

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

% Judgment Reserved On: 5th August, 2010
Judgment Delivered On: 1st September, 2010

+ **W.P.(C) NO.3614/2010**

UNION OF INDIA & ORS. Petitioners

Through: Mr.R.V.Sinha, Advocate and
Mr.R.N.Singh, Advocate

versus

A.K.VERMA Respondent

Through: Mr.Prashant Bhushan, Sr.Advocate
with Mr.Pranav Sachdeva and
Ms.Poulami Putatunda Pyoli,
Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. With a view to provide an alternative and reliable transport system in the State of Jammu and Kashmir in the year 2002 Government of India planned a 345 km long railway line. The line was to join the Kashmir Valley with the Indian Railways network. The project known as "Jammu-Udhampur-Srinagar-Baramulla Rail Link Project" (hereinafter referred to as "JUSBRL Project") is of strategic importance and is intended to provide quick access within the State of Jammu and Kashmir and serve as an alternative to road transport on National Highway – 1A on which the traffic is frequently disrupted by landslides and snow avalanches.

2. For a speedy execution of the project, the task of survey, field investigations, design and construction was entrusted to three public sector units; namely, Konkan Railway Corporation Limited (hereinafter referred to as the "KRCL"), Indian Railway Construction Company (hereinafter referred to as the "IRCON") and Rail India Technical and Economic Services (hereinafter referred to as the "RITES"). Whereas KRCL and IRCON were required to finalize the alignment, prepare design of tunnels, bridges etc. and carry out construction activities through sub-contractors who were to be appointed through tendering process, RITES was required to assist KRCL and IRCON in the matters of surveys and investigations and preparation of designs. The Northern Railway was entrusted with the supervisory role and overall responsibility of execution of the project.

3. Based on the topography of the area, the project was divided into three sections; namely: (i) Udhampur – Katra section; (ii) Katra – Qazigund section; and (iii) Qazigund – Baramulla section. Whereas the work in Udhampur – Katra and Qazigund – Baramulla sections was progressing at rapid speed the work in Katra – Qazigand section was still in the initial stages of execution on the date of proposed completion of the project. It be noted here that a uniform ruling gradient of 1 in 100 was chosen as the alignment of Katra – Qazigand section.

4. On 19.09.2003 Mr.B.Rajaram, Managing Director KRCL, wrote a letter to petitioner No.2, who was then posted as Chief Administrative Officer, Northern Railways, wherein he expressed serious doubts regarding the suitability of the alignment chosen for Katra – Qazigand section. The relevant portion of the said letter reads as under:-

“.....The paper alignment without even preliminary ground reconnaissance, without initial digging but only proceeding with partial surveys with partial ground details and then going ahead with calling of tenders and committing the national resources is causing a serious concern to me. We may be in a hurry, but without first (illegible) even by simple engineering survey the ground details, launching on construction from either end is fraught with serious consequences. We may end up with infructuous expenditure, and at the same time we also are not giving (illegible) picture, in terms either of cost or time.

It is only with an indication to help things out, I had to explore the alternatives as well as examine the paper alignment also whether we can comfortably proceed with the same. The results are not too encouraging.....

.....After matching with the levels, we get an alignment, which actually becomes half the length and reduces the number of portals to only about 8 and the bridges also to just about 2 nos. Initially, when this was presented as a concept, a view was taken that there were no ground details, and also any way we cannot accept 1 in 50 gradient. There is no reason why 1 in 50 gradient cannot be managed. Technical mitigation measures are available. As far as ground details are concerned, this work has also been completed. I am happy that we have no completed survey report as per our Engineering code with ground details and it is easily located on the ground. Experts in geo technical as well as environmental areas have concurred. The thrust areas are avoided. The alignment is shifted away from the Line of control and it has many more advantages in terms of security and safety. In fact, from Katra to Qazigund the travel time gets reduced to 1/4th of the current paper alignment. I estimate the saving of at least Rs.3000 crores when we adopted this alternative alignment.

The question arises as to why we should not examine the alternative honestly in the interest of the nation. In fact the safety concern of the tunnels is very real and with my experience on Konkan Railway single line tunnels, in case of hazards,

create very serious problems. In the alternative alignment these issues also are addressed.

If I am in your position I would rather have a committee of Sr. Expert Engineers, Operating Signal engineers as well as geo technical experts and Commission of Railway Safety with a Finance representative, and a defence representative to jointly examine the alternative and take a view.....”

5. In view of the apprehensions expressed by Mr.B.Rajaram, the then General Manager Northern Railway set up a Task Force to review the alignment chosen for Katra – Qazigand section. The said Task Force comprised of SAG officers of all the concerned departments and the respondent, who was then working as Chief Engineer/Construction/NEC was appointed as the Convener of the said Task Force. The said Task Force submitted its report in the year 2005 and approved the existing alignment i.e. alignment with ruling gradient of 1:100.

