

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR.JUSTICE S.G.PANDIT

WRIT PETITION No.33948/2024 (S-TR)

BETWEEN:

ASHWIN KUMAR
AGED ABOUT 41 YEARS
S/O LATE U ASHOK KUMAR
INTERNAL AUDITOR
OFFICE OF THE ZONAL INTERNAL
AUDIT DEPARTMENT
BANK OF BARODA
MANGALOORU MUDA BUILDING
ASHOKNAGAR
MANGALOORU-575006.

...PETITIONER

(BY SRI. VINAY KEERTHY M., ADV.)

AND:

1. CHIEF GENERAL MANAGER (HR)
BANK OF BARODA
CORPORATE CENTER
BANDRA KURLA COMPLEX-1
C-26, G-BLOCK, BANDRA EAST
MUMBAI-400051.

2. DEPUTY GENERAL MANAGER
BANK OF BARODA
ZONAL INTERNAL AUDIT DEPARTMENT
MANGALOORU MUDA BUILDING

ASHOKNAGAR
MANGALOORU-575006.

....RESPONDENTS

(BY SRI. SHETTY VIGNESH SHIVARAM, ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED EMAIL MESSAGE (UNDATED) (ANX-C) ISSUED BY R1 COMMUNICATING TRANSFER AND POSTING OF THE PETITIONER FROM ZIAD/MANGALOORU ZONE TO CHENNAI ZONE.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON **24/01/2025** COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE S.G.PANDIT

CAV ORDER

The petitioner, an officer of respondent-Bank is before this court under Article 226 of the Constitution of India, questioning the correctness and legality of Annexure-C/communication received through *e-mail* on 08.12.2024 transferring and posting the petitioner who was working as Chief Manager, Internal Audit (ZIAD Mangalore Zone to Chennai Zone with a direction to report to Zonal Head, Chennai for further placement.

2. The brief facts of the case are that:

The petitioner is working as Senior Manager in the respondent-Bank. When he was working as Branch Manager of respondent-Bank at Vidyagiri Branch, Bagalkot, the petitioner was selected as Internal Auditor to the Zonal Internal Audit Division (ZIAD). The selection was in pursuance of the Circular dated 02.05.2023. The Circular stated that tenure of Internal Auditor at ZIAD would be normally for a period of 4 years. Applications were invited from eligible and willing Officers fulfilling conditions stated therein and one of the conditions was that no disciplinary action shall be pending/proposed against such officer. Considering the application of the petitioner, the petitioner was selected and appointed as Internal Auditor for Banks, Zonal Internal Audit Division and was posted at Mangalore (Annexure-B dated 06.09.2023). The petitioner was working as Internal Auditor at Mangalore Zone since

06.02.2023. It is submitted that under communication at Annexure-C dated 08.12.2024, without there being any reason, the petitioner is transferred to Chennai Zone with a direction to report to Zonal Head, Chennai for further placement. Questioning the said communication, the petitioner is before this Court in this writ petition.

3. Heard learned counsel Sri.Vinaya Keerthy for petitioner and Sri.Vignesh S.Shetty, learned counsel for respondents-Bank. Perused the writ petition papers.

4. Learned counsel for the petitioner would submit that on fulfilling all the conditions including that no disciplinary action is pending or proposed against the petitioner, he was selected and posted as Internal Auditor at Mangalore Division under communication at Annexure-B dated 06.09.2023. When he was working as such, under communication which was received

through *e-mail* on 08.12.2024, the petitioner is transferred to Chennai Zone with a direction to report to Zonal Head at Chennai for further placement. Learned counsel would submit that the said communication of transfer is wholly arbitrary and unreasonable. Learned counsel would submit that the Circular inviting applications to fill up the post of Internal Auditor assures a term of 4 years and even before completion of the said 4 years period, the petitioner is transferred. Further, learned counsel would submit that the memo filed by the respondents on 24th December 2024 enclosing communication dated 21.08.2024 indicates that there is allegation of suspicious transaction of Rs.0.89 lakhs in the account of petitioner, when he was working as Chief Manager, the then branch at Bagalkot. On the said allegation, the petitioner is not provided with an opportunity and if that was the basis for transferring the petitioner, the petitioner ought to have been provided an

opportunity and transfer on the said allegation would amount to punishment transfer. Thus, learned counsel would pray for allowing the writ petition and to quash the impugned communication of transfer at Annexure-C.

5. Per contra, learned counsel Sri.Vignesh Shetty vehemently opposes the prayer of the petitioner by submitting that the petitioner is transferred in the exigencies of service. Therefore, no right of the petitioner is affected. Learned counsel for the respondent would submit that a person who is to be posted to audit shall have clean service record and when the petitioner was posted as Internal Auditor at Mangalore Zone, irregularity committed by the petitioner as Chief Manager in the Branch Office at Bagalkot was not within knowledge of the respondent-Bank and on coming to the knowledge of the respondent-Bank, the respondent has acted upon the same and posted the petitioner to a different place. Thus, learned counsel

would support the order passed by the respondent-Bank.

6. Further, learned counsel for respondent places reliance on various decisions of the Hon'ble Apex Court to contend that transfer is an administrative order and no Court could interfere with the same. Further, learned counsel would also submit that no legal right to seek posting to a particular place and in terms of regulation 47 of Bank of Baroda (Officers) Service Regulations, 1979 (for short "1979 Regulations") every officer is liable for transfer to any office or branch of the Bank or to any place in India. Thus, learned counsel would submit that when the petitioner has accepted such term, it is not open for the petitioner to challenge his transfer from Mangalore Zone to Chennai Zone. Thus, he prays for dismissal of the writ petition.

