PETITIONER:
THE GENERAL MANAGER, TELEPHONES, AHMEDABAD & ORS.

Vs.

RESPONDENT:
V.G. DESAI & ANR.

DATE OF JUDGMENT: 01/02/1996

BENCH:
AGRAWAL, S.C. (J)
BENCH:
AGRAWAL, S.C. (J)
NANAVATI G.T. (J)

CITATION:
1996 AIR 2062 1996 SCC (7) 444
JT 1996 (2) 77 1996 SCALE (1)668

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.C. AGRAWAL, J,

Special leave granted.

V. G. Desai, respondent No. 1, was appointed as Telephone Operator in the Telephone Department of the Government of India on August 30, 1948. He was promoted as Inspector with effect from November 12, 1959 in the said department. By order dated February 28, 1970, he was transferred from the office of Divisional Engineer Telegraphs Baroda to the office of Divisional Engineer telegraphs Rajkot at Kandla. He did not join at the place of posting and remained on leave. Ultimately he submitted an application dated September 25, 1971 whereby he sought further extension of leave for 60 days and also sought retirement on medical grounds. By application dated October 19, 1971, he requested the Divisional Engineers Telegraphs, to accept his resignation with immediate effect. Since a vigilance case was pending against him since September 25, 1971, The said request of resignation was not accepted. In the departmental proceedings which were taken against him the punishment of censure was imposed on him on March 20, 1972. On August 1, 1980, he sent another letter requesting that his retirement case be settled and his GPF be released. Since no action was taken on the said letter, he filed a Writ Petition in the Gujarat High Court. After the constitution of Central Administrative Tribunal (hereinafter referred to as 'the Tribunal), the said writ petition was transferred to the Tribunal and it was registered as TA No. 109 of 1986, The said application was disposed of by the Tribunal by judgment dated November 30, 1987. The Tribunal was of the view that after the award of the punishment of censure on March 20, 1972, there was no reason why the authorities could not have decided on the letter for retirement on medical grounds submitted by the respondent. According to the Tribunal, if the question of withholding

any part of pension or retirement benefits or GPF on account of the punishment imposed upon him arise, this should also have been decided immediately after 1972. In view of the delay on the part of the authorities in dealing with that request of the respondent to release his pensionary benefits, arrears of pay, GPF etc the Tribunal gave the following direction :-

> "We, therefore, direct that the respondents decide the question of releasing GPF leave salary and other dues of the petitioner within a period of two months and further direct that an interest of 9% should be payable on such dues to the petitioner from 20.4.1972 one month after the date of the order of punishment of censure i.e., 30.3,1972. Payment of the dues of the petitioner with interest should be effected within three months of the date of this order."

The respondent filed an application (MA/392/88) which was disposed of by order dated February 20, 1989 with the following observations :

> "The Judgment in TA/109/86 clearly states that the dues as indicated in it are required to be paid and further clarification is not possible in this review application."

The respondent was paid the dues in accordance with the directions contained in the judgment dated November 30, 1987 including the amount lying in his GPf account alongwith interest @ 9% from April 20, 1972. The claim of the respondent for pension was, however, not accepted by the Divisional Engineer Telegraphs by his order dated February 26, 1988 on the ground that he was not entitled to pensionary benefits as per the rules.

Thereafter the respondent filed another application (OA No. 313 OF 1989) which has given rise to these appeals. In that application the respondent sought the relief that a declaration may be given that he is entitled to pensionary benefits on and from March 20, 1972 or from the date of application made by him requesting for retirement on medical grounds, i.e., September 25, 1971. In the alternative he sought a declaration that he is entitled to pensionary benefits on voluntary retirement as per the new pension rules, namely, Central Civil Services (Pension) Rules, 1972 (for short '1972 Rules') or, in the alternative, for a declaration that he has retired on superannuation on August 27, 1987 and that he is entitled to pensionary benefits of retirement by superannuation.

The said application of the respondent was opposed by the appellants on the ground that as per the decision of the Tribunal dated November 30, 1987 in TA No. 109 of 1986 the respondent had already been paid arrears of pay alongwith interest as per the directions of the Tribunal and no cause survives. It was submitted that as per the judgment of the Tribunal, the respondent is deemed to have retired with effect from April 20, 1972 and, at that time, entire period of his qualifying service was 23 years 6 months and 20 days and since he had not completed 30 years of qualifying service, he could not get pension under the old rules. It was submitted that the 1972 Rules had come into force from June 1, 1972 and the respondent could not get pension under

the said rules. It was also submitted that the respondent also could not be granted invalid pension because the medical certificate submitted by him did not declare him unfit for ever but for a specific period only.

