

Day 8

Module III

Process of Seeking Information

Chapter 8

Appeal Process

Chapter Scheme

- ☐ List of Abbreviations / Acronyms.
 - ☐ First Appeal.
 - ☐ Second Appeal.
 - ☐ Penalty Provisions.
 - ☐ Case.
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-

List of Abbreviations / Acronyms

<i>APIO(s)</i>	Assistant Public Information Officer(s)	<i>PIO(s)</i>	Public Information Officer(s)
<i>FAA(s)</i>	First Appellate Authority / Authorities	<i>RTI</i>	Right to Information
<i>IC(s)</i>	Information Commission(s)	<i>S.(s)</i>	Section(s)
<i>NGO(s)</i>	Non Government Organisation(s)	<i>u. S.</i>	under Section
<i>PAs</i>	Public Authority / Authorities	-	--

First Appeal...

□ Any person who,

does not receive a decision within the time specified in S. 7(1) & (3)(a) of the Act, or

is aggrieved by a decision of the Central / State PIO, as the case may be,

may within thirty days from the expiry of such period or from the receipt of such decision

Contd.

First Appeal.....II

prefer an appeal

to such officer who is senior in rank to the Central / State PIO as the case may be, in each PA;

- *Such officer [referred to in Chapter 5, Module II as 'First Appellate Authority' (FAA)] may admit the appeal after the expiry of the period of thirty days if he / she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. [S. 19(1)]*

Contd.

First Appeal.....III

The Citizen has a right to appeal...

If he / she

- has not received any reply from the PIO within the specified time limit
- is not satisfied with any of the PIO's response(s)
- has been refused information by the PIO
- has been given only partial information
- has been provided incomplete information
- has been charged unreasonable fee for accessing information

Contd.

First Appeal.....IV

- Where an appeal is preferred against an order made by PIO u. S. 11 to disclose **third party** information,

the **appeal** by the concerned third party **shall be made within 30 days** from the date of the order. **[S. 19(2)]**

An FAA does not have the discretion to accept appeals from a third party after 30 days. **[S. 19(2)]**

First Appeal.....v

- ❑ The first appeal shall be disposed of **within 30 days** of the receipt of the appeal or
within such extended period **not exceeding a total of 45 days** from the date of filing thereof,
(In case of the latter), **reasons have to be recorded in writing. [s. 19(6)]**

First Appeal.....VI

Relevant Guidelines from DoPT, GoI

Deciding appeals under the RTI Act is a quasi-judicial function. Therefore, the order passed by the appellate authority should be a speaking order giving justification for the decision arrived at.

If the appellate officer comes to the conclusion that the appellant should be supplied information in addition to what has been supplied by the PIO, he may either

- (i) pass an order directing the PIO to give such information to the appellant or

First Appeal.....VII

- (ii) himself give information to the appellant while disposing off the appeal.

In case the PIO does not implement the order passed by the appellate authority, such appellate authority should bring the matter to the notice of the officer in the public authority competent to take action against the PIO.

[OM No.10/23/2007-IR dated 9th July 2007 by the DoPT]

Second Appeal...

- A **second appeal against** the decision under S. 19(1) [i.e. the **decision of an FAA**] **shall lie**, with the Central / State IC, **within 90 days** from the date on which the decision should have been made or was actually received,
- Central / State IC, as the case may be, **may admit** the **appeal after** the expiry of the period of **90 days** if it is **satisfied that the appellant was prevented by sufficient cause from filing the appeal in time [s. 19(3)]** .

Second Appeal.....II

- Similarly, second appeals by a third party may also lie with the Central / State IC, as the case may be,

in which case, the IC shall give a reasonable opportunity of being heard to that third party.

[S. 19(4)]

Note: No time limit has been fixed for ICs to decide upon appeals.

Second Appeal.....III

- ❑ In any appeal proceedings,
the **onus to prove** that a denial of a request
was justified

shall be on the **PIO** who denied the request.
s. 19(5)
- ❑ The **decision of the IC** shall be **binding**. **[s. 19(7)]**

**Note: No time limit has been fixed for ICs to
decide upon complaints or appeals.**

Second Appeal.....IV

- ❑ In their decision, Central / State IC has powers to require a PA to take any such steps as may be necessary to secure compliance with the provisions of the 'RTI Act, 2005' [S. 19 (8)(a)] including –
 - (i) providing access to information in a particular form
 - (ii) appointing a Central / State PIO
 - (iii) *publishing certain information or categories of information*

Second Appeal.....v

- (iv) making necessary changes to its practices in relation to the maintenance, management and destruction of records
- (v) enhancing the provision of training on the right to information for its officials
- (vi) providing it with an annual report in compliance with S. 4(1)(b)

Second Appeal.....VI

- require the PA to compensate the complainant for any loss or other detriment suffered **[S. 19(8)(b)]**
- impose any penalties provided under the 'RTI Act, 2005' **[S. 19(8)(c)]**
[elaborated in the next slide]
- reject the application **[S. 19(8)(d)]**

Penalty Provisions...

- ❑ Where a Central / State IC (at the time of deciding any complaint / appeal) is of the opinion that a PIO has, without any reasonable cause:
 - refused to receive an application for information
 - not furnished information within the time specified
 - malafidely denied the request for information
 - knowingly given incorrect, incomplete or misleading information
 - destroyed information
 - obstructed in any manner in furnishing the information...

Penalty Provisions.....II

...It shall impose a penalty of Rs. 250/- each day

till application is received or

information is furnished,...

