

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)
Information Commissioner

CIC/SA/A/2016/000884
(Show-cause notice)

O. P. Gandhi Vs. Tihar Jail

Date of Hearing : **16.09.2016**
Decided on : **27.09.2016**
Result : **Compensation awarded**

Appellant: Present

Public Authority: Mr. Tariq Salam, Superintendent (CJ-5) of Tihar jail and Mr. Sanjiv Kumar, Assistant Superintendent of Tihar Jail are present.

Facts & Circumstances:

2. The appellant Mr. O. P. Gandhi mainly asked when he will receive compensation for the extra detention in jail. Rest of the points are not relevant.

3. The appellant was convicted under Section 138 of the Negotiable Instruments Act for dishonour of cheque for insufficiency of funds. He was detained from 23rd November 2010 until he was granted bail on 24th December 2010. The trial went on for 3 years resulting in sentencing on 26th November 2013 for a period of one-year simple imprisonment and fine. The appellant was supposed to be released on 24th October 2014. He has collected the information on remission and other aspects through 36 RTI applications and based on that contended that he should have been released on 2nd August 2014. The following table explains the remission details.

Month	Total days of Remission	Remission as per jail rules	Government Remission	Special Remission by Superintendent	Special Remission by Director General	Admission by Jail Authorities to Remissions
December 2013	2	2	-	-	-	Yes
January 2014	20	5	15	-	-	Yes
February 2014	5	5	-	-	-	Yes
March 2014	5	5	-	-	-	Yes
April 2014	5	5	-	-	-	Yes
May 2014	5	5	-	-	-	Yes
June 2014	5	5	-	-	-	Yes
July 2014	5	5	-	-	-	Yes
August 2014	15	-	15	-	-	Yes
Other Remission	16	-	-	15	1	Yes
Total Remission	83	37	30	15	1	

4. The appellant's son sought to know the date of release from the Jail authorities much before the release but he was not responded. He wrote again on 4th August 2014. The Jail authorities gave different answers to the question why was he not released earlier. Once they said that they did not inquire about the appellant's bail status in one of the on-going cases before Judicial Magistrate 1stClass, Faridabad, Haryana, which has further delayed the release. Later, the Jail authorities were trying to justify the release date. The question for consideration was 'other detriment' of extra-detention, and compensation. Finally, the appellant prayed for Rs 1000 as costs and compensation for extra-detention of 14 days. The jail authorities, in reply to the various RTI applications, have admitted to all the remissions (as given above), which sets the release date at 2nd August 2014 as contended by the appellant.

5. The First Appellate Authority order states that "The appellant had filed an application before the PIO, PHQ seeking information about the time period in which he will get the amount of compensation in lieu of his illegal confinement in the jail. The reply was sent by the PIO, PHQ mentioning that the information is not covered under section 2 (f) of RTI Act. Now he has filed an appeal mentioning that he was

illegally detained for 18 days in the Jail and SCJ-5 has given his report to the Commission on the appeal filed by the appellant vide order no. 431 and 432, dated 04.07.2015, then why the reply is not given to him. The PIO, CJ-5 was directed to send reply to the appellant within 10 days of time. Therefore, the present appeal be treated as MOST URGENT since under section 19, sub-section (i) or section 2 of the RTI Act, we are bound to dispose of the appeal within the specified time, failing to furnish the information asked for under the Act within the time specified is liable for penalty". However, the warning given by their FAA was ignored.

6. As no information is provided in the given period of time(10 days), the appellant approached the Commission. As a result, the show-cause notice is emerged out of the second appeal hearing, besides directed to give complete information. Yet, his question was not answered till now. Though discussed earlier, some of the points were repeated to explain the reasons for sanctioning the compensation for the other detriment caused to the appellant.

Earlier Direction of the Central Information Commission (CIC):

7. The Commission directed on 23.6.2015 to the appellant to present a written submission to the jail authorities on all his RTI applications for comprehensive redressal and the authorities were also asked to respond within 30 days.

