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

+ W.P.(C) 6084/2021

GP CAPT (TS) GEETA GUPTA

..... Petitioner

Through: Ms. Deepika Sheoran, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Himanshu Pathak &
Ms. Bushra Kazim, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **05.07.2021**

[VIA VIDEO CONFERENCING]

C.M. No. 19262/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

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3. The petitioner, a medical officer in the respondents Indian Air Force and presently posted at Delhi, has filed this petition impugning the communication dated 24th December, 2020 of rejection of her request for premature retirement and seeking mandamus to the respondents Air Force to grant premature retirement to the petitioner from 11th October, 2021, with all consequential benefits. In addition, in the petition, the order dated 3rd June, 2021, posting the petitioner to Lucknow, has also been impugned.
4. It is the case of the petitioner, (i) that she was commissioned in the respondents Air Force on 26th September, 1996; (ii) that she underwent a

surgery on 3rd October, 2019, for removal of her ovaries and underwent another surgery on 23rd January, 2020, for the ailment of discharge of brain fluid through the nose; (iii) that owing to the aforesaid health conditions, the medical category of the petitioner was downgraded and the petitioner superseded; (iv) that owing to the aforesaid factors, the petitioner, on 23rd November, 2020 applied for premature retirement from respondents Air Force, with effect from 11th October, 2021; (v) that however, vide impugned order dated 24th December, 2020, the request for premature retirement from the respondents Air Force was rejected on the ground of being premature by ten months and observing that a request for premature retirement had to be made four months prior to the date from which premature retirement was sought; (vi) that vide Signal dated 26th February, 2021, the petitioner was ordered to be posted from Delhi to Allahabad with effect from 17th May, 2021; however the said Signal/ posting was kept in abeyance owing to the prevalent Covid-19 pandemic; (vii) that vide order dated 3rd June, 2021, the petitioner has been posted to Lucknow with effect from 5th July, 2021; (viii) that the son of the petitioner is studying in Class XII at Delhi and his results are to be declared by 31st July, 2021 and according to the scheme announced in view of the Covid-19 pandemic, would have an opportunity to appear in the physical examination to be conducted for Class XII students; (ix) that though the petitioner made representation against her posting order to Lucknow but no response has been received; and, (x) that the petitioner, again on 21st June, 2021 has applied for premature retirement but no response has been received thereto.

5. Being *prima facie* of the opinion that if the request of the petitioner for premature retirement with effect from 11th October, 2021 as earlier

sought, is to be granted, then the petitioner, for a short period of few months ought not to be disturbed from the place of her present posting, we have enquired from the counsel for the respondents appearing on advance notice, why should a composite decision be not taken by the respondents Air Force on the request of the petitioner for premature retirement as well as against the posting to Lucknow. It was felt that if the request for premature retirement is to be granted, posting the petitioner to Lucknow would be a futile exercise with the services of the petitioner remaining to be utilized, neither at Delhi nor at Lucknow.

6. The counsel for the respondents Air Force has contended that the principal challenge in this petition is to the rejection of the request for premature retirement and the relief claimed is of premature retirement; the jurisdiction with respect thereto vests with the Armed Forces Tribunal (AFT). It is argued that this Court thus ought not to exercise jurisdiction on the said aspect.

7. Being however still of the view that in these days of restricted hearings by all Courts/Tribunals, if the matter can be resolved at this stage, AFT should not be troubled therewith, we have asked the counsel for the respondents Air Force to take instructions.

8. The counsel for the respondents Air Force on taking instructions, has contended that owing to the need for medical officers in the prevalent pandemic, there is a general order deferring all orders of premature retirement till the end of the year. He has also stated that the evaluation of the request of premature retirement would take minimum of 2 to 3 months' time as assessment of human resources requirements would have to be done.

9. On enquiry, whether the petitioner, owing to her medical condition is

not rendering her duties and remains on leave, it is stated by the counsel for respondents Air Force that the petitioner, at Delhi, has not been taking any leave and has been reporting for her duty.

10. The counsel for the respondents Air Force has also drawn our attention to page 57 of the e-file, being part of the letter dated 9th June, 2021 of the petitioner where the petitioner has sought posting at Pune. It is also informed that the petitioner has been posted at Delhi since the year 2014. It is stated that as far as the consideration of the petitioner's request for premature retirement is concerned, the same can also be done while the petitioner is posted at Lucknow. It is stated that there is a need for the services of the petitioner at Lucknow and the petitioner, at her whim and fancy, cannot choose the place of her posting. It is argued that if the petitioner was willing to go to Pune, there is no reason why she cannot go to Lucknow. It is further argued that once the petitioner was willing to go to Pune, the case made out now, of her being required to be at Delhi, is false.

11. The counsel for the petitioner, though not controverting that the jurisdiction with respect to premature retirement is of AFT, has contended that the rejection of request for premature retirement is contrary to the policy of the respondents Air Force. Attention in this regard is drawn to page 47 of the e-file, being part of the "Norms and Considerations for Postings/Premature Retirement: IAF Medical/Dental Officers" dated 23rd February, 2017 and has contended that the denial of premature retirement is violative of Articles 14 and 21 of the Constitution of India. With respect to the letter dated 9th June, 2021 where the petitioner had asked for posting at Pune, it is stated that the said letter was written in a hurry, when the petitioner was unwell. However, on enquiry whether there are any pleadings

to the said effect, the answer is in the negative. It is further argued that if the petitioner is posted to a new unit, as at Lucknow, as per the policy, her request for premature retirement cannot be considered for further period of six months.

12. In view of the letter dated 9th June, 2021 of the petitioner where the petitioner sought posting at Pune, shows that there is no merit in the plea of the petitioner that her displacement from Delhi is prejudicial to the petitioner, on the ground of education of the son of the petitioner or otherwise. The petition, in so far as challenging the posting order to Lucknow, has no merit and is dismissed.

13. As far as challenge in the petition is to non-grant of premature retirement and the relief claimed in the petition of premature retirement, is concerned, we do not find this to be a case where we should, in preference to the statutory jurisdiction of AFT, entertain this petition.

14. The writ petition is thus disposed of, declining the challenge to the posting order and leaving it open to the petitioner to, if so desires, claim the relief of premature retirement before the AFT.

15. Needless to state that in the event of the petitioner approaching AFT, the petitioner would also be entitled to contend that the Rule regarding non-consideration of request for premature retirement for a period of six months on posting to a new unit, would not be applicable to the petitioner.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JULY 5, 2021/ak