

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C.) No. 2144/2010**

% **Date of Decision: 26th MARCH, 2010**

M.K. BAINIWAL PETITIONER

! Through: Petitioner in person.

VERSUS

\$ UNION OF INDIA AND OTHERS RESPONDENTS

^ Through: Ms. Nidhi Minocha, counsel for counsel for
the respondent No. 1/UOI.
Mr. M.M. Sudan, Advocate for the
respondents No. 2 to 6

CORAM:

Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **NO**
2. To be referred to the reporter or not? **NO**
3. Whether the judgment should be reported in the Digest? **NO**

S.N.AGGARWAL, J (ORAL)

C.M. No. 4279/2010 in W.P.(C.) No. 2144/2010

Exemption as prayed for is granted subject to all just exceptions.

W.P.(C.) No. 2144/2010 & C.M. No. 4280/2010 (for stay)

The petitioner had joined service with the respondent No. 2 as Deputy Marketing Manager (Grade-I) on 08.09.1995. In the course of time, he was promoted from the post of Deputy Marketing Manager (Grade-I) to Marketing Manager w.e.f. 16.10.1998; then, to the post of Chief Marketing Manager w.e.f. 22.03.2003 and then, to the post of General Manager, presently held by him w.e.f. 31.03.2008. The petitioner was transferred to Hyderabad by respondent No. 2 vide transfer order dated 04.12.2009 and was relieved from Delhi office vide relieving order dated 07.12.2009. Despite his relieving from Delhi office,

he did not go and join at the place of his transfer in Hyderabad. He chose to challenge the transfer order in writ petition being W.P.(C.) No. 14134/2009. In that writ petition, he prayed for stay of his transfer but that was declined by this Court speaking through Hon'ble Ms. Justice Rekha Sharma vide order dated 23.12.2009.

2. Aggrieved therefrom, the petitioner filed a Letters Patent Appeal being L.P.A. No. 37/2010 which came up for hearing before Division Bench-II on 15.01.2010 but was transferred to Division Bench-III. The L.P.A. No. 37/2010 filed by the petitioner against order of Single Bench dated 23.12.2009 was withdrawn by him from Division Bench-III and thereafter, he again moved applications being C.M. No.s 1258-59/2010 for stay of his transfer and these applications were dismissed by this Court vide its order dated 29.01.2010. Thereafter, the writ petition being W.P.(C.) No. 14134/2009 filed by the petitioner against his transfer was dismissed on merits vide order of this Court dated 18.02.2010. The petitioner was aggrieved by the order passed by this Court on 18.02.2010 dismissing his writ petition against transfer order and he, therefore, filed a Letters Patent Appeal being L.P.A. No. 168/2010 which has been dismissed by the Division Bench vide its order dated 11.03.2010. The transfer of the petitioner from Delhi to Hyderabad vide transfer order dated 04.12.2009 has been upheld up to the Division Bench and the matter has already taken several rounds of litigation as mentioned hereinabove. The petitioner has suppressed the dismissal of L.P.A. No. 168/2010 by the Division Bench in the present writ petition for reasons best known to him.

3. The fact of the matter is that the petitioner has not joined the place of his transfer though all efforts made by him for stalling the said transfer have failed in various rounds of litigation mentioned above. This, in fact,

amounts to misconduct on the part of the petitioner in not joining the place of his transfer despite command of the Court. This Court, while dismissing the writ petition (W.P.(C.) No. 14134/2009) against his transfer, vide its order dated 18.02.2010 took note of a judgment of the Hon'ble Supreme Court in **Gujarat Electricity Board & Another Vs. Atmaram Sungomal Poshani, AIR 1989 1433**, and reserved liberty to the respondents to initiate disciplinary proceedings against the petitioner for non-compliance of transfer orders as per observations of the Hon'ble Supreme Court contained in the said judgment.

4. The petitioner has filed the present writ petition for directions to the respondents to revalidate his transfer order and order of his relieving and in the meanwhile allow him to work at Delhi. The petitioner has also prayed for directions to the National Commission for Scheduled Castes (respondent No. 7 herein) to produce the record of his case before the Court as, according to him, irresponsible handling of his matter by respondent No. 7 has lead to arbitrary, unfair and mala fide action against him by respondents No. 2 to 6.

5. The record of the case reveals that the petitioner is using the SC/ST card against the management of the respondents only to stall his transfer from Delhi to Hyderabad. Neither the Commission for Scheduled Castes nor the police, before whom complaint of SC/ST atrocities was made by the petitioner, has found any substance or merit in the accusations of the petitioner.

6. This Court at the time of hearing the present writ petition asked the petitioner if he is willing to join the place of his transfer to which he responded that he can go and join the place of transfer provided the respondents revalidate his transfer order and relieving order and give him joining time. The Court also asked the petitioner how much joining

time he wants for joining duties at Hyderabad. He states that he may be given a week's more time to go and join at Hyderabad subject to the respondents revalidating his transfer order and the relieving order. This condition of revalidation of transfer/relieving order imposed by the petitioner is wholly unacceptable to the Court for the reason that the petitioner has been repeatedly informed by the Court that he can treat his transfer order and relieving order revalidated in Court itself. At this stage, the petitioner states that he gives up his claim for revalidation of his transfer and relieving order and agrees to go and join at the place of his transfer at Hyderabad within a week's time.

7. In view of the above submission made by the petitioner, he is given ten days joining time for joining the place of his transfer at Hyderabad. The petitioner is directed that he should join the place of his transfer at Hyderabad by 05.04.2010. The period of his absence from the service of respondents No. 2 to 6 from the date of his relieving, i.e., 07.12.2009 till the date of his joining at Hyderabad shall be dealt with by the respondents in accordance with the rules applicable in this regard.

8. In the facts and circumstances of the case, I do not consider it necessary to call for any record from the Office of National Commission for Scheduled Castes as prayed for by the petitioner because this Court, on going through the record, is quite convinced that the petitioner is playing SC/ST card against the management (respondents No. 2 to 6) for ulterior motives only to stall his transfer. In fact, the National Commission for Scheduled Castes as well as the police before whom the petitioner had made complaints against the management of SC/ST atrocities on him have on inquiry found that there was no substance on his said complaints. This fact was duly taken into account by this Court while dismissing the writ petition of the petitioner against his transfer

vide order dated 18.02.2010 in W.P.(C.) No. 14134/2009 and also by the Division Bench in its order dated 11.03.2010 in L.P.A. No. 168/2010. Hence, the prayer made by the petitioner for directions to the National Commission for Scheduled Castes for production of record is declined.

9. In view of the foregoing, I do not find any merit at all in this writ petition which fails and is hereby dismissed in limine but having regard to the fact that the petitioner is appearing in person, no Costs is imposed.

MARCH 26, 2010
'BSR '

S.N.AGGARWAL, J