

  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 14914/2020

Brijraj Singh Rathore Son Of Late Shri S.s Rathore, Aged About 57 Years, Resident Of Plot No. 5, Kailash Nagar, Jhotwara, Jaipur, At Present Posted As Director, Central Training Institute, Home Guard, Civil Defence, Jaipur.

-----Petitioner

Versus

1. State Of Rajasthan, Through The Principal Secretary, Home Department Government Of Rajasthan, Government Secretariat, Jaipur.
2. Civil Defence And Home Guard Department, Government Of Rajasthan, Through The Director General Of Police, Civil Defence And Commandant General, Home Guard Rajasthan, Jaleb Chowk, Jaipur.
3. The Financial Advisor, Civil Defence And Home Guard Department, Government Of Rajasthan, Headquarter, Jaleb Chowk, Jaipur Rajasthan.
4. The Senior Staff Officer, Directorate Of Civil Defence And Home Guard Department, Government Of Rajasthan, Headquarters, Jaleb Chowk, Jaipur Rajasthan.

-----Respondents

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|-------------------|---|-------------------------------------------------------|
| For Petitioner(s) | : | Mr. Chirau Sharma, for<br>Mr. Abhishek Sharma.        |
| For Respondent(s) | : | Ms. Karishma Soni, for<br>Mr. Vinod Kumar Gupta, AGC. |

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**HON'BLE DR. JUSTICE NUPUR BHATI**  
**Order**

**27/03/2026**

1. This writ petition has been filed by the petitioner with the following reliefs:

- "i) Call for the entire record pertaining to the case and after examining the same the Hon'ble Court may kindly be pleased to quash and set aside the impugned order dated 8.9.2020 wherein the amount of arrears has been directed to be recovered from the salary of the petitioner.*
- ii) Any other order or direction which may be deemed fit to the facts and circumstances of the case, may kindly be passed in favour of the petitioner.*
- iii) Cost of the writ petition may kindly be awarded to the petitioner."*

2. Brief facts of the case are that the petitioner is presently serving as Director, Central Training Institute, Home Guard and Civil Defence, Jaipur, Rajasthan, and has been in service with the department since his initial appointment on 05.04.1993 as Deputy Commandant, Home Guards through the Rajasthan Public Service Commission, Ajmer, prior to which he had served in the Indian Army (Short Service Commission) for five years from 25.08.1986 to 24.08.1990; the petitioner is aggrieved by the action of the respondent department concerning grant and subsequent recovery of arrears arising out of re-fixation of his pay for the period 15.04.1993 to 27.09.1996 pursuant to Notification No. F.1(4) DOP/A-II/94 dated 28.09.1996 (Annex.1), whereby Rule 6 of the Rajasthan Home Guards and Civil Defence Service Rules, 1976 was amended by insertion of sub-rules (3) and (4), with sub-rule (4) being given retrospective effect from 01.11.1984, thereby entitling ex-army personnel to re-fixation of pay with actual arrears payable post 01.11.1984 (subject to the last pay drawn in the armed forces), although denying arrears prior thereto; pursuant to note-sheet No. F-15(3) H.G. dated 28.11.1996 (Annex.2) and clarification issued by the Department of Personnel, the petitioner's pay was accordingly re-fixed and arrears amounting to Rs.38,181/- for the period 15.04.1993 to 27.09.1996 were paid, on which applicable income tax was also duly deposited, and similar benefits were extended to other similarly situated officers; however, despite settled legal position and repeated judicial pronouncements, including order dated 03.03.2014 passed in SB Civil Writ Petition No. 21449/2013

(Annex.3) and earlier order dated 10.04.1995 in SB Civil Writ Petition No. 805/1986, deprecating such recovery actions, the respondents have continued initiating recovery proceedings against such officers, particularly at the verge of their retirement, and in the petitioner's case also, repeated explanations were sought through departmental communications, compelling the petitioner to submit a detailed representation dated 03.04.2020 (Annex.4) along with supporting documents; nevertheless, in disregard of the settled legal position, the respondents issued order dated 08.09.2020 (Annex.7) directing recovery of the aforesaid arrears from the petitioner's salary, thereby giving rise to the present petition.

3. Learned counsel for the petitioner submits that the petitioner was appointed on 05.04.1993 to the post of Home Guard after rendering prior service in the Indian Army from 25.08.1986 to 24.08.1990, and was therefore entitled to the benefit of re-fixation of pay in terms of Notification dated 28.09.1996 (Annex.1). He submits that during his service as Home Guard, the petitioner was extended the benefit in the form of arrears upon re-fixation. However, vide the impugned order dated 08.09.2020 (Annex.7), the respondents have directed recovery of the amount paid as arrears, which benefits had been extended to the petitioner for the period from 15.04.1993 to 27.09.1996.

4. Learned counsel for the petitioner further submits that the respondents extended the said benefit to the petitioner while taking into consideration the Notification dated 28.09.1996 (Annex.1) issued by the Department of Personnel. He submits that the respondents, in Note-sheet No.F-15(3) H.G. dated 28.11.1996

(Annex.2), also examined whether the arrears for the period 01.11.1984 to 28.09.1996 would be payable and arrived at the conclusion that the same were indeed payable.

5. Learned counsel for the petitioner further submits that the petitioner has neither misrepresented nor committed any fraud, and that the respondents, while taking into consideration the relevant Notification dated 28.09.1996 and after examining the facts and circumstances of the case, extended the said benefit to the petitioner, which cannot be recovered thereafter.