6. On 18.07.2005, Mr.R.K.Singh, Chairman Railway Board and Ex-Officio Principal Secretary, Ministry of Railways, Government of India, wrote a letter to the respondent as under:-

“A comprehensive review of the operational, maintenance and safety requirements vis-à-vis the provision in the DPR has been carried out by the Northern Railway. As the Chief Engineer in charge of the section of the region where most of the construction problems were going to arise due to the difficult terrain and adverse geology that necessitated a review and additional measures, you have ably projected the need for review and additional measures, and then as the convener of the Task Force that was set up to review the provisions of the DPR, you have helped formulate options, examine their feasibility, and steered the recommendations of the Task Force to the stage of their approval by the General Manager/Northern Railway and apprising the Railway Board. This is in

recognition of the good work done by you.”
(Emphasis Supplied)”

7. In or around March 2006, the then Member Engineering, Railway Board, deputed the respondent to undergo a nine-month course in Public Administration at Indian Institute of Public Administration, New Delhi. Relevant would it be to note that the respondent was not associated with USBRL Project after he finished the aforesaid course. However, in view of the fact that the respondent had carried a detailed study regarding the alignment of Katra – Qazigand section, he was given an opportunity to give a presentation to the Railway Board on 08.11.2007. In his presentation, the respondent pointed out many flaws in the alignment with ruling gradient of 1:100 chosen for Katra – Qazigand section. The respondent emphasized that the flaws pointed out by him in the alignment with ruling gradient of 1: 100 would mar the carrying capacity of the line, its competitiveness with the other modes of the transport as also seriously compromise the basic human needs of safety, security and comfort while travelling. The respondent stressed that the alignment with ruling gradient of 1:100 should be changed and the alignment with ruling gradient of 1 in 50 with some stretches of 3 to 5 km on gradient up to 1 in 44 should be adopted.

8. In light of the presentation made by the respondent, Member Engineering, Railway Board directed Northern Railway to examine the new alignment suggested by the respondent.

9. On 04.12.2007 Mr.B.P.Khare, the then Chief Administrative Officer, Construction – II wrote a letter to the Railway Board, the relevant portion whereof reads as under:-

**“.....2.0 Presentation made by Alok Verma,
CE/BWS/HQ/NR**

Shri A.K. Verma, SAG Officer has worked on this project for two years and he has also collected data on the railway lines constructed/under construction on the hilly terrain on the other part of world. A presentation was made by Shri Verma on 8th November'2007 in the Railway Board where ME, AM (Works), AM (Elect.), ED (TT), CAO-C-II/INR and other SAG/JAG Officers were present. During the presentation, Shri Verma brought out the following shortcomings of the existing alignment:

.....

At the end of the presentation, the Northern Railway was directed to examine the new alignment.

3.0 Modified alignment with a steeper ruling gradient of 1 in 50

The proposed alignment with a steeper ruling gradient of 1 in 50 (compensated) has been examined based on the toposheet and satellite imageries. A rapid and quick examination indicates that the alignment from Katra (km 30) to Banihal (km 154) is feasible with ruling gradient of 1 in 50 (compensated)..... The salient features of this alignment are as under:

....

- (v) The cost of the line will be less.
- (vi) Alignment will be mostly straight thus enhancing safety level.
- (vii) Due to less number of bridges and tunnel portals the security requirement will be less.
- (viii) Lesser operation and maintenance cost is expected.

....

5.0 The Proposal

After a rapid examination of the toposheets it is found that a gradient of 1 in 50 (compensated) is feasible between Km.30 to Banihal.....

The existing alignment is single line between Katra and Qazigand. In the long tunnels (>3 KM) a 3m

wide road has been proposed to provide rescue and relief during accidents and emergencies. This type of relief and rescue operations has its own limitations.

It is, therefore, proposed that two line track be laid in the portion where alignment is proposed to be modified. The system can work as double line or twin single lines. The cost of the two line track between Km30 and Banihal will be Rs.6455 crores against the present estimate of Rs.7250 crores for single line.

Thus it will be seen that the cost of new proposal with two lines will be slightly less than as compared to existing estimated cost.

....

The provision of two lines will greatly enhance the line capacity and would enable Railways to provide an efficient rail based rescue and relief operations during accidents.

....

It is, therefore, proposed to carry out a detailed investigation of the alignment proposed with a gradient of 1 in 50.

6.0 Approval required from the Railway Board

In view of the foregoing, the Railway Board is requested to approve the following:

- a) Northern Railway's proposal for a fresh alignment survey alongwith Geological feasibility chargeable for the present work.
- b) Authorize Northern Railway to instruct M/s KRCL and M/s IRCON not to enter into fresh commitment for works on existing alignment.
- c) Authorize Northern Railway to instruct M/s KRCL and M/s IRCON to keep the execution of works under the existing contracts under abeyance; progress of which will lead to infructuous expenditure in case new alignment with grade 1 in 50 is finally adopted...."

10. Pursuant thereto, petitioner No.2, who was then posted as General Manager, Southern Railway wrote a letter to Mr.S.K.Vij, Member Engineering, Railway Board, relevant portion whereof reads as under:-

“....While I was in the Board during my last visit, I overheard that re-alignment of URBRL is being considered. I would request that my views on this are also taken particularly since I think I have been on this project for the longest period and, I do know about how and when these alignments were fixed....”

