

No. RTI/GoI/MoD/2018/1

From,
Venkatesh Nayak
#55A, 3rd Floor
Siddharth Chambers-1
Kalu Sarai
New Delhi – 110 016

To,
The Central Public Information Officer &
US (GS-I/IS)
Department of Defence
Ministry of Defence
Government of India
Room No. 283-B, South Block
New Delhi- 110 001

Dear sir,

Sub: Submission of request for information under *The Right to Information Act, 2005*

Apropos of the reply to Unstarred Question No. 1463 tabled in the Rajya Sabha on 01/01/2018 (copy along with Annexure is enclosed), by the Hon'ble Minister of State in your Ministry, I would like to obtain the following information under the RTI Act:

- 1) A clear photocopy of all official records containing details of the procedure that is required to be followed by your Ministry while deciding whether or not to grant sanction for prosecuting any member of the defence forces for actions committed under the *Armed Forces (Jammu and Kashmir) Special Powers, 1990* (J&K AFSPA), including channel(s) of supervision over and accountability of such decision making procedure;
- 2) A clear photocopy of all official records/documents containing the norms, criteria and standards that are required to be applied for assessing the evidence submitted by the Government of Jammu and Kashmir in relation to its request for sanction for prosecuting any member of the defence forces for actions committed under J&K AFSPA;
- 3) The rank or designation of the officer who is competent to make a final decision on whether or not to grant sanction for prosecuting any member of the defence forces for actions committed under J&K AFSPA in any case (name of the officer is not required);
- 4) A clear photocopy of the communication sent by your Ministry to the Government of J&K denying sanction for prosecution of members of the defence forces in all cases listed in the Annexure to the reply to the said Unstarred Question; and
- 5) Inspection of every file including all papers, correspondence, file notings and emails, if any, relating to the denial of sanction for prosecution of members of the defence forces as per the list annexed to the reply to the said Unstarred Question and supply of clear photocopies of the relevant papers and electronic files identified by me during the inspection.

I believe that the information sought at paras #1-4 above are required to be proactively disclosed by your Ministry under Sections 4(1)(b), 4(1)(c) and 4(1)(d) of the RTI Act. As I am unable to locate the said information on your official website, I am constrained to file this RTI

अधपत्रा COUNTERFOIL
इसे फाड़कर प्रेषक अपने पास रख ले।
To be detached and kept
by the Sender.

पोस्टल आर्डर
₹ 10
POSTAL ORDER

किससे अदा करना
To whom payable A/o
Ministry of Defence

किस डाकघर
At what Office 6/12, N. Delhi

क्या इसे क्रॉस किया है
Whether crossed no

भेजने की तारीख
Date sent 12/2/18

38F 252947

Date: 12/02/2018

application. I would like to receive all this information by post at my postal address mentioned above.

As regards the request for inspection of information described at para #5 above, I would be grateful if you would give me sufficient advance notice of the date and time for inspection.

I am a citizen of India. I have enclosed an IPO (bearing #38F 252947) for Rs. 10/- towards payment of the prescribed application fee. Please inform me of the additional fee payable for obtaining access to all the information described above.

I hereby certify that the total length of the substantive portion of this RTI application (424 words) is well within the statutory limit of 500 words prescribed in the RTI Rules, 2012.

Yours sincerely,

S.S. Venkatesh Nayak

Venkatesh Nayak

12/2/18

SP HALU KHAG <110016>
GSTN No: 07AAAGH0037BZ25
ED716443558IN
Counter No:1,OP-Code:OP1
To:THE CPID,
NEW DELHI, PIN:110001
From:KINKATESH , ND
Wt:20grams, ,12/02/2018 ,11:00
Amt:18.00
,CGST @7% 1.5 ,UTGST @7%: 1.50
<<Track on www.indiapost.gov.in>>



GOVERNMENT OF INDIA
MINISTRY OF DEFENCE
DEPARTMENT OF DEFENCE
RAJYA SABHA
UNSTARRED QUESTION NO.1463
TO BE ANSWERED ON 1.1.2018

PROSECUTION OF ARMED FORCES UNDER AFSPA

1463. SHRI HUSAIN DALWAI:

Will the Minister of DEFENCE be pleased to state:

- (a) the number of cases received by the Central Government from Jammu and Kashmir Government for sanction of prosecution of Armed Forces personnel, under Armed Forces (Jammu and Kashmir) Special Powers Act, (AFSPA), 1990;
- (b) the number of such cases in which sanctions were granted, denied and pending;
- (c) the details for each request received including its year of receiving, offences alleged, outcome of investigation, current status of the sanction for prosecution; and
- (d) the reasons for denying or pending status of sanction for prosecution?