By judgment dated August 27, 1992, the Tribunal has held that in the earlier judgment dated November 30, 1987 in TA No. 109 of 1986 the Tribunal had not accepted the claim of the respondent that he is deemed to have retired on medical grounds and that the said claim has also not been established by him in this petition. The Tribunal has, therefore, rejected his claim that he was entitled to pensionary benefits on and from March 20, 1972 or from the date of his application, i.e., September 25, 1971, requesting to retire him on medical grounds. The Tribunal has also held that the respondent could not be granted invalid Pension under CSR 441 because no documentary evidence was produced by him to show that he was incapacitated from rendering public service due to bodily or mental infirmity and the medical certificate produced by him did not declare him unfit for ever but it declared him unfit for a specific period only. The Tribunal has, however, referred to the 1972 Rules, more particularly Rule 48-A, and has observed that on March 20, 1972, the respondent had completed 20 years qualifying service and he could claim pension on the basis of the said Rule. It was submitted on behalf of the appellants before the Tribunal that 1972 Rules had come into effect from June 1, 1972 and the respondent could not avail the benefit of the said Rules. The Tribunal has observed that the 1972 Rules were published vide notification dated March 1,1972 and at the time of hearing of TA No. 109 of 1986 neither party had brought to the notice of the Tribunal that the 1972 Rules had been notified in the Gazette on March 1, 1972 and if the same had been brought to the notice of the Tribunal it might have perhaps considered the respondent for voluntary retirement finally at that stage considering the said notification. The Tribunal further observed that if the appellants had rejected the request of the respondent for retirement on medical grounds immediately after the order dated March 20, 1972 imposing punishment of censure the respondent could have taken the advantage of the 1972 Rules as per Rule 48-A and he could have given notice of not less than three months in writing to the appellants to retire him from service as he had completed 20 years qualifying service. The Tribunal directed the appellants to fix the pension of the respondent under Rule 48-A of the 1972 Rules as if he had retired on June 1, 1972 on the basis of his qualifying service that may be calculated upto that date.

The appellants submitted a Review application (R.A. No. 43 of 1993) for the review of the said judgment of the Tribunal on the ground that Rule 48-A was not in operation on June 1, 1972 but had been inserted by notification dated November 28, 1978 with effect from August 26, 1977. The said review application was, however, dismissed by the Tribunal by its order dated December 3, 1993 as barred by limitation. The Tribunal has dealt with the said review application on merits and has held that the judgment dated August 27, 1992 did not suffer from any error apparent on the face of the record.

The appellants have filed these appeals against judgment dated August 27, 1992 in OA No. 313 of 1989 as well as judgment dated December 3,1993 in R.A. No. 43 of 1993.

The impugned direction given by the Tribunal regarding payment of pension to the respondent by treating him as having retired with effect from June 1, 1972 involves two

questions : (i) whether the direction to treat the respondent as having retired from service from June 1, 1972 is in consonance with the earlier judgment dated November 30, 1987; and (ii) whether under the 1972 Rules pension is payable even if the respondent is treated as having retired on June 1, 1972.

In the earlier judgment dated November 30, 1987, the Tribunal has observed :

> "The punishment of censure awarded after the inquiry following the C.B.I. report came about on 20/3/1972. There is no reason why the respondents authorities could not have decided on the letter for retirement on medical grounds thereafter, even if there was any genuine reason for withholding consideration of his letter before that date. The respondent authorities, therefore, have also in a sense acquiesced in the position brought about the applicant treating himself as if he had retired. If the question of withholding any part of pension or retirement benefits or G.P.F. on account of the punishment imposed upon him arises, this should also have been decided immediately after 1972."

This would show that having regard to the conduct of the respondent as well as the appellants, the Tribunal, while deciding TA No. 109 of 1986, had proceeded on the basis that the respondent should be deemed to have retired on April 20, 1972 and gave the direction regarding releasing GPF, leave salary and other dues to the respondent and for payment of interest @ 9% on such dues from April 20, 1972. The direction that interest should be paid on GPF with effect from April 20, 1972, can be justified only on the ground that GPF was payable on April 20, 1972 which means that the deemed date of retirement of the respondent was April 20, 1972. The view expressed by the Tribunal in the later judgment dated August 27, 1992 in OA No. 313 of 1989 that in its earlier judgment dated November 30, 1987 it had not held that the respondent should be deemed to have retired on April 20, 1972 cannot, therefore, be upheld. In the later judgment dated August 27, 1992 in OA No. 313 of 1989, the Tribunal has directed that the respondent should be treated to have retired on June 1, 1972. The said direction cannot be reconciled with the direction given by the Tribunal in its earlier judgment dated November 30, 1987 in T.A.No. 109 of 1986. The Tribunal has not given any cogent reason for arriving at this date, i.e., June 1, 1972. Merely because the 1972 Rules came into force on June 1, 1972 cannot be the basis for altering the date of retirement of the respondent from April 20, 1972 to June 1, 1972.