11. Thereafter on 28.01.2008, petitioner No.2 again wrote a letter to S.K.Vij, Member Engineering, Railway Board, which letter reads as under:-

“I have gone through the proposal for modification of alignment between Katra and Qazigand, submitted by Shri Alok Kumar, CE/BWS/HQ.....

I have gone through the copy of the presentation. It is a very good work of research done in posterity and highly theoretical with hindsight wisdom.

To my mind, the issues dealt with, have been scratched only on surface.

Social issues, particularly for the state of Jammu & Kashmir, and for the reason for which this alignment has been accepted, have been totally excluded from the presentation and analysis. There are some aspects of terrorism and national security associated with this alignment, which need to be appreciated and which cannot be really put down on a piece of paper. Some of these together with allied roadways construction will prove fruitful for the above purpose.

Besides it, the economic development of this hinterland hitherto unconnected has been a great strength of this alignment. It is what is need desperately today.

Insofar as the costing is concerned, the presentation speaks of only the cost of tunnels and that too in comparison with those made in China. I am not sure about the correctness of the cost in so far as the Chinese construction methodology and project is concerned as it is not well known to us. Also at the same time, it is important to realize that the total cost would be increasing and in this case of the revised alignment, the rolling stock, engines and systems are required to be purchased new for this new alignment. Can Indian Railways afford this? Moreover, for 200 kms, the costs are well known to us. Then where is the comparison? To my mind, it is absurd.

More over, the proposal he has made are quite akin to the one which Mr.Rajaram as Managing Director of KRCL had made in the beginning before taking up Konkan Railway portion of the works. The Board has discussed examined and rejected it. It is also necessary to mention that the present proposal in respect of the grade etc. has also been cleared by CCEA and the matter apparently has been debated there also. Any change in the proposal at this stage would mean going back to CCEA.

In any project, any hindsight improvements can always be pointed out. But it is important that once a large project, as this one has put in a firm footing, where the works have started, then pessimism of any nature in the execution of the work is not allowed, as it only causes concerns, confusion and delays leading to time and cost overruns.

It is however accepted that small changes will continue to be necessary and made, from site to site and location to location. Those can certainly be extracted out of the presentation and used wherever necessary. However methods of construction suggested have all been examined at various stages in the life of the project.

As far as, the tunnel aspects regarding curves etc is concerned, these issues too have been dealt with critically earlier and thereafter only conscientious decisions have been taken.

As engineers, we are required to take up the problems upfront and solve them and not shy away, by changing total alignments. It is better to confront a known devil than an unknown one through such a change.

Therefore, in my view and with the above points kept in mind, the surprise recommendation of CAO/CN/II/N.Rly in his letter to ED/Works under para 6.0 are required to be immediately dropped and orders given for continuing with the work with minor modifications as may be necessary. Lost of stopping the works itself is several hundreds of crores per year.”

12. On 30.07.2008, Mr.S.Prakash, petitioner No.4, who was then posted as General Manager, Northern Railway, wrote a letter to Mr.S.K.Vij, Member Engineering, Railway Board, regarding the proposed alignment of Katra-Qazigand section as proposed by respondent, the relevant portion whereof reads as under:-

“....9. The decision of Board for pending all works on the section from Km.34 to Km.126 is perhaps based on the consideration of adopting the new alignment on steeper gradient of 1:50 in place of existing ruling gradient of 1:100. The Railway Board has already decided to follow the grade of maximum of 1:60 from Kms.126 to 150 and has asked IRCON to submit the revised alignment proposal.

10. At this stage changing the alignment from Km.34 to Km.154 and providing maximum grade of 1:60 or 1:50 will have immense operational problems.....

12. The issue of new alignment was discussed in a Brain Storming Session held in Northern Railway on 23.06.2008. This session was attended by the eminent scientists who are experts in tunneling and were actively involved in projects in lower Himalayas. The session was also attended by the eminent Engineers, including retired Members – Engineering and General Managers.....

13. After detailed discussion, the brain storming session concluded that the existing alignment which takes into consideration the operator's requirement, should continue with small alignment corrections of the steeper gradients on small stretches to overcome the local construction difficulties.

14. Almost all the participants of the brain storming session held on 23.06.2008 had a unanimous view that existing alignment should continue with some changes, at identified locations where steeper gradients can be provided at small stretch.

15. The geological conditions of the region are almost the same everywhere and does not vary widely. Almost the entire area is inaccessible and we do not have full and specific geological information along the alignment. It is, therefore, prudent not to make major alignment corrections considering the past experience of tunneling in the region. It is more so because the geological information along the suggested alignment is not known....

18. As has been already stated that the existing alignment based on ruling gradient of 1:100 is based on the operational requirements. It would be extremely difficult to run heavier freight trains on a steep gradient of 1:60 as proposed in the new alignment particularly so, the rising gradient is in the loaded direction.

19. Along with the increase in cost of operation on steeper gradient, the cost of maintenance of track and related infrastructure, would be abnormally high.

20. The existing alignment also takes care of the growth of the area and its economic development. Any change in the present alignment would deprive the people of the area of their development. In fact there has been already resentment in the area against the stoppage of work due to the proposed change of alignment.