8. The Commission directed the jail authorities, and the Government (GNCTD) to explain why they should not be ordered to pay suitable compensation for causing loss or for other detriment caused by denial of information, besides Rs. 1,000 as costs to the appellant for reaching the Commission as hearing was postponed due to absence of the public authority. In addition, the Commission directs Mr. Pramod Kumar Gupta, PIO to show-cause why maximum penalty should not be imposed against him for wrongfully denying the information to the appellant, within 30 days from the receipt of this order.

9. The Commission also directed the Jail authorities and the GNCTD to declare their policy in the form of citizen charter under Section 4(1)(b), (c) and (d) of Right to Information Act, 2005 explaining rights of a prisoner in the jail especially with regard to '*remission and remedy*' for wrongful extra detention like this, the amount

compensation and procedure to claim, to be placed on their website as that was required to be disclosed voluntarily under Section 4 of Right to Information Act, within 30 days from the date of receipt of this order, which was not complied with.

10. It was again heard on dated 4.7.2016 but the public authority was not present. On the same day, in the evening one of the officers of the Jail Authorities came to the office of the Commission to explain the absence of the PIO, Mr. Pramod Kumar Gupta, for the hearing on 01.07.2016, stating late receipt of the hearing notice. Moreover, he also mentioned that they wanted to submit their representation on dated 08.07.2016, but it was not submitted on that day, in fact, there was no response to the calls from the office of the Commission.

11. The hearing of the show-cause notice in the second appeal/complaint was posted to 22.08.2016, for compliance and penal proceedings. It was later postponed to 9.9.2016, and then to 16th of September, 2016 for written submissions as agreed by the parties.

Date of the Remission Order

12. Mr. Sanjiv Kumar, Assistant Superintendent of Tihar Jail, stated that the 15 days special remission on the occasion of Independence Day of 2014 was announced on August 15, 2014 (which was later proved not correct), but by that date the appellant's release date was fixed at 16.08.2014 after remission. He contended that the announcement of remission was made on 15th August itself, and hence the appellant could not get the full benefit of 15 days but got only one-day benefit and released on 15th August, 2014. He explained that a prisoner cannot be released on the assumption of remission in advance. Further, he mentioned that had the release date of the appellant been 30.08.2014, he would have got the full benefit of 15 days remission and reiterated that the benefit of remission announced on August 15th could not have been availed prior to that date. The respondent authority did not show any proof to say that the remission was declared only on 15th August, 2014. He assured the Commission that he would produce the copy of the order of remission in couple of days and on 19.09.2016 he has furnished the DG(Prisons)'s order dated 11.08.2014, text of which is:

"On the occasion of 68th Independence Day Celebration, the Special remission is granted to convicts as per Rule 80 (2) of Delhi Prisons (Admission, Separation, Remission, Reward and Release of prisons) Rule 1988 on the following scale :-

- | | | |
|-----|--|---------|
| (a) | Prisoners undergoing sentence upto 1 year | 15 days |
| (b) | Prisoners sentenced above 1 year and upto 05 years | 30 days |
| (c) | Prisoners sentenced for more than 05 years | 45 days |

The above quantum of remission is to be granted to all the convicts who had maintained good conduct in the jail and have not been punished during **preceding** one year 15.08.2013 to 14.08.2014. The remission should be granted to only such prisoners who fulfil conditions laid down in Rule 80(1).

Number and details of released convicts by virtue of this Special Remission be sent to PHQ by 16.08.2014 positively.

