

WEST BENGAL HUMAN RIGHTS COMMISSION
Purta Bhavan, 2nd Floor, Salt Lake, Kolkata – 700 091.

File No. 1508/WBHRC/COM/2013-14

P r e s e n t

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| 1. Shri Naparajit Mukherjee | Acting |
| Chairperson | |
| 2. Shri M. S. Dwivedy | Member |

Genesis of the Case:

A letter was received by the West Bengal Human Rights Commission on Jun 7, 2013 from one Chandu Yadav, a Life Convict detained in Berhampur Central Correctional Home, Murshidabad dated 27.10.2012 in which he alleged that he was detained in Berhampur Central Correctional Home as life convict for long. On 07.10.2012(Sunday) Side Jamadar Saurabh Ali had allegedly beaten him up severely and used bad languages on several occasions and demanded money time to time. As the complainant refused to give money he was called to No. 25 Gumpti and beaten badly and thereafter he was hospitalized as an indoor patient. He alleged against the Jailor that no discipline was being maintained and the Jailor demanded money from the convicts and bad language was being used. After receiving this letter by post, the Commission took cognizance of the matter and directed the IG-Correctional Services for an enquiry and report.

2. **Report of the ADG, Correctional Services:**

DIG(A) of Correctional Services on behalf of the ADG, Correctional Services submitted an enquiry report vide his Memo No. 2284/HRC-14/2014

dated 23.04.14 on the subject matter. This enquiry was conducted by DIG-North Correctional Services in which he reported that there was an allegation against Side Jamadar(Section In-charge) Saurabh Ali or Sohrab Ali who had beaten Chandu Yadav, a convict and demanded money and also used foul language. The same allegation was leveled against the Jailor who failed to maintain discipline and demanded money but there is no mention of the name of this Jailor, place of occurrence and amount of money so demanded. Sri Asit Baran Maity, who was the Chief Controller and retired from the service on 31.01.2013 was contacted by DIG(North) Correctional Services but he denied such allegation. Sri Biswarup Biswas, Chief Controller was also examined. He too denied such allegation. Chandu Yadav was examined on 15.03.2014 when he stated that one B.K. Mishra, Chief Controller(no such officer was posted there) beat him in front of the lock up and he was admitted to hospital thereafter. However, Chandu Yadav could not mention the date. After ten months of the above mentioned incident Chandu Yadav alleged that warders namely, Gautam Mohanto, Suvendu Halder, Sohrab Ali, Nazimul Molla, Suresh Ghosh had beaten him up while he was sleeping at No. 4 side of the jail. Thereafter, he was brought to side 3 and Suvendu Halder further beat him up with lathi. He categorically stated that Sohrab Ali did not beat him up. He also stated that as a protest against this incident, the inmates of the Correctional Home submitted a mass petition to the Superintendent and threatened to go on hunger strike. The Superintendent subsequently had enquired into the matter. The Enquiring Officer i.e. DIG,-North, Correctional Services, West Bengal gave

his concluding findings to the effect that on 07.10.12 at around 2 p.m. convict Chandu Yadav and other inmates of Ward No. 25 under Section 4 were directed by the on duty warder Suvendu Halder to go inside the lock up after midday meal. Chandu Yadav disobeyed and engaged in verbal altercation with the warder and allegedly took off the warder's belt and assaulted him physically. Following this incident the Section In-charge Sohrab Ali assisted by other warders came to the spot and took both the convict and Suvendu Halder to the Central Tower(Gumpty) where the Chief Head Warder's office is located. Here the convict attempted to assault Suvendu Halder with a piece of brick which caused injuries to the warder. Suvendu Halder used baton to beat up Chandu Yadav. Joy Narayan Saha, Head Warder intervened and shifted the convict to the hospital ward where he was admitted between October 7, 2012 and October 30, 2012 and was under treatment of Dr. A. Nan, Medical Officer, Berhampur CCH. The medical records of the warder as well as the convict were enclosed along with this report in which it was stated that Chandu Yadav received multiple injuries over right shin bone and lateral surface of left leg. He was given medicines for treatment and was released on 30.10.2012 following admission on 07.10.2012.

