

**BIHAR HUMAN RIGHTS COMMISSION**  
**9, Bailey Road, Patna – 15**

File No **BHRC/COMP.** 2079/10

Case of **CHANDRABHAN OJHA**

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This matter is about the unauthorised detention of the applicant, Chandrabhan Ojha, resident of village Kauria within Bhagwanpur P.S. of Siwan District.

The applicant was convicted under section 366 IPC and sentenced to rigorous imprisonment for seven years and fine of Rs.1000 or in default imprisonment for additional period of two months by the First Additional Sessions Judge, Bhagalpur in Sessions Trial No.199/2000 arising out of Bhagwanpur P.S. Case No.76/98 vide judgement and order dated 15.4.2005. He was taken into custody for serving the sentence on the same day.

The case of the applicant is that he paid the fine on 1.4.2009 and should have been released after serving sentence of imprisonment of seven years (including remissions) on 20.5.2009, but he was not released on the due date; instead, he was kept in detention for two months more and finally released on 20.7.2009. The applicant contends that his detention for the period of two months between 20.5.2009 and 20.7.2009 being illegal and unauthorised, suitable action be taken.

The stand of the Jail Department is that under Rule 489 of the Bihar Jail Manual, the concerned court is required to send intimation about the payment of fine – at the time of conviction/judgment or afterwards – to the concerned jail. In the instant case, no such intimation was received. The applicant also did not inform the jail authorities. Thus, on the premise that fine had not been paid he was kept in detention for the additional period of two months.

It may be mentioned here that the applicant had earlier moved the NHRC in the matter in Case No.12/4/7/2010/OC/SB-2. By order dated 12.1.2010, the complaint was sent to the concerned authority for such action as deemed appropriate. IG Prisons however did not do anything and closed the file vide report dated 20.10.2010.

The matter was heard on 12.8.2011 in presence of the applicant and Shri U.K. Sharan, AIG Prisons.

The applicant produced copy of the 'information' furnished to him by First Subordinate Judge-cum-Public Information Officer, Siwan vide letter nos. 169 dated 10.3.2011 and 194 dated 17.3.2011 under the Right to Information Act to the effect that amount of Rs.1000 was deposited by the applicant's Advocate,

Shri Surendra Kr. Pandey in connection with Sessions Trial No.199/2000 on 1.4.2009 vide challan no.1 dated 1.4.2009. It may be mentioned here that the applicant filed another application under the RTI Act on 18.4.2011 seeking to know as to whether intimation about the deposit was sent to Central Jail Buxar. The desired information, however, was not furnished to him. In the circumstances, the Commission decided to proceed on the assumption that the intimation had not been given to the jail authorities.

As observed in the previous order dated 4.4.2011 – copy whereof was sent to the Secretary, Home (Jail) Department for comments/response – even if it were true that intimation was not given to the concerned jail, it would not absolve the state of its liability. So far as the applicant is concerned, if he had paid the fine, it would follow that continuation of his imprisonment for additional two months was without any authority of law which would entitle the applicant to compensation from the state. No comments/response has been received from the Jail Department.

In view of the admitted position – vide letter no.4680 dated 20.10.2010 of the IG Prisons Bihar – that the due date of release (on completion of seven years imprisonment) was 20.5.2009 but the applicant remained in custody of the state upto 20.7.2009, case of compensation is clearly made out. Article 21 of the Constitution of India lays down that “no person shall be deprived of his life or personal liberty except according to procedure established by law”. The applicant was sentenced to imprisonment and therefore imprisoned under authority of the court’s judgment i.e. according to procedure established by law. After serving the sentence, he should have been released from jail on 20.5.2009 as per the calculation made by the jail authorities – which is part of the record. No doubt, had he not paid the fine, he could have been detained for additional two months. Fine having been paid, his detention beyond 20.5.2009 was clearly without authority of law. The fact (if it was so) that intimation about payment of fine was not given by the concerned court to the jail authorities is of no consequence. While it may absolve the jail authority of the responsibility in view of rule 489 of the Jail Manual, the state cannot escape liability. Courts also are organs of state and for any act of omission or commission of the court staff, the state would be liable. In any view, the applicant after payment of fine, had no role to play in the matter and he therefore can not be denied the relief.

No court or Commission or Authority can restore the liberty which the applicant was deprived of between 20.5.2009 and 20.7.2009. The deprivation of his right to liberty can, however, be somewhat compensated by awarding

monetary compensation. In the facts and circumstances, the Commission would award him compensation of rupees fifty thousand.

The Commission would accordingly direct the Secretary, Home (Jail) Department to pay sum of rupees fifty thousand to the applicant and submit compliance report within a period of six weeks.

Copy of the order may be sent to the Secretary, Home (Jail) Department for compliance and the applicant for information.

Justice S.N. Jha  
Chairperson