13. As the order of remission was issued on 11th August, 2014, the appellant should have been released on that day itself. The authorities knew that the appellant has to be released on that day as per the remission order, yet he was detained till 15.08.2014. He could have given benefit of four days of remission, if not 15 days. Had they decided remission on 31st July, he could have got the full benefit of remission. Mr. Sanjiv Kumar contended that, though order was given on 11th August 2014, it would come into operation on 15th August 2014 and hence there was no extra detention. The order copy does not disclose any date of its commencement. The order specifically stated that it would apply to all convicts who maintained good conduct and not punished during a year preceding up to 14th August 2014. Mr. Sanjiv Kumar further contended that as order was received on 12th and hence it will operate from 13th. This is highly unreasonable, illogical and against the legal right of the prisoner. It cannot be accepted. Personal liberty can be curtailed only in accordance with the procedure established by law as per Article 21 of the Constitution. This is not procedure prescribed, but an unreasonable and illegal interpretation.

14. According to calculation of the appellant, he lost 14 days of freedom, and assuming that the order was given on 11th August 2014, as per the contention of the respondents, the appellant has lost 04 days of freedom.

Law of personal liberty and compensation:

15. The appellant, O.P. Gandhi is seeking this information and then compensation from the Jail Authorities and the State and wants to know who would be liable if he was detained beyond the date because of negligent or mistaken calculation of remission? The answer to this question depends upon the constitutional right and responsibility of the state if that right is violated by the state employees.

16. It is internationally recognized principle that the right to compensation is not alien to the concept of enforcement of guaranteed right. Article 9(5) of the International Covenant on Civil and Political Rights states: "*Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation*". It is incorporated in Article 21 of Indian Constitution:

21. Protection of life and personal liberty: *No person shall be deprived of his life or personal liberty except according to procedure established by law.*

17. The remedy for the violation of this constitutional right was practically found in constitutional courts under their writ jurisdiction, because there is no mechanism to provide remedy. The scope of writ jurisdiction has also been expanded with recognition of Public Interest Litigation to uphold the Human Dignity and other Fundamental Human Rights. Consequent upon the expansion of writ jurisdiction, the Compensation as a mode of redressal of violation of Human Rights gained importance.

18. The State pleaded immunity which was initially accepted. A ridiculous state of affairs prevailed as reflected in ***Kasturilal vs. State of U.P.*** (AIR 1962 SC 933). In this case a gold merchant Kasturilal was detained on suspicion and his gold ornaments were seized and put in safe chest (maalkhana) in the police station. A police constable stole them and fled. Kasturilal demanded return of gold or its cost. The State pleaded immunity because it was done during performance of sovereign function. Justice Gajendra Gadkar, CJI, upheld rule that state was not liable for wrong

committed while exercising sovereign police function. However, CJI advocated for a better policy on state liability.

19. The Supreme Court has observed in ***Municipal Corporation of Delhi, Delhi v. Uphaar Tragedy Victims Association and others*** [(2011) 14 SCC 481]:

Right to life guaranteed under Article 21 of the Constitution of India is the most sacred right preserved and protected under the Constitution, violation of which is always actionable and there is no necessity of statutory provision as such for preserving that right.

Thus, it is implicit that the right to life and liberty would include the right to live with human dignity and any breach or violation of the right to life would entail serious civil consequences and that would be actionable.

20. The Supreme Court made a departure from the ordinary civil law, where the right to claim compensation is only through a civil suit instituted by the aggrieved party before the court of first instance.

21. Whether the state/public authority should be made liable for false imprisonment? This question generated a lot of human rights jurisprudence in India. In ***State of Rajasthan v Mst. Vidhyawati & Anr, 1962 AIR 935***, the apex court stated that: "*Now that we have by a Constitution established a republican form of government and one of the objectives is to establish a socialistic state with its varied industrial and other activities, employing a large army of servants, there is no justification, in principle or in public interest that the State should not be held liable vicariously for the tortious acts of its servants.*"