ANSWER
MINISTER OF STATE IN THE MINISTRY OF DEFENCE
DR. SUBHASH BHAMRE

- (a) A total of 50 cases have been received by the Union Government from the Government of Jammu and Kashmir for Prosecution Sanction against Armed Forces personnel under AFSPA, 1990.
- (b) & (c): A statement giving the details of the total number of cases received in each of the years, offence alleged and the current status of the sanction granted / denied / pending based on the investigation is annexed.
- (d) The reason for denial / pendency of prosecution sanction is on account of lack of sufficient evidence to establish a *prima facie* case.

ANNEXURE IN RESPECT OF REPLY GIVEN IN PARTS (b) & (c) OF RAJYA SABHA UNSTARRED QUESTION NO. 1463 FOR 1.1.2018 REGARDING PROSECUTION OF ARMED FORCES UNDER AFSPA.

S. No.	Year	Total Requests Received	Offence Alleged	Current Status of Prosecution sanction
1.	2001	1	Death in operation	Denied
2.	2005	2	Death in an encounter	Denied
			Death in retaliatory fire	Denied
3.	2006	17	Killing after abduction	Denied
			Apprehending and killing	Denied
			Death after apprehension of civilian	Denied
			Outraging the modesty of a woman	Denied
			Disappearance of two civilians	Denied
			Rape of a woman	Denied
			Death of a civilian in operation	Denied
			Death of a civilian	Denied
			Beating of civilians	Denied
			Maltreatment	Denied
			Death of a civilian	Denied
			Disappearance of a civilian	Denied
			Illegal detention of a civilian	Denied
			Abduction of a civilian	Denied
			Death of a civilian after abduction	Denied
			Abduction and Death of a civilian	Denied
			Disappearance of a civilian	Pending
4	2007	13	Torture and Killing	Denied
			Apprehending and killing	Denied
			Torture and Killing	Denied
			Torture and killing	Denied
			Torture and killing	Denied
			Rape of a woman	Denied
			Custodial death	Denied
			Disappearance of a civilian	Denied
			Disappearance of a civilian	Denied
			Disappearance of a civilian	Denied
			Apprehending and killing	Denied
			Fake encounter leading to death of one person	Denied
			Killing of a civilian	Denied

: 2 :

5	2008	3	Detention and Killing	Denied
			Disappearance of a civilian	Denied
			Theft, molestation and rape	Denied
6	2009	2	Disappearance of civilians	Denied
			Death in custody	Denied
7	2010	4	Killing of a civilian	Denied
			Custodial death	Denied
			Killing of a civilian	Denied
			Killing of a civilian	Denied
8	2011	2	Kidnapping of a civilian	Pending
			Killing of a civilian	Denied
9	2013	3	Killing of suspected terrorist	Denied
			Killing of a civilian	Denied
			Killing of a civilian	Denied
10	2014	2	Killing of a civilian	Pending
			Killing of a civilian	Denied
11	2016	1	Killing of two civilians and causing injury to two civilians.	Denied

No.F.14 (16)/2009-D(GS-I/IS)

Ministry of Defence

D(GS-I/IS)

South Block, New Delhi

Dated 22.02.2018

To

Shri Venkatesh Nayak
55A, 3rd Floor
Siddharth Chambers-1
Kalu Sarai
New Delhi – 110 016

Subject:- Application under Right to Information Act, 2005.

Sir,

Kindly refer to your application No. RTI/Gol/MoD/2018/1 dated 12-02-2018 and received on 19th Feb. ,2018 on the subject mentioned above.

