

# How to File an Appeal under the RTI Act

## 1. Who can be an Appellant?

As per section 19(1) of the RTI Act, an applicant who has not been provided with the sought information, not received any response, provided with the information not as per record, or is aggrieved by the decision of the Public Information Officer, (hereinafter referred to as PIO) or the decision has not been provided within the 30 days (35 days in the case of transfer of application) from the date of receipt of the application, may prefer a first appeal before the first appellate authority in the concerned department.

As per section 19(2), when a third party has been asked by the PIO under section 11 of the Act, to disclose the information, the respective third party may file an appeal before the first appellate authority against the decision on disclosure of information by the PIO within 30 days of such order.

As per section 19(3), an appellant dissatisfied with the decision of the First Appellate Authority (hereinafter referred to as FAA) may file a second appeal before the State Information Commission (hereinafter referred to as SIC) or Central Information Commission, (hereinafter referred to as CIC) as the case may be. The said appeal maybe preferred within 90 days from the date of receiving the order of the first appellate authority.

In the case of delay in filing the application, the respective appellate bodies are empowered with the power to condone the delay, on furnishing the sufficient cause of action that prevented the appellant from filing the timely appeal.

## 2. First Appeal

The First Appeal is the primary relief available to an RTI applicant against the undisclosed, unattended, or unsatisfactorily replied RTI application within the stipulated time period.

Under Section 7(8)(3), a PIO is bound to provide the particulars of the Appellate Authority. Hence, the details of the FAA can be pursued from the reply of the PIO.

## 3. First Appeal Application Process:

- Nowhere in the RTI Act, 2005 and the RTI Rules, 2012, a prescribed format has been mentioned that guides the aggrieved party regarding the drafting and filing of the First appeal. However, it is advised to check the websites and rules

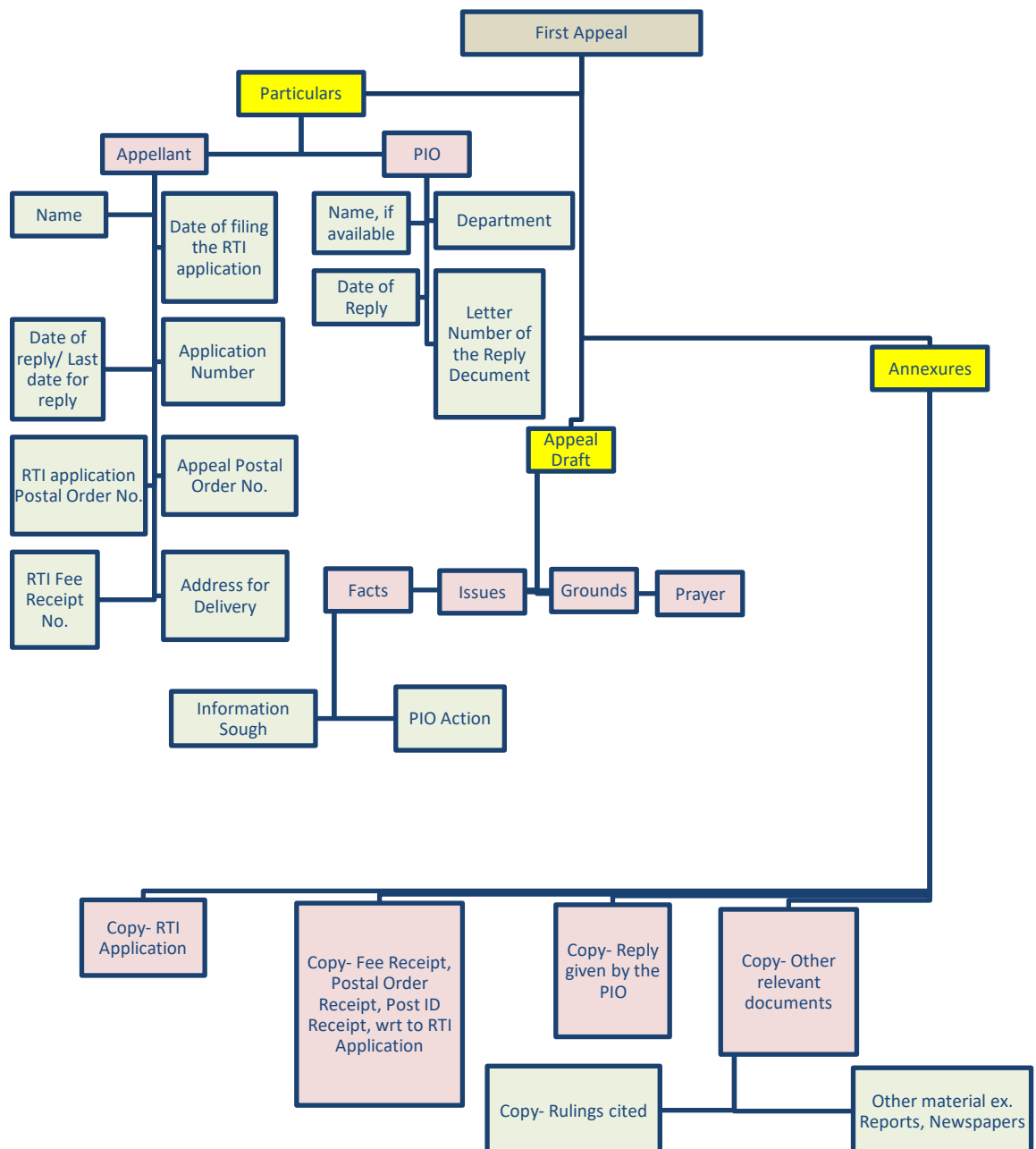
of the concerned government office, if there is any format for First Appeal has been provided or not.