22. In ***Khatri's*** [1981 SCC (1) 627] case, the Supreme Court created the ***jurisdiction of payment of monetary compensation under Public Interest Litigation to the victims on violation of their life and personal liberty.*** Bhagwathi J., speaking for the court observed: "the court can certainly inject the state for depriving a person of his life or Personal Liberty except in accordance with the procedure established by law but, if life or Personal Liberty is violated otherwise

than in accordance with such procedure, is the court helpless to grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new and devise new remedies for the purpose of vindicating the most precious Fundamental Right to life and Personal Liberty? Otherwise Article 21 would be reduced to a nullity, a "mere rope of sand". The court described this issue as of gravest Constitutional importance involving exploration of new dimension of the Right to Life and personal liberty. (at page 930 Para 3)

23. In landmark ***Rudul Shah v State of Bihar, AIR 1983 SC 1086*** case the Supreme Court held that the state has to compensate for extra detention. In this case, prisoner Rudul Shah, though acquitted by the Court of Sessions, Muzaffarpur, Bihar, on June 3, 1968, was released from the jail only on October 16, 1982, i.e., after more than 14 years. He was awarded Rs 35,000 compensation.

24. In ***Bhim Singh, MLA vs State of J & K and Ors. [AIR 1986 SC 494]***, Mr. Bhim Singh legislator was detained by police illegally. Supreme Court awarded him compensation of Rs 50,000. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases, we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case and direct the first respondent, the state of Jammu and Kashmir, to pay to Bhim Singh, a compensation of Rs. 50,000 within two months from today."

25. After Bhim Singh, another landmark order came from AP High Court later confirmed by the Supreme Court. In ***State of A.P. v. Challa Ramkrishna Reddy and Others- Civil Appeal No. 3969 of 1989***, a bomb was hurled in the Jail cell of Kurnool, causing death of a prisoner besides injuring his son. Father's dying declaration revealed: they received information that a conspiracy was hatched to kill them in the jail itself and that a Sub-Inspector of Police was a party to that conspiracy. The court held that Article 21 is available to prisoners, that there was negligence on the part of the government officers that resulted in the death of a

prisoner in jail, that the principle of sovereign immunity cannot be invoked in this case because adequate security was not provided to the prisoners, who were attacked. A suit for compensation was filed in the district court of Kurnool in AP against the state. The State raised issue of sovereign immunity, which were rejected. The High Court said:

This court, through a stream of cases, has already awarded compensation to the persons who suffered personal injuries at the hands of the officers of the Government including police officers and personnel for their tortious act. Though most of the cases were decided under public law domain, it would not make any difference as in the instant case, two vital factors, namely, police negligence as also the Sub-Inspector being in conspiracy are established as a fact. The crown in England does not enjoy absolute immunity and may be held vicariously liable for the tortious acts of its officers and servants. The maxim that the *king can do no wrong* or that the *crown is not answerable* in tort has no place in Indian Jurisprudence where the *power vests, not in the crown, but in the people* who elect their representatives to run the government, which has to act in accordance with the provisions of the Constitution and would be answerable to the people for any violation thereof.

Thus this archaic principle of state immunity was denounced by series of orders of the Supreme Court. Now state immunity was replaced by principle of vicarious liability.

26. In ***Nilabati Behara vs. state of Orissa and others*** (AIR 1993 SC 1960) the Supreme Court further explained that the said provision indicates that an enforceable right to compensation is not alien to the concept of a guaranteed right. It is also pertinent to mention that the provision of compensation to the crime victims is crying need of the honour. The International Covenant on the Civil and Political Rights, 1966 indicates that an enforceable right to compensation is conceptually integral to Human Rights. In this case a distinction is made between the remedy of compensation available under the public law i.e., Constitution and the private law, i.e. civil law of Tort. In this case Anand J, in his concurring judgment further explained the distinction by observing that "the payment of

compensation in such cases not to be understood, as it is generally understood in a civil action for damage under the private law, but in the broader sense of providing relief by an order of making "monetary amends", under public law for the wrong done due to breach of public duty of not protecting the Fundamental Rights of the citizen. The compensation is in the nature of exemplary damages awarded against the wrongdoer for the breach of its public law duty and it is independent of the rights available to the aggrieved party to claim compensation under the private law in action based on tort through a suit instituted in a court of competent jurisdiction or to prosecute the offender under the penal law. As per Article 21 of the constitution and various judgments, the victim is entitled to compensation for illegal detention.

