

Before the Central Information Commission

2nd Floor, 'B' Wing, August Kranti Bhawan, Bhikaiji Cama Place, New Delhi- 110 066

Appeal submitted under Section 19(3) of *The Right to Information Act, 2005*

In the matter of

Venkatesh Nayak

VS

Indian Army

Date of submission: 26/09/2015

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Appeal submitted under Section 19(3) of *The Right to Information Act, 2005*

Date: 26/09/2015

- 1) Name and address of the Appellant** : Venkatesh Nayak
#55A, 3rd Floor
Siddharth Chambers-1
Kalu Sarai
New Delhi-110016
- 2) Name and address of the Public Information Officer to whom the Application was addressed** : The Central Public Information Officer cum
Additional Directorate General of Army
Education
RTI Cell, G-6, D-1 Wing, Sena Bhawan
Integrated Headquarter of MoD (Army)
New Delhi- 110 011
- 3) Name and address of the Public Information Officer who gave reply to the Application** : **1)** Shri Prashant Saxena
Lt Col
GSO-1 (RTI)
for DDG MT (RTI)
G-6, D-1 Wing
Sena Bhawan
IHQ of MoD (Army)
New Delhi- 110 011
- 2)** Shri Rajiv Guleria
Lt Col
GSO-1 (Appeal)
For CPIO of Indian Army
Sena Bhawan
IHQ of MoD (Army)
New Delhi- 110 011
- 4) Name and address of the First Appellate Authority to whom the first appeal was submitted** : The First Appellate Authority and
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 decided the first appeal** : Shri V D Dogra
FAA and Major General
Provost Marshal's and Appellate Authority Office
Adjutant General's Branch
Integrated HQs of MoD (Army)
Room No. 423A, Sena Bhawan B Wing
New Delhi- 110 011
- 6) Particulars of the RTI application** :
- a) Date of submission of the RTI application** : 27/01/2015
- b) Date of payment of additional fee (if any)** : Not applicable
- 7) Particulars of the order(s) including number, if any against which the appeal is preferred** :
- 1)** Decision issued by the CPIO, Indian Army of A/810027/RTI/19893 dated 11/03/2015
- 2)** Decision issued by the FAA in Case No. B-87008/AG/PM/RTI-3366 dated 19/06/2015
- 8) Brief facts leading to the appeal** :
- 8.1)** On 27/01/2015 this Appellant despatched by Speed Post a request for information to the CPIO mentioned at para #2 above, along with the prescribed application fee, stating as follows (**Annexe 1/colly**):
- I would like to obtain the following information from your public authority:
- 1) A clear photocopy of the entire text of the findings of the Court Martial in relation to the conviction of five Army Personnel for the killings committed at Macchil, Jammu and Kashmir in the year 2010 as reported in the attached news clipping;
 - 2) A clear photocopy of the chargesheet filed before the said Court Martial in relation to the case mentioned above at para #1 along with Annexures, if any;
 - 3) A clear photocopy of the sentence awarded to the convicted Army Personnel by the said Court Martial;
 - 4) A clear photocopy of the communication along with Annexures, if any, sent to the concerned confirming officer/confirming authority in relation to the said case as per the relevant Rules under the *Indian Army Rules, 1954*;

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

8.2) On 19/02/2015, this Appellant received a reply dated 11/02/2015 from the officer referred to at para #3(1) above stating as follows (**Annexe 2**):

"1. Your RTI application dated 27 Jan 2015, received at this office on 03 Feb 2015 and the same is under process at this Headquarters.

2. To know status of your application in future your case No. is **19893**."

8.3) Subsequently on 25/03/2015, more than 40 days after the receipt of the said RTI application by the Respondent Public Authority, this Appellant received a reply from the officer mentioned at para # 3.2 above stating as follows: (**Annexe 3**):

"1. Further to this office letter No. A/810027/RTI/19893 dated 11 Feb. 2015.

