(**UNDER SECTION 25 OF THE CODE OF CIVIL PROCEDURE, READ WITH ORDER XXXVI, SUPREME COURT RULES.)**

**Sec 25 of CPC 1908 states that on an application made by a party and after notice to the parties and after hearing them the Supreme Court may at any stage if satsfied that such a order is needed in the interest of justice may under this section order that any suit, appeal or any other proceeding be transferred from a High Court or other civil court in one state to High Court or other civil court in another state.**

IN THE SUPREME COURT OF INDIA

ORIGINAL CIVIL JURISDICTION

**TRANSFER PETITION** (CIVIL) NO. \_\_\_\_\_ OF 2017

(**UNDER SECTION 25 OF THE CODE OF CIVIL PROCEDURE, READ WITH ORDER XXXVI, SUPREME COURT RULES.)**

IN THE MATTER OF:

J \_\_\_\_\_\_\_\_\_\_\_ S/o \_\_\_\_\_\_\_\_\_\_ R/O \_\_\_\_\_\_\_\_

**VERSUS**

1. Union of India,

Through its Secretary,Ministry of Defence,South Block,New Delhi-110001

Chief of Air Staff,Vayu Bhawan, New Delhi-110001.

Air Officer Commanding –in-Chief Western Air Command, Subrato Park, New Delhi-110010

Group Captan A \_\_\_\_\_\_ Station Commander, Air Force Station Suratgarh.

… RESPONDENTS

… PETITIONER

2.

3.

4.

5.Presiding Officer Court Martial, Subrato Park,New Delhi.

AND IN THE MATTER OF:

**TRANSFER OF CIVIL WRIT PETITION NO.727/2015 FILED BY**

**THE PETITIONER AGAINST THE RESPONDENTS PENDING**

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

**HIGH COURT OF JUDICATURE AT ALLAHABAD.**

To

The Hon‟ble Chief Justice of India, And his Companion Justices of the Hon‟ble Supreme Court of India at New Delhi

The above named petitioner respectfully, showeth as under:

**MOST RESPECTFULLY SHOWETH**

1. That the petitioner is seeking Transfer of Civil Writ Petition No.727/2015 filed by the Petitioner against the respondents pending in the High Court of Delhi at New Delhi, to the High Court of Judicature of Allahabad, titled “JWO BP Misra Versus Union of India & Ors.”

**2. BRIEF FACTS:**

i. The Petitioner joined as Airmen in the Trade Flight Mechanic Air Frame and later after conversion course became Air Frame Fitter after passing the necessary examination and training. During the period petitioner also gained a promotion to the rank of Corporal, Sergeant and later Junior Warrant Officer – Class-II, a Gazetted post. The Petitioner was also awarded three good conduct badge Pay each after 4 year of Services for very good character and good proficiency in his trade. There was no whisper of any kind of misconduct while working at various places during 22 year of service as per the directions of the Respondents. The same is a matter of record and speaks in volumes about the Character and Trade proficiency of the petitioner.

ii. The Petitioner got his last rank after passing due examination and consideration of last Annual Confidential Report (ACRS) Significantly in the year 1998 the Petitioner was awarded in assessment 94 / 100 as exceptional which speaks about the high caliber of the Petitioner in his trade.

iii. The Petitioner was compelled to file a Redress of Grievances ROG against Respondent No.6 for non grant of leave and unwanted harassment in many ways i.e. sending on temporary duty assigning Secondary Duties, not granting of leave and denial of even monthly salary for four months which is a matter of record. The Petitioner has one son suffering with asthmatic problem and came on posting to present place as per the Medical advice of the authorities.

iv. The Petitioner was charge sheeted and later the same was dropped as he has complained about the grievances against his Squadron Technical Officer (STO) for illegal harassment.

v. The petitioner has to face the wrath of his previous Commanding Officer (C.O.) and Squadron Technical Officer (S.T.O.) by means of various methods of harassment which even adversely affected the health of his one son and even wife was got effected by Tuberculosis. The harassment of the respondents did not end there and hence continued which compelled the Petitioner to file a application for interview with the Station Commander but all in vain.

