

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.

407/90

T. A. No.

109

DATE OF DECISION 26.3.91

E.T.Vasu _____ Applicant (s)

Mr.M.Rajagopalan _____ Advocate for the Applicant (s)

Versus

Asstt.Commissioner of Income Tax, _____ Respondent (s)
Circle I,Mattancherry,Cochin-682002 and 2 others

Mr.George Joseph, ACGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 22.5.90 the applicant who is an ex-serviceman reemployed as an U.D.C in the Income Tax Office under the Commissioner of Income Tax, Cochin, has prayed that the impugned orders at Annexures A-2 and A-3 refixing his pay as U.D.C with effect from 1.1.86 deducting the military pension of Rs.325/- should be set aside and the respondents directed to restore his reemployment pay and refix his revised pay with deduction of military pension in accordance with their own order dated 8th January, 1974 at Annexure-A1. The brief facts of the case are as follows.

2. The applicant retired from the Indian Air Force after rendering 15 years of service with a military pension of Rs.70/- per month in October, 1968. His last pay in the Air Force was Rs.213/- per month. On 28.12.74 he was reemployed as L.D.C in the Income Tax Office and his reemployment

pay was fixed at Rs.143/-per month(Annexure-A1). He was allowed to draw his pension over and above the pay so fixed. At the time of reemployment, according to the extant order applicable to reemployed ex-servicemen, Rs.50/- of the military pension was to be ignored for the purposes of pay fixation on reemployment. Accordingly the unignorable portion of his military pension being Rs.20/-, the same was deducted from his reemployment pay as L.D.C and the reduced pay of Rs.143/- was fixed. On the recommendations of the 4th Pay Commission when the minimum military pension also was later revised to Rs.375/-, his revised pay with effect from 1.1.86 was re-fixed by deducting Rs.325/- out of the revised military pension from the revised pay by designating Rs.325/- out of military pension of Rs.375/- to be unignorable. By the impugned order dated 18.5.90 at Annexure-A3 the overpayment made to him to the extent of Rs.15860/- was ordered to be recovered. The applicant has referred to the decision of this Tribunal in OAK 507/88 to claim exemption of the total revised military pension of Rs.375/-for fixation of revised pay with effect from 1.1.86. The respondents have stated that in accordance with the O.M dated 9.12.1986(Ext.R1) the pay of the applicant was fixed at Rs.1440/-in the revised scale of U.D.C with effect from 1.1.86. This was fixed after taking into account the unignorable portion of the military pension received by him. When military pension was also enhanced from Rs.70/- to Rs.375/- with effect from 1.1.86 in accordance with the O.M dated 11th September,1987 at Ext.R2, the increase in pension by the revised pension had to be reckoned for refixation of the revised pay. While verifying the qualifying service of the applicant who was to retire on 31.3.91, the Accounts Officer pointed out that the O.M. of 11.9.1987 has not been properly applied to in the applicant's case inasmuch as his revised pay with effect from 1.1.86 was not fixed after deducting the unignorable part, i.e., Rs.325/- of his revised military pension of Rs.375/- from his revised pay with effect from 1.1.86. Accordingly the impugned orders were issued refixing his revised pay and directing recovery of the overpayments made. The respondents have referred to the decision of this Tribunal in OAK 507/88 and stated that the Government has filed an appeal

before the Supreme Court and therefore the same cannot be followed in case of the applicant. They have conceded that the overpayment of more than Rs.15,000/- was made to the applicant on account of wrong fixation of his pay.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. A large number of similar cases of ex-servicemen whose part or whole of military pension was to be ignored for purposes of pay fixation on their reemployment has been coming before this Bench of the Tribunal. In some cases the question raised was about denial of pension relief on the ignorable part of the military pension. In some cases the grievance of the ex-servicemen was that when their military pension was ordered to be ignored in 1983 for purposes of initial pay fixation, those who had already been re-employed were given the option to come over to the 1983 order of exemption only on the condition that they will lose their previous re-employment service for the purposes of increments. Still in other cases the grievance was that on revision of the pay scales of the re-employment post with effect from 1.1.86 while their military pension continued to be exempted ^{totally} under the 1983 order, when the military pension itself was increased subsequently with retrospective effect from 1.1.86, the increase in the military pension was ordered to be deducted from their revised pay even in those cases where the entire military pension was to be ignored. Considering that these ex-servicemen had fought and offered themselves for the defence of the country and they were retired prematurely before attaining the age of 55 years on cessation of hostilities and the Government themselves have been taking a generous view in their cases in the matter of re-employment and grant of advance increments on re-employment by virtue of their equivalent military service, this Tribunal has been taking a balanced view to avoid undue financial hardship in the interpretation of the various orders passed by the Govt. for their benefit. It will be therefore useful to briefly delineate the background of such cases. The principal question involved in this case is whether the ex-servicemen who had been discharged from the Armed Forces before

