

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh

-----Vice Chairman (J)

**CLAIM PETITION NO. 87/NB/SB/2021**

Laxman Singh Jagwan, aged about 36 years, s/o Sri Mohan Singh Jagwan, presently posted as Senior Sub Inspector, Kotwali, Khatima, District Udham Singh Nagar.

.....Petitioner

**vs.**

1. State of Uttarakhand through Principal Secretary, Home, Government of Uttarakhand, Secretariat Complex, Subhash Road, Dehradun.
2. Senior Superintendent of Police, Udham Singh Nagar.
3. Inspector General of Police, Kumaon Division, Nainital.

.....Respondents

Present: Sri Vipul Sharma, Advocate, for the Petitioner  
Sri Kishore Kumar, A.P.O., for the Respondents

**JUDGMENT**

**DATED: APRIL 18, 2023**

Present claim petition has been filed for the following reliefs:

*a) To set aside the impugned order dated 12.06.2020 passed by the Senior Superintendent of Police, Udham Singh Nagar (letter no. Na-58/2019) by means which a censure entry was awarded to the petitioner for the year 2020 and the order dated 30.12.2020 passed by the Inspector General of Police, Kumaon Division, Nainital (Letter no. COK-150 (22/2020) by means of which the statutory appeal filed by the petitioner has been dismissed and the order dated 12.06.2020 passed by the Senior Superintendent of Police, Udham Singh Nagar has been upheld.*

*b) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

*c) Award cost of the petition.*

2. The facts of the case, in brief, are that in the year 2019 while posted as incharge of Chowki Kalkatta Farm, Police Station Kiccha, District Udham Singh Nagar, a show cause notice was issued to the petitioner as to why adverse entry be not recorded in the service record of the petitioner under Rule 14(2) of the Uttarakhand (Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991. The imputations against the petitioner were that Smt. Surendra Kaur had got a mining lease from the Government and in the pretext of the said mining lease, husband of Smt. Surendra Kaur, namely, Balvinder Singh @ Dimple was doing illegal mining and the petitioner did not inform the senior officials about the illegal mining being conducted by Balvinder Singh @ Dimple and had not taken any steps to stop the said illegal mining. On 08.06.2019, SOG team had taken action against 23 trucks and one tractor under the Motor Vehicles Act and had taken action against the husband of Smt. Surendra Kaur, namely, Balvinder Singh @ Dimple. It was alleged that the petitioner did not inform the senior officials about the illegal mining being conducted by Balvinder Singh @ Dimple and had not taken any steps to stop the said illegal mining. It was also stated that since there was no evidence of mining in the land which was given as patta for mining and minor minerals which had accumulated there appeared to be different than the land belonging to patta, it was clear that illegal minor minerals were accumulated.

The petitioner submitted his reply to the show cause notice denying the allegations made in the show cause notice, stating that he had taken action against the illegal mining and details whereof were given. The preliminary inquiry was conducted by the by the C.O., Sitarganj, who submitted its report on 31.12.2019. The S.S.P., Udham Singh Nagar, without appreciating the facts, reply to the show cause notice tendered by the petitioner, report of the Deputy Director, Mining and the order passed

