

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

File No **BHRC/COMP.** 2499/09

Case of **RAM NARESH YADAV**

This is yet another case of police highhandedness. Applicant Ram Naresh Yadav was granted bail by the court in Phulparas P.S. Case No.109/2009 on 26.08.2009. However, after about two and half months SI Baikunth Mishra of Phulparas P.S. forcibly brought him to police station and kept him in confinement in the hazat in connection with the same case. He demanded sum of Rs.2000 for releasing him saying that the court might have granted him bail but he had not done so. When the applicant expressed his inability he was abused and assaulted. He remained in hazat. On coming to know about the arrest his relatives came to police station and they were forced to pay him sum of rupees 1200. After paying the amount to SI Baikunth Mishra and good deal of remonstrations he was finally released from hazat but not before obtaining his and his relatives' signatures on blank papers. It is the specific case of the applicant that the surrender slip and the court's order was duly communicated to the police station.

Report was called from the Range DIG. DIG Darbhanga Range vide his report dated 13.6.2011 found the complaint version to be correct. The report stated that despite applicant's obtaining bail from the court, SI Baikunth Mishra arrested him in order to humiliate and harass him. The report also stated that money was demanded and when the complainant did not pay he was kept in the hazat and assaulted. The report further stated that departmental action is proposed to be taken against SI Baikunth Mishra.

On consideration of the report the Commission vide its order dated 25.7.2011 found that the complaint version stands proved – that the applicant was indeed arrested by SI Baikunth Mishra even though he was granted bail in the case. As regards the proposed departmental action the Commission observed that it may not be sufficient solace to the applicant whose right to liberty was infringed without any authority of law and therefore he is prima facie entitled to the compensation – to be paid at the first instance by the State Government – recoverable from the salary of the official concerned. The matter was fixed for hearing and notice was issued to the Secretary, Department of Home, SP Madhubani and SI Baikunth Mishra besides the applicant.

The matter was heard on 8.12.2011 in presence of Shri Dharmeshwar Thakur, Special Secretary, Department of Home (Police), Shri Saurabh Kumar SP Madhubani and applicant Ram Naresh Yadav. SI Baikunth Mishra however did not

appear as noticed could not be served on him in view of his transfer to another district (Samastipur district) in the meantime. The Commission was informed that the SI Baikunth Mishra has been awarded punishment of three black marks equivalent to stoppage of two increments. Further, he has been denied salary for the suspension period except the subsistence allowance. The Commission was also informed that in course of departmental enquiry it had transpired that SI Baikunth Mishra had manipulated the Station Diary to cover up wrongful confinement of the applicant for which another proceeding has been initiated against him.

In its order dated 8.12.2011 the Commission held that the punishment awarded to the applicant is inadequate. Observing that "confinement of a person who had been granted bail by the court means mockery of the criminal justice system and calls for severe punishment", the Commission held that the punishment deserved to be reviewed by the competent authority. However, in view of the mandate of section 16 of the Protection of Human Rights Act, in order to give an opportunity of hearing to SI Baikunth Mishra, the hearing was adjourned to 18.01.2012.

On 18.01.2012 SI Baikunth Mishra appeared in person. He did not file any written show cause or response. Nor did he seek time to do so. He simply apologised for his conduct. In fairness to him, it may be mentioned, he also took a feeble plea that the applicant did not inform him about the court's order granting bail to him.

The plea of the official has been noticed to be summarily rejected. It is unbelievable that a person would not divulge the fact that he has been granted bail in the case and would, acquiesce in being arrested. It is to be kept in mind that the (mis)conduct of the official was gone into in the departmental proceeding and he was found guilty of the charge. In fact, as indicated above, there was attempt by him to cover up the arrest for which he manipulated the station diary which shows his bad intention.

The Commission would reiterate its observations that the punishment of three black marks equivalent to stoppage of only two increments is quite inadequate. Considering the gravity of the misconduct resulting in blatant violation of the applicant's human rights the Commission is of the view that the official does not deserve to remain in police service. It need hardly be said that persons like him bring bad name to the organisation and it is high time that the department gets rid of him by way of compulsory retirement or otherwise. The Police Manual contains provisions regarding suo motu and review of the punishments awarded by a subordinate.

While suitable punishment like dismissal from service or compulsory retirement may be one way to mitigate the complaint of the applicant, the Commission is of the view that for the ends of justice he should also be monetarily compensated. In the facts and circumstances, the Commission would award him compensation of rupees fifty thousand (Rs.50,000). The amount should be paid at the first instance by the State Government and recovered from the salary or retiral dues of SI Baikunth Mishra as indicated in the order dated 25.7.2011 (supra).

Compliance report be filed within six weeks.

Copy of this order may be sent to (i) Secretary, Department of Home; (ii) DGP Bihar; (iii) SP Samastipur, besides (iv) SI Baikunth Mishra c/o SP Samastipur and the applicant for information and follow-up action, as the case may be.

Date:20.01.2012

Justice S.N. Jha
Chairperson