

**NHPC LIMITED**

(NHPC OFFICE COMPLEX SECTOR-33 FARIDABAD-121003)

**BEFORE THE APPELLATE AUTHORITY  
UNDER THE RTI ACT, 2005.**

No: NH/ED(HR)/AA/25/2016 /437-39

Dated: 23/05/2016

Appellant : Sh. Venkatesh Nayak, Kalu Sarai, New Delhi  
Respondents : PIO, NHPC and Deemed PIO, NHPC.

**ORDER**

Vide application dated 24/02/2016 filed under RTI Act, 2005 by Sh. Venkatesh Nayak filed under RTI Act, received in the office of CPIO, NHPC on 07/03/2016 through Under Secretary, Ministry of Power, Govt. of India vide their letter No. 12/5/2016-NHPC(Desk) dated 04/03/2016. Vide aforesaid application, Sh. Venkatesh Nayak sought the following information:-

1. A clear copy of all correspondence received from the Government of Jammu and Kashmir regarding the buy back of hydro power projects situated in that State, till date.
2. A clear copy of all replies sent to the Government of Jammu and Kashmir in relation to the correspondence referred to at para #1 above, till date.
3. A clear copy of all documents relating to feasibility of the proposal of buy back of the projects mentioned at para # 1 above, including reports of any experts committee available on record; and
4. A clear copy of all file notings held as on date relating to the queries described at para # 1-3 above".

Aggrieved by the reply of CPIO vide letter no. NH/RTI/186/2016/2817-18 dated 17/03/2016 the applicant has preferred the present appeal dated 25/04/2016 received in this office on 28/04/2016 on the ground that "Appellant is aggrieved by the decision of the said CPIO" by mentioning the reasons. He also cited the various decisions of Hon'ble Delhi High Court & Hon'ble Central Information Commission in support of his appeal.

I have carefully examined the appeal viz-a-viz correspondence made between the CPIO, the deemed PIO and the appellant and it has been observed there is no denial in providing the information as per the Act. The reply as supplied by Planning Division, Corporate Office being deemed PIO as per section 5(5) of the RTI Act vide their IOM no. NH/PD/RTI/703 dated 16/03/2016, has been furnished to the applicant by CPIO, NHPC vide letter no. NH/RTI/186/2016/2817-18 dated 17/03/2016. It has also been observed that the


Anand Kumar Agrawal  
23/05/2016

deemed PIO resorted the exemption under section 8(1)(d) of RTI Act being information related to commercial confidence, which was however inadvertently typed as 8(d) instead of 8(1)(d) of the RTI Act 2005. The appeal was forwarded to Planning division, Corporate Office with the request to review the information/reply provided against his application and offer their comments on the appeal, vide IOM no. NH/RTI/Appeal/25/2016/224 dated 29/04/2016. Responding to the same, deemed PIO i.e. Planning Division replied vide their IOM no. NH/PD/RTI/1105 dated 10/05/2016 that "NHPC is a Central Public Sector Undertaking (CPSU), it is a listed company in the stock market. The information sought by the applicant is sensitive and directly related to the business of the company. Also, the issue is between the parties MOP/NHPC & GoJ&K. The disclosure, shall lead to unwarranted speculations and confusion among the shareholders and shall affect the commercial confidence of NHPC. The disclosure of such information affecting the commercial confidence is exempted in terms of section 8(1)(d) of RTI Act, which says that:-

Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information".

I agree with deemed PIO and a copy of reply received from deemed PIO is enclosed as Annexure- 'A'. (02 pages).

The Appeal is accordingly disposed of.

