

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

File No **BHRC/COMP.** 2056/11

Case of **SHIVSHANKAR KUMAR SUDHANSHU**

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Complaint of applicant Shivshankar Kumar Sudhanshu, a postman in Supaul Post Office, is that on 28.06.2011 when he came home in village Lahrania within Triveniganj P.S. of Supaul District he was asked to meet the SHO Triveniganj P.S. and when he reached at the police station the SHO S.I. Viresh Kumar physically abused him and called names. He was put in the hazat and remained in confinement for the whole night. He was not allowed to eat food brought by his family members in the night. He was allowed to leave on the next day only after his family members paid the SHO Rs.10,000. Before leaving, the SHO forcibly took his gold ring and he was made to sign on blank papers. The complaint which was filed before the NHRC, was transferred to this Commission for disposal.

Report was called from the Range DIG. It appears that complaint had also been made to the Zonal IG Darbhanga. On the basis of report of the fact finding enquiry, the Zonal IG vide his order dated 10.07.2011 placed SHO Viresh Kumar under suspension and directed initiation of departmental enquiry on the charges same as the complaint version.

It may be mentioned here that apart from the charges which were framed on the basis of the aforesaid complaint, departmental enquiry was also made with respect to another charge to the effect that while posted as SHO Pipra, Viresh Kumar had refused to register the FIR on complaint of one Md. Hameed Safi. FIR (Pipra P.S. Case No.51/11) was registered only on intervention of SDPO Supaul under sections 304B, 201/34 IPC.

At the conclusion of the departmental proceeding which followed, the Inquiry Officer namely Dy.S.P. (Hqrs.) Supaul found both the charges to be proved. S.P. Supaul took the view that the enquiry was perfunctory and he made another enquiry himself. Finally, he awarded the punishment of stoppage of one annual increment equivalent to two black marks vide Supaul District Order no.730/2012 contained in memo no.899 dated 2.6.2012.

Earlier, on consideration of the report of S.P. Supaul submitted to this Commission, notice was issued to S.I. Viresh Kumar in terms of section 16 of the Protection of Human Rights Act in view of the adverse findings against him. S.I. Viresh Kumar filed his written defence and the matter was finally heard on 8.6.2012 in presence of the applicant and S.P. Supaul S.I. Viresh Kumar was also present.

The Commission is of the view that punishment of stoppage of one annual increment equivalent to two black marks is grossly inadequate. Punishment is integral part justice delivery system and must be commensurate with the nature of the misconduct and the charge. Imposition of penalty disproportionate to the misconduct or charge has been held to be violative of article 14 of the Constitution by courts and the matters referred back to the competent authority for fresh consideration on the point of quantum of punishment.

In the instant case, the applicant was asked to report at the police station without any iota of justification, physically abused and detained for the whole night. He was not given any food. The meal brought by the family members was also not allowed. All this was done on the pretext that the applicant was involved in a theft of motorcycle. Curiously, no case of theft was even lodged by the owner. Entries were not made in the Station Diary. He was allowed to leave on the next day but not before taking bribe of Rs.10,000. In another case – though not subject matter of the present complaint – S.I. Viresh Kumar as SHO Pipra did not register the FIR (in a case of dowry death). It was only on the intervention of the SDPO that this was done. If these allegations – in the event of being proved – do not justify harsh punishment, one wonders as to what kind of misconduct would invite harsh punishment. Punishment should be such as to create an impact on the system. Stoppage of one annual increment may technically be major punishment but in actual terms amounts to letting off the offender.

Apart from the inadequacy of punishment, in the instant case the Commission finds that there has been a mix up of departmental enquiry conducted by Dy.S.P. (Hqrs.) and the enquiry made by S.P. Supaul. The departmental proceeding is in the nature of quasi judicial proceeding and must be conducted in accordance with the prescribed procedure and the rules of natural justice, lest the final order may get quashed on technical grounds – on challenge by the aggrieved delinquent in the court of law. This would certainly be counter productive.

The Commission is therefore of the view that a fresh departmental proceeding should be held in accordance with law, followed by appropriate punishment commensurate with the misconduct/charge proved in the proceeding.

S.P. Supaul is accordingly directed to proceed in the matter afresh.

Copy of this order may be sent to S.P. Supaul for compliance and Zonal IG, Darbhanga Zone for information.

Copy may also be sent to the applicant and S.P. Viresh Kumar (now posted in Special Branch at Patna).

Date: 12.06.2012

Justice S.N. Jha  
Chairperson