vi. The Petitioner applied for further extension of service after fulfilling all the conditions. The Petitioner was compelled to raise redressal of Grievances ROG against the Respondent No.6 Commanding Officer Wg. Cmr. Raj Shekhar. This further aggravated the attitude of the Commanding Officer and Squadron Technical Officer (STO).

vii. The petitioner has all the apprehensions of his life as such filed a FIR at the Police Station for seeking protection from the officials of the Respondents. The Security Officer of the Respondents gave undertaking before the Police on behalf of Respondents that no harm will be done to the Petitioner. After withdrawing the Complaint by the Petitioner, the Petitioner was immediately sent on temporary duty to Nalia in Gujarat due to irritation of complaint. The Petitioner had no alternative but to proceed as directed without being his turn. The harassment of the Petitioner continued at the behest of the Respondent No.6 Commanding Officer C.O. and his Subordinates. After strong and heavy earth quake in whole of the Gujarat in the morning the Petitioner was directed to go back to his Unit knowing fully well of non-availability of transport which was totally abandoned due to the earth quake, the same is matter of record. However the Petitioner has to beg for his food and somehow reached his unit to avoid wrath of the Respondents by way of disciplinary action for mis- conduct of not disobedience.

viii. The Petitioner aggrieved by such highhandedness of the Respondents filed an Appeal under 26 of Air Force Act for redressal of his grievances. The Petitioner gave a reminder for disposal of his appeal under Section 26 of the Air Force Act. The Appeal was rejected without speaking order with stereo type of order devoid of merits. The Petitioner filed application for permission to file Civil Case and for grant of leave. The same was not granted by the Respondents and even denied the acknowledgment of the receipt. Application for extension ofservice was rejected and ordered to be discharged.

ix. The Petitioner was posted out to Nalia with effect from 25.6.2014 at the behest of Respondents 5 and 6 knowing fully well that Petitioner is likely to be discharged from service with effect from May, 2015 and he is not to be disturbed in his last days of service as per the custom and usage of service.

x. The Petitioner applied for cancellation of his posting as Nalia is a wet place and sons is suffering from Asthma besides there is no education facilities beyond Class-XII which would effect the career and studies of the Children of the Petitioner. It is also a matter of record that Petitioner‟s wife is suffering from Tuberculosis and is under the treatment of the Respondent‟s Medical authorities. The Petitioners application was not even forwarded in time to the higher authorities.

xi. The Petitioner applied for leave but was not granted. The Petitioner was directed to clear the unit by way of clearance certificate and proceed on posting without disposal of leave application under Escort forcibly. There was direct threat from Commanding Officer C.O. and no assistance was provided by Police.

xii. The Petitioner again was under threat of his posting under escort and danger to his

life at the hands of the Respondents. The Petitioner feeling apprehension of danger to his life

as such came to Delhi to see higher authorities but all in vain. As such decided to file a Writ

Petition before this Hon‟ble Court. As similarly one Sgt Pathak of 737 SU was killed in

mysterious circumstances, petitioner has apprehension of raising Mental checking Form P-10

making/declaring a mental case. The Petitioner filed a Writ Petition for cancellation of his

transfer posting. The Hon‟ble Vacation Judge directed to produce the transfer policy and

adjourned the matter to 2.7.2014. On 2.7.2014, the Petitioner failed to procure the policy as

such the matter was again adjourned to 4.7.2001. On 4.7.2014 the matter was again adjourned

to 13.8.2014 as even the Respondents Lawyer failed to produce the transfer policy of the

Respondent just to avoid the wrath of the Hon‟ble Court.

xiii. The Petitioner being relieved of his fear due to the interference of the Court, joined

his duty at the then place of posting and informed and prayed for regularization of the leave.