attaining 55 years of age and accordingly whose part or whole of military pension was to be ignored for the purposes of fixation of civilian pay on re-employment would continue to enjoy this facility of ignoring part or whole of their military pension even after the pay of the re-employment post as also their military pension were revised with effect from 1.1.86. Normally, in accordance with Article 526 of the Civil Service Regulations and the Government of India's instructions notably the Ministry of Finance's O.M of 25.11.1958 re-employed pensioners will get their initial pay on re-employment fixed at the minimum stage of the scale of pay prescribed for the post in which they are reemployed. In cases where it is felt that the fixation of initial pay at the minimum of the prescribed pay scale will cause undue hardship(i.e. where pay plus pension is less than the pre-retirement pay), the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer had rendered before retirement in a post not lower than that in which he is reemployed. In addition to the pay so fixed the reemployed pensioner is permitted to draw separately any pension sanctioned to him provided that the total amount of initial pay as fixed above plus the gross amount of pension and pension equivalent of other forms of retirement gratuity does not exceed the last pay drawn by him before retirement. In case this limit is exceeded the re-employment pay is reduced by the amount of excess. Simply stated it only means that the reemployment pay is adjusted so that the adjusted pay plus pension and pension equivalent of gratuity does not exceed the last pay drawn before retirement. As stated earlier in case of ex-service-men who retired before attaining the age of 55 years part or full of their military pension is ignored for fixing their reemployment pay, i.e., the ignorable part of the pension is not added to the re-employment pay to compare the total with the last pay drawn before retirement. The ignorable part of the pension was at one time Rs.50/- which was increased to Rs.125/- by the Ministry of Finance's O.M of 19th July 1978. By a further O.M the Ministry of Defence dated 8th February 1983 for the aforesaid category of re-employed ex-servicemen who retired below Commissioned Officer's rank, the entire pension has to be ignored for the purposes of their pay

fixation on reemployment. Thus, in their cases, there would be no adjustment by deduction from their initial pay of any amount of the military pension because their entire military pension was to be ignored as if it did not exist. As is well known, on the recommendation of the Fourth Pay Commission, the pay scales of the Central Govt. servants were revised from 1.1.86 and later the pension was also revised with effect from the same date. Initially the pay scales of the reemployed pensioners were not revised, but by the Department of Personnel and Training's O.M of 9th December, 1986 the revised pay scales were made applicable to reemployed pensioners also, but it was laid down that the reduction of the re-employment pay by adjustment of pension will continue as before /under the pre-revised (as discussed above) retirement benefits. When, however, the pension was also revised with effect from 1.1.86, in order to avoid the double benefit of revised pay scales and revised pension, by the Department of Personnel and Training's further impugned O.M dated 11th September 1987(Ext.R2), it was laid down that "pay of pensioners who were in re-employment on 1.1.1986 and whose pay was fixed in accordance with the provisions of this Department O.M dated 9.12.1986 may be refixed with effect from 1.1.1986 by taking into account the revised pension". For re-employed ex-servicemen it was laid down that "likewise increase in the pension of ex-servicemen under separate orders of Ministry of Defence may also be adjusted by refixation of their pay in terms of provisions of this department O.M dated 9.12.1986". The respondents in this case have interpreted the O.M of 11th September, 1987 to deduce that even where the entire military pension used to be ignored for pay fixation in accordance with O.M of February 1983, with the revision of pension by which a minimum military pension of Rs.375/-was fixed with effect from 1.1.86, the increase in pension has to be reckoned to reduce the re-employment pay which also was revised with effect from 1.1.86.