by the Sub Divisional Magistrate, Kichha proceeded to award a censure entry to the petitioner for the year 2020 vide order dated 12.06.2020. The petitioner preferred an appeal under Rule 20 of the Uttarakhand (Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 against order dated 12.06.2020. The Inspector General of Police, Kumaon Division vide order dated 30.12.2020 dismissed the appeal and upheld the order dated 12.06.2020 passed by the SSP. Udham Singh Nagar. Both the orders dated 12.06.2020 and 30.12.2020 have been passed overlooking the report of the Deputy Director, Mining which was conducted in the presence of Enquiry, Officer, wherein it has been specifically stated that no illegal mining activity was conducted on the land allotted to Surendra Kaur and the pillars that were placed during the demarcation of the land were found in the right places. It was also stated that no witness has deposed against the petitioner. It was also stated that the inquiry officer had not stated as to which was the place from where illegal mining was done and the minor minerals were stored from where. The spot from where the alleged illegal mining was done was not pointed out by the inquiry officer and as such this made the entire allegation against the petitioner unsustainable. It was also stated that the inquiry officer has not given the number and details of the trucks and tractor trolleys which were indulged in so-called illegal mining. When an expert in the field of mining has provided an opinion through a comprehensive study that no illegal mining has taken place on the spot in question, it was the duty of SSP, Udham Singh Nagar and Inspector General of Police, Kumaon Division while deciding the case to give significance to the above said report and to decide the matter based on the report provided to them. The report submitted has been prepared by an expert in the field of mining which makes it all the more important that the orders passed should have relied heavily upon the report given by Deputy Director, Mining. During the entire enquiry no evidence was found against the petitioner and no evidence were recorded from any witness by the investigating officer. Both the orders dated 12.06.2020 and 30.12.2020 have been passed ignoring

the report dated 02.07.2019 of the Deputy Director mining Shri Divesh Kumar who is an expert and a professional in the field of geology and is the proper authority to come to a decision as to whether mining was conducted at the particular spot or not. The entire proceedings from the very inception have been held in complete violations of the principle of Natural Justice as preliminary enquiry was conducted by the same authority who has filed the complaint against the petitioner. The proceedings must be without bias and the fundamental principle of natural justice is that no man shall be a judge in his own cause which has been severely violated in the instant case where the preliminary enquiry was conducted by the complainant himself. The complainant himself conducting the preliminary enquiry is contrary to the rules of natural justice and fair-play and the decisions and orders based on such procedure is liable to be set aside. The Respondent no.3 in the order dated 30.12.2020 has admitted the fact that the officer who conducted the preliminary enquiry was present when the petitioner was apprehended and however respondent no 3 has overlooked the same which is violative of the principles of natural justice. Hence the present claim petition.

3. The claim petition has been opposed by the respondents with the contention that the petitioner was appointed at Chowki Kalkutta farm P.S. Kichha then on 08-06-2019, the SOG found that Mr. Balwinder Singh husband of lease holder Smt. Surendra Kaur was indulged in illegal mining and initiated proceeding against him under M.V. Act and Mining Act and found that the above named person is using 23 trucks and one tractor trolley for illegal mining. Since the petitioner was deployed as beat in-charge to stop the illegal mining in the area but the petitioner was failed to discharge his duties and under his supervision illegal mining work was done by the illegal miners, the petitioner has also not informed to the higher authorities about the illegal mining. Thus, for the negligence of the petitioner a preliminary enquiry was conducted and the enquiry officer vide its report dated 31-12-2019 found the petitioner guilty. Thereafter the

respondent no.2 after receiving the enquiry report of the enquiry officer issued show cause notice dated 29-01-2020 to the petitioner as per Rule 14 (2) of Uttarakhand (U.P. Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, adoptions and modification orders 2002. The Rule 14(2) is quoted here below:

*"14(2) Notwithstanding anything contained in sub-rule (1) punishments in cases referred to in sub-rule (2) of Rule 5 may be imposed after informing the Police Officer in writing of the action proposed to be taken against him and of the imputations of act or omission on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal."*

The respondent no. 2 alongwith show cause notice supplied the copy of the enquiry report and directed the petitioner to present his cause against the enquiry report and also mentioned the minor punishment "Censure" in the show cause notice. Thus the disciplinary authority has followed the procedure as prescribed in the Uttarakhand (UP. Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991) adoptions and modification orders 2002 and Rule 23(2) of the Uttarakhand Police Act 2007. Thereafter the petitioner replied to the show cause notice and the disciplinary authority after going through the reply of the petitioner and the enquiry report and by giving his detail and specific findings passed the punishment order and awarded censure to the petitioner vide order dated 12-06-2020. The petitioner filed the statutory appeal Under section 26 of the Uttarakhand Police Act 2007 before the respondent no.2 and the appellate authority vide its order dated 30-12-2020 rejected the appeal by recording his findings. The appellate authority also after going through the record and evidence rejected the appeal of the petitioner. The respondents while awarding the punishment to the petitioner followed the rules and procedure. Thus the punishment orders are just and proper and no interference of this Hon'ble Court is required in the matter and the claim petition is liable to be dismissed.