The Petitioner was charge sheeted for „Absent without leave‟ (AWOL) and disobedience

order by not going on posting as directed to Nalia.

xiv. The charge sheet tried by Commanding Officer C.O. without jurisdiction in a

discourteous manner asking the Petitioner to remove his Cap and Belt like Non-

Commissioned Officer ignoring willfully the status and rank of the Petitioner who is junior

warrant officer-Class-II Post, for which no such procedure is prescribed. The Ist Summary of

evidence was ordered without application of Rule 24 of A.F. Rules, 1969 which prescribes

principles of natural justice. The Petitioner prayed for loan from his Air force Public

Provident (AFPP) fund to meet the legal expenses and the same was denied by the

Respondents and the same is a matter of record.

xv. The Petitioner‟s posting was cancelled to avoid the wrath of this Hon‟ble Court.

Accordingly Writ Petition No.3978/2014 was allowed by this Hon‟ble Court, however,

without specifying the date of absence, Respondents got orders for disciplinary action against

Petitioner. It is worth while to note that petitioner also come to Delhi to avoid death threat of

Respondent No.4 and 6.

xvi. All Application under Section 26 of the Air Force Act, was rejected by Chief of Air

Staff, Respondent No.2 without speaking order again in Stereo Type order devoid of merits,

hence rejected. This is usual order in all such appeals u/s. 26 of Air Force Act, 1950 is matter

of record. The Respondents themselves admitted the illegalities in the record of summary of

evidence is also a matter of Record. The Petitioner again filed Appeal under Section 26 of the

Air Force Act for redressal of his grievances as prescribed under the Act. The Petitioner was

orally threatened to abstain from raising such applications.

xvii. The Petitioner was put under Close arrest without informing his family as even

directed by the Hon‟ble Supreme Court in D.K. Basu‟s case, which curtails the liberty of the

Petitioner in a illegal manner. The reasons are yet to be known. The Petitioner sought

interview with the Station Commander which was granted later on 9.10.2001. The Station

Commander instead of redressing of the grievance and consoling the Petitioner for his illegal

close arrest, further threatened the Petitioner with a dire consequence and of further putting

him under close arrest and threatened for Court Martial.

xviii. The Petitioners Summary of Evidence 2nd is completed in any illegal manner

without providing him a copy of the previous Summary of Evidence which is mandatory to

meet the requirements of principles of Natural Justice. The petitioner is now informed that he

is likely to Court martialled by way of GCM. and since last 4 months the Petitioner is under

constant threat of disciplinary action at the hands of the Respondents for no fault of his where

as all officials under the Respondents have joined hands together to harass the Petitioner by

all means and make example case for others. The Petitioners extension application is also

rejected as the last Respondent has spoiled his ACR for the year 2003 and 2005 without any

communication to the Petitioner or in a Counseling to the Petitioner as provided under the

provisions of the Air Force Act. Hence Writ Petition No.727 of 2015 filed for initiation of

appropriate enquiry and disciplinary action against the officials for illegal harassment of the

Petitioner and for quashing of the ACRs 2003 & 2005 and subsequent order of discharge.

xix. Petitioner filed C.W.P. No. 6989 of 2014. In spite of several directions of the Hon‟ble

Court, the Respondent did not filed the Counter – Affidavit in time and the same is now fixed

for 11.2.2015. Respondents decided to conduct General Court Martial in retaliation to certain

observations and queries by this Hon‟ble Court to explain the reason of close arrest in

September, 2014. That no legal aid or defence Advocate was provided. All members were

ignorant about law and worked at the tune of the Judge Advocate and all pleas of petitioner

were disallowed in arbitrary manner. Preliminary objections were not taken by General Court

Martial on record. The Petitioner approached Hon‟ble High Court of Delhi by way of Civil

Misc. Application in which notice was issued. General Court Martial without adhering to law

and provisions and principles of natural justice passed the order, “to be reduced to the rank of

Cpl. From JWO (JCO) subject to confirmation.” The copy of the order was not given to the

Petitioner to deprive him to approach this Hon‟ble Court. The Petitioner was released form

open arrest which speaks in volumes about the high-handedness of the Respondents to

deprive him of any legal aid or counseling by any one. Proceeding copy of General Court

Martial were denied to the Petitioner by which denied the statutory right of Appeal u/s 161 (1)

of Air Force Act. Even affidavit of defence witness was not taken on record. The Court orders

dated 4.7.2014 and 13.8.2014 were not taken on record by the General Court Martial which

were passed for illegal posting which actuated the absence of the Petitioner.

xx. The Petitioner was discharged. Pension stopped Regular threat to life is given as

numerous incidents of elimination of Airmen who raise voice against commissioned officers.

