

# Before the Central Information Commission

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

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

In the matter of

***Venkatesh Nayak***

vs

***The Central Public Information Officer & Under Secretary (D-I)***

&

***The Central Public Information Officer & Under Secretary (D-II)***

&

***The First Appellate Authority***

***Department of Justice, Government of India***

Date of submission: 29/08/2018

## **Index of Contents**

<b>No.</b>	<b>Item</b>	<b>Page</b>
1.	Letter of second appeal submitted under Section 19(3) of the RTI Act	2-8
2.	<b>Annexe 1:</b> Self-attested copy of the RTI application dated 03/03/2018 along with Annexure	9-12
3.	<b>Annexe 2:</b> Self-attested copy of the communication received from the CAPIO dated 20/03/2018	13
4.	<b>Annexe 3:</b> Self-attested copy of the first appeal submitted on 04/06/2018	14-19

*S. S. Venkatesh Nayak*

# Before the Central Information Commission

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

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

Date: 29/08/2018

- 1) Name and contact details of the Appellant** : Venkatesh Nayak  
#55A, 3<sup>rd</sup> 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  
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 officer who gave reply to the RTI application** : Shri Sandipan Ghosh  
Section Officer & CAPIO  
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
- 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

S.S. Venkatesh Nayak

**5) Name and address of the First Appellate Authority to whom the First Appeal was submitted** : The First Appellate Authority  
Department of Justice  
Ministry of Law and Justice  
Government of India  
Jaisalmer House  
#26, Man Singh Road  
New Delhi- 110 011

**6) Particulars of the RTI application and appeals :**

- 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
- c) Date of the CPIO's reply : NIL
- d) Date of submission of the first appeal : 04/06/2018
- g) Date of the FAA's order : NIL

**7) Particulars of the order(s) including number, if any against which the appeal is preferred** : No decision provided till date

**8) Brief facts leading to the appeal :**

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

"Apropos of the 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;

S.S. Venkatesh Nayak

- 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 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."

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

**8.3)** After waiting in vain for almost 60 days for a reply from the CPIO of the Respondent Public Authority, on 04/06/2018, this Appellant despatched a first appeal to the First Appellate Authority mentioned at **para #5** above, through the CPIO of the Respondent Public Authority with the following prayers (**Annexe 3**):

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

- 1) admit this appeal and inquire into the matters raised herein; and
- 2) direct the CPIOs to disclose all information specified 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.

**8.4)** In support of the aforementioned prayers, this Appellant adduced the following grounds to his appeal:

**"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 CPIO 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 CPIO "transferred/forwarded" the instant

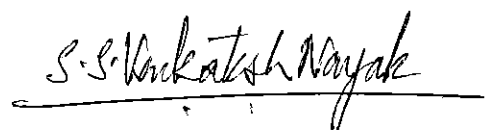
S.S. Venkatesh Nayak

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. 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.**

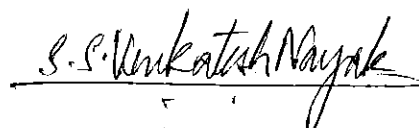
**9.5)** Further, the CPIO being statutory authorities designated under the RTI Act ought to have at least sent a communication to this Appellant about any possible delay in the disposal of the instant RTI application. They have not elected such a course of action till date. Therefore, this Hon'ble Appellate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

**8.5)** This Appellant has not received any response from the Respondent Public Authority till date.

**9) Prayers or relief sought**

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

- 1) admit this appeal and inquire into the matters averred to and canvassed herein;**
- 2) direct the concerned CPIOs of the Respondent Public Authority to disclose all the information sought in the instant RTI application, free of charge as provided for in Section 7(6) of the RTI Act;**
- 3) initiate proceedings under Section 20 of the RTI Act against the CPIOs of the Respondent Public Authority for failing to provide any reply to the instant RTI application without reasonable cause;**
- 4) issue appropriate directions to the Respondent Public Authority under Section 19(8)(a)(v) of the RTI Act to require their FAA and the CPIOs to undergo training in the procedures and practices under the RTI Act at a reputable training institution such as the Institute of Secretariat Training and Management, New Delhi, without delay; and**



5) pass any other order or recommendation that this Hon'ble Commission may deem appropriate in this matter.

**10) Grounds for the prayer or relief :**

**10.1)** According to Section 19(3) of the RTI Act, a second appeal against the decision under sub-Section (1) of Section 19 shall be preferred before this Hon'ble Commission within ninety days of the date on which such decision should have been made or was actually received. This Appellant has not received any decision from the First Appellate Authority (FAA) of the Respondent Public Authority, till date. The outer limit of 45 days stipulated in Section 19(6) of the RTI Act for the said FAA to give a decision on the first appeal was breached on 19/07/2018. This second appeal is being submitted on the 41<sup>st</sup> day on which the deadline for the FAA of the Respondent Public Authority to give a decision on the first appeal lapsed. In the absence of a decision from the said FAA, this Appellant firmly believes that he is entitled to prefer a second appeal before this Hon'ble Commission. As stated above already, this appeal is being submitted well within the time limit of ninety days stipulated in Section 19(3) of the RTI Act on the grounds stated below:

