027/RTI/OF_44712 dated 01 Mar 2018.
 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 the information requested for, subject to availability of information with concerned agency.
 3. Please accept delayed response.



(Ram Naresh Sharma)
Lt Col
GSO-1 (Legal)
For CPIO of Indian Army



REGISTERED SDS/POST

RTI Cell, Addl DG MT (AE)
आर टी आई सेल ए डी जी एम टी (ए ई)
G-6, D-1 Wing
जी - 6, डी-1 वींग
Sena Bhawan, Gate No-4
सेना भवन, गेट न.-4
IHQ of MoD (Army)
एकीकृत रक्षा मंत्रालय (सेना)
New Delhi - 110011
नई दिल्ली-110 011

A/810027/RTI/OF_44712

16 Apr 2018

Shri Venkatesh Nayak
55A, 3rd Floor, Siddharth Chambers - 1,
KaluSarai, New Delhi - 110016

RIGHT TO INFORMATION ACT 2005
INFO ON RECORDS FOR PROSECUTING MEMBER OF DEF - FORCES

1. Further to this office letter No A/810027/RTI/OF_44712 dated 28 Mar 2018.
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.
3. This disposes off your RTI application dated **12 Feb 2018**.
4. The address of First Appellate Authority of this HQ is Provost Marshal & Appellate Authority, Integrated HQ of MoD (Army), Room No 421-A, 'B' Wing, Sena Bhawan, New Delhi-110 011. For further details, in case of preferring an appeal, please refer Sec 19(1) of the RTI Act 2005.



(ADS Jasrotia)
ए डी एस जसरोटिया
Lt Col
ले0 कर्नल
GSO-1 (RTI)
जी.एस.ओ.-1 (आर.टी.आई)
For CPIO of Indian Army
कृते जन सूचना अधिकारी भारतीय सेना



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: 07/05/2018

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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: 07/05/2018

- | | | |
|--|---|---|
| 1) Name and address of the Appellant | : | Venkatesh Nayak
#55A, 3 rd 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 as addressed | : | The Central Public Information Officer and
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 CPIO who transferred the RTI application u/s Section 6(3) of the RTI Act to the CPIO of this Public Authority | : | Shri T D Prashanth Rao
Under Secretary (AG-I)
D(AG)
for DDG MT (RTI)
RTI Cell, G-6, D-1 Wing, Sena Bhawan
IHQ of MoD (Army)
New Delhi- 110 011 |
| 4) Name and address of the officer who gave a final reply to the RTI application | : | Shri ADS Jasrotia
Lt. Col
GSO-1 (RTI)
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) Particulars of the RTI application- | | |
| 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.

6) Particulars of the order(s) including number, if any against which the appeal is preferred : Communication No. A/810027/RTI/OF_44712 dated 16/04/2018 issued by the Officer mentioned at para #4 above.

7) Brief facts leading to the appeal :

6.1) On 12/02/2018 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):

"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."

6.2) On 22/02/2018, the CPIO, Ministry of Defence, one Shri B. Senapati, Under Secretary to the Government of India transferred the instant RTI application under Section 6(3) of the RTI Act, to the CPIO specified at para #3 above. As this transfer is not germane to this first appeal, a copy of the communication received from the Shri B. Senapati, CPIO is not annexed to this appeal.

6.3) Further, on 26/02/2018, the CPIO specified at para #3 above, transferred the instant RTI application to the CPIO of this Public Authority (Annexe 2).

6.4) Subsequently, on 01 March, 2018, one, Lt. Col Rajiv Guleria, GSO-1 (Appeal), purportedly acting for the CPIO of this Public Authority, sent this Appellant a communication dated 01 March, 2018 indicating *inter alia* allotment of Case number to the instant RTI application (Annexe 3).

6.5) Subsequently, on 28 March, 2018 one, Lt. Col Ram Naresh Sharma, GSO-1 (Legal) purportedly acting for the CPIO of this Public Authority sent an intimation to this Appellant that more time is likely to be taken to provide the information requested for, subject to availability of information with concerned agency (Annexe 4).

6.6) Subsequently, on 16 April, 2018, the Officer specified at para #4 above, sent a communication of number and date specified at para #6 above, stating as follows:

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

6.7) 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) 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) Grounds for the prayer or relief :

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 uthority 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.**

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:

(Venkatesh Nayak)

Tele : 011-23019585

RTI Cell, Addl DG MT (AE)
G-6, D-1 Wing
Sena Bhawan, Gate No-4
IHQ of MoD (Army)
New Delhi -110011

A/810027/RTI/24445/(Appeal)

27 Aug 2018

Under Secretary CPIO
Ministry of MoD (D/RTI)
Room No 4
South Block, New Delhi -11

COMPLIANCE OF ORDER OF FIRST APPELLATE AUTHORITY
SHRI VENKATESH NAYAK

1. An RTI application dated 12 Feb 2018 and first appeal dated 07 May 2016 preferred by above named appellant (**copies enclosed**) and First Appellate Authority speaking order No B/87008/AG/PM/RTI-4331 dated 22 Jun 2018 (**copy enclosed**).
2. It is intimated that the application was earlier processed with DV Coord (HR Cell), IHQ of MoD (Army), who have in turn vide their Note No C/17732/6/RTI/AG/Gen/HRC dated 19 Jul 2018 (**copy enclosed**), have informed that information sought by the appellant pertains to/is more closely related to the functions of your office/office under your jurisdiction, the application therefore, transferred to you under the provisions of **sub-section 6(3)** of Right to information Act 2005. You are requested to provide information directly to the applicant and dispose off the application.
3. While forwarding info/denial of info to the applicant, address of the First Appellate Authority must be specified/ mentioned so that applicant is able to prefer an appeal, if he/she wishes to do so.