The Petitioner is in bad financial state and has no money to meet his day to day expenses. The

petitioner has no means to incur heavy expenditure in travelling to Delhi for conduct of his

case. The petitioner also feels that his life will be put to an end by the respondents. Fearing

safety of his life the petitioner has moved his family bag and baggage to District Pratap Garh

(U.P.). That the High Court of judicature at Allahabad are near to the place of residence of the

petitioner and the petitioner feels that the writ Petition No. 727 of 2015 titled B.P. Mishra V/s

U.O.I. be transferred to the High Court of Judicature at Allahabad as the petitioner has no

trust and faith in the respondent and they can stoop to any level and the petitioner fears for his

life. Hence the petitioner is seeking transfer of his case to the High Court at Allahabad.

3. This Transfer Petition is being filed by the Petitioner for transferring the Civil Writ

Petition No.727/2015 filed by the Petitioner at the High Court of Delhi at New Delhi on

amongst others the following grounds.

GROUNDS

I. Because the Petitioners have no trust and faith in the respondents as they are

prejudiced and using influence and every other illegal method to defeat the petitioner. Thus

the petitioner is seeking the transfer of the case from the High Court of Delhi at New Delhi to

High Court of Judicature at Allahabad.

II. Because the petitioner have no trust and faith in Opposite party as they had in past

acted with malice and making life threatening attempts and petitioner fears for his and of his

family‟s life.

III. Because the petitioner is discharged from service and is not getting Pension and dues

and petitioner is reduced in state of penury and is not in a position to conduct case in Delhi.

IV. Because on 31.5.2015 the Petitioner was discharged. His pension stopped and he

received regular threat to life is given as numerous incidents of elimination of Airmen who

raise voice against commissioned officers.

V. Because the Petitioner is in bad financial state and has no money to meet his day to

day expenses. The petitioner has no means to incur heavy expenditure in travelling to Delhi

for conduct of his case. The petitioner also feels that his life will be put to an end by the

respondents. Fearing safety of his life the petitioner has moved his family bag and baggage to

District Pratapgarh (U.P.). That the High Court of judicature at Allahabad are near to the

place of residence of the petitioner and the petitioner feels that the writ Petition No. 727 of

2015 titled B.P. Mishra V/s U.O.I. be transferred to the High Court of Judicature at Allahabad

as the petitioner has no trust and faith in the respondent and they can stoop to any level and

the petitioner fears for his life.

VI. Because in the facts and circumstances stated above, it would be in the interest of

justice that the said Civil Writ Petition No. 727/2002 filed by the petitioner against the

respondents pending in the High court of Delhi at New Delhi be transferred to High Court of

Judicature at Allahabad (U.P.). Even otherwise there is no likelihood of disposal of writ

petition No. 727/2015 due to heavy back log of cases. The copy of the civil writ petition

No.727 / 2015 is Annexure P-1.

4. That the petitioner has not filed any other similar transfer petition before this Hon‟ble

Court so far in respect of this matter.

PRAYER

In view of the above facts and circumstances, it is respectfully submitted that this

Hon‟ble Court may be pleased:

a) To pass order for transfer of the Civil Writ Petition No. 727/2015 filed by the

Petitioner against the respondent titled “JWO BP Mishra Vs. Union of India” from High

Court Delhi at New Delhi to the High Court of Judicature at Allahabad.

b) Any other and further order as may be deemed fit and proper may also be passed.

DATE OF DRAWN \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DATE OF FILING

NEW DELHI

[NOTE : To be supported by an affidavit]

ADVOCATE FOR THE PETITIONER