

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

Present: Hon'ble Mr. Capt. Alok Shekhar Tiwari

----- Member (A)

Claim Petition No. 07/NB/SB/2024

Constable 469 Civil Police Bablu Goswami (Male, aged about 43 years), S/o Shri Dharmvir Giri, Permanent resident of 478/1 Gali No. 5, New Mangalpuri, P. S. Kakar Khera, Meerut Cantt., Meerut, Uttar Pradesh.

Presently posted as Constable at Kotwali Jaspur, Uttarakhand Police.

..... Petitioner

Versus

1. State of Uttarakhand, through Secretary (Home), District-Dehradun.
2. Deputy Inspector General of Police, Kumaon Region, Nainital.
3. Senior Superintendent of Police, District Udham Singh Nagar.
4. Superintendent of Police, Kashipur, District Udham Singh Nagar.

..... Respondents

Present : Sri Ajay Joshi, Advocate for the petitioner (Online)
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED : **MARCH 20, 2025**

This claim petition has been filed seeking the following relief:-

- “(i). to quash the preliminary enquiry report dated 16.03.2021 conducted by Superintendent of Police, Kashipur, District Udham Singh Nagar, order dated 02.03.2022 passed by Senior Superintendent of Police, Udham Singh Nagar and order dated 02.11.2023 passed by Deputy Inspector General of Police, Kumaon Range,

Nainital in the Appeal No. 13/2022 whereby the petitioner has been awarded "Censure Entry" (Annexure No. 1, 2 & 3 respectively).

- (ii). to pass any appropriate order as learned Tribunal may please to think fit and proper according to facts, reasons and circumstances of the case.
- (iii) to allow the petition with cost."

2. In brief, the facts of the case are that the petitioner is presently posted as Constable at P. S. Kotwali Jaspur in Uttarakhand Police and his career, so far, has been unblemished. The petitioner was transferred and posted at Police Chowki Sultanpur Patti, Udham Singh Nagar on 22.12.2020 and around that time, allegedly on receipt of complaints regarding illegal mining of Chowki Sultanpur Patti area, the Circle Officer, Bazpur conducted a surprise/sudden inspection in the mining areas on 10.12.2020 and 02.02.2021 and during inspection/check of illegal mining, actions were taken against persons, who were carrying illegal minerals and transporting excess minerals on their vehicles. On 02.02.2021, four trucks were found transporting excess minerals illegally on main highway near Chowki Sultanpur Patti and it was alleged that the petitioner was discharging his duty near Chhoi turn at night on that day, however, he did not bother to check the vehicles and was involved in ongoing illegal mining activities near the Chowki area which shows negligence and indiscipline towards his duties. In fact, on 10.12.2020, the petitioner was not even posted at Chowki Sultanpur Patti and only on 22.12.2020, petitioner got posted at Chowki Sultanpur Patti and despite that the petitioner has been punished for the act that took place 12 days prior to the date of joining of petitioner and no iota of evidence is available against the petitioner and no witness during preliminary inquiry was deposed regarding any kind of involvement of the petitioner. On 02.02.2021, the petitioner was discharging his duties alongwith P.R.D. Guard near Chhoi turn which

is 30 meters from the National Highway-74 and no overloaded truck crossed the petitioner's picket on that day and the illegal seized vehicles that were seized by Circle Officer, Bazpur were 4 Kms. away from the place of the petitioner's duty on Highway towards Kashipur and Sultanpur Patti chowki had no jurisdiction in that area. On the basis of aforesaid allegations, the respondent No. 3 vide its communication dated 15.02.2021 directed the respondent No. 4 to conduct the inquiry and submit the preliminary inquiry report. Thereafter, the preliminary enquiry was conducted against the petitioner and other persons and the report of preliminary inquiry was submitted to respondent No. 3 by respondent No. 4 vide letter dated 16.03.2021. On the basis of preliminary inquiry report dated 16.03.2021, a show-cause notice dated 28.04.2021 was served upon the petitioner and in response to which the petitioner submitted its reply on 11.05.2021 to the respondent No. 3. However, without considering the explanation submitted by the petitioner, the respondent No. 3 passed an order dated 02.03.2022, whereby, the petitioner was awarded a punishment of censure. The order dated 02.03.2022 was challenged by the petitioner before the Appellate Authority, i.e., respondent No. 2, who also failed to consider the grounds raised by the petitioner and dismissed the appeal filed by the petitioner vide its order dated 02.11.2023. Hence, this claim petition has been filed by the petitioner before the Uttarakhand Public Services Tribunal, Nainital Bench, Nainital.

3. Learned A.P.O. has filed counter affidavit on behalf of all the respondents, in which it has been stated that all the paragraphs of claim petition are unacceptable, except for those facts, which are based upon documents. As per the learned A.P.O., the petitioner was posted at Police Chowki Sultanpur Patti, Police Station Bazpur, District Udham Singh Nagar in the year 2020 when reports of illegal mining were received in the jurisdictional area of the aforesaid Police Chowki, after which the Police C.O. Bazpur made a surprised spot inspection on 10.12.2020 and 02.02.2021. During this surprise inspection the

information about illegal mining was found to be correct, as 04 overloaded trucks were seized involved in illegal mining. It was found that the police staff of the concerned Police Chowki was in connivance in this act. A show-cause notice dated 18.04.2021 was issued to the petitioner by the respondent No. 4 against which the petitioner has submitted his written explanation on 11.05.2021. Meanwhile, a detailed enquiry about the matter was conducted by the Police Superintendent, Kashipur, District Udham Singh Nagar, who submitted his report dated 16.03.2021 before the respondent No. 4. In this enquiry report also, the information of illegal mining was found to be correct and the explanation as submitted by the petitioner on 11.05.2021 was found to be weak and incorrect. Therefore, the petitioner was awarded the impugned punishment order dated 02.03.2022. Hence, this present claim petition filed by the petitioner is liable to be dismissed.

