RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Civil Writ Petition No. 7613/2021

CNR: RJHC010321802021 | URN: CW / 13982U / 2021

Bhanwar Lal S/o Mohan Lal Vishnoi, Aged About 36 Years, Village Bhatip, Post Pamana, Tehsil Raniwada, District Jalore, Rajasthan.

----Petitioner

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Versus

1. State Of Rajasthan, Through Secretary, Department Of Home, Government Of Rajasthan, Secretariat, Jaipur, Rajasthan.
2. The Inspector General Of Police Range, Jodhpur, Rajasthan.
3. The Superintendent Of Police Sirohi, District Sirohi, Rajasthan.
4. The Superintendent Of Police Pali, District Pali, Rajasthan.

----Respondents

For Petitioner(s) : None present

For Respondent(s) : Mr. Raj Singh Bhati for
Mr. Rituraj Singh Bhati, GC
Mr. Deepak Chandak, AAAG &
Ms. Sulochana Bishnoi for
Mr. B.L. Bhati, AAG

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment / Order

31/10/2026

1. None present for the petitioner.

2. However, learned counsel for the respondents submits that a similar controversy has already been decided by a Co-ordinate Bench of this Court in a bunch of matters led by S.B. Civil Writ Petition No. 221/2021 in case titled as ***Ram Niwas Bishnoi Vs. State of Rajasthan & Ors.*** (Decided on 17.01.2023). The relevant portion of the order is reproduced as under :

> *"Learned counsel for the parties jointly submit that the controversy is squarely covered by the order passed by a coordinate Bench of this Hon'ble Court in Dinesh Kumar Vs. State of Rajasthan & Ors.*

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(S.B. Civil Writ Petition No.11067/2021) on 10.02.2022, which reads as follows:

"These writ petitions have been filed by the petitioners aggrieved against the order dated 18.12.2020 (Annex.3), whereby, the Headquarter of the petitioners during the period of suspension has been changed from Churu to Sri Ganganagar.

The respondents by order dated 18.12.2020, inter-alia indicating that as it has come to the notice that in most of the cases, the suspended policemen have their Headquarter in the same Range/Unit, resulting in an apprehension that they may affect the cases and, therefore, their Headquarters be changed and consequently, the Headquarter of the petitioners has been changed.

Learned counsel for the petitioners made submissions that issue regarding the change of of Headquarter of persons like petitioners, who are Head Constable stands squarely covered by judgment of this Court in Subhash Chandra v. State of Rajasthan & Ors.: S.B. Civil Writ Petition No.10353/2021, decided on 03.09.2021, which order has been upheld by the Division Bench in State of Rajasthan & Ors. v. Surendra Khokhar: D.B. Special Appeal Writ No.610/2021, decided on 29.11.2021.

Learned counsel for the respondents attempted to make submissions that the order in the case of Subhash Chandra (supra), as upheld by the Division Bench, is contrary to the provisions of the Rule. However, it was conceded that the seniority of Head Constable is being maintained at District Level.

A Coordinate Bench of this Court in the case of Subhash Chandra (supra) came to the following conclusion:-

"(35) As the appointing authority of Constable/Head- Constable is the Superintendent of Police of the district concerned, consequent to their transfer under consideration, the Constables and Head-Constables will be required to receive instructions/directions from the Superintendent of Police of the district in which they have been transferred and as a natural corollary of their transfer, their appointing authority, so also the disciplinary authority will be changed.

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(36) Such action of the respondents cannot be countenanced as the Appointing Authority and Disciplinary Authority of an employee cannot be changed without his/her consent.

(37) The transfers made vide order under challenge are, on the one hand, contrary to the statutory provisions and judgments of this Court and on the other hand reflective of non-application of mind.

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(38) This Court fails to comprehend that if any disciplinary action is to be taken against a transferred Constable/Head Constable, then, who will be the competent authority to initiate the enquiry? Subhash Chandra (petitioner in S.B. Civil Writ Petition No.10353/2021), being a Constable (General Duty), has been transferred from Jaisalmer to G.R.P., Ajmer; his disciplinary authority prior to the impugned transfer was Superintendent of Police, Jaisalmer. May be, as per the stand of the respondents, his seniority will remain as per his seniority in Jaisalmer, but what would happen if the persons junior to him posted in Jaisalmer are promoted, whereas no promotional avenues are available in G.R.P., Ajmer. Will he still be given promotion?