21. It is therefore, requested that Board may:

- i) Permit the restart of works in the section from Km 34 to Km 126 as per the approved alignment.
- ii) Reconsider the decision of changing the alignment from Km 126 to Km 150 and
- iii) Restore the alignment on the entire stretch of Katra-Qzaigand Section, with minor corrections, as requested by the IRCON and KRCL....”

13. Vide Office Order No.ERB-I/2008/23/36 dated 10.12.2008, the Railway Board decided to constitute a Committee to study various issues involved in the alignment of Katra-Qazigand section. Further, the respondent was given an opportunity to make a presentation pertaining to the alignment suggested by him to the said committee and IRCON was directed to appoint a consultant to study the present and proposed alignment. As per the request of Mr.S.K.Vij, Member Engineering, Railway Board, vide Office Order No.2008/IRSE/466 dated 17.10.2008 issued by the Northern Railway, the respondent was appointed as a member of the said Committee. Vide Office Order No.86/W2/NL/N/25 Pt.IV dated 10.11.2008 issued by the Northern Railway, the respondent was appointed as Nodal Officer and required to co-ordinate with IRCON and the consultant appointed by IRCON.

14. On 14.03.2009 Mr.S.K.Vij, Member Engineering, Railway Board, prepared a detailed note regarding the alignment of Katra-Qazigand section for the consideration by the Minister of Railways. In the said note Mr.S.K.Vij pointed out that the present alignment with a ruling gradient of 1:100 is flawed; that the modified alignment with a ruling gradient of 1:50 proposed by the respondent is more suitable and should be adopted; that Northern Railway is not satisfactorily dealing with the issue of alignment of Katra-Qazigand section and that

the consultant appointed by IRCON who was entrusted with the task of examining the stability and safety risks on the present alignment as also to examine more appropriate concepts for a revised alignment has not worked satisfactorily.

15. On 24.03.2009 the respondent wrote a letter to Chief Administrative Officer, Construction – II, Northern Railway, the relevant portion whereof reads as under:-

“I have prepared a technical note (Copy enclosed) to draw attention to what is indicated by the world practice and the body of scientific knowledge to be the most important requirement that should be met by an alignment of a rail line in a high relief mountainous region.....

Yet, despite its importance this is missing from the solutions being suggested by IRCON and KRCL and now even by the foreign consultant who was engaged to study the alignment issues. The problems caused by this flaw are getting ignored, or belittled. On this project, recent experience on Udhampur – Katra line which runs along the folding axis is a reminder. The construction problems being faced on this section may delay opening of this 25 km long section by over five years.

....

In the last six months, increasingly view is being taken by both IRCON and KRCL that it is possible to make a line on the present alignment with some local changes, not realizing that with such changes it shall not be possible to overcome the basic flaw of the alignment lying along with folding axis in considerable lengths. M/s Amberg were engaged by IRCON on directives of Railway Board to associate with Northern Railway for studying the present alignment and examining new alignment concepts.

The consultant has made the statement in his presentation to the Expert Committee that the present alignment can be made to work by retaining portions where work is in progress and changing the alignment in the remaining portions by just shifting it deeper into the mountains. For a

new alignment solution, the consultant has proposed an alignment that also runs parallel to the folding planes, and also skirts the slopes in significant lengths. Despite my best efforts as nodal officer, the consultant has not answered questions about stability and safety on the alignment solutions proposed by him.

Undoubtedly, it is absolutely necessary to overcome the problems posed by this very challenging terrain for building a workable line that will also survive the extremely adverse natural environment in this remote inhospitable region. But, this does not seem possible if the above basic requirement based on long experience and scientific studies is ignored.....” (Emphasis Supplied)

16. On 30.03.2009 Mr.S.K.Vij, Member Engineering, Railway Board wrote a letter to Mr.E.Sreedharan, Managing Director, Delhi Metro Rail Corporation Ltd seeking his views on the new alignment of Katra-Qazigand section proposed by the respondent.

17. On the same day i.e. 30.03.2009 Mr.S.K.Vij wrote a letter to the respondent, the relevant portion whereof reads as under:-

“You have worked with utmost diligence and dedication for acquiring an understanding of the basic causes of the problems that have been faced with the present alignment in the above part of the project. Your 1st presentation to the Board on 08.11.2007: “A worldview of the Fundamentals of Building Railways in High-Relief Mountains: An Insight into the Shortcomings of the Present Alignment and A Proposal Modified Alignment” has provided necessary ground work for further work. I have also perused your last report of last week addressed to CAO/C and copy to me.

The insights you brought out with your extensive study of the problems has led to the realization that tunnels laid at shallow depth under the slopes and bridges and stations in the openings in khads etc. in

the extremely unfavorable conditions of terrain and geology, require a serious relook. The new alignment with tunnels cutting across the main mountain ridges and fault lines, with bridges, tunnel portals and stations, in openings in wider valleys; has certainly been a valuable suggestion. Train operations, overall viability of the line considered has brought out a much more safe and survivable line.

I compliment you for the incisive study done, solutions proposed which reflect dedication, brilliance. I am sure you will keep this spirit alive in you.....”