2. Information as available with concerned agency of this Headquarters and permissible under RTI Act 2005 is given as under:-

a) **Information on Para 1 to 5.** Information sought is exempted from disclosure under **Section 8(1)(h)** of RTI Act 2005.

3. This disposes off your RTI application dated 27 Jan 2015."

The said officer also provided the designation and contact details of the First Appellate Authority at the end of this communication.

8.4) Subsequently, on 2/04/2015, this Appellant submitted a first appeal under Section 19(1) of the RTI Act to the designated First Appellate Authority, praying as follows supported by detailed grounds for the prayers and relief sought: (**Annexe 4**):

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

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

8.5) Further, on 28/06/2015 this Appellant received the order of the designated First Appellate Authority (FAA) specified at para #5 above, dated 19/06/2015. In his order the said FAA, after reciting the contents of the instant RTI application, stated as follows (**Annexe 5**):

"2. AND WHEREAS DDG, RTI, the CPIO at Integrated Headquarters of MoD (Army) vide their letter No. A/8/10027/RTI/19893 dated 11 March 2015 had provisioned the appropriate reply.

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

4. AND NOW THEREFORE, after having perused all the records and after hearing views of the nodal officer, I find that requisite information has been correctly denied under Section 8(1)(h) of RTI Act by CPIO vide their letter No A//8/10027/RTI/19893 dated 11 Mar 2015. I, therefore, uphold the decision of the CPIO.

5. The appeal is therefore disposed off accordingly."

In effect the FAA concurred with the decision of the CPIO resulting in complete denial of access to all information sought in the said RTI application by the Respondent Public Authority.

9) Prayers or relief sought :

This Appellant humbly prays that this Hon'ble Commission be pleased to:

- 1) admit this second appeal against the Respondent Public Authority for reasons explained below at para #10 and hold an inquiry into the matters raised herein;**
- 2) direct the CPIO of the Respondent Public Authority to disclose all the information sought in the instant RTI application, free of charge, as is this Appellant's right under Section 7(6) of the RTI Act;**
- 3) in its decision, require the Respondent Public Authority to regularly disclose all information that is in the nature of information sought in the said RTI application in future, as a rule;**
- 4) that this Appellant be provided an opportunity to attend any hearing scheduled in relation to this second appeal by this Hon'ble Commission; and**
- 5) that this Appellant be provided sufficient advance notice of any and all hearings that this Hon'ble Commission may conduct in relation this second appeal so as to enable him to represent his case adequately.**

10) Grounds for the prayer or relief :

10.1) According to Section 19(3) of the RTI Act, a second appeal against a First Appellate Authority's decision lies with the Central Information Commission within ninety days from the date on which the decision should have been made or was actually received. This second appeal is being filed within the ninety-day deadline stipulated in Section 19(3) of the RTI Act on the grounds specified below:

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

"7. Section 4 of the Act obliges every public authority to publish inter alia the particulars of facilities available to citizens for obtaining information and the names, designations and other particulars of the PIOs. Section 5 requires the public authorities to designate PIO to provide information to persons requesting for information under the Act. Such PIOs, under Section 5(2) of the Act are to receive applications for information and under Section 5(3) of the Act are to deal with request from persons seeking information and render reasonable assistance to the information seekers... Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he has sought information, the PIO is expected to recommend a remedial action to be taken. The RTI Act makes the PIO the pivot for enforcing the implementation of the Act.

8. Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO... The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates... [emphasis supplied]

The reply received from the Officer named at para #3(2) above is purported to have been made at the instance of the designated CPIO rather than issued by the CPIO himself. The designation of the CPIO as provided on the website of your public authority does not match with the designation of the Officer mentioned at para #3(2) above. Nothing in the RTI Act permits a CPIO to delegate his authority to any other officer for the purpose of making a decision on an RTI application. Therefore this Appellant believes that the Officer mentioned at para #3(2) above had no jurisdiction under the RTI Act to make a decision on the RTI application that is the subject matter of this first

appeal. As the reply sent to this Appellant is without jurisdiction, it deserves to be set aside."