(39) That apart, if due to any delinquency, a disciplinary action is proposed to be taken against the said Constable (Subhash Chandra), whether the Superintendent of Police, Jaisalmer will be the competent authority to initiate the disciplinary proceedings or the Superintendent of Police at Ajmer!

(40) There are many more related or ancillary questions attached with such transfer, such as; at which place the service record of the transferred employees will be kept, who will deal with leave applications etc. of the transferred Constable/Head Constables and A.S.Is? The Rules of 1989 are silent in this regard. The hiatus, if any, cannot be filled by the administrative orders.

(41) According to this Court, transfers affected by the impugned order, shunting petitioners even out of range, would entail more complications than serving the cause of administration; let alone, the inconvenience caused to the petitioners.

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(42) During the course of submission, learned Additional Advocate General apprised the Court that most of the petitioners are facing cases of anti-corruption and hence, in the interest of better administration, the respondent No.2 has decided to transfer these employees out of their respective range, so that they
cannot influence the investigation.
(43) This Court feels that the same cannot be a reason or ground to transfer a Constable/Head-Constable or even an A.S.I. out of his range. Such stand reflects State's lack of confidence in the officers and investigating agencies.
(44) As an outcome of the discussion foregoing, these writ petitions deserve to be, and are hereby allowed. The impugned order dated 05.08.2021, qua each of the petitioners, whose names are mentioned in the schedule, including that of Subhash Chandra, is quashed."

The Division Bench, on appeal, came to the conclusion that statutory provisions limit the transfer liability of the Constable and Head Constable within the district and the Assistant Sub Inspector within the Range.

So far as the submissions made by learned counsel for the respondents pertaining to the interpretation of the provisions is concerned, the Coordinate Bench as well as the Division Bench have taken into consideration the provisions of Rules and as such, the submissions made in this regard cannot be countenanced.

Further submissions were attempted to be made by learned counsel for the respondents that present is not a case of transfer
and the same is only a change of Headquarter and as such, the ratio in the case of Subhash Chandra (supra) would not apply.

A perusal of the judgment of Subhash Chandra (supra) as quoted hereinbefore would reveal that in para No.42 & 43, the Coordinate Bench has dealt with the said aspect and had negated the said submissions, therefore, the said aspect also is no more res integra.
In view of the above discussion, following the judgments in the case of Subhash Chandra (supra)

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and Surendra Khokhar (supra), the petitions filed by the petitioners are allowed.

The order dated 18.12.2020 (Annex.3) qua the petitioners are quashed and set aside."

Learned counsel for the respondents are unable to refute the applicability of the aforequoted order.

In light of aforequoted order, the present petitions are allowed. The transfer order dated 18.12.2020 (Annex.3) (in CW No.221/2021; order dated 18.12.2020 (Annex.P./7) (in CW No.865/2021); order dated 19.01.2021 (Annex.1) (in CW No.1670/2021); order dated 19.01.2021 (Annex.4) (in CW No.1677/2021); order dated 19.01.2021 (Annex.1) (in CW No.1690/2021; order dated 05.01.2021 (Annex.1) (in CW No.4213/2021); orders dated 04.01.2021 (Annex.2) and 05.01.2021 (Annex.3) (in CW No.4620/2021) order dated 09.12.2022 (Annex.3) (in CW No.4622/2021); orders dated 04.01.2021 (Annex.2) and 05.01.2021 (Annex.3) (in CW No.4669/2021; orders dated 04.01.2021 (Annex.2) and 05.01.2021 (Annex.3) (in CW No.4671/2021); order dated 06.10.2020 (Annex.3) (in CW No.6113/2021); orders dated 19.04.2021 (Annex.4) and 22.04.2021 (Annex.5) (in CW No.7229/2021; and order dated 04.02.2022 (Annex.2) (in CW No.7867/2022) qua the petitioners are quashed and set aside.

All pending applications stand disposed of."

3. Since learned counsel for the respondents have submitted that the writ petitions of the similarly situated persons have already been allowed and the petition of the present petitioner be allowed in the same terms.

4. On the statement of the learned counsel for the respondent, the present writ petition is also allowed in same terms as that of ***Ram Niwas Bishnoi*** (supra).

5. Pending applications, if any, stand disposed of.

(BIPIN GUPTA),J

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