- One must remember that the '*Guidelines for the officers designated as the first appellate authority, under RTI Act 2005*' issued by the Department of Personnel and Training, Government of India dated 25.04.2008, provides that:

*'It is, therefore, necessary that the appellate authority should see to it that the justice is not only done but it should also appear to have been done. In order to do so, the order passed by the appellate authority should be a speaking order giving justification for the decision arrived at.'*

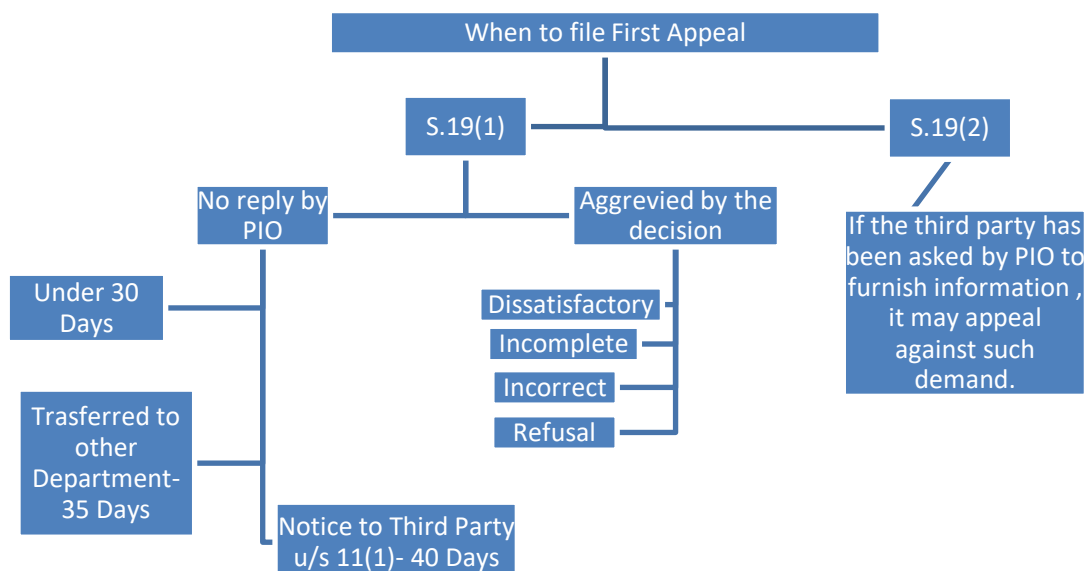
Hence, to receive a justified speaking order, an appellant must provide all the relevant, necessary documents along with the draft of the appeal.

- The composition of an Appeal may be divided into the following sections:



- The RTI application filed through the electronic portal (either state or central), also provides the facility to file an appeal through the same portal itself. If the RTI application was filed offline, you have to file the first appeal offline as well. This appeal will have to be in accordance with the information above mentioned.
- In the case of an appeal for an application previously filed with the Central Government, no additional fee needs to be paid at the time of filing the appeal. However, this may not be the case with an appeal filed with the public authority governed by the State government.
- For example, in Maharashtra, a Rs 20 court fee stamp needs to be affixed along with the appeal. Similarly, in Madhya Pradesh, the fee of Rs. 50 is required to be paid for preferring an appeal. In Orissa as well, the required fee has to be paid through a court fee stamp. Hence, it is suggested to go through the respective government rules and file the appeal accordingly.
- An appeal based on the rulings of the Hon'ble Supreme Court, High Courts, Central Information Commission, State Information Commissions, guidelines by Department of Personnel and Training, etc. will strengthen the legal argument in the appellate proceedings.
- Under this First Appeal process, once an appeal has been filed, you have 45 days until the FAA responds to your appeal from the date of filing.

#### 4. Circumstances under which you can file the first appeal:

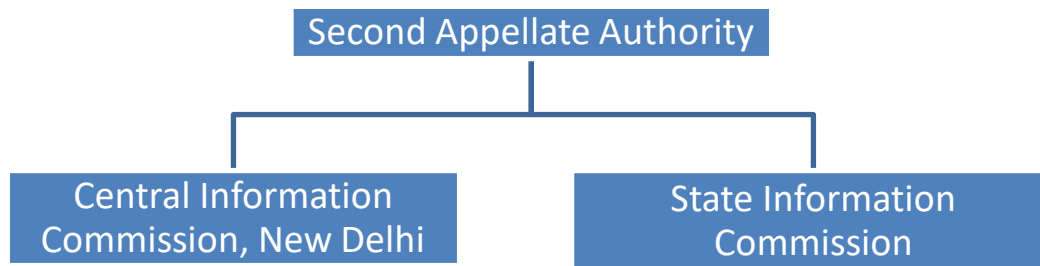


#### 5. Dos and Dont's

- There are few basics that everyone needs to keep in mind while filing the first appeal. Below are few tricks that one can use.
- A reading of the RTI Act will help in drafting competent appeals. It will help in understanding the legislative intent behind the Act and bring out more strong law based grounds and arguments.
- Keep the first appeal brief and to the point. Do mention the abovementioned components, shown through the abovementioned table under point four. Keep the content precise. Mention the particulars carefully.
- The grounds must reflect, how the act of the PIO is against the wordings of the RTI Act. Mention the legal provisions, that have been violated by PIO in his reply or no reply as such. Draft separate paragraphs on separate grounds.
- Annexe all the documents. Do the numbering of these annexures. Refer to the relevant annexure number in the argument.
- At the bottom of the photocopy, self-attested signifies mentioning 'Attested' and putting full signature below it to prove the authentication of documents furnished
- You must submit your First Appeal by Speed Post or Registered Post AD. This will help you check the delivery status through the India Post website as well as be a sufficient proof of exercising your right to appeal well within time. Further, you can take a printout of the delivered status, and keep it on record.
- Avoid Courier services for submitting RTI documents.
- Keep a set of your appeal documents with you as you will be asked to present yourself for an appeal hearing.
- There is also a provision to appear for hearings virtually. In case you wish to do so, you must inform before hand.

## **6. Second Appeal**

- There are times when the response given by the FAA is also not satisfactory and you wish to appeal further to a higher authority. It is also possible that the FAA has not responded to your query within the stipulated time.
- Under section 19(3) of the RTI Act, an appeal can be filed within 90 days from the date of order of the FAA, against such order of the FAA.
- Rule No. 8 of the RTI Rules, 2012 provides that any appellant aggrieved by the decision of the FAA, or non-disposal of the application, may file an appeal before the State or Central Commission, against the order of the FAA.
- **Where to File:**



In case of application pertaining to the state government, the appeal goes to SIC. If the application pertains to the offices of the central government, the appeal goes to CIC.

- The process of sending a second appeal to the SIC or CIC is similar to that of the First Appeal. For the central government, you can file an appeal electronically using the official website, <https://www.cic.gov.in/> and for the concerned state government, you can use their respective online portals.
- The RTI Rules, 2012 provides an Appendix 'Format of Appeal'. It provides a list of documents and details that would be enough and sufficient for the appellate bodies to adjudicate the matter. The list is as follows:
  1. *Name and address of the appellant*
  2. *Name and address of the Central PIO to whom the application was addressed*
  3. *Name and address of the Central PIO who gave reply to the Application*
  4. *Name and address of the First Appellate Authority Who decided the First Appeal*
  5. *Particulars of the application*
  6. *Particulars of the order(s) including number, if any, against which the appeal is preferred*
  7. *Brief facts leading to the appeal*
  8. *Prayer or relief sought*
  9. *Grounds for the prayer or relief*
  10. *Any other information relevant to the appeal*
  11. *Verification/authentication by the appellant*
- However, as per Rule 10 of the RTI Rules, 2012, no appeal can be dismissed on the ground that compliance has not been made with the format prescribed under 'Appendix' which provides you with an opportunity to provide the documents further in time.
- You can file an appeal on a plain sheet of paper, concisely mentioning the history of your case, reasons for filing the appeal and cause for rejection. Do not forget to attach the responses you have received from the PIO and FAA (if any), before sending the same by SpeedPost or Registered Post.