18. On 31.03.2009 Mr.S.K.Vij retired from the post of Member Engineering, Railway Board and the petitioner No.2, who was posted as General Manager, Southern Railway got promoted to the said post. Simultaneously, the petitioner No.4, who was posted as General Manager, Northern Railway got promoted to the post of Member Traffic, Railway Board.

19. Soon after his promotion as Member Engineering, Railway Board, the petitioner No.2 withdrew the file containing the afore-noted note dated 14.03.2009 prepared by his predecessor Mr.S.K.Vij from the office of the Minister of Railways.

20. Thereafter on 24.04.2009, petitioner No.2 wrote a letter to Mr.Vivek Sahai, General Manager, Northern Railway, pertaining to transfer of the respondent, the relevant portion whereof reads as under:-

“...While reviewing the progress of the work, after taking over as ME, I understand that the Expert Committees’ have more or less completed their discussions and field work. They have also heard and interacted in the various presentations made to them.

From the above referred letter, I find that Shri Alok Verma was also directed and desired for being

placed under CAO/C-II in order to make a presentation on the ideas he has, as also to interact with the Experts while they were in the stage of understanding the problems. I understand now that stage is over. As a matter of fact, I also understand that the Expert Committees are expected to submit their final report shortly.

In view of this, I suppose that the desired interaction and presentations for which Shri Alok Verma was placed under CAO/C-II has been accomplished. He may therefore now be utilized elsewhere for better opportunity by the Northern Railway." (Emphasis Supplied)

21. Thereafter on the next day i.e. 25.04.2009 petitioner No.2 mooted a proposal with respect to the alignment of Katra-Qazigand section. The relevant portion of the noting prepared by petitioner No.2 in said regard reads as under:-

"....9. The matter was discussed with MT on 21.4.09 and keeping in view the requirement of catch-siding on gradients steeper than 1 in 80 it was considered appropriate to explore the possibility of refining the existing alignment following a maximum gradient of 1 in 80 in stretches where gradient steeper than 1 in 100 is essential. It was also considered while doing the refinement of the existing alignment, attempts should be made to keep the curvature restricted to 2.75 but may go up to 4 at isolated locations if the same is required to meet a better geology and/or better location/lay out of the yards etc. This should also be operationally beneficial.

10. Even for the new alternative solutions, the Consultant's terms of reference can be revised to follow the gradient and curvature as proposed for the refinement of the existing alignment above.

11. MT may please indicate his agreement to the above proposed limits of gradients and curvature before N.Rly is to be advised accordingly."

22. It be noted here that petitioner No.4 expressed his concurrence with the afore-noted proposal mooted by petitioner No.2.

23. Vide office order No.2009/IRSE/Construction/22 dated 27.04.2009 issued by Northern Railway, the respondent was transferred from the post of Chief Engineer/Construction/North, Kashmere Gate to the post of Chief Engineer/General, Baroda House.

24. On 13.05.2009 a meeting of the High Level Expert Committee was held, in which meeting, the issue of suitability of the alignment with ruling gradient of 1:100 for Katra-Qazigand section was discussed amongst the members of the said committee. The minutes of the meeting were minuted and relevant would it be to extract a part thereof as under:-

“vi) Notwithstanding the discussions and agreement arrived at during the discussions on 11th and 12th instant, few members were not in agreement with the conclusions drawn and were in favour of adopting the base tunnel concept. There were apprehensions about constructability of large dia tunnels at the stations to accommodate platforms and additional lines, slope stability along the alignment and long term survivability of the alignment. They were requested to give specific examples and quantification if possible of such a length falling under this category rather than making general comments. To this, they requested for some more time. They were, therefore, asked to study these issues, quantify them in terms of the magnitude of the problem as also come up with the solid reasons in support of their apprehensions with a clear statement that no engineering solution exists to make the existing alignment retainable. Interestingly, they were clearly in agreement with the Committee’s earlier deliberation for retainability of Chenab bridge and on Anji bridge.

vii) Despite requests made, expressing the urgency to submit the report in time to avoid any more extensions and to minimize the idling charges/claims, the Committee could not proceed further although was scheduled to continue deliberations upto 14th, due to unpreparedness of members who raised issues in a very abrupt

manner on the conclusions already arrived at by the Committee during the previous two Committee meetings. It was, therefore, decided that the Committee will meet on 3rd and 4th June'09 at New Delhi by this time the Committee members would study all the documents in detail and come up with concrete proposals for presentation to other members of the Committee. It would be desirable if a copy of the presentation is sent at least one week in advance to all the members of the Committee so that they could also study and discussions can be concluded during the next meeting positively. The committee decided not to seek extension for the further few days and complete the work by 4th June 2009."

25. On 19.05.2009 Mr.E.Sreedharan wrote a letter to Mr.Ravindra, Chairman, High Level Expert Committee regarding the alignment of Katra-Qazigand section, the relevant portion whereof reads as under:-

"....Right from 2002 onwards when Railways decided to take up the Rail Link to Srinagar, I was opposing the present contour alignment and had suggested that a direct route through long tunnels, cutting across fault zones should be adopted reducing drastically the overall length. This view was also shared by the Konkan Railway Corporation. By adopting a straight alignment with long tunnels, not only the total length of tunneling can be brought down, the number of bridges could be reduced and the total haulage length also considerably reduced. This would, however, necessitate a ruling gradient of 1:40 for which I do not think formidable from operational and safety point of view if electric traction and compressed air braking is adopted....."