...however, the total amount of such penalty shall not exceed 25,000 rupees. **[S. 20(1)]**

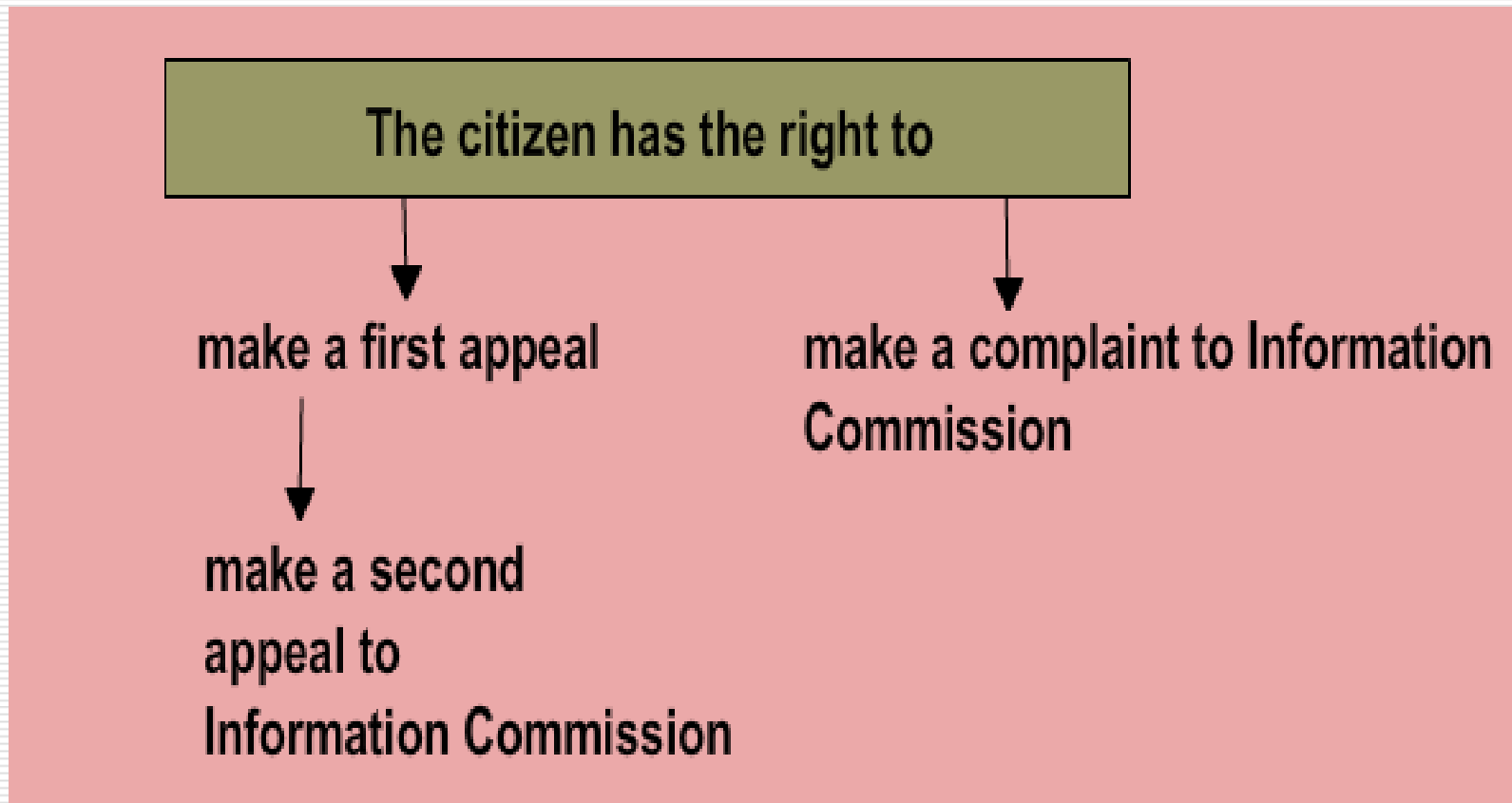
Penalty Provisions.....III

...the Central / State PIO... shall be given a reasonable **opportunity of being heard** before any penalty is imposed on him... **[S. 20(1)]** ... the burden of proving that he / she **acted reasonably and diligently** shall be on the Central / State PIO... **[S. 20(1)]**

- ❑ **IC shall recommend for disciplinary action** against the Central / State PIO if he / she has, **without any reasonable cause, persistently violated** the provisions of **the Act** [as stated in S. 20(1)]. **[S. 20(2)]**

Note: Action in good faith will not be penalised as explained in Chapter 12, Module III.

Illustration: Appeal Process – Citizen's Rights vis-à-vis the FAAs & ICs



Case I...

PIO has decided to disclose some information and the Head of the PA has some reservations about the proposed disclosure. Can the Head of the PA appeal against the PIO's decision?

Yes. A full bench of the CIC in *Mrs. Guninder Kaur Gill v DCP EOW* answered this question thus: "Section 19(2) recognizes the right of a third party to submit an appeal before the First Appellate Authority. If the CPIO decides to disclose information that relates to a PA and if the PA has treated the information as confidential, it can submit an appeal before the FAA under S. 19(2) of the RTI Act".

Case III

The issue still remains as to whether a PA can appeal against the decision of its own CPIO.

In this context, the opening words of Section 19(1) are important. It says that any persons can prefer an appeal who – (i) does not receive a decision within time specified; or (ii) is aggrieved by a decision of the CPIO.

It may be mentioned that the word 'person' has not been defined in the Act but it is wide enough to include a PA, which is a juristic entity and as such is a "person" in the eye of the law.

References

- ❑ 'Right to Information Act', 2005 – Bare Act. **A soft copy is available on this website. It is downloadable.**
- ❑ www.rti.gov.in
- ❑ www.cic.gov.in

End of Chapter 8

You must take the Quiz for this Chapter before proceeding to the next Chapter!