- Appeals supplemented with the appropriate and exact rulings of the Supreme Court, High Courts, and Central Information Commission, State Information Commission make the appeal stronger because of the precedential position.
- For a Second Appeal, there has been no time limit specified under which the matter requires to be adjudicated. Considering the disposal to pendency rate of the cases, a second appeal usually takes one to two years for getting a hearing.

## 7. Expert's Suggestions:

*Below are a few important tips as shared by former Central Information Commissioner, Shailesh Gandhi when filing a First, or Second Appeal:*

- If the PIO/FAA does not pass an order within the stipulated period of having received the appeal, then it should be accepted as a "deemed refusal" and a second appeal should be filed within 120 days of filing the first appeal.
- In case the FAA has ordered the PIO to provide with the required information and the PIO fails to do so, you may approach the FAA first and make him aware of any such facts before filing for the second appeal.
- If you wish to present your case in a hearing before the FAA, you may state so in your appeal and even expressly state if you don't wish to do the same. The FAA is under an obligation to grant permission for a personal hearing as per the provisions of the RTI Act.
- In case you are filing an appeal offline, ensure that it is sent via Speed Post or Registered Post so that the delivery status can be monitored online and you have proof of delivery.
- Fees for the first and second appeal at the State Information Commission may vary as per the respective State rules. In some cases, when the appeal is received with inadequate fees, the PIO/FAA may ask the applicant to submit the requisite amount instead of rejecting the application outright.

## 8. Time frame for second appeal

The RTI Act does not provide any time frame for disposal of time frame. However, there are following observations made by various High Courts in this respect-

- The Hon'ble High Court of Calcutta in W.P. No. 11933 (W) of 2010, *Akhil Kumar Roy v/s. The West Bengal Information Commission & Ors* said that –  
*“A second appeal arises from a decision in a first appeal under s.19(1), and a first appeal arises from a decision or a failure to give a decision under s.7. The sparkle of a strong strand of speed woven through the sections of the Act is abruptly lost in the second appeal that has been allowed to run wild. This open ended second appeal scheme is bound to make the s.6 request go totally adrift generating a multi-tier avoidable and unwanted offshoot Court proceedings such as this case.*

*In my opinion, keeping in mind the respective maximum periods fixed for deciding a first appeal under s.19(1) and disposal of a request for obtaining information under s.7, the second appellate authority should have decided the second appeal within 45 days from the date of filing thereof. In view of the scheme of the statute, I think this period should be considered the reasonable period for deciding a second appeal. I am of the view that this petition should be disposed of directing the authority to decide the appeal. For these reasons, I dispose of the petition ordering that the second appellate authority shall decide the petitioner's second appeal within 45 days from the date of communication of this order."*

- The Hon'ble High Court at Calcutta, in yet one more case, ***Alok Patwari v. The State Chief Information Commissioner & Ors*** placed its reliance upon the decision in W.P. No. 11933 (W) of 2010 and had held as follows:  
*"I entirely agree with the decision of the said learned Judge and hold that the second appeal preferred by the petitioner on April 19, 2010 ought to have been disposed of within 45 days from its receipt."*
- In ***Jayaprakash Reddy v/s. Central Information Commission & Union of India***, the court held-  
*"It is indeed to be noticed that no time limit is prescribed to decide a second appeal. Therefore, it would have to be interpreted that when no time is prescribed, it would follow that it ought to be decided within a reasonable time. Since there is a time limit prescribed for deciding a first appeal, it would be safe to conclude that a similar period would apply insofar as deciding the second appeal, for otherwise, it would lead to a situation where the object of the Act is not achieved if the authority should indefinitely postpone the hearing and decision of a second appeal. Consequently, it would be deemed that the second appeal would also have to be decided within a period of 45 days if not earlier, from the date of filing."*

**FIRST APPEAL**  
(APPEAL U/S 19(3) OF THE RTI ACT, 2005)

Date: 01.02.2021

<b>Particulars of the RTI Application</b>	
<b>Name</b>	Mr.Gada
<b>Address</b>	Gokuldham Society, Powder Gali, Vashi, Mumbai
<b>Contact No.</b>	1212121212
<b>Email Address</b>	<a href="mailto:jethalal@gmail.com">jethalal@gmail.com</a>
<b>Application Number</b>	RTI/01/2021
<b>Date of Filing The RTI Application</b>	01.01.2021
<b>Date of Reply/ Last Date for Reply</b>	26.01.2021
<b>RTI Application Postal Order No.</b>	CASH
<b>RTI Fee Receipt No.</b>	FEE/01/2021
<b>Appeal Postal Order No.</b>	XYXYXYXY

<b>Details of the PIO</b>	
<b>Name of the PIO</b>	Mr.Bhide
<b>Department</b>	Public Works Department, Mumbai
<b>Date of Reply</b>	26.01.2021
<b>Letter Number of the Reply Document</b>	REPLY/10/2021

<b>Details of First Appeal</b>	
<b>Facts</b>	<p>The applicant sought the following information: Please provide the inspection reports of the roads of Mumbai City, from the period 01.01.2019 to 01.01.2021. The FAA, after 25 days, through the letter no.REPLY/10/2021 dated 26.01.2021 replied that the sought information cannot be furnished. <i>Copies of the RTI application and PIO's reply are attached as Annexure No. 1 and 2, respectively to the present Appeal.</i></p>
<b>Issue</b>	Whether the Information qualifies to be provided under the RTI Act or not?
<b>Ground</b>	As per Section 2(f), the definition of information includes 'reports' under it. Hence, the information stands to be furnished under the preview of the RTI Act.
<b>Prayer</b>	The applicant humbly prays that the sought information be provided to him.

<b>List of Annexure</b>		
<b>Sr. No.</b>	<b>Annexure No.</b>	<b>Particulars</b>
01.	A1	The RTI Application dated 01.01.2021
02.	A2	The reply of PIO dated 26.01.2021
03.	A3	Receipt of the fee paid of Rs. 10, number FEE/01/2021, dated 01.01.2021.