2. It is intimated that information sought in your application referred to above is not under the custody of the undersigned CPIO. Hence your application in original is transferred under Section 6(3) of RTI Act to CPIO for providing requisite information, if any. The requisite information as sought on behalf of the undersigned CPIO may be treated as 'Nil'.

3. In case, you are not satisfied with aforesaid reply, you may prefer an appeal to following First Appellate Authority:

Shri C.S. Reddy,
First Appellate Authority/Director(G)
Room No. 206(II), South Block,
New Delhi – 110 011.

Yours faithfully,



(B. Senapati)

CPIO/Under Secretary to Govt. of India

Tele: 23012972

Copy to:- Shri T.D. Prashantha Rao, Under Secretary(AG) & CPIO, Room No. 108, B-Wing, Sena Bhawan, New Delhi along with application & enclosures including application fee(IPO No 38F 252947) in original referred to above for information and necessary action.

Ministry of Defence
D(AG)

Subject: RTI application from Shri Venkatesh Nayak regarding details related to Rajya Sabha Unstarred Question No. 1463 answered on 1.1.2018 - reg.

Please find enclosed herewith RTI application dated 12.02.2018 of Sh. Venkatesh Nayak received in this section on 22.02.2018 through D(GS-I/IS) on the subject cited above. The requisite information are not maintained/available in D(AG) section. The RTI application of Sh. Venkatesh Nayak is transferred to the ADG (AE), RTI Cell, Sena Bhawan, New Delhi under the provision of Section 6(3) of Right to Information Act, 2005 with a request for taking appropriate action and to provide the requisite information to the applicant directly under intimation to all concerned.

2. In case, if it does not pertain to your division, the same may be forwarded to the concerned CPIO with a copy marked to the RTI applicant.

Prashanth
26-02-18

(T D Prashanth Rao)
Under Secretary (AG-I)
Tele No. 23018602

ADG (AE) &CPIO, RTI Cell, D-I Wing, G-6, Gate No. 4, IHQ of MoD (Army), Sena Bhawan, New Delhi

MoD ID No. 23(03)/2017-D(AG) dated 26.02.2018

Copy to:-

- 1) Shri Venkatesh Nayak, #55A, 3rd Floor, Siddharth Chambers-I, Kalu Sarai, New Delhi-110016, with a request to further pursue the matter with above mentioned addressee.

Before the Designated First Appellate Authority
and DS[AG-1], Department of Defence, Ministry of Defence
Government of India

"B" Wing, Sena Bhawan, New Delhi- 110 011

Appeal filed under Section 19(1) of the Right to Information Act, 2005

In the matter of

Venkatesh Nayak vs CPIO & Under Secretary (AG-I)

Date of submission : 15/03/2018

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SP HAZI KWS <110016>
GSTIN No: 07AAAG100378225
EID7645786091M
Counter No:1, CP-Code:CP1
To:THE FIRST APPELLATE,
NIRMAN BHAWAN, PIN:110011
From:VENKATESH NAYAK, ND
Wt:55grams, 15/03/2018, 15:20
Amt:30.00
, GST 0% 2.5 , LTGST 0% 2.50
<<Track on www.indiapost.gov.in>>

भारतीय डाक



S. S. Venkatesh Nayak

Before the Designated First Appellate Authority
and DS[AG-1], Department of Defence, Ministry of Defence

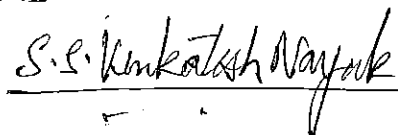
Government of India

"B" Wing, Sena Bhawan, New Delhi- 110 011

Appeal filed under Section 19(1) of the Right to Information Act, 2005

Date: 15/03/2018

- 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 RTI Application was addressed :** The Central Public Information Officer &
US (GS-I/IS)
Department of Defence
Government of India
Room No. 283-B, South Block
New Delhi- 110 001
- 3) Name and address of the CPIOs who gave reply to the Application :**
- 1)** Shri B. Senapati
CPIO & Under Secretary to Govt.
of India, D(GS-I/IS)
Ministry of Defence
Government of India
New Delhi- 110 011
- 2)** Shri T. Prashanth Rao
CPIO and Under Secretary (AG-I)
Room No. 108, 'B' Wing
Sena Bhawan
New Delhi- 110 011
- 4) Particulars of the RTI application-**
- a) No. and date of submission of the RTI application :** No. RTI/GoI/MoD/2018/1 dated
12/2/2018
- b) Date of payment of additional fee (if any) :** Not applicable.