4. Rejoinder affidavit has been filed by the petitioner denying the contents of the Counter affidavit and have reiterated the averments made in the claim petition.

5. I have heard learned Counsel for the parties and perused the record.

6. Learned Counsel for the petitioner has argued that the both the orders dated 12.06.2020 and 30.12.2020 have been passed ignoring the report dated 02.07.2019 of the Deputy Director, mining Shri Divesh Kumar who is an expert and a professional in the field of geology and is the proper authority to come to a decision as to whether mining was conducted at the particular spot or not. Moreover, the entire proceedings from the very inception have been held in complete violations of the principle of Natural Justice as preliminary enquiry was conducted by the same authority who has filed the complaint against the petitioner. It is argued that the petitioner had taken action against the illegal mining and details whereof were given and vehicles involved in illegal mining were also seized on the report of the petitioner on 04.06.2019, 06.06.2019 and 31.06.2019. Moreover the 23 trucks seized for illegal mining had been released by the concerned authorities as no case of illegal mining was made out against them. That the petitioner has always taken action whenever a case of illegal mining came to his notice. That during the entire enquiry no evidence was found against the petitioner and no evidence were recorded from any witness by the investigating officer.

7. It has been argued on behalf of the respondents that when the petitioner was posted at Chowki Kalkatta farm P.S. Kichha then on 08-06-2019, the SOG found that Mr. Balwinder Singh husband of lease holder Smt. Surendra Kaur was indulged in illegal mining and initiated proceeding against him under M.V. Act and Mining Act and found that the above named person is using 23 trucks and one tractor trolley for illegal mining Since the petitioner was deployed as beat in-charge to stop the illegal

mining in the area but the petitioner was failed to discharged his duties and under his supervision illegal mining work was done by the illegal miners, the petitioner has also not informed to the higher authorities about the illegal mining. Thus for the negligence of the petitioner a preliminary enquiry was conducted and the enquiry officer vide its report dated 31-12-2019 found the petitioner guilty and after receiving the report of enquiry officer the disciplinary authority issued show cause notice to the petitioner under Rule 14 (2) of Uttarakhand (U.P. Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991, adoptions and modification orders 2002 and section 23(2) of Uttarakhand Police Act 2007 and directed the petitioner submit the reply the same. The petitioner thereafter submitted his reply. The disciplinary authority after going through the reply of the petitioner and relevant documents passed the punishment order with giving his specific findings on the reply of the petitioner. That thereafter the petitioner filed the statutory appeal under section 26 of the Uttarakhand Police Act 2007 before the respondent no.3 and the appellate authority vide its detailed and reasoned order rejected the appeal by recording his findings. Thus the answering respondents while awarding the punishments to the petitioner followed the rules and also procedure as prescribed Uttarakhand (U.P. Subordinate Class Police Officers/Employees [Punishment & Appeal] Rules, 1991) adoptions and modification orders 2002.

8. In view of the above discussion, the Tribunal finds that the imputations against the petitioner were that Smt. Surendra Kaur had got a mining lease from the Government and in the pretext of the said mining lease, husband of Smt. Surendra Kaur, namely, Balvinder Singh @ Dimple was doing illegal mining. On 08.06.2019, SOG team had taken action against 23 trucks and one tractor under the Motor Vehicles Act and had taken action against the husband of Smt. Surendra Kaur, namely, Balvinder Singh @ Dimple. The Deputy Director, Mining Sri Divesh Kumar had

conducted an inquiry. The inquiry report dated 02.07.2019 is reproduced as below:

“भूतत्व एवं खनिकर्म इकाई उद्योग निदेशालय उत्तराखण्ड  
उधम सिंह नगर

पत्राक 215 /उ0सि0न0/अवैध खनन/2010-20 दिनांक 02/07/2019

सेवा में,  
उपजिलाधिकारी  
किच्छा।

विषय: दिनांक 08.06.2019 को चौकी कलकत्ता फार्म पुलिस द्वारा अवैध खनन में संलिप्त 23 ट्रको के सम्बन्ध में।