4. At this stage we will pause for a while. In case of the applicant before us when he was reemployed on 28.12.74 the ignorable part of the pension was Rs.50/- which means that for all purposes of reemployment

his military pension of Rs.70/- was to be reckoned as Rs.20/- only. For instance his reemployment pay was to be reduced not by Rs.70/- but by Rs.20/- only. The ignorable part of the military pension was increased to Rs.125/- in 1978 and the entire military pension for Non-Commissioned officers like the applicant was to be ignored by the O.M. of 1983 provided he opted to come over to the benefits of the O.M. It appears that the applicant did not opt for the O.M. of 1983 and the non-ignorable part of the military pension of Rs.20/- continued to be deducted from his re-employment pay. He did not feel the pinch of it as the/ amount was not considerable. When the pay scales were revised with effect from 1.1.86 by the O.M of 9th December, 1986 the revised pay was also reduced by Rs.20/- only with effect from 1.1.86 and the applicant ~~did~~ did not feel its impact. When later the military pension was increased from Rs.70/- to Rs.375/- the deduction from the revised pay also continued to be Rs.20/- However, by a subsequent O.M. of 11th September, 1987(Ext.R2) when it was directed that because of the increase in military pension, the same should be deducted from the revised pay to avoid double benefit and the unignorable portion of the military pension of Rs.375/- became Rs.325/- (Rs.375/- less Rs.50/-), the reemployed ex-servicemen like the applicant received a financial blow. One of them Shri Kurien Joseph came before the Tribunal in O.A.K 507/88 seeking the benefit of total exemption of military pension by virtue of the O.M of 1983. In our judgment dated 18.12.89 in that case we observed as follows:-

"Since the entire military pension of the applicant has to be ignored after 24th October, 1983, the increased military pension of Rs.375/- with effect from 1.1.86 has to be ignored for the purposes of pay fixation with effect from 1.1.86. The respondents' contention that the applicant cannot be given the benefit of ignoring the entire amount of pension for purposes of pay fixation as provided for in the O.M of 8.2.83 as he did not opt for the same, cannot be accepted. The O.M of 8.2.83 indicated that if the reemployed pensioners opt for this O.M, and they had been in reemployment from a prior date, they will lose the benefit of their previous reemployment for the purposes of increments etc. This Tribunal in T.A.K 404/87 and other cases had an occasion to deal with the question of application of the O.M of 1983 for such ex-servicemen who were in reemployment from a prior date. In the judgment dated 31.10.89 to which one of us was a party it was felt that such Ex-servicemen should not be denied the benefit of the O.M from the date of their re-employment, but they should not be given the arrears of pay. Relying on the

judgment of the Supreme Court in Nakara's case the Tribunal in TAK 404/87 observed as follows:-

"9. The Supreme Court in Nakara's case compared the position of pensioners vis-a-vis the Liberalised Pension Scheme with the position of serving Government servants vis-a-vis the scheme revised pay scales. The following further extracts from the same judgment will be relevant:-

" Revised pay-scales are introduced from a certain date. All existing employees are brought on to the revised scales by adopting a theory of fitments and increments for past service. In other words, benefit of revised scale is not limited to those who enter service subsequent to the date fixed for introducing revised scales but the benefit is extended to all those in service prior to that date. This is just and fair. Now if pension as we view it, is some kind of retirement wages for past service, revised retirement benefits being available to future retirees only. Therefore, there is no substance in the contention that the Court by its approach would be making the scheme retroactive, because it is implicit in theory of wages".(emphasis added)

"From the above it is clear that the Supreme Court were keen that no discrimination should be made between the pensioners based on the date of retirement. It was also felt that notional fixation of pension on the date of retirement even though it may be anterior to the promulgation of Liberalised Pension Scheme without giving them retirement and date of promulgation of scheme)will not be giving retrospective effect to the Scheme and will not violate its prospective nature. In the case of revision of pay scale from a particular date even old entrants are allowed revision of pay scale from a particular date and the benefit of increments which they had earned during the past period is also duly accounted for. It therefore seems to us iniquitable that the re-employed pensioners who had been re-employed prior to February, 1983 should be forced to lose the benefit of their past service by exercising option on a "take it or leave it basis".

"10. We feel that for those Ex-servicemen who had been re-employed prior to the issue of the O.M their re-employment pay should be determined notionally on the date of their re-employment by applying the enhanced limit of ignorable pension and their pay as on 8th February, 1983 reckoned by giving them the benefit of earning increments over and above the notional pay so fixed. Their actual pay will be revised accordingly with effect from the date of issue of the relevant O.M. without any arrears based on notional pay fixation for the past period."