4. Rejoinder affidavit has also been filed reiterating the facts mentioned in the present claim petition.

5. I have heard the learned Counsel for the parties and perused the records. The petitioner has challenged the preliminary enquiry report dated 16.03.2021 conducted by Superintendent of Police, Kashipur, District Udham Singh Nagar, punishment order dated 02.03.2022 and the appeal dismissal order dated 02.11.2023 on the following grounds:-

- (a) As per the petitioner, he joined his duties on the said Police Chowki on 20.12.2022, whereas the Police C.O. Bazpur had conducted his surprise inspection on 10.12.2020 and 02.02.2021. Thus, it is evident that the petitioner was not posted at the concerned Police Chowki once the surprise inspection was conducted and also he had put in only 10 days of police duty on the said Police Chowki by 02.02.2021 when the Police C.O. Bazpur made a 2nd surprise

inspection, therefore, the allegations of connivance against the petitioner does not hold water. Further, the spot where 04 loaded trucks with illegal mining were seized by Police C.O. Bazpur was 04 Km. away from the petitioner's place of duty, on the said date.

- (b) The petitioner alleges that during his departmental inquiry both these above-mentioned facts have not been taken cognizance of by the Inquiry Officer, Punishing Officer and the Appellate Authority. In the entire proceeding, there has not been any mention of CCTV footage, if any. Thus, as per the petitioner's Counsel it is a case of mass punishment of the entire Police Chowki Staff where the petitioner was unfortunately posted. In fact, he has been made a scapegoat alongwith the others.

6. Learned A.P.O. in his argument has reiterated the facts of the counter affidavit and emphasized that the departmental proceeding has been conducted absolutely in accordance with the rules, wherein, the petitioner has been found guilty of dereliction of duty by the Police C.O., Bazpur, as well as by the Superintendent of Police, Kashipur. The petitioner's explanation is merely an eye-wash and, therefore, this claim petition deserves to be dismissed.

7. There is no doubt that the Police C.O., Bazpur as well as the Superintendent of Police, Kashipur found in their inquiries that illegal mining was being conducted under the nose of the said Police Chowki Sultanpur Patti, Bazpur and the police staff of the said Police Chowki was found to be generally in connivance, nevertheless, it is noticeable that the Police Superintendent, in his inquiry report dated 16.03.2021 has recommended punishment against the entire Police Chowki staff, namely, the Sub-Inspector Vipin Chand Joshi, Constable 1137 Civil Police Amit Joshi, Constable 506 Civil Police Subodh

Sharma, Constable 1130 Civil Police Darshan Singh and the petitioner Constable 469 Civil Police Bablu Goswami. Therefore, there is very much a chance of the petitioner getting punishment just by virtue of his posting recently on the said Police Chowki, for the illegality conducted by his colleagues.

8. The petitioner's explanation about his having joined his duties of the said Police Chowki very recently and the indicated facts that the spot of illegal mining truck seized being 04 Km. away from the place of petitioner's duty have not been sufficiently pondered upon during the departmental proceeding. This provides a benefit of doubt in favour of the petitioner.

9. Therefore, this Tribunal opines that the enquiry reports submitted by the Police C.O. Bazpur, and Superintendent of Police, Kashipur may have been erroneous to that extent. The departmental proceeding and the dismissal of appeal also appear to be contaminated by this oversight of facts. In the light of these facts it would be prudent that another opportunity is given to the petitioner for submitting a fresh explanation/representation specifically mentioning only those facts in his defence, which the petitioner has averred before this Tribunal on oath. The fresh departmental proceeding must be concluded in the light of this afresh explanation/representation, within a period of 60 days from the date of submission of a fresh explanation/representation, alongwith an affidavit, and a verified copy of this Tribunal's judgment.

ORDER

Accordingly, the claim petition is partly allowed to the extent that the after effects of the inquiry report dated 16.03.2021, punishment order dated 02.03.2022 and appeal dismissal order dated 02.11.2023 shall be kept in abeyance till the time the fresh departmental proceeding is concluded as directed above by this Tribunal. In case, the fresh department proceeding is concluded in favour of the petitioner, he

would be exempted from all the adverse effects of inquiry report dated 16.03.2021, punishment order dated 02.03.2022 and the appeal dismissal order dated 02.11.2023 and the impugned adverse entry/endorsement already entered in the petitioner's service book or character-roll will stand nullified. The petitioner is instructed to submit a fresh explanation/representation as per the aforesaid directions before the respondent No. 3, Senior Superintendent of Police, Udham Singh Nagar, alongwith an affidavit to that effect, as a reply to the show-cause notice dated 28.04.2021. No orders as to costs.

(Capt. Alok Shekhar Tiwari)
Member (A)

DATE: MARCH 20, 2025
NAINITAL
BK