**IN THE HON'BLE CENTRAL INFORMATION COMMISSION**

**NEW DELHI**

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**IN**

FILE NO. \_\_\_\_\_

(Under Section 19 of the Right to Information Act, 2005)

Mr. \_\_\_\_\_

..... Appellant

**Versus**

Wildlife Institute of India through its

Central Public Information Officer

..... Respondent

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	authority under the RTI Act, 2005 dated 25.04.2008.	
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Dated: 09/05/2021

(Mr.\_\_\_\_\_)

Appellant

Party-in-person

**BEFORE THE HON'BLE CENTRAL INFORMATION COMMISSION**

**NEW DELHI**

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**DATES AND EVENTS**

FILE NO. \_\_\_\_\_

(Under Section 19 of the Right to Information Act, 2005)

Mr. \_\_\_\_\_

..... Appellant

**Versus**

Wildlife Institute of India, Dehradun through its

Central Public Information Officer

..... Respondent

<b>S.No.</b>	<b>Dates</b>	<b>Events</b>
01.	03.08.2018	Hon'ble High Court of Utrakhand through its Order in the Case Number Writ Petition (PIL) No. 6 of 2012 banned the commercial use of Elephants across the State of Utrakhand.
02.		Nationwide reporting of the order dated 03.08.2018 was done by almost all the

		<p>prominent media houses. The media houses highlighted the following:</p> <ol style="list-style-type: none"> <li>1. Elephant Joyrides across the State of Uttarakhand has been banned.</li> <li>2. <b>The Wildlife Institute of India (Hereinafter referred to as 'WII'), Dehradun, was directed to carry out a survey within three months to assess the carrying capacity of these zones for the number of vehicles that could be permitted to ply to avoid disturbance to wildlife.</b></li> </ol>
03.	09.08.2018	<p>Hon'ble Uttarakhand High Court reiterated the issue i.e. the number of permission for allowing the gypsies in the Kalagarh and Rajaji National Park.</p> <p><i>"The State Government has grossly misunderstood the order dated 3.8.2018 passed by this Court to permit the number of private gypsies/commercial gypsies entering in Sitabani, Bijrani, Dhela zones including Kalagarh and Rajaji National Park. Direction No. (A) of the previous order dated 03.08.2018 is modified and the State Government is directed to only permit 20 private gypsies /commercial gypsies, to enter in each zone i.e. Sitabani, Jhirna, Bijrani, Dhikala, Dhela, Durgadevi, Sonanadi zones including Kalagarh and Rajaji National Park in a day."</i></p>
04.	08.01.2019	<p>Hon'ble High Court of Uttarakhand through its order reiterated its order dated 03.08.2018 i.e.</p> <p><i>"By an order of this Court dated 3rd August, 2018, the Chief Wildlife Warden, through the concerned DFOs, was directed to issue notices to the owners of the Elephants to explain under</i></p>

		<p><i>what law they were using the Elephants commercially, including joyrides in breach of the Wildlife Protection Act, 1972 and the Prevention of Cruelty to Animals Act, 1960.</i></p> <p><i>While banning commercial use of Elephants in the entire State of Uttarakhand until further orders, including joyrides /rides by owners of resorts, the Division Bench directed the Chief Wildlife Warden, through the DFOs, to take over possession of Elephants from their owners, by issuing them proper receipt for their treatment, medical examination and proper upkeep, within 24 hours."</i></p>
05.		<p><b>Till this moment the Appellant has come across the news reporting only. The Appellant did not know about the name and number of the case. Appellant continued his research for the name, number, and copy of the order/judgment. Consequently, Appellant relied on the fact that 'direction to WII for carrying out a survey for accessing the carrying capacity' has been widely reported by every major media houses.</b></p> <p><b>Relying on the 4<sup>th</sup> pillar of the democracy i.e., Appellant decided to file the RTI Application before the WII.</b></p>
06.	15.05.2019	<p>The Appellant filed the Right to Information Application before the Wildlife Institute of India, Dehradun, and sought:</p> <ol style="list-style-type: none"> <li>1. The Name of the Case in which this Order was passed.</li> <li>2. The Citation of the Case.</li> <li>3. A copy of the order dated 03.08.2018</li> </ol> <p>The application was filed before the WII as it is one of the body(s) that was directed by</p>

		the Hon'ble High Court of Utrakhand in the same order dated 03.08.2018.
07.	22.05.2019	The CPIO denied the information on the ground that WII does not have a copy of the 'judgment'. The CPIO by not exercising its power under Section 6(3) of the RTI Act, 2005 and irrespective of transferring the application to the concerned department rather suggested the Appellant to approach the Chief Wildlife Warden, Utrakhand.
08.	30.05.2019	The Appellant filed the First Appeal before the learned First Appellate Authority on the ground that information be furnished to the Appellant as the wide reporting by media houses confirms the fact that direction to WII has been issued. Or else, under section 6(3) of the RTI Act, the application to be transferred to another concerned public authority with whom the information lays.
09.	13.06.2019	The learned First Appellate Authority upheld the order of CPIO and dismissed the appeal on the ground that <i>"once the application has been disposed by the CPIO, the appellate authority has no right to forward it further to any other public authority."</i>
10.	10.07.2019	The Appellant filed the Second Appeal before the Hon'ble Central Information Commission for obtaining the information sought under the RTI Act 2005.
11.		<b>The appellant discovered that Order dated 03.08.2018 was passed by the Hon'ble High Court of Utrakhand in the Case No. WP (PIL) No. 6 of 2012.</b>

		<b>However, the Order dated 03.08.2018 is not available on the website of the Hon'ble High Court of Uttarakhand at Nainital. Hence, this application becomes the only means to obtain a copy of the Order dated 03.08.2018.</b>
12.	16.04.2020	As directed by the CPIO, the Appellant addressed e-mails to the concerned officers of the Uttarakhand Forest Department, for accessing the copy of the Order dated 03.08.2018.
12.	06.05.2021	Appellant received the notice of hearing for this Appeal.
13.		Hence, this Second Appeal.

Dated: 09/05/2021

(Mr.\_\_\_\_\_)

Appellant

Party-in-person

**BEFORE THE HON'BLE CENTRAL INFORMATION COMMISSION**

**NEW DELHI**

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**SECOND APPEAL**

FILE NO. \_\_\_\_\_

(Under Section 19 of the Right to Information Act, 2005)

Mr. \_\_\_\_\_

..... Appellant

**Versus**

Wildlife Institute of India through its  
Central Public Information Officer

..... Respondent

To,

The Hon'ble Central Information Commissioner of the aforesaid  
Commission.

The appellant most respectfully showeth:

1. That the present Second Appeal is filed u/s 19(3) of the Right to Information (Hereinafter Referred to as 'RTI') Act, 2005. The appeal is filed against the order of the First Appellate Authority dated 14.06.2019.

