

Before the Designated First Appellate Authority
Dept. of Justice, Ministry of Law and Justice, Government of India
Jaisalmer House, #26, Man Singh Road, New Delhi – 110 011

Appeal submitted under Section 19(1) r/w Section 5(2) of

The Right to Information Act, 2005

through the Central Assistant Public Information Officer

In the matter of

Venkatesh Nayak

VS

CPIO & Under Secretary (D-I)

&

CPIO & Under Secretary (D-II)

Date of submission: 04/06/2018

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PIN:110001, New Delhi GPO
From:VENKATESH NAYAK,55A 3 FLOOR
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S. S. Venkatesh Nayak

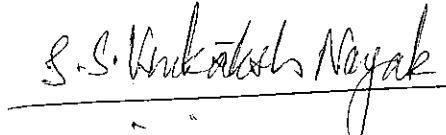
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Appeal submitted under Section 19(1) r/w Section 5(2) of
The Right to Information Act, 2005

through the Central Assistant Public Information Officer

Date: 04/06/2018

- 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 application was addressed** : The Central Public Information Officer
Department of Justice
Ministry of Law and Justice
Government of India
Jaisalmer House
#26, Man Singh Road
New Delhi- 110 011
- 3) Name and address of the CAPIO who gave a reply to the RTI application** : Shri Sandipan Ghosh
CAPIO and Section Officer
Department of Justice
Ministry of Law and Justice
Government of India
Jaisalmer House
#26, Man Singh Road
New Delhi- 110 011
- 4) Name and address of the CPIOs who ought to have replied to the RTI application** : **1)** Shri K. C. Thang
Under Secretary & CPIO (D-I)
Department of Justice
Ministry of Law and Justice
Government of India
Jaisalmer House
New Delhi- 110 001


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2) Shri S. Vijay Gopal
Under Secretary & CPIO (D-II)
Department of Justice
Ministry of Law and Justice
Government of India
Jaisalmer House
New Delhi- 110 001

5) Particulars of the RTI application-

- a) **No. and date of submission of the RTI application** : No. RTI/GoI/DoJ /2018/1 dated 03/03/2018
- 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** : no substantial reply till date

7) Brief facts leading to the appeal :

7.1) On 03/03/2018 this Appellant despatched by Speed Post a request for information along with the prescribed application fee, to the CPIO mentioned at para #2 above, stating as follows (**Annexe 1**):

"Apropos of the Unstarred Question No. 2187 replied by the Hon'ble Minister of State for Law and Justice and Corporate Affairs, on 05/01/2018, in the Rajya Sabha (copy enclosed) I would like to obtain from your public authority the following information under the RTI Act:

- 1) A clear photocopy of the request sent by the Government of India to Chief Justices of High Courts for ensuring due consideration to be given to suitable candidates belonging to SCs, STs, OBCs, Minorities and Women while sending proposals for appointment as Judges of those High Courts;
- 2) A clear photocopy of all replies received from Chief Justices, if any, till date, relating to the request mentioned at para #1 above;
- 3) A clear photocopy of all official records that contain the procedure or mechanism that has been put in place for ascertaining that Chief Justices of High Courts are giving due consideration to suitable candidates from the communities mentioned at para #1 above; and
- 4) The High Court-wise total number of suitable candidates for appointment as judges received from the Chief Justices of the High Courts of Karnataka, Bombay, Madras, Calcutta and Allahabad since 01 April, 2014, till date, as per

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the Memorandum of Procedure for appointment of Judges of High Courts published on your website; and

- 5) A clear photocopy of the proposals of suitable candidates for appointment as High Court judges received from the Chief Justices of the High Courts mentioned at para #4 above since 01 April, 2014, till date."

7.2) On 06/04/2018 this Appellant received a communication from the CAPIO mentioned at para #3 above, which indicated that the instant RTI application had been transferred to the two CPIOs of this Public Authority specified at para #4 above (**Annexe 2**).

7.3) This Appellant has not received any response subsequently from this Public Authority till date.