"It was directed that those petitioners who had not opted for the O.M should be given an opportunity to opt and if they do so, their actual pay from the date of issue of the O.M should be determined on the basis of the O.M. The applicant before us indicated that he did not opt for the O.M. of 1983 as the difference between the ignorable part of the military pension of Rs.50/- and the total military pension of Rs.66/- was only Rs.16/- and he did not bother much about the same. When the total military pension was increased to Rs.375/- from 1.1.1986 the difference between Rs.50/- and the total pension which was to be deducted from his re-employment salary became so pronounced that he invoked the O.M of 1983 for ignoring the total

pension. Since the option itself was not found by the Tribunal to be equitable as it was conditional upon the applicant losing the benefit of his entire previous service, we do not see much justification in the respondents' taking the technical plea of the applicant not exercising the option in 1983, for denying him the benefit of total exemption of enhanced pension for purposes of pay fixation. In any case at least from 1.1.1986, if not earlier, the applicant should be given exemption of the total pension of Rs.375/- of military pension for pay fixation."

Relying upon the dictum in the aforesaid case which is similar to the one before us, we feel that the applicant before us also should be given exemption of total pension of Rs.375/- of revised military pension for pay fixation with effect from 1.1.86. Our finding in O.A 507/88 was reinforced further by the detailed discussions in our judgment dated 20.12.90 in O.A. 144/90. We quote liberally the relevant parts of that judgment as follows:-

"4. Let us start with the Department of Personnel and Training's O.M No.3/7/86-Estt.(Pay II) dated 9th December, 1986(Annexure R3(e) in O.A 710/89) by which the re-employed pensioners also were given the benefit of revised pay scales with effect from 1st January 1986. Para 2 of this O.M. is extracted below:-

"2.(i) the initial pay of a re-employed Government servant who elects or is deemed to have elected to be governed by the revised pay scale from the 1st day of January, 1986 shall be fixed in the following manner, namely:-

According to the provisions of Rule 7 of the C.C.S(R.P.) Rules, 1986, if he is

- 1) a Government servant who retired without receiving a pension gratuity or any other retirement benefit; and
- 2) a retired government servant who received pension or any other retirement benefits but which were ignored while fixing pay on re-employment.

2.(ii) The initial pay of a re-employed Government servant who retired with a pension or any other retirement benefit and whose pay was fixed on reemployment with reference to these benefits or ignoring a part thereof, and who elects or is deemed to have elected to be governed by the revised scales from the 1st day of January, 1986 shall be fixed in accordance with the provisions contained in Rule 7 of the Central Civil Services(Revised Pay) Rules, 1986.

In addition to the pay so fixed, the re-employed government servant would continue to draw the retirement benefits as he was permitted to draw in the pre-revised scales. However, any amount which was being deducted from his pay in the pre-revised scale in accordance with the provisions of Note 1 below para 1(c) of Ministry of Finance Office Memorandum No.F8(34)Estt.111/57, dated the 25th November, 1958 shall continue to be deducted from the pay and the balance will be allowed as actual pay.

After pay in the revised scale is fixed in the manner indicated above, increments will be allowed in the manner laid down in Rule 8 of C.C.S(R.P)Rules, 1986".(emphasis added)

[Signature]

From the above it is clear that vide para 2(i) above for those re-employed pensioners who did not get any retirement benefit or whose pension was totally ignored, for purposes of pay fixation on re-employment, their re-employment pay on revision will be fixed like any other Central Govt.servant without any deduction because of pension. In respect of the re-employed pensioners whose full or part of pension was to be taken into account for pay fixation on re-employment vide para 2(ii) above, their re-employment pay in the revised scales would continue to be subjected to adjustment by deduction on the basis of the non-ignorable part of the unrevised pension. It may be remembered that the aforesaid O.M of 9th December, 1986 was issued when it was decided to give revised pay scales to the re-employed pensioners, but when their pension had not been revised. Subsequently when the pension also was revised with effect from 1.1.1986, the impugned order dated 11th September 1987(Annexure A1) was issued. For the facility of reference, the order is quoted in full as follows:-

"Subject: Applicability of C.C.S(RP)Rules, 1986 and C.C.S(RP) Amendment Rule 1987 to persons re-employed in Government Service after retirement, whose pay is debitable to Civil Estimates.