27. In ***Sunder Patel & Anr v The High Court of Chhattisgarh, through the Registrar General, Chhattisgarh High Court & Ors., W.P.(Cr.)No.29/2014***, the convicts were illegally detained for an extra 113 days beyond their actual release date. The court took into account the deprivation of personal liberty, the mental agony and the pain caused due to the extra detention, hence awarding a compensation Rs.50,000 to each of the petitioners to be paid by the State holding it vicariously liable for the tort committed by its servants acting in the course of employment.

28. Another major problem for the poor citizen like the appellant is that he cannot afford litigation in the court of law –if the court is higher, the cost is much higher. Prisoners have a very less chance of affording litigation, unless he made huge illegal money.

29. Poor man's affordability in agitating in courts was considered in ***Hussainara Khatoon vs. Home Secretary, Bihar*** (AIR 1979 SC 1377), it was held that it was the Constitutional right of every accused person who was unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the state and the state is under Constitutional duty to provide a lawyer to such person if the needs of justice so require.

30. In ***Kedra Pahadiya and others vs. State of Bihar*** [(1981) 3 SCC 671], the Supreme Court directed that the petitioners must be provided legal representation by a fairly competent lawyer at the cost of the state, since legal aid in a criminal case is a Fundamental Right implicit in Article 21, and the Fundamental Right has merely remained a paper promise and has been grossly violated.

Thus, the Supreme Court scripted prisoner rights jurisprudence according deserving value to the life and liberty of unfortunate detainees. Apex court held that the Right to Life and Personal Liberty enshrined in Article 21 cannot be restricted to mere animal existence. Because of lack of awareness and poverty of victims, increased cost of litigation, delay, pendency of cases and absence of policy with public authorities, state is escaping from this liability.

31. In above cases the Constitutional courts talked about remedy that they could provide under writ jurisdiction without depriving the citizen right to approach civil courts for compensation based on the loss established. Replying the questions, the Jail Authorities stated that there was neither the policy nor remedy, only course left is that the prisoner should approach the court of law and secure a direction to pay compensation. An ordinary citizen like the appellant can neither go to the civil court with a plaint nor file a writ petition in the Constitutional Courts for compensation. The State/public authority cannot drive poor convicts to the courts of law.

32. The State is expected to give people-friendly administration. The Jail Authorities cannot breach the rights of prisoners and refuse any remedy. If this educated and courageous appellant has not brought out this issue of extra detention, it would have been not possible for anyone to know the breach of his constitutional and human rights. Thousands of prisoners might be languishing in the jail for no fault of them beyond their entitled release date, because of miscalculation or negligent calculation of remission. Their right to liberty is totally dependent on the officer's knowledge/efficiency in calculation. If a being has to lose his precious personal liberty for such silly reasons, can it still be called a good administration? No person shall be deprived of life and liberty except in accordance

with procedure established by law, is the time tested principle of life and liberty guaranteed by all democratic constitutions in the world and by the Indian Constitution under Article 21, which cannot be violated in the jail. The 'established procedure' will be the jail term determined by the court and remission power as exercised. This cannot be breached by mistakes or negligence or red-tape or lethargy or inaction or indecision of the authorities.