3. **Action taken by the Commission following receipt of this report :**

The Commission vide its order dated 05.08.2014 raised certain queries on the examination of this report for further clarification which are as follows:-

(i) It called for the injury report of Suvendu Halder, warder since he was allegedly assaulted with a belt by the convict Chandu Yadav, (ii) Whether any FIR was lodged at the local P.S. over the incident and (iii) the status of the treatment of Chandu Yadav since it was mentioned that he was a psychiatric patient. Vide his Memo No. 98(1)/HRC-14/2014 dated 07.01.2015, DIG(A) of Correctional Services submitted clarifications to the queries raised by the Commission in which he stated that no criminal case was lodged in the local PS over the issue and he enclosed the medical report of injuries sustained by Suvendu Halder. Also copies of medical report of Medical Officer of Presidency Correctional Home along with copy of the report of the Institute of Psychiatry, Kolkata were sent to the Commission in respect of the convict Chandu Yadav. The OPD ticket of the Berhampur General Hospital in respect of the warder Suvendu Halder revealed that he sustained multiple abrasion injuries over his left little finger and some abrasion over forehead. A C.T. Scan was conducted on October 9, 2012 in Berhampur which stated that the functioning of his brain was within normal limit. Further, it was revealed that he was under treatment in the hospital from 08.10.12 to 10.10.12 but his earlier OPD ticket dated 07.10.12 indicated that he refused admission on that date. The Institute of Clinical Psychology, Kolkata in its finding dated 12.09.14 reported that Chandu Yadav(Convict) was suffering from **'Formal thought disorder(FTD) (in respect of the convict Chandu Yadav) for which it was difficult to examine him further'**. There was also signs of poor organizing ability in the patient suggesting cognitive slippage and faulty judgment in logical process.

The matter was discussed in the Full Bench of the Commission on 02.04.15 and the ADG, Investigating Wing of the Commission was directed to conduct further enquiry and submit his report by 30.05.15 to the Commission.

ADG, Investigating Wing of the Commission submitted its report on 11.06.15 which was again discussed in the Commission on 22.06.15 and the S.P., Investigating Wing of the Commission was directed to examine and record statement of the convict Chandu Yadav, obtain bed head ticket of the hospital in which he was admitted for the period from 07.10.12 to 31.10.12. The matter was again discussed on 19.04.16 in the Commission and the other clarifications were sought for from the S.P. of the Commission as reason for outbreak of scuffle was not very clear and the bed head ticket collected was not legible. The S.P., Investigating Wing of the Commission submitted his subsequent report which stated that Suvendu Halder, warder could not produce any medical document in which it was clearly written that he was assaulted by a belt by Chandu Yadav during scuffle but he produced an OPD ticket in which there was mention of certain injuries. No FIR was initiated in this case and nor any GD was lodged in the local PS. Chandu Yadav was treated by Dr. A. Nan of Berhampur Correctional Home Hospital where it was found that he suffered multiple injuries on person and was admitted in hospital between October 7, 2012 and October 30, 2012. He also underwent psychiatric treatment at Berhampur Correctional Home Hospital between December 15, 2010 and January 22, 2011. The S.P. further commented that scuffle with warder and disobedience violates the provisions of Section 45(1) (2)

of Prisons Act, 1894. Chandu Yadav could have been warned and punished under Section 46 of the Prisons Act, regarding the alleged incident of 07.10.12 but the Berhampur Correctional Home Authority could not show any punishment register which indicates such action had been taken against Chandu Yadav.

4. **Action Taken by the Commission:**

The Commission decided to examine Suvendu Halder, Warder, under Section 16 of the Protection of Human Rights Act. Warder Suvendu Halder did not turn up on the 1st date given by the Commission (May4, 2016) apparently because of some miscommunication. He was subsequently examined on 18.05.16 and his statement under Section 16 of the PHR Act was recorded by the Commission. He stated that currently he was posted in Darjeeling Correctional Home. On October 7, 2012 he was posted in Berhampur Correctional Home and that he was working in the department since 2007. He admitted that in case of disobedience of orders by life convict/UTP of the warder, superiors should be informed. On 07.10.12 at around 2 p.m. he ordered Chandu Yadav to get inside the ward but the latter disobeyed him when he(Suvendu Halder) created verbal pressure on him. Chandu Yadav jumped on him when Suvendu Halder raised hue & cry the inmates and other warders rushed to separate Suvendu Halder from Chandu Yadav and both were taken to Gumpty(Central Tower). At that time Chandu Yadav picked up a piece of brick and tried to assault but he (Suvendu Halder) was saved by the others. He admitted that Chandu Yadav might have received some injuries

while being separated by other officers and inmates. He initially stated that he was assaulted by Chandu Yadav with a piece of brick but immediately corrected by his (Suvendu Halder) service belt and was treated at Berhampur General Hospital. While he refused hospitalization on 07.10.12 he was admitted on 08.10.12 and discharged on 10.10.12 as he was feeling pain on his head and little finger. He also admitted that he was unaware whether any punitive action was taken against Chandu Yadav under Jail Code/Prison Act..