5) Particulars of the order(s) including number, if any against which the appeal is preferred

: Communication No. MOD ID No. 23(03)/2017-D(AG) dated 26/02/2018 issued by the CPIO mentioned at para #3.2 above.

6) Brief facts leading to the appeal :

6.1) On 12/02/2018 this Appellant despatched by Speed Post a request for information to the CPIO mentioned at para #2 above along with the prescribed application fee, stating as follows (**Annexe 1**):

"Apropos of the reply to Unstarred Question No. 1463 tabled in the Rajya Sabha on 01/01/2018 (copy along with Annexure is enclosed), by the Hon'ble Minister of State in your Ministry, I would like to obtain the following information under the RTI Act:

- 1) A clear photocopy of all official records containing details of the procedure that is required to be followed by your Ministry while deciding whether or not to grant sanction for prosecuting any member of the defence forces for actions committed under the *Armed Forces (Jammu and Kashmir) Special Powers, 1990* (J&K AFSPA), including channel(s) of supervision over and accountability of such decision making procedure;
- 2) A clear photocopy of all official records/documents containing the norms, criteria and standards that are required to be applied for assessing the evidence submitted by the Government of Jammu and Kashmir in relation to its request for sanction for prosecuting any member of the defence forces for actions committed under J&K AFSPA;
- 3) The rank or designation of the officer who is competent to make a final decision on whether or not to grant sanction for prosecuting any member of the defence forces for actions committed under J&K AFSPA in any case (name of the officer is not required);
- 4) A clear photocopy of the communication sent by your Ministry to the Government of J&K denying sanction for prosecution of members of the defence forces in all cases listed in the Annexure to the reply to the said Unstarred Question; and
- 5) Inspection of every file including all papers, correspondence, file notings and emails, if any, relating to the denial of sanction for prosecution of members of the defence forces as per the list annexed to the reply to the said Unstarred Question and supply of clear photocopies of the relevant papers and electronic files identified by me during the inspection.

I believe that the information sought at paras #1-4 above are required to be proactively disclosed by your Ministry under Sections 4(1)(b), 4(1)(c) and 4(1)(d) of the RTI Act. As I am unable to locate the said information on your official website, I am constrained to file this RTI application. I would like to receive all this information by post at my postal address mentioned above.

S.S. Venkatesh Nayak

As regards the request for inspection of information described at para #5 above, I would be grateful if you would give me sufficient advance notice of the date and time for inspection."

6.2) On 26/02/2018 the officer mentioned at para #3.1 above, sent this Appellant a communication in response to the said RTI application stating, that the same had been transferred to the CPIO mentioned at para #3.2 above (**Annexe 2**). This action of the said CPIO is not being challenged through this appeal.

6.3) Subsequently, on 01/03/2018, this Appellant received a communication of number and date captioned at para #5 above, addressed to the CPIO & ADG (AE), RTI Cell, D-I Wing, G-6, Gate No. 4, IHQ of MoD (Army), Sena Bhawan, New Delhi stating that the information sought in the instant RTI application is "not maintained/available in D(AG) section and that the said RTI application was being transferred to the said CPIO for taking appropriate action (**Annexe 3**).

6.3) This Appellant is aggrieved by the action of the CPIO mentioned at para #3.2 above for reasons explained below.

7) 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; and**
- 2) order the disclosure of all the information sought in the said RTI application, as is this Appellant's right under Section 7(6) of the RTI Act from this very public authority.**

8) Grounds for the prayer or relief :

8.1) According to Section 19(1) of the RTI Act any person aggrieved by any decision of a CPIO may prefer an appeal against such decision within 30 days of receipt of that decision to an officer senior in rank to such CPIO. This first appeal is being submitted on the 14th day of receipt of the decision of the CPIO mentioned at para #3.2 above which is well within the statutory time limit specified in Section 19(1) of the RTI Act. This Appellant is aggrieved by the decision of the said CPIO for the following reasons:

8.1.1) A persusal of the instant RTI application makes it clear that this Appellant was seeking information from this Department and not from the Indian Army to whom the CPIO mentioned at para #3.2 above transferred it under the terms of Section 6(3) of the RTI Act. For the purpose of demonstrating this point, Section 7 of *The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990* (J&K AFSPA) is reproduced below, *ad literatim*:

"7. Protection of persons acting in good faith under this Act.—No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of

S.S. Venkatesh Nayak

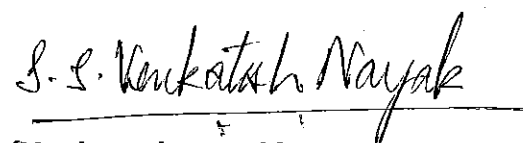
anything done or purported to be done in exercise of the powers conferred by this Act."

A perusal of the said provision contained in the J&K AFSPA clearly indicates that the authority competent to make a decision on a request for sanction of prosecution of a member of the defence forces, operating in a "disturbed area", as declared under Section 3 of the said Act, is the Central Government. This Appellant was seeking information relating to the details of a reply tabled by this Department through its parent Ministry, namely, the Ministry of Defence in the Rajya Sabha on 01/01/2018 – a copy of which was annexed to the instant RTI application. To the best of this Appellant's knowledge the Indian Army to which the instant RTI application was transferred by the CPIO mentioned at para # 3.2 above can be described as an instrumentality of the Central Government and not the Central Government itself as understood within the meaning and scope of the definition of that phrase provided under Section 8(b)(i) of the *General Clauses Act, 1897*. Further as per the Second Schedule attached to the *Allocation of Business Rules, 1961*, this Ministry is the controlling authority for the Armed Forces of the Union. The Indian Army falls within the administrative jurisdiction of this Department and its parent Ministry. So the authority competent to make a decision on requests for sanction for prosecution of members of the defence forces is this Department or its parent Ministry and not the Indian Army to which the CPIO mentioned at para #3.2 transferred the instant RTI application under Section 6(3) of the RTI Act. Therefore this Appellant is aggrieved by the action of the CPIO which appears to be aimed at dodging the responsibility for providing a definitive reply to the queries raised in the instant RTI application. Therefore this Appellant believes that the action of the said CPIO is bad in law and deserves to be set aside and the request for information be considered in depth within this Department or any other part of its parent Ministry for the purpose of making a determination as to whether or not to disclose the information sought in the instant RTI application. **Hence the submission of this first appeal to this Hon'ble Appellate Authority.**

8.1.2) 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 applicant has a right to obtain all the information free of charge. As more than 12 days have passed since the submission of the instant RTI application to this Department, this Appellant therefore has a 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 first appeal to this Hon'ble Appellate Authority.**

9) 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)

BY SPEED POST

File No. 23(03)2017-D(AG)
Ministry of Defence
D(AG-I)

Room No. 105, 'B' Wing,
Sena Bhawan, New Delhi - 110105
Dated 11th April, 2018

To,

Shri Venkatesh Nayak
#55A, 3rd Floor,
Siddharth Chambers-1,
Kalu Sarai,
New Delhi - 110016

Subject:- RTI appeal filed in the matter of Venkatesh Nayak ..Vs.. CPIO and Under
Secretary (AG-I) - reg.

Sir,

This is with reference to your RTI appeal dated 15.03.2018 in respect to the
decision of CPIO No. 23(03)/2017-D(AG) dated 26.02.2018.

2. The matter has been discussed with the concerned CPIO, who has stated that
as per Section 6(3) of the RTI Act, 2005, the matter was transferred to the
concerned authority who is the custodian of the desired information.
3. As such, you may approach the concerned authority directly. Accordingly,
your appeal stands disposed off.

In case you are not satisfied with this order, you may approach CIC.

