

Case of Radhey Shyam Jaiswal

This proceeding has been registered on receipt of the complaint from the NHRC. The complainant, Radhey Shyam Jaiswal resident of Nawab Saheb ka Phatak, P.S. Kotwali, district Ghazipur (Uttar Pradesh), had moved the Commission seeking compensation for his delayed release from jail and remuneration for work done in the jail as convict.

Report was called, and received, from the I.G. Prisons, Bihar and the Jail Superintendent and the matter was heard in presence of the applicant and Srimati Puneeta Shrivastava Incharge Jail Superintendent and Shri Surya Nath Singh, Jailor of Chapra District Jail.

The relevant facts are as follows.

The complainant was convicted for an offence under section 394 IPC in Sessions Trial No. 214 of 1992 and sentenced to rigorous imprisonment for five years. It is not in dispute that during the stage of investigation he remained in custody as an under trial from 3.8.1998 to 21.6.1999 i.e. for one year one month and nineteen days before he was granted bail pending trial which period is to be set off against sentence of imprisonment under section 428 Cr.P.C. After his conviction he was taken into custody and remained in jail as a convict from 21.7.1992 to 4.12.1992 i.e. for four months and fourteen days until he was released on bail by the High Court in appeal. The High Court finally upheld the conviction but reduced the sentence of imprisonment to three years. After the judgment the complainant surrendered to serve the remainder of the sentence on 17.7.2007. He was finally released on 7.11.2008. While calculating the sentence the jail authorities allowed him remission of 67 days. According to the complainant his entitlement to remission was worked out as 104

days and therefore he should have been released 37 days ago i.e. on 1.10.2008. The complainant in support of his case places reliance on 'Convict History Ticket' which is a statutory document containing necessary particulars such as case detail, trial number, judgment, sentence and remissions earned by the convict.

It is relevant to mention here that the said Convict History Ticket relates to the period subsequent to the complainant's surrender after the judgment of the High Court i.e. from 17.7.2007. There is no record of similar entries for the period 21.7.1992 to 4.12.1992 when the complainant was in custody earlier after his conviction by the Trial Court. Be that as it may, the remission has been calculated in the said document separately for the third and fourth quarters of the year 2007 and the first, second and third quarters of the year 2008. However, while the entries in respect of the third and fourth quarters of the year 2007 bear the signature of the Jail Superintendent, the signature against the remaining entries for the first, second and third quarters of 2008 are missing.

In course of hearing of this matter on 8.9.2009 we asked the Jail Superintendent and the Jailor to explain why the entries were not counter-signed by the Superintendent. They submitted that the complainant did not perform the work assigned to him as a convict and he was allowed remission of 67 days and not 104 days as mentioned in the Convict History Ticket. This, in fact, is the substance of the stand of the Administration. According to them, the complainant was entitled to remission of only 67 days and therefore he could not be released prior to 7.11.2009 when he completed three years sentence including remission. The submission must be rejected for various reasons.

In the said Convict History Ticket the remission was calculated for different periods in the following manner:-

3 rd quarter of 2007	-- 14 days
4 th quarter of 2007	-- 23 days (14 + 23=37 days)
1 st quarter of 2008	-- 22 days (37 + 7 days spl + 15 days = 59 days)
2 nd quarter of 2008	-- 23 days (59 + 8 days spl + 15 days = 82 days)
3 rd quarter of 2008	-- 22 days (82 + 7 days spl + 15 days = 104 days)

As mentioned above, the entries with respect to the 3rd and 4th quarters of 2008 only bear the counter signature of the Superintendent. If, thus, we take into account the only entries counter signed by the Superintendent, the complainant should have been allowed remission of only 37 days (14 + 23). If we add the days of remission for the first quarter of 2008 the total comes to 59 days (14 + 23 + 22). If we add the days of remission for the 2nd quarter of 2008, the total number of days would work out to 82 days (14 + 23 + 22 + 23).