" The undersigned is directed to invite attention to this Department O.M of even No. dated 9th December,1986 whereby persons reemployed in Civil posts under the Government after retirement and who were in the reemployment as on 1.1.1986 were allowed to draw pay in the revised scales under CCS(RP)Rules, 1986. A point has arisen as to whether consequent on the revision of pension of the employees with effect from 1.1.1986, the revised pension should be taken into reckoning for the purpose of fixation of pay of such re-employed persons in the revised scale.

"2. The matter has been considered. It has been held that if the revised pension is not taken into consideration, certain unintended benefits are likely to accrue to re-employed pensioners as they will draw the revised amount of pension which would invariably be higher than the earlier amount of pension, in addition to pay already fixed on the basis of the pension granted to them earlier. The President is accordingly pleased to decide that pay of pensioners who were in re-employment on 1.1.1986 and whose pay was fixed in accordance with the provisions of this department O.M dated 9.12.1986 may be refixed with effect from 1.1.1986 by taking into account the revised pension. Likewise increase in the pension of ex-servicemen under separate orders of Ministry of Defence may also be adjusted by refixation of their pay in terms of provisions of this department O.M. dated 9.12.1986. Over payments already made may be recovered/adjusted, as is deemed necessary. All re-employed pensioners would therefore, be required to intimate to the Heads of Officers in which they are working, the amount of revised pension sanctioned to them with effect from 1.1.1986 for the purpose of refixation of their pay after taking into account their revised pension.

"3.In so far as the application of these orders to the persons serving in the Indian Accounts and Audit Department is concerned, these orders are issued in consultation with the Comptroller and Auditor General."(empahasis added)

Since the order of 11th September 1987 directs adjustment of the pension of ex-servicemen by re-fixation of their re-employment pay in terms of the O.M of 9th December 1986, the respondents cannot reintroduce through the back door, the ignorable part of the pension which continued to be ignored by the O.M. of 9th December 1986. The question of deduction of pension from the re-employment revised pay arises only in respect of those re-employed ex-servicemen who fall within sub-para 2(ii) of the O.M. of 9th December, 1986. Since the applicants before us had their entire amount of pension ignored by virtue of the 1983

order, which has not been superseded by the impugned order of 11th September, 1987, they fall within the application of sub-para 2(i) of the O.M of 9th December 1986 wherein there is no mention of adjustment of pension by deduction from pay as has been mentioned in sub-para 2(ii) thereof. The above conclusion is supported by the Ministry of Finance's letter No.A-38015/72/88-Ad.IX dated 5th April 1989(a copy of which is placed on the case file) as quoted below:-

"Sub: Re-fixation of pay of re-employed military pensioners as per CCS(RP)Rules,1986 -regarding.

I am directed to refer to your letter F.No.250/1/Esst/Rep/89- dated 6.1.1989 on the above subject and to say that matter has been examined in consultation with departments of Personnel & Training and P&FW who have held the views that as far as the application in O.M No.3/9/87/Esst.(P-II) is concerned increase in pension w.e.f 1.1.86 has to be adjusted from the pay fixed in the revised scale excepting those where pension is not at all reckonable factor e.g. those governed under O.M No.2(1)/83-D(civ.1 dated 8.2.1983 of the Ministry of Defence. Any over payments already made also required to be recovered.

2. Regarding fresh opportunity to exercise option under Clause (b) of sub-rule (i) of Rule 19 of CCS(Penion)Rules 1972 ,the Department of Pension & Pensioners Welfare had stated that option once exercised is final and cannot be changed.The petitioner may be informed accordingly."

"From the above clarificatory order it is crystal clear that where pension is to be ignored there is not to be any adjustment of re-employment pay in the revised scale. By the same logic where and not the whole of military pension is to be ignored for pay fixation, the same is to be ignored in the revised pension for purposes of pay fixation in the revised pay scale.

