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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 09<sup>TH</sup> DAY OF OCTOBER, 2020

BEFORE

THE HON' BLE MR.JUSTICE R. DEVDAS

**WRIT PETITION NO.9604 OF 2020 (S-TR)**

**BETWEEN**

WING COMMANDER

... PETITIONER

**AND**

1. UNION OF INDIA  
THROUGH SECRETARY  
MINISTRY OF DEFENCE  
101A SOUTH BLOCK,  
DELHI - 110 011.
2. CHIEF OF AIR STAFF  
AIR HEADQUARTERS,  
VAYU BHAWAN, RAFI MARG,  
DELHI - 110 011.
3. AIR OFFICER-IN-CHARGE PERSONNEL  
AIR HEADQUARTERS,  
VAYU BHAWAN, RAFI MARG,  
DELHI - 110 011.

... RESPONDENTS

(BY SRI. B. PRAMOD, ASG)

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THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING SET ASIDE THE IMPUGNED ORDER DATED 20.07.2020 VIDE ANNEXURE-A PASSED BY THE R-2 AND 3, TRANSFERRING THE PETITIONER FROM BENGALURU STATION TO THE PALM, DELHI STATION OF THE INDIAN AIR FORCE, QUASH AND SET ASIDE THE AIR HEADQUARTERS HUMAN RESOURCE POLICY DATED 06.04.2015 FOR BEING DISCRIMINATORY VIS-A-VIE OFFICERS AND AIRMEN, ARBITRARY AND IN VIOLATION OF ARTICLE 14 OF THE CONSTITUTION OF INDIA AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 07.10.2020 AND COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner is an Aeronautical Mechanical Engineer, commissioned as Pilot officer in the Air Force in the year 1995. With a distinguished service and promotions, the petitioner is now a Wing Commander having served the nation in Kargil Operation and has served in intelligence unit. It is contended that the petitioner was awarded certificate of "Commendation by the Chief of Air Staff" and has led an unimpeachable career. Unfortunately, the petitioner's son is suffering from a rare genetic disorder known as propionic

academia. It is submitted that the petitioner's son though aged about 18 years, has a mental age of a 2 or 3 year old. The child cannot sit without support, his speech is not developed, he cannot walk independently, he is not toilet trained, has difficulty in swallowing food and has poor comprehension. The child is suffering from 100% physical and mental disability.

2. The petitioner sought transfer to Bengaluru on the ground of the child's medical condition. Accordingly, the petitioner was posted to Bengaluru area (AFTC), w.e.f. 07.07.2014. The grievance of the petitioner is that the respondents have issued the impugned order of transfer dated 20.07.2020 posting the petitioner at Delhi station of the Indian Air Force.

3. Learned Counsel for the petitioner submits that the impugned order of transfer is in violation of the Official Memorandums dated 06.04.2015 and 08.10.2018, IAF Posting Policy dated 06.04.2015 and IAF Posting Policy dated

07.07.2020. In addition, it is submitted that the transfer would be detrimental to the survival of the petitioner's child in addition to violation of the Rights of Persons with Disabilities Act, 2016, UN Conventions of Rights of Persons with Disabilities. The learned counsel has also drawn the attention of this Court to a decision of the Hon'ble Apex Court in the case of **Anil Kumar Yadav Vs. Military Secretary Branch and Others**, in **Special Leave to Appeal (C) No.351/2017**, which was disposed of on 13.11.2017. It is submitted that the Apex Court has held that in a case involving 100% disability of a child and where treatment could be effectively given only at a particular place, protection is required to be given to parents of such children, without adverting to routine transfers.

4. Per contra, Sri. B. Pramod, learned ASG, submits that during the month of October 2017, the petitioner was proposed to be transferred from Bengaluru. However, the petitioner submitted an application seeking retention at

Bengaluru till July, 2020. Considering the medical condition of the petitioner's child, the petitioner was retained at Bengaluru and accommodated at REB Training Centre w.e.f. 28.05.2018. The learned ASG further submits that during September 2019, the petitioner was posted to 181 Flt (Delhi) to enable the petitioner's child to continue with the medical facilities. However, the petitioner took up the case for cancellation of the said posting and sought retention at Bengaluru. In this regard, attention of this Court is drawn to a Certificate of Undertaking dated 16.09.2019 given by the petitioner wherein it is clearly stated that on rehabilitation ground of the disabled child, the petitioner has sought retention at Bengaluru. It is stated that the petitioner would not seek extension of tenure at Bengaluru beyond April 2020.

5. Learned ASG submits that as per the Transfer Policy, where a request posting is sought to metro/major cities, the tenure would be restricted to a maximum of 2 years. Attention of this Court is also drawn to the medical

certificate issued by the Neuro Specialist of the Command Hospital, Air Force, Bangalore, dated 12.03.2020, which is produced by the petitioner himself, to contend that it was recommended for posting of the officer to a station where neurology specialty and rehabilitation facilities are available. In this regard, it is submitted that in New Delhi there are more than 7 hospitals, including the All India Institute of Medical Sciences, which have the neurology specialty and rehabilitatory facilities. Moreover, it is submitted that the petitioner has applied for leave and has been sanctioned leave.

6. Heard the learned counsels and perused the petition papers.

7. The argument of the learned Counsel for the petitioner is of two fold. Since it was pointed out by the learned ASG that the petitioner has given an undertaking and he should not be permitted to renege from such undertaking, the learned Counsel for the petitioner submits that the said

undertaking was given under compulsion while the petitioner was under helpless circumstances. Secondly, it is submitted that if an undertaking is given contrary to a statutory right vested with an officer, such an undertaking cannot take away the statutory right vested with the petitioner. To buttress his argument the learned Counsel for the petitioner had relied upon the Official Memorandums dated 06.04.2015 and 08.10.2018 to contend that the OMs provided protection to officers with differently abled family members against routine transfers. It was also submitted that the Transfer Policy dated 07.07.2020, provided extended tenure of 10 to 15 years to Airman having one or more differently abled children. But, as rightly pointed out by the learned ASG, the Transfer Policy dated 07.07.2020 is applicable only to Airmen/Air Warriors. Admittedly, the petitioner is an Engineer taking care of the Aircrafts and not an Airman or Air Warrior. Therefore, the submissions of the learned counsel for the petitioner that the undertaking given by the petitioner is contrary to a statutory right is not supported by reference to any such provision of

law. Moreover, the Transfer Policy dated 07.07.2020 has been brought in place subsequent to the undertaking given by the petitioner.

8. The learned counsel has made a fervent appeal that the case of the petitioner should be considered sympathetically having regard to the medical condition of the petitioner's son. This Court cannot lose sight of the fact that the petitioner's family along with the ailing son have resided in New Delhi before coming to Bengaluru. The submission of the learned Counsel for the petitioner that the child would be denied the support system which has been around him for more than 6 years is understandable. But, the predicament of the respondent authorities are also required to be taken into consideration. At the request of the petitioner, the respondent authorities have twice recalled the proposal for transfer of the petitioner. The petitioner has given a solemn undertaking that he would not seek further extension. The fact that super specialty hospitals like AIIMS, Safdarjung,



etc., at New Delhi have the best facilities, if not better facilities than NIMHANS, Bengaluru, cannot be denied.

9. Transfer is an incidence of service. If the contention of the petitioner were to be accepted then it may lead to a situation where the petitioner cannot be transferred out of Bengaluru. On an overall consideration, this Court is of the opinion that the petitioner has not made out a case for exercise of the extraordinary writ jurisdiction of this Court. Consequently, the writ petition stands dismissed. No order as to costs.

**Sd/-  
JUDGE**

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