33. The appellant was sentenced to one-year imprisonment on the charge of dishonour of cheque. Though he has initially claimed remission for 83 days on various counts, finally he was claiming compensation for detention for 18 extra days. The CIC opined that the public authority should have a policy to compensate for unjustifiable or extra detention caused either by mistake or by miscalculation or malice, because it is a tort of false imprisonment. In classic Torts Law book "Clerk & Lindsell on Torts" (Nineteenth Edition), false imprisonment is defined as complete deprivation of liberty for any time, however short, without lawful cause and false imprisonment is a type of trespass to a person that is actionable even without proof of special damage. Clerk & Lindsell on Torts (Nineteenth Edition) in Chapter 6- Vicarious Liability, while dealing with Liability of employer for torts of employee, explained: "Liability of employer for torts of employee Where the relationship of employer and employee exists, the employer is liable for the torts of the employee so long only as they are committed in the course of the employee's employment. This means the public authority (Tihar Jail) is vicariously liable for the tort of 'false imprisonment' of the complainant for at least four days, if not for 14 days. The Indian Penal Code defined various kinds of wrongful imprisonment offences under Sections 339 to 348. The appellant has collected information through several RTI applications and second appeals, to prove the extra detention, and filed petition before public authority for compensation under RTI Act. There was initial denial followed by enormous delay in furnishing the information in this RTI request.

34. From the above facts, contentions and the legal position, besides Jail Rules, it can be inferred that the appellant was admittedly detained for several days extra than he was supposed to be, taking into account the remissions agreed as legally granted, that he was not paid any compensation, and that the Jail Authorities or

Home Department had no policy at all to deal with such situations in various jails. There is no reason to doubt appellant's claim as per the responses given by the authorities to his various RTI requests.

Denial of information

35. The rejection of RTI request on the ground that what he sought was not 'information' under RTI Act is illegal and unreasonable. He has a right to know as to what their policy is regarding compensation for illegal detention, or when he would be paid the same and what action was taken on his petition for compensation? This RTI request revealed the real administration, or Governance of the public authority, maintenance of the jail manual and implementation of the policy as reflected in their remission rules. When remission is admitted to be legal right of appellant, what is the remedy available for its breach? It is on record that actual information to the appellant was provided after several hearings, instructions and directions of the Commission, beyond the last date of hearing (when the copy of order of the remission was given on 19.9.2016). Hence there is merit in complaint and contention that he was not given complete and proper information about remission and that he was also not given the due benefit of remission. The appellant suffered loss because of this denial and delay in furnishing information besides other detriment, i.e., the loss of freedom.

36. The remission policy is like a citizen charter of the Jail and breach of the same should have a consequence. Not only appellant, but the public in general also have a right to know about this policy respecting human rights of liberty and compensation in case of breach. Instead of giving a remedy or relief, the Jail Authorities are not expected to drive them to the court. If he goes to the court, the public exchequer will be doubly burdened with legal aid to be given to the appellant and paying huge fee to the Government Counsel, spending on travel of the government officers etc to oppose 'compensation' claim in the court.

37. It can be concluded that the term of imprisonment of appellant minus legally accepted remission entitle the appellant to release on August 2nd itself, which did

not happen. The extra-detention caused deprivation of personal liberty of the appellant not in accordance with procedure established by the law.

Lack of policy

38. Though under Article 32 and Article 226, the Constitutional right to remedy is available in the statute book, it is practically not available because of high costs, huge lawyer fees and large period of pendency to an average citizen. In fact, most of the accused are in the jail because they could not afford to hire the services of lawyers with higher face value. Because Article 226 is not available, the right to life under Article 21 along with the preamble becomes futile piece of poetry for détenues.

39. It is the constitutional responsibility of the Jail authorities to be meticulous in counting the freedom by days and even hours to see that nobody suffers unnecessary incarceration. This duty is breached. It is the prisoner's constitutionally guaranteed right under Article 21. And if they suffer any loss they shall be paid compensation as decided by the Constitutional Courts of India. This right is violated. But the Jail Authorities say that there is no remedy for the appellant available with them.