Encls : As above.

(Kamal Kapoor)
Maj
GSO1 (Legal)
for Brig MT (RTI)

Copy to :-

AG/PM Office

- For info wrt your Note No B/87008/AG/PM/RTI-4331 dt 22 Jun 18.

Shri Venkatesh Nayak
55A, 3rd Floor
Siddharth Chambers-1
Kalu Sarai, New Delhi
PIN-110016

Your ibid RTI application has been transferred to above addresses under section 6 (3) of Right to information Act 2005. You are therefore, requested to correspond with them directly with respect to query of your ibid RTI application.

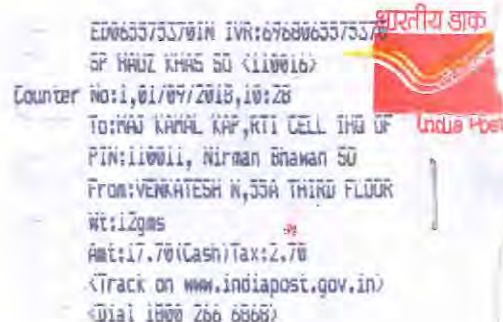
WITHOUT PREJUDICE

Date: 31/08/2018

No. RTI/GoI/MoD/2018/1

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

To,
Maj. Kamal Kapoor
GSO1 (Legal)
for Brig MT (RTI)
RTI Cell
Addl DG MT (AE)
G-6, D-1, Gate No.-4
IHQ of MoD (Army)
New Delhi- 110 011



Dear sir,

Sub: Response to your communication of number and date cited immediately below

Ref: Your communication of No. A/810027/RTI/24445/(Appeal) dated 27/08/2018 addressed to the CPIO-cum-Under Secretary, Ministry of MoD (D/RTI), South Block, New Delhi

I have received a copy of your communication of number and date referenced above, in relation to my RTI application of number captioned at the top of this letter and dated 12/02/2018.

Without prejudice to the prayers and grounds mentioned in my second appeal submitted to the Hon'ble Central Information Commission on 24/08/2018 in relation to the aforementioned RTI application, whose copy has already been served on your public authority by Speed Post, earlier this month, and while reserving my right to amend, alter or add to any of the said prayers and grounds at a future date as and when I deem it appropriate and necessary, I would like to respond to your communication of number and date referenced above in the following manner:

- 1) I have not yet received any order from your First Appellate Authority whose number and date are mentioned in your communication of number and date referenced above. Kindly arrange to send the same to me forthwith;
- 2) At para #2 of your communication of number and date referenced above, you have intimated as follows:

"2. It is intimated that the application was earlier processed with DV Coord (HR Cell), IHQ of MoD (Army), who have in turn vide their Note No C/17732/6/RTI/AG/Gen/HRC dated 19 July 2018 (**copy enclosed**), have informed that information sought by the appellant pertains to/is more closely related to the functions of your office/office under your jurisdiction, the application, therefore, transferred to you under the provisions of **sub-section 6(3)** of Right to

Information Act, 2005. You are requested to provide information directly to the applicant and dispose off the application" (emphasis as in the original).

- 3) Without contesting anything contained in the said para #2 of your communication, for the time being and while reserving my right to seek appropriate remedy(ies) from the appropriate forum, when and if necessary, at a later date, I am requesting you to kindly furnish me a copy of the Note of number and date captioned at para #2 of your communication referenced above, forthwith.

Thanking you,
Yours sincerely,

S. S. Venkatesh Nayak
Venkatesh Nayak 31/8/18

Tele No : 23019585

RTI Cell, ADG MT AE
Room No G-6, D 1 Wing
Sena Bhawan Gate No-4
IHQ of MoD (Army)
New Delhi – 110 011

A/810027/RTI/OF-44712 (Appeal)

07 Sep 2018

Shri Venkatesh Nayak
55A, 3rd Floor
Siddharth Chambers-1
Kalu Sarai, New Delhi-110016

RIGHT TO INFORMATION ACT 2005
SHRI VENKATESH NAYAK

1. Ref your letter No RTI/Gol/MoD/2018/1 dated 31 Aug 2018.
2. A copy of Additional Directorate General Discipline & Vigilance (Human Rights Cell) Note No C/17732/6/RTI/AG/Gen/HRC dated 19 Jul 2018 is enclosed herewith as desired please.



(Kamal Kapoor)
Maj
GSO 1 (Legal)
for Brig MT (RTI) & CPIO

Encls: As above.

Tele : 35123


C/17732/6/RTI/AG/Gen/HRC

19 Jul 2018

ADDITIONAL DIRECTORATE GENERAL DISCIPLINE & VIGILANCE
(HUMAN RIGHTS CELL)

COMPLIANCE OF ORDER OF FIRST APPELLATE AUTHORITY
SHRI VENKATESH NAYAK

1. Ref RTI Cell Note No A/810027/RTI/OF-44712-4331 (Appeal) dt 06 Jul 2018.
2. As per Para 7 of the Armed Forces Special Power Act 1990, "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".
3. Therefore, a suitable reply on the subject may be sought from Central Govt/MoD.


(Vishal Kumar Singh)
Lt Col
AAG

✓ DV-1 (P)