Yours faithfully,


(B.D.Barua)

First Appellate Authority/Deputy Secretary to the Govt. of India,
Tele.:23014036

Tele: 011-23019585

RTI Cell, Addl DG MT (AE)
आर टी आई सेल ए डी जी एम टी (ए ई)
G-6, D-1 Wing
जी - 6, डी-1 वींग
Sena Bhawan, Gate No-4
सेना भवन, गेट नं.-4
IHQ of MoD (Army)
एकीकृत रक्षा मंत्रालय (सेना)
New Delhi - 110011
नई दिल्ली-110 011

A/810027/RTI/OF_44712

01 Mar 2018

Shri Venkatesh Navak
55A, 3rd Floor, Siddharth Chambers - 1,
Kalu Sarai, New Delhi - 110016

RIGHT TO INFORMATION ACT 2005

1. Your RTI application reference No. RTI/Gol/MoD/2018/1 dated 12 Feb 2018 received at this office on 27 Feb 2018 and the same is under process at this Headquarters.
2. Please be informed that RTI applications are processed with coordinating section of concerned branches/directorates to obtain inputs with respect to information sought which lay scattered within various sections/branches. Provisioning of information also involves inter-directorate movement of the said application. IHQ of MoD (Army) and all its agencies function only 5 days a week and consequently each month has 8 or more non working days. Hence there is a possibility of a slight delay and in case of such a delay, please accept delayed response.
3. To know status of your application in future, your case No is **OF_44712**.



(Rajiv Guleria)
राजीव गुलेरिया
Lt Col
ले0 कर्नल
GSO-1(Appeal)
जी.एस.ओ.-1 (अपील)
For CPIO of Indian Army
कृते जन सूचना अधिकारी भारतीय सेना

Tele: 011-23019585

RTI Cell, Addl DG MT (AE)
आर टी आई सेल ए डी जी एम टी (ए ई)
G-6, D-1 Wing
जी - 6, डी-1 वींग
Sena Bhawan, Gate No-4
सेना भवन, गेट नं.-4
IHQ of MoD (Army)
एकीकृत रक्षा मंत्रालय (सेना)
New Delhi -110011
नई दिल्ली-110 011

A/810027/RTI/OF_44712

28 Mar 2018

Shri Venkatesh Nayak
55A, 3rd Floor, Siddharth
Chambers - 1,
Kalu Sarai, New Delhi - 110016

RIGHT TO INFORMATION ACT - 2005

- 43-
1. Further to this office letter No A/810027/RTI/OF_44712 dated 01 Mar 2018.
 2. It is intimated that your application is under process with concerned agency at IHQ of MoD (Army) and it will take some more time to provide the information requested for, subject to availability of information with concerned agency.
 3. Please accept delayed response.



(Ram Naresh Sharma)
Lt Col
GSO-1 (Legal)
For CPIO of Indian Army



REGISTERED SDS/POST

RTI Cell, Addl DG MT (AE)
आर टी आई सेल ए डी जी एम टी (ए ई)
G-6, D-1 Wing
जी - 6, डी-1 वींग
Sena Bhawan, Gate No-4
सेना भवन, गेट न.-4
IHQ of MoD (Army)
एकीकृत रक्षा मंत्रालय (सेना)
New Delhi -110011
नई दिल्ली-110 011

A/810027/RTI/OF_44712

16 Apr 2018

Shri Venkatesh Nayak
55A, 3rd Floor, Siddharth Chambers - 1,
KaluSarai, New Delhi - 110016

RIGHT TO INFORMATION ACT 2005
INFO ON RECORDS FOR PROSECUTING MEMBER OF DEF - FORCES

1. Further to this office letter No A/810027/RTI/OF_44712 dated 28 Mar 2018.
2. **Information on Para 1 to 5.** It is intimated that concerted efforts were made to obtain the information sought by you, however, the same is not available/held with the concerned agency of this Headquarters.
3. This disposes off your RTI application dated **12 Feb 2018**.
4. The address of First Appellate Authority of this HQ is Provost Marshal & Appellate Authority, Integrated HQ of MoD (Army), Room No 421-A, 'B' Wing, Sena Bhawan, New Delhi-110 011. For further details, in case of preferring an appeal, please refer Sec 19(1) of the RTI Act 2005.



(ADS Jasrotia)
ए डी एस जसरोटिया
Lt Col
ले0 कर्नल
GSO-1 (RTI)
जी.एस.ओ.-1 (आर.टी.आई)
For CPIO of Indian Army
कृते जन सूचना अधिकारी भारतीय सेना