  
(A.B. Agrawal)  
Executive Director (HR) and  
Appellate Authority

Copy to:

1. Sh. Venkatesh Nayak, 55A, 3<sup>rd</sup> Floor, Sidharth Chamber-1, Kalu Sarai, New Delhi-110016
2. The Executive Director (Planning), NHPC Limited, Corporate Office, Sector 33, Faridabad
3. The PIO, NHPC Limited, Corporate Office, Sector 33, Faridabad



**एनएचपीसी लिमिटेड**

(भारत सरकार का उधम)

**अंतः कार्यालय ज्ञापन**

**प्रेषक : योजना विभाग**

**प्रापक: मुख्य अभियंता (सिविल) एवं  
केन्द्रीय लोक सूचना अधिकारी**

**सं.: एनएच/पीडी/आरटीआई/ 1105**

**दिनांक: 10.05.2016**

**विषय: Appeal for Information under the RTI Act, 2005:- अपील संख्या: एनएच/  
आरटीआई/अपील/25/2016/224 दिनांक: 29.04.2016**

कृपया लोक सूचना अधिकारी के अंतः ज्ञापन संख्या एनएच/  
आरटीआई/अपील/25/2016/224 दिनांक: 29.04.2016, जो श्री वेंकटेश नायक की अपील से  
संबंधित है, का अवलोकन करें।

इस विषय में योजना विभाग जैसी अपनी पूर्व प्रदत्त सूचना का मूल्यांकन किया है और  
आवेदक की अपील पर योजना विभाग की टिप्पणी संलग्न है।

**संलग्न : यथोपरि।**



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under the RTI act. Page No..01



एनएचपीसी निगम मुख्यालय  
निगम योजना विभाग  
अंतर कार्यालय ज्ञापन

प्रेषक:- मुख्य अभियंता-II(योजना)

प्रापक:- मुख्य अभियंता-IV(योजना)

संख्या:- एनएच/पीडी/General/ 1101

दिनांक:-10.05.2016

Sub:-Appeal for information under the RTI Act 2005

Ref:-1 NH/RTI/Appeal/25/2016/224 dated 29.04.2016

Vide IOM mentioned under reference, RTI Section has forwarded the an Appeal of Sh. Venkatesh Nayak, on the reply furnished by the Planning Division vide IOM dated 16.03.2016, and requested Planning Division to review the information / Reply provided against his application and offer the comments on the appeal, for early disposal by the Appellate Authority.

In this connection, the comments on the points pertaining to this Division are furnished hereunder:-

NHPC is a Central Public Sector Undertaking (CPSU), it is a listed company in the stock market.

The information sought by the applicant is sensitive and directly relating to the business of the company. Also, the issue is between the parties MOP/NHPC & GoJ&K.

The disclosure, shall lead to unwarranted speculations and confusion among the shareholders and shall affect the commercial confidence of NHPC.

The disclosure of such information affecting the commercial confidence is exempted in terms of section 8(1)(d) of RTI Act, which says that,

"Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information".

एम. चन्द्रशेखर  
एम. चन्द्रशेखर  
प्रबंधक (सिविल)

मुख्य अभियंता - II (योजना)



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under the RTI act. Page No. 2

**Before the Designated First Appellate Authority**  
**and Executive Director (HR), NHPC Ltd.,**  
**NHPC Office Complex, Sector-33, Faridabad, Haryana – 121 003**