महोदय,

कृपया उपरोक्त विषयक आपके कार्यालय के पत्रांक संख्या 293/एस0टी0/2019 दिनांक 24 जून 2019 के क्रम में अवगत कराना है, कि ग्राम बखपुर तहसील किच्छा जनपद उधमसिंह नगर के खसरा संख्या 11 मिन कुल रकबा 1546 है0 मध्ये रकबा 1.212 है0 भूमि में वर्तमान में श्रीमती सुरिन्दर कौर पुत्री श्री सतनाम चन्द निवासी ग्राम विजयपुर, कालादुगी जिला नैनीताल के पक्ष में 01 वर्ष हेतु शासन द्वारा खनन पट्टा स्वीकृत किया गया है। जो वर्तमान में मानसून सत्र होने के कारण अन्य खनन पट्टो के साथ जिलाधिकारी महोदय के आदेशानुसार दिनांक 16 जून 2019 से 31 सितम्बर 2019 तक खनन कार्य पूर्णतः बन्द है। जिसमें दिनांक 08 जून 2019 को पुलिस, राजस्व विभाग द्वारा संचालित खनन पट्टा का औचक छापेमारी की कार्यवाही की गयी जिसके दौरान पुलिस विभाग द्वारा खनन पट्टा क्षेत्र में 23 वाहनों को सीज किया गया, जैसा की पुलिस विभाग द्वारा अपनी आख्या में बताया गया है।

अधोहस्ताक्षरी द्वारा दिनांक 12 जून 2019 को आपके साथ, पुलिस क्षेत्राधिकारी तथा खनन, राजस्व एवं पुलिस विभाग की संयुक्त टीम के साथ उक्त खनन पट्टा का संयुक्त निरीक्षण किया गया जिसके दौरान पाया गया कि सीमांकन के समय लगे पिलर मौके पर सही पाये गये तथा खनन कार्य भी सीमांकित पिलर के अन्दर ही पाया गया। खनन पट्टा क्षेत्र में पूर्व से अलग अलग ढेरियों में उपखनिज रेता एकत्रित था। जो खनन पट्टा क्षेत्र के अन्दर से खनन किया हुआ प्रतीत होता है।

उक्त दिनांक तक खनन पट्टा क्षेत्र के आस पास किसी भी प्रकार का अवैध खनन नहीं पाया गया। जैसा की बताया गया पुलिस विभाग द्वारा उपखनिज से लदे हुए वाहनो को खनन पट्टा क्षेत्र के अन्दर ही सीज किया गया है, न कि मोटर मार्ग पर सीज किया गया है। खनन पट्टा क्षेत्र में कार्यवाही हेतु जाँच उत्तराखण्ड शासन औद्योगिक विकास विभाग संख्या 1031/VII-/2015-ख/2004 देहरादून 31 जुलाई 2015 अधिसूचना के स्तम्भ -2 के उपनियम 13 (1) के अनुसार खनिजों के जाँच प्रयोजन या अधिनियम तद्धीन बनायी गयी नियमवाली से सम्बन्धित अन्य प्रयोजन से जिलाधिकारी या ज्येष्ठ खान अधिकारी /खनन अधिकारी या राज्य सरकार द्वारा प्राधिकृत अधिकारी जो उपजिलाधिकारी के स्तर से नीचे का ना हो।

अतः आख्या आवश्यक कार्यवाही हेतु प्रेषित।

संलग्नक:- उपरोक्तानुसार मूल में।

भवदीय

(दिनेशकुमार)  
उपनिदेशक खनन”



The Deputy Director, Mining in its report stated that that everything was in order and in fact the minor minerals which were accumulated on the spot belong to the land upon which they were stored and no illegal mining was found on the spot.