5. Even otherwise, the contention of the respondents that one should not get the double benefit of revised pension and revised pay simultaneously is not valid, when military pension as such has to be ignored in part or full as the case may be. That the ignorable part of pension is irrelevant and 'non est' for the purposes of pension relief or advance increment for re-employed pensioners, has been so held by two Larger Benches of this Tribunal in their judgment dated 28.7.1989 in TAK 732/87 etc. for pension relief and in judgment dated 13.3.90 in O.A 3/89 etc. for advance increments. Fortified in ratio by these two judgments of the Larger Benches and in letter by the Ministry of Finance's O.M of 5th April, 1989, we have no hesitation in reiterating our earlier finding that reemployed military pensioners whose full or part of the pension was to be ignored before 1.1.86 will continue to have the whole or part of their revised military pension ignored for the purposes of re-fixation of their re-employment pay in the revised scales after 1.1.1986. We, however, find nothing wrong in the O.M. of 11th September, 1987 which seems to have been misinterpreted and wrongly applied in the case before us.

6. In the conspectus of facts and circumstances we allow this application and set aside the impugned memo dated 21.8.89 at Annexure A2 issued to the eleventh applicant and similar memos issued to the other applicants and all action taken thereunder to refix the pay of the applicants with effect from 1.1.86 and direct the respondents to refix the pay of the applicants in the revised pay scale with effect from 1.1.86 by ignoring the total amount of military pension drawn by them even after revision."

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Considering the facts and circumstances of the case we are bound by the ratio, dicta and the findings in the aforesaid judgments.

7. As regards the contention of the respondents that an appeal has been filed against the judgment of this Tribunal in OAK 507/88 and therefore our decision is not a binding precedent ,a similar contention taken in another case of ex-servicemen was rejected by us in OA 193/90. We find that pendency of an S.L.P and even stay of the order in the S.L.P cannot stand in the way of our relying on the judgment and that the ratio of those judgments will continue to be applicable to other cases also until those judgments are set aside by the Hon'ble Supreme Court.In Roshan Jagdish Lal Duggal and others vs. Punjab State Electricity Board, Patiala and others, 1984(2)SLR 731, the High Court of Punjab and Haryana observed that pendency of an appeal before the Supreme Court does not render an order of the High Court 'non est' even where the High Court's order in appeal had been stayed by the Supreme Court. The order of the High Court was still to be treated as a binding precedent. The Delhi High Court also in Jagmohan v. State, 1980 Criminal Law Journal 742 observed that mere pendency of appeal before the Hon'ble Supreme Court does not take away the binding nature of the High Court's decision unless and until it is set aside by the Hon'ble Supreme Court. In Alpana V.Mehta vs. Maharashtra State Board of Secondary Education and another, AIR 1984 SC 1827 the Supreme Court upheld the contention of the appellant that the Bombay High Court was not justified in dismissing her writ petition on the sole ground that operation of the earlier judgment of that High Court on the basis of which the writ petition had been filed,had been stayed by the Supreme Court.The above view has been upheld by the Full Bench of the Principal Bench of the Tribunal in its judgment dated 13th February, 1991 in O.A 184/1990(Shri Ganga Ram & Another v. Union of India) and 3 other O.As. In those cases the issue before the Full Bench was whether the judgment delivered by another Full Bench in Rasila Ram's case about the jurisdiction of the Tribunal which had been stayed by the Supreme Court in an S.L.P filed by the Government, remains valid as a binding precedent or whether the interim order passed by the Supreme Court nullified the

judgment of the Full Bench or its effect was to be confined only in respect of the judgment pronounced in the case of Rasilaram. The Full Bench observed that the interim order passed by the Supreme Court in the S.L.P in Rasilaram's case not being a speaking order does not make any declaration of law and "consequently, it is not a binding order under Article 141 of the Constitution". The Full Bench further observed that until the decision of the Full Bench in Rasilaram's case is set aside, reversed or modified by the Supreme Court it remains effective. In view of unambiguous finding of the Full bench of the Tribunal, we have no hesitation in following the dicta of our judgments in this case also so long as those judgments have not been set aside, modified or reversed by the Hon'ble Supreme Court. ✓

8. In the facts and circumstances we allow the application, set aside the impugned orders at Annexures-A2 and A3 refixing the pay of the applicant and direct the respondents to refix the pay of the applicant with effect from 1.1.86 by ignoring the total amount of revised military pension of Rs.375/-per month. Any recovery made pursuant to the impugned order dated 8.5.1990 at Annexure-A3 should be refunded to the applicant along with all the arrears of the revised pay to be determined on the basis of this judgment. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.


 26/3/91
 (A.V.Haridasan)
 Judicial Member


 26/3/91
 (S.P.Mukerji)
 Vice Chairman

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