26. On 10.06.2009 the High Level Expert Committee submitted its report to the Railway Board. The Committee was of the opinion that there is no requirement to change the alignment with ruling gradient of 1:100 chosen for Katra-Qazigand section. After the submission of the report of High Level Expert Committee, the respondent wrote several letters

to the senior officials of the Northern Railway as also members of the Railway Board wherein he pointed out various omissions and anomalies in the report of the Expert Committee.

27. On 02.07.2009 petitioner No.2 prepared a note regarding alignment of Katra – Qazigand section for the consideration of Minister of Railways, the relevant portion whereof reads as under:-

“...6.0 **To summarise,** the committee has unanimously recommended that “Construction on the present alignment is feasible and would be stable and survivable”. The committee is also unanimously of the view that “it is not necessary for it take up and further study for alternate alignment (s). With the suggested changes in the present alignment, refinement and measures, the criteria given in the terms of reference would be met with.”

In above background, and being a national project of enormous importance, as also observed by Hon’ble MR, and keeping in view the public aspirations at large, **in principle approval and acceptance of the committee’s report to recommence the work on existing alignment is recommended, for consideration of the Hon’ble MR.** Once approved, further detailed directions in tune with the committee’s recommendations will be given to Northern Railway with respect to recommencement of work and to go ahead with test and study as recommended by the committee.

28. On the aforesaid note prepared by petitioner No.2, petitioner No.4 made the following noting:-

“From operational point of view, the existing alignment is immensely suitable as it would provide smooth (illegible) of both freight and passenger trains to the valley. However, since there are construction difficulties at certain (illegible) we can change the alignment, in small stretches, providing a gradient upto 1:80. From the people’s point of

view, the existing alignment is preferred as it would connect all important populated areas in Jammu to this important network. Any other alignment, though (illegible) would deprive many populated areas from the railway link.

29. Relevant would it be to note that the aforesaid note prepared by petitioner No.2 does not contain a word about the alignment with ruling gradient of 1:50 of Katra-Qazigand section suggested by the respondent.

30. Vide office order No.E(O)III-2009/TR/445 dated 04.09.2009 issued by Railway Board, Ministry of Railways, Government of India the respondent was transferred from Northern Railway to South East Central Railway.

31. Thereafter the respondent filed two representations before the Competent Authority against the order dated 04.09.2009 passed by the Railway Board but the same were not considered by the Authority. In his representations the respondent questioned his being transferred to the South Eastern Central Railway.

32. Since his representations bore no fruitful results, and the order dated 04.09.2009 stood, the respondent filed an application under Section 19 of the Administrative Tribunals Act, 1985 before Central Administrative Tribunal (hereinafter referred to as the "CAT"), Principal Bench, New Delhi. The case projected by the respondent before the CAT was that the order dated 04.09.2009 passed by the Railway Board is tainted by mala fide inasmuch as the same is the handiwork of petitioner No.2 and 4 herein, who wanted to scuttle his view-point regarding the alignment of Katra-Qazigand section and contrived to ensure that the said view point was not placed before the Minister of Railways. It was the case of the respondent that legends in the field of laying down railway

lines such as Mr.E.Sreedharan had concurred with his suggestion. It was highlighted that the purpose of the transfer was the extraneous consideration to kill a democratic debate and the result was the denial of a fair evaluation of the two rival viewpoints pertaining to the alignment of Katra-Qazigand section.

33. Holding that the material(s) placed on record by the parties lends support to the case of the respondent that the order dated 04.09.2009 passed by the Railway Board was tainted by mala-fide and that the respondent was transferred to scuttle his viewpoint regarding the alignment of Katra-Qazigand section being placed before the Minister of Railways, vide impugned judgment and order dated 6th May, 2010 the Tribunal allowed the application filed by the respondent and quashed the order transferring him to South East Central Railway.

34. Aggrieved by the impugned judgment and order dated 6.5.2010 the petitioners have filed the instant petition.

35. During hearing of the writ petition, learned counsel for the petitioners advanced following three submissions:-

A Firstly that in quashing the order dated 04.09.2009 passed by the Railway Board, the Tribunal ignored the settled legal position that the transfer of a government employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service, in the absence of any specific indication to the contra, in the governing law or the conditions of service. The government servants are liable to be transferred in the “administrative exigencies” from one place to another. No government

servant has any legal right to be posted forever at one particular place or place of his choice.

B Secondly that the Tribunal failed to appreciate that a challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as they are appellate authorities over such orders for they cannot assess the niceties of the administrative needs and requirements of the situation concerned and substitute their own decisions for that of the competent authorities.

