

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

% *Judgment Reserved On: 23rd September, 2010*
Judgment Delivered On: 27th September, 2010

+ **WP(C) 4923/2010**

UOI ...Petitioner
Through : Mr.V.S.R.Krishna, Advocate

Versus

NAVEEN KUMAR PEER ...Respondent
Through: Mr.Hitender Kapur, Advocate

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. Vide impugned judgment and order dated 21.5.2010 OA No.3576/2009 has been allowed and the order dated 30.11.2009 transferring the respondent from Delhi to Firozpur Division has been set aside.

2. The respondent is an Accounts Assistant under the Northern Railway and was attached in the office of FA&CAO housed at Baroda House New Delhi and as per the transfer order was transferred to Firozpur Division on administrative grounds. The petitioner challenged the transfer alleging that he is a whistle blower and the order transferring him to Firozpur Division is a colourable exercise of power and the real intention is to get even with him.

3. The very first line of the impugned order commences with the statement of fact: '*A whistle blower is the applicant*'. It is apparent that the Tribunal has gullibly gulped the assertion of the respondent that he is a whistle blower. Needless to state the Tribunal has not adjudicated upon the said version vis-à-vis the defence; we say so for the reason no facts have been stated to bring out said finding of fact and the decision commences with the sentence afore-noted in italics.

4. A perusal of the Original Application filed by the respondent before the Tribunal evidences that the respondent pleaded that the '*Northern Zone Railway Employees Cooperative Thrift and Credit Society*' has its office at Baroda House New Delhi and he is a Member thereof. He alleged that a large scale fraud was committed by the office bearers of the society who were senior officers in the Accounts Department up to the level of the General Manager in the Northern Railways and that on detecting the fraud he lodged FIR No.375/2006 under Sections 403/406/408/409/420 IPC at PS Tilak Marg against the office bearers of the society. He alleged mala fide against these senior officers and claimed that they retaliated by manipulating his transfer.

5. The petitioner stated in the counter affidavit that the reason why the respondent was transferred was his running feud with the office bearers of the society, who no doubt were the officials of the Northern Railway and that there were daily brawls and shouting in the precincts of Baroda House disturbing the working inasmuch as peace and tranquility in Baroda House was being breached. Since we had called for the relevant file in which the decision stands penned to transfer the respondent from Delhi to Firozpur Division, we

are of the opinion that it would be desirable to record further facts with reference to the file.

6. On 13.8.2009 two groups of employees indulged in verbal abuses and threatened each other with respect to the affairs of the Northern Zone Railway Employees Cooperative Thrift and Credit Society and in respect whereof a written complaint was received by the General Manager, Northern Railway and a counter complaint through e-mail was received subsequently giving the rival version. The two complaints were sent to the FA&CAO for investigation and report to be submitted. On 18.8.2008 the FA&CAO took cognizance of the matter and recorded a note to said effect in the file. He constituted a fact finding committee which heard the rival versions as presented by 7 persons which included the respondent and submitted a report on 27.10.2009 holding therein that it was the respondent who had instigated a few colleagues and it is they who had marched in unison shouting slogans and breaches the peace and tranquility in Baroda House.

7. The report was thereafter processed at various levels and the General Manager took a decision on 19.10.2009 that whatever may be the cause of the trouble it was evident that the respondent was in conflict with some of his colleagues and that the conflict had nothing to do with the official affairs of the Northern Railway and thus on *administrative grounds due to compelling circumstances* it was necessary to transfer the respondent.

8. If this be so, we are left wondering as to wherefrom the Tribunal has returned a verdict that a whistle blower has been transferred on account of mala fide. There is sufficient material in the file that the transfer was resorted to not as a

result of any mala fide or by way of penalty but for the reason the Department was left with no option but to physically separate the warring groups. We may hasten to add that though an inquiry was held as to who breached the peace in Baroda House on 13.8.2009 and at the inquiry the respondent was duly heard and the report of the inquiry indicts him of being the cause of the trouble, but the order of the General Manager does not direct the transfer as founded on the incident i.e. the transfer is not by way of penalty. It is on account of exigencies of service and compelling circumstances. This is evident from the note dated 19.10.2009 where it is recorded: *In order to avoid same ugly situation in future it is recommended that Sh.Naveen Kumar Peer A/C Astt. PA&CAO/NR Office may be transferred outside Delhi and his wife Ms.Urvashi Peer may be transferred out of Baroda House. Both the transfers will be on administrative ground due to the compelling circumstances.*

9. The Tribunal completely lost sight of the fact that the whistle blowing done by the respondent pertained to the affairs of Northern Zone Railway Employees Cooperative Thrift and Credit Society and not the Northern Railway. The whistle blowing was with respect to the alleged affairs of the Society and not the Northern Railway. Thus, there is just no scope to hold that a whistle blower was retaliated against.

10. That apart, assuming the respondent was a whistle blower and came into conflict with those who believed that he was acting mala fide and this conflict created law and order problem in the office where all worked, the management had not to suffer and it was lawful for the management to take administrative steps to ensure that further atmosphere in Baroda House was not vitiated.

11. Either the respondent had to be transferred out or the other warring group had to be transferred out. The decision to transfer out the respondent is therefore bona fide and in the exigencies of the situation.

12. We would be failing not to highlight the fact that the whistle blowing, if at all, by the respondent pertains to the private affairs of a cooperative society of the railway employees and does not pertain to the working of the Northern Railway.

13. It is settled law that even if there is a transfer policy, the same cannot be the source of the foundation of an absolute right and where objective facts can be shown to justify a transfer contrary to the transfer policy, on administrative compulsions the transfer has to be upheld. It is not in dispute that the service of the respondent in the Northern Railway is a transferable service and he can be transferred to any station under Northern Railway Jurisdiction and in exceptional cases even to a place outside; but we note that the transfer is to a place within Northern Railway Jurisdiction.

14. We had tried to resolve the issue and for which the petitioner had very willingly found out a post available in Ghaziabad where respondent could be posted so that he would have been near to his family and in fact could have lived in Delhi and worked in Ghaziabad, but he expressed his unwillingness to work in Ghaziabad as he claims that his rivals have got lodge 3 false FIRs against him in Ghaziabad and he fears for his life in Ghaziabad. Thus, he has no option but to be posted at Firozpur. To some extent it would be better for him to go to Firozpur as it would have a cooling of effect.

15. Finding no mala fide in the order transferring the respondent and on the contrary finding good and valid reasons to transfer him out from Baroda House Delhi, we allow the writ petition and quash the impugned order dated 21.5.2010 and as a result we dismiss OA No.3576/2009, but we make no orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

SEPTEMBER 27, 2010
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