**10.1.1)** While the CPIOs of the Respondent Public Authority did not bother to send any reply to the instant RTI application that stood forwarded to them by the CAPIO of the Respondent Public Authority, the FAA of the same Public Authority has also not deemed it fit to give any decision on the first appeal submitted by this Appellant. In fact this Appellant's efforts to seek information on a matter of enormous public interest, inspired by a set of questions raised in Parliament and answers provided by the Government of India, have been frustrated by the inaction of the said CPIOs and the FAA. **Hence the submission of this appeal before this Hon'ble Commission.**

**10.1.2)** 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 RTI applicant has a right to obtain all the information free of charge. It has already been shown conclusively above, that the Respondent Public Authority has not bothered to make any decision on the contents of the instant RTI application, except to forward it to the CPIOs mentioned at **para #4** above. In the event that this Hon'ble Commission is pleased to direct the disclosure of any or all of the information described in the instant RTI application, this Appellant believes that he has the right to receive all the information specified in the instant RTI application free of charge, under Section 7(6) of the RTI Act. **Hence the submission of this Appeal to this Hon'ble Commission.**

**10.1.3)** Further, according to Section 20 of the RTI Act, in the course of deciding an appeal preferred before it, if this Hon'ble Commission were to form an opinion that a CPIO has failed to furnish the information requested in an RTI application within the time limit stipulated under Section 7(1) of the RTI Act, without reasonable cause, then it may impose a penalty at the rate of Rs. 250 per day up to a maximum of Rs. 25,000 on such CPIO. As both CPIOs of the Respondent Public Authority, mentioned at **para #4** above have not bothered to send any response to the instant RTI application, this Appellant believes this is

S. S. Venkatesh Nayak

a fit case for initiating proceedings against them under Section 20 of the RTI Act. **Hence the submission of this appeal before this Hon'ble Commission.**

**10.1.4)** Further, as pointed out at **para #10.1** above, the FAA of the Respondent Public Authority, has not sent any decision on the first appeal submitted to him by this Appellant- despite the lapse of the statutory limit of 45 days. Even though there is no provision in the RTI Act for initiating penal action against an FAA for violating the provisions of the RTI Act, this Hon'ble Commission may nevertheless issue a direction under Section 19(8)(a)(v) of the RTI Act to the Respondent Public Authority to require its FAAs and CPIOs to undergo training on the procedures of the RTI Act. This Appellant urges this Hon'ble Commission to issue a direction to the Respondent Public Authority to send its CPIOs and FAA for in-depth training on the RTI procedures at a reputable training institution such as the Institute of Secretariat Training and Management, New Delhi. **Hence the submission of this Appeal before this Hon'ble Commission.**

**11) I hereby verify that the aforementioned facts are true to the best of my knowledge. I also declare that I have authenticated the Annexes to this appeal. I also affirm that I have transmitted a copy of this appeal along with Annexes to the Respondent Public Authority.**

**Signature of the Appellant:**

*S. S. Venkatesh Nayak*  
**(Venkatesh Nayak)** 29/8/18

ED063583301IN IVR:69680635833  
SP HAUZ KHAS SO <110016>  
Counter No:1,29/08/2018,14:38  
To:CPIO,DEPT OF JUSTICE  
PIN:110011, Nirman Bhawan SO  
From:VENKATESH N,35A THIRD FLOOR  
Wt:34gms  
Amt:29.50(Cash)Tax:4.50  
<Track on www.indiapost.gov.in>  
<Dial 1800 266 6868>



ED063583187IN IVR:696806358318  
SP HAUZ KHAS SO <110016>  
Counter No:1,29/08/2018,14:38  
To:REGISTRAR,DIC  
PIN:110067, JNU SO  
From:VENKATESH N,35A THIRD FLOOR  
Wt:34gms  
Amt:29.50(Cash)Tax:4.50  
<Track on www.indiapost.gov.in>  
<Dial 1800 266 6868>



ED063583173IN IVR:696806358317  
SP HAUZ KHAS SO <110016>  
Counter No:1,29/08/2018,14:38  
To:CPIO,DEPT OF JUSTICE  
PIN:110011, Nirman Bhawan SO  
From:VENKATESH N,35A THIRD FLOOR  
Wt:34gms  
Amt:29.50(Cash)Tax:4.50  
<Track on www.indiapost.gov.in>  
<Dial 1800 266 6868>



ED063583292IN IVR:696806358329  
SP HAUZ KHAS SO <110016>  
Counter No:1,29/08/2018,14:38  
To:FIRST APPELLA,DEPT OF JUSTICE  
PIN:110011, Nirman Bhawan SO  
From:VENKATESH N,35A THIRD FLOOR  
Wt:34gms  
Amt:29.50(Cash)Tax:4.50  
<Track on www.indiapost.gov.in>  
<Dial 1800 266 6868>