C Thirdly that the Tribunal failed to appreciate that while exercising power of judicial review, the superior courts should not readily accept the charge of “malus animus” against the State and its functionaries. The very seriousness of the allegations of mala-fide requires proof of a high order of credibility. The courts should be slow to draw dubious inferences from incomplete facts placed before them by a party, particularly when the imputations are grave and made against the holder of an office which has a high responsibility in the administration. The counsel further contended that in case of transfer, allegations of mala-fide, when made, must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on considerations borne out of conjectures and surmises and except for strong and convincing reasons, no interference can be made with an order of transfer. In said regards, particular emphasis was laid down by the counsel on the decision of the Supreme Court reported as State of UP v Gobardhan Das (2004) 11 SCC 402.

36. Per contra, learned counsel for the respondent reiterated before us that the order dated 04.09.2009 is tainted by mala-

fide and that petitioners Nos.2 and 4 got transferred the respondent in order to scuttle his viewpoint regarding the alignment of Katra-Qazigand section. Counsel submitted that even before passing of the order dated 04.09.2009 the attempts were made by the petitioners Nos.2 and 4 to get the respondent dissociated from USBRL Project at least on two previous occasions. The first occasion pointed out by the counsel pertains to the year 2006 when all of a sudden the respondent was deputed to attend a nine-month course in Public Administration and was not re-associated with the project after he finished the said course. The second occasion pointed out by the counsel pertains to the April 2009 when the respondent was transferred from the post of Chief Engineer/Construction/North, Kashmir Gate to the post of Chief Engineer/General, Baroda House.

37. Before dealing with the aforesaid contentions advanced by the parties it may be stated that law relating to transfer is now well settled by catena of judgments pronounced by Supreme Court. Transfer is an administrative function. An employer is the best judge about the requirement of posting of its employees. The courts are not to interfere with the discretion of the employer in such matters. Scope of judicial review is very limited and the transfer can be challenged only under two circumstances, namely: (a) when the transfer is an act of mala-fides on the part of the State and its functionaries; (b) when it is made in violation of statutory provisions. The courts cannot question the subjective satisfaction of the Competent Authority in passing the order of transfer when the same is based upon objective facts for the same entirely falls in the domain of the Authority. But at the same time, the courts can certainly examine the existence/non-existence of

the objective facts which has led to the passing of the order of transfer by the Competent Authority. In this regards, relevant would it be to note the following pertinent observations made by Supreme Court in the decision reported as Union of India versus S.L. Abbas (1993) 4 SCC 357:-

“An order of transfer is an incident of Government service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration”. (Emphasis Supplied)

38. In view of the aforesaid settled legal position it is to be seen whether the respondent was able to make a case of judicial review within the parameters mentioned above which justified interference with the order of transfer of the respondent by the Tribunal? Whether there existed such objective facts before the Competent Authority which justifies the passing of the order of transfer of the respondent? Whether the order of transfer of the respondent is tainted by mala-fide as alleged by the respondent?

39. To start with, certain basic facts may first be delineated. There were two rival view-points regarding the alignment of Katra-Qazigand section of USBRL Project. The first view-point was that the alignment with ruling gradient of 1:100 is the most suitable alignment of Katra-Qazigand section and the second viewpoint was that the alignment with ruling gradient of 1:50 is a more suitable alignment of Katra-Qazigand than the alignment with ruling gradient of 1:100. Whereas the first view-point was endorsed by petitioners Nos.2 and 4 and the High Level Expert Committee constituted to examine the

issue of alignment of Katra-Qazigand section the second view-point was canvassed by the respondent and endorsed by some of the senior officials in the Ministry of Railways namely Mr.S.K.Vij and Mr.B.P.Khare as also by the experts in the field namely, Mr.E.Sreedharan and Mr.B.Rajaram. The work done by the respondent in respect of alignment of Katra-Qazigand section earned him appreciation from senior officials in the Ministry of Railways. The petitioners Nos.2 and 4 were strongly opposed to the view-point taken by the respondent. (See the letters dated written by the petitioners Nos.2 and 4 respectively, contents whereof have been noted in foregoing paras).

40. Having noted the basic facts, let us examine the attendant circumstances leading to the passing of order of transfer of the respondent.

41. The respondent was appointed as the convener of the task force set up in the year 2005 to review the alignment with ruling gradient of 1:100 chosen for Katra-Qazigand section and the contribution made by the respondent in the report submitted by the said task force was highly appreciated. (See paragraph 6 of the present judgment). Notwithstanding the fact that the issue of alignment of Katra-Qazigand section was vigorously been debated within the Northern Railway and the Railway Board and that the respondent had extensively worked on the said issue, the respondent was all of a sudden deputed to attend a nine-month course in Public Administration was not re-associated with the said project on his finishing the course.

42. In view of extensive work done by the respondent with respect to alignment of Katra-Qazigand section he was again

associated with the said project in November, 2007. On 08.11.2007, the respondent gave a presentation to the Railway Board where he proposed an alignment with ruling gradient of 1:50 for Katra-Qazigand section, which proposal found strong favor with Mr.S.K.Vij and Mr.B.P. Khare but was strongly opposed by the petitioners Nos.2 and 4.