One is left guessing as to how the (imaginary) figure of 67 days was worked out while calculating the complainant's entitlement to remission. It is relevant to mention here that the officials aforementioned did not, and apparently could not, challenge the genuineness of the Convict History Ticket for the simple reason that it is photocopy of the original document in the prescribed format containing the counter signature of the Jail superintendent against at least two entries and signatures of other authorities at other places in the document. The officials could not produce any other document to explain as to how the figure of 67 days was worked out. We are inclined to think that the entries in the Convict History Ticket are supposed to be written at the end of the respective period or afterwards and not in advance and therefore in absence of any cogent explanation we are inclined to accept the entries as correct.

Coming to the stand of the Administration that the applicant was not entitled to remission beyond 67 days as he did not perform the work assigned to him, reliance was placed on Rule 715 of the Bihar Jail Manual. Rule 715 runs as follows:-

“715. Ordinary remission shall be awarded on the following scale:-

- (a) two days per month for thoroughly good conduct and scrupulous attention to all prison regulations;
- (b) two days per month for industry and the performance of the daily task imposed.”

From a bare reading of the above rule it is manifest that the rule is in two parts. While as per clause (a) remission is generally awarded @ 2 days per month save for bad conduct, under clause (b) remission is also awarded @ 2 days per month for work done by the convict. Thus, even if we accept the stand of the administration that the complainant could be denied remission awardable under clause (b) as he did not do the work, the remission awardable under clause (a) could not be denied except when his conduct was found to be unsatisfactory and violative of the jail regulations. We asked the officials to produce any contemporaneous document/ material which would show – even remotely – that the complainant declined to perform the work/ daily task imposed on him or his conduct was not satisfactory so as to attract either clause (b) or clause (a) or both. The officials fairly stated that there is no record to show that the complainant ever declined to perform the duty/ jail task imposed on him and any action was taken for the same or that his conduct was not satisfactory. We may observe that in the ordinary course one would expect that in all cases of refusal by the convict to perform the duty assigned to him, a report would be made or memorandum would be drawn by the authority and the matter would be taken to its logical end in accordance with rules. In absence of any contemporaneous material on the point we are not prepared to accept the ipse dixit as to the alleged refusal on the

part of the complainant to perform his duty. In fairness to the complainant we may state that it is his specific case that he performed the duties in the Nirmanshala (workshop) and all those who refused to do their duty were transferred to other jails.

We may mention here that the Incharge Jail Superintendent Srimati Puneeta Shrivastava (who joined the Chapra District Jail later) apparently saw logic in our observations and she made a pointed query to the Jailor (who was posted during the relevant period) as to why the entries were not counter signed by the then Jail Superintendent, Shri Chandeshwar Prasad Chaudhary. The Jailor made a significant revelation that the then Superintendent refused to sign the entries saying that it was his choice to allow or disallow remissions.

We may point out here that the Jail Manual provides for different types of remissions and even if we put the case of the complainant at the lowest level there is little doubt that in the absence of any material to the contrary he could not be disallowed the ordinary remissions under Rule 715. It may be recalled that the complainant had earlier also served part of the sentence and is therefore prima facie entitled to remission for the earlier stint (after conviction by the Trial Court) between 21.7.1992 and 4.12.1992. Even if we do not take into account his entitlement for the earlier period which would only advance the due date of his release, it is clear that the remissions were calculated in an arbitrary manner and he was made to overstay in the jail beyond the permissible period.

Article 21 of the Constitution mandates that no person shall be deprived of his liberty except according to procedure established by law. As in the instant case the complainant was deprived of his liberty by reason of his belated release he is entitled to compensation. In the facts and circumstances we quantify the amount of compensation to be one lakh rupees. In view of our decision on the point of

compensation we are not passing any separate order on the complainant's claim for remuneration.

We accordingly direct the State Government through the Principal Secretary, Department of Home to pay Rs. One lakh as compensation to the complainant within six weeks and report compliance. Since the complainant's overstay is prima facie attributable to the then Jail Superintendent, Shri Chandeshwar Prasad Chaudhary, it is open to the Government to recover the amount from him in accordance with law.

Copy of this decision may also be sent to the applicant and to the I.G. Prisons, Bihar.

(Justice S.N. Jha)
Chairperson

(Justice Rajendra Prasad)
Member