However the FAA specified at para #5 above did not proceed to examine the validity of this objection raised by this Appellant in relation to the manner in which the RTI application was disposed of. Instead he has chosen to ignore the first plea made on technical grounds about the lack of competence of the officer specified at para #3.2 above to make a decision on the said RTI application. This omission indicates a lack of due application of mind by the said FAA who is a very senior officer of the Respondent Public Authority. Therefore his decision deserves to be set aside. **Hence the submission of this second appeal before this Hon'ble Commission.**

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

"8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

X X X

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;"

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

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

"13. ... It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must

show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information.” [emphasis supplied]

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

10.4) Nothing in the order of the FAA specified at para #5 above, indicates that he has given due consideration to the ground of appeal narrated above. He has mechanically reiterated the decision of the CPIO to reject the request without reasoning how Section 8(1)(h) is applicable to the information sought in the instant RTI application. His decision also smacks ignorance of the pronouncements of the Delhi High Court in relation to the interpretation of Section 8(1)(h) of the RTI Act. Illustratively, in the matter of ***Adesh Kumar vs Union of India & Ors., WP (C) No. 3543/2014, judgement dated 16/12/2014 the Hon’ble Delhi High Court*** was pleased to interpret the applicability of Section 8(1)(h) to information sought by a requestor under the RTI Act, as follows:

“6. A plain reading of the aforesaid provision [Section 8(1)(h)] 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...

10. 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.” [emphasis supplied]

10.5) More recently, in the matter of ***Union of India vs O. P. Nahar, WP(C) 3616/2012, judgement dated 22/04/2015, the Hon’ble Delhi High Court*** was pleased to reiterate its interpretation of Section 8(1)(h) of the RTI Act, as follows:

"13. 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 or prosecution of the offenders.

14. In the present case, the facts, as set out hereinabove, clearly demonstrate that the investigation is over. The charge sheet in the case was filed, as far back as on 31.12.2010.

14.1 The question then is, would the information sought for by the respondent "impede" the respondent's apprehension or prosecution. The respondent is in court and he says that he has been granted bail by the competent court. Therefore, prima faice, [sic] the view of the competent court, which is trying him, is that there is no impediment in apprehending the respondent, and that he would be available as and when required by the court. The petition makes no averments as to how the information sought for by the respondent would prevent his prosecution."
[emphasis supplied]

10.6) The FAA specified at para #5 above being a very senior officer of the Respondent Public Authority is expected to be aware of the latest jurisprudential developments in order to discharge his appointed duties under the RTI Act in a judicious manner. However, despite this Appellant pointing out in his first appeal the existence of case law as to how Section 8(1)(h) must be interpreted, he has proceeded to uphold the decision of the CPIO to reject the request in a cavalier manner. Nothing in the decision of the said FAA indicates that he has adequately applied his mind to the issues raised in the first appeal. Therefore his decision to uphold the rejection order issued by the CPIO is bad in law and deserves to be set aside. **Hence the submission of this second appeal before this Hon'ble Commission.**

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

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

Further, in the matter of *Lajinder Singh v Archaeological Survey of India*, (F.No.PBA/06/504, decision dated 24/05/2007) the Hon'ble Central Information

Commission has held that the PIO performs a quasi-judicial role and has to pass a speaking order while denying access to information.

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

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

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

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

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

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

10.8) Nothing in the order of the FAA specified at para #5 above, indicates that he has given due consideration to this ground of appeal. He has mechanically reiterated the decision of the CPIO to reject the request without reasoning how Section 8(1)(h) is applicable to the information sought in the instant RTI application. In the matter of ***Central Board of Secondary Education & Anr. Vs Aditya Bandopadhyay & Ors., Civil Appeal No. 6454 of 2011, judgement dated 9/8/2011, the Hon'ble Supreme Court*** was pleased to explain the nature of the exemptions listed in Section 8 of the RTI Act as follows:

"33. Some High Courts have held that section 8 of the RTI Act is in the nature of an exception to section 3 which empowers the citizens with the right to information, which is a derivative from the freedom of speech and that therefore section 8 should be construed strictly, literally and narrowly. This may not be the correct approach. The Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy. Therefore when section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals." [emphasis supplied]

Further, in the matter of ***The Institute of Chartered Accountants of India vs Shaunak H Satya & Ors., Civil Appeal No. 7151 of 2011, judgement dated 02/09/2011, the Hon'ble Supreme Court*** was pleased to reiterate its position in the following words:

"18. ... Therefore when section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals. Therefore in dealing with information not falling under section 4(1)(b) and (c), the competent authorities under the RTI Act will not read the exemptions in section 8 in a restrictive manner but in a practical manner so that the other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding other public interests". [emphasis supplied]

Ignoring the well-established jurisprudence about the manner in which the exemptions listed under Section 8(1) should be interpreted, the FAA specified at para #5 above has proceeded to uphold the rejection order of the CPIO by looking upon Section 8(1)(h) as if it were a fetter on the right to information. Nothing in his order indicates that the said FAA even explored the possibility of disclosing the information requested in the instant RTI application in the larger public interest under Section 8(2) of the RTI Act. Section 8(2) of the RTI Act permits the disclosure of even exempt information including those which attract Section 8(1)(h), if the larger public interest in disclosure outweighs the harm to the protected interests. The news clipping attached to the instant RTI application by this Appellant was indicative of the enormous public interest generated by the media reporting on the affairs relating to Macchil and Pathribal incidents. However instead of examining the possibility of ordering disclosure of the requested information under Section 8(2) of the RTI Act, as the issue has become the subject of widespread public debate and discussion, the said FAA has mechanically upheld the decision of the CPIO to reject the request. Therefore his decision to uphold the rejection order issued by the CPIO is bad in law and deserves to be set aside. ***Hence the submission of this second appeal before this Hon'ble Commission.***

10.9) Further the FAA specified at para #5 above has stated at para #3 of his decision that he heard the views of the nodal officer prior to arriving at his decision on this Appellant's first

appeal. Nothing in the FAAQ's order indicates whether the unnamed nodal officer is the CPIO or another officer of the Respondent Public Authority who is the custodian of the information sought in the instant RTI application. Further, the said FAA has denied this Appellant an opportunity of being heard while hearing the views of the unnamed nodal officer prior to arriving at his decision on the said first appeal. This Appellant was not afforded an opportunity to rebut the arguments made by the unnamed nodal officer who is said to have pressed for maintaining secrecy of the information sought in the instant RTI application. This amounts to a violation of an important principle of natural justice namely, *audi alteram partem*. Being the seeker of the information in the instant RTI application, this Appellant has the right to be heard prior to taking any decision on the first appeal by the FAA specified at para #5 above. However the said FAA did not even issue notice of hearing to this Appellant and instead proceeded to decide the first appeal without the benefit of the counter arguments that this Appellant could have put forth during such a hearing in favour of disclosure in public interest of the information sought in the instant RTI application. Due to this omission the decision of the FAA has become bad in both law and procedure and deserves to be set aside. **Hence the submission of this second appeal before this Hon'ble Commission.**

10.10) Further, media reports indicate that a Court Martial has recently upheld the award of life imprisonment to officers and personnel of the Respondent Public Authority in the Macchil fake encounter case (**Annexe 6**). Under the current circumstances, there is no investigation, or trial pending in the said case. As a result this Appellant firmly believes, Section 8(1)(h) of the RTI Act cannot be invoked to deny access to the information sought in the instant RTI application as none of the processes mentioned in that clause are underway to be adversely affected by disclosure of the information. As pointed out earlier in this second appeal, in the Pathribal matter, the Respondent Authority has decided not to proceed with the court martial against the accused. So Section 8(1)(h) of the RTI Act does not apply to this information as well. Therefore all the information sought in the instant RTI application deserves to be disclosed under the RTI Act. **Hence the submission of this second appeal before this Hon'ble Commission.**