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

**In the matter of**

**Venkatesh Nayak vs CPIO, NHPC Ltd.**

Date of submission: 25/04/2016

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*S.S. Venkatesh Nayak*

**Before the Designated First Appellate Authority**

**and Executive Director (HR), NHPC Ltd.,**

**NHPC Office Complex, Sector-33, Faridabad, Haryana – 121 003**

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

**Date: 25/04/2016**

- 1) Name and address 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 sent :** The Central Public Information Officer  
Ministry of Power  
Government of India  
2<sup>nd</sup> Floor, Shram Shakti Bhawan  
New Delhi – 110 001
- 3) Name and address of the Officer who gave initial reply to the RTI Application :** Shri S. S. Rawat  
Under Secretary to the Govt. of India  
Ministry of Power  
Government of India  
Shram Shakti Bhawan, Rafi Marg  
New Delhi – 110 001
- 4) Name and address of the CPIO who gave a final reply to the RTI Application :** Shri Deepak Saigal  
CPIO & Chief Engineer (C)  
NHPC Ltd.  
NHPC Office Complex  
Sector 33, Faridabad  
Haryana – 121 003
- 5) Particulars of the RTI application-**
- a) No. and date of submission of the RTI application :** No. RTI/GoI/PowerMin/2016/1 dated 24/02/2016
- b) Date of payment of additional fee (if any) :** Not applicable.
- 6) Particulars of the order(s) including number, if any against which the appeal is preferred :** Communication of No. NH/RTI/186/2016/2817-18 dated 17/03/2016

*S.S. Venkatesh Nayak*

## 7) Brief facts leading to the appeal :

**7.1)** On 10/02/2016 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**):

"I would like to obtain the following information from your public authority, under the RTI Act:

- 1) A clear copy of all correspondence received from the Government of Jammu and Kashmir regarding the buy back of hydro power projects situated in that State, till date;
- 2) A clear copy of all replies sent to the Government of Jammu and Kashmir in relation to the correspondence referred to at para #1 above, till date;
- 3) A clear copy of all documents relating to the feasibility of the proposal of buy back of the projects mentioned at para #1 above, including reports of any expert committee available on record; and
- 4) A clear copy of all file notings held as on date relating to the queries described at paras #1-3 above.

I am a citizen of India. I have enclosed an IPO (bearing #32F 161184) for Rs. 10/- towards payment of the prescribed application fee. I would like to receive the information by post at my address mentioned above. If any or all of the information specified above is available in electronic form, kindly provide copies as requested above in a CD. If any information specified above is not available in electronic form, kindly provide photocopies of the same. Kindly inform me of any additional fee payable for obtaining the information specified above."

**7.2)** On 07/03/2016 this Appellant received a reply from the Officer mentioned at para #3 above, stating as follows (**Annexe 2**):

"I am directed to forward herewith a copy of application in respect of Sh. Venkatesh Nayak, 55A, Kalu Sarai, Delhi - 110 016, received in this Ministry vide registration no. POWER/R/2016/00087 dated 26.02.2016. The applicant has sought information on buy back of hydro power projects situated in Jammu and Kashmir. As the information sought pertains to NHPC Ltd., the application is being transferred to NHPC Ltd. in terms of section 6(3)(ii) of the RTI Act, 2005 for providing information directly to the applicant under intimation to this Ministry."

**7.3)** Subsequently on 26/03/2016, this Appellant received a reply from the CPIO mentioned at para #4 above stating as follows (**Annexe 3**):

"Please refer your application dated 24/02/2016 received in this office through Sh. S. S. Rawat, Under Secretary to the Govt. of India, MOP, New Delhi on dated 07/03/2016 for information under RTI Act, 2005."

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We are pleased to furnish you the requisite information/document as received from the deemed PIO as per section 5(5) of the RTI Act, 2005 as Annexure I."

**7.4)** The Annexure I attached to the reply of the CPIO mentioned at para #4 above, stated as follows (**Annexe 4**):

"RTI section vide IOM dated 08.03.2016 has forwarded the RTI application of Sh. Venkatesh Nayak, which was transferred by MOP to NHPC vide letter dated 04.03.2016, to Planning Division for reply.

In this context it is intimated that the issue raised in the application (i.e. buyback of NHPC Projects in J&K by State Government) is between the parties MOP/NHPC & GoJ&K, which is not yet resolved. Any disclosure of information at this stage, will affect the commercial interest of NHPC.

The disclosure of such information is exempted under section 8(d) of the Right to Information Act, 2005."