Suvendu Halder stated to the Stenographer Sri Nirmalya Kundu that his knowledge of English was not good and he was unable to find out the meaning of the statement so recorded. The statement of Suvendu Halder recorded in English was then read over and explained to him by the Stenographer Sri Nirmalya Kundu but he(Suvendu Halder) was not satisfied to repose confidence and insisted upon the statement so recorded being examined by his acquaintances. He was then asked to submit a petition to this effect. Suvendu Halder submitted a petition to the Commission requesting a copy of his statement on that ground. A copy of his statement was duly supplied to him free of cost on 18. 05. 2016.

5. **Findings of the Commission :**

The Commission duly examined the original petition, report submitted by the DIG-North Correctional Services,, Clarification submitted by the DIG, Headquarter Correctional Services and subsequent enquiry report of S.P. Investigating Wing of the Commission and came to the conclusion - "that life convict Chandu Yadav in Berhampur Correctional Services was a psychiatric

patient who had earlier undergone treatment between 2010-2011 in Berhampur CCH. On 07.10.2012 at around 2 p.m. he was moving outside the lock up which is a standard practice in jail. Following midday meal at around 2 p.m. Suvendu Halder asked him to get inside the ward while he was sleeping on the floor outside. This apparently led to an altercation between the two and there might have been an attempt on the part of the life convict Chandu Yadav to assault warder Suvendu Halder which is indicative of an injury received on his left little finger. It is alleged that Chandu Yadav removed service belt of warder Suvendu Halder and hit him but the medical report did not support this incident. There is also mention of bricks being thrown at Suvendu Halder by the convict but nature of injury does not point to that effect. On the contrary it has been admitted by Suvendu Halder and subsequent report that ChanduYadav was assaulted with baton for which he received multiple injuries on his shin and legs. The nature of injuries were so serious that he was admitted in the hospital between the period from 07.10.12 to 30.10.12. He was also examined in the Institute of Psychiatric Kolkata during 2014 and found suffering from FTD which is a type of thought disorder indicative of mental imbalance’.

The Commission is of the opinion that this life convict was a psychiatric patient, he should have been dealt with due care, caution and consideration instead warder Suvendu Halder used force on him to take him inside the lock up of the jail. This led to a scuffle in which the convict was assaulted which is not desirable for the prison authorities as

it is clear violation of human rights of a life convict. Also as claimed by the Prison Authorities that the life convict was indulging in undisciplined conduct but this was not substantiated by any action taken by them by registering criminal case in the local PS or action under Section 45/46 of the Prisons Act. This is a grave violation on the part of the Correctional Services Authority of Berhampur and shows how lackadaisical they are towards management of life convict who happens to be a psychiatric patient

6. **Recommendations of the Commission:-**

The Commission makes the following recommendations in this respect:

- I) The Commission holds warder Suvendu Halder responsible for assaulting life convict Chandu Yadav and recommends disciplinary proceedings against him. The result of the disciplinary proceedings may be communicated to the Commission.
- II) A compensation to the tune of Rs. 30,000/- (Rupees Thirty thousand) only be awarded to the life convict Chandu Yadav for undergoing physical and mental agony resulting from the incident of 07.10.2012 inside the Berhampur Correctional Home.
- III) ADG, Correctional Services, West Bengal be directed to issue instructions to all Correctional Homes regarding the standard procedure for dealing with the convicts and inmates under the Prisons Act in case of violation of lawful order of the warders by Convicts/UTPs so that such unfortunate incidents are avoided in future.

7. The Principal Secretary, West Bengal State Human Rights Commission is directed to communicate a copy of this recommendation to the Chief Secretary Govt. of West Bengal with the request that an action taken report be sent to this Commission within 4(Four) months time.

Sd/-
(M. S. Dwivedy)
Member

Sd/-
(Naparajit Mukherjee)
Acting Chairperson

Dated, 20th May, 2016

SDB