6. In the aforesaid context, learned counsel for the petitioner places reliance upon the judgment dated 03.03.2014 passed by the then Coordinate Bench of this Court in the case of **Vipin Kumar Uppal Vs. State of Rajasthan & Ors.: SBCWP No.21449/2013**, and submits that the issue raised in the present writ petition is squarely covered by the said judgment.

7. Learned counsel for the respondents submits that they have wrongly interpreted the Notification dated 28.09.1996 while extending the benefits to the petitioner, and therefore the arrears paid pursuant thereto have been rightly recovered from the petitioner. She further submits that the petitioner was afforded an opportunity of hearing before passing the impugned order; however, without availing of the said opportunity, the petitioner directly approached this Court, and that, according to the respondents, the petitioner's case is not covered by the judgment in Vipin Kumar Uppal (supra).

8. I have considered the submissions made by learned counsel for the respective parties and have perused the material available on record.

9. For ready reference, relevant paragraphs of the judgment in the case of Vipin Kumar Uppal (supra), being apposite, are reproduced hereunder:

“Facts of the present case show that the aforesaid amount was paid to the petitioner after making due discussion between the various departments of the Government and Department of Personnel and also the Finance Department and on taking interpretation of the rules, such benefits were granted to the petitioner. The benefits were granted to the petitioner by the department on their own and there was no fraud or misrepresentation on the part of the petitioner. Therefore, the action of the respondents in making recovery from the retiral dues of the petitioner is therefore illegal and arbitrary and cannot be sustained in law.

In the result, the writ petition succeeds and the same is hereby allowed. The impugned-orders dated 2/2/2009 (Ann.P/11), 21/8/2012 (Ann.P/15), 31/12/2012 (Ann.P/17), 10/1/2013 (Ann.P/18), 21/10/2013 (Ann.P/20), 7/11/2013 (Ann.P/21) and 21/11/2013 (Ann.P/23) are quashed and set-aside. The respondents are directed to pay to the petitioner the aforesaid amount of Rs.61,253/- with interest @9% within a period of two months from the date, copy of this order is produced before the respondents.”

10. This Court finds that in a similar set of facts and circumstances as in the present case, the Coordinate Bench in Vipin Kumar Uppal (supra) allowed the writ petition. Although the petitioner in that case was not afforded an opportunity of hearing, however, it is undisputed by the respondents that the petitioner in the present case has neither committed any fraud nor misrepresented the Department at the time the benefit of arrears was extended to him.

11. Further, in the case of the petitioner, the respondents also considered the matter in Note-sheet No. F-15(3) H.G. dated 28.11.1996 (Annex.2) (No. 255) regarding whether the arrears for the period 01.11.1984 to 28.09.1996 would be payable. Vide

Note-sheet No. 256, the authority gave an affirmative decision that the arrears payable. The relevant Note-sheets Nos. 255 and 256 are reproduced hereunder:

"**255.** अनु: 253/सी के आशय को और स्पष्ट किया जावे । कर्मिक विभाग यह उल्लेख करे कि क्या इस प्रकरण में 01.11.1984 से 28.09.1996 (अधिसूचना जारी होने की तिथि) तक के बकाया का भी भुगतान देय होगा या नहीं।

**256.** सेवा नियमों में प्रावधान को दिनांक 1-11-84 से लागू माना गया है अतः इसके पूर्व का एरियर देय नहीं होगा लेकिन 1-11-84 से 28-9-96 की अवधि का तो एरियर देय होगा।"

12. Learned counsel for the respondents is otherwise unable to refute that the issue involved in the present writ petition is squarely covered by the judgment in the case of Vipin Kumar Uppal (supra).

13. Thus in view of the above circumstances and the facts presented by the petitioner, it is evident that the arrears granted to the petitioner for the period 01.11.1984 to 28.09.1996 pursuant to the pay re-fixation were not obtained by the petitioner through any misrepresentation or fraud. The benefit was extended to the petitioner as per Note-sheet No. F-15(3) H.G. dated 28.11.1996 (Annex.2), which explicitly confirmed that the arrears for this period were payable.

14. The Hon'ble Apex Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih (2015) 4 SCC 334**, has observed that if any benefit is granted to an employee by the department without any misrepresentation or fraud, any subsequent attempt to recover the same is illegal, arbitrary, and unsustainable in law. Therefore, the action of the respondents in ordering for recovery

of the arrears amount paid to the petitioner is contrary to the law laid down in the case of Rafiq Masih (supra), wherein it has been laid down, as under :-

**“12.** It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i)** Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii)** Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii)** Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv)** Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v)** In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

15. Accordingly, the petitioner's case is squarely covered by the judgments in Vipin Kumar Uppal (SBCWP No. 21449/2013) and Rafiq Masih (supra). Therefore, the impugned order dated 08.09.2020 (Annex.7), directing recovery of the arrears from the petitioner, is illegal and arbitrary. The writ petition is, therefore, allowed, and the said impugned order dated 08.09.2020 (Annex.7) is quashed and set aside.

16. As the petitioner has already been granted interim relief by a Coordinate Bench of this Court vide order dated 08.02.2021, whereby the respondents were restrained from making any recovery pursuant to the impugned order, it is directed that, in any case, any amount is recovered from the petitioner pursuant to impugned order dated 08.09.2020 (Annex.7), the same shall be refunded back to the petitioner forthwith along with interest at the rate of 6% per annum. The respondents are further directed to complete the necessary exercise and ensure such refund within a period of one month from the date of receipt of a certified copy of this order.

17. Pending application(s), if any, stand disposed of.

**(DR.NUPUR BHATI),J**