43. Thereafter in December 2008 the respondent was made a member of the High Level Expert Committee constituted to examine the suitability of the two rival view-points pertaining to the alignment of Katra-Qazigand section. Immediately on his promotion to the post of Member Engineering, Railway Board the petitioner No.2 mooted a proposal for transfer of the respondent from the post of Chief Engineer/Construction, Kashmere Gate to the post of Chief Engineer/General, Baroda House, thereby dissociating the respondent from USBRL Project on the ground that *'Expert Committees' have more or less completed their discussions and field work'*. However, a perusal of the minutes of the meeting dated 13.05.2009 of Expert Committee and the contents of the letter dated 24.03.2009 written by the respondent to Chief Administrative Officer, Construction-II pointing out the unsatisfactory manner of working of consultant appointed by IRCON suggest otherwise. The aforesaid documents demonstrate that there were serious differences between members of the committee on 13.05.2009 and that the work of the committee was far from over on 24.04.2009. It is also a strange coincidence that a proposal for dissociating the respondent from USBRL Project gets mooted a day after he writes a letter to Chairman, Railway Board pointing out the unsatisfactory manner of working of consultant appointed by IRCON.

44. In between the aforesaid two events, the predecessor of the petitioner No.2 i.e. Mr.S.K.Vij had prepared a note highlighting the two rival view-points pertaining to alignment of Katra-Qazigand section and endorsing the view-point canvassed by the respondent for the consideration of Minister of Railways. It is of utmost importance to note that on his promotion as Member Engineering, Railway Board the petitioner No.2 recalled the file containing said note from the office of the Minister and did not sent it back to the Minister thereby preventing the Minister from having a fair assessment of two rival view-points.

45. Despite the fact that the Expert Committee constituted to study the two rival view-points pertaining to the alignment of Katra-Qazigand section was yet to submit its report, the petitioners Nos.2 and 4 took an important decision regarding the alignment of Katra-Qazigand section on 25.04.2009, which decision was in contradiction to the view-point canvassed by him. What was the urgency before the petitioners Nos.2 to 4 to not to wait for the report of the Expert Committee?

46. On 10.06.2009 the Expert Committee submitted its report to the Railway Board, which report according to the respondent was most flawed and had ignored to consider the technicalities and the merits brought by the rival view-point canvassed by him. Notwithstanding the fact that the respondent had written a letter to Chairman, Railway Board pointing out the omissions and anomalies in the report of the Expert Committee, petitioners Nos.2 and 4 hastily prepared a note for the consideration by the Hon'ble Minister of Railways for the purposes of taking necessary approval of the Minister to implement the recommendations of the Expert Committee. Significantly, the said note did not contain a word about the

rival view-point canvassed by the respondent, thereby again preventing the Minister from having a fair assessment of two rival view-points. After getting necessary approval from the Minister of Railways on the basis of the aforesaid note which was unfairly prepared, the order transferring the respondent from Northern Railway to South East Central Railway was passed.

47. From the circumstances pointed above, it is crystal clear that the view-point canvassed by the respondent regarding the alignment of Katra-Qazigand section was scuttled and Hon'ble Minister of Railways was time and again prevented from having a fair assessment of two rival view-points.

48. People all over the world look up to the State and its organs for high quality performance. When good governance is guaranteed by a State, its citizens go about their personal business and pursuits with enhanced expectations. Good governance helps create an environment in which sustained economic development becomes achievable. On the other side of spectrum, bad or indifferent governance not only restricts opportunities of success but it can even degenerate into sectarian conflicts and civil wars.

49. Good governance has 8 major characteristics. It is (i) participatory, (ii) consensus oriented, (iii) accountable, (iv) transparent, (v) responsive, (vi) effective and efficient, (vii) equitable and (viii) inclusive and follows the rule of law.

50. Participation of the citizens in the decision making process is a key cornerstone of good governance. Participation by the civil servants in decision making processes and a debate on rival viewpoints within the corridors of power is healthy for democracy. The respondent

is not a fly-by-night engineer, evident from the fact that the work done by him regarding alignment of Katra-Qazigand section earned him appreciation from several quarters. The view-point canvassed by the respondent found strong favour with several senior officials in Ministry of Railways who were involved with USBRL project. Not only that, the view-point canvassed by the respondent that alignment with ruling gradient of 1:100 of Katra-Qazigand section is unsuitable was endorsed by a most renowned expert in the field Mr.E.Sreedharan. In these circumstances, it is essential that voice of the respondent is not suppressed and that it reaches the ear of the Hon'ble Minister of Railways so in order to enable the Minister to take a decision regarding the alignment of Katra-Qazigand section after making a fair assessment of the two rival view-points.

51. It is apparent that petitioner No.2 and 4 have disabused if not misused their authority and have acted with a personal motive in effecting the transfer of the respondent, which transfer can certainly be said to be neither in public interest nor in the exigencies of service.

52. Before concluding, another relevant fact needs to be noted. As already noted hereinabove, the respondent filed two representations against the order dated 04.09.2009 passed by the Railway Board before the Competent Authority but the same was not considered by the Authority. In S.L.Abbas's case (supra) it was held by the Supreme Court that it is incumbent upon the competent Authority to duly consider the representation filed by an employee against his order of transfer.

53. We are thus constrained to concur with the view taken by the Tribunal.

54. The writ petition is dismissed with costs imposed upon the petitioners and in favour of the respondent who shall receive Rs.22,000/-.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

SEPTEMBER 01, 2010
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