**BRIEF INTRODUCTION OF THE APPELLANT:**

2. That Appellant is a Fifth-year student of BBA.LLB (Hons.) and has previously worked as a Research Intern and Project Assistant with this Hon'ble Central Information Commission of India. The Appellant has also worked as an Internship Coordinator with the Hon'ble Madhya Pradesh State Information Commission, Bhopal.

The Appellant is working for Elephant conservation since his third year of studies. He has previously filed the RTI Applications for obtaining the statistical data of the Elephant deaths in the country.

In the light of this objective to work for the conservation of Elephants, the Appellant filed the present RTI Application.

Hence, the Appellant has preferred the present Second Appeal before this Hon'ble Commission for obtaining the information on his RTI application.

### **SUBJECT MATTER OF THE RTI APPLICATION:**

3. The Hon'ble High Court of Uttarakhand in the case of *Himalayan YuvaGraminVikasSanstha v. State of Uttarakhand and Ors. (WP (PIL) No. 6 of 2012)* through its Order dated 03.08.2018 banned the Elephant joyrides across the State of Uttarakhand. The Order dated 03.08.2018 further directed the Wildlife Institute of India, Dehradun, to carry out a survey within three months to assess the carrying capacity of the zones in the wildlife parks to determine the number of vehicles that could be permitted to avoid disturbance to wildlife. The order dated 03.08.2018 was widely reported by almost all the prominent media houses across the country.

A list of all such newspapers with their relevant extracts is attached as **Annexure Number 1** to the present Appeal. Copies of all such newspapers are collectively attached as **Annexure Number 2** to the present Appeal.

4. That, the Hon'ble High Court's reiteration in its further order dated 09.08.2018 confirms that Order dated 03.08.2018 was passed with respect to the permissions of gypsies in the various zones of Corbett, Rajaji, and Kalagarh national park. The relevant extract is produced below:

*"The State Government has grossly misunderstood the order dated 3.8.2018 passed by this Court to permit the number of private gypsies/commercial gypsies entering in Sitabani, Bijrani, Dhela zones including Kalagarh and Rajaji National Park. Direction No. (A) of the previous order dated 03.08.2018 is modified and the State Government is directed to only permit 20 private gypsies /commercial gypsies, to enter in each zone i.e. Sitabani, Jhirna, Bijrani, Dhikala, Dhela, Durgadevi, Sonanadi zones including Kalagarh and Rajaji National Park in a day."*

The Hon'ble Court through its order dated 08.01.2019 further repeated and confirmed that Order was issued on 03.08.2019 to ban the Elephant joyrides across the State of Uttarakhand. The relevant portion is produced below:

*"By an order of this Court dated 3rd August, 2018, the Chief Wildlife Warden, through the concerned DFOs, was directed to issue notices to the owners of the Elephants to explain under what law they were using the Elephants commercially, including joyrides in breach of the Wildlife Protection Act, 1972 and the Prevention of Cruelty to Animals Act, 1960. While banning commercial use of Elephants in the entire State of Uttarakhand until further orders, including joyrides /rides by owners of resorts, the Division Bench directed the Chief Wildlife Warden, through the DFOs, to take over possession of Elephants from their owners, by issuing them proper receipt for their treatment, medical examination and proper upkeep, within 24 hours. The Elephants were directed to be temporarily kept at Rajaji National Park, Chilla, and the injured / maimed Elephants were directed to be attended to by the Veterinary Doctors within 12 hours from the date of the order."*

These reiteration about the Order dated 03.08.2018 through these above-produced further Orders dated 09.08.2018 and 08.01.2019 confirms the fact that Order dated 03.08.2018 was passed by the Hon'ble High Court of Uttarakhand with respect to the:

- i. Banning of Elephant joyrides across the State of Uttarakhand;
- ii. Subject of Carrying Capacity of Gypsies in the zonal territories of the Corbett, Kalagarh, and Rajaji National Parks.

A copy of the Order dated 09.08.2018 is attached as **Annexure Number 3** to the present Appeal. Copy of the Order dated 08.01.2019 is attached as **Annexure Number 4** to the present Appeal.

5. That, unlike other Orders, the Copy of the Order dated 03.08.2018 is not available on the website of the Hon'ble Uttarakhand High Court. A true list of available Order on the website of Hon'ble Uttarakhand High is attached as **Annexure Number 5** to the present Appeal.

## **BRIEF FACTS OF THE CASE:**

6. That, Appellant read the news, as a landmark move the Hon'ble High Court of Uttarakhand through its order dated 03.08.2018 has banned the Elephant joyrides across the State of Uttarakhand. Further directions were issued to WII to assess the carrying capacity. The news was widely reported by various prominent media houses. The Appellant searched for the copy of the Order but was unable to find the same.

However, it was equally widely reported in all the news reporting that WII has been directed to assess the carrying capacity in the Corbett, Kalagarh, and Rajaji National Park. After relying on these various reporting the appellant filed the RTI Application dated 15.05.2019 before the WII through the online RTI Portal of **www.rti.gov.in**. The application sought:

- i. The name of the Case;
- ii. The Citation of the Case;
- iii. The Copy of the Order passed by the Hon'ble High Court, directing the ban on Elephant joyrides across the State of Uttarakhand, and Survey to be conducted by WII for assessing the carrying capacities of various zones.

A true copy of the RTI Application dated 15.05.2019 is attached as **Annexure Number 6** to the present Appeal.

7. That, the Central PIO furnished its reply on 22.05.2019 and informed the following:

*"Regarding your query, kindly contact office of the Chief Wildlife Warden, Uttarakhand, as WII does not have copy of the judgement"*

A true copy of the reply of the CPIO dated 22.05.2019 is attached as **Annexure Number 7** to the present Appeal.

8. That, dissatisfied with the reply of the CPIO, the Appellant filed the First Appeal before the First Appellate Authority on 30.05.2019 on the ground that:

- i. The reliance has been put on the wide reporting by the Fourth pillar of the democracy i.e. the Press. Various prominent media houses reported that WII has been directed under the same order dated 03.08.2018. It is impractical to say that all of these media houses made a factually wrong reporting in synergy.
- ii. The CPIO misinterpreted the contents of the RTI application. The appellant sought the copy of the '*Order*' dated 03.08.2018 whereas the CPIO read it as '*Judgment*'.
- iii. U/s 6(3) of the RTI Act, the RTI application can be forwarded before another appropriate public authority. Rather than passing the suggestion to approach the Chief Wildlife Warden, Uttarakhand, the CPIO himself must have forwarded the application before the same. A true copy of the First Appeal dated 30.05.2019 is attached as **Annexure Number 8** to the present Appeal.