8) 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 CPIOs 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; and**
- 3) issue a warning memo to the said CPIOs to act with due diligence while disposing RTI applications in future.**

9) Grounds for the prayer or relief :

9.1) According to section 19(1) of the RTI Act, any person who does not receive a decision from the CPIO of a public authority to which an information request has been submitted, within the time limit specified under Section 7(1) of the Act, may prefer a first appeal to an officer, senior in rank to such CPIO, within 30 days of the date on which such decision ought to have been made. The instant RTI application was despatched via Speed Post to this Public Authority in 03/03/2018. Yet, inexplicably, the CAPIO specified at para #3 above has informed this Appellant that the said RTI application was received in this Department only on 26/03/2018 (**Annexe 2**). Be that as it may, the said CAPIO "transferred/forwarded" the instant RTI application to the two CPIOs of this Public Authority mentioned at para #4 above on 29/03/2018 (although the date is erroneously recorded as 29/03/2017 on the CAPIO's letter) under Section 6(3)(ii) of the RTI Act. This Appellant received a copy of the said letter of the CAPIO on 06/04/2018. The two CPIOs ought to have made a decision on the instant RTI application latest by 05/5/2018 on which date the 30-day deadline mentioned in Section 7(1) of the RTI Act lapsed. **However no reply has been received from the CPIOs specified at para #4 above, till date.**

Almost 60 days have lapsed since the forwarding of the instant RTI application to the CPIOs specified at para #4 above. No reply has been forthcoming from the said CPIOs till date.

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This Appellant is not prepared to wait any longer for this information and intends to invoke the appellate jurisdiction of this Respondent Public Authority under Section 19(1) of the RTI Act. The delay in submission of this first appeal is only one day because the last day of the deadline for submission of this first appeal was 03/06/2018 which happened to be a Sunday. So this appeal is being submitted on the next working day as per Section 10 of the *General Clauses Act, 1897*. **Therefore this first appeal may please be admitted for inquiry and action.**

9.2) Further, under Section 5(2) of the RTI Act, a CAPIO has been appointed by this Public Authority for the purpose of carrying out specific tasks mentioned in the Act. One of those tasks is to receive first appeals under the Act from aggrieved citizens and forward them to the officer senior in rank to the CPIO. Nothing in the communication received from the CAPIO of this Public Authority indicates the name and contact details of the First Appellate Authority to whom a first appeal may be submitted against the inaction of the CPIOs specified at para #4 above. Further, despite browsing the official website of this Public Authority, this Appellant could not find the name and contact details of the relevant First Appellate Authority. **Therefore this Appellant is exercising his right to submit this first appeal through the CAPIO of this Public Authority under Section 5(2) of the RTI Act.**

9.3) Further, according to Section 7(1) of the RTI Act, upon receiving an RTI application under the RTI Act, a CPIO of a public authority has only two courses of action, namely, either supply the information on payment of the additional fee at the prescribed rates or reject the request for any of the reasons specified in Sections 8 and 9 of the RTI Act. Further, under Section 7(2) of the RTI Act, if a CPIO fails to reply to an RTI application within the stipulated time it shall be deemed that the request for information has been refused. More than 30 days have lapsed since the forwarding of this Appellant's RTI application to the CPIOs specified at para #4 above. This Appellant has not received any communication from the said CPIOs. Therefore it shall be deemed that the instant RTI application has been rejected by them. This is also a valid ground for submitting a first appeal under Section 19(1) of the RTI Act. **Hence the submission of this first appeal to this Hon'ble First Appellate Authority through the CAPIO under Section 5(2) of the RTI Act**

9.4) Further, under Section 7(6) of the RTI Act, access to information must be provided to a citizen free of charge if it is supplied beyond the statutory deadline of 30 days. This Appellant has already conclusively shown above that the CPIOs specified at para #4 above have simply not bothered to send any reply to the instant RTI application despite the lapse of the statutory deadline. **Hence the submission of this first appeal to this Hon'ble Appellate Authority with a prayer for disclosure of all information requested in the instant RTI application free of charge.**

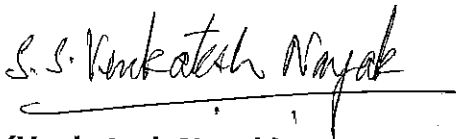
9.5) Further, the CPIO being statutory authorities designated under the RTI Act ought to have at least sent a communication to this Appellant about any possible delay in the disposal of the instant RTI application. They have not elected such a course of action till date. Therefore, this Hon'ble Appellate Authority being senior in rank to the said CPIOs has the

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powers to issue an official memorandum requiring the said CPIOs to perform their appointed functions and tasks under the RTI Act with due diligence. There seems to be no probable cause for remaining silent on an RTI application endlessly given the statutory requirement of sending a reply to the information requestor within 30 days of receipt of an RTI application. ***Hence the submission of this first appeal to this Hon'ble Appellate Authority.***

10) 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)