**7.5)** This Appellant is aggrieved by the CPIO's reply to the instant RTI application for reasons explained below.

**8) Prayers or relief sought :**

**This Appellant prays that this First Appellate Authority be pleased to:**

- 1) admit this appeal and inquire into the matters raised herein;**
- 2) direct the CPIO 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 an official memorandum to the CPIO to discharge his statutory responsibilities under the RTI Act with greater care and diligence in future.**

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

**9.1)** According to Section 19(1) of the RTI Act an RTI applicant who is aggrieved by a decision of the CPIO may prefer an appeal to the designated First Appellate Authority of that public authority within 30 days of receipt of the CPIO's decision. This Appellant received the decision of the CPIO specified at para #4 above, rejecting the instant RTI application on 26/03/2016. This first appeal is being submitted by this Appellant on the 30<sup>th</sup> day of the receipt of the said CPIO's decision which is within the time limit stipulated in Section 19(1) of the RTI Act. This Appellant is aggrieved by the decision of the said CPIO for the following reasons:

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**9.1.1)** The CPIO referred to at para #4 above has merely forwarded an opinion furnished by an officer of this Respondent Public Authority without arriving at his own decision as is required to be done under Section 7(1) of the RTI Act. This reply of the said CPIO deserves to be set aside on both technical and substantive grounds. First, the CPIO does not appear to have adequately understood the nature of his duties under Section 7(1) of the RTI Act. Section 7(1) of the RTI Act requires a CPIO to either furnish the requested information upon receipt of the prescribed additional fee or reject the request for reasons specified in Sections 8 or 9 of the RTI Act. Nothing in the RTI Act permits the designated CPIO of a public authority to delegate the responsibility of making a decision under Section 7(1) of the RTI Act to any other officer by invoking the provisions of the Act. Section 5(4) read with Section 5(5) has been placed in the scheme of the RTI Act only for the purpose of seeking from and providing assistance by other officers in a public authority to a designated CPIO in order to deal with an RTI application. It is not open for the CPIO to invoke these provisions to delegate the responsibility of making a decision on the RTI application to any other officer of the public authority, howsoever senior he/she may be. Nothing in the RTI Act permits the CPIO to delegate his/her responsibilities to any other officer.

There is clear case law on this subject. In the matter of ***J P Agrawal vs Union of India & Ors., [2011 VII AD (Del.) 625]***, the Hon'ble Delhi High Court was pleased to explain the ambit of Sections 5(4) and 5(5) vis-à-vis the statutory responsibilities of the CPIO in the following terms:

"7. Section 4 of the Act obliges every public authority to publish inter alia the particulars of facilities available to citizens for obtaining information and the names, designations and other particulars of the PIOs. Section 5 requires the public authorities to designate PIO to provide information to persons requesting for information under the Act. Such PIOs, under Section 5(2) of the Act are to receive applications for information and under Section 5(3) of the Act are to deal with request from persons seeking information and render reasonable assistance to the information seekers. The Act having required the PIOs to "deal with" the request for information and to "render reasonable assistance" to the information seekers, cannot be said to have intended the PIOs to be merely Post Offices as the Petitioner would contend. The expression "deal with", in *Karen Lambert v. London Borough of Southwark* (2003) EWHC 2121 (Admin) was held to include everything right from receipt of the application till the issue of decision thereon. Under Section 6(1) and 7(1) of the RTI Act, it is the PIO to whom the application is submitted and it is he who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he has sought information, the PIO is expected to recommend a remedial action to be taken. The RTI Act makes the PIO the pivot for enforcing the implementation of the Act.

8. Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO. As has been noticed above, penalty has been imposed on the Petitioner not for the reason of delay which the Petitioner is attributing to Respondent No. 4 but for the reason of the Petitioner having acted merely as a Post Office, pushing the application for information

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received, to the Respondent No. 4 and forwarding the reply received from the Respondent No. 4 to the information seeker, without himself "dealing" with the application and/or "rendering any assistance" to the information seeker. The CIC has found that the information furnished by the Respondent No. 4 and/or his department and/or his administrative unit was not what was sought and that the Petitioner as PIO, without applying his mind merely forwarded the same to the information seeker. Again, as aforesaid the Petitioner has not been able to urge any ground on this aspect. The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates. The PIO has to apply his own mind independently and take the appropriate decision and cannot blindly approve / forward what his subordinates have done." [emphasis supplied]