9. That, the First Appellate Authority passed its Order dated 14.06.2019 and held that:

- i. WII does not have any such information in its record;
- ii. Appellant has been requested to contact the Chief Wild Life Warden, Uttarakhand as the sought information may pertain to his office.
- iii. Since the RTI application has already been disposed of by the CPIO, the appellate authority has no right to further forward it to any other public authority.

A true copy of the Order of the First Appellate Authority dated 13.06.2019 is attached as **Annexure Number 9** to the present Appeal.

10. That, dissatisfied with the Order of the learned First Appellate authority, the Appellant filed the present Second Appeal before this Hon'ble Commission for the adjudication of the matter. The Appellant in his initial appeal application submitted that:

- i. It has been widely reported by the media houses that directions have been passed by the Hon'ble High Court of Uttarakhand through its Order dated 03.08.2018 to the WII.

- ii. Reasonable Assistance u/s 5(3) of the RTI Act has not been provided to the Appellant. Under the same, the application must have been forwarded to the appropriate authority for the furnishing of the information.
- iii. U/s 6(3), the application is entitled to be transferred to the appropriate department.
- iv. Appropriate directions u/s 6(1) of the RTI Act to be given to the State of Uttarakhand and the Hon'ble High Court of Uttarakhand for establishing the online portal for the filing of RTI applications.

A true copy of the Second Appeal Application dated 10.07.2019 is attached as **Annexure Number 10** to the present Appeal.

### **GROUND & SUBMISSIONS:**

11. That, it has been widely reported and celebrated by various prominent national media houses that the Hon'ble High Court of Uttarakhand through its order dated 03.08.2018 imposed a ban on Elephants joyrides across the State of Uttarakhand and further directed the WII to conduct a survey within three months to assess the carrying capacity in Corbett, Kalagarh and Rajaji National Park for determining the number of permissions to be issued to the gypsies within the zonal territories of these parks.

Media is the fourth pillar of the democratic system. It is almost impossible to admit that the same fact of direction to WII by the Hon'ble High Court of Uttarakhand through its order dated 03.08.2018 had been widely wrongly reported by all the media houses in consensus.

Moreover, it merits to be noted that the Wildlife Institute of India, Dehradun falls under the jurisdiction of the Hon'ble High Court of Uttarakhand. The legal precedents from the Hon'ble High Court of Uttarakhand confirm that it is a settled practice across the State of Uttarakhand to rely on the news reporting for adjudicating the legal issues. The Hon'ble High Court of Uttarakhand in the case of *Vipul Jain v. State of Uttarakhand (WPIL No. 21 of 2019)* passed its landmark judgment by keeping its faith in the news articles only. The Court appreciated that:

*"109. ...If letters and newspapers reports can form the basis for the Superior Courts to entertain Writ Petitions, in the exercise of their Public Interest*

*Litigation jurisdiction, there is no reason why newspaper reports should not be treated as complaints by the State Election Commission, and the allegations made therein promptly inquired into, and, if found true, for action to be taken forthwith to ensure that such corrupt practices are dealt with an iron hand, and are immediately nipped in the bud. Instead of waiting for receipt of written complaints for it to act, the State Election Commission should treat information, from whatever be the source (including newspaper reports), as complaints which necessitate inquiry. If such information is found, on enquiry, not to be genuine, it goes without saying that no further action need be taken. If, on the other hand, the information is found to have some basis, then action should be taken forthwith to ensure free and fair elections at both the block and the district level Panchayat Raj institutions."*

The Hon'ble Court further summarized the same observation under point 17 of paragraph 117 i.e.:

*"117 (17.) ...If letters and newspapers reports can form the basis for Superior Courts to entertain Writ Petitions, there is no reason why newspaper reports should not be treated as complaints by the State Election Commission, and the allegations made therein promptly inquired into."*

Thus, it merits to be noted that the Hon'ble Court has appreciated the fact that there is no harm in admitting the news reporting for the purpose of legal admissibility. If the information is genuine then further investigation is continued, otherwise, no further action needs to be taken.

**12.** That, the Appellant went from pillar to post in the search of the copy of the Hon'ble High Court of Uttarakhand's Order dated 03.08.2018. Regardless of which, the maximum details available with respect to the Order dated 03.08.2018 were already reported by the media houses. The appellant was not able to access the copy of the Order. Consequently, the Appellant filed the presently appealed RTI application before the WII for accessing the copy of the Order. However, the information was denied by the Information Officer and Appellate Authority at respective stages. Later on, when the Appellant found the case details, it came to his knowledge that the copy of the order dated 03.08.2018 is not available on the website of the Hon'ble High Court. Annexure Number 5 has been

attached to this appeal that reflects that order dated 03.08.2018 is not listed in the case and thus is unavailable.

It merits to be noted that the order dated 03.08.2018 has been passed by the Hon'ble High Court of Uttarakhand in a Writ Petition (Public Interest Litigation). The jurisprudence of Public Interest Litigation says that the orders passed by the Hon'ble Courts in the PIL are for the community at large. Moreover, the Hon'ble Supreme Court in the case of *State of Uttranchal v. Balwant Singh Chauhal and Others ((2010) 3SCC 402)* noted that:

*"27. Public interest litigation has been defined in Black's Law Dictionary (6<sup>th</sup> Edn.) as under: "Public interest. – Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government."*

Thus, non-availability of the Order dated 03.08.2018 on the website of Hon'ble High Court of Uttarakhand does not constitute a ground for inaccessibility of the copy of the Order dated 03.08.2018 to the Appellant. On the contrary, in the light of the abovementioned ruling of the Hon'ble Supreme Court, the Appellant is a stakeholder in the interest of the society, and must not be barred from obtaining the copy of the order dated 03.08.2018.

**13.** That, the CPIO through its reply dated 22.05.2019 informed the Appellant that the sought copy of the judgment is not available with the WII, Dehradun. Moreover, the Appellant was directed to approach the Chief Wildlife Warden, Uttarakhand for accessing the information.

*Firstly*, it merits to be noted that the Appellant sought the copy of the '**Order**' and not the '**Judgment**'. The reply of the CPIO reflects his casual and inattentive attitude in handling matters of public information. It is needless to inform that there is a fundamental legal difference between both the terms '**Order**' and '**Judgment**'.

*Secondly*, it merits to be noted that the reply of the CPIO is in grave violation of the RTI Act. U/s 5(3) and 6(3) of the RTI Act, the CPIO failed

to render reasonable assistance to the Appellant by not forwarding the application to the appropriate department for the furnishing of the information. On the contrary, the CPIO by not exercising the power u/s 6(3)(i) of the RTI Act, rescued himself from forwarding the application to another public authority and acted in violation of the RTI Act, 2005.