Compensation under the RTI Act

40. Each violation of the right shall give rise to an enforceable remedy. ***Ubi jus ibi remedium***, (=where there is a legal right, there shall be a remedy) is age-old maxim of justice. Any illegal detention should give rise to two remedies – criminal and civil. It is an offence of wrongful confinement under the Indian Penal Code and also, under the law of torts, the appellant is entitled to be compensated in a civil court.

41. Mahatma Gandhi said: "*To deprive a man of his natural liberty and to deny to him the ordinary amenities of life is worse than starving the body; it is starvation of the soul, the dweller in the body.*" How can this deprivation be compensated? The RTI Act provides for compensation. Section 19 (8)(b) deals with the power of the Commission to give compensation for loss or any other detriment:

S 19(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to,—

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

*(b) require the public authority to compensate the complainant for **any loss or other detriment suffered**;*

(c) impose any of the penalties provided under this Act;

42. The Section 19(8)(b) accommodates two kinds of compensations- loss or any other detriment suffered. Other detriment the appellant suffered is loss of freedom for 14 days as per his count. The public authority has a duty to explain and justify detention to the appellant and the Commission. The contention of the authority is not convincing. The appellant has every right to pursue his legal remedy for the loss of freedom, quantum of which need to be determined based on evidence by an appropriate legal forum. Four-days detention beyond the date of order of remission, i.e., 11th August 2014, is clearly established, while detention of 10 days is still an issue to be decided. The Commission considers this case as a fit case for awarding compensation to the appellant-prisoner for 04 days of extra-detention.

43. It is difficult to value 'freedom' or the loss caused to the aggrieved because of extended detention, which is illegal/wrongful and mental agony caused by denial of information and freedom. However, a victim appellant cannot suffer loss of remedy because the value of freedom cannot be calculated. The Commission gave several opportunities to the public authority to resolve this issue of remission and extra-detention. They have simply consumed the time, sought more time, but came with strange arguments and interpretations to deny the complainant and the information about the benefit of remission causing breach of personal liberty. The complainant suffered the loss of freedom and breach of personal liberty guaranteed

under Article 21, and the public authority is vicariously liable for the tort, whoever might have committed during the course of performance of their statutory duties.

Decision

44. Strangely the courts treated the MLA and the common man differently in awarding compensation. A poor prisoner Rudul Shah got Rs 30,000 for 14 years of extra detention, while an MLA Bhim Singh was given Rs 50,000 for one day's false imprisonment. In a recent case, another poor citizen got just Rs 50,000 for 113 days of imprisonment. Actual compensation has to be ascertained in a proper way in a trial court. The appellant is free to pursue such a remedy. However, the Commission requires the public authority under Section 19(8)(b) to pay the Complainant a token compensation of:

- a) Rs. 2,500 per day for the detriment of four-days freedom (Rs 2500 X 4 = 10,000) and
- b) Rs 1,000 (one thousand) towards the costs to attend cases several times,

within one month from the date of receipt of this order. However, the complainant is free to approach appropriate forum of law for getting complete and comprehensive compensation for the loss of freedom.

45. The Commission requires the public authority under Section 19(8) to put in the place a policy/guidelines/regulation for a system of resolving the disputes regarding the remission, and paying compensation to prisoners who lost their personal liberty due to extra-detention, either by mistake or negligence; and that mechanism of compensation shall be prominently displayed/notified in the official website and on the notice board in their office in English and Hindi languages. This is required to be framed and disclosed *suo motu* under Section 4(1) (b), (c) and also (d) of the RTI Act. Prisoners like the appellant are persons affected by the 'administrative' (deciding the benefit of remission) or 'quasi-judicial' (interpreting it or deciding the date of according that benefit) and hence they have the right to know about such policy, within three months from date of receipt of this order.

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

Addresses of the parties:

1. The CPIO under RTI,
O/o Director General of Prison, Prison HQ,
Tihar, Ianakpuri, New Delhi (RTI Cell).
2. Shri O. P. Gandhi,
2034, Sec-7, Block-D,
Faridabad-121006.