

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

File No : CIC/DODEF/A/2018/152701

Venkatesh Nayak

....अपीलकर्ता/Appellant

VERSUS
बनाम

CPIO,
D(GS-1/IS),
Ministry of Defence,
South Block,
New Delhi – 110011

CPIO,
Under Secretary (AG),
Ministry of Defence,
Room No. – 108, B – Wing,
Sena Bhawan, New Delhi – 110011

CPIO
RTI Cell,
Addl. DG MT (AE),
G – 6, D – 1 Wing,
Sena Bhawan, Gate No. – 04,
IHQ of MoD(Army),
New Delhi – 110011

....प्रतिवादीगण /Respondent(s)

RTI application filed on	:	12/02/2018
CPIO replied on	:	No reply
First appeal filed on	:	15/03/2018
First Appellate Authority order	:	No order
Second Appeal dated	:	24/08/2018
Date of Hearing	:	18/02/2020
Date of Interim Decision	:	26/02/2020

सूचना आयुक्त : दिव्य प्रकाश सिन्हा
INFORMATION COMMISSIONER : DIVYA PRAKASH SINHA

Information sought:

The Appellant sought information through 5 points regarding reply to unstarred question no. 1463 tabled in the Rajya Sabha on 01.01.2018. He specifically sought for procedure followed while deciding whether or not to grant sanction for prosecuting any member of the defense forces for actions committed under the Armed Forces (Jammu & Kashmir) Special Powers Act, 1990 etc.

Grounds for the Second Appeal:

The CPIO has not provided the desired information.

Relevant Facts emerging during Hearing:

The following were present:-

Appellant: Present and assisted by Shri Wajahat Habibullah; Shri Sanjoy Hazarika, Commodore Lokesh K. Batra (Retd.) and Ms Shikha Chhiber in person

Respondent (1): Not present.

Respondent (2): Ajay Kumar V.R, US & CPIO, T.D. Prashanth Rao, US & CPIO, O/o.Under Secretary (AG), Ministry of Defence, Sena Bhawan, New Delhi present in person.

Respondent (3): Lt. Col. Jagdish Prasad, GSO1(Legal) & Rep. of CPIO and Lt. Col. Vishal Singh, Dir(DV-1), IHQ of MoD(Army), New Delhi present in person.

Appellant stated that he is not satisfied with the reply of the Respondents. He further stated that given the context of seeking the information he believes that the same should have been proactively disclosed by the Ministry of Defence as per the provisions of Section 4(1)(b), (c) and (d) of RTI Act.

Respondent No.2 referred to his written submission dated 11.02.2020 wherein it has been stated with respect to para 1 & 2 of the RTI Application that there are no official records containing details of procedure or the norms, criteria and standard that is required to be followed by the Ministry while deciding the evidence submitted by Jammu & Kashmir Government in prosecution sanction cases. He further stated that the process varies on a case to case basis. As regards, para 3 of

the RTI Application, CPIO stated that the Defence Minister is the competent authority for taking decision on sanction/denial to prosecute the accused army personnel.

Appellant interjected to state that there ought to be a Standard Operating Procedure for processing the prosecution sanction cases.

Appellant furthermore stated that information sought vide para 4 & 5 are substantial issues as it has been gathered that out of the 50 cases received by the Union Government from the Jammu & Kashmir Government for prosecution sanction, 47 cases have been denied and urged that the copy of communication sent to the Jammu & Kashmir Government as sought at para 4 of the RTI Application should be provided and inspection of records related to the denial of sanction for prosecution should also be provided.

Appellant also pointed out that he is aggrieved with the fact that the RTI Application was transferred within the Ministry initially and later it was transferred to Army Headquarters, thus dodging the responsibility of providing a definitive reply. He remarked at the role of Army Headquarters in the matter in as much as the information was sought relating to the details of a reply tabled by Department of Defence through its parent Ministry, Ministry of Defence in the Rajya Sabha. Further, as understood from the provisions of the AFSPA, 1990, the authority competent to make a decision on requests for sanction for prosecution of members of the defence forces is the Department of Defence and not the Indian Army, therefore it was for the RTI Cell, Ministry of Defence to have accessed the information from within its departments or to determine whether or not to disclose the information sought in the RTI Application.

At this point, Respondent No.2 clarified that the cases of prosecution sanction are processed by the Ministry in a single file system originating from Army Headquarters and all the files in which cases of prosecution were processed are in the custody of AHQ.

Respondent No.3 did not refute the submissions of Respondent No.2 and agreed to abide by the order of the Commission.

Appellant urged that Respondent No.3 may be directed to facilitate inspection of every file relating to the denial of sanction for prosecution of members of the defence forces as sought at para 5 of the RTI Application.

Respondent No.3 submitted that information sought at para 5 of the RTI Application is exempt from disclosure under Section 8(1)(a) of RTI Act since files relating to the prosecution sanction will contain details of the operation, location and other confidential data and disclosure of the same may affect the security and strategic interest of the State.

Appellant objected to the exemption claimed by Respondent No.3 and prayed that he may be allowed time to submit his contentions in this regard.

Interim Decision

In view of the hearing proceedings, Commission reserves the final decision in the matter and directs the Appellant and Respondent No.3 to send their written submission with respect to the exemption of Section 8(1)(a) of RTI Act claimed for information sought at para 5 of the RTI Application within 15 days from the date of receipt of this order.

The appeal is reserved for final order.

**Divya Prakash Sinha (दिव्य प्रकाश सिन्हा)
Information Commissioner (सूचना आयुक्त)**

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

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