**14.** That, despite the mistreatment of the RTI Act for rescuing from the duties of a public officer, the CPIO suggested the Appellant to approach the Chief Wildlife Warden, Uttarakhand for seeking the copy of the order dated 03.08.2018. In compliance with the same and considering the spread of COVID-19 Virus (Hereinafter referred to as 'COVID-19'), the Appellant tried his best attempt and went from pillar to post with the primary intention of obtaining the information. Consequently, the grave non-enforcement of u/s 6(1) of the RTI Act, 2005 was noticed by the Applicant. It has been more than 15 years since the enactment of the RTI Act, and no arrangement for the e-filing of RTI application has been ensured by the State of Uttarakhand. The provision of application for information u/s 6(1) is an explicit provision that has nowhere in the RTI Act been compromised with the subject of availability of the online mode. The provision is certain, non-negotiable, and needs to be enforced.

Consequently, affected by the non-enforcement and widespread of COVID-19, the Appellant e-mailed the concerned officials of the Uttarakhand forest department for accessing the copy of the order dated 03.08.2018. The fact turned up that no reply was given against the e-mails of Appellant, on the contrary, two e-mail addresses turned out to be wrong. This shows the open falsehood and the *malpractices*, which are being practiced by the public authorities.

That, the Appellant also aimed to file the same RTI application before the Hon'ble High Court of Uttarakhand and the Chief Wildlife Warden, Uttarakhand for obtaining the copy of the order dated 03.08.2018. However, affected the non-enforcement u/s 6(1) of the RTI Act, and the widespread of COVID-19, it was not possible for the Appellant to file these RTI applications.

Thus, it merits to be noted that due to the non-enforcement of a part of the RTI Act, the appellant felt disabled in exercising his Fundamental

Right of Freedom to Speak & Express, guaranteed under Article 19 of the Constitution of India.

True copies of the e-mails dated 16.04.2020 addressed to the officers of the forest department are collectively attached as **Annexure Number 11(Colly.)** to the present Appeal.

15. That, the Appellant filed the First Appeal dated 30.05.2019 and prayed that information be provided to the Appellant, or the application to be transferred before another concerned public authority. First Appellate Authority through his Order dated 13.06.2019 upheld the decision of the CPIO and further stated that once an application has been disposed of by the CPIO, the appellate authority has no right to forward it further to any other public authority.

It merits to be noted that *Firstly*, the Appellant in his submission prayed that rather of disposing of the application, direction to be given to the 'authority' for forwarding the application to the appropriate department. Appellate authority instead of commanding the CPIO, disposed of the appeal on the ground that, once an application has been disposed of by the CPIO same cannot be forwarded before any other authority. It merits to be noted that the Appellant nowhere limited his submission that Appellate authority himself forwards the application. Appellant used the term 'authority'. Despite this, the Appellate Authority disposed of the application without exercising the provision u/s 6(3) of the RTI Act and understanding the true submission of the Appeal Application.

*Secondly*, the Appellate authority is appointed to adjudicate the decision of CPIO on the basis of the legality and rightfulness, and if found any defect then direct the CPIO to take the corrective measures. In the present case, Appellate Authority nowhere denied the Appellant's submission that provision u/s 6(3) would not apply. On the contrary, the First Appellate Authority must have directed the CPIO to transfer the application before the other public authority. Moreover, the Department of Personnel and Training, Ministry of Personnel, P.G. and Pension (Government of India) through its Office Memorandum dated 25.04.2008 issued the 'Guidelines for the Officers designated as first appellate authority under the RTI Act, 2005.' The memorandum specifically provides that:

*"2. In order to perform his/her duties effectively, the Appellate Authority should study the Act carefully and understand its provisions correctly. This document explains some of the important aspects of the Act which a First Appellate Authority should, in particular, be conversant with."*

In light of the same, the memorandum on page 7, from point 17 to 20 dealt very deeply with the factor of 'Transfer of Application' while passing the adjudication on the conduct of a CPIO, and hence guided on point 38 under the heading 'Disposal of Appel' that:

*"38. Deciding appeals under the RTI Act is a quasi-judicial function. It is, therefore, necessary that the appellate authority should see to it that the justice is not only done but it should also appear to have been done. In order to do so, the order passed by the appellate authority should be a speaking order giving justification for the decision arrived at."*

Hence, the conduct of the Appellate Authority in the present matter is in grave violation of the Guidelines issued by the Department of Personnel and Training dated 25.04.2008.

*Thirdly*, nowhere in the RTI Act 2005, the First Appellate Authority has been restricted to forward the application to the other public authority.

*Fourthly*, the First Appellate Authority u/s 19(2) of the RTI Act has been empowered with the responsibility to adjudicate, whether the CPIO has rightly treated the application or not. The Hon'ble Supreme Court in the case of *Namit Sharma v. Union of India ((2013) 1 SCC 745)* acknowledged the fact that the present RTI Act of 2005 was specially introduced to establish the Appellate machinery with the investigative power to review the decision of the CPIO. Despite the same, by not exercising its power, the present First Appellate Authority failed to uphold the spirit and preamble of the RTI Act, 2005. The relevant portion has been produced below:

*"28. ...The Right to Information Bill was introduced in terms of its statements of objects and reasons to ensure greater and more effective access to information. The Act of 2002 needed to be made even more progressive, participatory and meaningful. The Important changes proposed to be incorporated therein included establishment of an appellate machinery with investigative powers to review the decision of the Public Information Officer, providing penal provisions in the event of failure to provide information as per law, etc. This Bill was passed by both the*

*Houses of the Parliament and upon receiving the assent of the President on 15th June, 2005, it came on the statute book as the Right to Information Act, 2005."*

The Court further noted that more than a PIO, the role and decision of the Appellate Authorities is vital, as the same orients through a judicial determinative process. Thus, the mind has to be applied with consideration to the legal position. The relevant portion has been produced below:

*"60. Before the Public Information Officers, the controversy may fall within a narrow compass. But the question before the First Appellate Authority and particularly, the Information Commissioners (Members of the Commission) are of a very vital nature. The impact of such adjudication, instead of being tilted towards administrative adjudication is specifically oriented and akin to the judicial determinative process. Application of mind and passing of reasoned orders are inbuilt into the scheme of the Act of 2005. In fact, the provisions of the Act are specific in that regard. While applying its mind, it has to dwell upon the issues of legal essence and effect."*

Contrary to this, the First Appellate Authority in the present case has failed to act in consonance with the provisions of the RTI Act, 2005.