Given the aforementioned crystal clear opinion of the Hon'ble Delhi High Court that a CPIO cannot abdicate his statutory responsibility for making a decision on an RTI application by depending upon the assistance of other officers under Sections 5(4) and 5(5), the reply and action of the CPIO mentioned at para #4 above becomes bad in law. The said CPIO has merely conveyed an opinion of a colleague in the Respondent Public Authority who is not authorised to make any decision in relation to a request for information submitted under the RTI Act. The said CPIO has not applied his mind to ascertain the correctness of the opinion furnished by the said colleague as is required to be done under the provisions of the RTI Act before communicating it to this Appellant. Therefore the reply of the CPIO referred to at para #4 above deserves to be set aside as being bad in law. **Hence the submission of this appeal before this Hon'ble First Appellate Authority.**

**9.1.2)** Further, the opinion furnished by the 'deemed PIO' of the Respondent Public Authority clearly indicates his lack of familiarity with the provisions of the RTI Act. In his opinion furnished to the CPIO mentioned at para #4 above, the 'deemed PIO' has claimed that the disclosure of the information sought in the instant RTI application would affect the commercial interest of the Respondent Public Authority. So he has reasoned that Section 8(d) of the RTI Act is applicable to the information sought. These arguments clearly indicate lack of adequate awareness about the provisions of the RTI Act on the part of the 'deemed PIO'. First, none of the exemptions listed in Section 8(1) of the RTI Act exempt the disclosure of information on the grounds that such disclosure would affect the commercial interest of a public authority. Second, there is no provision in the RTI Act numbered Section 8(d) either. These lacunae in the opinion of the 'deemed PIO' clearly indicate his lack of familiarity with the form and the substance of the RTI Act. The CPIO mentioned at para #4 above has misplaced his reliance on the competence of his colleague to deal with the instant RTI application. Hence the reply of the CPIO mentioned at para #4 deserves to be set aside. **Hence the submission of this appeal before this Hon'ble First Appellate Authority.**

**9.1.3)** Further, presumably, the 'deemed PIO' had in a convoluted way intended to opine that Section 8(1)(d) of the RTI Act is applicable to the information sought in the instant RTI application. However, this reasoning is mistaken for two more reasons. First, the exemption

S. S. Venkatesh Nayak

from disclosure in Section 8(1)(d) is available only to information that is in the nature of commercial confidence. Merely stating that the disclosing the information would affect the 'commercial interest' of the Respondent Public Authority is not adequate to meet the test of the exemption provided in Section 8(1)(d). Second, Section 8(1)(d) of the RTI Act exempts the disclosure of information that is in the nature of 'commercial confidence' or intellectual property rights where disclosure may harm the competitive position of a "third party". A public authority receiving and disclosing an RTI application cannot claim this exemption for itself. A public authority cannot be both the second party, namely, the recipient of an RTI application and also a third party in a single case. This would lead to absurdity in the interpretation of the law. The 'deemed CPIO' has not applied his mind to these complex legal issues. Similarly, the CPIO mentioned at para #4 above has also not applied his mind to the opinion furnished by the 'deemed CPIO' and instead simply endorsed the opinion without any kind of justification. Therefore the reply of the CPIO is bad in law and deserves to be set aside. **Hence the submission of this appeal before this Hon'ble First Appellate Authority.**

**9.1.4)** Further, while purportedly trying to reject the instant RTI application, the CPIO referred to at para # 4 above, has not acted in accordance with the requirements of Section 7(8) of the RTI Act. Section 7(8) of the RTI Act requires a CPIO to give detailed and cogent reasons for rejecting access to information. A mere mention of an exemption listed in Section 8(1) of the RTI Act is not adequate for the purpose of that Section. In the matter of *Balmukand Rai v Life Insurance Corporation of India* (Decision No.204/IC(A)/2006, decision dated 25/08/2006) the Hon'ble Central Information Commission has held that the CPIO had erred in not issuing a speaking order while rejecting the RTI application. The Hon'ble Commission noted:

*"A mere mention of the provisions of 8(1)(d) of the Act for denying the information is not enough."*

Further, in the matter of *Lajinder Singh v Archaeological Survey of India*, (F.No.PBA/06/504, decision dated 24/05/2007) the Hon'ble Central Information Commission has held that the PIO performs a quasi-judicial role and has to pass a speaking order while denying access to information.