There is another serious infirmity in the direction given by the Tribunal in its later judgment dated August 27, 1992 regarding payment of pension to the respondent on the basis that he should be treated to have retired on June 1, 1972. The said direction appears to have been given by the Tribunal on the basis that the respondent was entitled to invoke Rule 48-A of the 1972 Rules and since the said rules came into force on June 1, 1972, he was entitled to claim pension on the basis of the reduced period of 20 years of

qualifying service. As indicated earlier, Rule 48(A) was inserted in the 1972 Rules by notification dated November 28, 1978 with effect from August 26, 1977. Even if the respondent is treated to have retired on June 1, 1972, as directed by the Tribunal in its judgment dated August 27, 1992, he cannot claim pension on the basis of Rule 48-A because the said provision was not in force on June 1, 1972 and came into force much later on August 26, 1977. This error in the approach of the Tribunal was pointed out in the review application filed by the appellants. The Tribunal, however did not consider it necessary to correct this apparent error in the judgment on the ground that the review application was barred by limitation as well as on the ground that the judgment dated August 27, 1992 did not suffer From an error apparent on the face of the record.

Shri Narayan B. Shetye, the learned senior counsel appearing for the respondent, has laid stress or the observations in the earlier judgment dated November 30, 1987 in TA No. 109 of 1986 that the respondent could not claim that he must be deemed to have retired merely because letter dated May 29, 1971 had not been replied to and until the competent authority decided and communicated the reply to the respondent's request for retirement on e cal grounds it cannot be deemed that the respondent is retired merely because his letter had not been replied to. It is submitted that since the offer of the respondent for voluntary retirement was not accepted by the competent authority he should be treated to have continued in service till he attained the age of superannuation in 1987 and he is entitled to pension. We are unable to agree. As indicated earlier, the only possible construction that can be placed on the direction that was given by the Tribunal in its judgment dated November 30, 1987 in TA No. 109 of 1986 can be that the respondent was treated to have retired with effect from April 20, 1972. The appellants as well as the respondents also proceeded on this interpretation of the said judgment and the dues payable to the respondent were paid to him on that basis and GPf amount was also released with interest @ 9% from April 20, 1972. The respondent having obtained the said benefit under the Judgment dated November 30, 1987 cannot now be permitted to say that he could not be treated as having retired on April 20, 1972 and that in continued in service till he attained the age of superannuation as per rules in August, 1987.

Shri Shetye has urged that the present case involves an individual employee and since substantial justice has been done by the Tribunal by directing payment of pension it is not a case which calls for interference by this Court under Article 136 of the Constitution. Reliance has been placed on the decision of this Court in Council of Scientific and Industrial Research & Anr. v. K.G.S. Bhatt & Anr. 1989 (4)SCC 635, wherein this Court has emphasized that in exercise of its jurisdiction under Article 136 of the Constitution this Court will not interfere with the orders of the Tribunal unless there is manifest injustice or substantial question of public importance, It is no doubt true that the power of this Court under Article 136 of the Constitution is to be exercised sparingly and the Court does not ordinarily interfere with the orders of the Tribunal on individual disputes, But since the possibility of the impugned judgment being used as a precedent in future, cannot be ignored we feel that the impugned judgment of the Tribunal dated April 27, 1992 cannot be allowed to stand and the matter calls for interference of this Court under Article 136 of the Constitution, We are not inclined to

agree with the submission of Shri Shetye that since substantial justice has been rendered this Court should not interfere with the impugned judgment of the Tribunal. In our opinion under the impugned judgment the Tribunal has extended pensionary benefits to the respondent which were not available to him in law.

The appeal filed against judgment dated August 27, 1992 in OA No. 313 of 1989 is, therefore, allowed, the said judgment of the Tribunal is set aside and OA No. 313 of 1989 filed by the respondent is dismissed. Since the judgment dated August 27,1992 in O.A.No. 313 of 1989 has been set aside the Review Application No. 43 of 1993 vied by the appellants for the review of the judgment dated August 27, 1992 does not survive and the appeal filed against the order dated December 3, 1993 on the review application is dismissed as infructuous. There will be no order as to costs.