Moreover, the Hon'ble Apex Court highlighted the need for detailed reasoning in the adjudicatory decisions of the Appellate Authorities. The relevant portions have been produced below:

*"96. ...The orders of the appellate authority and the Commission have to be supported by adequate reasoning as they grant relief to one party, despite opposition by the other or reject the request for information made in exercise of a statutory right.*

*97. It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its decisions. Reasoning is the soul of a judgment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence rests. It is informative to the claimant of the basis for rejection of his claim, as well as provides the grounds for challenging the order before the higher authority/constitutional court. The reasons, therefore, enable the authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required to"*

Contrary to this, the present First Appellate Authority has failed to provide detailed reasoning. The First Appellate Authority neither cited the provision under which the Appellate Authority is barred from forwarding the application to the other public authority, nor has cited any case law in which the same reasoning has been laid.

Thus, Contrary to the ruling of the Hon'ble Supreme Court, the First Appellate Authority failed to discharge the duties, and uphold the decision of the CPIO. The First Appellate Authority has failed to uphold the provisions and the spirit of the RTI Act 2005 and has failed to apply the judicial mind while deciding the matter.

A true copy of the office memorandum carrying the Guidelines issued by the Government of India for the Officers designated as the first appellate authority under the RTI Act, 2005 is attached as **Annexure Number 12** to the present Appeal.

**16.** That, the jurisprudence of the RTI Act strengthens the position of the Applicant. With the insertion of the provisions like Section 5(3) and 6(3), it is almost impossible to deny the information to the applicants. However, rulings of the Hon'ble Commission have taken care of the misuse of the position but have exempted the closely connected departments to coordinate and cooperate with each other for the purpose of furnishing the information.

In the light of the same, both the WII and Chief Wildlife Warden are closely connected authorities to each other in the terms of functioning. Both of these public authorities act for the conservation and protection of wildlife. The Hon'ble Delhi High Court in the case of *Ministry of Railway through Secretary & Anr v. Girish Mittal (W.P.(C) 6088/2014 & CM Nos.14799/2014, 14800/2014)* upheld the CIC's Order in *File No: CIC/AD/A/2012/001924* in the light of Section 6(3) that, a PIO must transfer an application to its 'closely connected department'. The relevant portion has been produced below:

*"15. The plain language of Section 6(3) of the Act indicates that the public authority would transfer the application or such part of it to another public authority where the information sought is more closely connected with the functions of the other authority. The reliance placed by the learned counsel for the*

*petitioner on the provisions of Section 6(3) of the Act is clearly misplaced in the facts and circumstances of the case. This is not a case where penalty has been imposed with respect to queries which have been referred to another public authority, but with respect to queries that were to be addressed by the public authority of which petitioner no. 2 is a Public Information Officer. Section 6(3) of the Act cannot be read to mean that the responsibility of a CPIO is only limited to forwarding the applications to different departments/offices. Forwarding an application by a public authority to another public authority is not the same as a PIO of a public authority arranging or sourcing information from within its own organisation. In the present case, undisputedly, certain information which was not provided to respondent would be available with the Railway Board and the CPIO was required to furnish the same. He cannot escape his responsibility to provide the information by simply stating that the queries were forwarded to other officials. Undeniably, the directions of CIC were not complied with."*

Thus, a CPIO is bound u/s 6(3) to transfer the application to the closely connected department. Moreover, a CPIO cannot escape from his duties by merely forwarding the application to the closely connected department. It is the duty of a CPIO to furnish the sought information.

Contrary to this, the present CPIO has failed to act in compliance with the RTI Act, Order of this Hon'ble Commission, and the decision of the Hon'ble Supreme Court and various other High Courts.

17. That, u/s 21 of the RTI Act, a suit, prosecution, or other legal proceedings shall not lie against any other person that is done under good faith. The Appellant is a student of environmental laws and is, directly and indirectly, working for the conservation of Elephants. The presently appealed RTI application was filed under good faith to make an effort for the conservation of the national heritage animal 'Elephant'.

The Hon'ble High Court of Kerala through its judgment dated 03.08.2015 in the case of ***Amrutha M George v. Spices Board (WP(C). No. 13528 of 2015 (M)*** held that:

*"That apart, I also find force in the contention of the learned senior counsel for the petitioner that Section 21 of the RTI Act affords a protection to an applicant who prefers an application in terms of the Act. The contention of the learned senior counsel for the respondents that the said provision offers immunity from legal proceedings only to officers exercising powers under the Act does not appeal*

*to me as convincing since the express provisions of Section 21 of the RTI Act do not admit of any such restricted interpretation to be placed on the provisions."*

Thus, the present appeal furnishes merits in order to be passed in the favor of the Appellant for all the actions taken in the good faith for the conservation of Elephants.

**18.** That, it merits to be noted that the illegal act of denial to information and rescuing from duties has caused a delay of 729 days (**1 Year, 11 Months, 28 Days**) i.e. approximately 2 Years, till this present date of hearing.

The RTI Act aims to supply the information within 30 days of the filing of the application. Due to the non-compliance with the provisions of the RTI Act, this unprecedented delay has hampered the objective of the Appellant.

Hence, u/s 20 of the RTI Act, heavy exemplary penalty and departmental inquiry must be issued against the Respondent for not furnishing the information under the RTI Act 2005.

### **PRAYER**

Therefore in the light of the facts stated, issues raised, arguments advanced and authorities cited, it is most humbly and respectfully prayed before this Hon'ble Commission that it may be pleased to:

**i.** Direct the CPIO to provide the copy of the Order dated 03.08.2018 in the WP (PIL) No. 6 of 2012 to the Appellant,

OR

Direct the Chief Wildlife Warden, Dehradun to provide the copy of the Order dated 03.08.2018 in the WP (PIL) No. 6 of 2012 to the Appellant,

OR

Direct the Registrar General of the Hon'ble High Court of Uttarakhand at Nainital to provide the copy of the Order dated 03.08.2018 in the WP (PIL) No. 6 of 2012.

**ii.** Issue the direction or advisory to the State of Uttarakhand for enforcing the RTI Act by establishing an Online RTI filing portal u/s 6(1) of the RTI Act 2005.

**iii.** Under Section 26(1)(d), direct the Government of India to regularise the training programs for the development of public information officers.

**iv.** Impose penalties u/s 20 of the RTI Act upon the CPIO for non-furnishing of information that has led to a delay of almost 2 years.

**v.** Pass any other order that deems fit in the light of equity, justice, and good conscience.

Dated: 09/05/2021

(Mr.\_\_\_\_\_)

Appellant

Party-in-person