9. On the basis of report of the Deputy Director, Mining, the Sub Divisional Magistrate, Kichha had also exonerated the vehicles in question. The order of the Sub Divisional Magistrate, which reads as below:

“आदेश

प्रभारी निरीक्षक कोतवाली किच्छा जिला उधमसिंहनगर द्वारा दिनांक 08.06.2019 की चालानी रिपोर्ट को दिनांक 13.06.2019 को प्रेषित किया गया है। जो अधोहस्ताक्षरी कार्यालय को दिनांक 15.06.2019 को प्राप्त हुई, जिसमें उनके द्वारा अपनी चालानी रिपोर्ट में वाहन सं० UK06CB-3083 के विरुद्ध अन्तर्गत 3/57 खनन अधिनियम, 1957 एवं उत्तराखण्ड (अवैध खनन परिवहन एवं भण्डारण) का निवारण नियमावली 2005, प्रेषित की गयी है। चालानी रिपोर्ट का परीक्षण किया गया, सम्बन्धित पक्ष को अपने साक्ष्य प्रस्तुत करने हेतु नोटिस भेजा गया। नोटिस तामीली के उपरान्त वाहन चालक श्री मो० जरीफ पुत्र मो० अहमद द्वारा लिखित में प्रतिउत्तर दिया कि पुलिस द्वारा वाहनों को पट्टे से जबरदस्ती पुलिस चौकी ले गये जबकि मेरे पास रायल्टी मौजूद थी, मेरे द्वारा अवैध खनन परिवहन नहीं किया गया है।

जिसके परिपेक्ष में पुलिस द्वारा भेजे गये वाहनों के चालानों के सम्बन्ध में उपनिदेशक खनन से जांच करायी गयी। उपनिदेशक खनन द्वारा अपनी जांच आख्या दिनांक 02.07.2019 से अवगत कराया गया है कि दिनांक 12.06.2019 को संयुक्त निरीक्षण तिथि तक खनन पट्टा क्षेत्र के आस पास किसी भी प्रकार का अवैध खनन नहीं पाया गया है। पुलिस द्वारा उपखनिज से लदे वाहनों को खनन पट्टा क्षेत्र के अन्दर ही सीज किया गया है न कि मोटर मार्ग पर सीज किया गया है जिसे पत्रावलियों का भाग बनाया गया। पत्रावली में उपलब्ध आवेदन एवं साक्ष्यों का अवलोकन किया गया।

जिसमें वाहन सं० UK06CB-3083 को 3/7 खनन अधिनियम, 1957 एवं उत्तराखण्ड (अवैध खनन परिवहन एवं भण्डारण) का दोषी नहीं पाया गया है। अतः वाहन अवमुक्त किया जाता है।

(विवेक प्रकाश)  
उपजिलाधिकारी  
किच्छा।”

10. On the basis of the above, the Tribunal is of the view that the petitioner had taken action against the illegal mining and details whereof were given and vehicles involved in illegal mining, were also seized on the report of the petitioner on 04.06.2019, 06.06.2019 and 31.06.2019. Moreover the 23 trucks seized for illegal mining had been released by the concerned authorities as no case of illegal mining was made out against them. Despite that, the S.S.P., Udham Singh Nagar, without appreciating the facts, reply to the show cause notice tendered by the petitioner, report of the Deputy Director, Mining and the order passed by the Sub Divisional Magistrate, Kichha proceeded to award a censure entry to the petitioner for the year 2020 vide order dated 12.06.2020. The appellate authority also without applying the mind, has rejected the appeal and confirmed the order passed the disciplinary authority. Hence the impugned orders are liable to be quashed and the claim petition is liable to be allowed.

#### **ORDER**

The claim petition is allowed. The impugned punishment order dated 12.06.2020 and appellate order dated 30.12.2020 are quashed. The respondents are directed to expunge the censure entry recorded in the character roll of the petitioner within 30 days from the date of this order. No order as to costs.

**(RAJENDRA SINGH)**  
VICE CHAIRMAN (J)

*DATE: APRIL 18, 2023*  
*DEHRADUN*  
*KNP*