10.11) Further, nothing in *The Army Act, 1950* or *The Army Rules, 1954* as amended from time to time indicate that the proceedings of Courts Martial or Courts of Inquiry shall be held *in camera* as a rule. Much like the proceedings in other criminal cases, these proceedings are public proceedings. Given the public nature of these proceedings there is simply no justification for treating the records of such proceedings as confidential. The FAA specified at para #5 above has not adequately applied his mind to this aspect of the procedures of Courts Martial and Courts of Inquiry while arriving at his decision on the said first appeal. Therefore his decision deserves to be set aside on grounds of non-application of mind. **Hence the submission of this second appeal before this Hon'ble Commission.**

10.12) Further, this Hon'ble Commission has the power under Section 19(8)(a)(iii) of the Act, to require the Respondent Public Authority to publish all information that it is required to publish proactively, under Section 4(1)(c) of the RTI Act. Section 4(1)(c) requires every

public authority to voluntarily place all significant facts relating to important decisions taken by it in the public domain. The records sought in the instant RTI application in relation to the Macchil and Pathribal incidents are in the nature of information that is fit to be disclosed under Section 4(1)(c) of the RTI Act. There ought to be no need for citizens to formally seek such information under Section 6 of the RTI Act. Therefore this Appellant has sought a direction from this Hon'ble Commission to the Respondent Public Authority to disclose all records relating to Courts Martial and Court of Inquiry Procedures proactively after the completion of the respective processes. ***Hence the submission of this second appeal before this Hon'ble Commission.***

10.13) Further, security and intelligence organisations exempt from the ordinary obligations of transparency under Section 24 of the RTI Act are nevertheless required to furnish information about allegations of human rights violations or corruption as the case may be. This is the high standard of transparency that Parliament has stipulated even for security and intelligence organisations to observe. There is no reason why such high standards must be lowered in the case of the Respondent Public Authority. The information sought in relation to the incidents at Macchil and Pathribal undoubtedly fall within the category of "allegations of human rights violation". Therefore the Respondent Public Authority has a duty to make all information about such matters transparent whether or not the allegations are proven to be true. Nothing in Section 8(1) of the RTI Act permits secrecy for information relating to allegations of human rights violations. No sane democracy will make the effort to brush incidents of allegations of human rights violations under the carpet. Given the fact that both Macchil and Pathribal incidents have become the subject of intense public debate and discussion time and again, there is no reason why the Respondent Public Authority must not provide all access to all facts and figures relating to these incidents to the general public on its own or upon receiving a formal request like the instant RTI application. The enormous public interest involved in both cases and one of the solemn objectives of the RTI Act as spelt out in its preamble, namely, "to hold Governments and their instrumentalities accountable to the governed" both support this Appellant's contention that the information sought in the instant RTI application must be made public. The said FAA has not adequately applied his mind to these issues and instead proceeded to decide the first appeal in a cavalier manner. This Appellant is aggrieved by this non-application of mind by the said FAA. ***Hence the submission of this second appeal before this Hon'ble Commission.***

10.14) Further, this Appellant prays that he be provided sufficient advance notice of any and all hearings that this Hon'ble Commission may hold while inquiring into this second appeal so as to enable him to participate in such proceedings in a well-prepared manner.

10.15) Further this Appellant would like to point out that the communication of rejection of the instant RTI application was despatched well beyond the 30-day deadline stipulated in Section 7(1) of the RTI Act. According to Section 7(6) of the RTI Act, an RTI applicant has the right to get the information free of charge if the PIO fails to furnish the same within the statutory deadline of 30 days. Should this Hon'ble Commission decide that all or any of the information sought in the said RTI application is fit for disclosure, the benefit of Section 7(6) must also be given to this Appellant. ***Hence the prayer to this Hon'ble Commission for***

a direction to the Respondent Public Authority to disclose all the information free of charge.

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 the Respondent Public Authority.

Signature of the Appellant:

(Venkatesh Nayak)