7. Having heard the learned counsel for the parties and on perusal of the writ petition papers, the only point which falls for consideration is as to whether the impugned communication of transfer of the petitioner from Mangalore Zone to Chennai Zone requires interference at the hands of this Court.

8. In the peculiar facts and circumstances of the case, the impugned communication of transfer needs interference at the hands of this Court, for the following reasons:

9. It is true that the petitioner is holding transferable post in the respondent-Bank and in terms of Regulation 47 of Regulations 1979 Regulations, an officer of the respondent-Bank is liable for posting anywhere in India. It is also to be noted that decision of the Hon'ble Apex Court on which, learned counsel for respondent-Bank places reliance would state that the transfer is an

administrative order and normally transfers cannot be interfered by the Court; no legal right to seek posting to a particular place; transfer could be effected anywhere in India and transfer effected would in exigencies of service. In that regard, learned counsel has placed reliance on the following decisions:

1. ***All India Bank of Baroda Officer's Federation and others v/s Bank Of Baroda and Another (2002(2) L.L.N. 1094.***
2. ***All India Bank of Baroda Officer's Federation and Others v/s Bank of Baroda ((2000 ILR 1 DELHI 260).***
3. ***GUJARAT ELECTRICITY BOARD v/s ATMA RAM ((1982) 2 SCC 602)***
4. ***The Tamil Nadu Agricultural University and Another Etc. v/s R.Agila ETC. (Unreported judgment of Hon'ble Supreme Court)***
5. ***Kerala v/s P.K.Rajan (1989 SCC Online Ker.259).***

The principles laid down by the Hon'ble Apex Court in the above decisions shall have to be applied by examining the facts and circumstances of each case.

10. In the instant case, the petitioner who was working as Chief Manager at respondent-Bank Branch office at Bagalkot was selected as Internal Auditor and was posted to ZIAD, Mangalore. The Circular dated 02.05.2023 calling applications for filling up of vacancy of Internal Auditor would indicate that the tenure of Internal Auditor at ZIAD would be normally for a period of 4 years. When it says that tenure would be normally for a period of 4 years under normal circumstances, and such Internal Auditor shall continue for a period of 4 years unless there is compelling circumstance to transfer out of the audit department.

11. The respondent-Bank along with memo dated 24.12.2024 has placed on record the communication

dated 21.08.2024 from CGM & Head-Internal Audit to the General Manager & Zonal Head, Bank of Baroda, Mangalore Zone, Zonal Office, Mangalore which indicates suspicious transaction of Rs.0.89 Lakhs in the account of the petitioner, while the petitioner was working as Chief Manager at the then branch at Bagalkot. It is the contention of the learned counsel for respondents that based on the said Communication, decision is taken to send the petitioner out of Internal Audit and accordingly, communication is issued to the petitioner transferring him to Chennai Division.

12. Paragraphs IV and V of statement of objections filed by respondent-Bank reads as follows:

"IV. The Bank received complaints regarding the fraud that took place in the Branch of the Petitioner and conducted a Risk Based Internal Audit of the Petitioner's Branch in which the auditors discovered that there were allegations against the Petitioner

as well. Upon receiving this information the Respondent Bank immediately relieved the Petitioner of his duties from the ZIAD Mangalore Branch and transferred him to a Branch of the Respondent Bank in Chennai through a mail issued to Bank of Baroda Zonal Office.

V. The Respondent Bank submits that the Petitioner was transferred from the Internal Audit Department because there were allegations against the Petitioner related to fraudulent transactions and investigation and was incompetent to hold such a position. The duty of an auditor is to carry out inspections to prevent frauds in a particular institution but in this unfortunate incident, there were allegations against the Petitioner himself. It is pertinent to mention that the transfer of the petitioner was done to protect the "Public Interest".

(emphasis supplied)

13. The respondent-Bank has come to unilateral conclusion that the petitioner is incompetent to hold such a position. The word "incompetent to hold such a position" would affect the service conditions of the petitioner and such finding could not have been arrived at, by respondents without providing an opportunity to the petitioner. The conclusion that a person is incompetent to hold any position shall be arrived at only after enquiry. Moreover, the communication dated 21.08.2024 filed along with memo dated 24.12.2024 was available with the respondent-Bank before selecting and posting the petitioner as Internal Auditor under communication dated 06.09.2023 (Annexure-B). Even thereafter, the petitioner is selected and posted as Internal Auditor.

14. The Hon'ble Apex Court in a case reported in **(2009) 2 SCC 592** in the case of **SOMESH TIWARI v/s UNION OF INDIA AND OTHERS** was considering

transfer effected on an anonymous complaint. In the said circumstances, the Hon'ble Apex Court at paragraph 16 has held as follows:

"Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds – one malice in fact and the second malice is law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e., on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of

punishment, the same is liable to be set aside being wholly illegal."

15. In the instant case also, the respondent could not have condemned the petitioner as incompetent to hold the position without providing any opportunity. The transfer in the above circumstances would amount to punishment transfer without conducting any enquiry. An order of transfer which appears to be punitive action would be illegal and cannot be sustained. Hence, the following order:

(i) The writ petition is allowed. Communication received by the petitioner through *e-mail* at Annexure-C on 08.12.2024 is quashed.

(ii) The respondent-Bank is at liberty to effect transfer afresh, in accordance with

law or to take appropriate action against the petitioner, if it finds necessary to do so.

**Sd/-
(*S.G.PANDIT*)
*JUDGE***

mpk/-*
CT:bms