Further, in the matter of *Ranjit Singh Saini v State Bank of India* (Appeal No.1927 ICPB/2008, decision dated 05/05/2008) the Hon'ble Information Commission has held as follows:

*"Whenever the CPIO and AA provided the reply to the appellant they should give a speaking order so that the appellant will be able to understand why this information has not been given to him."*

Further, in the matter of *S P Goyal v Income Tax Officer XII(2)(1), Mumbai* (Appeal No. CIC/AT/A/2008/00688, decision dated 15/01/2009) the Hon'ble Information Commission has held that the PIO is required to issue a speaking order while denying access to the information requested by an applicant.

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Further, in the matter of *Kusum Singh v Bharat electronics Ltd.* (Appeal No.CIC/WB/A/2008/01435-SM, decision dated 15/04/2009) the Hon'ble Central Information Commission has held as follows:

*"We note that the CPIO was not right in denying a number of information by merely referring to the provisions of Section 8 of the Right to Information (RTI) Act. If any information is to be denied, the CPIO has to record a speaking order and explain/clarify why a particular piece of information should not be disclosed under any provision of that Section."*

The full text of these decisions is not being annexed to this first appeal in order to save paper. All these orders are available on the website of the Hon'ble CIC at [www.cic.gov.in](http://www.cic.gov.in). According to the Hon'ble Central Information Commission and reiterated by the Hon'ble Supreme Court of India, the established position in law on this matter is that a CPIO is duty bound to give detailed reasoning in the form of a speaking order while denying an information request instead of mechanically invoking an exemption under one or more provisions the RTI Act. The CPIO has erred in not discharging his duty with due diligence by issuing a well reasoned order. This Appellant is aggrieved by the unreasonable action of the said CPIO which deserves to be set aside. **Hence the submission of this appeal before this Hon'ble First Appellate Authority.**

**9.1.5)** Further, the cavalier manner in which the CPIO referred to at para #4 above has dealt with the instant RTI application indicates a lack of due application of mind to the contents of the RTI application in the light of the express provisions of the Act as interpreted by the Courts. This Hon'ble First Appellate Authority (FAA) has an obligation to ensure that the CPIOs under his charge discharge their obligations under the RTI Act faithfully. Where such officers are found lacking, it is this Appellant's firm belief that the FAA may issue an official memorandum to such officers requiring them to process all RTI applications more diligently and within the specified time limits in future. Further, should this Hon'ble First Appellate Authority decide to disclose the information sought in the instant RTI application it would clearly qualify for being disclosed free of charge under Section 7(6) of the RTI Act as such decision would have been taken after the stipulated period of 30 days. **Hence the submission of this appeal before this Hon'ble First Appellate Authority.**

**10) I hereby verify that the aforementioned facts are true to the best of my knowledge. I also declare that I have authenticated the Annexes to this appeal.**

**Signature of the Appellant:**

*S-S. Venkatesh Nayak*  
(Venkatesh Nayak) 25/4/16

SP HAUZ KHAS <110016>  
ED768862983IN  
Counter No:4,OP-Code:SCX  
To:F A A,NHPC LTD  
AMAR NAGAR, PIN:121003  
From:VINKATERH NAYAK , DELHI  
Wt:60grams,  
Amt:29.00 ,26/04/2016 ,14:18  
Taxes:Rs.4.00<<Track on [www.indiapost.gov.in](http://www.indiapost.gov.in)>>

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